

D. Whether there is substantial evidence in the record to support the State Engineer's finding of abandonment of the water rights presented for change in the place of use by Application 47809, parcels 4 and 5; Application 49285, parcel 1; and Application 49111, parcel 1.

### **III. STATEMENT OF THE CASE**

#### **A. Nature of the Case.**

This appeal seeks review of State Engineer's Ruling No. 4798 (Ruling 4798). That ruling involved the consideration of forty applications to change the place of use of water decreed under the Truckee and Carson River Decrees (Change Applications). The Pyramid Lake Paiute Tribe of Indians (PLPT) protested those Change Applications, and the United States was allowed to intervene as a party for the purposes of protecting federal interests.

#### **B. Course of the Proceedings.**

The Change Applications at issue here were originally granted by the State Engineer following administrative hearings held on January 16, 1986, February 21, 1986, January 28, 1988, February 16 and 22, 1989, and April 1, 1991. Federal Appellant's Excerpts of Record (FER) at 35. Those applications which had been presented to the State Engineer as part of the 1986, 1988, and 1989 hearings were remanded to the State Engineer by the District Court on July 25, 1990. *Id.* at 36. Following a hearing at which no additional evidence was taken the State Engineer

issued Ruling on Remand 3778 on February 8, 1991, and once again granted the Change Applications. *Id.* at 36-37. The applications presented at hearing on April 1, 1991, were also affirmed by the State Engineer in Ruling 3868 on January 30, 1992. PLPT and the United States appealed both Ruling 3778 and Ruling 3868 to the District Court. On April 20, 1992, the District Court issued a minute order granting a joint motion by PLPT, the United States, the State Engineer, and the Truckee-Carson Irrigation District to stay the appeal pending the consideration of other rulings of the State Engineer that were on appeal to this Court. *Id.* at 37.

During the pendency of the stay this Court decided *United States v. Alpine Land and Reservoir Co.*, 983 F.2d 1487 (9th Cir. 1993) (*Alpine III*). In light of that decision, the District Court remanded both Ruling 3778 and Ruling 3868 to the State Engineer together with all other pending Change Application appeals on October 4, 1995, for consideration of the issues of perfection, abandonment, and forfeiture. FER at 40. In response to the District Court's remand, the State Engineer conducted further hearings on various dates between October 1996 and February 1998. *Id.* at 40-45. As a result of an appeal of State Engineer's Ruling No. 4591, which addressed change applications not at issue in the instant appeal, the District Court entered an order on September 3, 1998, *United States v. Alpine Land and Reservoir Co.*, 27 F. Supp. 2d 1230 (D. Nev. 1999) (*Alpine IV*), addressing the issues of abandonment, forfeiture, and equity, among other issues.

*Id.* at 46-47. As a result of that Order the State Engineer reopened the proceedings on the Change Applications at issue here and entered Ruling on Remand 4798 on September 24, 1999, and approved the Change Applications. *Id.* at 49-50, 378. PLPT and the United States appealed Ruling 4798 to the District Court which affirmed the State Engineer's Ruling by Order entered February 22, 2001. FER at 379.

**C. Disposition Below.**

The State Engineer approved each of the Change Applications at issue here in Ruling 4798 on September 24, 1999. FER at 33-378. The District Court affirmed that Ruling by order entered February 22, 2001. *Id.* at 379.

**IV. STATEMENT OF FACTS**

**A. Background of the Newlands Project and the *Alpine* Litigation.**

All forty of these Change Applications involve the transfer of water rights held by farmers in the Newlands Project, a federal reclamation project in Nevada. The Newlands Project is supplied with water from both the Truckee River and Carson River, although only the Carson River flows directly into the Newlands Project. Water is diverted from the Truckee River at the Derby Dam, where it flows through the Truckee Canal to Lahontan for Newlands Project use.

Upon passage of the Reclamation Act of 1902, the Secretary of the Interior withdrew 232,800 acres in western Nevada, which ultimately became the

Newlands Project. The Newlands Project's goal was to turn wasteland into farmland with irrigation water supplied from the Carson and Truckee Rivers.

The history of litigation over the water rights in the Newlands Project is a long and complex one. In 1913 the United States initiated *United States v. Orr Water Ditch Co.*, Equity No. A-3 (D. Nev. Sept. 4, 1944), in an attempt to settle the competing claims to the waters of the Truckee River. The United States initiated separate litigation to adjudicate claims to the water of the Carson River, which concluded with the entry of a final decree in 1980. *See United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980), *substantially aff'd*, 697 F.2d 851 (9th Cir.), *cert. denied*, 464 U.S. 863 (1983).

This appeal is the result of protracted litigation and administrative hearings before the State Engineer beginning in the mid-1980s with respect to applications for the transfer of water rights from an existing place of use to a proposed place of use by farmers within the Newlands Project. This litigation has primarily addressed questions of whether and how the State Engineer and the federal courts are to determine when a water right proposed for transfer was perfected by placing that water to a beneficial use, the priority date of that water right once perfected, and whether or not the water rights have been forfeited or abandoned as those doctrines are applied under Nevada law.

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In *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851 (9th Cir. 1983), *cert. denied*, 464 U.S. 863 (1983) (*Alpine I*), this Court confirmed in accordance with the *Alpine Decree* and the Reclamation Act of 1902, 43 U.S.C. §§ 371—390, that Nevada law governed the transfer of water rights within the Newlands Project. Then as a result of a collateral attack on the *Orr Ditch Decree*, the United States Supreme Court in *Nevada v. United States*, 464 U.S. 875 (1983), rejected the contention that the United States is the owner of the water rights in the Newlands Project or that the *Orr Ditch Decree* could be reopened to allow PLPT to make claims for additional water.

As a result of the decisions in *Alpine I* and *Nevada v. United States*, and at the advice of the United States, numerous project farmers began filing applications with the State Engineer consistent with the laws of Nevada to transfer those water rights from the historic place of use to a proposed place of use. SER at 3A. When the State Engineer ruled on these change applications, they were protested pursuant to Nevada law by PLPT.

The first challenge resulted in *United States v. Alpine Land & Reservoir Co.*, 878 F.2d 1217 (9th Cir. 1989), *cert. denied*, 498 U.S. 817 (1990) (*Alpine II*). Of 129 transfer applications that were considered by the State Engineer, 25 were validly challenged by PLPT and the United States. In *Alpine II* this Court reaffirmed that Nevada law applied to transfer applications and held that it was

appropriate for the State Engineer to adjudicate the issues of perfection, abandonment, and forfeiture. This Court also held that water rights that have not been put to beneficial use may not be transferred and that issues of forfeiture and abandonment could not be raised on appeal if the change application was not protested on those grounds before the State Engineer.

On remand of *Alpine II* the District Court upheld the State Engineer's prior determinations with respect to the forfeiture and abandonment of water rights. *Alpine III*, 983 F.2d at 1491. The District Court's ruling was appealed, resulting in the *Alpine III* decision. In *Alpine III* this Court held that the State Engineer and the District Court abused their discretion by failing to make proper factual findings with respect to the issues of forfeiture and abandonment. *Id.* at 1496-97. With respect to abandonment, this Court held that the decision of the State Engineer shall be *prima facie* correct and the burden of proof shall be on the party challenging the decision, but concluded that the proper inquiry was not as to the intent of the project water users as a whole, but rather the intent of the specific applicant. The Court also rejected PLPT's argument that nonuse of water by the owner of a water right gives rise to a rebuttable presumption of intent to abandon under Nevada law. *Id.* at 1494 n.8. As to forfeiture, the Court held that under Nevada law the forfeiture statute does not apply to water rights that vested or were initiated prior to the statute's enactment on March 22, 1913. *Id.* at 1495-96.

On remand the State Engineer issued Interim Ruling Nos. 4411 and 4591 and therein concluded that an extended period of nonuse of water does not by itself create a rebuttable presumption of abandonment under Nevada law. SER at 2. Also, the State Engineer concluded that since it was universally believed within the Newlands Project that the United States owned the water rights until 1983 and the United States at all times prior to 1983 had conducted itself and held itself out as the owner of the water rights, no one within the project could formulate an intent to abandon a water right he or she did not believe they owned. SER at 4-6. Finally, the State Engineer found that if the lands being stripped of water rights were simultaneously replaced by irrigated lands where leveling of the land had occurred within the irrigable area of the same farm unit or contract area that there could not be a forfeiture or abandonment. SER at 6-7.

The District Court affirmed Ruling No. 4591, and consistent with *Alpine II*, held that traditional equitable principles govern whether the strict requirements of Nevada water law are to be relaxed. The court found that “intrafarm transfers within the Newlands Reclamation Project should be upheld as a matter of equity.” *Alpine IV*, 27 F. Supp. 2d at 1244.

The court cited to four factors to support this conclusion. First, there was evidence that the procedures to transfer water had changed several times over the years. Second, when farmers were told to file transfer applications, they did.

Third, individuals who were legally entitled to use the water continued to beneficially apply the water to their land, albeit at a different location than the original place of use. Fourth, there was no evidence that any landowner used more water than the amount granted by the contract. Based on these factors, the District Court concluded the State Engineer had not erred in concluding that where the lands being stripped of water rights were simultaneously replaced by irrigated lands that had been leveled within the same farm unit or contract area that neither forfeiture nor abandonment applied. *Id.* The District Court remanded several of the applications to the State Engineer for additional consideration regarding abandonment and forfeiture. The court specifically directed the State Engineer to identify any other applications that involve intrafarm transfers so the court could affirm those transfers. *Id.* at 1245 n.13.

On remand the State Engineer issued Ruling No. 4750. That ruling confirmed that three of the applications involved intrafarm transfers and as such the law of forfeiture and abandonment did not apply. The State Engineer identified intrafarm transfers as those in which the existing place of use and proposed place of use were owned by the same person. SER at 9-12. Ruling No. 4750 was affirmed by order of the District Court on February 14, 2000. The District Court's order affirming Ruling No. 4750 was appealed and sustained in part and reversed in part by this Court in *Alpine V*, 291 F.3d 1062 (9th Cir. 2002).

In *Alpine V* this Court upheld the District Court's findings as to the evidentiary standards to be applied to abandonment, citing to the then recently decided opinion *United States v. Orr Ditch Co.*, 256 F.3d 935 (9th Cir. 2001) (*Orr Ditch*). This Court specifically noted that (1) a prolonged period of nonuse does not create a rebuttable presumption of abandonment, (2) that abandonment is to be determined from all of the surrounding circumstances, and (3) where there is evidence of a substantial period of nonuse and evidence of improvement inconsistent with irrigation, the payment of assessments and taxes alone will not defeat a claim of abandonment. *Alpine V*, 291 F.3d at 1072-73. This Court also held that a blanket equitable exemption was contrary to *Alpine II* but noted that "equitable relief might be appropriate on a case-by-case basis to prevent individual transfer applicants from losing their water rights." *Alpine V*, 291 F.3d at 1076. Finally, this Court concluded that equitable relief was unavailable to avoid abandonment since a showing of a lack of intent would avoid abandonment as a matter of law. *Alpine V*, 291 F.3d at 1077.

Ruling 4798 was entered February 22, 2001, prior to both the *Orr Ditch* and *Alpine V* decisions. FER at 378.

**B. Statement of Facts Related to the Specific Change Applications at Issue Here.**

Of the forty Change Applications considered by the State Engineer in Ruling 4798, the State Engineer found that thirty of them at least in part involved

proposed transfers where the existing and proposed places of use are both within the farm unit owned by the applicants and that, as a result, the proposed transfers constituted intrafarm transfers not subject to the doctrines of forfeiture and abandonment according to the District Court's September 3, 1998, Order. These include: Application 47809, parcels 1 and 2, FER at 84; Applications 48465/66, parcels 1-3 and 5, *Id.* at 99-100; Application 48669, *Id.* at 107-109; Application 48670, parcels 1 and 3, *Id.* at 116-18; Application 49114, parcels 1-8, *Id.* at 145-46; Application 49116, parcels 1-7, *Id.* at 154-55; Application 49117, parcels 1-4, *Id.* at 160-61; Application 49119, parcel 1, *Id.* at 166; Application 49120, parcels 1 and 5, *Id.* at 172-74; Application 49122, parcel 1, *Id.* at 183-86; Application 49283, parcel 1, *Id.* at 195-97; Application 49287, parcel 1, *Id.* at 205; Application 49288, parcels 1-3, *Id.* at 210-11; Application 49563, parcel 1, *Id.* at 214-16; Application 49567, parcel 2, *Id.* at 223-24; Application 49998, parcels 1-3, *Id.* at 239; Application 50001, parcel 1, *Id.* at 242; Application 50008, parcels 1-8 and 10-13, *Id.* at 265-68; Application 50012, parcel 1, *Id.* at 274-75; Application 50333, parcel 1, *Id.* at 278-79; Applications 51040/51048, parcels 1-8 and 12-13, *Id.* at 318-19, 321-23; Application 51043, *Id.* at 331-32; Application 51082, parcel 1, *Id.* at 335-36; Application 51137, parcel 2, *Id.* at 348-49; Application 51138, parcels 1-5, *Id.*;

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Application 51139, parcels 6-8, *Id.*; Application 51237, parcel 1, *Id.* at 352-54; Application 51738, parcels 1, 2, and 13, *Id.* at 363-66.<sup>2</sup>

Four of the forty Change Applications were approved by the State Engineer in part because they involved on-farm dirt-lined ditches which the State Engineer found to have appurtenant water rights. These included Application 50008, parcel 9 (which granted on basis that it was an intrafarm transfer), FER at 263-64; Application 49568, parcel 2, *Id.* at 229; Application 51038, parcels 4 and 5, *Id.* at 296-98; and Application 51040, parcels 9, 10, and 11. *Id.* at 320-25.

As to six of the forty Change Applications, PLPT has asserted that the State Engineer erred in concluding that PLPT had not shown clear and convincing evidence of nonuse or an intent to abandon. These include Application 49109, parcel 1; Application 49110, parcel 1; Application 49120, parcel 3; Application 49122, parcels 3, 4, and 5; Application 50010, parcels 1 and 2, and Application 51736, parcels 4 and 6. FER at 123-24, 128-29, 174, 186-87, 270-71, 364-66.

Of the Change Applications that were denied by the State Engineer, three of them have been appealed by the Applicants. These include Application 47809, parcels 4 and 5 (Appellant Louis A. Guazzini, Jr.); Application 49111, parcel 1

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<sup>2</sup> In regards to a number of these applications, the finding that the proposed change in place of use was an intrafarm transfer was not the sole basis for the State Engineer granting the application. *See*, for example, FER at 214-15, 275, 331-32, 335-36, 348-49, 352-54, 99-100, 109, 117-18, 166, 211.

(Isabelle E. Winder); and Application 49285, parcel 1 (Darrel W. and Patricia A. Norman).

## **V. SUMMARY OF THE ARGUMENT**

The *Alpine V* decision, which was decided since the entry of Ruling 4798, overruled the District Court's conclusion that equity could be applied throughout the Newlands Project to all intrafarm transfers. The Change Applications at issue here, since they each involve an equitable exception to forfeiture and abandonment, should therefore be remanded to determine whether the facts of each individual case justify the invocation of equitable relief. Likewise, *Alpine V* mandates the remand of these applications for a factual determination of whether the Applicant or his or her predecessor in interest had the requisite intent to abandon the water rights at issue. However, Nevada law does not limit the facts that may be considered by the State Engineer to determine intent. Consequently, a showing of continuous use of the water is not necessary to prove a lack of intent to abandon. Finally, the State Engineer correctly concluded that on-farm dirt-lined ditches do have appurtenant water rights. This conclusion is compelled by the U.S. Reclamation Service General Regulations for the Determination of Irrigable Areas, the nature of the ditches at issue, their history of use, and Nevada law.

In regard to the appeal of Louis A. Guazzini, Jr., et al., there is substantial evidence in the record to support each of the State Engineer's factual findings and



Ruling 4798 should therefore be affirmed as it relates to Applications 47809, 49111, and 49285.

## **VI. STANDARD OF REVIEW**

Nevada law governs on the issues presented by this case before the State Engineer, the United States District Court, and this Court. “The Supreme Court has held, in *California v. United States*, 438 U.S. 645, 57 L. Ed. 2d 1018, 98 S. Ct. 2985 (1978), that state law will control the distribution of water rights to the extent there is no preempting federal directive.” *Alpine I*, 697 F.2d at 858.

State law controls as to procedure as well as to substantive issues. “The *Alpine* decision necessarily contemplated that state law would control both the process and the substance of a proposed transfer of water rights.” *Alpine II*, 878 F.2d at 1223. As a consequence, “[A]ll Nevada change applications will be directed to the State Engineer and will be governed by Nevada law.” *United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877, 893 (D. Nev. 1980), *substantially aff’d.*, *Alpine I*, 697 F.2d at 858. “We agree with the district judge that the notice and protest procedures of Nevada law are adequate to allow exploration of these issues, when they arise, before the state engineer.” *Alpine I*, 697 F.2d at 863.

NRS 533.370(3) provides the criteria for addressing change applications. *Alpine III*, 983 F.2d at 1493. That section states that where a proposed change,

“conflicts with existing rights, . . . or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the requested permit.” NRS 533.370(3).

The *Alpine Decree* and Nevada law provide, “that the decision of the Engineer ‘shall be prima facie correct, and the burden of proof shall be upon the party challenging the Engineer’s decisions.’ *Alpine Decree*, Administrative Provisions Par. 7; *See also* NRS 533.450(9) (same).” *Alpine III*, 983 F.2d at 1494. The function of this Court is to review the evidence on which the State Engineer based his decision to ascertain whether the evidence supports the decision, and if so, the Court is bound to sustain the State Engineer’s decision. *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985).

Review of a decision of the State Engineer is in the nature of an appeal. NRS 533.450(1). The Nevada Supreme Court has interpreted NRS 533.450 to mean that a petitioner does not have a right to *de novo* review or to offer additional evidence at the District Court. *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). *See also* *Kent v. Smith*, 62 Nev. 30, 32, 140 P.2d 357, 358 (1943); *State Engineer v. Curtis Park*, 101 Nev. at 32, 692 P.2d at 497; *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991); *Town of Eureka v. State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992); *United States v. Alpine Land & Reservoir Co.*, 919 F. Supp. 1470, 1474 (D. Nev. 1996).

The Nevada Supreme Court has explained the Courts' function in reviewing a decision of the State Engineer by stating that, "neither the district court nor this court will substitute its judgment for that of the State Engineer: we will not pass upon the credibility of the witnesses nor reweigh the evidence, but limit ourselves to a determination of whether substantial evidence in the record supports the State Engineer's decision." *Morris*, 107 Nev. at 701, 819 P.2d at 205. The Nevada Supreme Court has likewise defined substantial evidence as that which a "reasonable mind might accept as adequate to support a conclusion." *State Employment Security Dept. v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

While this Court is free to decide purely legal issues or questions without deference to an agency determination, the agency's conclusions of law, which will necessarily be closely related to the agency's view of the facts, are entitled to deference and will not be disturbed if they are supported by substantial evidence. *Jones v. Rosner*, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986); *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992). Likewise, while not controlling, an agency's view of or its own interpretation of its statutory authority is persuasive. *Morris*, 107 Nev. at 701, 819 P.2d at 205 (*quoting State v. State Engineer*, 104 Nev. 709, 713, 766 P.2d 263, 266 (1988)). Additionally, any review of the State Engineer's interpretation of his legal authority must be made with the

thought that “[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action.” *Pyramid Lake Paiute Tribe v. Washoe County*, 112 Nev. 743, 747, 918 P.2d 697, 700 (1996), citing *State v. State Engineer*, 104 Nev. at 713, 766 P.2d at 266 (1988). See also *Chevron U.S.A., Inc. v. N.R.D.C.*, 467 U.S. 837 (1984) (deference promotes uniformity in the law because it makes various courts less likely to adopt differing readings of a statute. Instead, the view taken by a single centralized agency will usually control).

The weight of the evidence is its weight in probative value, not the quantity of evidence. It is not determined by mathematics but depends on its effect in inducing belief. The probative force of evidence is to be estimated, not only by its intrinsic weight, but also in view of the evidence which it is in the power of one side to produce and the other to contradict. *Travelers’ Ins. Co. v. Pomerantz*, 246 N.Y. 63, 158 N.E. 21 (1927). The trier of fact determines the weight to be given the evidence. *United States v. Vaccaro*, 816 F.2d 443 (9th Cir. 1987), *rev’d on other grounds*, *Huddleston v. United States*, 485 U.S. 681 (1988). When weighing the evidence, the trier of fact is not required to accept entirely either party’s account of the facts. The trier of fact may reject that which it finds implausible, but accept other parts which it finds to be believable, and is free to choose among reasonable constructions of the evidence. See *United States v. Rothrock*, 806 F.2d

318 (1st Cir. 1986); *United States v. Pruneda-Gonzalez*, 953 F.2d 190 (5th Cir. 1992), *cert. denied*, 504 U.S. 978 (1992).

## **VII. ARGUMENT**

### **A. Ruling 4798 Should Be Remanded So That Each Change Application May Be Considered on an Individual Basis to Determine if Equitable Relief Is Appropriate.**

Thirty of the forty Change Applications addressed in Ruling 4798 were approved on the grounds that the proposed transfers constitute intrafarm transfers and were therefore exempt from forfeiture and abandonment. *See* Section IV(B) above. In so ruling the State Engineer was following the instructions of the District Court as set forth in the *Alpine IV* decision.

Traditional equitable principles govern whether the strict requirements of Nevada water law are to be relaxed. *Bailey v. State*, 95 Nev. 378, 383, 594 P.2d 734 (1979); *Alpine II*, 878 F.2d at 1229 (Judge Noonan, concurring). The court finds that intrafarm transfers within the Newlands Reclamation Project should be upheld as a matter of equity.

There are several factors which support this conclusion. First, there is evidence in the record that the procedures to transfer water changed at least three times over the years. At one point, an applicant was told that transfers were not allowed. Further, when the farmers were finally told by TCID that they were required to file a transfer application, they complied. More importantly, the individual who was legally entitled to use the water continued to beneficially apply the water to his land, albeit in a different location than what might have been described in the contract, to the extent the location was described in the contract. Finally, there is no evidence

that any of the landowners making intrafarm transfers used more water than the amount granted by contract with the government. Accordingly, the Engineer did not err in concluding that the water rights subject to intrafarm transfers will not be deemed to have been forfeited or abandoned. . . .

Accordingly, based on the foregoing findings and conclusions: . . .

5) All future transfer applications which concern an intrafarm transfer of a water right will not be subject to principles of forfeiture or abandonment. . . .

*Alpine IV* at 1244-45. The District Court further ordered the State Engineer determine for all other pending Change Applications whether the proposed transfers constitute intrafarm transfers. *Id.* at 1245 n.13.

It was following *Alpine IV* and State Engineer's Ruling Nos. 4750 and 4798 that this Court decided *Alpine V* and rejected the idea that there could be a blanket equitable remedy applied to all of the applications.

With respect to forfeiture, we reverse the district court's application of a blanket equitable exemption. Unlike with abandonment, however, we conclude that equity may be appropriate on a case-by-case basis in the forfeiture context if a landowner can show that steps were taken to transfer water rights during the period of non-use, but that those steps were thwarted by the government or TCID.

*Alpine V*, 291 F.3d at 1078.

The State Engineer's findings that these thirty Change Applications are exempt from forfeiture and abandonment because they involve intrafarm transfers

was based on a legal standard that has been subsequently overruled by this Court.

Ruling 4798 should therefore be remanded for consideration of the specific facts of each Change Application to determine whether they merit the application of an equitable remedy.<sup>3</sup>

**B. Ruling 4798 Should Be Remanded So That Each Change Application May Be Considered Individually to Determine Whether There Was Intent to Abandon, But the State Engineer Should be Allowed to Make That Determination Based on All of the Surrounding Circumstances and Not in the Limited Manner Advocated by the Appellants.**

In Ruling 4798 the State Engineer found that portions of thirty of the Change Applications were not subject to abandonment since they constituted intrafarm transfers and were therefore entitled to an equitable exemption from those doctrines. *See* Section IV(B) above. In so holding, the State Engineer was relying

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<sup>3</sup> There may be facts currently in the record as to certain Change Applications that would support a finding that equitable relief is appropriate without further proceedings. The State Engineer does not advocate the remand of such Change Applications. Likewise, a number of these applications were granted on grounds other than the fact that they involved intrafarm transfers. *See*, for example, Application 49563, FER at 214-16; Application 50012, *Id.* at 275; Application 51043, *Id.* at 331-32; Application 51082, *Id.* at 335-36; Applications 51137, 51138, and 51139, *Id.* at 348-49; Application 51237, *Id.* at 352-54; Application 48465/66, *Id.* at 99-100; Application 48669, *Id.* at 109; Application 48670, *Id.* at 117-18; Application 49119, *Id.* at 166; Application 49288, *Id.* at 211. Since the Appellants' have not argued that the alternative grounds for granting these applications were in some way deficient, remand of these applications would be inappropriate even though they also include a finding that they involve intrafarm transfers.

on the District Court's holding in *Alpine IV* which had held that the intrafarm exemption from forfeiture was likewise applicable to the doctrine of abandonment as well as forfeiture. As was noted above, however, this Court held in *Alpine V* that equity was unavailable as a remedy to abandonment since the Applicants might be able to show that they lacked intent to abandon and therefore had a legal remedy available. *Alpine V*, 291 F.3d at 1077. As a consequence, a remand of Ruling 4798 is appropriate to allow the State Engineer to determine whether the Applicants had the requisite intent to abandon the water rights at issue.

The United States and PLPT have argued, however, that in order to show a lack of intent to abandon, the applicants must show that they continuously used the water and that he or she attempted unsuccessfully to file for a change in place of use or at least inquired about the possibility of transfer and were told that such a transfer was not permitted. PLPT's Opening Brief at 11-13; United States' Opening Brief at 21-22. The United States and PLPT rely on the statement of this Court in *Alpine V* to support this position. *Alpine V*, 291 F.3d at 1077.

The State Engineer should not be limited by the statements set forth in *Alpine V* regarding the evidence that may be considered in regard abandonment. First, the language cited constitutes dicta and is therefore not binding on this Court. Second, to require a showing of continuous use of water as the only or minimum evidence of an intent not to abandon is inconsistent with the now well established



principle that intent must be determined from all of the surrounding facts and that nonuse of the water by itself does not create a presumption of abandonment.

Dictum is defined as an observation or remark not necessarily involved in the case or essential to its determination, *Export Group v. Reef Industries, Inc.*, 54 F.3d 1466, 1471-72 (9th Cir. 1995), and this Court is not bound by dicta in a decision of another panel of the Ninth Circuit. “We are not bound by dicta in decisions from our court or any other circuit.” *United States v. Pinjuv*, 218 F.3d 1125, 1129 (9th Cir. 2000), citing *United States v. Tsinnijinnie*, 601 F.2d 1035, 1038 (9th Cir. 1979). The statement of the *Alpine V* Court in regard to the minimum evidence required to show a lack of intent to abandon is clearly not an observation or remark necessarily involved in the case or essential to its determination. The issue before the *Alpine V* Court was whether equitable jurisdiction could be invoked as a defense to abandonment or whether the factors identified by the District Court more appropriately bore on the issue of intent. *Alpine V*, 291 F.3d at 1077. The Court’s statements in regard to the evidence needed to prove an intent not to abandon were not necessary to that determination. Those statements therefore constitute dicta and are not binding on this Court.

Regardless of the binding effect of the *Alpine V* Court’s statements in regard to the evidence needed to show a lack of intent to abandon, its statements are inconsistent with Nevada law and are therefore not controlling. Under Nevada

water law, abandonment of a water right is the voluntary “relinquishment of the right by the owner with the intention to forsake and desert it.” *In re Waters of Manse Spring*, 60 Nev. 280, 287, 108 P.2d 311, 315 (1940). “Abandonment, requiring a union of acts and intent, is a *question of fact to be determined from all the surrounding circumstances.*” *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979) (emphasis added). Nonuse of water, along with other circumstances of a particular case, may be evidence of an intent to abandon. *Manse Spring*, 60 Nev. at 290, 108 P.2d at 316.

This Court recognized in both *Orr Ditch* and *Alpine V* that under Nevada law abandonment of a water right is to be determined from all the circumstances surrounding the alleged abandonment. *Orr Ditch*, 256 F.3d at 946; *Alpine V*, 291 F.3d at 1072. Requiring an applicant to prove continuous use of water, or any other fact selected by the appeals court as being particularly relevant, is contrary to this general and longstanding principle of Nevada law since it limits the facts upon which the determination of intent will be based. For example, if an applicant were to offer evidence that he or she had made concerted efforts to sell a water right, but had been unsuccessful in doing so, there could be little argument that he or she did not have the intent to abandon that right even if they were not making immediate use of it. Likewise, intermittent use of the water could also indicate that there was no intent to abandon, especially in conjunction with other facts. Any number of

factual scenarios can be imagined where an applicant might offer evidence of a lack of intent to abandon even though the water had not been put to continuous use.

Likewise, requiring an applicant to show continuous use of the water to rebut a presumption of abandonment appears to be inconsistent with the very idea that nonuse by itself is no more than an inference of abandonment, and not a presumption. For example, in *Franktown Creek Irrigation Co. v. Marlette Lake Co.*, 77 Nev. 348, 364 P.2d 1069 (1961), even though there was an extended period of nonuse of a portion of the water at issue, the Court gave no indication that use at some other location was necessary to rebut a presumption of abandonment. Requiring a showing of continued use of the water to rebut a presumption of abandonment runs directly contrary to the idea that nonuse of the water by itself does not create a presumption of abandonment.

The *Alpine V* Court cited to no authority to support its statement that a showing of continuous use of the water is necessary to rebut a finding of abandonment, either from the Nevada Supreme Court or any other state adhering to the prior appropriation system, nor did it articulate any reasoning, factual or legal, to support that statement. *Alpine V*, 291 F.3d at 1077. The United States and PLPT

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have likewise not identified any authority or applicable policy to justify the *Alpine V* Court's requirement of a showing of continuous use. As a consequence, the Court's statements in this regard must not be deemed to be controlling.

Furthermore, in requiring the Applicants to show continuous use of their water to rebut a presumption of abandonment, the *Alpine V* Court appears to have fallen back on the elements articulated by the District Court in *Alpine IV* as justifying the exercise of equity to exempt the Change Applications from abandonment. *Alpine IV*, 27 F. Supp. 2d at 1244. Not only is there no reason to interpret the District Court's findings as requiring a showing of continuous use to rebut the presumption of abandonment, but it stands the reasoning of the District Court on its head. Merely because continuous use of the water may show that there is not an intent to abandon it does not follow that it is the only or minimum evidence of intent.

There is no authority to support the *Alpine V* Court's statement that the applicants may only rebut a presumption of abandonment by showing a continuous use of the water. Such a conclusion runs directly contrary to the idea that intent must be determined from all of the surrounding facts and that nonuse by itself does not create a presumption of abandonment. To require such a finding would

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constitute a significant change of Nevada law. The State Engineer must therefore, as the finder of fact, be allowed to consider all relevant evidence in addressing the issue of intent to abandon.

**C. The State Engineer Correctly Concluded That Transport of Water Through On-Farm Dirt-Lined Ditches Together With Associated Uses Is a Beneficial Use of Water and the Lands Used for That Purpose Must Be Considered to Have Appurtenant Water Rights.**

In regard to Application 50008, parcel 9; Application 49568, parcel 2; Application 51038, parcels 4 and 5; and Application 51040, parcels 9, 10, and 11, the State Engineer found that the existing places of use were shown to be dirt-lined on-farm ditches to which transferable water rights were appurtenant. FER at 229, 263-64, 296-98, 320-25. The State Engineer was correct in concluding that the water rights appurtenant to these parcels could be transferred to new places of use.

Ruling 4798 states:

[I]f a dirt-lined supply ditch is within the irrigable area of an existing place of use, water was beneficially used on the parcel of land covered by the dirt-lined ditch. Dirt-lined ditches within a farm were not excluded from the irrigable area under the Reclamation Service regulations and it is the State Engineer's understanding that the Bureau of Reclamation required these areas to be water-righted.

FER at 69. In reaching this conclusion, the State Engineer was relying in large part on Exhibit Y, U.S. Reclamation Service, General Regulations for the Determination of Irrigable Areas (General Regulations). FER at 12. The

document specifically stated: “The Irrigable area shall be determined by deducting from the total area, railroad, canal, lateral, drain and waste ditch rights of way, and non-irrigable lands, that are to be deducted as hereinafter specified, the summation of the same to be figured to the nearest one-tenth of an acre.” FER at 12. The import of this regulation is clear: on-farm ditches, since they are not list as being excluded from the calculation of the irrigable area, were included in the irrigable area. This constitutes the only legitimate interpretation of the General Regulation.

The United States attempts to discredit the significance of the General Regulation by arguing that it is not in fact a regulation at all. There is no evidence before this Court that would indicate, however, that the General Regulations are anything but the stated policy of the United States for distributing water within the Newlands Project and determining the amount of water to which each water user was entitled.

Other documents in the record support the State Engineer’s interpretation of the General Regulation and his finding that on-farm ditches were included in the calculation of irrigable acreage and have appurtenant water rights. For example, the water rights at issue under Application 50005, parcel 3, were granted by Water Right Application to the Department of the Interior on December 4, 1919. SER at

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30.<sup>4</sup> According to the water right map of the Truckee-Carson Irrigation District, which the State Engineer has long held to be the best evidence that exists as to the location of water righted lands within the Newlands Project, FER at 60, the water right holder was granted water for the *entire* 40 acres of the southwest quarter of the northeast quarter of Section 34, Township 18 North, Range 28 East, in which parcel 3 of Application 50005 is found. SER at 29. No reduction was made for on-farm dirt-lined ditches in the water right maps or the Water-Right Application consistent with the State Engineer's interpretation of the General Regulations.

As an additional example, the water rights at issue in Application 51037, parcel 2, were granted in 1911 for the entire 80 acres of the north half of the southwest quarter of section 16 of Township 18 N., Range 29 E. No reductions were made in the Water-Right Application for on-farm ditches. SER at 33. Likewise, the Water-Right Map shows that a full 40 acres of the northwest quarter of the southwest quarter of Section 16, Township 18 North, Range 29 East, M.D.B.&M., in which parcel 2 is located were granted appurtenant water rights without any reduction for on-farm ditches. SER at 32. Both the Water-Right Application granted by the United States and the Water Right Maps prepared by the Truckee-Carson Irrigation District, the United States' agent in the Newlands

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<sup>4</sup> Applications 50005 and 51037 were addressed by the State Engineer as part of Ruling 4825, which is before this Court on appeal in Case Nos. 01-16224 and 01-16241.

Project, made no reduction in the irrigable acreage because of on-farm ditches.

The State Engineer's interpretation of the General Regulations is completely consistent with the manner in which the United States granted and managed water rights within the Newlands Project.

The United States' contention that its own regulations, contracts, and water right maps have no bearing on the question of whether there are water rights appurtenant to the on-farm dirt-lined ditches constitutes another attempt by the United States to change the rules in the middle of the game. There can be little doubt that the water users were required to follow the regulations and rules put in place by the United States in the early days of the Newlands Project. It is disingenuous for the United States to now argue that the State Engineer has misinterpreted the rules or that the rules do not apply. It was based on facts similar to these, i.e. the moratorium placed on transfers, the assertion of title to the water by the United States, etc., that the District Court determined in the first instance that the blanket exercise of equity was appropriate.

Not only is the State Engineer's finding that on-farm ditches are to be included within the irrigable area of a farm a correct interpretation of the General Regulation, the Water-Right Applications, and the Water Right Maps, but is consistent with both the *Orr Ditch* and *Alpine Decrees* and general practices in the State of Nevada. To conclude otherwise would result in a significant alteration of



water allocation not only in the Newlands Project but throughout the State of Nevada.

A review of both the *Alpine* and *Orr Ditch Decrees* shows that the amounts awarded to the various water right users did not exclude the area covered by on-farm ditches. For example, the *Alpine Decree* awarded Leo B. Galeppi and Frances M. Galeppi water for 160 acres, which would compromise all of the NE quarter of Sec. 11, T.13 N., 19 E., M.D.B.& M. The priority date of the associated rights was determined to be 1861. SER at 16. Since 160 acres constitutes an entire quarter section, it is clear that no land was excluded from the adjudicated area even though a significant number of on-farm ditches would be necessary to convey water to an area of 160 acres. Both decrees are replete with such rights. For example, Frank Settelmeyer and Sons, Inc., was awarded water for two parcels constituting 80 acres, both of which constitute the entire area of one half of a quarter sections. SER at 16. James Rolph III and June Rolph were awarded water for 40 acres constituting the entire area of a quarter quarter section. SER at 14. Anna Herbig, Herman Herbig, and Anneliese Herbig were awarded water for two 40 acre parcels that constitute the entire area of a quarter quarter section. SER at 15. Paul Garson was awarded water for 40 acres constituting the entire area of a quarter quarter section. SER at 19. Charles Farretto was awarded water for 40 acres constituting an entire quarter quarter section. SER at 20. Domingo Felipelli

was awarded water for two 40 acre parcels both of which constitute the entire area of two separate quarter quarter sections. SER at 21. In none of these cases, and numerous others not set forth here for the purposes of conserving space, did the decree courts reduce the amount of irrigable acreage by any amount even though numerous on-farm ditches would be necessary to deliver the water to the various parcels.

The water right maps associated with the *Alpine Decree* likewise show that on-farm ditches were included in the calculation of irrigable acreage. By way of example, one of the federal water master's water right maps shows that in the northwest quarter of Section 7 that one holder was adjudicated water for 160 acres, which would constitute the entire area of that quarter section, in spite of the fact that a ditch clearly runs through that quarter section. SER at 34. This likewise occurs in the southeast quarter of section 31. *Id.* Similarly, in the southwest quarter of the northeast quarter of Section 8 a water rights holder was adjudicated water for 40 acres, constituting the entire area of that quarter quarter section, even though it is clearly indicated that two ditches run across that property. *Id.* at 34. This can only be interpreted to mean that the ditches were not excluded from the irrigable acreage when the water rights were adjudicated by the federal court. The same circumstances can be seen in the southeast quarter of the southwest quarter of Section 17; the southwest quarter of the southeast quarter of Section 17; the

southeast quarter of the northwest quarter of Section 20; the southwest quarter of the southeast quarter of Section 19; and the northwest quarter of the northwest quarter of Section 30. *Id.* To hold that such on-farm dirt-lined ditches did not have appurtenant water rights would, as a consequence, be inconsistent with both the *Alpine* and *Orr Ditch Decrees*, other decrees throughout the State of Nevada, and the longstanding practice of the Office of the State Engineer. To conclude the *Orr Ditch* and the *Alpine Decrees* are not controlling on this subject would be no less than a collateral attack on both the *Orr Ditch* and *Alpine Decrees*, as well as every other decree in the State of Nevada, in direct contravention of *Nevada v. United States*, 463 U.S. 110 (1983).

Not only is the State Engineer's determination consistent with both the *Orr Ditch* and the *Alpine Decrees*, it is also consistent with the factual realities of on-farm ditches. The land covered by on-farm ditches is put to beneficial use for purposes other than the mere transport of water. Because of the size and nature of the ditches at issue, they are not only used to transport water, but also provide forage for cattle, which is a beneficial use independent of transport. This fact was recently recognized by the United States Claims Court in *Hage v. United States*, 42 Fed. Cl. 249, 251 (1998) (*Hage III*), *rescinded in part and affirmed in part by Hage v. United States*, 51 Fed. Cl. 570 (2002). The issue presented for decision to that court, among others, was whether a grazing permittee of the U.S. Forest

Service acquired a property right in ditch easements used to convey water owned pursuant to state law across Forest Service Land. The Court of Claims found that:

Concurrent with the accompanying easement to perform ditch maintenance via the right-of-way, the court finds that a limited right to forage is appurtenant to and a component of a vested water right. *The court notes the undisputed historical use of the ditches and water at issue for stockwatering and livestock maintenance.* Persuasive testimony at trial on the nature and intent of the Congressional Acts [\*\*7] dealing with western land management bore out the conclusion that the United States intended to respect and protect the historic and customary usage of the range. To that end, the court finds as a matter of common sense, *that implicit in a vested water right based on putting water to beneficial use for livestock purposes was the appurtenant right for those livestock to graze alongside the water.*

The court holds that the extent of the right to forage around an Act of 1866 ditch is contiguous with the scope of the ditch right-of-way: *the ground occupied by the water* and fifty feet on each side of the marginal limits of the ditch.

*Hage III* at 251 (emphasis added). Similarly, the on-farm ditches at issue here, just as with other on-farm ditches throughout the State, have been historically used as forage for cattle, since the forage grows up to and in the ditches itself. This growth of forage and its use by cattle is a beneficial use to the same extent as growing crops and forage on the remaining land would be. PLPT and the United States are therefore incorrect in their unsupported assertion that water applied to the land covered by the on-farm ditches has not been put to a beneficial use. The State

Engineer properly concluded that the land covered by on-farm ditches did have appurtenant water rights potentially available for transfer as established by the *Orr Ditch* and *Alpine Decrees*.

The State Engineer's decision that the land underlying the on-farm ditches do have appurtenant water rights is likewise supported by the fact the United States and PLPT have failed to identify the doctrinal underpinnings of their argument, i.e. whether they assert that the water rights at issue were never perfected, were abandoned, or were forfeited. United States' Opening Brief at 32-33. It is also supported by the fact that the on-farm ditches are periodically moved to different locations as fields are plowed and replanted or as other changes in need require.

Alfalfa, the primary crop in the Newlands Project, has to be replanted approximately every four to five years. When this is done the small on-farm ditches will in many cases be obliterated and moved. Additionally, the ditches are periodically changed to more efficiently transport water and to account for leveling that has been done on the field. The nature of these on-farm ditches is therefore temporary in nature.

This fact is of great significance when viewed in light of the fact that the United States and PLPT have not articulated any specific theory as to why the on-farms ditches do not have appurtenant water rights. This failure is significant since

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neither the United States nor PLPT have made any attempt to meet their burden of showing that the doctrines of perfection, abandonment, or forfeiture apply.

“The law of Nevada, in common with most other Western States, requires for the perfection of a water right for agricultural purposes that the water must be beneficially used by actual application on the land.” *Nevada v. United States*, 463 U.S. 110, 126 (1983), *quoting*, *Prosole v. Steamboat Canal Co.*, 37 Nev. 154, 159-61, 140 P. 720, 722 (1914). As a consequence, to prove that the water rights appurtenant to on-farm ditches have never been perfected, the United States and PLPT must make two assumptions. First, that the ditches at issue existed at the time the water rights were created and that they have never moved since, and second, that the use of those ditches was not a beneficial use of water. As has already been discussed above, the use of water in the on-farm ditches is in fact a beneficial use. *Hage III*, 42 Fed. Cl. at 251. Even if one assumes for the sake of argument, however, that the use of water in the on-farm ditches is not a beneficial one, the United States and PLPT have failed to show, and have in fact not attempted to show, that no use of water was ever made on the lands at issue. Absent evidence that the on-farm ditch at issue has existed since the farm has been under irrigation and has never moved since, the very likely possibility remains that the land was at one time *not* covered by an on-farm ditch and, therefore, was irrigated and the associated water right perfected.

In regards to abandonment, the United States and PLPT have the burden of showing, by clear and convincing evidence, that the applicants voluntarily relinquished the right with the intention to forsake and desert it. *Manse Spring*, 60 Nev. at 287, 108 P.2d at 315. No evidence has been offered, however, to indicate that any farmer in the Newlands Project intended to abandon water rights to land covered by an on-farm ditch that was by necessity only temporary in nature. Clearly, there could have been no such intention on the part of the water rights holders since after a ditch is moved they would again irrigate the land previously covered by the on-farm ditch. To conclude otherwise would be to assume that a water rights holder intended to abandon water rights every time an on-farm ditch was moved. This certainly cannot be the case since the irrigated land of the farm would then be incrementally decreased in size every time an on-farm ditch was moved until a significant portion of the farm had been abandoned. There is simply no evidence in the record that would indicated that any of the applicants had such an intent, and it would of course be ridiculous to assume that they would.

In regard to forfeiture, the United States and PLPT have the burden of showing that there were five consecutive years of nonuse, NRS 533.060 (amended 1999). There would likewise be no forfeiture if there has been subsequent use of the water such as would constitute a cure. *Town of Eureka*, 108 Nev. 163, 169, 826 P.2d 948, 952 (1992). Again, as was noted above, the use of the water in the

on-farm ditches is a beneficial use, and there is therefore no evidence of nonuse at all. This fact notwithstanding, the United States and PLPT have failed to show any other evidence of five years of nonuse, a fact that cannot merely be assumed given the transient nature of on-farm ditches. PLPT and the United States have therefore failed to meet their burden of proving forfeiture.

Merely arguing that the use of water in an on-farm ditch is not a beneficial use does not immediately lead to the conclusion that there are no water rights appurtenant to on-farm ditches. The temporary and transitory nature of on-farm ditches requires that some theory be identified as to why the land covered by the on-farm ditches does not retain its appurtenant water rights granted to it by the Court. The United States and PLPT have failed to do this. Just as importantly, the United States and PLPT have clearly failed to meet their burden of proof for the theories of perfection, abandonment, or forfeiture.

The United States has also argued that the inclusion of conveyance loss in the duty under the *Alpine Decree* in some way eliminates any argument that the on-farm dirt-lined ditches do not have appurtenant water rights. United States' Opening Brief at 30-31. This argument in no way resolves the issue of beneficial use since it both assumes that the use is not beneficial, a factual question for which

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they offer no evidence, and misinterprets the significance of the “on-farm efficiency” that was included as part of the duty available to each water righted acre.

The fact that the duties assigned to bench and bottom lands under the *Alpine* and *Orr Ditch Decrees* take into account conveyance and on-farm efficiencies in no way alters the fact that on-farm ditches have appurtenant water rights, since, as was discussed above, the use of the water in the ditches is beneficial independent of the transport of water. This being the case, the fact that the decree has accounted for on-farm efficiencies in setting the duty does not alter the fact that there are appurtenant water rights any more than it would affect land elsewhere on the farm. Likewise, on-farm efficiencies by definition include the loss of water on the entire farm, not only in ditches, and are necessary because more water must be applied on the upgrade side of a parcel to ensure that sufficient water will flow to the downgrade side. This is the case regardless of whether the water is conveyed in a ditch or is merely flowing across the field. This inclusion of on-farm efficiencies in the water duty cannot, therefore, be assumed to address the issue of beneficial use since it applies to every acre of land irrigated within the project whether it is ditch or some other type of irrigated land.

The State Engineer correctly concluded that the General Regulations included on-farm ditches within the irrigable acreage of the Applicants, and that

conclusion is consistent with Nevada law, the *Alpine* and *Orr Ditch Decrees*, and the physical realities of on-farm dirt-lined ditches. Just as importantly, PLPT and the United States have failed to identify what legal theory would invalidate these water rights and have failed to meet their burden of showing that the water rights were never perfected, were abandoned, or were forfeited. Ruling 4798 must therefore be affirmed in regard to the conclusions related to on-farm dirt-lined ditches.

**D. The Issue of Whether the Ditches at Issue Are On-Farm Dirt-Lined Ditches, and Whether Their Use Constitutes a Beneficial Use of Water, Is a Factual as Well as a Legal Question, and Since No Evidence Was Received Below on This Issue, It Would Be Inappropriate for This Court to Rule on This Issue at This Time.**

There is no dispute that the District Court did not address the validity of the State Engineer's statements in regard to on-farm ditches. FER at 379-83. In spite of this fact both the United States and PLPT do not contend that the issue should be remanded, but instead argue that the issue of the on-farm dirt-lined ditches and beneficial use are purely legal ones and may be addressed by this Court without consideration by the District Court or development or consideration of any facts regarding the physical nature of the ditches, how they are used, or the manner in which the State Engineer has dealt with them elsewhere in the State. United States' Opening Brief at 23. The Appellants are mistaken, however, in asserting that this issue is purely a legal one. To the contrary, this issue is primarily factual

in nature. As a consequence, should this Court question the State Engineer's holding that on-farm ditches are water righted, the appropriate course of action is not to announce a general rule of law without any relation to the actual facts and history of use of the ditches that would impact not only the water users in the Newlands Project but water rights users throughout the State of Nevada, but rather, to remand the question to the State Engineer for additional development of a record on this very important state-wide issue.

A review of relevant case law, the actual physical nature of on-farm ditches and the Appellants' own arguments show that the question of whether the on-farm ditches have associated water rights is primarily a factual one.

As was discussed above, the United States Court of Claims has recognized that ditches and easements have historically been used for grazing in the State of Nevada. Such grazing, and consequently use of water in the ditches, is a beneficial use.

The court notes the undisputed historical use of the ditches and water at issue for stockwatering and livestock maintenance. . . .

The court holds that the extent of the right to forage around an Act of 1866 ditch is contiguous with the scope of the ditch right-of-way: *the ground occupied by the water* and fifty feet on each side of the marginal limits of the ditch.

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*Hage III*, 42 Fed. Cl. at 251. As the *Hage III* court's findings make clear, the use of on-farm ditches is not strictly limited to the conveyance of water, and the actual nature of the use of the ditches is a factual one. The analysis of beneficial use will be impacted by facts such as whether the ditch is used for forage, how often it is used to convey water, its physical size, etc. Also, depending on which specific legal doctrine the United States and PLPT are relying on to support their contention that the on-farm ditches do not have appurtenant water rights, i.e. lack of perfection, forfeiture, or abandonment, additional facts such as when the ditch was constructed, whether it has ever been moved, and how often it has been moved, as well as other facts related to intent and use, will be significant.

The arguments of the United States in regard to beneficial use of water in on-farm dirt-lined ditches do not support their ultimate conclusion that this is a question of law rather than fact. As duly noted by the United States, water is beneficially used when applied to a given tract of land to produce crops. United States' Opening Brief at 29, *citing Alpine I*, 697 F.2d at 854. The critical issue is, therefore, how and where the water is actually used. How and where water is used is a question of fact, not law. As noted in *Hage III* and the discussion above, the use and history of any given on-farm ditch may involve far more than the mere transport of water. This fact is implicitly recognized by the United States by its inability to identify what theory would justify denying the Applications at issue.

United States' Opening Brief at 32-33. The United States cannot merely assume that the only use of the dirt-lined on-farm ditches is for the conveyance of water, that the ditches have never moved, or that the Applicant had the intent to abandon water rights.

It is clear that the question of beneficial use turns on the question of how water was used. This is a factual and not a legal question. Should this Court determine that the State Engineer in some manner erred in regard to his ruling related to on-farm dirt-lined ditches, the appropriate course for this Court would be to remand the question for further consideration.

**E. The State Engineer Correctly Determined That PLPT Had Failed to Show Nonuse of the Water By Clear and Convincing Evidence as Is Necessary to Establish Forfeiture or Abandonment.**

Pursuant to Nevada law, clear and convincing evidence is necessary to prove abandonment or forfeiture. *Town of Eureka v. State Engineer*, 108 Nev. 163, 169, 826 P.2d 948, 952 (1992). PLPT argues that this Court should remand Application 49109, parcel 1; Application 49110, parcel 1; Application 49120, parcel 3; Application 49122, parcels 3, 4, and 5; Application 50010, parcels 1 and 2; and Application 51738, parcels 4 and 6, on the grounds that the State Engineer's finding that PLPT had failed to meet its burden of proof of nonuse of water for purposes of forfeiture and abandonment was in error. PLPT cites to this Court's Decision in *Orr Ditch*, 256 F.3d at 948, to support this proposition. PLPT's

Opening Brief at 14-19. Contrary to PLPT's contention, the State Engineer did not misinterpret the clear and convincing evidence standard by holding that PLPT had failed to meet its burden of showing nonuse in respect to these applications.

In regard to Application 49109, parcel 1, the State Engineer found that PLPT's evidence showed this parcel was described as bare land and natural vegetation. FER at 124. Other evidence indicated, however, that in 1986 the land was described as a pasture and that there was actual observation of irrigation in 1971 through 1977. There was likewise evidence of payment of taxes and assessments. From this the State Engineer found that there was no clear and convincing evidence of nonuse of the water or an intent to abandon. *Id.* at 125. PLPT's contention that the State Engineer misapplied the clear and convincing evidence standard both misinterprets the *Alpine V* decision and ignores this Court's holding in *Orr Ditch*.

This Court has recognized that an extended period of nonuse of water, by itself, does not create a rebuttable presumption of abandonment. *Orr Ditch*, 256 F.3d at 945. The Court adopted the view of the District Court, which had held:

Where there is evidence of both a substantial period of nonuse, combined with evidence of an improvement which is inconsistent with irrigation, the payment of taxes or assessments, alone, will not defeat a claim of abandonment. *If, however, there is only evidence of*

*nonuse, combined with the finding of a payment of taxes or assessments, the court concludes that the Tribe has failed to provide clear and convincing evidence of abandonment.*

*Id.* at 946 (emphasis added). These are the very facts that are presented by Application 49109, parcel 1. Although there is some evidence of periods of nonuse interrupted by periods of actual irrigation, there was no evidence of any improvements inconsistent with irrigation. There was, however, evidence of the payment of taxes and assessments. Consequently, according to the holding of *Orr Ditch*, PLPT has failed to meet its burden of proof, and the Application was correctly granted.

In addition, this Court's statement in *Alpine V* regarding the clear and convincing standard of proof was based in large part on the perception that there was no evidence in the record contradicting PLPT's evidence in regard to the parcels at issue there. As is readily apparent here, however, there was contradictory evidence offered in regard to Application 49109, parcel 1, showing use of the land as pasture and numerous years of actual irrigation. Accordingly, the State Engineer did not err in concluding that PLPT had failed to meet its burden of proof, and since the State Engineer did not find that equitable relief was appropriate as to this application, there is no reason to remand this application.

In regard to Application 49110, parcel 1, the State Engineer found that the parcel had been described at various times as bare land, trees, and partially

irrigated. The descriptions mention undescribed structures on the property in 1962, 1972, and 1977 but also indicate that there were no structures in 1973, 1974, 1975, and 1980-1984. At the hearing in 1986 the Applicants described the 1948 use as a pasture and the current use as a church. FER at 128-29. The application to change the place of use was filed on June 5, 1985, however. *Id.* at 126. From this evidence the State Engineer concluded that PLPT did not prove nonuse and the intent to abandon with clear and convincing evidence. *Id.* at 128-29. This finding is consistent with *Orr Ditch* in that there is insufficient evidence of nonuse and improvements inconsistent with irrigation to shift the burden of proof. Likewise, the State Engineer cannot be said to have misinterpreted the clear and convincing evidentiary standard since there was contradictory evidence as to the use of the land. The State Engineer's findings regarding Application 49110, parcel 1, must therefore be affirmed, and no remand of that application is necessary.

In regard to Application 49120, Parcel 3, the State Engineer found that the land at issue was described from 1948 to 1977 as irrigated or partially irrigated. There was therefore no evidence of nonuse for those years. FER at 174. There was evidence that a portion of the parcel had been converted to residential use but where that portion was and how much land was involved was not identified in any way by PLPT. *Id.* at 174-75. The State Engineer correctly concluded as a result that PLPT had failed to meet its burden of showing nonuse as to those portions



which were not developed and that it failed to meet its burden as to the remaining portions of the parcel where development had occurred by failing to identify in any way their location or the amount of land involved. *Id.* at 175. There is no dispute that PLPT had the burden of showing nonuse and development inconsistent with irrigation, and it is likewise clear that PLPT failed to meet that burden since the State Engineer was unable to identify any specific piece of land whose water rights the State Engineer could declare forfeited. Remand of this application is therefore unnecessary.

Application 49122 involved the consideration of the three parcels. In regard to each of these parcels, the State Engineer found that all of the evidence described this land as bare land, natural vegetation or irrigated. FER at 184-87. There was no evidence of any development inconsistent with irrigation. For purposes of abandonment, then, the burden did not shift and there was insufficient evidence to prove intent.

The evidence presented as to Application 50010, parcels 1 and 2, described the land at various times as bare land, natural vegetation road, and canal. The evidence gave no indication what area might be covered by the road and canal, however. FER at 270. Since there was inadequate evidence to allow the State Engineer to conclude what land had been covered by improvements and no evidence that the remainder of the land was used for purposes inconsistent with

irrigation, the State Engineer correctly concluded that PLPT had failed to meet its burden of proof. *Id.* at 271. The State Engineer is not free to guess at the location and amount of land that may have been used for improvements and refusing to do so does not mean that he has misapplied the clear and convincing evidence standard.

Similarly, Application 51738, parcel 4, was described as farm yard, road, and partially irrigated. FER at 364. Most importantly, PLPT's own witnesses testified that 0.45 of an acre was irrigated out of the total parcel of 0.50 of an acre. *Id.* at 365. The entire parcel became a city lot after the Change Application was filed. *Id.* at 365. As to parcel 6 of Application 51738, the State Engineer found that the land use description over the years was irrigated land or partially irrigated land, with a structure appearing in an undisclosed location in 1980. *Id.* at 365. Since PLPT had not proved nonuse for any specifically identifiable portion of the parcel, the State Engineer correctly concluded that PLPT had failed to meet its burden of showing nonuse and the intent to abandon. *Id.*

The contention of PLPT that the State Engineer misapplied the clear and convincing evidence standard is not supported by the record here. Unlike the applications referred by this Court in *Alpine V*, there is disputed evidence in regard to many of these applications. As to the remainder of the applications, PLPT has failed to show that there were any improvements inconsistent with irrigation. The

State Engineer was therefore correct to conclude that PLPT had failed to meet its burden of proof under the holding of *Orr Ditch*. The decision of the State Engineer as to these applications should therefore be affirmed.

Unlike the Change Applications addressed by the *Orr Ditch* Court, the evidence presented by PLPT as to the nonuse of water *is* disputed and contradicted by other evidence. As the finder of fact, the State Engineer is required to consider all of the evidence and give it the weight he deems appropriate. In light of the contradictory evidence presented as to these applications, the State Engineer correctly concluded that PLPT had failed to show forfeiture or abandonment by clear and convincing evidence. The circumstances that caused the *Orr Ditch* Court to comment on the standard of proof are simply not present in this Ruling, and no remand is necessary to address the burden of proof.

**F. There Is Substantial Evidence in the Record to Support the State Engineer's Finding of Abandonment as to Applications 47809, 49111, and 49285.**

In Ruling 4798 the State Engineer found that the water rights associated with Application 47809, parcels 4 and 5 (Louis A. Guazzini, Jr.); Application 49111, parcel 1 (Isabelle E. Winder); and Application 49285, parcel 1 (Darrel W. and Patricia A. Norman) have been abandoned.<sup>5</sup> FER at 85, 135, and 202. The finding

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<sup>5</sup> These appellants will be cumulatively referred to hereafter as the "Applicants," and will be referred to individually as "Applicant."

of abandonment has been appealed by each of the Applicants above. The primary question on review of these applications is whether there was substantial evidence in the record to support the State Engineer's finding of abandonment. *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991). A review of the record indicates that the State Engineer did in fact rely on substantial evidence in finding that these rights have been abandoned. The State Engineer's decision must therefore be affirmed.

In regard to Application 47809, parcels 4 and 5, the State Engineer specifically found the land at issue had been described as bare land and large structures from 1962 through 1984. FER at 84. Furthermore, at the 1985 administrative hearing, the Applicant described the land use of both parcels as a school. *Id.* at 84-85. Based on the Applicant's own evidence that the parcels were now occupied by a school, the State Engineer was correct in concluding that this was a use incompatible with irrigation and that the burden of proof therefore shifted to the Applicants to show facts that would indicate that they did not have the intent to abandon the water rights appurtenant to those parcels. *Alpine V*, 279 F.3d at 1198-99. Since no evidence was offered by the Applicant that would indicate that they did not intend to abandon the water appurtenant to these parcels, the State Engineer correctly concluded that PLPT had made a sufficient showing of abandonment.

The Applicants have argued, however, that the transfer moratorium put in place by the United States from 1973 to 1984 precluded the Applicants from forming the intent to abandon their water rights. Although the State Engineer does not necessarily disagree that the moratorium has a significant bearing on the issue of intent, this issue was not presented to the State Engineer in the proceedings below and were on that account not addressed in Ruling 4798.<sup>6</sup>

As a consequence, there is substantial evidence to support the State Engineer's determination that the water rights appurtenant to parcels 4 and 5 of Application 47809 have been abandoned, and the State Engineer's Ruling to that effect should be affirmed.

The State Engineer found that the water rights appurtenant to parcel 1 of Application 49111 had been abandoned based on evidence that showed that no water had been placed on the land for 22 years and that the land use is inconsistent with irrigated agriculture. FER at 134. The Applicant argues that the State Engineer erred in refusing to admit certain documents that would have indicated that the water rights at issue here were subject to the intrafarm transfer rule. Although the State Engineer asserts that it is well within his right as the finder of

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<sup>6</sup> The Applicants likewise argue that 43 C.F.R. § 426.4 defines irrigable acreage and that certain of the uses described therein supports their contention that water rights have not been abandoned. The State Engineer admits that he did not address the import of that regulation below since it was not presented to him for consideration.

fact to exclude documents from evidence that were not produced to opposing counsel in a timely fashion as required by hearing procedures, that issue has since become moot in light of this Court's ruling in *Alpine V* that there can be no blanket application of an equitable remedy and that equity does not apply to abandonment. *Alpine V*, 279 F.3d at 1202-1204.

As to Application 49285, parcel 1, the State Engineer found that no water had been applied to the parcel for at least seven years and that it was occupied by a church and an adjacent dirt parking lot. FER at 201. The State Engineer concluded that these uses constituted improvements inconsistent with irrigation and that the Applicants failed to show a lack of intent to abandon the water right. Based on these facts there can be little argument that there is substantial evidence to support the State Engineer's conclusion.

There is substantial evidence supporting the State Engineer's findings of abandonment as to Application 47809, parcels 4 and 5, Application 49111, and Application 49285, parcel 1, and Ruling 4798 should be affirmed in regard thereto.

## **VIII. CONCLUSION**

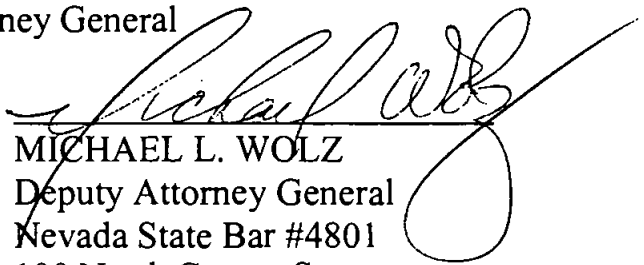
The *Alpine V* decision, which was decided since the entry of Ruling 4798, overruled the District Court's conclusion that equity could be applied to all intrafarm transfers. Where the intrafarm transfer rule was the sole basis for granting the application, it is therefore necessary to remand such applications to

determine whether the facts of each individual case justify the invocation of equitable relief. Likewise, *Alpine V* mandates the remand of these applications for a factual determination of intent. However, Nevada law does not limit the facts that may be considered by the State Engineer to determine intent. Finally, the State Engineer correctly concluded that on-farm dirt-lined ditches do have appurtenant water rights as they do throughout the State of Nevada. Ruling 4798 should therefore be sustained as to its holding related to on-farm dirt-lined ditches and be remanded for determinations regarding equity and abandonment consistent with the holding of *Alpine V*.

DATED this 22<sup>nd</sup> day of July, 2002.

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**BRIEF FORMAT CERTIFICATION PURSUANT TO CIRCUIT RULE 32-1**

Pursuant to Ninth Circuit Rule 32-1, I certify that

xx 1. Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached answering brief is

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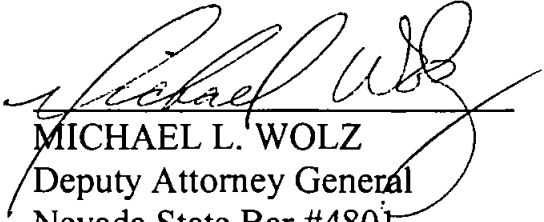
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\_\_\_\_\_ Monospaced, has 10.5 or fewer characters per inch and contains \_\_\_\_\_ words or \_\_\_\_\_ lines of text.

DATED this 22<sup>nd</sup> day of July, 2002.

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## **STATEMENT OF RELATED CASES**

Pursuant to Circuit Rule 28-2.6, the parties are directed to list related cases now pending before the Ninth Circuit. Cases related to this matter include: *United States v. Alpine Land & Reservoir Co.*, Case Nos. 01-16224 and 01-16241; and *United States v. Alpine Land & Reservoir Co.*, Case Nos. 01-16694 and 01-16789.

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## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General of the State of Nevada and on this 22nd day of July, 2002, I served two copies of the foregoing APPELLEE NEVADA STATE ENGINEER'S ANSWERING BRIEF by mailing true and correct copies, first class mail, postage prepaid, to the following persons:

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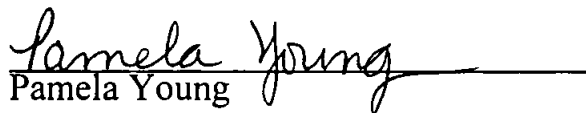
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Pamela Young

# EXHIBIT 2

# EXHIBIT 2

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

IN THE MATTER OF APPLICATION 53662)

RULING ON REMAND

GENERAL

**#5464 - K**

I.

By order of remand, the State Engineer again has the responsibility to address the "TCID Transfer Cases." This is the result of the Federal District Court's decision in what is commonly known as *Alpine IV* and the Ninth Circuit Court of Appeals' decisions in what are commonly known as *Alpine V*<sup>291</sup> and *Alpine VI*<sup>292</sup> and the Federal District Court's Order of February 25, 2004,<sup>293</sup> which provided that the pending applications in State Engineer's Ruling Nos. 4750, 4798, 4825, 5005 and 5047 were remanded to the State Engineer for express findings and recommendations on the issues of abandonment and forfeiture. The State Engineer was given discretionary authority to reopen any hearings he deemed appropriate to permit the applicants and the United States and the Pyramid Lake Paiute Tribe to present additional evidence limited solely on the issues of forfeiture and abandonment: [Forfeiture - whether the applicant was thwarted by the government in efforts to transfer; Abandonment - whether the applicant attempted unsuccessfully to file for a change in place of use or at least inquired about the possibility.] The State Engineer was given the discretion to affirm his prior rulings if appropriate. The State Engineer was ordered to apply the standards set forth by the court consistent with the holdings in *Alpine IV*, *V* and *VI* and make explicit findings by applying clear and convincing standards, balancing the interests of the applicant with the potential negative consequences to the Tribe. The State Engineer was also provided the discretion to consider evidence that

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<sup>291</sup> 291 F.3d 1062 (9th Cir. 2002).

<sup>292</sup> 340 F.3d 903 (9th Cir. 2003).

<sup>293</sup> *U.S. v. Alpine Land and Reservoir Co.*, D-184-HDM (D. Nev. Feb. 25, 2004) (Minutes of the Court).

an applicant relied on the Federal District Court's prior order to his detriment, that is whether an applicant relied on the exception for intrafarm transfers.

FINDINGS OF FACT

I.

After reviewing *Alpine IV*, *V* and *VI* together, the State Engineer finds the law of the case provides the following:

1. The Tribe bears the burden of proving clear and convincing evidence of acts of non-use of the water, of abandonment and an intent to abandon.
2. All transfers of water rights within the Newlands Project are governed by Nevada water law, and neither the U.S. Government nor the Truckee-Carson Irrigation District (TCID) had the power to transfer water rights, unless in accord with Nevada water law.
3. The amalgamation of the water rights for the Newlands Reclamation Project is not the relevant set of water rights when addressing the issue of forfeiture. The landowner cannot claim 1902 as the relevant date as to when said landowner's water rights were initiated. The State Engineer is to look at the specific water rights appurtenant to a specific tract of land and the landowner must demonstrate that he or she took affirmative steps to appropriate water prior to 1913 to be exempted from Nevada's forfeiture statutes. The Ninth Circuit Court of Appeals in *Alpine VI* has affirmed the State Engineer's determination as to the relevant contract dates.
4. A water right holders non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment. But said non-use is only some evidence of an intent to abandon the right. There is no rebuttable presumption of abandonment under Nevada water law, but a prolonged period of non-use may raise an inference of an intent to abandon.
5. Abandonment is a question of fact to be determined from all

the surrounding circumstances, which certainly includes the payment of taxes and assessments. If the Tribe provides evidence of a substantial period of non-use combined with improvements on the land inconsistent with irrigation, the payment of taxes and assessments alone will not defeat a claim of abandonment. However, if the Tribe's only evidence is non-use and there is a finding of the payment of taxes and assessments, the Tribe has failed to provide clear and convincing evidence of abandonment. Bare ground by itself does not constitute abandonment. If the Tribe has proved a substantial period of non-use and a use inconsistent with irrigation, in the absence of other evidence, besides the payment of taxes and assessments, the applicant must at a minimum prove continuous use of the water and that he or she attempted unsuccessfully to file for a change in place of use or at least inquired about the possibility and was told by the government or TCID that such transfers were not permitted.

6. If the transfer was an intrafarm transfer, an equitable exemption from forfeiture may be appropriate on a case-by-case basis, if the applicant can show he or she took steps to transfer the water right during the period of non-use, but was thwarted in that attempt by the government or TCID. In making said equitable determinations, the State Engineer should make explicit findings balancing the interests of an applicant with the negative consequences to the Tribe resulting from any increased diversions from Pyramid Lake.
7. On remand, the Ninth Circuit Court of Appeals and the Federal District Court mandated that the State Engineer apply the standards referenced.
8. In *Alpine VI*, the Ninth Circuit Court of Appeals remanded only those transfer applications that had been granted by the State Engineer and affirmed the Federal District Court to the extent it upheld the State Engineer's rulings denying transfer applications. Only those applications approved on the grounds

- of an intrafarm exemption, or had issues as to on-farm, dirt-lined ditches, were remanded for additional consideration.
9. The Ninth Circuit Court of Appeals has already rejected arguments that filing transfers with the government or TCID was an exercise in futility or that the time frame for forfeiture should be tolled during the moratorium period of 1973 -1984.
  10. The State Engineer is to make individualized findings as to beneficial use as it relates to all parcels where a transfer applicant claimed an appurtenant water right due to passage of water through a ditch. Transportation of water does not create rights in land along the entire course of the ditch; however, there is a possibility that along the course of a ditch, there may be some beneficial use and appurtenant rights if the water is used for lateral root irrigation.

## II.

In State Engineer's Ruling No. 5005, the State Engineer was addressing three parcels of land. The Tribe alleged forfeiture and abandonment as to Parcels 1 and 3, and partial forfeiture and partial abandonment as to Parcel 2. The State Engineer found that all three parcels had contract dates post-1913; therefore, the forfeiture provision of NRS § 533.060 is applicable.

As to Parcel 1, the State Engineer found taking both the Applicant's and Tribe's land use descriptions that the land use was a drain ditch, that no water was placed to beneficial use on that parcel from 1948 to 1989, and the land use is inconsistent with irrigation.

As to Parcel 2, the State Engineer found taking both the Applicant's and Tribe's land use descriptions that no water was placed to beneficial use on 2.08 acres of the 13.70 acres of the existing place of use from 1948 to 1989, and the land use on the 2.08 acres is inconsistent with irrigation.

As to Parcel 3, the State Engineer found taking both the Applicant's and Tribe's land use descriptions that the land use was



a drain ditch, that no water was placed to beneficial use on that parcel from 1948 to 1989, and the land use is inconsistent with irrigation.

At the hearing on remand, the new holder of the water rights argued that drain ditches should fall under the category of on-farm, dirt-lined ditches; therefore, the State Engineer should allow the Applicant to show beneficial use of water on the drain ditch. However, the Applicant did not provide any evidence to support its contention that drain ditches were considered a water-righted area. The State Engineer refers to the General Findings of Fact Applicable to All Applications Under Consideration in State Engineer's Ruling No. 5005 and specifically Finding X in which the State Engineer notes that waste ditches and drains were not considered part of the irrigable acreage. The State Engineer never made a finding that drain ditches were considered irrigable areas, and the matter was not remanded or the hearings reopened to raise new arguments this far into the cases. Further, the purpose of the remand was not to revisit the State Engineer's land use determinations. The State Engineer affirms his original findings and recommends the Federal District Court also affirm those findings, and not accept the new issue that drain ditches are irrigated or irrigable areas.


The State Engineer finds the Applicant did not present any evidence addressing the standards required by the Ninth Circuit Court of Appeals or by the Federal District Court on remand to the State Engineer. The State Engineer recommends the Federal District

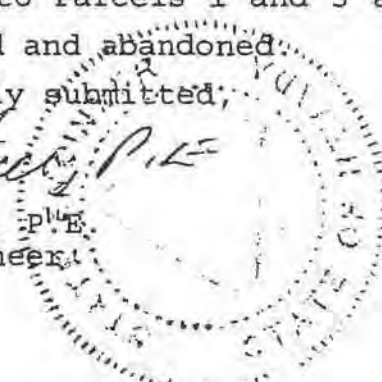


Ruling  
Page 6

Court find the water rights appurtenant to Parcels 1 and 3 and a portion of Parcel 2 be declared forfeited and abandoned.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer



HR/SJT

Dated this 14th day of  
December, 2004.

# EXHIBIT 3

# EXHIBIT 3

06-15738

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

|                                |   |                        |
|--------------------------------|---|------------------------|
| UNITED STATES OF AMERICA,      | ) |                        |
| Plaintiff,                     | ) |                        |
| And                            | ) | DC NO. CV-73-00184-RCJ |
| PYRAMID LAKE PAIUTE TRIBE OF   | ) | Nevada (Reno)          |
| INDIANS,                       | ) |                        |
| Plaintiff—Appellant,           | ) |                        |
|                                | ) |                        |
| RICHARD BASS,                  | ) |                        |
| Petitioner—Appellee,           | ) |                        |
|                                | ) |                        |
| v.                             | ) |                        |
|                                | ) |                        |
| ALPINE LAND & RESERVOIR        | ) |                        |
| COMPANY, a corporation; et al, | ) |                        |
| Defendant,                     | ) |                        |
|                                | ) |                        |
| NEVADA STATE ENGINEER,         | ) |                        |
| Respondent.                    | ) |                        |

NEVADA STATE ENGINEER'S ANSWERING BRIEF

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## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES .....   | iii         |
| I. STATEMENT OF JURISDICTION .....   | 1           |
| II. ISSUES PRESENTED FOR REVIEW .....  | 1           |
| III. STATEMENT OF THE CASE, COURSE OF PROCEEDINGS,<br>AND DISPOSITION BELOW .....  | 2           |
| IV. STATEMENT OF FACTS AND SUMMARY OF HISTORY OF<br>THE NEWLANDS PROJECT AND THE <i>ALPINE</i> LITIGATION .....  | 5           |
| V. SUMMARY OF THE ARGUMENT .....   | 13          |
| VI. STANDARD OF REVIEW .....   | 16          |
| VII. ARGUMENT .....  | 18          |
| A. Tribal Immunity Has Been Waived for the Administration<br>of the <i>Alpine Decree</i> by the McCarran Amendment and by<br>the Tribe's Own Actions .....               | 19          |
| 1. The McCarran Amendment Waives the Tribe's<br>Immunity From Suit Under the Circumstances of<br>This Case .....   | 20          |
| 2. The Tribe Has Waived Its Sovereign Immunity By<br>Challenging the Validity of the Water Rights At Issue<br>Here in Administrative Forums and the District Court ..... | 24          |
| B. The District Court Has Continuing Jurisdiction Over the Water<br>Rights At Issue in This Case and Did Not Err in Exercising<br>That Jurisdiction .....                | 32          |

## TABLE OF CONTENTS

### Page

|  |    |
|--|----|
| C. The Carson Water Subconservancy District Is the Agency Charged With the Administration and Interpretation of A.B. 380, and Its Decision Approving the Match for the Application 51060 Water Rights Is Final ..... | 36 |
| VIII. CONCLUSION .....   | 38 |
| CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT RULE 32-1 .....  | 40 |
| STATEMENT OF RELATED CASES .....   | 41 |
| CERTIFICATE OF SERVICE .....   | 42 |

## TABLE OF AUTHORITIES

### Page

### CASES

|   |                 |
|---|-----------------|
| <i>California v. United States</i> , 438 U.S. 645, 57 L. Ed. 2d 1018,<br>98 S. Ct. 2985 (1978) .....                | 16, 26          |
| <i>Colorado River Water Conservation Dist. v. United States</i> ,<br>424 U.S. 800 (1976) .....                      | 21              |
| <i>Coyle v. P.T. Garuda Indonesia</i> , 363 F.3d 979 (9th Cir. 2004) .....  | 16              |
| <i>DP Aviation v. Smiths Industries Aerospace and Defense Systems<br/>Ltd.</i> , 268 F.3d 829 (9th Cir. 2001) ..... | 17              |
| <i>Goldman v. Standard Insurance Co.</i> , 341 F.3d 1023 (9th Cir. 2003) .....                                      | 17              |
| <i>Kent v. Smith</i> , 62 Nev. 30, 140 P.2d 357 (1943) .....  | 18              |
| <i>Linneen v. Gila River Indian Community</i> , 276 F.3d 489 (9th Cir. 2002) .....                                  | 17              |
| <i>McClendon v. Unites States</i> , 885 F.2d 627 (9th Cir. 1989) .....  | 25, 27,<br>28   |
| <i>Nevada v. United States</i> , 463 U.S. 110 (1983) .....  | 6, 7,<br>29, 30 |
| <i>Peterson v. Highland Music, Inc.</i> , 140 F.3d 1313 (9th Cir. 1998) .....                                       | 16              |
| <i>Rabkin v. Oregon Health Sciences Univ.</i> , 350 F.3d 967 (9th Cir. 2003) .....                                  | 17              |
| <i>Revert v. Ray</i> , 95 Nev. 782, 603 P.2d 262 (1979) .....   | 18              |
| <i>Schwarzenegger v. Fred Martin Motor Co.</i> , 374 F.3d 797<br>(9th Cir. 2004) .....                              | 16              |
| <i>South Delta Water Agency v. United States</i> , 767 F.2d 531<br>(9th Cir. 1985) .....                            | 22, 23          |

## TABLE OF AUTHORITIES

### Page

### CASES

|   |                 |
|---|-----------------|
| <i>State Engineer v. Curtis Park</i> , 101 Nev. 30, 692 P.2d 495 (1985) .....   | 18              |
| <i>State Engineer v. Morris</i> , 107 Nev. 699, 819 P.2d 203 (1991) .....   | 18              |
| <i>State Engineer v. South Fork Band of the Te-Moak Tribe of<br/>Western Shoshone Indians of Nevada</i> , 339 F.3d 804 (9th Cir. 2003) .....  | 22              |
| <i>Town of Eureka v. State Engineer</i> , 108 Nev. 163, 826 P.2d 948 (1992) .....   | 18              |
| <i>United States v. 1.377 Acres of Land</i> , 352 F.3d 1259 (9th Cir. 2003) .....   | 17              |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , Case No. D-184-LDG .....  | 1               |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 503 F. Supp. 877<br>(D. Nev. 1980), <i>substantially aff'd</i> , 697 F.2d 851 (9th Cir. 1983),<br><i>cert. denied</i> , 464 U.S. 863 (1983) ..... | 1, 6,<br>16     |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 697 F.2d 851 (9th Cir.<br>1983), <i>cert. denied</i> , 464 U.S. 863 (1983) ( <i>Alpine I</i> ) .....  | <i>passim</i>   |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 887 F.2d 207 (9th Cir.<br>1989) ( <i>Bench/Bottom Decision</i> ) .....  | 33, 34          |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 878 F.2d 1217 (9th Cir.<br>1989), <i>cert. denied</i> , 498 U.S. 817 (1990) ( <i>Alpine II</i> ) .....  | <i>passim</i>   |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 983 F.2d 1487 (9th<br>Cir. 1993) ( <i>Alpine III</i> ) .....  | 3, 8,<br>17, 25 |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 919 F. Supp. 1470<br>(D. Nev. 1996) .....   | 18              |

## TABLE OF AUTHORITIES

### Page

### CASES

|  |                         |
|--|-------------------------|
| <i>United States v. Alpine Land and Reservoir Co.</i> , 27 F. Supp. 2d 1230<br>(D. Nev. 1999) ( <i>Alpine IV</i> ) ..... | 4, 9                    |
| <i>United States v. Alpine Land Reservoir Co.</i> , 174 F.3d 1007 (9th Cir.<br>1999) .....                               | 30                      |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 291 F.3d 1062<br>(9th Cir. 2002) ( <i>Alpine V</i> ) .....       | <i>passim</i>           |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 340 F.3d 903 (9th<br>Cir. 2003) ( <i>Alpine VI</i> ) .....       | 4, 11,<br>12, 23,<br>25 |
| <i>United States v. State of Oregon</i> , 657 F.2d 1009 (9th Cir. 1982) .....  | 19, 28,<br>29, 30       |
| <i>United States v. Orr Water Ditch Co.</i> , Equity No. A-3 (D. Nev.<br>Sept. 4, 1944) .....                            | 6                       |
| <i>United States v. Orr Water Ditch Co.</i> , 256 F.3d 935 (9th Cir.<br>2001) ( <i>Orr Ditch</i> ) .....                 | 10                      |
| <i>United States v. Orr Water Ditch Co.</i> , 391 F.3d 1077 (9th Cir.<br>2004) .....                                     | 27                      |

### FEDERAL STATUTES AND RULES

|                        |   |
|------------------------|---|
| 28 U.S.C. § 1291 ..... | 1 |
| 28 U.S.C. § 1345 ..... | 1 |



## TABLE OF AUTHORITIES

### Page

### FEDERAL STATUTES AND RULES

|                            |        |
|----------------------------|--------|
| 43 U.S.C. §§ 371–390 ..... | 7      |
| 43 U.S.C. § 666 .....      | 13, 20 |
| 43 U.S.C. § 666(a) .....   | 20, 22 |

### NEVADA STATUTES

|                         |    |
|-------------------------|----|
| NRS 233B.010–.150 ..... | 38 |
| NRS Chapter 533 .....   | 5  |
| NRS 533.040 .....       | 5  |
| NRS 533.060 .....       | 5  |
| NRS 533.365(1) .....    | 25 |
| NRS 533.450 .....       | 18 |
| NRS 533.450(1) .....    | 18 |
| NRS 533.450(9) .....    | 17 |

## I. STATEMENT OF JURISDICTION

The District Court maintains ongoing jurisdiction of *United States v. Alpine Land & Reservoir Co.*, Case No. D-184-LDG, of which this case is a part, under 28 U.S.C. § 1345. *See United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877, 879 (D. Nev. 1980), *substantially aff'd*, 697 F.2d 851 (9th Cir. 1983), *cert. denied*, 464 U.S. 863 (1983); *United States v. Alpine Land & Reservoir Co.*, 878 F.2d 1217, 1219 n.2 (9th Cir. 1989), *cert. denied*, 498 U.S. 817 (1990) (*Alpine II*). This Court has jurisdiction of this appeal under 28 U.S.C. § 1291.

## II. ISSUES PRESENTED FOR REVIEW

A. Whether the Pyramid Lake Paiute Tribe's sovereign immunity has been waived for purposes of the administration of the *Alpine Decree* by the McCarran Amendment and by the Tribe's involvement in this litigation.

B. Whether the District Court has continuing jurisdiction over the water rights at issue in this case and properly exercised that jurisdiction.

C. Whether the Carson Water Subconservancy District's determination that the proposed match transaction met the criteria for the A.B. 380 settlement program is final and therefore binding on the District Court and other agencies dealing with those water rights.

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### **III. STATEMENT OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW**

This case presents an appeal of the Order of the District Court for the District of Nevada (District Court) entered March 30, 2006. That Order held that respondent Richard Bass (Bass), the owner of water rights that are the subject matter of Nevada State Engineer's Change Application 51060 (the Application or Application 51060), could participate in Nevada's A.B. 380 program and required the Pyramid Lake Paiute Tribe of Indians (the Tribe) to withdraw its protests to the Application. Excerpt of Record of Appellants Pyramid Lake Paiute Tribe of Indians (EOR) at 97-101.

Application 51060 is one of several applications in what has been referred to by the Nevada State Engineer (State Engineer) as "Group 6" in this transfer litigation. A public administrative hearing was held on Application 51060 on February 16 and 22, 1989, in Reno, and Carson City, Nevada. Supplemental Excerpts of Record of the Nevada State Engineer (SEOR) at 2-3. As part of those proceedings the parties stipulated to incorporate the record of previous administrative hearings in regard to other change applications into the record of this matter. SEOR at 3. The application was originally approved by State Engineer's Ruling No. 3598. SEOR at 4. On July 7, 1989, the Ninth Circuit Court of Appeals addressed an appeal of related change applications in *United States v. Alpine Land and Reservoir Co.*, 878 F.2d 1217 (9th Cir. 1989), *cert. denied*, 498

U.S. 817 (1990) (*Alpine II*). As a result of that decision Application 51060 was remanded to the State Engineer by the District Court on July 25, 1990. SEOR at 4. Following a hearing at which no additional evidence was taken the State Engineer issued Ruling on Remand 3778 on February 8, 1991, SEOR at 4 n.12, and once again granted the Application. Other change applications were similarly affirmed by the State Engineer in Ruling 3868 on January 30, 1992. SEOR at 5.

The Tribe and the United States appealed both Ruling 3778 and Ruling 3868 to the District Court. On April 20, 1992, the District Court issued a minute order granting a joint motion by The Tribe, the United States, the State Engineer, and the Truckee-Carson Irrigation District to stay the appeal pending the consideration of other rulings of the State Engineer that were on appeal to the Ninth Circuit Court of Appeals. SEOR at 5.

During the pendency of the stay the Ninth Circuit Court of Appeals decided *United States v. Alpine Land and Reservoir Co.*, 983 F.2d 1487 (9th Cir. 1993) (*Alpine III*). In light of that decision, the District Court remanded both Ruling 3778 and Ruling 3868 to the State Engineer together with all other pending Change Application appeals on October 4, 1995, for consideration of the issues of perfection, abandonment, and forfeiture. SEOR at 8. In response to the District Court's remand, the State Engineer conducted further hearings on various dates between October 1996 and January 1999. SEOR at 13-15. As a result of an appeal

of State Engineer's Ruling No. 4591, which dealt with related change applications, the District Court entered an order on September 3, 1998, *United States v. Alpine Land and Reservoir Co.*, 27 F. Supp. 2d 1230 (D. Nev. 1999) (*Alpine IV*), addressing the issues of abandonment, forfeiture, and equity, as well as other issues. SEOR at 16-18. As a result of that Order the State Engineer reopened the proceedings on certain change applications and entered Ruling on Remand 4798 on September 24, 1999. *Id.* The Tribe and the United States appealed Ruling 4798 to the District Court which affirmed the Nevada State Engineer's Ruling by order entered February 22, 2001. The State Engineer reopened proceedings on other change applications and entered Ruling on Remand 4825 on December 21, 1999. *Id.* The District Court affirmed Ruling 4825 by order entered on April 18, 2001, which the Tribe then appealed. The State Engineer specifically addressed Application 51060 as part of Ruling on Remand 5047 entered on August 9, 2001. SEOR at 21-31.

The Ninth Circuit Court of Appeals reversed Ruling 4798 in part and remanded for further proceedings in *United States v. Alpine Land and Reservoir Co.*, 291 F.3d 1062 (9th Cir. 2002) (*Alpine V*). Ruling 4825 was reversed in part and remanded by the Ninth Circuit in *United States v. Alpine Land and Reservoir Co.*, 340 F.3d 903 (9th Cir. 2003) (*Alpine VI*). Following the remands in *Alpine V* and *Alpine VI* the District Court entered an Order on February 25, 2004, remanding



to the Nevada State Engineer all applications pending as part of State Engineer's Ruling Nos. 4591, 4750, 4798, 4825, 5005, and 5047. EOR at 27.

On December 14, 2004, the State Engineer entered Ruling on Remand 5464-E and recommended to the District Court that it declare the water rights at issue in Application 51060 to be abandoned. EOR at 34. That same month, following the entry of Ruling on Remand 5464-E, Bass elected to participate in the A.B. 380 settlement program. On September 9, 2005, Bass filed a Motion to Enforce Settlement Agreement and Enter Judgment Thereon Consistent with NRS Chapter 533, 533.040, 533.060 as Amended in 1999, or in the Alternative, for Leave to File Late Objection (Appeal) to Ruling 5464-E (Motion to Enforce Settlement). EOR at 97. On March 10, 2006, the District Court affirmed Ruling on Remand 5464-E. EOR 53-97. On March 30, 2006, the District Court granted the Bass Motion to Enforce Settlement and ordered the Tribe to withdraw its protest to Application 51060. EOR at 101. The Tribe appealed the March 29, 2006, Order by Notice of Appeal filed April 10, 2006.

#### **IV. STATEMENT OF FACTS AND SUMMARY OF HISTORY OF THE NEWLANDS PROJECT AND THE *ALPINE* LITIGATION**

The water rights at issue in Application 51060 are appurtenant to lands irrigated in the Newlands Project, a federal reclamation project in Nevada. The Newlands Project is supplied with water from both the Truckee River and Carson River, although only the Carson River flows directly into the Newlands Project.

Water is diverted from the Truckee River at the Derby Dam, where it flows through the Truckee Canal to Lahontan for Newlands Project use. *Nevada v. United States*, 463 U.S. 110, 115-16 (1983).

Upon passage of the Reclamation Act of 1902, the Secretary of the Interior withdrew 232,800 acres in western Nevada, which ultimately became the Newlands Project. The Newlands Project's goal was to turn wasteland into farmland with irrigation water supplied from the Carson and Truckee Rivers. *Id.*

In 1913 the United States initiated *United States v. Orr Water Ditch Co.*, Equity No. A-3 (D. Nev. Sept. 4, 1944), in an attempt to settle the competing claims to the waters of the Truckee River. The United States initiated separate litigation to adjudicate claims to the water of the Carson River, which concluded with the entry of a final decree in 1980. *See United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980), *substantially aff'd*, 697 F.2d 851 (9th Cir. 1983), *cert. denied*, 464 U.S. 863 (1983).

This appeal is the result of protracted litigation and administrative hearings before the Nevada State Engineer beginning in the mid-1980s with respect to applications for the transfer of water rights from existing places of use to proposed places of use by farmers within the Newlands Project. This litigation has primarily addressed questions of whether and how the State Engineer and the federal courts are to determine when a water right proposed for transfer was perfected by placing

that water to a beneficial use, the date on which the water right was considered to be initiated for purposes of forfeiture, and whether or not the water rights have been forfeited or abandoned as those doctrines are applied under Nevada law.

In *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851 (9th Cir. 1983), *cert. denied*, 464 U.S. 863 (1983) (*Alpine I*), the Ninth Circuit Court of Appeals confirmed in accordance with the *Alpine Decree* and the Reclamation Act of 1902, 43 U.S.C. §§ 371–390, that Nevada law governed the transfer of water rights within the Newlands Project. Then, as a result of a collateral attack on the *Orr Ditch Decree*, the United States Supreme Court in *Nevada v. United States*, 463 U.S. 110 (1983), rejected the contention that the United States is the owner of the water rights in the Newlands Project or that the *Orr Ditch Decree* could be reopened to allow the Tribe to make claims for additional water.

As a result of the decisions in *Alpine I* and *Nevada v. United States*, and at the advice of the United States, numerous project farmers began filing applications with the State Engineer consistent with the laws of Nevada to transfer those water rights from the historic places of use to proposed places of use. Many of the applications were protested pursuant to Nevada law by the Tribe.

The first challenges to the change applications resulted in *Alpine II*, 878 F.2d 1217. Of 129 transfer applications that were considered by the Nevada State Engineer, 25 were validly challenged by the Tribe and the United States on the



grounds of forfeiture and/or abandonment. In *Alpine II* this Court reaffirmed that Nevada law applied to the transfer applications and held that it was appropriate for the State Engineer to adjudicate the issues of perfection, abandonment, and forfeiture. The Ninth Circuit also held that water rights that have not been put to beneficial use may not be transferred and that issues of forfeiture and abandonment could not be raised on appeal if the change application was not protested on those grounds before the State Engineer.

On the remand of *Alpine II* the District Court upheld the State Engineer's prior determinations with respect to the forfeiture and abandonment of water rights. *Alpine III*, 983 F.2d at 1491. That ruling was appealed, resulting in the *Alpine III* decision. In *Alpine III* this Court held that the State Engineer and the District Court abused their discretion by failing to make proper factual findings with respect to the issues of forfeiture and abandonment. *Id.* at 1496-97. With respect to abandonment, the *Alpine III* Court held that the decision of the State Engineer shall be *prima facie* correct and the burden of proof shall be on the party challenging the decision but concluded that the proper inquiry was not as to the intent of the project water users as a whole, but rather the intent of the specific applicant. The *Alpine III* Court also rejected the Tribe's argument that nonuse of water by the owner of a water right gives rise to a rebuttable presumption of intent to abandon under Nevada law. *Id.* at 1494 n.8. As to forfeiture, the Court held that

under Nevada law the forfeiture statute does not apply to water rights that vested or were initiated prior to the statute's enactment on March 22, 1913. *Id.* at 1495-96.

On remand the Nevada State Engineer issued Interim Ruling Nos. 4411 and 4591, concluding therein that an extended period of nonuse of water does not by itself create a rebuttable presumption of abandonment under Nevada law. SEOR 11-13. Also, the State Engineer held that, since it was universally believed within the Newlands Project that the United States owned the water rights until 1983 and the United States at all times prior to 1983 had conducted itself and held itself out as the owner of the water rights, no one within the project could formulate an intent to abandon a water right he or she did not believe they owned. SEOR 16-18. Finally, the State Engineer found that if the lands being stripped of water rights were simultaneously replaced by irrigated lands within the same farm unit or contract area there could not be a forfeiture or abandonment. *Id.*

The District Court affirmed Ruling 4591 and, consistent with *Alpine II*, held that traditional equitable principles govern whether the strict requirements of Nevada water law are to be relaxed. The District Court found that "intrafarm transfers within the Newlands Reclamation Project should be upheld as a matter of equity," *Alpine IV*, 27 F. Supp. 2d at 1244, and remanded several of the applications to the State Engineer for additional consideration regarding abandonment and forfeiture. This Court specifically directed the State Engineer to

identify any other applications that involve intrafarm transfers so the court could affirm those transfers. *Id.* at 1245 n.13.

On remand the Nevada State Engineer issued Supplemental Ruling on Remand 4750 (Ruling 4750). That ruling confirmed that three of the applications involved intrafarm transfers and as such the law of forfeiture and abandonment did not apply. The State Engineer identified intrafarm transfers as those in which the existing place of use and proposed place of use were owned by the same person. Ruling 4750 was affirmed by order of the District Court on February 14, 2000. The District Court's order affirming Ruling 4750 was appealed and sustained in part and reversed in part by this Court in *Alpine V*, 291 F.3d 1062 (9th Cir. 2002).

In *Alpine V* this Court upheld the District Court's findings as to the evidentiary standards to be applied to abandonment, citing to the then recently decided opinion *United States v. Orr Water Ditch Co.*, 256 F.3d 935 (9th Cir. 2001) (*Orr Ditch*). The *Alpine V* Court specifically noted that (1) a prolonged period of nonuse does not create a rebuttable presumption of abandonment, (2) that abandonment is to be determined from all of the surrounding circumstances, and (3) where there is evidence of a substantial period of nonuse and evidence of improvements inconsistent with irrigation, the payment of assessments and taxes alone will not defeat a claim of abandonment. *Alpine V*, 291 F.3d at 1072-73. The *Alpine V* Court also held that a blanket equitable exemption was contrary to *Alpine*

*II* but noted that “equitable relief might be appropriate on a case-by-case basis to prevent individual transfer applicants from losing their water rights.” *Alpine V*, 291 F.3d at 1076. Finally, the *Alpine V* Court concluded that equitable relief was unavailable to avoid abandonment since a showing of a lack of intent would avoid abandonment as a matter of law. *Alpine V*, 291 F.3d at 1077.

The Nevada State Engineer entered Ruling 4825 on December 21, 1999, SEOR at 18, prior to both the *Orr Ditch* and *Alpine V* decisions. In that Ruling the State Engineer determined that some additional applications were subject to the “intrafarm” exemption to forfeiture and abandonment. The State Engineer also found that certain of the parcels at issue in that ruling were on-farm dirt-lined ditches and were therefore not subject to forfeiture or abandonment. *Alpine VI*, 340 F.3d at 907. The District Court affirmed Ruling 4825 in its entirety. *Id.* The District Court’s order affirming Ruling 4825 was appealed to the Ninth Circuit by the United States and the Tribe.

In *Alpine VI* the Ninth Circuit affirmed its findings in *Alpine V* in regard to equitable relief from forfeiture and the evidence necessary to show an intent to abandon and remanded so that findings of fact could be made on a case-by-case basis. *Alpine VI*, 340 F.3d at 908, 914, 916-19. The Ninth Circuit likewise overruled the State Engineer’s finding that on-farm dirt-lined ditches within the irrigable area of an existing place of use are a per se beneficial use of water on the

parcel covered by the ditch. The Ninth Circuit remanded for determination on an individual basis as to whether there had been “beneficial use of the water as it relates to all parcels claiming an appurtenant right due to the transfer of the water through a dirt lined ditch.” *Alpine VI*, 340 F.3d at 925.

In response to the holdings of *Alpine V* and *Alpine VI* the District Court remanded all of the pending applications to the Nevada State Engineer for further findings, which resulted in entry of State Engineer’s Ruling 5464 and Rulings 5464-A through 5464-K. Ruling 5464-E specifically addressed Application 51060, and the State Engineer found in regard to that Application that “no evidence was presented as to continuous use of the water rights. Therefore, the State Engineer finds the Application did not meet the standards required by the court and must recommend the District Court declare the water rights abandoned.” EOR at 34.

Following the entry of Ruling 5464-E, Bass elected to participate in the A.B. 380 Settlement Program. EOR at 98. That program is administered by the Carson Water Subconservancy District (CWSD) and not by the Nevada State Engineer. Assembly Bill No. 380, Section 4(2) and Section 5. EOR 14, 98. On July 20, 2005, CWSD held a meeting to consider the Bass request to participate in the A.B. 380 Settlement Program. CWSD voted to consider the State Engineer’s conclusions as “recommendations” since they were referred to as such by the District Court and Ruling 5464-E, and to allow Bass to participate in the settlement



program. EOR at 48. No appeal was taken from that decision of CWSD. The Tribe refused, however, to “sign off” on the proposed A.B. 380 match that would have allowed the State Engineer to approve the change in place of use proposed by Application 51060. EOR at 52.

In response to the Tribe’s refusal to sign off on the Bass request to participate in the A.B. 380 program, Bass filed his Motion to Enforce Settlement on September 9, 2005. EOR at 97. On March 10, 2006, the District Court affirmed Ruling on Remand 5464-E. EOR 53-97. On March 30, 2006, however, the District Court granted the Bass Motion to Enforce Settlement and ordered the Tribe to withdraw its protest to Application 51060. EOR at 101.

## **V. SUMMARY OF THE ARGUMENT**

Although it is generally true that Indian tribes enjoy immunity from suit in state or federal court, that immunity exists at the sufferance of Congress and may be waived. In addition, an Indian tribe may itself consent to suit.

Congress has expressly waived tribal immunity under the circumstances of this case by passage of the McCarran Amendment, 43 U.S.C. § 666. The McCarran Amendment expressly waives the United States’ and Indian tribes’ sovereign immunity for purposes of administration of general stream adjudications such as the *Alpine Decree*. The actions taken by the District Court in its Order of March 30, 2006, constituted administration of the *Alpine Decree* since they were

necessary to the determination of whether certain water rights were valid and water could be delivered to the proposed places of use. The Tribe therefore incorrectly asserts that its sovereign immunity was violated by the District Court's March 30, 2006, Order which was entered as part of its administration of the *Alpine Decree*.

The Tribe has similarly waived its immunity by participating for over twenty years in the administrative and judicial proceedings addressing the validity of the water rights at issue in Application 51060 and over 300 other change applications. The District Court's interpretation of A.B. 380 was a necessary part of determining the validity of the Application 51060 water rights and whether water may be delivered to the proposed places of use. The Tribe cannot waive its immunity for the purposes of challenging a proposed change in place of use based on the state law principle of abandonment but then assert in the same proceedings that it has not waived its immunity for purposes of the interpretation of another principle of state law that also directly bears on the validity of those rights.

The Tribe has likewise asserted that the District Court was without jurisdiction to interpret A.B. 380. The argument may not be accepted. It is a well established principle that the District Court has continuing jurisdiction over the *Alpine Decree* and that such jurisdiction is not limited merely to the review of decisions of the Nevada State Engineer on change applications, but extends to administration of all provisions of the *Alpine Decree* and interpretation of

applicable Nevada law. To conclude otherwise would be to render express provisions of the *Alpine Decree* null and unenforceable and would restrict the District Court from making the most basic of determinations under the *Decree*: may water be delivered to the original or new places of use for the Application 51060 water rights?

Even if it is assumed for the sake of argument that the District Court was without jurisdiction to interpret A.B. 380 or that the Tribe was immune from suit, CWSD, the sole entity granted authority to administer the A.B. 380 program, determined that the transaction proposed by Appellee Bass complied with the terms of that statute, and no appeal has been taken from that decision. Since that decision has not been appealed to or challenged in any other forum, that decision must be considered final and is binding upon the District Court and any administrative entity that is required to address the validity or status of the water rights at issue under Application 51060. The District Court and the Nevada State Engineer would, therefore, be required to take action consistent with CWSD's decision in dealing with the Application 51060 water rights.

The District Court's Order of March 30, 2006, must, as a consequence of the above, be affirmed in its entirety.

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## VI. STANDARD OF REVIEW

Nevada law governs the issues presented by this case. “The Supreme Court has held, in *California v. United States*, 438 U.S. 645, 57 L. Ed. 2d 1018, 98 S. Ct. 2985 (1978), that state law will control the distribution of water rights to the extent there is no preempting federal directive.” *Alpine I*, 697 F.2d at 858.

State law controls as to procedure as well as to substantive issues. “The *Alpine* decision necessarily contemplated that state law would control both the process and the substance of a proposed transfer of water rights.” *Alpine II*, 878 F.2d at 1223. As a consequence, “all Nevada change applications will be directed to the State Engineer and will be governed by Nevada law.” *United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877, 893 (D. Nev. 1980), *substantially aff’d*, 697 F.2d 851, 858 (9th Cir. 1983), *cert. denied*, 464 U.S. 863 (1983). “We agree with the district judge that the notice and protest procedures of Nevada law are adequate to allow exploration of these issues, when they arise, before the state engineer.” *Alpine I*, 697 F.2d at 863.

Determinations regarding personal jurisdiction are reviewed *de novo*. *Schwartzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004); *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1317 (9th Cir. 1998). Whether a district court has subject matter jurisdiction is similarly reviewed *de novo*. *Coyle v. P.T. Garuda Indonesia*, 363 F.3d 979, 984 n.7 (9th Cir. 2004). However, factual

findings on jurisdictional questions are reviewed for clear error. *Id.* Questions of tribal sovereign immunity are reviewed *de novo*. *Linneen v. Gila River Indian Community*, 276 F.3d 489, 492 (9th Cir. 2002).

A district court's interpretation of state law is reviewed *de novo*. *Rabkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 970 (9th Cir. 2003). In reviewing questions of state law, this Court must determine what meaning the state's highest court would give the statute in question. *Goldman v. Standard Insurance Co.*, 341 F.3d 1023, 1026 (9th Cir. 2003).

A district court's interpretation of the meaning of contract provisions are questions of law reviewed *de novo*. *United States v. 1.377 Acres of Land*, 352 F.3d 1259, 1264 (9th Cir. 2003). When an interpretation of a contract is premised upon extrinsic evidence, then the court's findings of fact must be upheld unless clearly erroneous. *Id.* See also *DP Aviation v. Smiths Industries Aerospace and Defense Systems Ltd.*, 268 F.3d 829, 836 (9th Cir. 2001).

To the extent that this appeal may involve the review of an order or decision of the Nevada State Engineer, the *Alpine Decree* and Nevada law provide, "that the decision of the Engineer 'shall be prima facie correct, and the burden of proof shall be upon the party challenging the Engineer's decisions.' *Alpine Decree*, Administrative Provisions Par. 7; See also NRS 533.450(9) (same)." *Alpine III*, 983 F.2d at 1494. The function of this Court is to review the evidence on which

the Nevada State Engineer based his decision to ascertain whether the evidence supports the decision, and if so, the Court is bound to sustain the Nevada State Engineer's decision. *State Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985).

Review of a decision of the Nevada State Engineer is in the nature of an appeal. NRS 533.450(1). The Nevada Supreme Court has interpreted NRS 533.450 to mean that a petitioner does not have a right to *de novo* review or to offer additional evidence at the District Court. *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). *See also Kent v. Smith*, 62 Nev. 30, 32, 140 P.2d 357, 358 (1943); *State Engineer v. Curtis Park*, 101 Nev. at 32, 692 P.2d at 497; *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205 (1991); *Town of Eureka v. State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992); *United States v. Alpine Land & Reservoir Co.*, 919 F. Supp. 1470, 1474 (D. Nev. 1996).

## **VII. ARGUMENT**

The Tribe has asserted that the District Court erred in entering its Order of March 30, 2006, both because the Tribe was immune from suit and because the District Court did not have jurisdiction over the question presented by the Bass Motion to Enforce Settlement.<sup>1</sup> The Tribe's arguments regarding immunity and

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<sup>1</sup> The Tribe has likewise raised issues regarding the interpretation of A.B. 380. Because the State Engineer is not charged with the administration of the A.B. 380 water settlement program, he takes no position in regard to that statute's

jurisdiction are incorrect and must be rejected. First, Congress has by passage of the McCarran Amendment expressly waived tribal immunity for the purposes of the general adjudication of water rights and their subsequent administration. The Tribe has also waived its immunity to suit by participating in this litigation for over 20 years. Likewise, the District Court maintains ongoing jurisdiction over the water rights at issue here and did not err in interpreting and applying state law that will affect the status and use of those rights and, therefore, the administration of the *Alpine Decree*. Finally, the decision of CWSD has not been appealed by any party and, as a final decision of the agency charged with the administration of A.B. 380, may be relied upon by the District Court and other agencies.

**A. Tribal Immunity Has Been Waived for the Administration of the Alpine Decree by the McCarran Amendment and by the Tribe's Own Actions.**

Although it is true that as “a general proposition, Indian tribes are immune from suit in state or federal court,” *United States v. State of Oregon*, 657 F.2d 1009, 1012 (9th Cir. 1982), that immunity “exists only at the sufferance of Congress and is subject to complete defeasance.” *Id.* at 1013. In addition, Indian tribes may themselves consent to suit without express Congressional authority. *Id.* Here Congress has expressly waived the Tribe’s immunity for purposes of the

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interpretation or administration, except as to limited issues set forth below. By doing so the State Engineer does not impliedly agree with or acquiesce to the interpretation advocated by any party.

administration of the *Alpine Decree*. Likewise, the Tribe's actions in challenging the validity of water rights adjudicated by the *Alpine Decree* in the District Court, before the Nevada State Engineer, and before CWSD constitute a waiver of its immunity for purposes of the administering the *Alpine Decree*.

1. **The McCarran Amendment Waives the Tribe's Immunity From Suit Under the Circumstances of This Case.**

By the passage of the McCarran Amendment, 43 U.S.C. § 666, Congress expressly waived the immunity of the United States for purposes of administering general stream adjudications such as the *Alpine Decree*. The McCarran Amendment states in relevant part:

Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights. . . . The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable. . . .

43 U.S.C. § 666(a).

By passage of the McCarran Amendment Congress not only expressly waived the United States' sovereign immunity but also waived the sovereign immunity of Indian tribes for purposes of the adjudication *and the administration* of water rights.

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*United States v. District Court for Eagle County*, 401 U.S. 520 (1971), and *United States v. District Court for Water Div. 5*, 401 U.S. 527 (1971), held that the provisions of the McCarran Amendment, whereby “consent is . . . given to join the United States as a defendant in any suit (1) for the adjudication . . . or (2) for the administration of [water] rights, where it appears that the United States is the owner . . . by appropriation under state law, by purchase, by exchange, or otherwise . . .,” subject federal reserved rights to general adjudication in state proceedings for the determination of water rights. More specifically, the Court held that reserved rights were included in those rights where the United States was “otherwise” the owner. [Citation omitted]. Though *Eagle County* and *Water Div. 5* did not involve reserved rights on Indian reservations, viewing the Government’s trusteeship of Indian rights as ownership, the logic of those cases clearly extends to such rights. Indeed, *Eagle County* spoke of non-Indian rights and Indian rights without any suggestion that there was a distinction between them for purposes of the Amendment.

*Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 809 (1976). The Court specifically noted: “The Government has not abdicated any responsibility fully to defend Indian rights in state court, and *Indian interests may be satisfactorily protected under regimes of state law.*” *Id.* at 812. As a consequence, the Tribe’s sovereign immunity has been waived for purposes of the administration of the *Alpine Decree* just as it has been waived for the United States.

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This Court has also held that the waiver of immunity provided for by the McCarran Amendment applies to the administration of water rights and not only for their adjudication.

We agree with the conclusion of United States District Judge Roger D. Foley expressed in *United States v. Hennen* 300 F Supp. 256 (D. Nev. 1968), that Congress intended a waiver of immunity under subsection (2) only after a general stream determination under subsection (1) has been made: “to administer a decree is to execute it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to interpret its language. Once there has been such an adjudication and a decree entered, then one or more persons who hold adjudicated water rights can, within the framework of § 666(a)(2), commence among others such actions as described above, subjecting the United States, in a proper case, to the judgment, orders and decrees of the court having jurisdiction.”

*South Delta Water Agency v. United States*, 767 F.2d 531, 541 (9th Cir. 1985).

Likewise, this Court has held that the terms of the McCarran Amendment are retroactive in application.

We hold that the McCarran Amendment waives the United States’s immunity from suit, not only for the administration of water rights acquired after the statute’s enactment, but also for the administration of water rights acquired before the law came into effect. Hence, even though the Humboldt Decree predates the Amendment by nearly two decades, the Amendment governs this case.

*State Engineer v. South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada*, 339 F.3d 804, 813 (9th Cir. 2003). The terms of the McCarran

Amendment therefore apply to the *Alpine Decree* and to all parties to the *Decree*, including the Tribe.

The actions taken by the District Court as part of its Order of March 30, 2006, constitute the administration of rights adjudicated as part of a general stream adjudication and, therefore, fall under the provisions of the McCarran Amendment. The central issue of all of the litigation involving the changes in place of use of water rights within the Newlands Project, from *Alpine II* to *Alpine VI*, is whether the applicants have valid water rights under Nevada law and whether, as a consequence, water may be delivered for the irrigation of the lands to which those rights are appurtenant. Determining whether water may be delivered to a specific parcel of land is the basic act in executing a decree, and determining that water may not properly be delivered to a parcel of land is the basic act in enforcing the provisions of a decree. By determining that Application 51060 could be granted pursuant to Nevada law and water delivered to the identified land, the District Court was administering the *Alpine Decree*. “[T]o administer a decree is to execute it, to enforce its provisions, to resolve conflicts as to its meaning, to construe and to interpret its language.” *South Delta Water Agency*, 767 F.2d at 541. The District Court’s determination that Application 51060 could be granted because the application had complied with the matching provisions of A.B. 380 was an act of administering the *Alpine Decree*, making the McCarran Amendment,



and its waiver of tribal immunity, applicable to this case. The Tribe's contention that it is immune from the Court's Order of March 30, 2006, must be rejected as a consequence.

2. **The Tribe Has Waived Its Sovereign Immunity By Challenging the Validity of the Water Rights At Issue Here in Administrative Forums and the District Court.**

Not only has Congress expressly waived the Tribe's sovereign immunity for purposes of the administration of the *Alpine Decree*, but the Tribe has by its participation in the change application proceedings and all of the subsequent appeals waived its immunity for purposes of determining the validity of those rights.

The Tribe's involvement in the enforcement and administration of the *Alpine Decree* dates from the very beginning of what is sometimes referred to as the "transfer cases." The Tribe first appeared as an amicus curiae in the *Alpine I* appeal, where it was established that change applications for water rights within the Newlands Reclamation Project should be filed with and addressed by the Nevada State Engineer pursuant to Nevada law. *Alpine I*, 697 F.2d at 857. Shortly after that decision, water right holders began filing change applications with the State Engineer, and the Tribe filed protests to those change applications pursuant to Nevada law. The first of these applications, Change Application 47797, was filed March 14, 1984. The Tribe protested that application, and since the last day of

publication of notice for that application was June 3, 1984, and the last day on which protests could be filed with the State Engineer was July 3, 1984, NRS 533.365(1), the Tribe's first involvement in the administrative consideration of the change proceedings for Newlands' water rights was at the very latest July 3, 1984. SEOR at 32.

The Tribe has been directly involved in all of the administrative and review proceedings for the approximately 317 change applications at issue in the *Alpine* transfer proceedings. This has involved numerous administrative hearings, as well as appellate arguments before the District Court and this Court, and resulted in this Court's *Alpine II*, *Alpine III*, *Alpine V*, and *Alpine VI* decisions. As this Court has held, "Indian Tribes may, in certain circumstances, consent to suit by participation in litigation." *McClendon v. United States*, 885 F.2d 627, 630 n.2 (9th Cir. 1989). The Tribe has directly and intentionally interposed itself and participated in the change application proceedings for over 20 years and has therefore waived its immunity for purposes of the proceedings seeking the changes in place or manner of use of those rights and the determination of their ongoing validity.

The Tribe contends, however, that the District Court's interpretation of A.B. 380 is in some way unrelated to the consideration of Application 51060 or the

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administration of the *Alpine Decree* and is therefore not included within the Tribe's waiver of immunity in those proceedings. The Tribe's contention is incorrect and cannot be accepted.

First, a major purpose of the transfer proceedings, and the primary purpose of the Tribe's protests and involvement in the litigation, is to determine whether the water rights at issue are valid pursuant to Nevada law. Although the focus of that question has been on the doctrines of perfection, forfeiture, and abandonment, A.B. 380 also has direct bearing on that question, since a right that has complied with the matching provisions of that statute will be entitled to the requested change in place of use and to the delivery of water at that new place of use. The District Court did not merely interpret and enforce the provisions of A.B. 380, but applied that law to the administration of *Alpine Decree* water rights, and the Tribe has waived its immunity for purposes of enforcing the *Alpine Decree* in these proceedings.

In addition, this Court has consistently held that *Alpine Decree* and *Orr Ditch Decree* water rights are to be administered pursuant to Nevada law. "The Supreme Court has held, in *California v. United States*, 438 U.S. 645, 57 L. Ed. 2d 1018, 98 S. Ct. 2985 (1978), that state law will control the distribution of water rights to the extent there is no preempting federal directive." *Alpine I*, 697 F.2d 851, 858. "The *Alpine* decision necessarily contemplated that state law would

control both the process and the substance of a proposed transfer of water rights.” *Alpine II*, 878 F.2d at 1223. State law has been applied to the administration of the Tribe’s Truckee River water rights as well. *United States v. Orr Water Ditch Co.*, 391 F.3d 1077, 1081-82 (9th Cir. 2004). This Court has not placed any limitation on what Nevada water laws are to be considered in the administration of *Alpine Decree* water rights. As a consequence, since A.B. 380 directly applies to *Alpine Decree* water rights and has a direct impact on the administration of the rights at issue in this appeal, the District Court properly applied and interpreted its provisions as part of these change proceedings. The Tribe’s contention that it has not waived its sovereign immunity for purposes of interpreting and enforcing A.B. 380 must be rejected since the District Court properly looked to all applicable laws bearing on the question of the validity of the subject water rights and the delivery of water to the proposed places of use as part of its authority to administer the *Alpine Decree*.

Furthermore, the Tribe’s reliance on this Court’s decision in *McClendon v. United States*, 885 F.2d 627 (9th Cir. 1989), is misplaced. In that case the United States sought to establish permanent title in trust for the Colorado River Indian Tribal Council to certain lands in California. That case was settled with title passing to the United States and the tribe and the defendants obtaining a long-term lease of the land. *Id.* at 628. The lawsuit was then dismissed, and no waiver of

immunity was found in the stipulated judgment. This Court found under the facts of that case that there was no waiver of immunity in a later action to enforce the terms of the lease agreement. *McClendon* differs from the case at hand in several important aspects. In *McClendon* the original lawsuit had been terminated and dealt with the title to land and not with the terms of the lease at issue in the subsequent lawsuit. This is, of course, not the case here. In the case at hand the District Court maintains ongoing jurisdiction over the water rights at issue, and the validity of those rights is the very issue raised by the filing of the Tribe's protests as well as the District Court's interpretation of A.B. 380. Consequently, the interpretation of A.B. 380 is a necessary issue "to decide the action brought by the tribe." *Id.* at 630.

The facts of this case are, rather, much more akin to those of *United States v. State of Oregon*, 657 F.2d 1009 (9th Cir. 1982), which was discussed at some length by the *McClendon* court. In that case the United States initiated an action to establish and protect fishing rights for Indian tribes in the Columbia River basin. As a result of sharp declines in the number of spawning salmon the State of Washington sought an injunction against Yakima tribal fishing of spring Chinook salmon. *Id.* at 1011. The District Court granted that injunction. *Id.* at 1012. The Yakima Tribe appealed that decision asserting, among other things, that it was immune from suit and the district court lacked subject matter jurisdiction. *Id.* In



response to these arguments this Court held that an Indian tribe may consent to suit even without explicit Congressional authority. *Id.* at 1013. This Court then held that the Tribe had waived its sovereign immunity by intervening in the lawsuit and that its waiver of immunity included the later action taken by the district court in issuing the preliminary injunction. This Court noted several facts justifying the finding of waiver of tribal immunity that apply directly to the case at hand.

First, it noted that the district court had retained jurisdiction to modify its decree. *Id.* at 1015. Similarly, in this case the District Court, as the *Alpine Decree* court, has retained jurisdiction to administer and interpret the *Alpine Decree*. *Alpine II*, 878 F.2d at 1219 n.2.

Second, the Court noted that equitable decrees particularly require flexibility in their enforcement. “To hold at this stage that tribal immunity blocks modification of an equitable decree would impermissibly violate a central tenet of equity jurisprudence, that of flexible decrees. By seeking equity, this Tribe assumed the risk that any equitable judgment secured could be modified if warranted by changed circumstances.” *State of Oregon*, 657 F.2d at 1015. The *Alpine Decree* is, like the decree in *State of Oregon*, an equitable decree, *Nevada v. United States*, 463 U.S. 110, 143 (1983), and the Tribe’s claim of immunity will interfere with the operation of that *Decree*. By challenging the validity of water rights in this case the Tribe similarly assumed the risk that certain of those rights

would be declared valid pursuant to Nevada law, whatever the source of that law might be.

Third, the *State of Oregon* Court found the fact that the decree involved *in rem* jurisdiction to be significant in concluding that the tribe had waived its immunity. This Court stated:

In such an action, a “court possessed of the *res* in a proceeding *in rem*, such as one to apportion a fishery, may enjoin those who would interfere with the custody.” [Citations omitted]. Here, Washington alleged that the very resource sought to be protected, the anadromous fishery, was in jeopardy. Since the existence of the salmon was inextricably linked to the *res* in the court’s constructive custody, the court was empowered to enjoin interference with that custody.

*State of Oregon*, 657 F.2d at 1015-16. In this fact the *State of Oregon* decision is also similar to the case at hand. Just as the district court in *State of Oregon* maintained *in rem* jurisdiction over fishing rights, here the District Court maintains *in rem* jurisdiction over rights to the Carson River. As this Court has noted, the District Court’s jurisdiction over the *Alpine* and *Orr Ditch Decrees* is, “best characterized as *in rem* jurisdiction.” *United States v. Alpine Land Reservoir Co.*, 174 F.3d 1007, 1013 (9th Cir. 1999). This Court stated further: “the Supreme Court has noted that, although equitable actions to quiet title are technically *in personam* actions, ‘water adjudications are more in the nature of *in rem* proceedings.’” *Id.* at 1014, quoting *Nevada v. United States*, 463 U.S. 110, 143-44

(1983). The District Court's *in rem* jurisdiction over the water rights at issue and the validity of those water rights is "inextricably linked" to the District Court's custody over and administration of the waters of the Carson River. There was, in fact, no way for the Court to avoid the question of the application and interpretation of A.B. 380. If Bass is allowed to participate in the settlement program, then water will be delivered under the *Alpine Decree* to the land to which those rights will be appurtenant under Application 51060. If Bass cannot participate in the settlement program, then the rights at issue in Application 51060 are abandoned and no water may be delivered. In order for the District Court to administer the *Alpine Decree*, the status of those rights, which is the basis of the Tribe's participation in the transfer cases, must be decided.

Given the Tribe's waiver of its sovereign immunity for purposes of determining the validity of these water rights under the transfer proceedings, and the inextricable connection A.B. 380 has in relation to the validity of those rights, the Tribe must be considered to have waived its sovereign immunity for purposes of interpreting that provision of Nevada law as it applies to these *Alpine Decree* water rights.

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**B. The District Court Has Continuing Jurisdiction Over the Water Rights at Issue in This Case and Did Not Err in Exercising That Jurisdiction.**

This Court has repeatedly and continually held that the District Court maintains continuing jurisdiction over the administration of the *Alpine Decree*. This was first recognized in the initial appeal approving the *Decree*. “The district court maintains jurisdiction over this matter.” *Alpine I*, 697 F.2d at 860. This Court restated the point some six years later: “The district court’s jurisdiction is established as an adjunct to its jurisdiction over the quiet title action originally filed by the United States. We noted in our earlier decision affirming the *Alpine* decree that ‘the district court maintains jurisdiction over this matter.’” *Alpine II*, 878 F.2d at 1219 n.2.

The Tribe contends, however, that the District Court’s ongoing jurisdiction is limited to appeals of orders or decisions of the Nevada State Engineer on applications for changes in the place of use, point of diversion, or manner of use of *Alpine Decree* water rights. Opening Brief of the Pyramid Lake Paiute Tribe of Indians (Opening Brief) at 30. This argument must be rejected since no authority supports such limited jurisdiction on the part of the District Court. Furthermore, the Tribe’s position is inconsistent with this Court’s precedents and the terms of the *Alpine Decree*.

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Administrative Provision VII of the *Alpine Decree* is the only authority discussed by the Tribe to support its contention that the District Court's jurisdiction is limited to review of rulings of the Nevada State Engineer on change applications. Administrative Provision VII does not state, however, that District Court jurisdiction is limited by its provisions and does no more than provide the procedures for dealing with change applications. "Applications for changes in the place of diversion, place of use or manner of use as to Nevada shall be directed to the State Engineer." *Alpine Decree* at 161, SEOR at 37. This provision in no way limits the Court's jurisdiction over administration of the *Decree* in contexts other than change applications.

This Court has in fact recognized that the District Court maintains jurisdiction over the allocation of water under the *Decree* in contexts other than the review of change applications. "The instant dispute arises in the context of the continuing proceedings in the *Alpine* litigation. In the *Alpine Decree*, the court retained continuing jurisdiction for water allocation and appointed a Watermaster." *United States v. Alpine Land and Reservoir Co.*, 887 F.2d 207, 209 (9th Cir. 1989) (*Bench/Bottom Decision*) (emphasis added). The *Bench/Bottom Decision* did not involve the review of change applications from the Nevada State Engineer, but rather a determination of whether certain lands were entitled to the per acre duty of water provided for bottom lands under the *Decree* or the higher

duty of water per acre provided for bench lands. The State Engineer did not participate in those proceedings, since they did not involve change applications. This Court nonetheless determined that the District Court retained continuing jurisdiction over the allocation of water. The *Bench/Bottom Decision* therefore stands for the proposition that the District Court's continuing jurisdiction over the *Alpine Decree* applies to administration of all provisions of the *Decree* and not only the review of change applications.

Other terms of the *Alpine Decree* contradict the Tribe's narrow interpretation of the District Court's jurisdiction over the *Decree* and show that the Court's jurisdiction extends to the enforcement or interpretation of all provisions of the *Decree*. For example, the *Alpine Decree* specifically enjoins all parties to the *Decree*, claimants, or potential claimants from asserting any rights to the waters of the Carson River or from diverting or using water from the Carson River inconsistent with the findings of the *Decree*. *Alpine Decree* Administrative Provision III at 157-58. SEOR at 33-34. The *Decree* also provides:

A Water Master shall be appointed by the Court to carry out and enforce the provisions of this Decree and the instructions and orders of this Court. If any proper order, rule or direction of the Water Master, made in accordance with and for the enforcement of this Decree, is disobeyed or disregarded, he is empowered and authorized to cut off the water from the ditch or canal owners who disobey or disregard the order, rule or

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direction. If such a cutoff should occur the Water Master shall promptly report to the Court his actions and the circumstances surrounding the case.

*Alpine Decree* Administrative Provision VI at 159, SEOR at 35. The jurisdiction of the District Court clearly and necessarily extends to the enforcement or interpretation of any provision of the *Decree* and not only to review of decisions of the Nevada State Engineer on change applications.

In fact, if the Tribe's argument is to be accepted, it would mean that the District Court would be without jurisdiction to enforce any provision of the *Alpine Decree* other than the provisions of Administrative Provision VII. This, of course, cannot be the case and is not only inconsistent with the injunction issued as part of the *Alpine Decree* and with the Court's authority to appoint a Water Master, but with the obvious necessity of having some means of ensuring that water is distributed in an orderly manner and consistent with the findings and terms of the *Decree*. Contrary to the contentions of the Tribe, the District Court has ongoing jurisdiction over enforcement of all provisions of the *Alpine Decree* and not merely the provisions related to change applications.

In light of the District Court's continuing jurisdiction over the *Alpine Decree*, the District Court cannot be said to have exceeded its jurisdiction in interpreting A.B. 380 in the context of this case since interpretation of that statute was necessary to the ongoing administration of the *Alpine Decree*. As was noted

above, if the rights at issue in Application 51060 may be matched with other unchallenged rights in the Newlands Project as part of the A.B. 380 settlement program, then Bass will be entitled to the delivery of water under the *Alpine Decree*. If, however, Bass cannot participate in the A.B. 380 settlement program, then the Nevada State Engineer's determination that the rights at issue in Application 51060 are abandoned stands and no water may be delivered. As a consequence, the District Court was required to address and interpret A.B. 380 in order to administer the *Alpine Decree* over which it has continuing jurisdiction.

C. **The Carson Water Subconservancy District Is the Agency Charged With the Administration and Interpretation of A.B. 380, and Its Decision Approving the Match for the Application 51060 Water Rights Is Final.**

Even if it is assumed for the sake of argument only that the District Court was without jurisdiction to interpret A.B. 380 or that the Tribe is immune from suit in this instance, the decision of CWSD, which is the entity granted the authority to administer A.B. 380 and the settlement program, has already determined that the match proposed for the Application 51060 water rights complies with the terms of the statute. Since that decision has not been challenged in any other forum, if it was not properly reviewed as part of these proceedings then that decision is final and is binding upon the District Court and any other entity required to deal with the Application 51060 water rights.

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The Nevada Legislature gave authority over the administration and interpretation of the A.B. 380 Settlement Program exclusively to CWSD. A.B. 380 states:

The Carson Water Subconservancy District shall not commit for expenditure any amount of the appropriation made by subsection 1 until the District determines that: (a) There is and will continue to be substantial compliance with the "Joint Testimony of Truckee-Carson Irrigation District, Pyramid Lake Paiute Tribe of Indians, City of Fallon, Churchill County and Sierra Pacific Power Company."

A.B. 380, Sec. 4(2), EOR at 13. A.B. 380 provides further: "[t]he Newlands Project Water Rights Fund is hereby established to be administered by the Carson Water Subconservancy District." A.B. 380, Sec. 5(2), EOR at 14. In addition, A.B. 380 provides: "[t]he Carson Water Subconservancy District shall establish a program for the acquisition of surface water rights to assist in the resolution of legal and administrative challenges . . . The District shall (a) Adopt criteria for the administration of the program. . . ." A.B. 380, Sec 5(4), EOR at 14. CWSD is the only agency granted the authority to administer A.B. 380.

It was pursuant to that authority that CWSD met on July 20, 2005, and acted on the water rights at issue here. EOR 46-48. It was noted at that meeting that CWSD had "sent a letter to the Tribe with copies to the State that the match has met all the criteria of our purchase procedures" and that the Tribe refused to withdraw its protest. EOR at 47. CWSD then voted, "to affirm the existing

policies toward the A.B. 380 program with regard to eligibility of participation in the program and that a State Engineer's 'recommendation' be treated as a recommendation." EOR at 48. No appeal has been taken from the CWSD decision, under the provisions of the Nevada Administration Procedures Act, NRS 233B.010-.150, by Petition for Writ of Mandamus, or otherwise, and over 16 months have passed since that decision was taken. As a consequence, CWSD's actions on July 20, 2005, are now final, and the District Court, if it is not authorized to independently interpret A.B. 380 as part of these proceedings, is nonetheless bound by that decision. The Nevada State Engineer would likewise be required to rely upon CWSD's decision in taking action on the Application 51060 water rights, even over the Tribe's objections.

#### **VIII. CONCLUSION**

The District Court did not err in exercising its jurisdiction in this case. Congress waived tribal immunity for purposes of administration of general stream adjudications such as the *Alpine Decree* by passage of the McCarran Amendment. In addition, the Tribe has waived its immunity from suit by challenging the validity of the Application 51060 water rights in proceedings before the Nevada State Engineer, the District Court, and this Court. Further, the District Court has continuing jurisdiction over the *Alpine Decree* and the rights adjudicated therein, and that jurisdiction is not limited to the review of decisions of the Nevada State

Engineer on change applications, but extends to all issues of administration of the *Alpine Decree*. Finally, CWSD is the agency charged with the administration of the A.B. 380 settlement program, and its decision that the water match proposed by Bass complies with that statute is a final decision that may be relied upon by the District Court and the Nevada State Engineer.

DATED this 2nd day of November, 2006.

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By:

  
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**CERTIFICATE OF COMPLIANCE PURSUANT TO CIRCUIT RULE 32-1**

Pursuant to Ninth Circuit Rule 32-1, I certify that

xx 1. Pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached answering brief is

xx Proportionately spaced, has a typeface of 14 points or more and contains 10,860 words,

or is

\_\_\_\_\_ Monospaced, has 10.5 or fewer characters per inch and contains \_\_\_\_\_ words or \_\_\_\_\_ lines of text.

DATED this 22nd day of November, 2006.

GEORGE J. CHANOS  
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Attorneys for Nevada State Engineer

### **STATEMENT OF RELATED CASES**

Pursuant to Circuit Rule 28-2.6, the parties are directed to list related cases now pending before the Ninth Circuit. There are no cases now pending that are related to this appeal.

### CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General of the State of Nevada and on this 22<sup>nd</sup> day of November, 2006, I served two copies of the foregoing **NEVADA STATE ENGINEER'S ANSWERING BRIEF** by mailing true and correct copies, first class mail, postage prepaid, to the following persons:

Don Springmeyer, Esq.  
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3811 West Charleston Boulevard, Suite 110  
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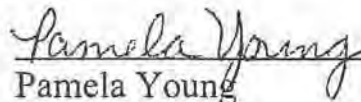
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I also certify that on this date I mailed the foregoing **NEVADA STATE ENGINEER'S ANSWERING BRIEF** by first class mail, postage prepaid, to the Clerk of the United States Court of Appeals for the Ninth Circuit.

  
Pamela Young

# EXHIBIT 4

# EXHIBIT 4

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**DECLARATION OF RACHEL L. WISE, ESQ.**

I, Rachel L. Wise, Esq., declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of Nevada. I am an associate attorney with Taggart & Taggart, Ltd., counsel for Petitioner in this matter.

2. I have personal knowledge of the following facts. If called upon as a witness, I could and would testify competently as to the contents of this declaration.

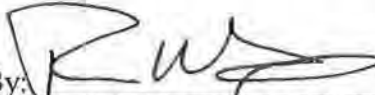
3. Attached hereto as Exhibit 1 is a true and correct copy of State Engineer's July 24, 2002 *Appellee Nevada State Engineer's Answering Brief* in Ninth Circuit Court of Appeals Case Nos.: 01-15665; 01-15814; 01-15816; of the case *United States of America*, and *Pyramid Lake Paiute Tribe of Indians v. Alpine Land and Reservoir Company*, et. al., Defendants, and *Nevada State Engineer ("Alpine V")*, Real-Party-in-Interest/Appellee.

4. Attached hereto as Exhibit 2 is a true and correct copy of the State Engineer's Ruling on Remand #5464-K applicable to the *Alpine Decrees*.

5. Attached hereto as Exhibit 3 is a true and correct copy of the *Nevada State Engineer's Answering Brief* filed in the Ninth Circuit District Court of Appeals, Case No.: 06-15738, filed on or around November 22, 2006 relating to the *Alpine Decrees*.

Executed this 2nd day of June, 2015.

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# Product Line Expansion

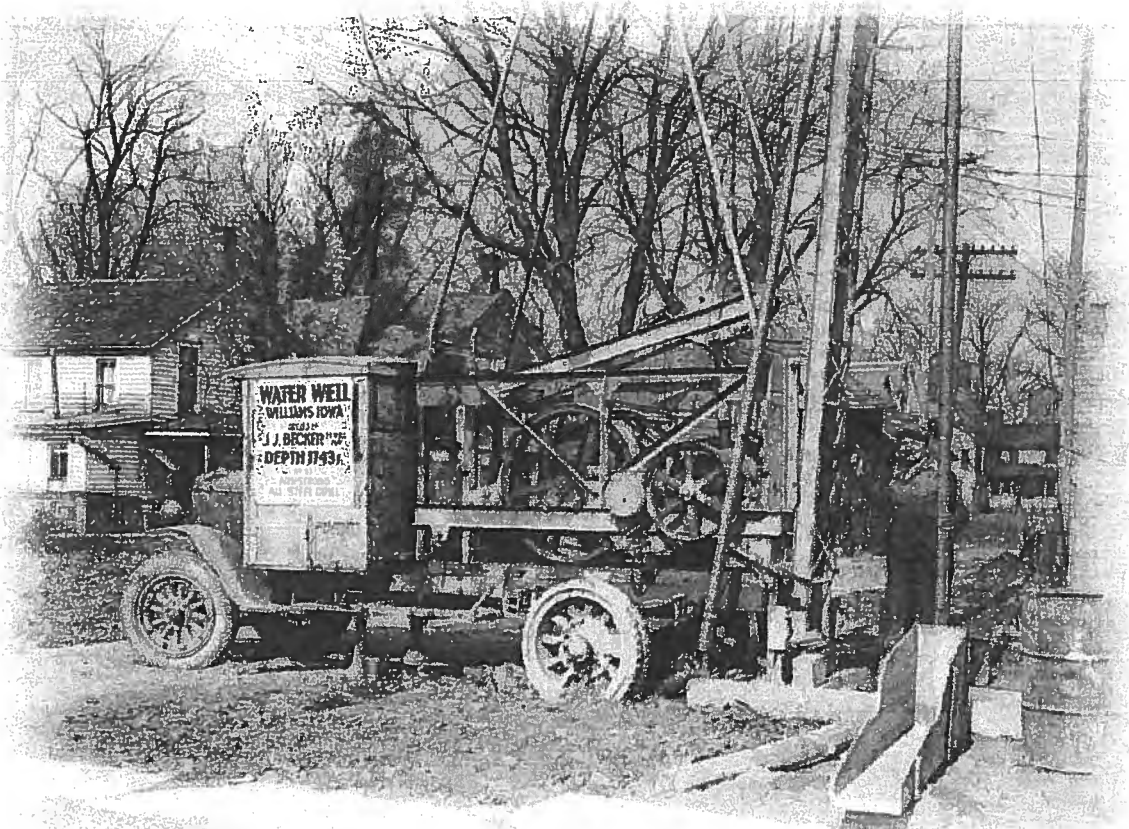
Between 1931 and 1939, Bucyrus' product line expanded to include walking draglines, drills and tractor equipment.

In 1933 Bucyrus first entered the drill market by acquiring the manufacturing rights to the Armstrong Drill product line. The acquisition included drill tools, bit dressers and the highly successful line of churn drills for water well and blast hole work. From 1933 to 1943 Bucyrus manufactured these products under the "BUCYRUS-ARMSTRONG" name.

By 1939, total annual shipments of the newly expanded product line had risen to 50 percent of the company's older lines, contributing to earnings in every year since inception. Sales of these machines increased and the future looked promising.

With the outbreak of World War II, Bucyrus experienced a greater demand for excavators. Virtually the entire production from 1942 to 1945 was devoted to the war. This allowed Bucyrus to expand its regular product line for civilian purchases, production of its regular line for the Government, and the design and production of special ordinance equipment, specifically gun carriages.

Following the war, Bucyrus invested \$2 million in an expansion program that increased plant capacity. Through the purchase of other companies and their patents, Bucyrus continued to expand its product line to include contractor-size cranes and excavators, and all-hydraulic truck cranes.



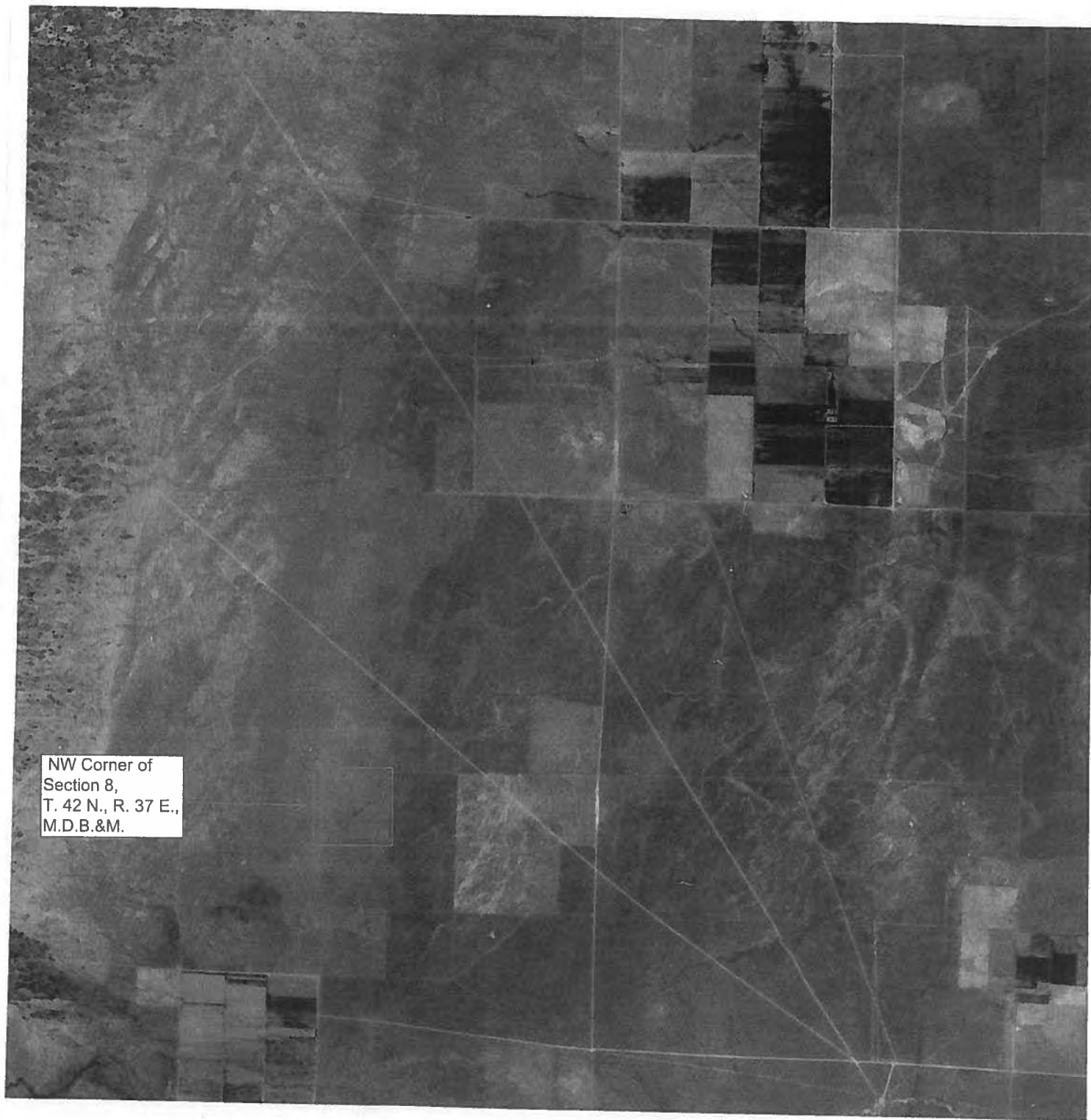
**Attachment 7: July 1954 Aerial**

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STATE ENGINEERS OFFICE







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8 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF HUMBOLDT

10 RODNEY ST. CLAIR, an individual

11  
12 Petitioner,

13 vs.

14 JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
15 RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
16 RESOURCES,

17 Respondent.

\* \* \*

CASE NO.: CV20-112

DEPT. NO.: II

18 **PETITIONER'S OPENING BRIEF**  
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## TABLE OF CONTENTS

|      |   |    |
|------|---|----|
| I.   | STATEMENT OF THE CASE.....  | 1  |
| II.  | JURISDICTIONAL STATEMENT.....   | 1  |
| III. | STATEMENT OF THE ISSUES.....  | 1  |
| IV.  | BACKGROUND.....   | 2  |
| A.   | Petitioner's Acquisition of the Property.....   | 2  |
| B.   | Vested Claim 010493.....  | 2  |
| C.   | Application 83246T.....   | 3  |
| D.   | State Engineer Ruling Number 6287.....  | 3  |
| V.   | STANDARD OF REVIEW.....   | 4  |
| VI.  | SUMMARY OF THE ARGUMENT.....  | 5  |
| VII. | ARGUMENT.....   | 5  |
| A.   | The State Engineer Erred By Finding that Petitioner's Vested Water Rights Are Abandoned.....  | 5  |
| 1.   | Abandonment Cannot Be Proven By Nonuse Alone.....   | 5  |
| a.   | The Ninth Circuit Agrees that Nonuse Evidence is Not Sufficient for Abandonment.....  | 6  |
| b.   | In <i>Alpine V</i> the State Engineer Properly Found Nonuse Evidence Is Not Enough to Find Abandonment.....                               | 7  |
| 2.   | The State Engineer Erred In Declaring Vested Claim 010493 Abandoned.....  | 8  |
| 3.   | State Engineer Improperly Shifted the Burden to Petitioner to Show a Lack of Intent to Abandoned Vested Claim 010493.....                 | 9  |
| B.   | The State Engineer Violated Nevada Water Law by Impairing an Unadjudicated Vested Water Right.....  | 11 |
| 1.   | Pre-statutory Water Rights Are Vested Water Rights.....   | 11 |
| 2.   | Unadjudicated Vested Groundwater Rights Cannot be Impaired by the State Engineer.....   | 12 |
| 3.   | Petitioner Owns a Vested Groundwater Right.....   | 13 |
| 4.   | The State Engineer's Declaration of Abandonment Clearly Impairs Vested Rights.....  | 13 |
| C.   | Petitioner Was Deprived of a Full and Fair Opportunity to Address the Evidence the State Engineer Relied on to Determine Abandonment..... | 13 |

1 VIII. CONCLUSION .....14

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3  
4  
5  
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22  
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### CASES

|   |                |
|---|----------------|
| <i>Andersen Family Assoc. v. Ricci</i> , 124 Nev. 182, 179 P.3d 1201 (2008)   | 8, 12          |
| <i>Desert Irrigation, Ltd. v. State of Nevada</i> , 113 Nev. 1049, 944 P.2d 835 (1997)                              | 12             |
| <i>Filippini</i> , 66 Nev. 17, 202 P.2d 535 (1949)  | 11             |
| <i>Franktown Creek et. al. v. Marlette Lake Co.</i> , 364 P.2d 1069, 364 P.2d 1069 (1961)                           | 6, 7           |
| <i>Kings Castle Limited P'ship et. al. v. Washoe County Bd. Of Commissioners</i> , 88 Nev. 557, 502 P.2d 103 (1972) | 11             |
| <i>Manse Spring</i> , 60 Nev. 280, 108 P.2d 311 (1940)  | 5, 6, 7, 9, 12 |
| <i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893 (1976)  | 11             |
| <i>Nevada State Eng'r Ruling No. 5823</i> , 277 P.3d 449, 128 Nev. Adv. Op. 22 (2012)                               | 5              |
| <i>Ormsby County et. al. v. Kearney et. al.</i> , 37 Nev. 314, 142 P. 803 (1914)                                    | 11, 12, 13     |
| <i>Pacific Live Stock Co. v. Malone</i> , 53 Nev. 118, 294 P. 538 (1931)  | 13             |
| <i>Pyramid Lake Paiute Tribe of Indians v. Washoe County</i> , 112 Nev. 743, 918 P.2d 667 (1996)                    | 5              |
| <i>Revert v. Ray</i> , 95 Nev. 782, 603 P.2d 262 (1979)   | 4, 5, 6, 9, 14 |
| <i>Shetakis Dist. v. State, Dep't Taxation</i> , 108 Nev. 901, 839 P.2d 1315 (1992)                                 | 5              |
| <i>State Engineer v. Morris</i> , 107 Nev. 699, 819 P.2d 203 (1991)   | 5              |
| <i>Town of Eureka v. State Engineer</i> , 108 Nev. 163, 826 P.2d 948 (1992)   | 7, 12          |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 697 F.2d 851 (9th Cir. 1983)                              | 7              |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 27 F.Supp.2d 1230 (D.Nev. 1998)                             | 7              |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 291 F.3d 1062 (2002)                                      | 6, 7, 10       |
| <i>United States of America v. Orr Water Ditch Co, et. al.</i> , 256 F.3d 935 (2001)                                | 6, 8, 9, 10    |
| <i>Wal-Mart Stores, Inc. v. County of Clark</i> , 125 F.Supp.2d 420 (D. Nev. 1999)                                  | 11             |
| <i>Walsh v. Wallace</i> , 26 Nev. 299, 567 P. 914 (1902)  | 11             |

### STATUTES

|                |    |
|----------------|----|
| NRS 533.024(2) | 12 |
| NRS 533.060(4) | 7  |

|    |                     |        |
|----|---------------------|--------|
| 1  | NRS 533.085(1)..... | 11     |
| 2  | NRS 533.115.....    | 12     |
| 3  | NRS 533.120.....    | 12     |
| 4  | NRS 533.370(1)..... | 4      |
| 5  | NRS 533.450(1)..... | 4      |
| 6  | NRS 534.090(1)..... | 11, 12 |
| 7  | NRS 534.100.....    | 12     |
| 8  | NRS 544.450(3)..... | 1      |
| 9  |                     |        |
| 10 |                     |        |
| 11 |                     |        |
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1 **I. STATEMENT OF THE CASE**

2 The State Engineer denied Application 83246T which was filed by Petitioner Rodney St. Clair  
3 (the "Petitioner"). Without an evidentiary proceeding, the State Engineer issued Ruling 6287 and ruled  
4 that Petitioner owns a vested water right. The State Engineer then erroneously declared that the vested  
5 water right was abandoned. He applied the wrong legal standard for determining abandonment and the  
6 evidence in the record does not support a declaration of abandonment under the proper legal test. He  
7 failed to complete an adjudication of Petitioner's vested rights and, therefore, was constitutionally  
8 barred from make a declaration of abandonment. The State Engineer improperly relied on evidence  
9 that Petitioner did not have an opportunity to review. This appeal followed.

10 **II. JURISDICTIONAL STATEMENT**

11 Application 83246T which was filed by Petitioner to change the point of diversion of a water  
12 right identified as Vested Claim 010493. The application was filed on November 8, 2013, and was  
13 later amended on December 6, 2013. On July 25, 2014, the State Engineer of Nevada ("State  
14 Engineer") issued Ruling 6287 and denied Application 83264T. Due to the State Engineer's denial of  
15 application, Petitioner filed a petition for review of the State Engineer's decision in this Court on  
16 August 22, 2014. Petitioner noticed the State Engineer of the petition on August 22, 2014. The  
17 petition and notices are timely, and this Court has jurisdiction over this matter pursuant to Section  
18 544.450(3) of the Nevada Revised Statutes ("NRS").

19 **III. STATEMENT OF THE ISSUES**

20 1. Whether the State Engineer incorrectly found that Vested Claim 010493 was abandoned  
21 despite the fact that nonuse alone is not enough to constitute the intent to abandon one's right to use  
22 water under Nevada law.

23 2. Whether the State Engineer improperly took action to regulate a vested water right  
24 before fully adjudicating that water right.

25 3. Whether the State Engineer improperly relied on certain evidence without giving  
26 Petitioner a full and fair opportunity to review and address that evidence.

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1 **IV. BACKGROUND**

2 This case involves a 160 acre property that was irrigated under a water right that is identified  
3 as Vested Claim 010493. Vested Claim 010493 is a water right that was established under Nevada's  
4 prior appropriation system prior to the adoption of Nevada's statutory groundwater appropriation  
5 system. The water right was pumped from a well on Petitioner's property and was used for  
6 irrigation on that property.

7 **A. Petitioner's Acquisition of the Property**

8 Petitioner's property was originally acquired by George J. Crossley ("Crossley") in 1924  
9 through federal Homestead Act of 1862. SE ROA 0037-0043. The same well that was documented  
10 in Vested Claim 010493 was documented by Crossley in his affidavit in support of his land patent  
11 application. SE ROA 0004; 00037-43.

12 After receiving a federal land patent, Crossley deeded the land with appurtenances to Albert  
13 H. Trathen on June 19, 1924. SE ROA 0044-048. Albert Trathen conveyed the property with  
14 appurtenances to Frank Trathen on June 26, 1927. SE ROA 0049-0051. Frank Trathen owned the  
15 property and water until his death. SE ROA 0052-0054. His estate consisting of Petitioner's 160  
16 acre property and on May 22, 1973 it was distributed to his four heirs: Florence Trathen, Grace  
17 Trathen, Harold Trathen, and Albert Trathen. *Id.* The property and appurtenant water rights  
18 remained in the Trathen family until 2013. SE ROA 0055-0062. Ultimately John Methvan and  
19 Albert Trathen were the last decedents of the Trathens, and they sold the property with  
20 appurtenances to the Petitioner on August 12, 2013. SE ROA 0063-0066. Each of the deeds in the  
21 chain of title for the property contained a general appurtenance clause that conveyed the property  
22 with all water rights. SE ROA 0044-0066. There is no evidence in the chain of title of an intent to  
23 abandon the water rights or an intention to exclude appurtenant water rights from the conveyances of  
24 the real property.

25 **B. Vested Claim 010493**

26 Upon purchasing the property, the Petitioner filed Vested Claim 010493. A vested claim is a  
27 claim for a water right that came into being prior to the adoption of a statutory process for acquiring  
28 a water right. Nevada's groundwater appropriation statutes were adopted in 1939. Petitioner's

1 vested claim focused on evidence that documented pre-1939 use of water from the well on  
2 Petitioner's property.

3 Petitioner's claim documented the current existence of the same well that was mentioned in  
4 the federal Homestead application. The well has an 8-inch casing made of rolled thin metal, with  
5 horizontal riveted seams. The casing was in short sections and connected with riveted collars. SE  
6 ROA 0005-06; 0074-77. This type of well construction was used until the mid-1930s. SE ROA  
7 0074-0102.

8 Other evidence from the federal land patent file was also submitted to support the Vested  
9 Claim 010493. That evidence showed the United States of America granted Crossley the property in  
10 1924 for the purpose of actual settlement and cultivation. Crossley beneficially used water from the  
11 well by irrigating his property in the 1920s. SE ROA 0071-0102. Crossley wrote several newspaper  
12 articles for the Orovada Weekly Journal in 1924 regarding irrigation and the irrigation practices in  
13 Orovada in the 1920s. SE ROA 0071.

14 **C. Application 83246T**

15 Petitioner also filed Application 83246T to change the use of water identified in Vested  
16 Claim 010493. SE ROA 0005. Application 83246T was filed on November 8, 2013 to change the  
17 point of diversion of 1.57 cubic feet per second ("cfs") from Vested Claim 010493 to a different  
18 well. SE ROA 0027-0029. Petitioner intends to use the water for irrigation and domestic purposes.  
19 SE ROA 0023, 0027-0029. The point of diversion and place of use for Application 83246T and  
20 Vested Claim 010493 are within the Quinn River Valley Orovada Hydrographic Basin. SE ROA  
21 0027-0029. No protests were filed against Application 83246T.

22 **D. State Engineer Ruling Number 6287**

23 The State Engineer reviewed the evidence that was submitted in Vested Claim 010493 and  
24 found that the Petitioner established that a vested water right existed on their property prior to 1939.  
25 Based on the Homestead Act evidence, the State Engineer concluded Crossley utilized groundwater  
26 on Petitioner's property for irrigation prior to 1939 and Crossley successfully obtained a vested  
27 water right. SE ROA 0007-10, 0038-0043, 0068-0069. Specifically, the State Engineer conceded  
28 that "there is sufficient evidence to prove that a vested right to underground waters was established



1 prior to March 25, 1939.” SE ROA 0006. The State Engineer further stated these “facts evidence  
2 that underground waters were appropriated by the drilled well and used for beneficial irrigation prior  
3 to March 25, 1939,” *Id.*

4 The State Engineer then found that Vested Claim 010493 was abandoned based on nonuse.  
5 SE ROA 0004-0010. Abandonment is a legal concept that results in the nullification of an otherwise  
6 valid water right. To prove abandonment, it is necessary to show that a water right owner *intended*  
7 to abandon a water right.

8 No claim of abandonment was made against Vested Claim 010493 and the State Engineer  
9 raised the issue *sua sponte*. The State Engineer did not hold a hearing to give Petitioner an  
10 opportunity to be heard regarding the abandonment claim. The State Engineer relied solely on one  
11 factor – nonuse – to prove the owner of Vested Claim 010493 had the intent to abandon the water  
12 rights located on Petitioner’s property. SE ROA 0004-0010. The State Engineer also shifted the  
13 burden of proof to Petitioner to prove actual use of the water, and then found Petitioner failed show  
14 evidence of when the water rights were actually used to support his finding of abandonment. SE  
15 ROA 0008. Since the State Engineer determining Vested Claim 010493 was abandoned, he denied  
16 Application 83246T which sought to change the use of that vested right. SE ROA 0004-0010.

17 On August 22, 2014, Petitioner filed this timely petition for judicial review.

## 18 **V. STANDARD OF REVIEW**

19 The State Engineer is responsible for administering the appropriation and management of  
20 Nevada’s public waters pursuant to the provisions of Nevada Revised Statutes (“NRS”) chapter 533.  
21 As part of that responsibility, the State Engineer must approve water right applications that are  
22 submitted in proper form if the statutory criteria in the Nevada water law are satisfied. NRS  
23 533.370(1) (“the State Engineer shall approve an application... if...”).

24 A party aggrieved by an order or decision of the State Engineer is entitled to have the order  
25 or decision reviewed, in the nature of an appeal, pursuant to NRS 533.450(1). Judicial review is “in  
26 the nature of an appeal,” and review is generally confined to the administrative record. NRS  
27 533.450(1), (2); *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

28 The role of the reviewing court is to determine if the decision was arbitrary or capricious and

1 thus an abuse of discretion, or if it was otherwise affected by prejudicial legal error. *Pyramid Lake*  
2 *Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 751, 918 P.2d 667, 702 (1996), citing  
3 *Shetakis Dist. v. State, Dep't Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992). A decision  
4 is arbitrary and capricious if it is contrary to the evidence or established rules of law. *State Engineer*  
5 *v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 204 (1991). With regard to factual findings, the court  
6 must determine whether substantial evidence exists in the record to support the State Engineer's  
7 decision. *Id.*, *Revert v Ray*, 95 Nev. at 786, 603 P.2d at 264. With regard to purely legal questions,  
8 such as the definition of abandonment, the standard of review is *de novo*. *In re Nevada State Eng'r*  
9 *Ruling No. 5823*, 277 P.3d 449, 453, 128 Nev. Adv. Op. 22 (2012).

## 10 VI. SUMMARY OF THE ARGUMENT

11 The State Engineer's abandonment conclusion is contrary to long-held Nevada Supreme  
12 Court precedent. Abandonment requires evidence of intent to abandon and such intent cannot be  
13 based on only evidence of nonuse of the water right. Also, the proponent of abandonment, not the  
14 water right owner, has the burden to prove the intent to abandon. The State Engineer improperly  
15 relied on nonuse evidence only and shifted the burden to the Petitioner's to show actual use of  
16 Vested Claim 010493. The State Engineer also improperly impaired a pre-statutory water right  
17 without first completing an adjudication of that right and denied Petitioner the right to be fully and  
18 fairly heard regarding all the evidence the State Engineer relied on.

## 19 VII. ARGUMENT

### 20 A. The State Engineer Erred By Finding that Petitioner's Vested Water Rights Are 21 Abandoned

#### 22 1. Abandonment Cannot Be Proven By Nonuse Alone

23 The definition of "abandonment" is hardly an issue of first impression. The question has been  
24 encountered by Nevada courts so often that clear cut rules exist for determining and analyzing  
25 abandonment of water rights. Abandonment is the relinquishment of a right by the owner *with the*  
26 *intent* to "forsake and desert it" forever. *In re Manse Spring*, 60 Nev. 280, 288, 108 P.2d 311, 315  
27 (1940) (emphasis added). Abandonment requires a union of acts and intent. *Revert*, 95 Nev. at 786.  
28 As intent to abandon is a subjective element, the courts utilize surrounding circumstances to

determine the intent. *United States v. Alpine Land & Reservoir Co.*, 291 F.3d 1062, 1072 (2002). But a consistent holding throughout the Nevada case law is that nonuse evidence is not enough to constitute the intent to abandon a water right. *Manse*, 60 Nev. at 288; *United States of America v. Orr Water Ditch Co, et. al.*, 256 F.3d 935, 941 (2001); *Alpine V.*, 391 F.3d at 1072; *Franktown Creek et. al. v. Marlette Lake Co.*, 77 Nev. 348, 354, 364 P.2d 1069, 1072 (1961); *Revert*, 291 F.3d at 786.

a. **The Ninth Circuit Agrees that Nonuse Evidence is Not Sufficient for Abandonment**

Federal courts have analyzed Nevada case law and determined nonuse alone is not enough to constitute abandonment. *Orr Ditch*, 256 F.3d at 945; *Alpine V.*, 391 F.3d at 1072. The Ninth Circuit Court of Appeal in *Orr Ditch* considered the application of abandonment and forfeiture in reference to the water rights in the Newlands Reclamation Project.<sup>1</sup> *Orr Ditch*, 256 F.3d at 937.

The Ninth Circuit first analyzed forfeiture of a water right in comparison to abandonment of a water right. After analysis of prior case law and statutory language, the Ninth Circuit stated that “it is easier to establish forfeiture than abandonment.” *Id.* at 941. The Ninth Circuit explained the threshold to show forfeiture requires “only a showing of non-use for five successive years,” while abandonment is the “relinquishment of the right by the owner with the intent to forsake and desert it.” *Id.* quoting *Manse*, 60 Nev. at 315.

Second, the Ninth Circuit reviewed whether nonuse evidence alone is enough to create a rebuttable presumption of abandonment. The Ninth Circuit uniformly rejected the assertion that Nevada law includes such a rebuttable presumption. *Orr Ditch*, 256 F.3d at 945-946. The Ninth Circuit analyzed the Nevada Supreme Court’s decisions and held that abandonment is determined “from all surrounding circumstances.” *Id.* at 946 (quoting *Revert v. Ray*, 95 Nev. 782, 603 P.2d 262, 264 (1979)) (further citations omitted). The Ninth Circuit concluded the factors that should be analyzed to determine abandonment are: (1) a substantial period of nonuse; (2) the construction of structures incompatible with irrigation; and (3) payment of taxes or assessments. *Orr Ditch*, 256 F.3d at 945-46.

<sup>1</sup> The *Orr Ditch* Decree is a federal court decree that adjudicated the water rights to the Truckee River.

The Ninth Circuit found that while Nevada is the only western state to maintain the position that there is no rebuttable presumption regarding the intent to abandon a vested right, this was Nevada's right under the federal system. *Id.* The Ninth Circuit reviewed Nevada's 1999 amendment to NRS 533.060(4) and stated, "Nevada has recently reaffirmed its commitment to a limited view of the law of abandonment." *Id.* Nevada's statutes coupled with long standing case law led the Ninth Circuit to hold that nonuse evidence alone cannot prove abandonment or shift the burden of disproving abandonment to a water right owner. *Id.* See also *Manse*, 60 Nev. at 316; *Franktown Creek* 364 P.2d at 1072; See *United States v. Alpine Land and Reservoir Co.*, 27 F.Supp.2d 1230, 1239-1241 (D.Nev. 1998) (a protestant alleging forfeiture or abandonment "bears the burden of proving clear and convincing evidence" to establish that fact); see also *Town of Eureka v. State Engineer*, 108 Nev. 163, 169, 826 P.2d 948, 951 (1992).

b. **In *Alpine V* the State Engineer Properly Found Nonuse Evidence Is Not Enough to Find Abandonment**

In *Alpine V*, the Ninth Circuit upheld the ruling in *Orr Ditch*, reasserting, "although a prolonged period of nonuse may raise an inference of intent to abandon, it does not create a rebuttable presumption." <sup>2</sup> *Alpine V*, 291 F.3d at 1072-73, see also *Orr Ditch*, 256 F.3d at 945. The Ninth Circuit further upheld and endorsed the rulings in the *Orr Ditch* requiring abandonment be shown "from all surrounding circumstances," and not only nonuse. *Alpine V*, 291 F.3d at 1072-73. *Alpine V*'s surrounding circumstances test also requires the State Engineer to analyze substantial periods of nonuse, evidence of improvements inconsistent with irrigation, and payment of taxes and assessments. *Id.*

The *Alpine V* court explained that nonuse of water rights coupled with evidence of improvements inconsistent with irrigation could establish abandonment. *Id.* In *Alpine V*, the court

<sup>2</sup> The Alpine Decree resulted from a quiet title action brought by the United States to adjudicate competing claims to the waters of the Carson River. *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851, 852-53 (9th Cir. 1983) ("*Alpine V*"). The initial Alpine adjudication dealt with relative water rights on the Carson River which is the primary regulatory control of Carson operations today. The adjudication was initiated in 1925 by the U.S. Department of the Interior through *U.S. v. Alpine Land and Reservoir Co., et. al.* and was not entered until fifty five years later in 1980. The decree itself established the respective surface water rights of the parties to the original law suit.



1 reviewed a decision of the State Engineer that did not find abandonment despite evidence of prolonged  
2 periods of nonuse. The court found that intent to abandon is not present if evidence also exists that no  
3 improvements were constructed that are inconsistent with irrigation and evidence exists that all taxes  
4 and assessments were paid on the subject property. *Id.* The Ninth Circuit remanded to the State  
5 Engineer for a case-by-case review to determine “whether each individual landowner had the requisite  
6 intent to abandon” and limited the State Engineer’s review to whether an extended period of nonuse  
7 was coupled with the nonpayment of taxes and assessments and improvements on the land inconsistent  
8 with irrigation. Nonuse alone was not enough to show abandonment.

9 The Ninth Circuit clarified that abandonment requires the showing of “subjective intent on the  
10 part of the holder of a water right to give up that right.” *Orr Ditch*, 256 F.3d at 944-45. Pre-statutory  
11 vested water rights can only be lost by intentional abandonment. *Manse*, 60 Nev. at 313; *see also*  
12 *Andersen Family Assoc. v. Ricci*, 124 Nev. 182, 189, 179 P.3d 1201, 1205 (2008). The Ninth Circuit  
13 further noted the understanding that subjective intent is difficult to show, as such, indirect and  
14 circumstantial evidence must be used to show abandonment. *Id.* at 945. The Ninth Circuit further  
15 explained that Nevada law only allows nonuse to be viewed as an inference of intent to abandon rather  
16 than a legal presumption. *Orr Ditch*, 256 F.3d at 945 (*stating*, “[i]t is only a matter of a degree, but a  
17 legal presumption is stronger than an inference). As such, the inference of nonuse is, in and of itself, a  
18 too weak of a standard to base an entire ruling for abandonment.

## 19 2. The State Engineer Erred In Declaring Vested Claim 010493 Abandoned

20 The State Engineer improperly concluded that evidence exists for the intent to abandon Vested  
21 Claim 010493. The land patent evidence and the complete chain of title fails to show an intent to  
22 abandon the water rights acquired by Crossley. SE ROA 0131-0148. Crossley acquired vested rights  
23 prior to his sale of the property and included those water rights in that sale. At no point throughout the  
24 chain of title did any property owner construct any structure that is inconsistent with irrigation which is  
25 shown in the aerial photographs. SE ROA 0008, 0185-86. Owners of Vested Claim 010493 made all  
26 of the requisite payments toward taxes and assessments regarding the property to which the water right  
27 is appurtenant.

28 The State Engineer hangs his hat on a misapplication of the facts to the law. The State

1 Engineer dismissed the value of Petitioner's aerial photographs by stating the images "showed no  
2 surface disturbance or development." SE ROA 0008. Pursuant to Nevada case law, no surface  
3 disturbances emphasize the fact that the Petitioner had no intent to abandon the water rights.

4 The State Engineer continued the analysis regarding Vested Claim 010493 by reviewing the  
5 decayed state of the well and Petitioner's admitted to lack of knowledge of continuous use. He then  
6 stated this "evidence" compelled him to believe the water right had been abandoned. SE ROA 0008.  
7 As this evidence only demonstrates nonuse, it could not be sufficient for the State Engineer to declare  
8 this water right abandoned. *Orr Ditch*, 256 F.3d at 945-946; *Manse*, 60 Nev. at 291.

9 All the cases cited by the State Engineer's ruling hold the water right owner had *no* intent to  
10 abandon their right – except one, *Revert v. Ray*. In *Revert* the origins of the water in question were  
11 acquired, by squatter's possession to Montilius M. Beatty ("Beatty") in 1905. *Id.* at 784. Beatty  
12 subsequently sold those rights to Bullfrog Water, Light and Power Company ("Bullfrog"). *Id.* at 784-  
13 85. On no uncertain terms, Bullfrog "vanished" from the area without transferring or selling any water  
14 rights. *Id.* at 785. After analysis, the court determined that Bullfrog had abandoned its water rights.  
15 *Revert* holds that short of vanishing from the property and water rights in question, the intent to  
16 abandon is not apparent.

17 *Revert* is vastly different than the current case at hand. At no point did any of the owners of  
18 Petitioner's Property vanish or forsake their vested rights. The estates of the decedents were  
19 continually and properly adjudicated where necessary passing down the rights of the Property to the  
20 designees throughout time until Petitioner purchased the Property. SE ROA 0038-0066. Furthermore,  
21 unlike *Revert*, Petitioner is capable of showing a complete title of the lands and water rights from 1924  
22 to present. SE ROA 0038-0073, 0068-0069. In *Revert*, Bullfrog simply failed to transfer rights and  
23 walked away from their rights. Petitioner and prior water owners in the chain of title have shown a  
24 vastly different approach through proper probate or set asides of the estate and water rights in question.

25 The State Engineer's conclusions amount to clear legal error.

26 **3. State Engineer Improperly Shifted the Burden to Petitioner to Show a Lack**  
27 **of Intent to Abandoned Vested Claim 010493**

28 The State Engineer admits an extended period of nonuse may be used as an element to show  
intent to abandon, "it has been held it does not create a rebuttable presumption of abandonment." SE

1 ROA 0007, *Orr Ditch*, 256 F.3d. at 945. The burden of proof lies on the State Engineer to show  
2 abandonment, and he cannot, under current law, shift the burden to the Petitioner.

3 The State Engineer misapplied long standing Nevada law by requiring the Petitioner to prove a  
4 lack of intent to abandon. SE ROA 0004-0010. When reviewing aerial photographs provided by the  
5 Petitioner, the State Engineer concluded, “[t]he State Engineer finds no evidence pointing to a *lack* of  
6 prior owner’s intent to abandon the water right.” SE ROA 0008 (emphasis added). Once the State  
7 Engineer demands proof of lack of abandonment, he has effectively shifted the burden of proof  
8 requirement to the Petitioner. Yet, the repeated theme in Nevada long standing case law is that the  
9 State Engineer may not shift the burden of proof onto the Petitioner. *Orr Ditch*, 256 F.3d at 945,  
10 *Alpine V*, 291 F.3d at 1072.

11 In the present case, the State Engineer completely avoided requisite legal requirements by  
12 directing the Petitioner to prove they lacked intent to abandon the water right. SE ROA 0008. The  
13 State Engineer has further misapplied the findings of *Alpine V* when he stated, “[a]t a minimum, then,  
14 proof of continuous use of the water right should be required to support a finding of *lack* of intent to  
15 abandon.” *Alpine V* at 1077; SE ROA 0007. In *Alpine V*, the Ninth Circuit held, “[w]e agree with  
16 appellants that, with respect to abandonment, . . . the factors noted by the district court more  
17 appropriately bear on whether the landowners formed the requisite intent to abandon their rights.” *Id.*  
18 The State Engineer’s Ruling is contradicted by the same citations he uses in his ruling. SE ROA 0007.

19 Applying the wrong standard, the State Engineer spent most of his analysis reviewing how the  
20 Petitioner failed to prove lack of intent. *See* SE ROA 0007 (*stating*, “the newspaper articles do not  
21 directly or even inferentially demonstrate continuous use of the water on the property . . . [t]hus, the  
22 newspaper articles are insufficient to prove continued irrigation was occurring in the NW ¼ of Section  
23 8”); *See also* SE ROA 0008 (*stating*, “the 1954 aerial photograph for the quarter-quarter depicted, this  
24 singularly piece of evidence to suggest continued beneficial use of the water is insufficient to  
25 overcome a finding of abandonment . . . Petitioners were informed that the evidence demonstrating  
26 continuous beneficial use to the present time was insufficient . . .”). The State Engineer continually  
27 references Petitioner’s need to “overcome” a finding of abandonment as well as prove their own “lack  
28 of intent” to abandon their water rights. This is improper.



1           **B.     The State Engineer Violated Nevada Water Law by Impairing an Unadjudicated**  
2           **Vested Water Right.**

3           **1.     Pre-statutory Water Rights Are Vested Water Rights.**

4           A vested water right is “a right to use water that has become fixed either by actual diversion  
5 and application to beneficial use or by appropriation, according to the manner provided by the water  
6 law” prior to adoption of the statutory appropriation process. *In re Filippini*, 66 Nev. 17, 22, 202 P.2d  
7 535, 537 (1949). The term vested water rights refers to pre-statutory water rights that were perfected  
8 prior to the enactment of Nevada’s statutory appropriation system. *Id.*; NRS 533.085. For  
9 groundwater rights, vested rights are those that were established prior to March 25, 1939. SE ROA  
10 0005; NRS 534.090. Pre-statutory water rights could be perfected through “appropriation” defined as  
11 “[a]n actual diversion of the [water], with intent to apply it to a beneficial use, followed by an  
12 application to such use within a reasonable time.” *In re Filippini*, 66 Nev. at 23 (quoting *Walsh v.*  
13 *Wallace*, 26 Nev. 299, 567 P. 914, 917 (1902)). Pre-statutory water rights vest at the time that the  
14 elements of a pre-statutory “appropriation” occur. *Id.* at 22, 202 P.2d at 537.

15           The reason pre-statutory water rights are called vested rights is because the holder of such a  
16 right has a vested property right that is protected from governmental impairment by the United States  
17 and Nevada Constitutions. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 901 (1976); *Kings*  
18 *Castle Limited P’ship et. al. v. Washoe County Bd. Of Commissioners*, 88 Nev. 557, 558, 502 P.2d  
19 103, 103 (1972); *Wal-Mart Stores, Inc. v. County of Clark*, 125 F.Supp.2d 420, 424-26 (D. Nev. 1999).  
20 Vested water rights are “regarded and protected as property.” *In re Filippini*, 66 Nev. at 23, 202 P.2d  
21 at 537-38 (quoting *Walsh v. Wallace*, 26 Nev. 299, 567 P. 914, 917 (1902)).

22           Nevadans acquired water rights prior to the enactment of the statutory appropriation system.  
23 When the statutory system was enacted, the new system was challenged in the Nevada Supreme Court.  
24 *Ormsby County et. al. v. Kearney et. al.*, 37 Nev. 314, 142 P. 803 (1914). The challenge was  
25 constitutionally based and claimed the State Engineer had no power to manage or administer water  
26 rights that had been perfected prior to the enactment of those statutes. *Id.* The Supreme Court agreed  
27 and held that only Nevada’s courts can define the nature and extent of pre-statutory water rights  
28 because a judicial adjudication of claims results in a final determination of the relative rights of water



1 users and the power to determine relative rights requires the power to quiet title. *Id.* at 371; NRS  
2 533.024(2); NRS 534.090(1). Nevada statutes provide a process for adjudicating such water rights that  
3 starts with a preliminary determination by the State Engineer. NRS 533.090 *et. al.* But until that  
4 process is followed completely and finalized by a judicial adjudication, the State Engineer is prohibited  
5 from taking any action that impairs a pre-statutory water right. *Ormsby*, 142 P. at 811-12.

6 As a result of the *Ormsby* court's decision that the State Engineer cannot impair such vested  
7 water rights, the legislature adopted NRS 533.085(1) and declared "[n]othing contained in this chapter  
8 shall impair the vested right of any person to the use of water. . . ." *see also* NRS 534.100. The  
9 Legislature enacted NRS 533.085(1) to avoid any unconstitutional impingements on water rights that  
10 were in existence at the time Nevada's statutory water law went into effect. *Ricci*, 124 Nev. at 187.  
11 Clearly, the legislature intended to protect vested rights regardless of whether they had been  
12 adjudicated. *Manse*, 60 Nev. at 291. Accordingly, the State Engineer cannot issue water rights or  
13 administer water resources in a manner that impairs vested rights and the State Engineer must  
14 affirmatively protect vested water rights.

15 Neither a claim of a vested right, nor an adjudication of a claim, is necessary for a pre-statutory  
16 water right to vest. *Id.*; *see also Town of Eureka v. State Engineer*, 108 Nev. 163, 167, 826 P.2d 948,  
17 951 (1992). The holders of vested rights file claims with the State Engineer to put the State Engineer  
18 and potential appropriators on notice that there are senior rights to the water. Claims may be amended  
19 at any time prior to an adjudication and the State Engineer provides forms for claimants to file  
20 statements and proofs of claims. NRS 533.115; 533.120. However, while an adjudication creates a  
21 final determination of a vested water right, it does not establish or create the vested water right or  
22 otherwise bring it into existence.

## 23 **2. Unadjudicated Vested Groundwater Rights Cannot be Impaired by the** 24 **State Engineer**

25 Nevada follows the prior appropriation doctrine. Water rights are entitled to protection on the  
26 basis of priority and an early appropriator's use of water is protected against a later appropriator. *See*  
27 *Desert Irrigation, Ltd. v. State of Nevada*, 113 Nev. 1049, 1051 n.1, 944 P.2d 835, 837 n.1 (1997).  
28 Pre-statutory water rights are the oldest water rights in Nevada and are entitled to protection from

1 statutory permits and certificates on the basis of priority. In the absence of an adjudication, the State  
2 Engineer can protect pre-statutory vested water rights but cannot cause “impairment” of those rights.  
3 *Pacific Live Stock Co. v. Malone*, 53 Nev. 118, 119, 294 P. 538, 540 (1931); *Ormsby County v.*  
4 *Kearney*, 37 Nev. 314, 352-353, 142 P. 803, 810 (1914).

5 **3. Petitioner Owns a Vested Groundwater Right**

6 In Ruling 6287, the State Engineer correctly found that Petitioner had pre-statutory vested  
7 rights to the underground percolating water which vested based on beneficial use prior to March 25,  
8 1939. SE ROA 0005. Petitioner’s pre-statutory right to the underground percolating water is  
9 demonstrated by the land patent acquired by Mr. Crossley pursuant to the Homestead act of 1862,  
10 the construction of the well with technology which ceased to be utilized during the mid-1930’s,  
11 aerial pictures from 1954, continuous payment of taxes and assessment fees for the right to use the  
12 water rights and newspaper articles published in the early 1920’s discussing irrigation of alfalfa  
13 occurring by the use of drilled wells. SE ROA 0037-0104. These documents show evidence of a  
14 vested right and the State Engineer fully recognized that right by stating, “[t]ogether, these facts  
15 evidence that underground waters were appropriated by the drilled well and used beneficially . . .  
16 prior to March 25, 1939.” SE ROA 004-006, n 3. If the State Engineer had ended his analysis there,  
17 this petition for review would not have been necessary.

18 **4. The State Engineer’s Declaration of Abandonment Clearly Impairs Vested**  
19 **Rights**

20 Indisputably, the State Engineer has not initiated an adjudication of Vested Claim 010493. Just  
21 as clearly, the State Engineer impaired that water right by declaring the right abandoned. This action  
22 violates the prohibition on the State Engineer’s ability to impair pre-statutory vested water rights.

23 **C. Petitioner Was Deprived of a Full and Fair Opportunity to Address the Evidence**  
24 **the State Engineer Relied on to Determine Abandonment**

25 In Ruling 6287, the State Engineer makes reference to several aerial photographs from the  
26 years of 1968, 1975, 1986, 1999, 2006, and 2013 that he viewed as part of his determination. SE ROA  
27 0008. The applicant has not been provided with copies of these referenced aerals, and they do not  
28 appear in the Record on Appeal. The only aerial in the record and known to the Applicant is the aerial  
from 1954 that was submitted by the Applicant. SE ROA 0104, 0186. The Applicant did not receive a

1 full or fair opportunity to review this additional evidence, or supply rebuttal to the conclusions based  
2 on that evidence. *Revert*, 95 Nev. at 786-87.

3 **VIII. CONCLUSION**

4 Petitioner respectfully requests that this Court overturn the finding of the State Engineer that  
5 Vested Claim 010493 is abandoned and allow the Petitioner to change the point of diversion on their  
6 property under Application 83246T.

7 DATED this 5<sup>th</sup> day of December, 2014.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the **PETITIONER'S OPENING BRIEF** as follows:

☒ By **U.S. Mail:** I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Jerry Snyder, Esq.  
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DATED this 5th day of December, 2014.

  
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**IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF HUMBOLDT**

\*\*\*

RODNEY ST. CLAIR, an individual,

Case No: CV20-112

Petitioner,

Dept. No: II

vs.

JASON KING, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES,

**AFFIRMATION (Pursuant to NRS 239B.030)**

The undersigned does hereby affirm that the  
preceding document does not contain the  
social security number of any person.

Respondent.

**RESPONDENT'S ANSWERING BRIEF**

**TABLE OF CONTENTS**

|  |    |
|--|----|
| <b>TABLE OF CONTENTS</b> .....   | i  |
| <b>TABLE OF CASES AND AUTHORITIES CITED</b> .....  | ii |
| <b>I. INTRODUCTION</b> .....   | 1  |
| <b>II. STATEMENT OF THE FACTS</b> .....  | 2  |
| <b>III. STANDARD OF REVIEW</b> .....   | 3  |
| <b>IV. ARGUMENT</b> .....  | 4  |
| A. Substantial Evidence Supports the State Engineer's Conclusion that the Water<br>Right Had Been Abandoned .....  | 4  |
| B. Vested Rights Are Subject to Abandonment.....   | 7  |
| C. St. Clair Has Had Access to All Evidence Upon Which the State Engineer<br>Relied In Support of the Ruling ..... | 9  |
| <b>V. CONCLUSION</b> .....   | 10 |
| <b>CERTIFICATE OF SERVICE</b> .....  | 11 |

**TABLE OF CASES AND AUTHORITIES CITED**

**CASES**

|   |         |
|---|---------|
| <i>Bacher v. State Engineer</i> , 122 Nev. 1110, 1121, 146 P. 3d 793, 800 (2006) .....                        | 4       |
| <i>Clark Co. Sc. Dist. v. Local Gov't</i> , 90 Nev. 332, 446, 530 P.2d 114, 117 (1974) .....                  | 4       |
| <i>Franktown Creek Irr. Co., Inc. v. Marlette Lake Co.</i> , 77 Nev. 348, 354, ____ P.2d ____<br>(1961) ..... | 5, 6    |
| <i>In re: Manse Spring</i> , 60 Nev. 280, 108 P.2d 311, 315 (1940) .....                                      | 5, 7, 8 |
| <i>Ormsby County v. Kearny</i> , 37 Nev. 314, 142 P. 803 (1914) .....   | 7       |
| <i>Pacific Live Stock Co. v. Malone</i> , 53 Nev. 118, 294 P. 538 (1931) .....                                | 7       |
| <i>Revert v. Ray</i> , 95 Nev. 782, 786, 603 P.2d 262 (1979) .....  | 3, 5, 8 |
| <i>State v. State Engineer</i> , 104 Nev. 709, 713, 766 P.2d 263, 266 (1988) .....                            | 4       |
| <i>U.S. v. Alpine Land &amp; Reservoir Co.</i> , 291 F.3d 1062 (2002) .....                                   | 5, 6    |
| <i>U.S. v. Orr Water Ditch Co.</i> , 256 F.3d 935 (9th Cir. 2001) .....                                       | 5       |

**STATUTES**

|                       |         |
|-----------------------|---------|
| NRS 533.035 .....     | 4, 8    |
| NRS 533.270 .....     | 3       |
| NRS 533.445 .....     | 3       |
| NRS 533.450 .....     | 3       |
| NRS 533.450(10) ..... | 3       |
| NRS 534.090(4) .....  | 3, 4, 7 |



1 **I. INTRODUCTION**

2 Petitioner Rodney St. Clair ("St. Clair") argues that the State Engineer erred in  
3 concluding that a water right which has not been used for at least six decades has been  
4 abandoned. The well associated with the water right at issue was drilled in or around 1924.  
5 St. Clair has provided some evidence that the well was used as recently as 1954. However, it  
6 is clear that the well was abandoned decades ago and was apparently not so much as  
7 thought of until St. Clair purchased the property in 2013 and found the silted, rusted remains  
8 of the well casing. Based on the existence of this long-unused well, St. Clair asserts a vested  
9 right to percolating ground water. In Ruling 6287, the State Engineer held that St. Clair's  
10 predecessor in interest had established a vested right, but that the right had been abandoned.

11 St. Clair asserts three errors in his Petitioner's Opening Brief ("POB"). First, St. Clair  
12 argues that there was not substantial evidence to support the State Engineer's holding that  
13 the water right had been abandoned because the State Engineer relied only on non-use of  
14 the right. Second, St. Clair asserts that the State Engineer may not declare vested rights  
15 abandoned because doing so operates as an impairment to pre-statutory rights. Finally, St.  
16 Clair argues that the State Engineer erred by relying on a number of aerial photographs that  
17 are not in the record.

18 St. Clair's arguments are meritless. Substantial evidence supports the State Engineer's  
19 conclusion. It is well settled under Nevada law that non-use of a water right is evidence of  
20 abandonment. In this case, the record shows not only that the right was not used for several  
21 decades, but that no effort has been made to operate or maintain the well. The well casing  
22 was made prior to 1933 and has not been replaced. The well has silted up. Indeed, the  
23 photographs show that no pump is attached to the well. St. Clair has offered no evidence  
24 whatsoever to suggest that the well has been used since 1954. This evidence is sufficient to  
25 support the State Engineer's conclusion that the water right has been abandoned.

26 St. Clair's argument that a ruling of abandonment operates as an impermissible  
27 impairment of an unadjudicated vested water right is likewise unavailing. The Nevada  
28 Supreme Court has long held that vested water rights may be subject to abandonment.



1 Indeed, in asserting that vested rights may not be abandoned, St. Clair is in effect denying  
2 that the principal of beneficial use—the cornerstone of Nevada water law—applies to  
3 unadjudicated vested rights. Accordingly, this argument is meritless as a matter of settled law.

4 Finally, St. Clair argues that the State Engineer improperly relied on evidence not  
5 included in the record. St. Clair points to aerial photographs taken between 1968 and 2013.  
6 However, the record in this matter demonstrates that the photographs at issue were publicly  
7 available to St. Clair. The State Engineer advised St. Clair of the contents of these  
8 photographs, and St. Clair had every opportunity to review these photographs and to address  
9 any issues raised.

10 Because St. Clair's arguments are meritless, the State Engineer respectfully requests  
11 that this Court deny the present petition.

12 **II. STATEMENT OF THE FACTS**

13 This matter arises from St. Clair's Vested Claim 010493 to groundwater located on  
14 property that St. Clair acquired in 2013.<sup>1</sup> St. Clair bases this claim on the existence of an  
15 unused well located on the subject property.

16 It is undisputed that the subject well was installed by 1924. George Crossley, who  
17 obtained the property from the United States government pursuant to the Homestead Act,  
18 documented a well in his land patent application. It is likewise undisputed that the  
19 construction technique used in constructing the well lining was last used in the mid-1930s.  
20 Record on Appeal ("ROA") at 5–6. In addition, it appears that the well was installed using a  
21 type of drill rig that was last manufactured in 1933. *Id.* Based on this evidence, the State  
22 Engineer concluded that St. Clair had established that his predecessor in interest had placed  
23 water to beneficial use prior to 1939. *Id.*

24  
25  
26 <sup>1</sup> A vested water right is a right based on an appropriation taking place prior to  
27 enactment of the statutory framework governing appropriation and use of water. An  
28 appropriation of surface water prior to 1905 gives rise to a vested claim. An appropriation of  
groundwater prior to 1913 (in the case of artesian or definable groundwater) or 1939 (in the  
case of percolating groundwater), gives rise to a vested claim for groundwater.

1 There is very little evidence in the record to indicate that the owners of the property  
2 continued irrigating after 1924. St. Clair submitted a 1954 aerial photograph (ROA 104) that  
3 may show the property was being irrigated. However, the State Engineer concluded that it  
4 was questionable whether this photograph actually showed that the property was being  
5 irrigated. ROA 8. In any event, there is no evidence in the record to indicate that the property  
6 has been irrigated, or that the well has been otherwise used, since 1954.

7 The well itself is not in a usable condition. Photos that St. Clair submitted in support of  
8 his application show that the well casing is rusted through and that the well has silted in. ROA  
9 75–76. The State Engineer concluded that this evidence showed that the “casing is unusable  
10 in its current condition and that it has gone unused for a significant period of time.” ROA 7.  
11 Moreover, the photographs show that there is no pump attached to the well. ROA 75–76.  
12 There is no evidence in the record to indicate when the pump was removed.

13 Based on this evidence, on July 25, 2014, the State Engineer issued Ruling 6827,  
14 concluding that St. Clair had established the existence of a vested right, but that the right had  
15 been abandoned. The present Petition for Judicial Review followed.

16 **III. STANDARD OF REVIEW**

17 NRS 533.450 provides for judicial review of orders and decisions of the State Engineer  
18 made under NRS 533.270 through NRS 533.445 (setting forth the statutory procedure for  
19 appropriation). NRS 534.090(4) provides that any decision relating to forfeiture or  
20 abandonment is also to be reviewed as provided in NRS 533.450. Under this statute, “[t]he  
21 decision of the State Engineer is *prima facie* correct and the burden of proof is on the party  
22 attacking the same.” NRS 533.450(10). Decisions of the State Engineer are entitled to  
23 deference both as to their factual basis and their legal conclusions.

24 The Court's review under NRS 533.450 is limited to a determination of whether the  
25 State Engineer's decision is supported by substantial evidence. *Revert v. Ray*, 95 Nev. 782,  
26 786, 603 P.2d 262 (1979). Substantial evidence is “that which a reasonable mind might  
27 accept as adequate to support a conclusion.” *Bacher v. State Engineer*, 122 Nev. 1110, 1121,

28 ///

1 146 P. 3d 793, 800 (2006). Thus, in evaluating the present matter, this Court may not “pass  
2 upon the credibility of the witness nor reweigh the evidence.” *Id.*

3 Decisions of the State Engineer are entitled not only to deference with respect to  
4 factual determinations, but also with respect to legal conclusions. The Nevada Supreme Court  
5 has explained that “an agency charged with the duty of administering an act is impliedly  
6 clothed with power to construe it as a necessary precedent to administrative action,” and  
7 therefore “great deference should be given to the agency’s interpretation when it is within the  
8 language of the statute.” *State v. State Engineer*, 104 Nev. 709, 713, 766 P.2d 263, 266  
9 (1988) (citing *Clark Co. Sc. Dist. v. Local Gov’t*, 90 Nev. 332, 446, 530 P.2d 114, 117 (1974)).  
10 Thus, the State Engineer’s interpretation of the Nevada Statutory scheme for adjudication of  
11 vested water rights and appropriation of public waters is, while not controlling, persuasive. *Id.*

12 **IV. ARGUMENT**

13 A. Substantial Evidence Supports the State Engineer’s Conclusion that the Water  
14 Right Had Been Abandoned

15 St. Clair first argues that the State Engineer erroneously relied on nothing more than  
16 non-use of the right to determine that the right had been abandoned. St. Clair argues that in  
17 order to show that his predecessor in interest intended to abandon the right, the State  
18 Engineer must show something beyond non-use of the right. This argument is meritless  
19 because substantial evidence supports the State Engineer’s conclusion that the vested right  
20 had long been abandoned.

21 Water rights in Nevada are based entirely on the principal that “[b]eneficial use shall be  
22 the basis, the measure and the limit of the right to the use of water.” NRS 533.035. As such,  
23 the right to use water can be lost through abandonment.

24 NRS 534.090(4) provides:

25 A right to use underground water whether it is vested or otherwise  
26 may be lost by abandonment. If the State Engineer, in  
27 investigating a groundwater source, upon which there has been a  
28 prior right, for the purpose of acting upon an application to  
appropriate water from the same source, is of the belief from his or  
her examination that an abandonment has taken place, the State

1 Engineer shall so state in the ruling approving the application. If,  
2 upon notice by registered or certified mail to the owner of record  
3 who had the prior right, the owner of record of the prior right fails to  
4 appeal the ruling in the manner provided for in NRS 533.450 and  
within the time provided for therein, the alleged abandonment  
declaration as set forth by the State Engineer becomes final.

5 Abandonment occurs when there is a "relinquishment of the right by the owner with the  
6 intention to forsake and desert it." *In re: Manse Spring*, 60 Nev. 280, 108 P.2d 311, 315  
7 (1940). Abandonment requires a union of acts and intent and is a question of fact to be  
8 determined from all surrounding circumstances. *Revert v. Ray*, 95 Nev. 782, 603 P.2d 262,  
9 264 (1979). Non-use of a water right provides inferential evidence of an intent to abandon  
10 that right. *Franktown Creek Irr. Co., Inc. v. Marlette Lake Co.*, 77 Nev. 348, 354, \_\_\_ P.2d  
11 \_\_\_\_ (1961). Prolonged non-use of a water right does not, by itself, create a presumption of  
12 abandonment. *U.S. v. Orr Water Ditch Co.*, 256 F.3d 935 (9th Cir. 2001). Nonetheless, the  
13 Ninth Circuit has held that "proof of continuous use of the water rights should be required to  
14 support a finding of lack of intent to abandon." *U.S. v. Alpine Land & Reservoir Co.*, 291 F.3d  
15 1062 (2002) ("*Alpine V*").

16 In the present case, substantial evidence supports the State Engineer's conclusion  
17 that the water right had been abandoned. The well casing was made using a construction  
18 technique that has not been used since the mid-1930s. ROA 6. As such, the well was drilled  
19 prior to the mid-1930s, and the casing has not been replaced since then. The photographs  
20 provided by St. Clair show that the well is unusable and has been for some time; the well  
21 casing has been silted and rusted though in areas. Moreover, it appears from the  
22 photographs that there is no pump associated with the well. ROA 157-158. This evidence  
23 demonstrates that no effort has been made to use or maintain the well for an extended period  
24 of time.

25 St. Clair submitted a 1954 aerial photograph which, he asserts demonstrates that the  
26 well was used to water cultivated land in 1954. ROA 104. This photograph is the most recent  
27 evidence in the record which even arguably shows water from the well being put to beneficial  
28 use. As the State Engineer first pointed out to St. Clair in a letter dated December 2, 2013,

1 this photograph "is inconclusive as far as surface disturbance." ROA 106. St. Clair has not  
2 submitted any evidence even suggesting that the well was used after 1954. In this letter, the  
3 State Engineer specifically requested evidence of continuous use from inception to the  
4 present time, noting for the vested claim to be valid they had to show continuous use. St.  
5 Clair did not offer any additional evidence showing continuous use. Rather, St. Clair simply  
6 resubmitted the same insufficient information that was filed originally with the application.

7       The record shows that the well is currently unusable and has been unusable for years  
8 or decades. St. Clair has not provided any evidence that suggests the well was used at any  
9 time after 1954. The State Engineer properly considered this evidence of non-use as  
10 evidence of an intent to abandon. *Franktown Creek Irr. Co., Inc. v. Marlette Lake Co., supra*.  
11 Not only does the evidence show that the well has not been used, but no efforts have been  
12 made to maintain the well. Moreover, the photographs submitted by St. Clair show that there  
13 is no pump at the well. The removal of the pump further evinces an intent to abandon the  
14 water right. Finally, St. Clair has offered no evidence at all to show there has been continual  
15 use of the water right. Under *Alpine V*, this fact alone precludes "a finding of lack of intent to  
16 abandon."

17       St. Clair insists that under *Alpine V*, the State Engineer may not find that a water right  
18 has been abandoned based only on prolonged periods of non-use, but must also show  
19 evidence of improvements inconsistent with irrigation. This is a misreading of *Alpine V*. The  
20 court in *Alpine V* held "although a prolonged period of non-use may raise an inference of  
21 intent to abandon, it does not create a rebuttable presumption." *Alpine V* at 1072. The court  
22 further noted that "abandonment is to be determined from all the surrounding circumstances."  
23 *Id.* While such surrounding circumstances may include the construction of improvements  
24 inconsistent with irrigation and the payment of taxes and maintenance assessments, the  
25 *Alpine V* court does not anywhere require that something beyond prolonged non-use is  
26 required to support a finding of abandonment. Rather, the *Alpine V* court is clear in stating  
27 that prolonged non-use may create an inference of abandonment. In that case, the court held

28 ///

1 that this inference could only be overcome by showing "proof of continuous use." *Alpine V* at  
2 1077.

3 As set forth above, the circumstances surrounding this case provide substantial  
4 evidence of abandonment. If a prolonged period of non-use can create an inference of  
5 abandonment, then 60 years of non-use creates a very strong inference of abandonment.  
6 This inference is reinforced by the fact that the well has not been maintained and the well  
7 casing has decayed to the point where it is not usable. The pump has been removed from the  
8 well. St. Clair has not pointed to any evidence that weighs against this inference of  
9 abandonment. Accordingly, the State Engineer properly determined that the water right had  
10 been abandoned.

11 B. Vested Rights Are Subject to Abandonment

12 St. Clair next argues that the State Engineer is precluded from finding that any  
13 unadjudicated vested water rights have been abandoned. St. Clair's position is entirely novel  
14 and is belied both by case law and the public policy underlying Nevada water law.

15 NRS 534.090(4) specifically provides that "a right to use groundwater whether it is  
16 vested or otherwise may be lost by abandonment." The Nevada Supreme Court has  
17 repeatedly held that vested water rights may be lost through abandonment. In *In Re: Manse*  
18 *Spring*, the court held that a "right acquired before 1913 could only be lost in accordance with  
19 the law in existence at the time of the enactment of said 1913 statute, namely intentional  
20 abandonment." *Manse Spring*, 60 Nev. 280, \_\_\_, 108 P.2d 311, 316 (1940). Indeed, St. Clair  
21 acknowledges in his opening brief that "pre-statutory vested water rights can only be lost by  
22 intentional abandonment."<sup>2</sup> POB at 8:10-11.

23 St. Clair concedes that adjudicated vested rights may be lost through abandonment.  
24 However, he argues that unadjudicated vested rights may not be abandoned. In support of  
25 this argument, he cites to *Pacific Live Stock Co. v. Malone*, 53 Nev. 118, 294 P. 538 (1931)  
26 and *Ormsby County v. Kearny*, 37 Nev. 314, 142 P. 803 (1914). St. Clair argues that these

---

27  
28 <sup>2</sup> In fact, pre-statutory vested rights can also be lost through forfeiture under NRS  
534.090.

1 cases hold that absent an adjudication, "the State Engineer can protect pre-statutory vested  
2 water rights but cannot cause an 'impairment' of those rights." POB at 13:1-2. This argument  
3 is meritless.

4 First, neither of the cases that St. Clair cites addresses the issue of abandonment.  
5 Neither of these cases stand for the broad proposition that the State Engineer may not take  
6 any action that "impairs" vested rights. Rather, the cases provide that nothing in the water  
7 statute should be "deemed to impair these vested rights." *Ormsby County v. Kearny*, 37 Nev.  
8 at 352. This merely means that the regulation of water rights created by statute does not  
9 apply to rights acquired prior to that statute. Neither of the cited cases provide that  
10 unadjudicated vested rights may not be subject to abandonment. Moreover, the Nevada  
11 Supreme Court has held that vested rights in springs that have not been subject to  
12 adjudication may be abandoned. The rights to Beatty Spring, which were at issue in *Revert v.*  
13 *Ray*, 95 Nev. 782, 603 P.2d 262 (1979), had never been adjudicated, but the court  
14 nonetheless held that those rights had been abandoned. Accordingly, there is no legal  
15 support for St. Clair's argument that unadjudicated vested rights may not be abandoned.

16 Moreover, St. Clair's argument that unadjudicated vested rights should not be subject  
17 to abandonment is contrary to long settled Nevada water policy. Nevada water law is based  
18 entirely on the principal that "[b]eneficial use shall be the basis, the measure and the limit of  
19 the right to the use of water." NRS 533.035. By asserting that unadjudicated vested rights are  
20 not subject to abandonment, St. Clair is asserting that such rights are entirely exempt from  
21 the requirement of beneficial use. Thus, St. Clair is arguing that even though adjudicated  
22 vested rights and all statutory rights may be abandoned if not put to beneficial use,  
23 unadjudicated statutory rights are entirely exempt from any requirement of ongoing beneficial  
24 use. St. Clair does not provide this court with case law or policy analysis to support this novel  
25 assertion. Indeed, the Supreme Court has very clearly stated that all vested rights may be  
26 subject to abandonment, without making any distinction between adjudicated and  
27 unadjudicated vested rights:

28 ///

We do not wish to be understood as holding that because a person may have established a right prior to 1913, such acquisition insures him in the right to the use of such water indefinitely, without regard to placing it to beneficial use. We do find that such rights have been left in a condition where courts must determine the intent of the claimant, and in determining such intent, as to whether abandonment has taken place, may take such non-use and other circumstances into consideration . . . .

*Manse Spring*, 60 Nev. 280, 108 P.2d 311, 316 (1940).

Accordingly, the State Engineer respectfully submits that this Court should reject St. Clair's argument.

C. St. Clair Has Had Access to All Evidence Upon Which the State Engineer Relied In Support of the Ruling

Finally, St. Clair argues that he was denied a full and fair opportunity to address all evidence that the State Engineer relied on. Specifically, St. Clair asserts that he was never provided with aerial photographs from 1968, 1975, 1986, 2006, and 2013. St. Clair argues that he "did not receive a full or fair opportunity to review this additional evidence, or supply rebuttal to the conclusions based on that evidence." POB 13:28–14:2. This argument is not supported by the record.

As St. Clair points out, the Record on Appeal does not contain aerial photographs from 1968–2013. However, the record clearly demonstrates that St. Clair was advised of the existence of these photographs and was asked to comment on them. In a letter dated December 2, 2013, the State Engineer advised St. Clair that the 1954 aerial photograph which St. Clair submitted in support of his application is "inconclusive as far as surface disturbance and is subject to alternative interpretation when viewed with the adjacent photographs in the flight line and with additional aerial photographs taken in 1968, 1975, 1986, and 1999, 2006, and 2013, which suggest no disturbance or development." ROA 105. This letter further invited St. Clair to submit correct proofs and to contact the State Engineer's office if he had any questions. There is no indication in the record that St. Clair requested that he be provided copies of the subject photographs. Furthermore, St. Clair did not, at any time

///



1 prior to July 25, 2014, when the State Engineer issued Ruling 6287, object to the State  
2 Engineer's use of these photos.

3 The aerial photographs at issue are publicly available from the same source that St.  
4 Clair used to find the 1954 aerial photograph he submitted in support of his proof: the United  
5 States Geological Survey's online archive of aerial photographs. St. Clair likely did not  
6 previously protest the State Engineer's use of these photographs because St. Clair was  
7 aware that he did, in fact, have full and fair access to the photographs identified by the State  
8 Engineer's December 2, 2013 letter.

9 Accordingly, St. Clair had a full and fair opportunity to review and comment on the  
10 photographs at issue. Having failed to do so in a timely manner, St. Clair cannot now assert  
11 that the fact that these photographs are not contained in the record constitutes a reversible  
12 error.

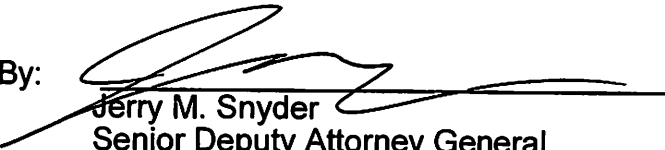
13 **V. CONCLUSION**

14 Based on the foregoing reasons, the State Engineer respectfully requests this Court  
15 uphold State Engineer's Ruling 6287 denying Application 83246T.

16 DATED this 21<sup>st</sup> day of January, 2015.

17 ADAM PAUL LAXALT  
18 Attorney General

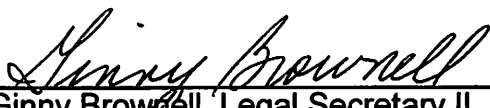
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**CERTIFICATE OF SERVICE**

I, Ginny Brownell, hereby certify that I am an employee of the State of Nevada Office of the Attorney General and that on the 21<sup>st</sup> day of January, 2015, I served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF**, via United States Postal Service, Carson City, Nevada, to the following address:

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Ginny Brownell, Legal Secretary II  
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## TABLE OF CONTENTS

|    |   |    |
|----|---|----|
| 1  |   |    |
| 2  | <u>INTRODUCTION</u> .....   | 1  |
| 3  | <u>FACTUAL BACKGROUND</u> .....   | 1  |
| 4  | <u>LEGAL BACKGROUND</u> .....   | 2  |
| 5  | <u>SUMMARY OF ARGUMENT</u> .....  | 2  |
| 6  | <u>ARGUMENT</u> .....   | 3  |
| 7  |   |    |
| 8  | I. In Ruling 6287, the State Engineer Departed From Nevada's Jurisprudence            |    |
| 9  | Regarding Abandonment of Water Rights .....   | 3  |
| 10 | A. A water right owner's mental state for abandonment cannot be inferred from         |    |
| 11 | nonuse. ....  | 3  |
| 12 | 1. The State Engineer previously advocated the same position Jungo                    |    |
| 13 | Ranch advocates here .....  | 4  |
| 14 | 2. Ninth Circuit Upheld the State Engineer's Prior Position that is the               |    |
| 15 | Same as Jungo's Current Legal Argument .....  | 5  |
| 16 | B. The State Engineer has always, until now, required more that mere nonuse           |    |
| 17 | evidence to declare abandonment of a water right. ....                                | 6  |
| 18 | 1. Ruling 6201 .....  | 6  |
| 19 | 2. Ruling 6182 .....  | 6  |
| 20 | C. The State Engineer has consistently ruled, until not, that evidence of bare ground |    |
| 21 | alone is not enough evidence for intent to abandon a water right. ....                | 7  |
| 22 | D. The State Engineer should have relied on the fact Jungo Ranch filed a change       |    |
| 23 | Application to prove the lack of intent to abandon. ....                              | 8  |
| 24 | E. Jungo Ranch's recordation of ownership of its water right evidences its lack of    |    |
| 25 | intent to abandon its water right. ....   | 9  |
| 26 | F. Jungo Ranch's Intent to Use its Well in Present Day is Evidence of Lack of         |    |
| 27 | Intent to Abandon .....   | 9  |
| 28 | 1. Ruling 6083. ....  | 10 |
|    | 2. Ruling 6090 .....  | 11 |
|    | 3. Present intent of Jungo Ranch makes this case different that                       |    |
|    | Revert v. Ray .....   | 11 |

|    |      |   |    |
|----|------|---|----|
| 1  | II.  | For the First Time in the History of Nevada, in Ruling 6287 the State Engineer Relied |    |
| 2  |      | Solely on Evidence of Nonuse to Declare a Water Right Abandoned. ....                 | 11 |
| 3  | III. | Burden of Proof is on State Engineer to Show Intent to Abandon, not Jungo to Show     |    |
| 4  |      | Lack of Intent to Abandon .....   | 12 |
| 5  | IV.  | The State Engineer Impaired Jungo Ranch's Vested Water Rights By Applying More        |    |
| 6  |      | Restrictive Rules to Find Abandonment. ....   | 13 |
| 7  | V.   | The Aerial Photos the State Engineer Relied on Were Never Provided to the Petitioner  |    |
| 8  |      | or the Court and Should be Stricken. ....   | 14 |
| 9  |      | <u>CONCLUSION</u> .....   | 15 |
| 10 |      | <u>AFFIRMATION</u> .....  | 15 |
| 11 |      |   |    |
| 12 |      |   |    |
| 13 |      |   |    |
| 14 |      |   |    |
| 15 |      |   |    |
| 16 |      |   |    |
| 17 |      |   |    |
| 18 |      |   |    |
| 19 |      |   |    |
| 20 |      |   |    |
| 21 |      |   |    |
| 22 |      |   |    |
| 23 |      |   |    |
| 24 |      |   |    |
| 25 |      |   |    |
| 26 |      |   |    |
| 27 |      |   |    |
| 28 |      |   |    |

## TABLE OF AUTHORITIES

### CASES

|   |             |
|---|-------------|
| <i>Ex Parte Prosole</i> , 32 Nev. 378, ___, 108 P. 630, 632-33 (1910).....  | 12          |
| <i>Howard v. Winters</i> , 3 Nev. 539, ___, 1867 WL 2078, 4 (1868). ....  | 14          |
| <i>Hurd v. State</i> , 114 Nev. 182, 190, 953 P.2d 270, 275 (1998).....   | 14          |
| <i>In re Franktown Creek</i> , 77 Nev. 348, 364 P.2d 1069, 1072 (1961).....   | 1           |
| <i>Kogan v. Silver King Mines, Inc.</i> , 108 Nev. 446, 833 P.2d 1141 (Nev. 1992).....  | 1, 3        |
| <i>Mallet v. Uncle Same Gold &amp; Silver Min. Co.</i> , 1 Nev. 188, ___, 1865 WL 1024 __ (1865). ....  | 1           |
| <i>Ormsby County v. Kearney</i> , 37Nev. 314, ___, 142 P. 803, 810 (1914).....  | 13          |
| <i>United States v. Orr Water Ditch Co.</i> , 256 F.3d 935 (2001).....  | 4, 5, 8     |
| <i>Revert v. Ray</i> , 95 Nev. 782, 786 (1979).....   | 3, 11       |
| <i>Town of Eureka v. Office of State Engineer of State of Nev., Div. of Water Resources</i> , 108 Nev. 163, 168 n 3, 826 P.2d 948. __ (1992)..... | 3           |
| <i>United States of America v. Alpine Land &amp; Reservoir Co., et. al.</i> , 291 F.3d 1062 (2001).....   | 3, 4, 5, 12 |
| <i>Waters of Manse Spring</i> , 60 Nev. 280 (1940).....   | 3           |

### STATUTES

|                  |    |
|------------------|----|
| NRS 533.090..... | 13 |
|------------------|----|

## INTRODUCTION

The rule of law of abandonment is well developed in Nevada law. For the sake of context, Nevada became a state on October 31, 1864. Nevada Const. In 1865, the Nevada Supreme Court issued its opinion in *Mallet v. Uncle Same Gold & Silver Min. Co.*, 1 Nev. 188, \_\_\_, 1865 WL 1024 \_\_ (1865). In *Mallet*, the Nevada Supreme Court fully analyzed whether a miner had intended to abandon one hundred feet of undivided mining ground in Storey County. *Id.* The Nevada Supreme Court had to determine whether Mallet had abandoned his property rights. To the question of abandonment, the Nevada Supreme Court held, “[i]n determining whether one has abandoned his property rights, the intention is the first and paramount object of inquiry; for there can be no strict abandonment of property without intention to do so.” *Mallet*, 1 Nev. at 7. The Nevada Supreme Court further stressed the difference between forfeiture and abandonment rights under mining laws. *Id.* The differentiation is eerily similar to that in Nevada water law. Not only did the Nevada Supreme Court hold that non-use of land is not enough to show abandonment, the Court held that “time is not an essential element of abandonment.” *Id.* The Nevada Supreme Court indicated “the moment the intention to abandon and the relinquishment of possession unite, the abandonment is complete.” *Id.* The Supreme Court further analyzed the lapse of time holding, “though the bare lapse of time . . . would be no evidence of abandonment.” *Id.* Simply put – intent is essential in all abandonment claims. *See In re Franktown Creek*, 77 Nev. 348, 364 P.2d 1069, 1072 (1961).

## FACTUAL BACKGROUND

Petitioner (“Rodney St. Clair” or “Jungo Ranch”) filed Application 83246T on November, 8 2013 to change the point of diversion of 1.57 cubic feet per second (cfs). The proposed manner of use is still unchanged and is for irrigation and domestic purposes. The State Engineer denied Application 83246T. Without an evidentiary proceeding, the State Engineer issued Ruling 6287 and ruled that Petitioners own a vested water right to irrigate 160 acres under vested water right 010498. Vested claim V010498 is a water right that was established under Nevada’s prior appropriation system prior to the adoption of Nevada’s statutory groundwater appropriation system. The water right was pumped from a well on the Jungo Ranch property and was used for irrigation on that property.



1 Jungo Ranch provided to the State Engineer, and now as it exists as Record on Appeal, the  
2 complete chain of title of the water rights. In fact, the original land grant was from President Calvin  
3 Coolidge to the initial rights holder, Crossly, and it specifically granted Crossly water rights -  
4 *forever*. ROA 45. All water rights were deeded with appurtenances, and held no reservations or intent  
5 to prevent full and appropriate transfer of the water rights. Probate records were also provided to the  
6 State Engineer that further demonstrates the intent of all parties to maintain the water rights.

7 The State Engineer reviewed the evidence that was submitted and found that a vested right  
8 was established on their property prior to 1939. SE ROA 007-10, 0038-0043, 0068-0069. Then what  
9 the State Engineer giveth, he taketh away by declaring the vested right abandon. Since the denial of  
10 the ruling, Petitioner has been forced to file and apply for change applications from other lands in  
11 order to obtain the proper water rights to irrigate Jungo Ranch.

#### 12 LEGAL BACKGROUND

13 Since the creation of the State Engineer in the state of Nevada, only 18 ground water rights  
14 have ever been abandoned. Of these rights, only one involved vested irrigation rights. Exhibit  
15 1. That is the decision that is before this court. Throughout history, the State Engineer has  
16 continuously stated that nonuse is not enough to support a finding of abandonment. The State  
17 Engineer eloquently held in 1998 that “[a]bandonment requires a union of acts and intent cannot be  
18 presumed to have occurred solely upon evidence of a prolonged period of non-use.” Ruling 4661 at  
19 12-13. In cases from 1983 until the current date the State Engineer scrupulously analyzed the effect  
20 of abandonment on current rights, and every single ruling states that nonuse is never enough to  
21 constitute abandonment. Quite the contrary, in this case nonuse is the only reason proffered for  
22 abandonment.

#### 23 SUMMARY OF ARGUMENT

24 Ruling 6287<sup>1</sup> represents a sharp departure by the State Engineer from prior practice and legal  
25 precedent. As will be show below, many State Engineer rulings show that his office’s past practice  
26 has been to not rely solely on nonuse evidence to declare abandonment. Yet, that is exactly what the  
27

---

28 <sup>1</sup> Each State Engineer ruling that is referenced in this brief is included in Respondent’s Appendix.

1 State Engineer did here. The court should reverse Ruling 6287 and place Nevada's jurisprudence  
2 regarding the abandonment of water rights back on course.

3 **ARGUMENT**

4 **I. IN RULING 6287, THE STATE ENGINEER DEPARTED FROM NEVADA'S**  
5 **JURISPRUDENCE REGARDING ABANDONMENT OF WATER RIGHTS**

6 **A. A water right owner's mental state for abandonment cannot be inferred from**  
7 **nonuse.**

8 Abandonment has two elements: mental state and physical acts. This distinguishes  
9 abandonment from forfeiture. Nonuse of a water right establishes the physical element of the proof of  
10 abandonment but it cannot establish the required mental state. This is a bright line. Nevada law is  
11 restrictive in this regard. *United States v. Alpine Land & Reservoir Co.*, 27 F. Supp.2d 1230, 1142  
12 (D. Nev. 1998).<sup>2</sup>

13 The State Engineer has previously understood this principle when he stated, "abandonment  
14 requires a union of acts and intent and *cannot be presumed to have occurred solely upon evidence of a*  
15 *prolonged period of non-use.*" Ruling 4661 at 12-13 (Citing *Re Waters of Manse Spring*, 60 Nev. 280  
16 (1940); *Revert v. Ray*, 95 Nev. 782, 786 (1979)) (emphasis added). Clear and convincing evidence is  
17 also required for a finding of abandonment. Any inference drawn from nonuse evidence cannot arise  
18 to clear and convincing evidence. *See Kogan v. Silver King Mines, Inc.*, 108 Nev. 446, 833 P.2d 1141  
19 (Nev. 1992) ("To meet their burden of proof to establish their claim of adverse possession, defendants  
20 must prove the adverse possession by clear and convincing evidence. Title by adverse possession  
21 cannot be made out by inference.").

22 Further, the State Engineer has recognized that "both the relinquishment of possession *and* the  
23 intent are essential to a finding of abandonment and are well defined and set forth in Nevada law."  
24 Ruling 3868 at 15. Nonuse can only establish, at most, relinquishment of physical possession. *See*  
25 *Ruling 3002 at 3-4 (same).*

26  
27 <sup>2</sup> *U.S. v. Alpine Land & Reservoir Co.*, 983 F.2d 1487, 1494 n. 8 (Nev. 1992); *see also Town of Eureka v. Office of State*  
28 *Engineer of State of Nev., Div. of Water Resources*, 108 Nev. 163, 168 n 3, 826 P.2d 948. \_\_ (1992) (stating "[a]lthough  
Colorado, Hawaii, and Montana have no statutory forfeiture provisions, under the abandonment statutes in Colorado and  
Montana, a ten-year period of non-use creates a rebuttable presumption of abandonment").

1 Even more clearly, the State Engineer has ruled:

2 Both the relinquishment of possession and the intent are essential to a  
3 finding of abandonment are well defined and set in case law of the  
4 Western States. The State Engineer finds no disparity or confusion in  
5 definition. *Mere non-use* of the water to which an appropriator is  
6 entitled under valid rights *without substantial and conclusive evidence*  
7 *of intent* to abandon and relinquish possession is not sufficient for a  
8 finding of abandonment.

7 Ruling 3241 at 15. (emphasis in original).

8 1. **The State Engineer previously advocated the same position Jungo Ranch**  
9 **advocates here.**

10 The State Engineer previously advocated the position Jungo Ranches advances here to the  
11 Ninth Circuit Court of Appeals, and that court adopted the State Engineer's arguments in *Orr Ditch*  
12 *and Alpine V. United States v. Alpine Land & Reservoir Co.*, 291 F.3d 1062 (2002), *United States v.*  
13 *Orr Water Ditch Co.*, 256 F.3d 935 (2001). Those two rulings arose from actions before the State  
14 Engineer after evidentiary hearings regarding claims of abandonment. At those hearings, the State  
15 Engineer properly stated that:

16 I can find no evidence in this record that the owners of these water  
17 rights past or present intended to abandon, desert, forsake, or relinquish  
18 these water rights. That standard is set out in *Franktown Creek*  
19 *Irrigation Company versus Marlette Lake Company* and the State  
20 Engineer, and other cases. . . . Nevada case law discourages and abhors  
21 the taking of water rights away from people. Therefore, the Supreme  
22 Court of Nevada has set the standard of 'clear and convincing evidence,'  
23 which is somewhere between substantial evidence and beyond a  
24 reasonable doubt. In this case, protestants have failed to carry that  
25 burden of showing by clear and convincing evidence that these water  
26 rights have been abandoned.

22 Ruling at 4642 at 475-476.

23 Based on this articulation of the law, the State Engineer made findings that recognized the first  
24 principle in abandonment cases that non-use alone is insufficient to establish abandonment.  
25 Specifically, he stated, "I find nothing in the record as to other union of acts or circumstances that  
26 would lead the fact finder to find that these water rights have been abandoned. The union of acts  
27 means *more than just non-use.*" *Id.*

2. **Ninth Circuit Upheld the State Engineer's Prior Position that is the Same as Jungo's Current Legal Argument**

In *Orr Ditch*, the court adopted the State Engineer's position that nonuse evidence alone cannot establish abandonment and is not enough evidence to create a rebuttable presumption of abandonment. *Orr Ditch*, 256 F.3d at 940. The Ninth Circuit uniformly rejected the assertion that Nevada creates a rebuttable presumption of abandonment that acts to shift the burden of proof. *Orr Ditch* at 945-946. In *United States of America v. Alpine Land & Reservoir Co., et. al.*, 291 F.3d 1062 (2001) ("*Alpine V*"), the same court adopted the same rule. *Alpine V* held that "although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption." *Alpine V* at 1072, *see also Orr Ditch* at 945.

Now the State Engineer turns *Alpine V* and *Orr Ditch* upside down. He claims Nevada law requires a water right owner to defend a claim of abandonment by asserting that "[a]t a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandoning." State Engineer Answering Brief at 5-6; ROA 0007. But the portion of *Alpine V* the State Engineer relies on for this statement falls under the heading "Equitable Relief for Intrafarm Transfers," and only applies narrowly to the completely separate issue of intrafarm transfers. *Alpine V*, 291 F.3d at 1073. This is not at issue in this case, and this rule is not consistent with Nevada law. *Id.*

In *Alpine V*, through its order of remand, the court ordered further investigation by the State Engineer or the district court of intrafarm transfers. *Alpine V*, 291 F.3d at 1076-77. Intrafarm transfers involved claims by water rights owners that even though evidence of forfeiture existed at the place of use of their water right, they had actually used the water on another part of their farm. The court created the intrafarm transfer defense to forfeiture as equitable relief to prevent the loss of water rights. *Alpine V*, 291 F.3d at 1078. The Court ruled that "[a]t a minimum, proof of continuous use of water should be required to support a finding of the lack of intent to abandon," in order to qualify for the intrafarm transfer relief. *Orr Ditch*, 256 F.3d at 945-46. The State Engineer's claim that Nevada law requires this rule wholesale to avoid abandonment is simply not supported in practice or the law, and is in direct conflict with the actual holding in *Alpine V* and *Orr Ditch*.

1           **B.     The State Engineer has always, until now, required more than mere nonuse**  
2           **evidence to declare abandonment of a water right.**

3           As recently as 2012, the State Engineer properly applied the rule of abandonment. In Ruling  
4 6201, evidence existed of a long period of nonuse, but the State Engineer understood that such  
5 evidence was not sufficient to establish abandonment. The State Engineer said, “not only does each  
6 of these permits have an extensive history of nonuse, *but the required intent to voluntarily relinquish*  
7 *the water rights also exists.*” Ruling 6201 at 3.

8           **1.     Ruling 6201**

9           In Ruling 6201, the State Engineer recognized that in addition to the physical evidence of non-  
10 use, separate evidence was needed to show voluntarily relinquishment. He then relied on the fact that  
11 the record owner of the water right had relinquished its rights to graze the area to another permittee,  
12 the corporate entity that owned the water right was not registered with the Nevada Secretary of State,  
13 and the owner did not respond to inquiries from the State Engineer about the water right. As such, the  
14 State Engineer found, “there is evidence of a significant period of non-use of the water rights by Red  
15 Rock Ranch, Ltd. *and that relinquishment of its grazing permit and failure to respond to the certified*  
16 *notice demonstrates intent to abandon the water rights.*” *Id.* See Ruling 6032 (finding intent to  
17 abandon based on loss of grazing rights and failure to respond to State Engineer inquiries); Ruling  
18 5898 (same); *see also* Ruling 6131 at 3 (finding voluntary intent to abandon based on failure of owner  
19 to have valid corporation filed with Secretary of State, and failure to communicate with State  
20 Engineer’s office for over 60 years); Ruling 6152 (same); Ruling 6081 (same).

21           In contrast to Ruling 6201, here the State Engineer does not have the additional evidence that  
22 Jungo Ranch relinquished its right to use public land, or failed to answer State Engineer inquiries, and  
23 Jungo Ranches is a valid corporation. Jungo Ranch continues to use the land to which vested claim  
24 01049 is appurtenant, and provided information to the State Engineer in response to every request.

25           **2.     Ruling 6182**

26           The State Engineer used the same rule that was applied in Ruling 6201 in Ruling 6182. There  
27 the State Engineer also stated that “not only does each of these permits have an extensive history of  
28 non-use, *but the required intent to voluntarily relinquish the water rights also exists.*” Ruling 6182 at

3. In that case, the water right was for a rail yard in Imlay, Nevada. The rail yard had not been used for many decades, but the State Engineer did not rely solely on the physical evidence of nonuse of water at the rail yard to declare the water right abandon.

Instead, the State Engineer had evidence that reflected the actual intent and state of mind of the water right owner. In Ruling 6182, the State Engineer indicated that the water right owner actually filed a relinquishment of its right-of-way across public lands for the pipeline that was required for use of the water right. Ruling 6182 at 4. This filing was made based on lack of use of the water right. *Id.* The State Engineer also relied on the lack of communication from any owner of the subject water right with his office since 1932. The State Engineer found that the “prolonged period of silence supports a lack of interest in maintaining the active status” of the water rights. *Id.* at 5; *see* Ruling 5268 at 4 (abandonment “evidenced by the overt acts of failure to maintain corporate status, failure to maintain a federal grazing permit, failure to put the water to beneficial use for at least 18 years, and the attempts to transfer the water right by deed to new range users).

The type of evidence the State Engineer relied on in Rulings 6201 and 6182 truly reflected to the state of mind and intent of the water right owner. In one case, the owner allowed another person to take over its grazing permit and the land that was required to place the water to beneficial use. In the other case, the owner actually filed paperwork to relinquish is right to use the land that was required to put the water to beneficial use. In both cases, the record owner of the water right had not communicated with the State Engineer’s office. These actions reflect a lack of interest in the water rights. In the case at bar, no such additional information exists and the State Engineer’s position in this case is simply inconsistent with his own application of the law of abandonment as recently at 2012.

C. **The State Engineer has consistently ruled, until not, that evidence of bare ground alone is not enough evidence for intent to abandon a water right.**

In this case, the State Engineer relied on aerial photography to conclude Jungo Ranch had the intent to abandon the subject water right. However, since at least 1994, the State Engineer has recognized nonuse of water is not sufficient evidence of abandonment because he has ruled that evidence of bare ground in photographs is not sufficient to prove the intent to abandon.

1 All photographs can show is that bare ground may have existed, they cannot reflect a person's  
2 intent. In Ruling 4116, the State Engineer agreed when he ruled that evidence of bare ground alone is  
3 not enough to find abandonment. The State Engineer said "non-use *is only some* evidence of an intent  
4 to abandon the right." Ruling 4116 at 9-10 (emphasis added). He then stated that "bare ground by  
5 itself does not constitute abandonment." *Id.* The State Engineer argued in Ruling 4116 that nonuse  
6 evidence needed to be coupled with a "use inconsistent with irrigation" and the Ninth Circuit upheld  
7 his position. *Id. Orr Ditch Decree*, 256 F.3d at 946. Accordingly, the State Engineer's reliance on  
8 aerial photography to prove intent of the water user was wrong.

9 **D. The State Engineer should have relied on the fact Jungo Ranch filed a change**  
10 **application to prove the lack of intent to abandon.**

11 The State Engineer has historically found that the act of filing a change application itself is  
12 evidence of the lack of intent to abandon a water right. In Ruling 6177, the State Engineer declined to  
13 declare a water right abandoned because:

14 the Applicant has filed a change application to move the point of  
15 diversion to a well located on the Applicant's property to allow for  
16 easier access to the water. This is evidence that the Applicant does not  
17 intend to abandon its water right and seeks to ensure that the water can  
18 be placed to beneficial use as needed to supplement its surface water.

19 Ruling 6177 at 5.

20 Also, in 2011, the State Engineer relied on the filing of a change application to reject a  
21 protestant's claim that nonuse of a water right since 1956 constitutes intent to abandon. Ruling 6159  
22 at 3. The sole evidence the State Engineer relied on to find lack of intent to abandon was that the  
23 applicant had filed change applications on the water right in 2011. Specifically, the State Engineer  
24 found "the Applicant's intent to place the water to beneficial use is evidence[d] by the filing of  
25 Applications 80453, 80454, 80455 and 80456 [sic]." *Id.* at 7; *see* Ruling 5840 (finding that filing of  
extension of time evidenced an intent not to abandon a water right); Ruling 5791 at 35 (same).

26 Likewise, Jungo Ranch filed the present applications and thereby evidenced its lack of intent  
27 to abandon these water rights. The State Engineer should have applied the same rule here as he did  
28 historically, and specifically in Rulings 6177 and 6159.

1           **E. Jungo Ranch's recordation of ownership of its water right evidences its lack of**  
2           **intent to abandon its water right.**

3           The State Engineer has historically found that the recordation of ownership of a water right is  
4 evidence of the lack of intent to abandon a water right. Clear evidence exists in this case that Jungo  
5 Ranch bought the subject property and the water right. That title evidence was submitted to the State  
6 Engineer and the State Engineer found that Jungo Ranch is the current owner of vested claim 010493.

7           In Ruling 6191, the State Engineer relied on the lack title evidence to declare a water right  
8 abandoned. In that case, the State Engineer found that non-use evidence, coupled with the fact that no  
9 conveyance documents or reports of conveyance had been filed on that water right, demonstrated  
10 intent to abandon. In Ruling 6191, the State Engineer also relied on the fact the record owner of the  
11 right had not communicated with the State Engineer for over 16 years. *See* Ruling 6152 at 2 (finding  
12 abandonment based on nonuse *plus* the fact "no entity or person has requested conveyance of the  
13 water right into the name of another water right holder in nearly 60 years" demonstrated an intent to  
14 abandon the water right); Ruling 6131 (finding lack of report of conveyance transferring ownership of  
15 water rights for 20 years to be evidence of intent to abandon); Ruling 6081 (same).

16           In contrast, here the State Engineer had evidence that title documents and reports of  
17 conveyance had been filed by the current owner, and that owner has had recent communications with  
18 the State Engineer's office. The State Engineer simply did not have the type of evidence in this case  
19 that justified the abandonment determination in Ruling 6191.

20           **F. Jungo Ranch's Intent to Use its Well in Present Day is Evidence of Lack of Intent**  
21           **to Abandon**

22           The State Engineer has continuously, until now, taken the position that the present day intent  
23 of a water right owner can demonstrate the lack of intent to abandon a water right. In 1992, the State  
24 Engineer entered Ruling 3885 in which he rejected an abandonment claim because, despite an alleged  
25 period of nonuse from 1951 to 1973, the "[r]ecord further reflects the present owner of the permit  
26 attempted to replace the well in 1982 or '83 which further shows at least he never intended to abandon  
27 the right." Ruling 3885 at 37. The State Engineer has further held that investigation of whether an  
28 owner intended abandonment is a fact by fact analysis, stating, "[o]ne owner may have intended to



1 abandon a water right and forsake the use of that water forever while another owner may not have the  
2 same intent.” Ruling 4602 at 9. Therefore, the inquiry should be for the water right owner at the time  
3 they own the right.

4 Also, the 1999 amendments adopted by the legislature to Nevada’s water law also reflect that  
5 the intent of the present owner of a water right to not abandon a water right can defeat any claim of  
6 abandonment. In 1999, the legislature amended the abandonment law to indicate that an irrigation  
7 water right that is conveyed to a municipality cannot be declared abandoned. NRS 533.060(3). This  
8 law reflects that the intent of the present municipal owner, not prior owners, controls whether a right  
9 is considered abandoned.

10 **1. Ruling 6083.**

11 Similarly, in 2010, the State Engineer declined to rely on the disrepair of works of diversion,  
12 as he did here, to find that abandonment had occurred because the water right owner expressed its  
13 intent to use the water to a State Engineer’s employee during a 2009 field investigation. Specifically,  
14 the State Engineer stated:

15 The protest requests the State Engineer declare Permit 10105,  
16 Certificate 2695, abandoned. The abandonment of a surface water right  
17 in Nevada is the relinquishment of a right with the intention to forsake  
18 it. Within the meaning of the term abandonment an intent to abandon is  
19 a necessary element. Nonuse of a water right *is only some* evidence of  
20 an intent to abandon the right and does not create a rebuttable  
21 presumption of abandonment under Nevada law. At the field  
22 investigation, *permittee Lincoln expressed a continued interest in*  
23 *returning the pipeline or other works of diversion to operating*  
24 *condition.*

25 Ruling 6083 at 3.

26 In Ruling 6083, the State Engineer had evidence that the works of diversion for the subject  
27 water had fallen into disrepair. But this evidence alone was not sufficient to make a finding of intent  
28 to abandon. In a sharp reverse of course, in this case the State Engineer relied heavily on the rusted  
condition of Jungo Ranch’s well to infer the intended abandon. Here, just as in Ruling 6083, the State  
Engineer should have concluded that in determining whether intent to abandon exists, a water right  
user’s present day intent outweighs physical evidence related to the condition of the works of  
diversion.

1                   2.       **Ruling 6090**

2               Similarly, in 2011, the State Engineer relied on the present owner's intent to use a water right  
3 to overcome a claim that the water right was abandon. Ruling 6090 at 5. Specifically, the State  
4 Engineer found

5                   The abandonment of a water right in Nevada is the relinquishment of a  
6 right with the intention to forsake it. Within the meaning of the term  
7 abandonment an intent to abandon is a necessary element. Non-use of a  
8 water right *is only some evidence* of an intent to abandon the right and  
does not create a rebuttable presumption of abandonment under Nevada  
law.

9                   The State Engineer finds that Permit 12544 is in good standing and that  
10 the *[current]* owner of record Connolly has shown no intent to abandon  
the water right.

11                  *Id.* (Emphasis added)

12               Just as in Ruling 6090, here the current owner of the water right has evidenced his clear intent  
13 to use the water right at issue here. No justification exists for the State Engineer's departure from the  
14 reasoning he applied in Ruling 6090 and 6083.

15                   3.       **Present intent of Jungo Ranch makes this case different than *Revert v. Ray***

16               Intent of the present day owner distinguishes this case from *Revert v. Ray* 95 Nev. 782, 603  
17 P.2d 262 (1977). In *Revert*, the record owner of the water right was a corporation that no longer  
18 existed. *Revert*, 95 Nev. at 786-87. This *Revert* reasoning was used in 2011 by the State Engineer in  
19 Ruling 6137. There, the water right owner was mining corporation that no longer exists and no  
20 communication from that owner, or any successor in interest, existed in the State Engineer's files.  
21 Ruling 6137. The opposite is true here. Jungo Ranch acquired the subject water rights and presented  
22 clear evidence that it does not intend to abandon those water rights.

23       **II.       FOR THE FIRST TIME IN THE HISTORY OF NEVADA, IN RULING 6287 THE**  
24       **STATE ENGINEER RELIED SOLELY ON EVIDENCE OF NONUSE TO DECLARE**  
25       **A WATER RIGHT ABANDONED.**

26               Nonuse evidence alone cannot prove abandonment or shift the burden of proof to the water  
27 right owner. Each and every piece of evidence the State Engineer relies upon points to one thing:  
28 mere nonuse of water. The State Engineer conflates this evidence of mere nonuse to reflect intent to  
abandon. While it is true that abandonment is a question of fact to be determined from all the

1 surrounding circumstances, that rule must be reconciled with the principle that non-use alone cannot  
2 establish abandonment. These two principles must both be given effect in any abandonment  
3 determination. *See generally Ex Parte Prosole*, 32 Nev. 378, \_\_\_, 108 P. 630, 632-33 (1910).  
4 Accordingly, if all the surrounding circumstances prove only non-use, that cannot be sufficient to  
5 establish abandonment.

6 Absent from the State Engineer's finding is evidence of intent. Particularly, the State  
7 Engineer did not rely on any of the types of evidence the State Engineer has used in the past to  
8 properly judge the water right owner's actual intent and state of mind. There is no evidence that  
9 Jungo Ranch failed to respond to the State Engineer's inquiries. There is no evidence that prior  
10 owners of this water right tried to convey it away. There is no evidence that Jungo Ranch's  
11 predecessor's relinquished control of the lands that are required to place the water right to beneficial  
12 use. There is no evidence that Jungo Ranch or its predecessors allowed their corporate status to lapse.  
13 The State Engineer also could not rely on the absence of change applications or the expression of the  
14 present owners to not use the water because Jungo Ranches actually filed change applications and  
15 expressed its present desire to not abandon the water rights.

16 Since the State Engineer relied exclusively of evidence of nonuse in his abandonment  
17 determination, Ruling 6287 should be reversed.

18 **III. BURDEN OF PROOF IS ON STATE ENGINEER TO SHOW INTENT TO**  
19 **ABANDON, NOT JUNGU TO SHOW LACK OF INTENT TO ABANDON**

20 Previously, the State Engineer understood a water right owner does not have the burden of  
21 proof in an abandonment matter. He stated simply "[i]t is not the applicant's job to disprove [such]  
22 claims. The State Engineer finds that the burden of producing evidence and proving" abandonment  
23 "lies squarely on the" party alleging abandonment. Ruling 4591 at 12. This was upheld by the Ninth  
24 Circuit. *Alpine V*, 297 F.3d at 1069. Throughout Ruling 6287, and in his brief to this court, the State  
25 Engineer shifts the burden to Jungo Ranch to show lack of intent to abandon. As this practice violates  
26 Nevada law, Ruling 6287 should be reversed.

27 ///

1 **IV. THE STATE ENGINEER IMPAIRED JUNGO RANCH'S VESTED WATER RIGHTS**  
2 **BY APPLYING MORE RESTRICTIVE RULES TO FIND ABANDONMENT.**

3 There is no dispute that Jungo Ranch's contested water right is a vested water right, or that the  
4 State Engineer is prohibited by law from impairing that vested water right. Nor can it be disputed that  
5 impairment occurs when the State Engineer applies a rule to regulate a vested water right that did not  
6 exist prior to the enactment of Nevada's statutory permit system. *Ormsby County v. Kearney*,  
7 37Nev. 314, \_\_\_, 142 P. 803, 810 (1914).

8 The reason these principles are undisputed it that, until now, the State Engineer agreed with  
9 these principles. In Ruling 4411, the State Engineer recognized that the very thing he has done here is  
10 an improper impairment of vested water rights. In that case, the Pyramid Lake Paiute Tribe argued  
11 that the State Engineer should apply a rule that a presumption of abandonment is created when there  
12 is evidence of prolonged nonuse of water right. Ruling 4411 at 18. But after the State Engineer  
13 concluded Nevada does not shift the burden of proof as requested by PLPT, he stated:

14 The Nevada Supreme Court in Manse Spring asked the specific  
15 question of whether a pre-1913 water right could be impaired by  
16 providing, a different method for its loss than had theretofore existed.  
17 Prior to 1913 in the case of abandonment the intent of the water user  
18 was controlling. 'To substitute and enlarge upon that by saying that the  
19 water user can lose the water by failure to use it for a period of five  
20 years, irrespective of the intent, certainly takes away much of the  
21 stability and security of the right to the continued use of such water.'

22 *Applying a rebuttable presumption standard, would further undercut*  
23 *the stability and security of pre-1913 vested water rights.*

24 Ruling 4411 at 19 (emphasis added).

25 Yet, the State Engineer did exactly what he cautioned against in Ruling 4411 by relying solely  
26 on nonuse evidence to declare Jungo Ranch's water right abandon, and shifting the burden of proof to  
27 Jungo Ranch's to show lack of intent to abandon.

28 Another reason the State Engineer impaired Jungo Ranch's vested rights is that he applied a  
rule that is stricter than the rule for forfeiture of statutory rights. NRS 533.090 requires the State  
Engineer to provide a water right owner with a notice of forfeiture before the water right can be  
forfeited. *Town of Eureka*, 108 Nev. at 168. The water right owner can then cure the forfeiture. *Id.*

1 Yet here the State Engineer gave no notice and Jungo Ranch did not have an opportunity to cure. The  
2 law abhors abandonment even more than forfeiture because it requires intent, and the State Engineer's  
3 application of a stricter standard against Jungo Ranch is clearly an improper impairment of that vested  
4 right and should be reversed.

5 Finally, the State Engineer impaired Jungo Ranch's vested right by not adjudicating the right  
6 before considering whether it should be abandon. In Ruling 5262, the state engineer agreed that  
7 abandonment should have been done in an adjudication, and since it was not, the right was valid and  
8 not subject to abandonment. Ruling 5262 at 18.

9 **V. THE AERIAL PHOTOS THE STATE ENGINEER RELIED ON WERE NEVER**  
10 **PROVIDED TO THE PETITIONER OR THE COURT AND SHOULD BE**  
11 **STRICKEN.**

12 The State Engineer has failed to submit evidence relied upon in his ruling in the Record on  
13 Appeal. As previously stated, in Ruling 6287 the State Engineer referenced several aerial  
14 photographs from years 1968, 1975, 1986, 1999, 2006, and 2013. Not only did the State Engineer fail  
15 to provide the Petitioner with the evidence the State Engineer relied upon, but the State Engineer has  
16 also failed to supply this to the Court for this review. The State Engineer attempts to base his ruling  
17 largely on "facts" which are not in the record. However, where the evidence is not in the record, its  
18 sufficiency cannot be reviewed. *Howard v. Winters*, 3 Nev. 539, \_\_\_, 1867 WL 2078, 4 (1868). The  
19 Nevada Supreme Court has concisely stated, "[t]he court cannot consider facts outside the record.  
20 Even less can it rely on inferences drawn from facts outside the record." *Hurd v. State*, 114 Nev. 182,  
190, 953 P.2d 270, 275 (1998).

21 The State Engineer continually compounds the due process issue he caused below by now  
22 foreclosing this court from reviewing certain evidence and precluding Jungo Ranch its opportunity to  
23 review or respond to the State Engineer's reliance on that evidence. Accordingly, all of the State  
24 Engineer's references to facts outside the record should be stricken. Furthermore, any reliance by the  
25 State Engineer on these facts that are outside the record should also be stricken from Ruling 6287.

26 ////

27 ////

1 CONCLUSION

2 For these reasons, Ruling 6287 should be reversed.

3 AFFIRMATION  
4 (Pursuant to NRS 239B.030)

5 The undersigned does hereby affirm that the preceding document does not contain the social  
6 security number of any person.

7 DATED this 26<sup>th</sup> day of February, 2015.

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13 By: Paul G. Taggart  
14 PAUL G. TAGGART, ESQ.  
15 Nevada State Bar No. 6136  
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17 Nevada State Bar No. 12303  
18 Attorneys for *Petitioner*  
19  
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28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the **PETITIONER'S REPLY BRIEF** as follows:

☒ By U.S. Mail: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Jerry Snyder, Esq.  
Senior Deputy Attorney General  
Attorney General's Office  
100 North Carson Street  
Carson City, NV 89701

DATED this 24 day of February, 2015.

  
Employee of TAGGART & TAGGART, LTD.

# EXHIBIT 1



# Hydrographic Abstract

Number of Records: 18

Selection Criteria: app\_status IN ('ABN') AND source IN ('UG')

| Basin | Application | Change of Application | Cert  | File date | App status | Source | QQ | Q   | SEC | TWN | RNG | Diversion rate | Use | Priority | Date | Duty balance | Sup? | CO | Owner name                       |
|-------|-------------|-----------------------|-------|-----------|------------|--------|----|-----|-----|-----|-----|----------------|-----|----------|------|--------------|------|----|----------------------------------|
| 028   | 10284       |                       | 3110  | 08-15-38  | ABN        | UG     | SE | NW  | 26  | 35N | 29E | 0.500          | MM  | 08-15-38 |      | 361.98       |      | HU | PETERSON, W.S.                   |
|       | 10313       |                       | 2728  | 12-15-38  | ABN        | UG     | NW | SW  | 26  | 34N | 29E | 1.075          | MM  | 12-15-38 |      | 778.09       |      | PE | NEVADA ROSEGOLD PLACER, INC.     |
|       | 10361       |                       | 2748  | 04-19-39  | ABN        | UG     | SW | NW  | 31  | 35N | 31E | 0.025          | MM  | 04-19-39 |      | 18.11        |      | HU | HUNTINGTON, S.R.                 |
|       | 11426       |                       | 3387  | 11-15-45  | ABN        | UG     | NW | SW  | 26  | 34N | 29E | 3.000          | MM  | 11-15-45 |      | 2171.92      |      | PE | ROSEGOLD PLACERS INC.            |
|       | 17109       |                       | 6439  | 11-30-56  | ABN        | UG     | SE | NW  | 33  | 34N | 29E | 2.000          | MM  | 11-30-56 |      | 515.70       | Y    | PE | PERSHING GOLD                    |
|       | 17110       |                       | 6002  | 11-30-56  | ABN        | UG     | NE | NW  | 33  | 34N | 29E | 1.500          | MM  | 11-30-56 |      | 515.70       | Y    | PE | PERSHING GOLD                    |
|       | 18580       |                       | 5590  | 02-11-60  | ABN        | UG     | NE | NE  | 34  | 35N | 29E | 0.960          | MM  | 02-11-60 |      | 694.80       |      | HU | CROFOOT, H.C.                    |
|       | 19477       |                       | 6040  | 01-24-61  | ABN        | UG     |    | LT0 | 03  | 35N | 30E | 0.891          | MM  | 01-24-61 |      | 645.08       |      | HU | CROFOOT, MABLE                   |
| 032   | 10542       |                       | 2576  | 07-29-40  | ABN        | UG     | NE | SE  | 24  | 37N | 36E | 0.000          | MM  | 07-29-40 |      | 0.00         |      | HU | WEST COAST MINES INC.            |
| 033A  | V10493      |                       |       | 11-08-13  | ABN        | UG     | NE | NW  | 08  | 42N | 37E | 0.000          | IRR | 11-08-13 |      | 0.00         |      | HU | RODNEY AND VIRGINIA ST. CLAIR    |
| 078   | 6316        |                       | 1082  | 11-03-20  | ABN        | UG     | NW | NW  | 29  | 25N | 25E | 0.050          | MM  | 11-03-20 |      | 36.20        |      | PE | PACIFIC SMELTING AND METALS CORP |
|       | 7126        |                       | 1083  | 06-09-24  | ABN        | UG     | SW | NW  | 29  | 25N | 25E | 0.083          | MM  | 06-09-24 |      | 60.31        |      | PE | CAUSTEN, J.H.                    |
|       | 76777       |                       |       | 03-03-08  | ABN        | UG     | NW | NE  | 11  | 26N | 27E | 0.000          | IRR | 01-26-00 |      | 0.00         |      | PE | C PUNCH RANCH, INC.              |
| 092A  | 41973       |                       | 12220 | 08-04-80  | ABN        | UG     | SW | SE  | 29  | 21N | 19E | 0.000          | QM  | 08-04-80 |      | 0.00         | Y    | WA | TMWA                             |
| 51107 |             |                       | 13242 | 07-10-87  | ABN        | UG     | SW | SE  | 29  | 21N | 19E | 0.000          | QM  | 07-10-87 |      | 15.34        | Y    | WA | TMWA                             |
| 153   | 11359       |                       | 3163  | 08-17-45  | ABN        | UG     | W2 | SE  | 09  | 22N | 52E | 0.200          | MM  | 08-17-45 |      | 144.79       |      | EU | CALLAHAN ZINC-LEAD COMPANY       |
| 181   | 6718        |                       | 1629  | 07-17-22  | ABN        | UG     | SW | SW  | 32  | 01N | 66E | 0.025          | MM  | 07-17-22 |      | 18.08        |      | LI | COMET MINES CO.                  |
| 212   | R07604      |                       |       | 04-23-96  | ABN        | UG     | NE | NW  | 34  | 17S | 59E | 0.210          | QM  | 05-20-96 |      | 41.00        |      | CL | USFWS                            |

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Attorneys for Petitioner

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

\* \* \*

RODNEY ST. CLAIR,

Petitioner,

vs.

JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

CASE NO.: CV 20112

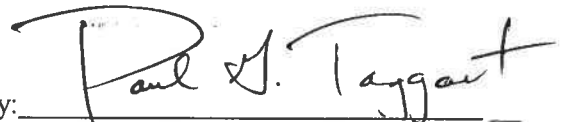
DEPT. NO.: II

PETITIONER'S APPENDIX

DATED this 26<sup>th</sup> day of February, 2015.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the PETITIONER'S APPENDIX as follows:

☒ By U.S. Mail: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Jerry Snyder, Esq.  
Senior Deputy Attorney General  
Attorney General's Office  
100 North Carson Street  
Carson City, NV 89701

DATED this 26th day of February, 2015.

  
Employee of TAGGART & TAGGART, LTD.

# TABLE OF CONTENTS TO PETITIONERS' APPENDIX

| Tab # | Document                                      | Date       | Bates  |        |
|-------|---|------------|--------|--------|
| 1     | State Engineer Ruling Number 3002             | 8/13/1984  | 000001 | 000005 |
| 2     | Pages from State Engineer Ruling Number 3241  | 9/30/1985  | 000006 | 000010 |
| 3     | Pages from State Engineer Ruling Number 3868  | 1/30/1992  | 000011 | 000014 |
| 4     | State Engineer Ruling Number 3885             | 3/27/1992  | 000015 | 000020 |
| 27    | State Engineer Ruling Number 4602             | 2/24/1998  | 000136 | 000145 |
| 5     | Pages from State Engineer Ruling Number 4411  | 8/30/1996  | 000021 | 000025 |
| 6     | Pages from State Engineer Ruling Number 4591  | 12/22/1997 | 000026 | 000029 |
| 7     | State Engineer Ruling Number 4642             | 6/15/1998  | 000030 | 000037 |
| 8     | Pages from State Engineer Ruling Number 4661  | 8/26/1998  | 000038 | 000042 |
| 9     | Pages from State Engineer Ruling Number 5262  | 6/13/2003  | 000043 | 000046 |
| 10    | State Engineer Ruling Number 5268             | 8/13/2003  | 000047 | 000050 |
| 11    | Pages from State Engineer Ruling Number 4116A | 4/20/2006  | 000051 | 000054 |
| 12    | Pages from State Engineer Ruling Number 5791  | 10/23/2007 | 000055 | 000058 |
| 13    | State Engineer Ruling Number 5840             | 4/16/2008  | 000059 | 000072 |
| 14    | State Engineer Ruling Number 5898             | 10/21/2008 | 000073 | 000075 |
| 15    | State Engineer Ruling Number 6032             | 3/19/2010  | 000076 | 000080 |
| 16    | State Engineer Ruling Number 6081             | 12/6/2010  | 000081 | 000083 |
| 17    | State Engineer Ruling Number 6083             | 12/7/2010  | 000084 | 000090 |
| 18    | State Engineer Ruling Number 6090             | 2/15/2011  | 000091 | 000096 |
| 19    | State Engineer Ruling Number 6131             | 7/28/2011  | 000097 | 000100 |
| 20    | State Engineer Ruling Number 6137             | 8/5/2011   | 000101 | 000103 |
| 21    | State Engineer Ruling Number 6152             | 12/2/2011  | 000104 | 000106 |
| 22    | State Engineer Ruling Number 6159             | 2/1/2012   | 000107 | 000114 |
| 23    | State Engineer Ruling Number 6177             | 5/4/2012   | 000115 | 000121 |
| 24    | State Engineer Ruling Number 6182             | 6/15/2012  | 000122 | 000127 |
| 25    | State Engineer Ruling Number 6191             | 8/6/2012   | 000128 | 000130 |
| 26    | State Engineer Ruling Number 6201             | 10/12/2012 | 000131 | 000135 |

# APPENDIX

## TAB 1

IN THE MATTER OF APPLICATION 45493 )  
FILED BY FRANK W. LEWIS TO )  
APPROPRIATE THE WATERS OF HORSE )  
CREEK IN DIXIE VALLEY, CHURCHILL )  
COUNTY, NEVADA. )

RULING

GENERAL

Application 45493 was filed on April 1, 1982, by Frank W. Lewis to appropriate 1.084 c.f.s. of water from Horse Creek for mining, milling and domestic purposes in the Dixie Valley Basin.<sup>1</sup> The point of diversion is described as the SW1/4 SE1/4 Section 12, T.19N., R.35E., M.D.B.&M., and the place of use is within the NW1/4 SW1/4 Section 17, NE1/4 SE1/4 Section 18, all in T.19N., R.35E., M.D.B.&M.

In the heading of Application 45493, it states: "Application is made to appropriate the waters permitted under Nevada Permit No. 9428, Certificate No. 2566, for 1.084 c.f.s. which water rights have been abandoned".

A hearing was held on April 8, 1982, before the Division of Water Resources in Fallon, Nevada, in the matter of protested Application 42972 filed by Horse Creek Ranch to appropriate 10.0 c.f.s. of water from Horse Creek for irrigation and domestic purposes.<sup>2</sup>

Frank W. Lewis protested Application 42972 in part on the grounds that:

"The waters of Horse Creek are fully appropriated. Said waters are the subject of existing certificated and permitted rights obtained on application to appropriate waters made to the State Engineer of Nevada."

Two existing certificated water rights from Horse Creek were made part of the record at the hearing.

- 1.) Permit 1510, Certificate 6, for 0.28 c.f.s. used for irrigation, domestic, mining, milling and power purposes in the ownership of Frank W. Lewis.

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<sup>1</sup> Application 45493 is a public record on file in the office of the State Engineer.

<sup>2</sup> Transcript of hearing dated April 8, 1982, in the matter of protested Application 42972 is a public record on file in the office of the State Engineer.

- 2.) Permit 9428, Certificate 2566, for 1.084 c.f.s. used for irrigation of 108.4 acres in the ownership of Horse Creek Ranch.

At the onset of the hearing, Mr. Ross deLipkau, attorney for the applicant Mr. Charles Chisholm, brought attention to a letter dated June 24, 1981, wherein he requested the State Engineer to declare Permit 1510, Certificate 6, abandoned, forfeited or both, "since the waters had not been used at the Wonder Mine for more than 50 years".

The hearing officer ruled that, although the letter was contained in the official records brought into evidence at this hearing, the hearing was properly noticed only to consider the protest of Application 42972 as provided under NRS 533.365.

Testimony was received by Donald E. Lewis, licensed water right surveyor, on behalf of Frank W. Lewis, that through a series of measurements, he found Horse Creek had a high flow of 405 gallons per minute (0.9 c.f.s.) and a low of 84.5 gallons per minute (0.19 c.f.s.).

Ernest E. Muller, water right surveyor for Charlie Chisholm, testified that he measured Horse Creek (from a small dam on the Horse Ranch property) to be "slightly over five c.f.s. on one occasion and between 1 and 1.5 c.f.s. on another".

Charlie Chisholm, applicant, testified that he acquired the Horse Creek Ranch in 1976 and had been familiar with the property since 1972. He identified the property of the present ranch to be 108.4 acres as depicted in Permit 9428 and that he had applied for approximately 100 additional acres in adjacent land as a Desert Land Entry. The proposed place of use of Application 42972 included all of the land referred to above.

In a ruling dated June 6, 1983, the State Engineer overruled the protest to Application 42972 and issued the permit for 10.0 c.f.s. for collection of flood waters on Horse Creek.<sup>3</sup> In the findings of fact it was noted that there were no existing surface water rights located downstream on Horse Creek from the proposed point of diversion of Application 42972.

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<sup>3</sup> Ruling No. 2808 dated June 3, 1983, is a public record filed in the office of the State Engineer.

FINDINGS OF FACT

I.

The abandonment of a water right requires an intent by the owner to relinquish possession.<sup>4</sup> Mere non-use of the water to which an appropriator is entitled under valid rights without substantial and conclusive evidence of intent to abandon and relinquish possession, is not sufficient.

II.

There is no requirement in statute or case law that mandates, as a condition precedent to denying an application to appropriate, that the State Engineer must first determine that prior rights have been abandoned or forfeited.

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<sup>4</sup> McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, 337 (1907).  
Gila Water Co. v. Green, 29 Arizona 304, 306, 241 Pac. 307 (1925).  
Wood v. Etiwanda Water Co., 147 Cal. 228, 234, 81 Pac. 512 (1905).  
Beaver Brook Res. and Canal Co. v. St. Vrain Res. and Fish Co., 6 Colo. App. 130, 136, 40 Pac. 1066 (1895).  
Hawaiian Commercial and Sugar Co. v. Wailuka Sugar Co., 15 Haw. 675, 691 (1904).  
Union Grain and Elevator Co. v. McCammon Ditch Co., 41 Idaho 216, 223, 240 Pac. 443 (1925).  
Atchison v. Peterson, 1 Mont. 561, 565 (1872), affirmed 87 U.S. 507, (1874).  
State v. Nielsen, 163 Nebr. 372, 381, 79 N.W. (2d) 721 (1956).  
In re Manse Spring and its Tributaries, 60 Nev. 280, 286-287, 289, 290, 108 Pac. (2d) 311 (1940).  
Borman v. Blackmon, 60 Oreg. 304, 308, 118 Pac. 848 (1911).  
Edgemont Improvement Co. v. N.S. Tubbs Sheep Co., 22 S. Dak. 142, 145, 115 N.W. 1130 (1908).  
Anson v. Arnett, 250 S.W., (2d) 450, 454, (Tex. Civ. App. 1952, error refused n.r.e.).  
Desert Live Stock Co. v. Hooppiana, 66 Utah 25, 32, 239 Pac. 479 (1925).  
Sander v. Bull, 76 Wash. 1, 6, 135 Pac. 489 (1913).  
Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 400, 100 Pac. (2d) 124, 102 Pac. (2d) 745 (1940).  
Valcada v. Silver Peak Mines, 86 Fed. 90, 95 (9th Cir. 1898).  
Franktown v. Marlette, 77 Nev., 354 Ped 1069 (1961).  
Revert v. Ray, 95 Nev. 783, 786 P2d 262 (1979).



III.

The burden of proof is upon whomever seeks a declaration of abandonment, whether it is the State Engineer, a private party, protestant or an applicant, to establish by conclusive and substantial evidence that the act of abandonment has occurred.<sup>5</sup>

IV

At the hearing on April 8, 1982, which occurred after the filing of Application 45493, there was no indication given by the owner of Permit 9428, Charles Chisholm, that said certificated right had been abandoned or that the water was not being put to beneficial use.<sup>6</sup> At the time of the ruling on Application 47972, it was determined that Permit 9428 was still in good standing.<sup>7</sup>

V.

On the basis of certificated water rights 6 and 2566 and Permit 42972, the total allocation exceeds the highest measured flows of Horse Creek on record in the office of the State Engineer.

CONCLUSIONS

I.

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

II.

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

- A. There is no unappropriated water in the source, or
- B. The proposed use conflicts with existing rights, or

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<sup>5</sup> Nevada State Engineer's Ruling No. 2804, Aram and Stella Harootunian, p. 5, footnote 27, public record in the office of the State Engineer.

<sup>6</sup> Transcript of hearing dated April 8, 1982, in the matter of protested Application 42972 is a public record on file in the office of the State Engineer.

<sup>7</sup> Ruling No. 2808 dated June 3, 1983, is a public record filed in the office of the State Engineer.

<sup>8</sup> NRS 533.325.

- C. The proposed use threatens to be detrimental to the public welfare.<sup>9</sup>

III.

The evidence and information available indicates that filing of Application 45493 was a frivolous response to the request of counsel for Charles Chism for the State Engineer to declare Permit 1510 abandoned.

IV.

From the record of the hearing on protested Application 42972 and records of the certificated and permitted water rights, it is determined that Horse Creek is fully appropriated.

RULING

Application 45493 is hereby denied on the grounds that there is no unappropriated water in the source.

Respectfully submitted



Peter G. Morros  
State Engineer

PGM/GC/b1

Dated this 13th day of  
AUGUST, 1984.

-----  
<sup>9</sup> NRS 533.370, subsection 3.

# APPENDIX

## TAB 2

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS)  
47809, 47822, 47830, 47840, 48422,) )  
48423, 48424, 48465, 48466, 48467,) )  
48468, 48470, 48471, 48647, 48665,) )  
48666, 48667, 48668, 48669, 48672,) )  
48673, 48767, 48825, 48827, 48828,) )  
48865 AND 48866 FILED TO CHANGE THE)  
PLACE OF USE OF WATERS HERETOFORE)  
DECREED AND SET FORTH IN THE)  
TRUCKEE RIVER AND CARSON RIVER)  
DECREES. )

RULING

GENERAL

I.

The twenty-seven (27) applications to change the place of use of decreed rights under the Truckee River and Carson River decrees<sup>1</sup> are the subject matter of this ruling and are set forth in the record.<sup>2</sup> The applications represent requests to change the place of use of decreed water on irrigated lands within the Newlands Reclamation Project under the provisions set forth in the Orr Ditch and Alpine decrees.<sup>3</sup>

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<sup>1</sup> Final Decree in United States v. Orr Water Ditch Co., et al., Equity A-3 (D. Nev. 1944), hereinafter referred to as Orr Ditch; and Final Decree in United States v. Alpine Land & Reservoir Co., et al., Equity No. D-183 BRT (D. Nev. 1980), hereinafter referred to as Alpine.

<sup>2</sup> State of Nevada Exhibits No. 11 and 12, public administrative hearing before the State Engineer, June 24th, 1985.

<sup>3</sup> Orr Ditch Final Decree, p. 88. Alpine Final Decree, pp. 161-162.

of use.<sup>35</sup> However, as in the past, the State Engineer has limited each application to either the acre-foot duty of the existing place of use or the acre-foot duty of the proposed place of use, which ever is lesser. When this criterion is applied to the subject applications, the cumulative total on the proposed places of use becomes less than the existing places of use.

VII.

With the exception of Application 47822 and 47830, the protests to all of the applications included a claim that the water rights were never perfected in accordance with federal and state law, or have been abandoned or forfeited. The existing Newlands water rights that are the subject of the change applications were vested in the name of the United States when Congress authorized Lahontan Dam in 1902. No state law governed how the water was to be used nor was there any statutory provision for loss of water by abandonment or forfeiture.<sup>36</sup> Both the Alpine and Orr Ditch decrees recognize the Newlands rights as having a priority of 1902 and Alpine specifically recognized existing uses as late as 1980 and that these rights did exist in their entirety.<sup>37</sup>

The record of evidence indicates that the water has been used continuously by project farmers. The fact that individual project farmers were not using the water on the exact acreage for which they contracted on an acre-for-acre accounting was addressed and disposed of in Alpine.<sup>38</sup>

The Nevada Supreme Court, in Manse Spring, provides authoritative guidance on the basic and fundamental distinctions between abandonment and statutory forfeiture as well as establishing precedent for criteria to be considered in making findings on loss of water rights.<sup>39</sup>

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<sup>35</sup> Applicant's Exhibits DD, public administrative hearing before the State Engineer, June 24th, 1985.

<sup>36</sup> NRS Chapter 533 was adopted in 1913 and, as it pertains to forfeiture and abandonment, NRS 533.060 in 1913 with amendments in 1917, 1949, and later.

<sup>37</sup> Orr Ditch and Alpine, supra, (See Footnote 1); Nevada v. United States, 463 U.S. 110 (1983).

<sup>38</sup> United States v. Alpine Land & Reservoir Co., supra at 853, 856. Testimony of Doris Morin, public administrative hearing before the State Engineer, June 24, 1985, pp. 71-73. Testimony of Barry Alan Fitzpatrick, public administrative hearing before the State Engineer, June 24, 1980, pp. 91-98; Interior's Exhibit 10; and Applicants Exhibit "EE".

<sup>39</sup> In re Manse Springs and Its Tributaries, 60 Nev. 280, 286-287, 389, 290, 108 P.2d 311 (1940). See also, NRS 533.085(1).

The court has clearly held that abandonment is a voluntary matter, the relinquishment of the right by the owner with the intention of forsaking and deserting it. Forfeiture, on the other hand, is the involuntary or forced loss of the right caused by failure of the holder of appropriation to utilize the resource as required by statute.

Both the relinquishment of possession and the intent are essential to a finding of abandonment and are well defined and set in case law of the Western States.<sup>40</sup> The State Engineer finds no disparity or confusion in definition. Mere non-use of the water to which an appropriator is entitled under valid rights without substantial and conclusive evidence of intent to abandon and relinquish possession is not sufficient for a finding of abandonment.

Based on this record of evidence, the State Engineer can make no finding that there was either intent to abandon nor intent to forsake the water or the right to use it.

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<sup>40</sup> McFarland v. Alaska Perseverance Min. Co., 3 Alaska 308, 337 (1907).  
Gila Water Co. v. Green, 29 Arizona 304, 306, 241 Pac. 307 (1925).  
Wood v. Etiwanda Water Co., 147 Cal. 228, 234, 81 Pac. 512 (1905).  
Beaver Brook Res. and Canal Co. v. St. Vrain Res. and Fish Co., 6 Colo. App. 130, 136, 40 Pac. 1066 (1985).  
Hawaiian Commercial and Sugar Co. v. Wailuka Sugar Co., 15 Haw. 675, 691 (1904).  
Union Grain and Elevator Co. v. McCammon Ditch Co., 41 Idaho 216, 223, 240 Pac. 443 (1925).  
Atchison v. Peterson, 1 Mont. 561, 565 (1872), affirmed 87 U.S. 507 (1874).  
State v. Nielsen, 163 Nebr. 372, 381, 79 N.W. (2d) 721 (1956).  
In re Manse Spring and its Tributaries, 60 Nev. 280, 286-287, 289, 290, 108 P.2d 311 (1940).  
Borman v. Blackmon, 60 Oreg. 304, 308, 118 Pac. 848 (1911).  
Edgemont Improvement Co. v. N.S. Tubbs Sheep Co., 22 S. Dak. 142, 145, 115 N.W. 1130 (1908).  
Anson v. Arnett, 250 S.W. (2d) 450, 454 (Tex. Civ. App. 1952, error refused n.r.e.).  
Desert Live Stock Co. v. Hooppiania, 66 Utah 25, 32, 239 Pac. 479 (1925).  
Sander v. Bull, 76 Wash. 1, 6, 135 Pac. 489 (1913).  
Campbell v. Wyoming Dev. Co., 55 Wyo. 347, 400, 100 P.2d 124, 102 P.2d 745 (1940).  
Valcalda v. Silver Peak Mines, 86 Fed. 90, 95 (9th Cir. 1898).  
Franktown v. Marlette, 77 Nev. 354 Ped 1069 (1961).  
Revert v. Ray, 95 Nev. 783, 786 P.2d 262 (1979).

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and subject matter of this action.<sup>41</sup>

II.

The Orr Ditch and Alpine decrees set forth the procedure and authority in the matter of applications to change the point of diversion, manner, purpose or place of use of decreed waters of the Carson and Truckee Rivers.

III.

The record of evidence is substantial and conclusive as to the historical uses of the water under the subject applications to change.

IV.

The record of evidence establishes the duty of water to which the lands under the proposed changes are entitled.

V.

There is no conclusive evidence that the approval of the applications to change in this matter will effect or impair the value of other existing rights set forth under the subject decrees.

VI.

There is no conclusive evidence that the approval of the applications to change in this matter will be detrimental to the public interest or welfare.

VII.

The record in this proceeding provides no substantial or conclusive evidence to support a conclusion that the rights set forth herein have been abandoned or forfeited.

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<sup>41</sup> NRS Chapter 533; See Footnote 3.

RULING

The protests to the granting of applications to change 47809, 47830, 47840, 48422, 48423, 48424, 48465, 48466, 48467, 48468, 48470, 48471, 48647, 48665, 48666, 48667, 48668, 48669, 48672, 48673, 48767, 48825, 48827, 48828, 48865 and 48866 are herewith overruled and Applications 47809, 47822, 47830, 47840, 48422, 48423, 48424, 48465, 48466, 48467, 48468, 48470, 48471, 48647, 48665, 48666, 48667, 48668, 48669, 48672, 48673, 48767, 48825, 48827, 48828, 48865 and 48866 will be approved subject to existing rights on the sources and subject to water duties affirmed or modified by the Federal Water Master.

Respectfully submitted,



PETER G. MORROS  
State Engineer

PGM/bl

Dated this 30th day of  
September, 1985.



# APPENDIX

## TAB 3

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

IN THE MATTER OF APPLICATIONS 51603, 51608, )  
51953, 51954, 51955, 51956, 51957, 51958, )  
51959, 51960, 51961, 51997, 52021, 52252, )  
52335, 52361, 52542, 52543, 52544, 52545, )  
52546, 52547, 52548, 52549, 52550, 52551, )  
52552, 52553, 52554, 52555, 52570, 52668, )  
52669, 52670, 52843, 53659, 53661, 53662, )  
53910, 54152, 54594, 54595, 54596, 54714, )  
54715, 54882, FILED TO CHANGE THE PLACE OF )  
USE OF WATERS HERETOFORE DECREED AND SET )  
FORTH IN THE TRUCKEE RIVER AND CARSON RIVER )  
DECREES AND APPLICATIONS 51383, 51733, )  
51735, 51736, 51737, 51738 FILED TO CHANGE )  
THE PLACE OF USE OF WATERS HERETOFORE )  
DECREED AND SET FORTH IN THE TRUCKEE RIVER )  
AND CARSON RIVER DECREES AND UNDER PERMITS )  
47877, 50003, 48472, 47805, 47899, 47869 )  
AND 47809 RESPECTIVELY, WITHIN THE CARSON )  
DESERT, CHURCHILL COUNTY, NEVADA. )

RULING

#3868

GENERAL

I.

The fifty-two (52) applications to change the place of use of decreed water rights under the Truckee River Decree<sup>1</sup> and Carson River Decree,<sup>2</sup> are the subject matter of this ruling and are set forth in the record.<sup>3</sup> The applications represent requests to change the place of use of a portion of decreed water rights on irrigated lands within the Newlands Reclamation Project under the provisions set forth in Orr Ditch and Alpine decrees.<sup>4</sup>

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1 Final Decree in United States v. Orr Water Ditch Co., In Equity Docket No. A-3 (D. Nev. 1944), hereinafter referred to as Orr Ditch Decree.

2 Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nev. 1980), hereinafter referred to as Alpine Decree.

3 State of Nevada Exhibit Nos. 71 and 72, public administrative hearing before the State Engineer, April 9, 1991.

4 Orr Ditch Final Decree, p. 88. Alpine Final Decree, pp. 161-162.

project farmers to put the land into production, then make application to the federal government for a water right.<sup>27</sup> The issuance of these contracts is evidence that a perfected water right exists.

The protestant attempted to show that some of the lands of the existing places of use were never irrigated. Citing maps from the early 1920's and aerial photographs taken in 1948, 1949, 1977 and 1984,<sup>28</sup> the protestant asserted that portions of these lands are covered by roads, ditches, buildings, etc., and therefore, the protestant contends that the lands could not have been irrigated. However, these maps and photographs do not provide a continuous record of land use and no evidence was submitted to invalidate the government contracts. Therefore, the State Engineer finds that the original contracts between the United States and the project farmers are valid and each of these contracts establishes a perfected water right to project water.

#### V.

The amount of water allowed to be transferred shall be limited to the duty of the existing place of use or the proposed place of use, whichever is lesser. The contested bench land/bottom land designations have yet to be decided. The State Engineer reserves the right to amend any permit to conform to the final bench land/bottom land determination.

#### VI.

The protests to all of the applications at issue here, included a claim that the existing water rights have been abandoned or forfeited.<sup>29</sup> The existing Truckee-Carson Irrigation

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<sup>27</sup> Testimony of Applicant's witness Doris Morin, pp. 133-135, transcript of the public administrative hearing before the State Engineer, April 9, 1991.

<sup>28</sup> Protestant's Exhibit No's. 191, 192 and 193, and testimony of protestant's witness Ali Shahroody, p. 43, transcript of public administrative hearing before the State Engineer, April 9, 1991.

<sup>29</sup> State of Nevada Exhibit No. 72, public administrative hearing before the State Engineer, April 9, 1991.

District water rights were vested in the name of the United States when Congress authorized the Newlands Project in 1902. Both the Alpine Decree and Orr Ditch Decree recognize the Truckee-Carson Irrigation District rights as having a priority of 1902 and Alpine specifically recognized existing uses as late as 1980 and that these rights did exist in their entirety.<sup>30</sup>

The Nevada Supreme Court, in Manse Springs,<sup>31</sup> provides authoritative guidance on the fundamental distinctions between abandonment and statutory forfeiture as well as establishing precedent for criteria to be considered in making findings on loss of water rights. The court held that abandonment is a voluntary matter, the relinquishment of a water right by the owner with the intention of forsaking and deserting it. Forfeiture, on the other hand, is the involuntary or forced loss of a water right caused by failure of the holder to utilize the resource for the time fixed by statute. The court further held that the statutory forfeiture procedure did not apply to water rights vested prior to the enactment of the 1913 water law.

Both the relinquishment of possession and the intent are essential to a finding of abandonment and are well defined and set forth in Nevada law.<sup>31, 32</sup> The State Engineer finds no disparity or confusion in definition. Mere non-use of the water to which an appropriator is entitled under valid rights without substantial evidence of intent to abandon and relinquish possession, is not sufficient for a finding of abandonment.

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<sup>30</sup> Orr Ditch and Alpine decrees, supra, Nevada v. United States, 463 U.S. 110 (1983).

<sup>31</sup> In re waters of Manse Spring and Its Tributaries, 60 Nev. 280, 286-287, 288-289, 290, 108 P.2d 311 (1940).

<sup>32</sup> Valcalda v. Silver Peak Mines, 86 F. 90, 95 (9th Cir. 1898); Revert v. Ray, 95 Nev. 783, 786 P.2d 262 (1979); Franktown v. Marlette 77 Nev. 348, 354, 364 P.2d 1069 (1961).

The owners of the water rights on the transferor lands paid the annual assessments charged for water-righted acreage.<sup>33</sup> According to the Secretary-Treasurer of the Truckee-Carson Irrigation District,<sup>34</sup> no project farmer has ever indicated an intent to abandon a water right. Based on this record of evidence, the State Engineer finds that there was neither intent to abandon nor intent to forsake the water right.

## VII.

The protestant feels that these applications cannot be approved because they involve the change "from lands that are not impracticable to irrigate and therefore such alleged water rights are not eligible for transfer to other lands." However, the protestant does not present any legal basis for this assertion. There are no provisions in the Nevada water law that limit the eligibility for changing the place of use based on the practicability or impracticability to irrigate the existing place of use. Rather, NRS 533.370 (3) sets out the criteria for the State Engineer to consider in change applications. In addition, the Ninth Circuit Court of Appeals affirmed the fact that the State Engineer is not precluded by statute from granting a change application where it is not impracticable to use the water at the present site.<sup>35</sup> Therefore, the State Engineer finds these applications cannot be denied on the basis of the practicability or impracticability to irrigate the existing place of use.

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<sup>33</sup> Testimony of Applicant's witness Doris Morin pp. 169-170, transcript of public administrative hearing before the State Engineer, April 9, 1991. See also pp. 71-72, transcript of public administrative hearing before the State Engineer, November 26-29, 1984.

<sup>34</sup> Testimony of Applicant's witness Doris Morin p. 75, transcript of public administrative hearing before the State Engineer, November 26-29, 1984.

<sup>35</sup> United States v. Alpine Land & Reservoir Co., 878 F.2d at 1227.

# APPENDIX

## TAB 4

#3885

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WATER RESOURCES

R. MICHAEL TURNIPSEED, STATE ENGINEER

In the Matter of  
56910, 56911,  
56912, 56913

-/

TRANSCRIPT OF PROCEEDINGS

BEFORE R. MICHAEL TURNIPSEED, STATE ENGINEER

March 27, 1992

Carson City, Nevada

Reported by:

Kathryn Terhune, NV CSR #209

1

*Original*

CAPITOL REPORTERS (702) 882-5322

1 Smith. I represent Merl Stewart who's also present. We have  
2 nothing further to add to the presentation by Mr. McMullin.  
3 Mr. Stewart proposes to receive the transfer of the water  
4 rights in the four applications that are in evidence and  
5 Exhibits 1 through 5. And if the applications for transfer  
6 are approved, then the water rights would be transferred to  
7 the south end of the valley and then dedicated to the county.

8 THE STATE ENGINEER: Thank you, Mr. Smith. Any  
9 other comments from the audience?

10 With that then I think I'm prepared to make a  
11 decision. However, going to be in recess until ten o'clock,  
12 and return to the hearing room for our decision.

13 (Recess.)

14 THE STATE ENGINEER: We'll be back on the record.  
15 This permit file has some pretty good evidence in it as to  
16 the nature of the wells in historic times. On the affidavit  
17 of labor, talks about four wells being in existence as of  
18 November 30th, 1932. I will just read you the statement out  
19 of the--where it said improvements consisted of piped in  
20 development of four wells casing of said wells and conveying  
21 water by pipes and ditches to irrigation ditches already had  
22 use in on Heidenreich Ranch for more than 50 years. Little  
23 difficult to tell from that statement whether the ditches  
24 were in use for 50 years prior to November 30th, 1932, or  
25 whether the wells were in existence prior to 1932.



1           The application that was filed on June 3rd, 1930,  
2 further indicates that the wells were probably in existence,  
3 it says in remarks, "Although this water has vested right to  
4 the use of water from Franktown Crick water from this well is  
5 used to augment the natural supply of Franktown, is used to  
6 augment the natural supply of Franktown Crick at times when  
7 there is a shortage." That would further lead me to believe  
8 the well was in existence at least as of June 30, 1930.

9           There is no statement in this affidavit from--there  
10 is no statement in Exhibit 11, the affidavit of Mr. Thomas S.  
11 Whitehead, that there was ever an intent to abandon. In  
12 fact, if the protestants had wished to prove the well had  
13 been abandoned, they should have had Mr. Whitehead here so  
14 his testimony could be the subject of cross-examination.  
15 Simply says that the water was not used between the time 1951  
16 and 1973.

17           Therefore, I'm going to find there is no evidence  
18 in the record to show that this water right evidenced by  
19 Permit 9267, Certificate 2704 is abandoned, for lack of any  
20 showing that there was ever an intent to abandonment.

21           I'm also going to find there is insufficient  
22 evidence in the record to show that a forfeiture occurred,  
23 specially on an artisan well that appears flowed at times and  
24 didn't flow at times. I don't believe the forfeiture statute  
25 reaches to drought periods when the water's not available.

1 Now, if a person that has an artisan well wishes to  
2 pump that well, preserve the right, I suppose that's his  
3 right. But I don't think there is any requirement on the  
4 part of a permit holder to have to pump an artisan well  
5 during drought times in order to preserve the right.

6 Record further reflects the present owner of the  
7 permit attempted to replace the well in 1982 or '83 which  
8 further shows at least he never intended to abandon the  
9 right.

10 The Eureka case is silent, as Mr. Swafford stated,  
11 as to vested rights, so the only law we have on vested rights  
12 is Mans Springs. And I don't have the cite for you on that,  
13 but he has the cite in his brief. And Mans Springs says you  
14 simply cannot forfeit a vested right.

15 Therefore, I'm going to find that Permit 9267  
16 Certificate 2704 is not forfeited nor abandoned. And is in  
17 good standing as far as the records of the State Engineer  
18 show and as far as this record shows.

19 I'm further going to grant Applications 56910,  
20 56911, 56912, and 56913 subject to prior rights and subject  
21 to both the old well drilled at or before 1930 and the  
22 replacement well that was drilled in 1982 or 1983 being  
23 plugged. Nevada has specific rules and requirements as to  
24 how those wells are to be plugged and abandoned. And subject  
25 to payment of the statutory fees for the change applications.

1 With that then this hearing will be closed.

2 (Proceedings concluded.)  
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1 STATE OF NEVADA )

2 )

3 CARSON CITY )

4  
5 I, Kathryn Terhune, Certified Shorthand Reporter,  
6 do hereby certify;

7 That on March 27, 1992, at 9:00 a.m., of said day,  
8 at 123 East Nye Lane, Carson City, Nevada, I was present and  
9 took stenotype notes of the hearing held before the Nevada  
10 Department of Conservation and Natural Resources, Division of  
11 Water Resources in the within entitled matter, and thereafter  
12 transcribed the same into typewriting as herein appears;

13 That the foregoing transcript, consisting of pages  
14 1 through 38 hereof, is a full, true and correct  
15 transcription of my stenotype notes of said hearing.

16  
17 Dated at Carson City, Nevada, this 7<sup>th</sup> day of May,  
18 1992.

19  
20  
21   
22 KATHRYN TERHUNE, CSR #209  
23  
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25

# APPENDIX

## TAB 5

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

IN THE MATTER OF TRANSFER )  
APPLICATIONS: )  
47809 et al. (Group 3) )  
47861 et al. (Group 4) )  
49116 et al. (Group 5) )  
51006 et al. (Group 6) )  
51383 et al. (Group 7) )

INTERIM RULING

# 4411

GENERAL

During the 1980's, many of the water right holders within the Newlands Reclamation Project ("Project") filed change applications ("transfer applications") with the Nevada State Engineer seeking permission to transfer the place of use of water rights within the Project. Applications 47809, 47822, 47830, 47840, 48422, 48423, 48424, 48465, 48466, 48467, 48468, 48470, 48471, 48647, 48665, 48666, 48667, 48668, 48669, 48672, 48673, 48767, 48825, 48827, 48828, 48865, 48866 (27 applications in total, hereinafter identified as "Group 3") were filed to change the place of use of water decreed under the Truckee and Carson River Decrees.<sup>1</sup> The transfer applications<sup>2</sup> represent requests to change the place of use of decreed water on irrigated lands within the Project under the provisions set forth in the Orr Ditch Decree and the Alpine Decree.<sup>3</sup>

With the exception of Applications 47822 and 47830, the Group 3 transfer applications were timely protested by the Pyramid Lake Paiute Tribe of Indians ("PLPT") on various grounds, including the following:

<sup>1</sup> Final Decree in United States v. Orr Water Ditch Co., et al., Equity A-3 (D.Nev. 1944), ("Orr Ditch Decree"); and Final Decree in United States v. Alpine Land & Reservoir Co., et al., Equity No. D-183 (D.Nev. 1980) ("Alpine Decree").

<sup>2</sup> State of Nevada Exhibits No. 11 and 12, public administrative hearing before the State Engineer, June 24, 1985.

<sup>3</sup> Orr Ditch Decree, p. 88. Alpine Decree, pp. 161-162.

the State Engineer believes it is his obligation to follow the law of Nevada which allows for the permitting of a change application on a water right that has not yet been perfected.

V.

**Rebuttable Presumption of Abandonment is Not Nevada Law**

The PLPT argued that the State Engineer should apply a rule that a presumption of abandonment is created when there is evidence of prolonged nonuse of a water right. The PLPT continues that once it submits evidence of a substantial period of nonuse of a water right the burden shifts to the transfer applicant to present evidence justifying the nonuse, showing that the nonuse of the water right resulted from circumstances beyond the water right users control, and failure to do so would result in a finding of abandonment.

The PLPT, citing to case law of Colorado, New Mexico, Montana, California and Wyoming, argues this rule of rebuttable presumption is well established in the western states, there is no reason the common law of abandonment should be different in Nevada than in other western states, and the Nevada Supreme Court's relatively sparse discussions of abandonment suggest a general desire to accept the doctrine as it has been developed in other states. Applicants argued in response that the burden of proving "intent to abandon" is on the party who asserts it, and that a showing of a prolonged period of nonuse of a water right does not shift the burden of going forward to the water right holder to introduce evidence to rebut the presumption.

The State Engineer concludes Nevada does not shift the burden of going forward to the applicants upon the protestant's showing of an extended period of nonuse. "The state, having a right to designate the method of appropriation, may also provide how long water may be permitted to run idly by and not be beneficially used."<sup>38</sup> Rights acquired before 1913 can only be lost in

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<sup>38</sup> In Re Waters of Manse Spring, 60 Nev. 280, 287 (1940).

accordance with the law in existence before the enactment of NRS 533.060, namely intentional abandonment.<sup>39</sup>

The Nevada Supreme Court in Manse Spring asked the specific question of whether a pre-1913 water right could be impaired by providing a different method for its loss than had theretofore existed.<sup>40</sup> Prior to 1913 in the case of abandonment, the intent of the water user was controlling.<sup>41</sup> "To substitute and enlarge upon that by saying that the water user shall lose the water by failure to use it for a period of five years, irrespective of the intent, certainly takes away much of the stability and security of the right to the continued use of such water."<sup>42</sup> Applying a rebuttable presumption standard would further undercut the stability and security of pre-1913 vested water rights.

The State Engineer has previously held the burden of proof is upon whoever seeks the declaration, be it the State Engineer, a private party, a protestant, or an applicant, to establish by conclusive and substantial evidence that the act of abandonment has occurred.<sup>43</sup> The State Engineer will not shift the burden to the transfer applicant to present evidence justifying the nonuse upon a mere showing by the PLPT of a substantial period of nonuse of a water right. Furthermore, since the Nevada Supreme Court's 1992 ruling in the Town of Eureka<sup>44</sup> wherein the Court held that because "the law disfavors a forfeiture, the State bears the burden of

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<sup>39</sup> Id. at 289.

<sup>40</sup> Id. at 290.

<sup>41</sup> Id. at 290.

<sup>42</sup> Id. at 290.

<sup>43</sup> State Engineer Supplemental Ruling on Remand No. 2804, dated April 15, 1983, official records of the Office of the State Engineer (In the Matter of Harootunian applications, Eagle Valley, Nevada)

<sup>44</sup> Town of Eureka v. State Engineer, 108 Nev. 163, 862 P.2d 948 (1992).



proving by clear and convincing evidence, a statutory period of non-use"<sup>45</sup> the State Engineer concludes there is no reason proof of abandonment should be held to any standard lower than clear and convincing evidence.

In Nevada, no rebuttable presumption of abandonment is created by evidence of the prolonged nonuse of a water right.<sup>46</sup> The State Engineer concludes the PLPT brought these protests, it is the "plaintiff" in these cases, and bears the burden of proving its case as to abandonment by clear and convincing evidence of acts of abandonment and intent to abandon, intent to forsake and desert the water right.<sup>47</sup> "Abandonment, requiring a union of acts and intent, is a question of fact to be determined from all the surrounding circumstances."<sup>48</sup> Nonuse for a period of time may inferentially be some evidence of intent to abandon;<sup>49</sup> however, abandonment will not be presumed, but rather must be clearly and convincingly established by the evidence. If the legislature wishes to establish a rebuttable presumption regarding abandonment it may do so, but to date it has not so chosen.

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<sup>45</sup> Id. at 826 P.2d 952.

<sup>46</sup> The United States District Court in Alpine III noted that "[t]he Tribe, relying on authority from other western states, argues that a substantial period of nonuse creates a rebuttable presumption of abandonment. Though the longer the period of nonuse, the greater the likelihood of abandonment, we find no support for a rebuttable presumption under Nevada law." U.S. v Alpine Land & Reservoir Co., 983 F.2d 1487, 1494 n. 8 (9th Cir. 1992).

<sup>47</sup> Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and State Engineer of the State of Nevada, 77 Nev. 348, 354 (1961).

<sup>48</sup> Revert v. Ray, 95 Nev. 782, 786 (1979).

<sup>49</sup> Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and State Engineer of the State of Nevada, 77 Nev. 348, 354 (1961).

Ruling  
Page 21

RULING

The Motions for Summary Ruling, Summary Judgment and Dismissal are hereby denied. The PLPT bears the burden of proving its case as to abandonment by clear and convincing evidence of acts of abandonment and intent to abandon.

Respectfully,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer



RMT/SJT/ab

Dated this 30th day of  
August, 1996.

# APPENDIX

## TAB 6

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

IN THE MATTER OF APPLICATIONS     )  
47840, 48423, 48424, 48467,     )  
48468, 48647, 48666, 48667,     )  
48668, 48672, 48673, 48825,     )  
48828, 48865 (GROUP 3) (14 OF     )  
THOSE TRANSFER APPLICATIONS     )  
OTHERWISE KNOWN AS THE     )  
"ORIGINAL 25" TRANSFER     )  
APPLICATIONS)     )

RULING ON REMAND

# 4591

GENERAL INTRODUCTION

I.

FILING OF APPLICATIONS AND PROTESTS

Applications 47809, 47822, 47830, 47840, 48422, 48423, 48424, 48465, 48466, 48467, 48468, 48470, 48471, 48647, 48665, 48666, 48667, 48668, 48669, 48672, 48673, 48767, 48825, 48827, 48828, 48865, 48866 (27 applications in total)<sup>1</sup> were filed to change the place of use of water decreed under the Truckee and Carson River Decrees, the decrees which adjudicated the waters of those rivers.<sup>2</sup> The applications<sup>3</sup> represent requests to change the place of use of

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<sup>1</sup> The protestant Pyramid Lake Paiute Tribe's original appeal to the Federal District Court included applications in what the State Engineer has identified as Group 1 consisting of 58 applications, Group 2 consisting of 44 applications, and Group 3 consisting of 27 applications (129 applications in total). In U.S. v. Alpine Land and Reservoir Co., 878 F.2d 1217, 1219 (9th Cir. 1989), the Ninth Circuit Court of Appeals held that the Pyramid Lake Paiute Tribe was precluded on appeal from challenging the forfeiture or abandonment of water rights for 104 of the subject transfer applications because it failed to protest the transfers before the State Engineer on these grounds. Based on the court's ruling, the 27 applications in Group 3 became the "original 25" transfer applications after excluding Applications 47822 and 47830 which were not protested on those grounds.

<sup>2</sup> Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D.Nev. 1944) ("Orr Ditch Decree"); and Final Decree, U.S. v. Alpine Land and Reservoir Co., Civil No. D-183 (D.Nev. 1980) ("Alpine Decree").

<sup>3</sup> State of Nevada Exhibit Nos. 11 and 12, public administrative hearing before the State Engineer, June 24, 1985. These exhibits are contained in the previous Record on Review filed with the Federal District Court in November 1985. The individual applications (book records) were re-introduced during the course of the 1996-1997 administrative hearings and designated with new exhibit numbers in the Record on Review on Remand. (RORR is used to identify the Record on

January 23-24, 1997,<sup>25</sup> and March 4, 1997,<sup>26</sup> at Carson City, Nevada, before representatives of the office of the State Engineer. At the pre-hearing status conference, the parties agreed that a "clean record" would be easier to follow. This meant that the exhibit numbers would begin again at Number 1, and that if any party wanted specific parts of the earlier proceedings to be highlighted they would identify that evidence or testimony and have it remarked for this record. While certain applicants argued this was a brand new hearing the State Engineer does not agree. It is a hearing on remand which means it is a continuation of the previous hearing, and the State Engineer cannot and will not ignore all that has taken place to date. Therefore, the State Engineer also took administrative notice of the records in the office of the State Engineer, including, the prior hearings and rulings in this matter and the various rulings of the Federal District Court and the Ninth Circuit Court of Appeals.<sup>27</sup>

**GENERAL FINDINGS OF FACT APPLICABLE TO ALL APPLICATIONS  
UNDER CONSIDERATION IN THIS RULING**

**I.**

**BURDEN OF PROOF**

The protestant and the applicants have been at loggerheads all through these proceedings as to who has the burden of proof and the burden of producing evidence as to the protestant's claims. More than a decade ago the protestant filed protests alleging that the applicants had either failed to perfect the water rights they were seeking to move by the transfer applications or had either

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<sup>24</sup> RORR Vols. 20-23, Tabs 181-184. Transcript, public administrative hearing before the State Engineer, November 12-15, 1996.

<sup>25</sup> RORR Vols. 24-25, Tabs 185-186. Transcript, public administrative hearing before the State Engineer, January 23-24, 1997.

<sup>26</sup> RORR Vol. 26, Tab 187. Transcript, public administrative hearing before the State Engineer, March 4, 1997.

<sup>27</sup> RORR Vol. 16, Tab 177. Transcript p. 7, public administrative hearing before the State Engineer, October 15-18, 1996.

forfeited and/or abandoned said water rights making them unavailable for transfer pursuant to the change applications.

The protestant argues: (1) that the applicant must first prove it has a perfected and valid, i.e., not abandoned or forfeited, water right before it can seek to move said water right pursuant to the transfer applications; (2) it is only the applicants who are in possession of the evidence, and (3) the protestant cannot secure much of the evidence it needs to prove its claims. Many of the applicants take the position that they do not need to prove the protestant's case. It is the protestant who has alleged lack of perfection, forfeiture and abandonment and it must be the protestant who is to provide the evidence to support its claims.

The Nevada Supreme Court has held that because the "law disfavors a forfeiture the State bears the burden of proving by clear and convincing evidence a statutory period of non-use."<sup>28</sup> It is the policy of the Division of Water Resources, affirmed by the Nevada Supreme Court's decision in the Town of Eureka case, that whenever a private person files a protest claim or a petition alleging forfeiture or abandonment of a water right, it is the protestant's or petitioner's burden to produce the evidence and prove said claims. It is not the applicant's job to disprove the protestant's claims. The State Engineer finds that the burden of producing evidence and proving the protest claims of abandonment and forfeiture lies squarely on the protestant PLPT.

As to the protestant's claims of lack of perfection, it is important to at least note that most of the Project water rights that the applicants seek to transfer were acquired by the applicant's predecessors many years ago, in many instances in the period of time between 1902 and 1925. It is often impossible to find a person alive today that can recall from memory the irrigation status of these often very small (ex., 0.15 acre)

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<sup>28</sup> Town of Eureka v. Office of the State Engineer, 108 Nev. 163, 826 P.2d 948, 952 (1992).

parcels of land identified as the existing places of use some seventy, eighty or ninety years ago.

It is also important to note that in some instances these water rights are being transferred from parcels miles away from the applicant's proposed place of use and from lands that are not owned by the applicant. Therefore, it might be next to impossible for the applicants or the protestant to prove what happened on a 0.1 acre parcel of land in 1920, 1904 or nearly a century ago, particularly in light of the realities of the management of movement of water on the Project and the lack of mapping; thus, all the more reason to put the burden of proving lack of perfection on the protestant who alleges the same. The TCID has certified that every one of these applicants are transferring valid water rights. Rights determined to be valid based on nearly a century of record keeping that has not been demonstrated to be anything other than the most accurate and best record available. The State Engineer finds that if he were to allege a decreed water right was not perfected, the State would have the burden of proving that lack of perfection. There is no reason to treat the private petitioner or protestant any differently. The State Engineer finds the protestant has the burden of proving lack of perfection. It is not the applicants' burden to prove perfection of an adjudicated and decreed water right certified by the TCID to be a valid water right available for transfer just because a protestant alleges a lack of perfection claim.

## II.

### AGREED UPON EXCHANGE PROCESS - PROTESTANT

At the February 1996 status conference, the parties to the Group 3 hearings agreed upon a process for moving forward with these cases, said process being set forth in the February 12, 1996, notice.<sup>29</sup> Since it is impossible for the protestant to sustain all

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<sup>29</sup> RORR Vol. 1, Tab 5. February 12, 1996, Notice of Group 3 discovery schedule.

# APPENDIX

## TAB 7



ORIGINAL

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES  
BEFORE THE STATE ENGINEER, MICHAEL TURNIPSEED

-oOo-

In the Matter of Applications )  
62405, 62619, 62830, 62831, 62897 )  
63005, 63006, 63008, 63009, 63025 )  
63026, 63027, 63034, 63056, 63057 )  
63060, 63061, 63073, 63097, 63098 )  
63104, 63105, 63106, 63137, 63138 )  
63209, 63220, 63243, 63244, 63253 )  
63268, 63280, and 63283 )

# 4642

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

VOLUME I

MONDAY, JUNE 15, 1998

CARSON CITY, NEVADA

Reported By:

KAREN YATES, RPR  
Nevada CCR No. 195

1 Previous to the hearing, we put the protests in  
2 about eight different categories, realizing that the City of  
3 Fallon protested certain applications and the County of  
4 Churchill protested certain applications, and many of the  
5 applications were protested by both.

6 The categories are: The water rights have been  
7 abandoned; the water rights have been forfeited. Because  
8 the water rights have been abandoned or forfeited, reviving  
9 and granting the change applications would conflict with  
10 existing rights. Because the water rights have been  
11 abandoned or forfeited, reviving and granting the change  
12 applications would per se be detrimental to the public  
13 interest.

14 Because the water rights have been abandoned or  
15 forfeited, reviving and granting the change applications  
16 would be detrimental to the public interest because it would  
17 reduce the water that recharges aquifers, thereby depleting  
18 Churchill County's drinking water supply. Because the water  
19 rights have been abandoned or forfeited, reviving and  
20 granting the change applications would violate Public Law  
21 101-618 and reduce rights decreed to TCID and water to  
22 Pyramid Lake.

23 Because the water rights have been abandoned or  
24 forfeited, reviving and granting the change applications  
25 would violate the Endangered Species Act. If granted, the

1 change application would jeopardize many thousands of  
2 Nevada's residents' drinking water supply.

3           Hopefully, I have addressed all of those in my  
4 findings of fact, conclusions of law, and ruling.

5           Finding of fact one. I can find no evidence in  
6 this record that the owners of these water rights past or  
7 present intended to abandon, desert, forsake, or relinquish  
8 these water rights. That standard is set out in Franktown  
9 Creek Irrigation Company versus Marlette Lake Company and  
10 the State Engineer, and other cases.

11           Quite the contrary. The evidence shows  
12 reservation by deed, by quiet title action, by dedication,  
13 that there was no intent to abandon these water rights.

14           Finding of fact two. I find nothing in the record  
15 as to other union of acts or circumstances that would lead  
16 the fact finder to find that these water rights had been  
17 abandoned. The union of acts means more than just non-use.  
18 That standard is set out in a Nevada case called Revert vs.  
19 Ray.

20           Finding of fact three. I find nothing in the  
21 record that would indicate that the approval of these change  
22 applications would violate Public Law 101-618 or the  
23 Endangered Species Act. Quite the contrary. More water  
24 would go downstream by the conversion of agricultural rights  
25 to municipal and industrial water rights

1           Finding of fact four. I find that those water  
2 rights with a decreed priority date that precede 1913 are  
3 not subject to forfeiture. That's directly in line with the  
4 Alpine III case. The surface water rights vested or were  
5 initiated in accordance with the law in effect prior to  
6 1913, and were decreed as such. Those are all found in the  
7 Orr Ditch decree.

8           Finding of fact five. I find that these water  
9 rights are determined not to be abandoned and are available  
10 to be transferred to a new point of diversion, place of use,  
11 and/or manner of use as anticipated in the Orr Ditch decree,  
12 special master's report, and Nevada water law. The cite to  
13 the Orr Ditch decree is in the general provisions, page 88.  
14 The NRS that covers those provisions are in 533.325 and  
15 533.345.

16           Conclusions of law, number one. Nevada case law  
17 discourages and abhors the taking of water rights away from  
18 people. Therefore, the Supreme Court of Nevada has set the  
19 standard of "clear and convincing evidence," which is  
20 somewhere between substantial evidence and beyond a  
21 reasonable doubt. In this case, protestants have failed to  
22 carry that burden of showing by clear and convincing  
23 evidence that these water rights have been abandoned.

24           Now, as to the forfeiture of a portion of  
25 Application 63026 and 63619, all those water rights or

1 parcels with a priority date post-1913 are subject to  
2 forfeiture, directly in line with the Alpine III decision in  
3 the Ninth Circuit.

4 Did I misstate the application? The applications  
5 that have portions that are subject to forfeiture are 63026  
6 and 62619.

7 Evidence shows that 1.6 acres in Claim 139 as  
8 being irrigated as late as 1992. Therefore, if there ever  
9 was a forfeiture, it has been cured, based on the Eureka  
10 decision. All other claims on 63026 or 62619 which have a  
11 post-1913 priority date show no use for a substantial period  
12 of time. Therefore, those portions have been forfeited as  
13 per Alpine III. To interpret otherwise would be a  
14 collateral attack on the decree.

15 Protestants brought up the fact that beneficial  
16 use is the standard in Nevada. Beneficial use is the  
17 standard in almost all of the western states, but I have to  
18 weigh beneficial use versus taking a real private property  
19 right. The Nevada Supreme Court has said it abhors such  
20 action.

21 I conclude that the conversion of ag rights to M &  
22 I rights was anticipated in Public Law 101-618. The Sierra  
23 Pacific Power Company resource plan and Nevada legislature  
24 have also anticipated the conversion of agricultural rights  
25 to municipal rights in the Truckee Meadows to sustain

1 growth. Therefore, approval of these change applications  
2 would not threaten or prove detrimental to the public  
3 interest.

4 As to the shifting of the burden of showing intent  
5 or lack thereof, in the Town of Eureka versus the State  
6 Engineer, the Supreme Court was clear in that the person  
7 claiming forfeiture has the burden. I see no reason why the  
8 burden on abandonment would be otherwise. It is not the law  
9 in Nevada until the legislature speaks to that issue.

10 I conclude that these water rights are valid water  
11 rights and can be changed from ag to municipal without  
12 interfering with existing water rights, as shown in the  
13 Burns exhibit.

14 Now, for the ruling. Protests to all applications  
15 are hereby overruled, except for the protest based on  
16 forfeiture in Application 62619 and 63026. The 30  
17 applications which are based entirely on pre-1913 water  
18 rights are approved in their entirety, subject to the  
19 payment of the statutory fees and ownership verification.

20 Application 62619 and 63026 are approved except  
21 those portions based on Truckee River Claims 105, 118, and  
22 55, subject again to payment of the statutory fees and  
23 ownership verification.

24 Any question on the ruling? I also want to thank  
25 you for your attention and your professionalism in this

1 hearing. We had actually set aside three weeks for the  
2 hearing and finished it in three days.

3 If there are no questions -- Mr. King?

4 MR. KING: Simply, the ruling then will be reduced  
5 to a written ruling or just orally --

6 THE STATE ENGINEER: Orally and a copy of the  
7 transcript. The appeal period will begin running today  
8 under 533.450.

9 Any other questions about the ruling? The hearing  
10 is closed.

11 (The hearing concluded at 4:55 p.m.)  
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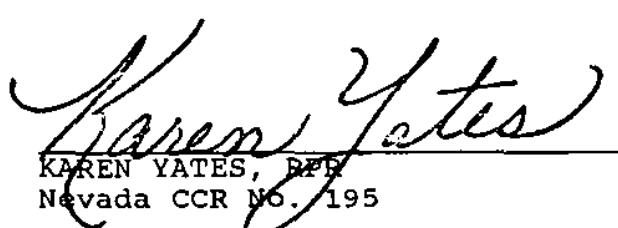
1  
2 STATE OF NEVADA, )  
3 CARSON CITY. ) ss.  
4

5 I, KAREN YATES, a Certified Court Reporter in  
6 and for the State of Nevada, do hereby certify:

7 That I was present at a meeting of the Nevada  
8 Department of Conservation and Natural Resources, Division  
9 of Water Resources, 123 West Nye Lane, Carson City, Nevada,  
10 on June 15, 16, and 17, 1998, and took verbatim stenotype  
11 notes of the proceedings had upon the hearing in the  
12 matter of Change Applications 62405, et cetera, and  
13 thereafter transcribed them into typewriting as herein  
14 appears,

15 That the foregoing transcript, consisting of  
16 pages 1 through 479, is a full, true and correct  
17 transcription of my stenotype notes of said hearing.  
18

19 DATED at Carson City, Nevada, this 29th day of  
20 June, 1998.

21  
22   
23 KAREN YATES, RPR  
24 Nevada CCR No. 195  
25



# APPENDIX

## TAB 8

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

IN THE MATTER OF APPLICATIONS 63125, )  
63281, 63282, 63310, 63311, 63528, )  
63614, 63615, 63617, 63618, 63644, 63645, )  
63649, 63699, 63701, 63709, 63711, )  
63713, 63714, 64050, 64052, AND 64059 )  
FILED TO CHANGE THE POINT OF DIVERSION, )  
PLACE AND MANNER OF USE OF VARIOUS )  
TRUCKEE RIVER CERTIFICATED AND DECREED )  
WATER RIGHTS, IN THE TRUCKEE CANYON )  
SEGMENT GROUNDWATER BASIN (91), WASHOE )  
COUNTY, NEVADA. )

RULING

# 4661

GENERAL

I.

Application 63125 was filed on May 19, 1997, by the City of Reno, City of Sparks, Washoe County, and Sierra Pacific Power Company to change the point of diversion, manner of use and place of use of 2.862 cubic feet per second (cfs), not to exceed 554.94 acre-feet annually (afa), a portion of the waters of the Truckee River previously appropriated under Claim Numbers 198, 201, 204, 207, 208, 208½, 209, 211, 214, 215, and 218 of the Orr Ditch Decree.<sup>1</sup> The proposed manner of use is for municipal and domestic purposes within the Sierra Pacific Power Company's certificated water service area. The proposed points of diversion are described as being Sierra Pacific's existing water treatment plants. The existing manner of use is as decreed.<sup>2</sup>

II.

Application 63281 was filed on July 25, 1997, by Taywood-Dermody Partnership to change the point of diversion, manner of use and place of use of 0.0433 cfs, not to exceed 4.13 afa, a portion of the waters of the Truckee River previously appropriated under Claim Number 236 as modified by Permit No. 11489, of the Orr Ditch

<sup>1</sup> Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D. Nev. 1944) (hereinafter referred to as "Orr Ditch Decree").

<sup>2</sup> File No. 63125, official records in the office of the State Engineer.

these water rights would interfere with existing water rights and would be detrimental to the public interest;

- B. the water rights that are the subject of the change applications have been forfeited for non-use, and the reactivation of these water rights would interfere with existing water rights and would threaten to prove detrimental to the public interest;
- C. the reactivation of these water rights would be in violation of the Endangered Species Act; and
- D. the reactivation of these water rights would be in violation of Public Law 101-618.

Although some variations occur when comparing the earlier protests with the more recent ones, the State Engineer finds that each protest contains a common set of contentions, including those which were ruled upon during the June 1998 hearings.

#### IV.

In Alpine III, the Ninth Circuit Court of Appeals held that "[i]f the right vested before March 22, 1913, or if the appropriation of the right was initiated in accordance with the law in effect prior to that date, then it is not subject to possible forfeiture under NRS 533.060."<sup>26</sup> The State Engineer finds that all water rights requested for transfer pursuant to these transfer applications are changes of pre-1913 water rights established under the Orr Ditch Decree. Therefore, they are not subject to the forfeiture provisions of Nevada Revised Statute § 533.060. Furthermore, the State Engineer finds that since forfeiture is not an issue in this determination there is no need to request or receive additional evidence and testimony.

#### V.

Abandonment requires a union of acts and intent and cannot be presumed to have occurred solely upon evidence of a prolonged

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<sup>26</sup> U.S. v. Alpine Land & Reservoir Co., 983 F.2d 1487, 1496 (9th Cir. 1992).

period of non-use.<sup>27</sup> During the evidentiary portion of the June 1998 hearings there was a general consensus among the applicants' and protestants' counsel that it would be difficult, if not impossible to reach back through the years to discern any intent which the original owner of the water right may have had to abandon his right. The protestants instead relied upon non-use alone to create a presumption of intent to abandon. This was accomplished through a series of exhibits and testimony which related entirely to the issue of non-use. During the June 1998 hearings, the State Engineer accepted the fact that the holders of those water rights by either reserving them out of deeds or transferring them to new owners evidenced an intent not to abandon those rights. The situation is not any different here. The State Engineer finds that the protestants, relying heavily upon evidence of non-use, did not establish an intent to abandon. The applicants here are not the original decreed owners. Surface water rights in the Truckee Meadows are bought and sold on a regular basis. The applicants here purchased Truckee River water rights from willing sellers. Whether one reserves water rights in a land transaction or severs the water from the land with the intent to sell, the State Engineer finds that any claim of intent to abandon must fail. The State Engineer further finds there is no need to request additional evidence and testimony to build a case for abandonment based solely on non-use of the water right.

VI.

Both the City of Fallon and Churchill County contend that the approval of the subject applications would violate the Endangered Species Act and Public Law 101-618. The State Engineer finds that these are legal issues which do not require additional testimony and evidence beyond that received during the June 1998 hearings.

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<sup>27</sup> Re Waters of Manse Spring, 60 Nev. 280 (1940); Revert v. Ray, 95 Nev. 782, 786 (1979).

VII.

The State Engineer upon consideration of a protest may at his discretion hold hearings and require the filing of such evidence as he may deem necessary for a full understanding of the water rights involved.<sup>28</sup> The State Engineer finds that the subject applications and protests are similar in nature to those which were evaluated, considered, and ruled upon at the June 1998 hearings; therefore, the need for any additional hearings to consider the merits of the protests can be satisfied by the information contained within the record of said hearing and the office of the State Engineer without scheduling additional hearings.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>29</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:<sup>30</sup>

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

III.

The City of Fallon and Churchill County have since 1996 filed protests against Truckee River change applications which request a conversion of agricultural water rights to municipal water rights. In June 1998 a public administrative hearing in the matter of 32 of these types of applications was held before the State Engineer which culminated in the issuance of State Engineer's Ruling No. 4642. As set forth in that ruling, the protests of 30 of the 32

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<sup>28</sup> NRS § 533.365(3).

<sup>29</sup> NRS Chapter 533.

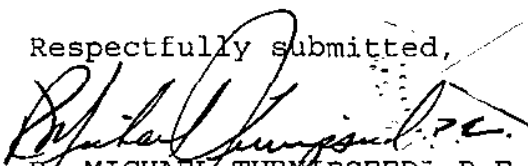
<sup>30</sup> NRS § 533.370(3).

applications were overruled after it was determined by the State Engineer that their approval would not conflict with existing water rights or threaten to prove detrimental to the public interest. The applications and protests which are the subject of this ruling differ little from those heard during the June 1998 hearing. The findings of fact and the conclusions of law which were formulated by the State Engineer and utilized as the basis of his ruling during the June 1998 hearing can be applied in considering the approval or denial of these applications as well. Based on these findings and conclusions, the State Engineer concludes that the approval of the subject applications would not conflict with existing rights nor threaten to prove detrimental to the public interest.

RULING

The protests to Applications 63125, 63281, 63282, 63310, 63311, 63528, 63614, 63615, 63617, 63618, 63644, 63645, 63649, 63699, 63701, 63709, 63711, 63713, 63714, 64050, 64052, and 64059 are hereby overruled and the above applications are approved subject to existing rights and the payment of the statutory filing fees.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/cl

Dated this 26th day of  
August, 1998.

# APPENDIX

## TAB 9

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

IN THE MATTER OF APPLICATIONS )  
67435 AND 67436 FILED TO CHANGE )  
THE MANNER OF USE OF THE )  
UNDERGROUND WATERS OF THE LOWER )  
MEADOW VALLEY WASH HYDROGRAPHIC )  
BASIN (205), LINCOLN COUNTY, )  
NEVADA. )

RULING

# 5262

GENERAL

I.

Application 67435 was filed on April 18, 2001, by the Union Pacific Railroad Company to change the manner of use of 0.89 cubic feet per second (cfs) of water previously appropriated from an underground source at Rox, Nevada, under Proof 04367 in the Lower Meadow Valley Wash Hydrographic Basin. The manner of use is requested to be changed from railroad and domestic uses to industrial use. The point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 24, T.12S., R.65E., M.D.B.&M.<sup>1</sup>

Application 67436 was filed on April 18, 2001, by the Union Pacific Railroad Company to change the manner of use of 0.25 cfs of water previously appropriated from an underground source at Carp, Nevada, under Proof 04366 in the Lower Meadow Valley Wash Hydrographic Basin. The manner of use is requested to be changed from railroad and domestic uses to industrial use. The point of diversion is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, T.10S., R.67E., M.D.B.&M.<sup>2</sup>

<sup>1</sup> File No. 67435, official records in the Office of the State Engineer.

<sup>2</sup> File No. 67436, official records in the Office of the State Engineer.



was 180.99 acre-feet annually, since the surface water source may not have been continually available.

**XI.**

The estimated total combined consumption for the helper and train engines, maintenance of way, and other industrial and domestic uses at Carp and Rox is 719.73 acre-feet annually. However, due to the limitation of the diversion rate at the Carp well, the State Engineer finds the estimated total combined consumption from the Carp and Rox wells was 580.06 acre-feet annually.

**XII.**

The MVWD protested these applications on the ground that if the applications were granted they would have an adverse effect upon and therefore conflict with prior rights of the protestant. The MVWD does not hold any water rights in the Lower Meadow Valley Wash Hydrographic Basin. The MVWD does have pending applications in the Lower Meadow Valley Wash Hydrographic Basin;<sup>42</sup> however, if permits were granted under these applications, with 1997 priority dates they would be junior to the water rights held by the applicant. The MVWD did not specify any particular water rights that may be adversely affected. The State Engineer finds this protest claim lacks merit.

**XIII.**

The MVWD protested the applications on the ground the groundwater basin in which the applications seek ground water is fully appropriated; therefore, there is no water available for appropriation. The State Engineer finds these applications involved decreed water rights, which represents water that is already appropriated within the Lower Meadow Valley Wash Hydrographic Basin; therefore, the protest claim lacks merit.

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<sup>42</sup> Applications 63379, 63380 and 63381.

**XIV.**

The MVWD protested the applications on the ground that the underlying claimed water rights, that is Proofs of Appropriation 04366 and 04367, are forfeited and/or abandoned, because the water rights have not been placed to beneficial use for railroad purposes for many years longer than five consecutive years. By lodging these protests, the MVWD indicated that it was petitioning the State Engineer to schedule an administrative hearing on the issue of forfeiture and/or abandonment for Proofs of Appropriation 04366 and 04367.

The State Engineer notes that historical research identified above indicates that these wells and their use as pumping stations was abandoned by the railroad in the 1950's when dieselization of the railroad took place. The issue of forfeiture and/or abandonment of at least a portion of these water rights probably should have been raised during the adjudication process. However, it was not and these water rights were decreed on June 9, 1999. Therefore, the State Engineer finds that five consecutive years of non-use has not run from the date of the decree and the filing of these applications on April 18, 2001.

**XV.**

The MVWD protested these applications on the ground that the granting of the applications, in light of the above allegations, would definitely prove detrimental to the public interest. The State Engineer finds he has overruled the other protest claims; therefore, this one does warrant consideration.

**XVI.**

In the Union Pacific Railroad's response to the MVWD's protests, it indicated that the Railroad by filing the change applications is applying to change the manner of use under the proofs of appropriation from railroad and domestic to industrial.

The Railroad, through continued use of a portion of the water rights for railroad purposes and eventual transfer of the

remaining portion of the water right to Vidler Water Company, intends to use the water beneficially for commercial purposes. Union Pacific indicated, in this case, it is likely that the Vidler water would be used for much needed power production in Southern Nevada.

The Railroad filed the Change Applications to facilitate Vidler's intentions to use the water in connection with power generation or similarly intense industrial uses.

\* \* \*

Here, the Change Applications are being made in conjunction with the proposed sale of the water rights to Vidler Water Company. Vidler fully intends to put the water to beneficial use and has demonstrated the ability to do so. In any event, the existing Change Applications represent only an interim step in the process and the District will have every opportunity to be heard when the owner seeks to change the place of use to the selected location(s).<sup>43</sup>

The State Engineer finds that change applications are not granted for the mere sale of water to another entity for some unknown project. The purchaser is not the applicant under these applications and there is no evidence of any specific project by which the water will be placed to beneficial use. Nevada Revised Statute § 533.335 provides that an application for a permit must state the purpose for which an application is made and a description of the proposed works, an estimated cost of the proposed works and the time required to construct the works and estimated time required to complete the application of the water to beneficial use. While these items are identified in the applications, if the applicant does not even know what the use of the water will be, it appears these items as identified in the application are not based on actual knowledge. Nevada Revised

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<sup>43</sup> File Nos. 67435 and 67437, official records in the Office of the State Engineer, pp. 3-4.

# APPENDIX

## TAB 10

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

IN THE MATTER OF PERMIT )  
20927, CERTIFICATE 5719, AND )  
APPLICATION 48439 FILED TO )  
APPROPRIATE THE PUBLIC )  
WATERS OF MUSTANG SPRING )  
WITHIN THE BUENA VISTA )  
VALLEY HYDROGRAPHIC BASIN )  
(129), PERSHING COUNTY, )  
NEVADA. )

RULING  
**# 5268**

GENERAL

I.

Certificate 5719 was issued on April 8, 1964, under Permit 20927, to the Dixie Valley Cattle Corporation to appropriate 0.005 cubic feet per second (cfs) of water from Mustang Spring for stockwatering and domestic purposes. The place of use is described as being located within the SW¼ SE¼ of Section 25, T.26N., R.36E., M.D.B.&M. The point of diversion is described as being located within the SW¼ SE¼ of said Section 25.<sup>1</sup>

II.

Application 48439 was filed on September 26, 1984, by Don and Martha Sims, and later assigned to Michael Maestri and Sharon B. Siegel to appropriate 1.0 cfs of water from Mustang Spring for stockwatering purposes. The proposed place of use is described as being located within the SW¼ SE¼ of Section 25, T.26N., R.36E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of said Section 25.<sup>2</sup>

FINDINGS OF FACT

I.

On May 1, 1973, the agent for Don and Martha Sims submitted certified copies of deeds, in part to prove ownership of Permit 20927, Certificate 5719. The assignment of Permit 20927, Certificate 5719, could not be completed because a complete chain of

<sup>1</sup> File No. 20927, official records in the Office of the State Engineer.

<sup>2</sup> File No. 48439, official records in the Office of the State Engineer.

title was not provided. By letter dated September 26, 1984, Omni-Means, Ltd., on behalf on Don and Martha Sims, wrote the following:<sup>1</sup>

On behalf of Don and Martha Sims, they request Permit 20927, Certificate 5719, be forfeited and/or abandoned as provided under NRS 533.060 and/or other appropriate sections of NRS. The water appropriated under said permit has not been used by the permittee since at least September 1, 1979.

Don and Martha Sims have been trying to transfer title of Permit 20927 since prior to May 3, 1979. The current permittee, Dixie Valley Cattle Corp., has not been in existence [sic] for more than six years. As the water right is on BLM land, no land deeds exist transferring the right, nor are there any other deeds specifying Permit 20927 to be transferred to another owner.

As a result, the Sims are making a new water right application and request the existing right be forfeited and/or abandoned.

A hearing was held on June 5, 1985, by the State Engineer to consider the petition that Permit 20927, Certificate 5719, be declared forfeited and/or abandoned. At the hearing, a continuance was ordered when the Sims indicated that they would again attempt to clear the chain of title from Dixie Valley Cattle Corporation to Don and Martha Sims.<sup>1</sup> The State Engineer finds Don and Martha Sims were unable to clear the chain of title to Permit 20927, Certificate 5719, and therefore, the administrative action regarding abandonment, started at the hearing of June 5, 1985, must be reconsidered.

## II.

On March 21, 2000, Application 48439 was assigned to show Michael Maestri and Sharon B. Siegel as the current owners of record, succeeding Don and Martha Sims.<sup>2</sup> Application 48439 was filed on the same source of water appropriated under Permit 20927, Certificate 5719. A review of records on file in the Office of the State Engineer show there are no other applications, permits, certificates, vested, or reserved rights on Mustang Spring. The State Engineer finds that approval of Application 48439 cannot be considered until a determination of abandonment is made on Permit 20927, Certificate 5719.

## III.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock on the public lands unless the applicant for the permit is legally entitled to place livestock on the public lands

for which the permit is sought. The BLM informed the State Engineer on April 2, 2003, that Michael Maestri is the Permittee and Range User for the locations described under Application 48439.<sup>2</sup> The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range serviced by the water source described under Application 48439.

#### IV.

The Dixie Valley Cattle Corporation has not been the range user on the grazing allotment served by Permit 20927, Certificate 5719, since prior to 1985.<sup>2</sup> The State Engineer finds the Dixie Valley Cattle Corporation has not been legally entitled to use water under Permit 20927, Certificate 5719, for at least 18 years and the corporation is not known to exist any longer.

#### V.

A review of records from the Nevada Secretary of State's office shows no listing under the name of Dixie Valley Cattle Corporation. The State Engineer finds the Dixie Valley Cattle Corporation has no corporate status in the State of Nevada at this time.

#### VI.

William M. Lamb, manager of the Dixie Valley Cattle Corporation, signed the original water right application under Permit 20927, Certificate 5719. Deeds submitted in 1979 include documentation quitclaiming the interest of Sheldon W. Lamb to Ward Tarp and deeds from Ward Tarp to Don and Martha Sims with the implication that Sheldon W. Lamb was the successor to William M. Lamb, manager of the Dixie Valley Cattle Corporation.<sup>1</sup> Although this information was not sufficient to convey the water right, the State Engineer finds that the Dixie Valley Cattle Corporation intended to convey the water right under Permit 20927, Certificate 5719, to the grazing allotment successor.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

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<sup>3</sup> NRS chapter 533.

II.

The State Engineer concludes Application 48439 was filed to replace Permit 20927, Certificate 5719, because all other efforts to convey the stock water rights on Mustang Spring to the new range user were exhausted. The State Engineer further concludes that, under these particular circumstances, the only solution provided by Nevada Water Law is to declare Permit 20927, Certificate 5719, abandoned and issue Application 48439 to the new range user.

III.

The State Engineer concludes that the Dixie Valley Cattle Corporation abandoned Permit 20927, Certificate 5719, as evidenced by the overt acts of failure to maintain corporate status, failure to maintain a federal grazing permit, failure to put the water to beneficial use for at least 18 years, and the attempts to transfer the water right by deed to new range users.

**RULING**

Permit 20927, Certificate 5719, is hereby declared abandoned. The water under Permit 20927, Certificate 5719, reverts to the source and may be subject to further appropriation in accordance with Nevada Water Law. Application 48439 is hereby approved subject to existing rights and the payment of the statutory permit fee.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 13th day of  
August, 2003.



# APPENDIX

## TAB 11

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

IN THE MATTER OF APPLICATION )  
56226 FILED TO CHANGE THE )  
MANNER AND PLACE OF USE OF )  
THE WATERS OF THE TRUCKEE )  
RIVER, STOREY COUNTY, NEVADA. )

**RULING ON REMAND**

**4116A**

**GENERAL**

**I.**

Application 56226 was filed on April 24, 1991, by the Town of Fernley to change the place and manner of use of 282.26 acre-feet annually, a portion of the waters heretofore decreed and set forth under Claim No. 3 of the *Orr Ditch Decree*.<sup>1</sup> The Application proposed to change the manner of use from the decreed use of irrigation, storage, power, domestic and other purposes to municipal use with the Fernley Utilities water service area.<sup>2</sup> The point of diversion remained at Derby Dam, located within the N $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 19, T.20S., R.23E., M.D.B.&M.<sup>3</sup>

**II.**

Application 56226 was timely protested by the United States Bureau of Reclamation (Bureau) and the Pyramid Lake Paiute Tribe of Indians (Tribe).

**III.**

An administrative hearing was held on May 25-26, 1993, after which the State Engineer issued State Engineer's Ruling No. 4116 (Ruling 4116). The Bureau and the Tribe appealed Ruling 4116 to the Federal District Court and the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals reversed the Federal District Court's decision affirming the State Engineer's decision and remanded the matter to the Federal District Court for further proceedings consistent with its opinion.<sup>4</sup> On June 24, 2005, the

<sup>1</sup> Final Decree, *United States v. Orr Water Ditch Co.*, In Equity, Docket No. A-3 (D. Nev. Sept. 4, 1944).

<sup>2</sup> State Engineer's Ruling No. 4116, dated May 27, 1994, official records in the Office of the State Engineer.

<sup>3</sup> Exhibit No. 2, public administrative hearing before the State Engineer, May 25, 1993, hereinafter the transcript of the hearing and the exhibits will be referred to solely by the transcript page number or the exhibit number.

<sup>4</sup> *U.S. v. Orr Water Ditch Co.*, 256 F.3d 935 (2001).

use was irrigated.<sup>21</sup> The State Engineer finds the Application was filed in 1991 and the existing place of use was irrigated in 1989; therefore, the Tribe has not proven a five-year period of non-use prior to the filing of the Application and affirms the earlier decision that the water right is not subject to forfeiture.

## V.

### Abandonment

The State Engineer has already found that Parcels 1, 3, 9, 10, and 16 are subject to a determination of forfeiture; therefore, it is unnecessary to review those parcels for a determination if they are also subject to a declaration of abandonment. The State Engineer has already found that the Tribe has not proven that Parcels 8, 19 or 20 are subject to a declaration of forfeiture as it has not proved its case as to non-use; therefore, it is unnecessary to review those parcels for a determination if they are also subject to a declaration of abandonment. The State Engineer has already found that Parcel 27 and the northern portion of Parcel 28 cannot be transferred under this application as the relevant contract document was not provided and as such no determination could be made on the protest issues of forfeiture and abandonment.

The parcels that will be reviewed as to abandonment are Parcels 2, 4, 5, 7, 11, 12, 14, 15, 17, 18, 21, 22, 23, 24, 25, 26, and a portion of 28.

The State Engineer finds the standard for reviewing whether a water right in the Newlands Project is subject to a declaration of abandonment has been established in a series of cases in the *U.S. v. Alpine* cases commonly known as *Alpine IV*, *V* and *VI*, which provide the following:<sup>22</sup>

1. The Tribe bears the burden of proving clear and convincing evidence of acts of non-use of the water, of abandonment and an intent to abandon.
2. A water right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the

<sup>21</sup> Exhibit No. 20-8.

<sup>22</sup> *U.S. v. Alpine*, 27 F. Supp. 2d 1230 (D. Nev. 1998), 291 F.3d 1062 (9<sup>th</sup> Cir. 2002), 340F.3d 903 (9<sup>th</sup> Cir. 2003).

likelihood of abandonment. But said non-use is only some evidence of an intent to abandon the right. There is no rebuttable presumption of abandonment under Nevada Water Law, but a prolonged period of non-use may raise an inference of an intent to abandon.

3. Abandonment is a question of fact to be determined from all the surrounding circumstances, which certainly includes the payment of taxes and assessments. If the Tribe provides evidence of a substantial period of non-use combined with improvements on the land inconsistent with irrigation, the payment of taxes and assessments alone will not defeat a claim of abandonment. However, if the Tribe's only evidence is non-use and there is a finding of the payment of taxes and assessments, the Tribe has failed to provide clear and convincing evidence of abandonment. Bare ground by itself does not constitute abandonment. If the Tribe has proved a substantial period of non-use and a use inconsistent with irrigation, the Applicant must have provided other evidence to show there was no intent to abandon the water right to avoid a declaration of abandonment.

**Parcel 2** – The contract date is December 20, 1907. In Ruling 4116, the State Engineer found that the Town of Fernley had kept the water rights in good standing as evidenced by the payment of assessments to the Truckee-Carson Irrigation District and there was no evidence that the previous owner had failed to pay the assessments. The Tribe provided evidence in Exhibit No. 20-5 “Historical Land Use for the Places Applied for Transfer,” which indicates from aerial photographs that in 1949 the land use was described as bare land prepared for cultivation. The land use was described in 1973 as a building, and farm road and in 1977, 1984 and 1991 as a building.<sup>22</sup> Exhibit No. 20-12 shows that a house surrounded by mature residential landscaping occupies the existing place of use, and

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<sup>22</sup> Exhibit No. 20-5.

Exhibit No. 20-8 indicates that the composite map shows the existing place of use was not irrigated from 1984 through 1989.

The State Engineer finds no water was placed to beneficial use on Parcel 2 for the 18-year period from 1973 through the filing of the application in 1991. The State Engineer finds the existing place of use is occupied by a use inconsistent with irrigation. The State Engineer finds the only evidence as to a lack of intent to abandon the water right is the payment of assessments, which the Ninth Circuit Court of Appeals has held is insufficient to avoid a declaration of abandonment. The State Engineer finds the water right appurtenant to Parcel 2 is subject to a declaration of abandonment.

**Parcel 4** – The contract date is February 16, 1910. In Ruling 4116, the State Engineer found that the Town of Fernley had kept the water rights in good standing as evidenced by the payment of assessments to the Truckee-Carson Irrigation District and there was no evidence that the previous owner had failed to pay the assessments. The Tribe provided evidence in Exhibit No. 20-5 “Historical Land Use for the Places Applied for Transfer,” which indicates from aerial photographs that in 1949 the land use was described as irrigated land. The land use was described in 1973 as bare land prepared for cultivation. In 1977 the land use was described as a building and irrigated field, and in 1984 and 1991 as buildings and a paved street.<sup>23</sup> Exhibit No. 20-8 indicates that the composite map shows the existing place of use was not irrigated from 1984 through 1989.

The State Engineer finds no water was placed to beneficial use on Parcel 4 for the seven-year period from 1984 through the filing of the application in 1991. The State Engineer finds the existing place of use is occupied by a use inconsistent with irrigated agriculture. The State Engineer finds the only evidence as to a lack of intent to abandon the water right is the payment of assessments, which the Ninth Circuit Court of Appeals has held is insufficient to avoid a declaration of abandonment. The State Engineer finds the water right appurtenant to Parcel 4 is subject to a declaration of abandonment.

**Parcel 5** – The contract date is December 20, 1907. In Ruling 4116, the State Engineer found that the Town of Fernley had kept the water rights in good standing as evidenced by

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<sup>23</sup> Exhibit No. 20-5.

# APPENDIX

## TAB 12

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

IN THE MATTER OF APPLICATIONS )  
74279, 74349, 74451, 74498, 74518, 74759, )  
74760, 74762, 74866, 74938, 74977, 74987, )  
75046, 75183, 75191, 75242, 75243, 75248, )  
AND 75304 FILED TO CHANGE THE )  
POINT OF DIVERSION AND/OR PLACE )  
OF USE AND/OR MANNER OF USE OF )  
THE UNDERGROUND WATERS OF )  
CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, )  
NEVADA. )

**RULING**  
**#5791**

**GENERAL**

**I.**

On May 8, 2006, W.R. Technology Park, LLC filed Application 74279 to change the point of diversion of 0.223 cubic feet per second (cfs), not to exceed 3.26 million gallons annually (mga), a portion of the underground water previously appropriated under Permit 63131 in the Carson Valley Hydrographic Basin. The manner of use is for industrial purposes. The place of use is within all that portion of the described land lying east of the Allerman Canal as existing in 1978 described as the S½ SW¼ SE¼ and S½ SE¼ SW¼ (APN 23-300-18), E½ SW¼, N½ SE¼, N½ SW¼ SE¼ (APN 23-480-16 and 97), SE¼ SE¼ (APN 23-480-24) of Section 2, T.12N., R.20E., M.D.B.&M., and NE¼ NE¼ of Section 11, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within NE¼ NE¼ of Section 11, T.12N., R.20E., M.D.B.&M. The existing point of diversion is located within NE¼ SE¼ of Section 2, T.12N., R.20E., M.D.B.&M. Application 74279 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>1</sup>

By letter dated June 12, 2007, the agent for the W.R. Technology Park, LLC indicated that the application only moves the point of diversion from the permitted well on land within the technology park to an existing certificated well (Permit 63132, Certificate 16585), which is located approximately 2,350 feet due south of the well under

<sup>1</sup> File No. 74279, official records in the Office of the State Engineer.

application of this provision of the NRS to the Carson Valley Hydrographic Basin is evidenced by State Engineer's Order No. 904. Order No. 904 describes and further designates a portion of the Carson Valley Hydrographic Basin also known as the Johnson Lane area. Within this further designated area, the State Engineer placed additional restrictions on ground water withdrawals. Specifically, applications seeking to appropriate water or to change the point of diversion of an existing water right outside the area to a new point of diversion within the Johnson Lane area will be denied. A review of Application 74498 and its supporting maps show that the water sought for change under Permit 58531 has a point of diversion located outside of the designated Johnson Lane area, while the proposed point of diversion under Application 74498 falls well within this area.

The State Engineer finds that to approve Application 74498 would violate State Engineer's Order No. 904; therefore, the requested change cannot be considered.

#### **XIV.**

As to Application 74451, the Tribe argues that the application is defective and should be denied or returned for correction as it does not indicate the number of persons to be served and the future requirement of the domestic use is not provided as required by NRS § 533.340. The State Engineer finds NRS § 533.340(3) addresses municipal use and Application 74451 is for irrigation and domestic use and overrules the protest claim.

#### **XV.**

The Tribe protested Applications 74451 and 74498 on the grounds that the water rights have been forfeited and/or abandoned. However, the Tribe later changes this to an allegation of cancellation or forfeiture. In its Report of Stetson Engineers, the Tribe argues that the water right that Applications 74451 and 74498 seek to change should be cancelled or forfeited on the ground that the water has not been put to beneficial use.

Douglas County argues that China Spring has been physically constrained from using its water by the design and corrosion in its existing irrigation well. Additionally, that China Spring has undergone significant expansion during the past five years and has been subject to such severe water rationing that at times water has been trucked in to serve the water needs of the facility. It indicated that a new well has been drilled that will allow it to beneficially use the water under Application 74451. Douglas County provided evidence that the static water level in the well drilled for Application 74451 at the China Spring regional treatment center is at an elevation of 5,300 feet, and the Carson River, 1



mile west of China Spring, is at an elevation of 5,100 feet. Moreover, the new well appears to be located within a “structural block which has a water level somewhat independent of the structural block to the east and west.”<sup>61</sup> Douglas County filed proof of beneficial use of a portion of the water under Permit 66912, that being 0.217 million gallons annually and Application 74451 seeks to move the balance of the water.

The State Engineer finds Applications 74451 and 74498 were not protested on the grounds that the base rights should be cancelled and the protest claim is overruled.

The State Engineer finds that the doctrine of forfeiture only applies to perfected water rights, that is, water that has been placed to beneficial use. Application 74451 seeks to move the water that has not yet been placed to beneficial use under Permit 66912; therefore, the State Engineer finds the doctrine of forfeiture is inapplicable and the protest claim as to forfeiture is overruled. The State Engineer finds Douglas County has filed extensions of time under the base rights which Application 74451 seeks to change and has drilled a new well in order to place the water to beneficial use demonstrating a lack of intent to abandon the water and the Tribe did not provide any specific evidence in support of a claim of abandonment and that portion of the protest allegation is overruled.

As to Application 74498, it seeks to change water permitted under Permit 58531 for irrigation purposes. The State Engineer finds that Permit 58531 changed water that had been placed to beneficial use and certificated under Permit 24696. Proof of beneficial use under Permit 58531 was first due to be filed in December 1998; however, extensions of time have been granted until December 2007. The State Engineer finds the doctrine of forfeiture is not applicable under Permit 58531 as the water right has not been perfected. The State Engineer finds the Permittee under Permit 58531 filed proof of completion for the drilling of the well in April 2005. The last two requests for extensions of time indicated that water lines are being installed and planting was to commence in April 2007. The State Engineer finds the Permittee under the base right that Application 74498 seeks to change has demonstrated steps being taken to place the water to beneficial use demonstrating a lack of intent to abandon the water and the Tribe did not provide any specific evidence in support of a claim of abandonment and that portion of the protest allegation is overruled.

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<sup>61</sup> Douglas County, Exhibit 5, p. 11.

**XVI.**

The Tribe alleges that Application 74498 is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. The State Engineer finds a stripping map is not required for Application 74498 because the base right, Permit 58531, is in permit status. The proof of beneficial use under Permit 58531 is not due until December 2, 2007. The 1.01-acre portion of Permit 58531 to be stripped by Application 74498 can come from anywhere within the proposed place of use of Permit 58531. When the proof of beneficial use is filed under Permit 58531, the Permittee will be required to submit a proof of beneficial use map illustrating the location of the 8.99 acres remaining under Permit 58531. The State Engineer finds the protest issue without merit and it is overruled.

**XVII.**

As to Application 75183, the Tribe protested on the grounds that the transfer threatens to prove detrimental to the public interest by extending and/or expanding the water deliveries to outside the irrigation season. The State Engineer finds the Tribe did not provide any evidence in support of this protest claim; therefore, it is overruled.

**XVIII.**

As to Application 75183, the Tribe protested on the grounds that the request is for a full duty transfer, rather than the consumptive use amount, which in this basin it argues is established as 2.5 afa, and thus, amounts to a request for a new appropriation in a basin that is designated and over-appropriated.

The State Engineer defines consumptive use of a crop as that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use or water lost due to inefficiencies or waste during the irrigation process. The consumptive use of a crop is equal to the crop evapotranspiration less the precipitation amount that is effective for evapotranspiration by the crop.

The State Engineer's consumptive use estimate for Carson Valley is based on the Penman-Monteith short reference evapotranspiration and crop coefficient approach for estimating growing season crop evapotranspiration, similar to methods of the California Irrigation Management Information System (CIMIS). The standardized methods are

# APPENDIX

## TAB 13

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

IN THE MATTER OF APPLICATIONS 74576 )  
AND 75403 FILED TO CHANGE THE POINT )  
OF DIVERSION AND/OR PLACE OF USE )  
OF THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMITS 52136 )  
AND 65077, RESPECTIVELY WITHIN THE )  
SMOKE CREEK DESERT HYDROGRAPHIC )  
BASIN (21), WASHOE COUNTY, NEVADA. )

**RULING**

**# 5840**

**GENERAL**

**I.**

Application 74576 was filed on July 31, 2006, by Jackrabbit Properties, LLC, to change the point of diversion of 3.0 cubic feet per second (cfs), not to exceed 1,600 acre-feet annually (afa), of underground water previously permitted for appropriation under Permit 52136. The proposed manner of use and place of use is unchanged and described as being for irrigation purposes within portions of Sections 10, 11 and 14, T.29N., R.19E., M.D.B.&M. The change requested by Application 74576, if approved, would transfer the Applicant's existing point of diversion from the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10, T.29N., R.19E., M.D.B.&M. to a point which is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.29N., R.19E., M.D.B.&M. It is further indicated in the remarks section that this change is sought to correct the actual point of diversion under Permit 52136.<sup>1</sup>

**II.**

Application 75403 was filed on March 1, 2007, by Jackrabbit Properties, LLC, to change the point of diversion and place of use of 1.4 cfs, not to exceed 1,013.6 afa, of underground water previously permitted for appropriation under Permit 65077. The proposed manner of use is unchanged and described as being for irrigation purposes. The proposed place of use is described as being located within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 5, NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, W $\frac{1}{2}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 8, SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 15, NW $\frac{1}{4}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  N $\frac{1}{2}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, all within T.31N., R.18E., M.D.B.&M. The existing place of use is described as being within the subdivisions described in Attachment

<sup>1</sup> File No. 74576, official records in the Office of the State Engineer.

“A” of the application. The change requested by Application 75403, if approved, would transfer the Applicant’s existing point of diversion from the NW¼ SE¼ of Section 24, T.32N., R.17E., M.D.B.&M. to a point which is located within the NE¼ NW¼ of Section 8, T.31N, R.18E., M.D.B.&M.<sup>2</sup>

### III.

Application 74576 was timely protested by the Pyramid Lake Paiute Tribe of Indians (PLPT) on the following grounds:<sup>1</sup>

1. The proof of the application of water to beneficial use under Permit No. 52136 has not been made for over 18 years since the date the application was originally filed. Granting Application No. 74576 to change the point of diversion of Permit No. 52136 would amount to granting a new appropriation for groundwater from the basin which should not be allowed for the reasons set forth below.
2. Given the prolonged period of non-use under Permit No. 52136, this application to change the point of diversion should not be granted on the basis that the water rights under Permit No. 52136 have been forfeited and/or abandoned.
3. On information and belief, a Petition for Adjudication of the water rights in the Smoke Creek Desert Hydrographic Basin #21 was filed with the State Engineer’s office in 2005. The application should not be considered, and certainly not granted, until the issues involving the Petition for Adjudication have been properly addressed and resolved.
4. As of August 2006, the records of the State Engineer’s office report the perennial yield of Smoke Creek Desert Hydrographic Basin #21 at 16,000 acre-feet, committed groundwater rights at 12,200 acre-feet, and pending groundwater rights in excess of 15,700 acre-feet. Given the prolonged period of non-use under Permit No. 52136, this application to change the point of diversion for Permit No. 52136 should not be granted and should be considered in the context of all other pending water rights in the Hydrographic Basin #21.
5. Granting the application would threaten to prove detrimental to the public interest.
6. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application – by way of example Fernley’s Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 – and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

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<sup>2</sup> File No. 75403, official records in the Office of the State Engineer.

7. Granting the application would threaten to prove detrimental to the public interest and the interests and existing water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because among other things, it would:
  - A. deplete water from the Pyramid Lake by depleting the underflow from the Smoke Creek Desert Basin to the Pyramid Lake Basin;
  - B. degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater withdrawals from the Smoke Creek Desert Basin;
  - C. adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe;
  - D. have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe's groundwater resources;
  - E. prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the threatened Lahontan cutthroat trout, in violation of (i) the Endangered Species Act, 16 U.S.C. § 1531 et seq., and (ii) Nevada law protecting the cui-ui;
  - F. adversely affect the recreational value of Pyramid Lake;
  - G. Interfere with the purposes for which the Pyramid Lake Indian Reservation was established;
  - H. deplete the supply of water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - I. affect the suitability of irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - J. increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - K. adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin; and
  - L. otherwise adversely affect the interest of the Tribe.
8. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

#### IV.

Application 75403 was timely protested by the Pyramid Lake Paiute Tribe of Indians (PLPT) on the following grounds:<sup>2</sup>

1. If granted, the application would decrease recharge to the Smoke Creek Desert groundwater basin, to the detriment of existing water rights including those of the Pyramid Lake Paiute Tribe.
2. On information and belief, the water rights sought for transfer have been forfeited and/or abandoned and the application should therefore be denied.
3. On information and belief, a Petition for Adjudication of the water rights in the Smoke Creek Desert Hydrographic Basin #21 was filed with the State Engineer's office in 2005. The application should not be considered, and certainly not granted, until the issues involving the Petition for Adjudication have been properly addressed and resolved.
4. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the

Application and the hearing on the protested Application – by way of example Fernley’s Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 – and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

5. Granting the application would threaten to prove detrimental to the public interest and the interests and existing water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because among other things, it would:
  - A. deplete water from the Pyramid Lake by depleting the underflow from the Smoke Creek Desert Basin to the Pyramid Lake Basin;
  - B. degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater recharge in the Smoke Creek Desert Basin;
  - C. adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe;
  - D. have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe’s groundwater resources;
  - E. prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the threatened Lahontan cutthroat trout, in violation of (i) the Endangered Species Act, 16 U.S.C. § 1531 et seq., and (ii) Nevada law protecting the cui-ui;
  - F. adversely affect the recreational value of Pyramid Lake;
  - G. interfere with the purposes for which the Pyramid Lake Indian Reservation was established;
  - H. deplete the supply of water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - I. affect the suitability of irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - J. increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;
  - K. adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin; and
  - L. otherwise adversely affect the interests of the Tribe.
6. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

### **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. On July 24, 2007, the Applicant and the Protestant were notified that there was insufficient specificity and supporting documentation to evaluate the merits of the protests and in

that regard the Protestant was requested to file additional information clarifying its protest issues and file any such evidence it feels is necessary to substantiate its protest claims. The Applicant was given the opportunity to provide any evidence in answer or rebuttal to the protest claims and in support of its applications. Based in part on the information filed by both the Applicant and Protestant, the State Engineer finds that in the case of protested Applications 74576 and 75403 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 State Engineer issued Permit 52136, which is the basis for change Application 74576, on October 22, 2002, for an individual duty of 3.0 cfs and a total combined duty of Permits 52136 and 52137 not to exceed 1,600 afa. In approving Permit 52136, the State Engineer made the determination that Permit 52136 complied with the provisions of NRS § 533.370(5). Specifically, the State Engineer found that there was unappropriated water at the proposed source and the additional allocation of water sought under then Applications 52136, 52137 and 52138 would not exceed the estimated perennial yield of the basin.<sup>3</sup>

Application 74576 does not seek an additional appropriation of water, only a change in the point of diversion of an existing water right, Permit 52136, within the Smoke Creek Desert Hydrographic Basin. Further, this change application is only being filed to correct the location of the point of diversion described in Permit 52136. The Applicant has indicated that the discrepancy in the point of diversion was discovered based on work that is being done to move forward with development of the property. It was indicated that the property and water rights previously owned by John and Vela Torvik were acquired by Jackrabbit Properties in 2002 and since that time the Applicant has been diligently proceeding with the property development.<sup>4</sup> The proposed point of diversion under Application 74576 is approximately 1/3 of a mile to the northwest of the point of diversion described by Permit 52136.

The Protestant has indicated that beneficial use under Permit 52136 has not been made for over 18 years since the date the application was originally filed and therefore, granting Application 74576 to change the point of diversion of Permit 52136 would amount to granting a new appropriation of groundwater from the basin. This argument seems to overlook the fact that the Applicant and his predecessor were not allowed under Nevada water law to place water to beneficial use prior to obtaining the permit. Although the application was filed in 1988, the

<sup>3</sup> State Engineer's Ruling No. 5142, July 22, 2002, official records in the Office of the State Engineer.

<sup>4</sup> See, Application for Extension of Time, Attachment "A", December 15, 2006, File No. 52136, official records in the Office of the State Engineer.



permit was not issued until October 22, 2002. Hence, only 5 years have passed since Permit 52136 was approved.

Under Permit 52136, the due date for the filing of the Proof of Completion of Work (POC) and the Proof of Beneficial Use (PBU) was set at November 22, 2004, and November 22, 2007, respectively. The Applicant was unable to meet the deadline for the filing of the proofs and has opted to file annual extensions of time. These extensions of time have been approved by the State Engineer and the current due date for the POC and PBU has been extended to November 22, 2008. A review of Permit 52136 shows that it is not subject to cancellation at this time and the permit is currently in good standing.<sup>5</sup>

The State Engineer finds that the doctrine of forfeiture only applies to perfected water rights, that is, water that has been placed to beneficial use. Application 74576 seeks to move water that has not yet been placed to beneficial use under Permit 52136; therefore, the State Engineer finds the doctrine of forfeiture is inapplicable and the protest claim as to forfeiture is overruled. The Permittee has filed extensions of time under Permit 52136, the base right which Application 74576 seeks to change, in order to keep the water in good standing and ultimately place the water to beneficial use thus demonstrating a lack of intent to abandon the water. In addition, the Protestant did not provide any specific evidence in support of a claim of abandonment.

The State Engineer finds that Application 74576 is a change application of an existing water right and is not a request for a new appropriation of water from the Smoke Creek Desert Hydrographic Basin. The State Engineer finds that the water sought for change under Application 74576, represented by Permit 52136, is currently in good standing and is not subject to cancellation, abandonment or forfeiture.

### III.

The Protestant has alleged that no action should be taken on the subject change applications until a general adjudication is completed for the Smoke Creek Desert Hydrographic Basin. The Protestant cites that several petitions for adjudication have been filed with the Office of the State Engineer and that pending applications have been filed for over 73,400 afa of water. A review of the basin abstract shows 2,196.90 afa has been claimed under vested ground-water rights. The total committed ground-water resource is shown as 12,205.31 afa, including all

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<sup>5</sup> File No. 52136, official records in the Office of the State Engineer.

claims of vested right, permits, and certificates, which indicate ground water as the source.<sup>6</sup> The estimated perennial yield of the Smoke Creek Desert Hydrographic Basin currently stands at 16,000 afa.

The pending applications referred to by the Protestant, in the amount of over 73,400 afa of water, are not claims of vested right but rather applications to appropriate water. A review of the water sought for change under Applications 74576 and 75403 shows that these water rights do not originate from any claim of vested right.

A review of records in the Office of the State Engineer failed to locate any instance where action was withheld on a change application of an existing ground-water permit in anticipation of a ground-water adjudication. Conversely, it was found that a majority of approved change applications for ground water occur in basins that have not been fully adjudicated with respect to ground water. As previously indicated, claims of vested right are counted as committed resources whether an adjudication has or has not been commenced. In addition, the water sought for change represents water that has been previously appropriated and therefore, accounted for in the ground-water basin budget for the Smoke Creek Desert Hydrographic Basin.

The State Engineer finds that there is no basis for withholding action on Applications 74576 and 75403 pending any future adjudication that may or may not occur, as the evidence demonstrates that the subject water rights would not be part of any adjudication and would not be affected by any adjudication in the Smoke Creek Desert Hydrographic Basin; therefore, this protest issue, for both Applications 74576 and 75403, is dismissed.

#### IV.

The Protestant alleges that the granting of Application 74576 will threaten to prove detrimental to the public interest (protest issue #5). There is no additional information contained within protest issue #5 and a review of the additional documentation submitted by the Protestant fails to clarify this protest issue. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.<sup>7</sup>

The State Engineer finds that the Protestant has failed to clarify this protest issue or to file additional information specific to this protest issue and therefore, protest issue #5 for Application 74576 is dismissed.

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<sup>6</sup> Nevada Division of Water Resources' Water Rights Database, *Hydrographic Basin Summary by Manner of Use and Hydrographic Basin Summary by Application Status*, Smoke Creek Desert Hydrographic Basin, October 22, 2007, official records in the Office of the State Engineer.

<sup>7</sup> NRS § 533.365(1).

V.

Protest issue #6 for Application 74576 and protest issue #4 for Application 75403 are similar and allege that the granting of the applications would threaten to prove detrimental to the public interest in ways that are not yet known to the Protestant but that may arise at a later time. This protest issue also notes that it is the position of the State Engineer that a specifically stated protest ground cannot be amended at a later date regardless of the amount of time that passes between the filing of the protest and its resolution.

Based on a review of the additional information filed by the Protestant in support of its protests, it is apparent that there were no new issues raised beyond the protest grounds originally submitted. Furthermore, any attempt to add additional protest issues not yet known to the Protestant but that may arise or first become known to the Protestant in the period between the date of the filing of the protest and any hearing on the protest would not be allowed. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.<sup>8</sup>

The State Engineer finds that this protest issue is not valid and therefore, is dismissed.

VI.

Protest issue #8 for Application 74576 and protest issue #6 for Application 75403 are similar and seek to incorporate any other protest issue that may be raised by any other protestant regarding these applications. A review of the application files show there are no other protestants to these applications. In addition, the attempt to co-opt another protest in this manner would not be allowed. A protest against the granting of an application must set forth, with reasonable certainty, the grounds of the protest.<sup>8</sup>

The State Engineer finds that this protest issue is irrelevant and therefore, is dismissed.

VII.

The State Engineer issued Permit 65077, which is the basis for change Application 75403, on January 13, 2004, for an individual duty of 1.4 cfs not to exceed 1,013.6 afa. The permit was issued supplemental to vested claims and for a total combined duty not to exceed 6,332.0 afa. In approving Permit 65077, the State Engineer made the determination that Permit 65077 complied with the provisions of NRS § 533.370(5). Specifically, the State Engineer found that there was unappropriated water at the proposed source and the additional allocation of water sought under the permit would not exceed the estimated perennial yield of the basin.<sup>9</sup>

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<sup>8</sup> NRS § 533.365(1).

<sup>9</sup> State Engineer's Ruling No. 5142, July 22, 2002, official records in the Office of the State Engineer.

Application 75403 does not seek an additional appropriation of water, only a change in the point of diversion and place of use of an existing water right permit within the Smoke Creek Desert Hydrographic Basin. In addition, the water sought for change represents water that has been previously appropriated and therefore, accounted for in the ground-water basin budget for the Smoke Creek Desert Hydrographic Basin.

The State Engineer finds that the issues related to water availability have been settled with the issuance of Permit 65077 and will not be revisited for a change in point of diversion and place of use as proposed under Application 75403. The State Engineer finds that the water sought for change under Application 75403 has already been accounted for in the ground-water basin budget and therefore, will have no additional effect on the ground-water resource.

### VIII.

The Protestant has indicated that beneficial use under Permit 65077 has not been made and the proof of completion of work and proof of beneficial use, originally due February 13, 2005, and February 13, 2009, respectively, have not been filed. Therefore, Application 75403 should be cancelled or forfeited on the grounds that the water has not been put to use and that good faith and reasonable diligence to complete the work have not been pursued as demonstrated by the long time that has passed since the application was filed.

Although Application 65077 was filed on April 22, 1999, the permit was not issued until January 13, 2004. Hence, only 4 years have passed since Permit 65077 was approved. Under Permit 65077, the Applicant was unable to meet the deadline for the filing of the POC and has opted to file annual extensions of time. These extensions of time have been approved by the State Engineer and the current due date for the POC has been extended to February 13, 2008. A review of Permit 65077 shows that it is not subject to cancellation at this time and the permit is currently in good standing.<sup>10</sup>

The State Engineer finds that the doctrine of forfeiture only applies to perfected water rights, that is, water that has been placed to beneficial use. Application 75403 seeks to move water that has not yet been placed to beneficial use under Permit 65077; therefore, the State Engineer finds the doctrine of forfeiture is inapplicable and the protest claim as to forfeiture is overruled. The Permittee has filed extensions of time under Permit 65077, the base right which Application 75403 seeks to change, in order to keep the water in good standing and ultimately place the water to beneficial use thus demonstrating a lack of intent to abandon the water. In

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<sup>10</sup> File No. 65077, official records in the Office of the State Engineer.

addition, the Protestant did not provide any specific evidence in support of a claim of abandonment.

The State Engineer finds that Application 75403 is a change application of an existing water right and is not a request for a new appropriation of water from the Smoke Creek Desert Hydrographic Basin. The State Engineer finds that the water sought for change under Application 75403, represented by Permit 65077, is currently in good standing and is not subject to cancellation, abandonment or forfeiture.

#### IX.

A determination was made, after an examination of the records of the Office of the State Engineer, that the Protestant does not possess any water rights within the Smoke Creek Desert Hydrographic Basin.<sup>11</sup> A review of the evidence submitted also fails to indicate that the Protestant owns or possesses water rights within the Smoke Creek Desert Hydrographic Basin nor does the Protestant assert a claim to any reserved water rights within the basin.

The State Engineer finds that the Protestant does not possess existing ground-water appropriations in the Smoke Creek Desert Hydrographic Basin.

#### X.

A protest claim common to both applications is that granting the applications would threaten to prove detrimental to the public interest and existing water rights of the PLPT. The Protestant further lists a subset of issues listed as items A through L. In support of this protest, evidence was submitted on estimates of perennial yield and impacts of ground water pumping on the PLPT's resources.<sup>12</sup> The protestant reviewed two studies and concluded that there is a great deal of uncertainty in the 16,000 afa perennial yield number and it is likely that the perennial yield of the Smoke Creek Desert is lower than this currently accepted number. Also, a 1993 United States Geological Survey (USGS) report indicates that an unknown amount of underflow occurs from the Smoke Creek Desert basin to the Pyramid Lake basin and granting the applications would decrease this underflow.<sup>13</sup>

The Office of the State Engineer has reviewed the information submitted by the Protestant, including the cited reports, and has determined that the perennial yield of the Smoke Creek Desert Hydrographic Basin should remain at 16,000 afa. It is recognized that there is

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<sup>11</sup> Nevada Division of Water Resources' Water Rights Database, *Hydrographic Basin Abstract*, Smoke Creek Desert Hydrographic Basin, October 22, 2007, official records in the Office of the State Engineer.

<sup>12</sup> See, *Report of Stetson Engineers and Robert C. Maddox & Associates in support of the Protests of the Pyramid Lake Paiute Tribe of Indians to Two Applications to Change Smoke Creek Desert Basin Groundwater Rights*, September 4, 2007, official records in the Office of the State Engineer.

<sup>13</sup> Ibid, pp.4-5.

uncertainty in this perennial yield estimate, as the study used to arrive at this number is a reconnaissance level report, but it is the best information available at this time.

The Applicant has the right to pump water under its existing base right permits or if approved, pump the same amount of water from Applications 74576 and 75403. The net impact on the ground-water resources of the Smoke Creek Desert basin would be unchanged whether the applications are granted or denied. It is important to remember that the Applicant is not seeking to pump additional water from the basin under new appropriations, but only seeking to change existing ground-water rights. The water sought for change has been accounted for in the basin budget as a committed resource and, as previously indicated, the committed resources of the basin are well below the estimated perennial yield. To recap, the total committed ground-water resource is 12,205.31 afa, including all claims of vested right, permits, and certificates, which indicate ground water as the source.<sup>14</sup> The estimated perennial yield of the Smoke Creek Desert Hydrographic Basin currently stands at 16,000 afa.

The Protestant also states that no matter what the actual perennial yield is, the applications should still be denied because the proposed wells will reduce the recharge to the Smoke Creek playa and result in a reduction of water available for withdrawal on the Pyramid Lake Reservation.<sup>15</sup> The State Engineer rejects this argument. As previously found, the Protestant does not have existing ground-water rights within the Smoke Creek Desert Hydrographic Basin. Also, Nevada water law allows for the appropriation of ground water. The Office of the State Engineer has historically made an effort to keep the amount of groundwater pumped to less than the estimated safe yield of the basin, thus preventing conflicts with adjacent basins that may occur if over-pumping were allowed. In the case of the Smoke Creek Desert Hydrographic Basin, the basin is under-appropriated by almost 25%. Regarding the effects of more localized pumping, NRS § 534.110(4) provides that for each appropriation of ground water, the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion.

The State Engineer finds that after a review of the evidence there is nothing contained in the Protestants argument that would disallow approval of the subject change applications. The

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<sup>14</sup> Nevada Division of Water Resources' Water Rights Database, *Hydrographic Basin Summary by Manner of Use and Hydrographic Basin Summary by Application Status*, Smoke Creek Desert Hydrographic Basin, October 22, 2007, official records in the Office of the State Engineer.

<sup>15</sup> See, *Report of Stetson Engineers and Robert C. Muddox & Associates in support of the Protests of the Pyramid Lake Paiute Tribe of Indians to Two Applications to Change Smoke Creek Desert Basin Groundwater Rights*, p. 6, September 4, 2007, official records in the office of the State Engineer.

State Engineer finds that the Protestants evidence contained numerous allegations, but such allegations were not supported by the evidence and, at times, conflict with Nevada water law.

**XI.**

The Protestant alleges a number of deleterious effects on Pyramid Lake, but a review of the evidence shows the claims to be unsubstantiated. There was no substantial evidence submitted to establish a connection between Pyramid Lake, a surface water source, and the ground water within the Smoke Creek Desert. Also, pumpage within the Smoke Creek Desert Hydrographic Basin does not exceed the perennial yield of the basin.

The State Engineer finds that this protest issue is without merit and unsupported by the factual evidence.

**XII.**

The Protestant notes that prior change applications were filed under Applications 72557 and 72535 on the same water sought for change under the subject applications. These change applications sought to move the subject water to the Granite Fox power project. This project is apparently no longer viable and most of the applications filed in support of this project were withdrawn.<sup>16</sup> Recently, the remaining applications associated with this project were also withdrawn, including Applications 72557 and 72535.<sup>17</sup>

The State Engineer finds that with the withdrawal of Applications 72557 and 72535, Applications 74576 and 75403 may be considered for review.

**XIII.**

The State Engineer finds that Permit 65077 was issued entirely supplemental to surface water and will remain entirely supplemental to surface water if the changes sought by Application 75403 are approved.

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<sup>16</sup> See, Withdrawal letter of August 20, 2007, File Nos. 72488, 72489, 72490, 72491, 72492, 72493, 72500, 72501, 72502, 72503, 72504, 72505, 72506, 72507, 72508, 72509, 72510, 72511, 72512, 72513, 72514, 72515, 72516, 72517, 72518, 72519, 72520, 72521, 72522, 72523, 72524, 72525, 72526, 72527, 72528, 72529, 72530, 72531, and 72532, official records in the Office of the State Engineer.

<sup>17</sup> See, Withdrawal letter of October 11, 2007, File Nos. 72533, 72534, 72535, 72536, 72537, 72538, 72539, 72540, 72542, 72543, 72544, 72545, 72546, 72547, 72548, 72549, 72550, 72551, 72552, 72553, 72554, 72555, 72556, 72557, 72558, 72559, 72726, and 72727, 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>18</sup>

### **II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>19</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 that the water sought for change is in good standing and the filing of change applications on these existing rights are allowed by Nevada water law.<sup>20</sup>

### **IV.**

The State Engineer concludes that the proposed changes in point of diversion and place of use will not threaten to prove detrimental to the public interest.

### **V.**

The State Engineer concludes that the Protestant does not possess an existing ground-water appropriation within the Smoke Creek Desert Hydrographic Basin. The State Engineer further concludes that Applications 74576 and 75403 will not conflict with existing rights.

### **VI.**

The Protestant provided additional evidence in support of its protest claims and a review of that evidence found that the Protestant failed to substantially support its allegations. The State Engineer concludes that the Protestant did not provide sufficient evidence to support denial of the applications under consideration in this ruling. The State Engineer further concludes that the protest issues raised are without merit and unsupported by the evidence and therefore, must be overruled.

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<sup>18</sup> NRS chapters 533 and 534.

<sup>19</sup> NRS § 533.370(5).

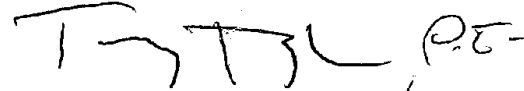
<sup>20</sup> NRS § 533.040(2).



**RULING**

The protests to Applications 74576 and 75403 are hereby overruled and the change applications are approved subject to existing water rights and payment of the statutory permit fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Taylor, P.E.', with a stylized flourish at the end.

TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 16th day of  
April, 2008.

# APPENDIX

## TAB 14

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

IN THE MATTER OF PERMIT )  
12194, CERTIFICATE 3812, ISSUED )  
FOR THE APPROPRIATION OF A )  
SURFACE WATER SOURCE IN )  
THE ANTELOPE VALLEY )  
HYDROGRAPHIC BASIN (151), )  
EUREKA COUNTY, NEVADA. )

**RULING**

**# 5898**

**GENERAL**

**I.**

Permit 12194 was issued on June 12, 1950, which authorized the appropriation of 0.0094 cubic feet per second or a sufficient quantity of water for 300 head of cattle. The point of diversion is described as being located within the NW¼ SW¼ of Section 24, T.16N., R.50E., M.D.B.&M.<sup>1</sup> Certificate 3812 was issued under Permit 12194 on August 4, 1952, for the same quantity of water that was permitted.

**II.**

On February 2, 1998, ownership of Permit 12194, Certificate 3812 was assigned in the records of the Division of Water Resources to Fish Creek Ranch, LLC.<sup>1</sup> The agent identified for Fish Creek Ranch, LLC, in the Report of Conveyance is Walter Leberski.

**FINDINGS OF FACT**

**I.**

The State Engineer finds that on February 28, 2008, the United States Department of Interior, Bureau of Land Management provided the State Engineer with information indicating that Fish Creek Ranch, LLC, no longer operates in the Seven Mile Allotment.<sup>1</sup> The State Engineer finds the surface-water source is on public land and without the authorization for access to the point of diversion and/or place of use, for example through a grazing permit, the Applicant can no longer place the water to beneficial use.

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<sup>1</sup> File No. 12194, official records in the Office of the State Engineer.

**II.**

By letter dated February 29, 2008, the State Engineer requested information from Fish Creek Ranch, LLC, or its agent Walter Leberski, as to its authorization to be a range user on the land on which the point of diversion under Permit 12194 exists. Fish Creek Ranch, LLC, or its agent was provided 30 days from the date of the letter to provide the requested information and was cautioned that failure to provide the information would result in a declaration of abandonment of Permit 12194, Certificate 3812. The State Engineer finds the United States Postal Service returned the State Engineer's certified letter marked as "Return to Sender, Attempted Not Known." The State Engineer finds the letters addressed as regular mail to the permittee and its agent Walter Leberski were not returned by the United States Postal Service; therefore the State Engineer must assume the mail was received.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>2</sup>

**II.**

Nevada Revised Statute § 533.360 provides that water may be appropriated for a beneficial use and not otherwise. Nevada Revised Statute § 533.365 provides that beneficial use is the basis, the measure and the limit of the right to the use of water. A water-right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances, which certainly includes the lack of a right to graze at the point of diversion or place of use permitted and the lack of response from the permittee or its agent of record.

In the case of Permit 12194, the State Engineer concludes that since the Fish Creek Ranch, LLC, no longer operates in the Seven Mile Allotment for which this water right was

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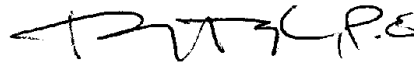
<sup>2</sup> NRS chapter 533.

permitted and the Fish Creek Ranch, LLC, and its agent failed to respond to the request for information that is demonstrable evidence of an intent to abandon the water right. The State Engineer concludes that the purpose for which the water right was issued no longer exists and the water can no longer be placed to the authorized beneficial use.

**RULING**

Permit 12194, Certificate 3812, is hereby declared abandoned.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/SJT/jm

Dated this 21st day of  
October, 2008.

# APPENDIX

## TAB 15

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

IN THE MATTER OF APPLICATION 63526 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS FROM HIKO SPRING WITHIN )  
THE COLORADO RIVER VALLEY )  
HYDROGRAPHIC BASIN (213), CLARK )  
COUNTY, NEVADA AND IN THE MATTER )  
OF THE ABANDONMENT OF PERMIT )  
11405, CERTIFICATE 3156. )

**RULING**  
**# 6032**

**GENERAL**

**I.**

Application 63526 was filed on October 22, 1997, by the United States of America, Department of the Interior, Bureau of Land Management (BLM), to appropriate 0.027 cubic feet per second (cfs) of water from Hiko Spring for wildlife purposes within the SE¼ SE¼ of Section 12, T.32S., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of said Section 12.<sup>1</sup>

**II.**

Application 63526 was timely protested by Thomas E. and Barbara W. Smigel, on grounds summarized as follows:<sup>1</sup>

- The Protestant's have a stockwatering right on Hiko Spring, Permit 11405, Certificate 3156.
- The Protestant's have a pending application for a new appropriation for irrigation on the spring, Application 61007.
- The Protestant's Desert Land Entry (DLE) N-59723, for the area around the spring, was denied by the BLM and is under appeal.
- Application 63526 is in direct conflict with existing rights.
- The BLM denied the Protestant's DLE on the basis of insufficient water and now files Application 63526 for water the existence of which it previously denied.
- No appropriation of water for wildlife use is necessary at this natural spring because NRS § 533.367 requires that access to the spring must be provided to wildlife.
- The use of water for "riparian/habitat maintenance" of 99% of the water included in the application is nebulous and undefined use, not measurable and cannot be shown to be a beneficial use. There is no diversion works planned in the application (63526 question 8). In order to verify the beneficial use of water there must be a measurement by a water rights surveyor showing the amount of water beneficially used (NRS 533.400). In this case, there is no diversion and no way to measure the

<sup>1</sup> File No. 63526, official records in the Office of the State Engineer.

use as required. In the application, the answers to questions 5 and 8 are in direct conflict.

### **III.**

Permit 11405, Certificate 3156 authorizes the appropriation of 0.002 cfs of water from Hiko Spring for the stockwatering of 150 head of cattle on public land managed by the BLM.

### **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 there is sufficient evidence in the records of the Office of the State Engineer and that a hearing is not necessary to consider the merits of the protest.

#### **II.**

A search of records within the Office of the State Engineer finds that the only active water right on Hiko Spring is Permit 11405, Certificate 3156, which is owned by Thomas E. and Barbara W. Smigel. Application 61007, referred to by the Protestants, was filed on March 10, 1995, by Thomas E. and Barbara W. Smigel to appropriate 0.25 cfs of water from Hiko Spring for irrigation purposes on 20.0 acres of land, access to which was hoped to be obtained pursuant to the Protestants' DLE application, BLM Application NVN-59723. The land applied for under the DLE application was determined unsuitable for entry on May 21, 1997, and the Protestants' appeal of the denial of entry was dismissed on March 31, 1998. The State Engineer denied Application 61007 on August 31, 2009, on the grounds of insufficient water and that it would threaten to prove detrimental to the public interest to grant a water right for use on land to which the applicant had no access.<sup>2</sup> The State Engineer finds that Permit 11405, Certificate 3156 is the only current authorized appropriation of water on Hiko Spring.

#### **III.**

Permit 11405, Certificate 3156 authorizes the appropriation of 0.002 cfs of water from Hiko Spring for the stockwatering of 150 head of cattle on public land managed by the BLM. The Office of the State Engineer contacted the Las Vegas Office of the BLM to determine the current authorized range user. The BLM disclosed that the Ireteba Peaks grazing allotment, of which Hiko Spring is a part, was closed in 1999, because it was considered to be a critical Desert

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<sup>2</sup> State Engineer's Ruling No. 6004, dated August 31, 2009, official records in the Office of the State Engineer.



Tortoise Habitat. By certified letter dated September 22, 2009, the Office of the State Engineer requested Thomas E. and Barbara W. Smigel to provide evidence that the water under Permit 11405, Certificate 3156 was being put to beneficial use from 1999 through 2009. This letter provided the Smigels with a deadline to respond within 30 days of the date of the letter and they were warned that failure to adequately or timely provide the requested information would result in a declaration of abandonment of Permit 11405, Certificate 3156. A properly endorsed certified mail receipt was received in the Office of the State Engineer on October 1, 2009; however, there has been no response to the request for information to date.

The State Engineer finds that the authorized beneficial use of water under Permit 11405, Certificate 3156 for stockwatering purposes was not possible after the grazing allotment was closed in 1999. The State Engineer finds the Smigels failed to respond to the State Engineer's request for information regarding alleged abandonment of Permit 11405, Certificate 3156.

#### IV.

The Protestants claim that Application 63526, which seeks to appropriate 0.0003 cfs to provide water for up to 38 Bighorn Sheep and 0.0267 cfs of water for riparian/habitat maintenance, directly conflicts with existing rights. The only existing water right on Hiko Spring is Permit 11405, Certificate 3156, which the Protestants failed to provide any evidence of current beneficial use. The State Engineer finds that if Permit 11405, Certificate 3156 is declared abandoned then the Protestants' claim of conflict with their existing water right is moot.

#### V.

The Protestants assert that the BLM denied their DLE application on the grounds of there being insufficient water for the irrigation of 20 acres of land and that the BLM is being disingenuous by filing on water that it previously denied existed. In May 2009, the Office of the State Engineer conducted a field investigation at Hiko Spring and determined that the flow from Hiko Spring was approximately 0.001 cfs. This diversion rate expands to a yearly volume of water of approximately 0.72 acre-feet annually. The State Engineer finds that this flow of water is minimal and would be definitively insufficient to irrigate 20.0 acres of land. Conversely, Application 63526 seeks to appropriate 0.027 cfs, of which 0.0267 cfs is for what is essentially un-diverted in-stream flow. The remaining 0.0003 cfs is for Bighorn Sheep watering and is well within the range of what Hiko Spring can produce. The State Engineer finds that the requested appropriation of 0.027 cfs under Application 63526 is reasonable and does not conflict with the BLM denial of the Protestants' DLE application, as the flow of Hiko Spring is vastly insufficient for the irrigation of 20 acres of land.

## **CONCLUSIONS**

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

### **II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>4</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 there is substantial evidence to support a declaration of abandonment of Permit 11405, Certificate 3156.

### **IV.**

The State Engineer concludes the Protestants' DLE application and related water right application have been denied; therefore, those grounds of its protest are moot.

### **V.**

The State Engineer concludes there is water available for appropriation and the use of water under Application 63526 will not conflict with existing rights.

### **VI.**

Nevada Revised Statute § 533.367 provides that before a person may obtain a right to the use of water from a spring or water that has seeped to the surface of the ground, he must ensure that wildlife that customarily uses the water will have access to it. Therefore, even if the Smigels were able to place the water under their stockwater permit to beneficial use, which they cannot, they would be required to ensure that the wildlife have access to the spring. Nevada Revised Statute § 533.023 provides the use of water for wildlife purposes includes the watering of wildlife and the establishment and maintenance of wildlife habitat. The Nevada Supreme Court has held that watering of wildlife is encompassed in the definition of recreation as a beneficial

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<sup>3</sup> NRS Chapter 533.

<sup>4</sup> NRS § 533.370(5).

use of water. *State, Bd. Of Agriculture v. Morros*, 104 Nev. 709 (1988). The State Engineer concludes that NRS § 533.367 does not preclude the appropriation of water from this spring for wildlife purposes and the approval of Application 63526 does not threaten to prove detrimental to the public interest.

**RULING**

The protest is hereby overruled and Application 63526 is hereby approved subject to payment of the statutory permit fees. Permit 11405, Certificate 3156 is hereby declared abandoned.

Respectfully submitted,

 P.E.

TRACY TAYLOR, P.E.  
State Engineer

*for*

Dated this 19th day of  
March, 2010.

# APPENDIX

## TAB 16

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

IN THE MATTER OF PERMIT 10542, )  
CERTIFICATE 2576, FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS WITHIN THE SILVER STATE )  
VALLEY HYDROGRAPHIC BASIN )  
(32), HUMBOLDT COUNTY, NEVADA. )

**RULING**  
**#6081**

**GENERAL**

**I.**

Permit 10542 was issued February 5, 1941, to West Coast Mines, Inc. to appropriate 3.0 cubic feet per second (cfs) of groundwater for mining, milling, and domestic purposes within the Silver State Valley Hydrographic Basin, Humboldt County, Nevada. The point of diversion is identified as a well located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.37N., R.36E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

The owner of Permit 10542 is West Coast Mines, Inc. of Winnemucca, Nevada. After filing proof of beneficial use of the water on February 11, 1941, the State Engineer issued water right Certificate 2576 for 0.78 cfs to West Coast Mines, Inc., on March 6, 1941.

A review of File No. 10542 shows that over the last 69 years only two inquiries have been received regarding Permit 10542.<sup>2</sup> The first request, by Gus Rogers, was a letter dated February 20, 1953, requesting the application map of Permit 10542. On April 3, 1953, Mr. Rogers filed Application 14957 to appropriate 1.0 cfs for irrigation purposes. The point of diversion described in his application is identical to that of Permit 10542. A field investigation was conducted by a representative of the State Engineer's office in the company of Mr. Rogers on July 27, 1953.<sup>3</sup> The representative concluded in his memorandum that West Coast Mines, Inc., was no longer active. He

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<sup>1</sup> File No. 10542, official records in the Office of the State Engineer.

<sup>2</sup> See, letter received in the Office of the State Engineer from Gus Rogers dated February 20, 1953, and memorialized telephone call from Ray Shannon received January 15, 2010, File No. 10542, official records in the Office of the State Engineer.

<sup>3</sup> See, Memorandum, August 26, 1953, File No. 14957, official records in the Office of the State Engineer.

could not locate any information in the Secretary of State's office for West Coast Mines, Inc. Their representative in Winnemucca was deceased and it appeared that no one had replaced him. Based on the information that West Coast Mines, Inc., was no longer using the well and had abandoned the place of use, it was recommended that Application 14957 be approved. Permit 14957 was approved on August 24, 1953, for 1.0 cfs for irrigation and domestic purposes. Permit 14957 was cancelled on May 24, 1957, for failure to file Proof of Beneficial Use and Cultural Map or an Extension of Time.

The second inquiry was received by telephone from Ray Shannon. It was indicated that Mr. Shannon or his company may have some interest in Permit 10542. He was advised that the permit is in the name of West Coast Mines, Inc. and that a Report of Conveyance and corresponding deeds are required to update ownership of the certificated water right if he wanted to use water under Permit 10542. To date, no correspondence has been received from Mr. Shannon.

On January 21, 2010, staff from the Office of the State Engineer conducted a field investigation at the point of diversion under Permit 10542 and found the well in disrepair and no active mining or exploration activity in the area.<sup>4</sup> The Pansy Lee mill site is located within the described place of use of Permit 10542 and is in disrepair. All that remains at the site is the concrete footings of the mill; however, the mill site is now situated on mining claims controlled by Infrastructure Materials Corp. An Internet search of Infrastructure Materials Corp. led to a subsidiary company, Silver Reserve Corp. of Reno, Nevada. A representative of Silver Reserve Corporation, was contacted by telephone on September 15, 2010, to gage their interest in Permit 10542.<sup>5</sup> Mr. Frost indicated that Silver Reserve Corporation was in the process of selling the property. He was advised, if they did have an interest in the water right, they would have to submit a Report of Conveyance and chain of title from West Coast Mines, Inc., to get the permit in their name. To date, there has been no title documents filed in the Office of the State Engineer by this entity.

The State Engineer finds there is no evidence of the continued existence of West Coast Mines, Inc. The State Engineer finds no water has been placed to beneficial use for a long period of time, and no entity or person has ever formally requested conveyance of the water right into the name of another water right holder. The State Engineer finds that the evidence indicates that the well has

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<sup>4</sup> See, Field Investigation, January 21, 2010, File No. 10542, official records in the Office of the State Engineer.

<sup>5</sup> See, Memorandum, September 15, 2010, File No. 10542, official records in the Office of the State Engineer.

not been used for over 52 years and the mining project of West Coast Mines, Inc. has been long abandoned.

### CONCLUSIONS

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

#### **II.**

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 10542, Certificate 2576, has been intentionally abandoned by the permit holder.

#### **III.**

There is also no evidence of West Coast Mines, Inc., being registered with the Secretary of State's office since 1953. A field investigation showed no signs of mining activity and that the well and mill site were abandoned. The State Engineer further concludes that this demonstrates an intent to abandon the water right.

### RULING

Permit 10542, Certificate 2576, is hereby declared abandoned.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 6th day of  
December, 2010.

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<sup>6</sup> NRS Chapters 533 and 534.

# APPENDIX

## TAB 17



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

IN THE MATTER OF APPLICATION 79659 FILED )  
TO CHANGE THE PLACE OF USE AND MANNER )  
OF USE OF A PORTION OF PERMIT 10105, )  
CERTIFICATE 2695, THE PUBLIC WATERS OF )  
WARM SPRINGS (AKA SEVEN DEVILS OR SOU )  
SPRINGS) WITHIN THE DIXIE VALLEY )  
HYDROGRAPHIC BASIN (128), PERSHING )  
COUNTY, NEVADA. )

**RULING**  
**#6083**

**GENERAL**

**I.**

Application 79659 was filed on March 3, 2010, by Joe Saval Company, LLC, to change the place of use and manner of use of a portion of water heretofore appropriated under Permit 10105, Certificate 2695, being 10.81 acre-feet annually (afa) from Warm Springs (a.k.a. Seven Devils or Sou Springs), for stockwater purposes within the NW¼ NE¼ of Section 32, T.26N., R.38E., M.D.B.&M. The existing manner of use and place of use are described as being irrigation and domestic purposes on 1.47 acres located within the NW¼ NE¼ of Section 5, T.25N., R.38E., M.D.B.&M. The point of diversion is described as being located within the S½ SE¼ of Section 29, T.26N., R.38E., M.D.B.&M. <sup>1</sup>

**II.**

Application 79659 was timely protested by Mike and Barb Stremmler on the following grounds:<sup>1</sup>

We, Mike & Barb Stremmler own the deeded land that these springs are on. There is no easement filed to access these waters. The property is fenced with No Trespassing signs. Mike & Barb Stremmler have asked to have the Permit #10105 Certificate #2695 be cancelled in accordance with NRS 533.060 part 4. Approval of this permit would contravene the policy [sic] of NRS 533.495 Also see NRS 533.085 part 1. Also, no water leaves our deeded property. Also see NRS 533.505, 533.510. Granting this application would be considered a taking of our property right.

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<sup>1</sup> File No. 79659, official records of the Office of the State Engineer.

## **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 sufficient evidence exists within the records of the Office of the State Engineer and a hearing is not necessary to consider the merits of the protest.

### **II.**

Application 79659 was filed by the Applicant to change the place and manner of use of a portion of water heretofore appropriated under Permit 10105, Certificate 2695. The existing point of diversion and manner of use is from Warm Springs for the irrigation of 18.68 acres at the Seven Devils Ranch, which is located about a mile south of the springs. Application 79659 proposes to change a portion of the irrigation water to provide water to livestock on public land south of the springs and north of Seven Devils Ranch. Rob and Sallie Lincoln are the owners of record of Permit 10105 and the Seven Devils Ranch. The portion of water under Permit 10105, Certificate 2695, sought for transfer under Application 79659 was transferred to the Applicant, Joe Saval Company, LLC.

Warm Springs is located within an 80 acre parcel of private land owned by the Protestant, Stremmer. The Protestant is the owner of two undetermined claims of vested right; V-04741 to water livestock and irrigate about 3 acres of pasture grass, and V-09887 for watering livestock. The source of water claimed is from Warm Springs.

On August 17, 2010, a formal field investigation was conducted with the Applicant, Protestant and Seven Devils Ranch (Lincoln) and their respective representatives.<sup>2</sup> The purpose was to gain additional information and to possibly resolve the protest to Application 79659. Although a resolution to the protest was not reached during the field investigation, several conclusions were made. Of importance is the conclusion that water flow measurements from the spring complex exceed the amount of water required to serve the manner of use described under the Protestant's claims of vested right. Based on this conclusion, there is water available in priority for Permit 10105, Certificate 2695.

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<sup>2</sup> Report of Field Investigation No. 1135, official records in the Office of the State Engineer.

The State Engineer finds that water is available to allow for the diversion of water under Permit 10105, Certificate 2695, which forms the basis for change Application 79659.

### III.

The protest indicates that no easements exist and there is no access allowed to other parties to the water source, which is located on the Protestants land. The field investigation confirmed that Warm Springs is located within an 80 acre parcel of land owned by the Protestant. Research of the records on file in the Office of the State Engineer revealed the existence of a proof of beneficial use map filed under Permit 17890, which describes a 50 foot right of way on each side of a ditch centerline and describes a 10-inch concrete pipeline that was also constructed, apparently within the existing ditch, to deliver water to the reservoir at Seven Devils Ranch. However, the attendees at the field investigation could not come to an agreement as to the existence of the easement.<sup>2</sup>

Currently, water right permits approved by the Office of the State Engineer are issued with a permit term stating that the issuance of a water right permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The State Engineer finds that the disagreement over whether an easement or other right of way exists that would allow the Applicant access to Warm Springs is an issue beyond his authority.

### IV.

The protest requests the State Engineer declare Permit 10105, Certificate 2695, abandoned. The abandonment of a surface water right in Nevada is the relinquishment of a right with the intention to forsake it. Within the meaning of the term abandonment an intent to abandon is a necessary element. Nonuse of a water right is only some evidence of an intent to abandon the right and does not create a rebuttable presumption of abandonment under Nevada law. At the field investigation, permittee Lincoln expressed a continued interest in returning the pipeline or other works of diversion to operating condition.<sup>2</sup>

The State Engineer finds that Permit 10105, Certificate 2695 is in good standing and that the permittee Lincoln has shown no intent to abandon the water right.

### V.

The protest references several statutes within Nevada water law; NRS 533.495, NRS 533.085(1), NRS 533.505, and NRS 533.510. Nevada Revised Statute 533.085(1) states that nothing contained in this chapter [NRS Chapter 533] shall impair the vested right of any person to

the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913. Nevada Revised Statute 533.495, 533.505, and 533.510, in general, relate to stockwater rights. An examination of the records of the Office of the State Engineer, show that there are no additional water right permits, proofs or claims filed at the proposed point of diversion beyond the Protestant's claims V-04741 and V-09887, and Permit 10105, Certificate 2695 sought for change by the Applicant.<sup>3</sup> Although the claims are not adjudicated, the filings notify the State Engineer that pre-statutory claims may exist on the water source. The flow of water from the Warm Springs exceeds the amount of water required to serve the beneficial uses described under the Protestant's claims of historic use.<sup>2</sup> In other words, there is sufficient water to fully satisfy the Protestant's claims and to satisfy the water requirements under Permit 10105, Certificate 2695. Application 79659 seeks to change a portion of Permit 10105, Certificate 2695, to stockwater use, whereby the place of use of the stockwatering will be on public land where the Applicant is the authorized range user. The Applicant is not seeking a change in point of diversion, only the manner of use and place of use of a portion of the water previously appropriated under Permit 10105, Certificate 2695.

The State Engineer finds that there are no additional existing water rights or claims at the proposed point of diversion beyond V-04741, V-09887 and Permit 10105 Certificate 2695. The State Engineer finds that change Application 79659 will not conflict with the Protestant's claims of vested right.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

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<sup>3</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, September 23, 2010, official records in the Office of the State Engineer.

<sup>4</sup> NRS Chapters 533 and 534.

## II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>5</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 that the permittee Lincoln has indicated that he has no intention of abandoning his water right; therefore, the request to declare Permit 10105, Certificate 2695, abandoned is denied.

## IV.

If the historic use of Permit 10105, Certificate 2695 is now continued, as desired by permittee Lincoln, water will be diverted from the Warm Springs complex to the Seven Devils Ranch for irrigation purposes. Application 79659 is seeking to use a portion of this water for stockwatering purposes where the water will cross the Applicant's grazing allotment. Change Application 79659 is not seeking a new appropriation of water from Warm Springs and will only result in authorized use by livestock from any restored ditch or pipeline under Permit 10105, Certificate 2695, on public land within the Applicant's grazing allotment. The protest references several statutes within Nevada water law, NRS 533.495, NRS 533.085(1), NRS 533.505, and NRS 533.510, indicating water use under Permit 10105, Certificate 2695 and change Application 79659 will conflict with the Protestant's water rights. The issuance of Permit 10105 and later Certificate 2695, were made over 65 years ago and the appeal periods for these actions have long passed. In addition, the State Engineer has found that the flow of the springs exceeds the quantity of water needed to satisfy the Protestants claims of vested right; therefore, there is no conflict with existing water rights or claims.

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<sup>5</sup> NRS § 533.370(5).

The State Engineer concludes that the matter before him is the determination of whether change Application 79659 can be approved and any part of the protest related to the issuance of Permit 10105, Certificate 2695, is dismissed. The State Engineer concludes that the Protestant failed to substantiate its protest claims.

#### V.

Application 79659 seeks to change the manner of use and place of use a portion of the surface waters previously appropriated under Permit 10105, Certificate 2695. The manner of use is being changed from irrigation purposes to stockwater purposes and the place of use is being changed from 1.47 acres of land within the existing place of use to stockwater use from the historical ditch used to convey this water to the existing place of use at Seven Devils Ranch. From the field investigation, it is clear that at one time water was conveyed from the spring mound to the Seven Devils Ranch via either a ditch or pipeline. Due to neglect and the passage of many years this pipeline no longer transports water. The path of the pipeline is easily identified on current aerial imagery, and it was located in the field. The pipeline was traced in the field south towards the Seven Devils Ranch and a valve was located. It appears that the valve was in the open position, but no water was visible and it is believed that the pipeline is dry at this time. The permittee under Permit 10105, Certificate 2695 (Lincoln) maintains the position that he has the equipment to clean out the pipeline and has expressed a continued interest in returning the pipeline or other works of diversion to operating condition. The pipeline and historical ditch that conveyed the water previously appropriated under Permit 10105, Certificate 2695, crosses Applicant Joe Saval Co., LLC's grazing allotment. The proposed change would use a portion of the water being conveyed to the Seven Devils Ranch for stockwatering purposes along the path of the ditch/pipeline.<sup>2</sup>

The State Engineer concludes that the proposed change in manner of use and place of use of a portion of water previously appropriated from Warm Springs under Permit 10105, Certificate 2695, will not conflict with existing rights, protectible interests in domestic wells or threaten to prove detrimental to the public interest.

#### VI.

On June 23, 1943, a proof of beneficial use was filed under Permit 10105 and a certificate of appropriation was issued on July 15, 1943.<sup>6</sup> This signifies that a works of diversion were

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<sup>6</sup> File No. 10105, official records in the Office of the State Engineer.

constructed to convey the water from the Warm Springs complex to the place of use, where beneficial use of the water occurred for irrigation purposes. At some later date, a 10-inch concrete pipeline was built within the ditch.<sup>2</sup> No agreement on the issue of the existence of an easement could be reached between the parties at the field investigation, despite the existence of the historic works of diversion under Permit 10105, Certificate 2695.<sup>2</sup> The State Engineer concludes that the issue of whether an easement exists to the Warm Springs complex is not within his statutory authority.

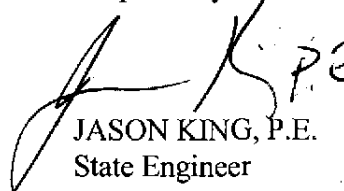
**VII.**

Based on the findings, the State Engineer concludes that the protest claims are without merit; therefore, Application 79659 may be considered for approval.

**RULING**

The protest to Application 79659 is overruled and Application 79659 is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 7th day of  
December, 2010.

# APPENDIX

## TAB 18



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

IN THE MATTER OF APPLICATION 75154 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE PINE VALLEY )  
HYDROGRAPHIC BASIN (53), EUREKA )  
COUNTY, NEVADA. )

**RULING**

**#6090**

**GENERAL**

**I.**

Application 75154 was filed on December 4, 2006, by Kenneth R. Buckingham to appropriate 0.03 cubic foot per second of water from an underground source for stock watering purposes (500 Cattle). The proposed place of use is described as being located within the NE½ NE¼ of Section 7, T.25N., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of said Section 7.<sup>1</sup>

**II.**

Application 75154 was timely protested by the U.S.D.I. Bureau of Land Management (BLM) on the following grounds:<sup>1</sup>

The application, which is being protested, is for water rights on an existing site of which the water rights were applied for on July 16, 1948 (Application number 12544). In 1951, following submittal of proof of beneficial use, the State of Nevada granted a certificate of appropriation for this site (Certificate number 3732). This new application will be in direct conflict with the provisions of these documents.

The present holders of these documents are Tom and Volina Connolly of the Flying T Ranch, located in Eureka County. The State of Nevada transferred these documents to the Connolly's on July 14, 2003. Mr. Connolly also holds a current grazing permit for this location (BLM Authorization Number 2706002).

On February 17, 1967, under the mandates provided by Section 4 of the Taylor Grazing Act of 1934, the Battle Mountain BLM Field Office issued a Range Improvement Application and Permit for this site for the purpose of furnishing stock with water. That application is still valid and on record in the Battle Mountain Field Office (Permit number N6-4-462).

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<sup>1</sup> File No. 75154, official records in the Office of the State Engineer.

The BLM wishes to facilitate the orderly administration of the range and minimize unauthorized livestock drift between the JD and Grass Valley allotments.

### **III.**

Application 75154 was timely protested by Tom and Volina Connolly on the following grounds:<sup>1</sup>

We, Tom & Volina Connolly purchased Permit #12544, Baumann Well #2, with the Baumann Ranch from George and Edna Penola, in 2001. The transfer of water rights took place July 14, 2003, as evidenced by accompanying letter. This places our ownership at less than a four year period, prior to Buckingham's filing on our permit. Our intent is to place a submersible pump in the well in 2007 and make beneficial use of the water for livestock watering. (See attached paper)

[From attached paper] The Baumann Well is a vital part of our future use of this area. Please take note of letter dated Dec. 6, 2006, from State Division of Water Resources, stating the States [sic] position on our Permit # 12544. Thank you for your attention to the above.

### **IV.**

Application 75154 was timely protested by American AgCredit, FLCA (formerly Intermountain Federal Land Bank, FLCA) on the summarized grounds that Permit 12544, Certificate 3732 is pledged as security for a loan to Thomas P. and Volina Connolly. The Protestant has filed a Deed of Trust and Notice of Pledge with the Office of the State Engineer that has been acknowledged and gives the Protestant an interest in this matter.<sup>1</sup>

## **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 a hearing is not necessary to consider the merits of the protests to Application 75154.

### **II.**

A determination was made, after an examination of the records of the Office of the State Engineer, that the proposed water source has a prior water right permit and associated certificate at the well site being Permit 12544, Certificate 3732 (hereinafter,

“Permit 12544”).<sup>2</sup> Permit 12544 was approved for stock watering purposes from an underground source. The well was drilled and water was placed to beneficial use as evidenced by the issuance of Certificate of Appropriation 3732, on December 3, 1951.

Application 75154 was filed to appropriate water from an existing well, Baumann Well #2, for stock watering purposes. The remarks section of Application 75154 notes that there is an existing water right on the well that the Applicant is requesting the State Engineer to declare forfeited and abandoned.<sup>1</sup> In support of this claim of forfeiture and abandonment, the Applicant submitted three sworn statements, including the Applicant’s, regarding non-use of Baumann Well #2.<sup>3</sup> Applicant Buckingham indicated that the well had not been pumped from 1997 to around 2002; Randy Buffington indicated no use from 1980 to early 1983; Dalton Wilson, 25 year resident, indicated that the last time well was in operation was 1991. It should be noted that Applicant Buckingham stated in a letter dated April 12, 2007, that, “He [Connolly] put a submersible pump in the well after I filed on the well water right.”<sup>4</sup> This statement, along with Protestant Connolly’s photographic evidence of beneficial use of the water in January of 2007,<sup>5</sup> appears to contradict the affidavit of Dalton Wilson, February 20, 2007, who indicated that the well has not been in operation since 1991.

A review of records in the Office of the State Engineer show that there are no pumpage inventories, measurements or records that would shed further light on the non-use issue. In the absence of his own records, the State Engineer may rely upon other evidence; however, because the law disfavors a forfeiture there must be clear and convincing evidence of the statutory period of non-use, and that any forfeiture has not been cured by resumption of use, for the State Engineer to declare a forfeiture.<sup>6</sup>

Nevada Revised Statutes (NRS) § 534.090, provides for the forfeiture and abandonment of water rights. The essential element of forfeiture is the failure for five consecutive years after April 15, 1967, to beneficially use the water. In 1995, the statute

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<sup>2</sup> Water Rights Database, Hydrographic Abstract, Basin 31, official records in the Office of the State Engineer.

<sup>3</sup> See, Chilton letter with attached statements, February 21, 2007, official records in the Office of the State Engineer.

<sup>4</sup> See, letter from Kenneth Buckingham, April 12, 2007, File No. 75154, official records in the Office of the State Engineer.

<sup>5</sup> File No. 75154, official records in the Office of the State Engineer.

<sup>6</sup> *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992).

was amended to provide that the State Engineer shall give notice of pending forfeiture after 4 consecutive years of non-use by certified mail to the owner of record giving that owner 1 year from the date of the notice to beneficially use the water or file for an extension of time to prevent forfeiture. However, the holder of a water right may also cure forfeiture and revitalize the right by substantial use of the right after the statutory period of non-use, so long as no claim or proceeding of forfeiture has begun.<sup>7</sup>

The Nevada Division of Water Resources (Division), by letter of July 14, 2003, confirmed that Permit 12544 had been assigned to show Protestants Thomas P. Connolly and Volina L. Connolly as current owners of record. On December 6, 2006, in response to a phone call inquiry from Thomas Connolly, the Division made the following determination regarding the status of the water right:<sup>8</sup>

Pursuant to our phone conversation of December 4, 2006 this letter is notification as to the current status of Permit 12544, Certificate 3732. Permit 12544, Certificate 3732 was issued for stockwatering purposes and is currently in good standing with this office. This office does not at this time have sufficient evidence of non-use to consider Permit 12544, Certificate 3732 for forfeiture. I am enclosing for your information a copy of Nevada Revised Statutes (NRS) § 534.090, which is the Statute that pertains to forfeiture of water rights.

A review of File No. 12544 shows that the water right is currently in good standing. In addition, there are no records in the file that indicate an intent by the current owner of record to abandon the water right.<sup>9</sup> Conversely, the owner of Permit 12544 has filed a protest to Application 75154 to protect his existing water right, equipped the well with a submersible pump and has submitted photographic evidence of beneficial use of the water in 2007.<sup>10</sup> The three photographs, dated January 29, 2007, show water being pumped from the well to a blue stock tank and show cattle watering at the stock tank. The presence of a submersible pump was confirmed by Division personnel in November of 2007, and it was noted that the well appeared to be operable at that time.<sup>11</sup>

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<sup>7</sup> *Town of Eureka v. State Engineer*, 108 Nev. 163, 826 P.2d 948 (1992).

<sup>8</sup> See, Division letter to Thomas Connolly, December 6, 2006, File No. 12544, official records in the Office of the State Engineer.

<sup>9</sup> File No. 12544, official records in the Office of the State Engineer.

<sup>10</sup> File No. 75154, official records in the Office of the State Engineer.

<sup>11</sup> Field Investigation of Baumann Well, November 13, 2007, File No. 75154, official records in the Office of the State Engineer.

The abandonment of a water right in Nevada is the relinquishment of a right with the intention to forsake it. Within the meaning of the term abandonment an intent to abandon is a necessary element. Non-use of a water right is only some evidence of an intent to abandon the right and does not create a rebuttable presumption of abandonment under Nevada law.

The State Engineer finds that Permit 12544 is in good standing and that the owner of record Connolly has shown no intent to abandon the water right. The State Engineer finds that the Applicant has not provided clear and convincing evidence of forfeiture and there is evidence that water was beneficially used for the purpose for which the water right was acquired in 2007. The State Engineer finds that the approval of Application 75154, to establish a water right permit at Protestant Connolly's Baumann Well #2 would conflict with the existing water right under Permit 12544 and threaten to prove detrimental to the public interest.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>12</sup>

#### **II.**

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.<sup>13</sup>

#### **III.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>14</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

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<sup>12</sup> NRS Chapters 533 and 534.

<sup>13</sup> NRS § 533.375.

<sup>14</sup> NRS § 533.370 (5).

IV.

The State Engineer concludes that approval of Application 75154 would conflict with a prior existing right under Permit 12544.

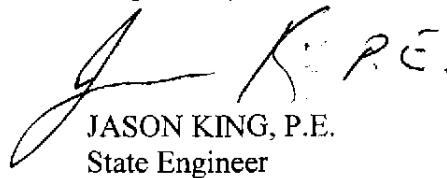
V.

Protestant Connolly submitted evidence showing that he installed a submersible pump in his well, Baumann Well #2, and used at least some water for stock water use as allowed under Permit 12544 in early 2007. The State Engineer concludes there is not clear and convincing evidence to support forfeiture or abandonment of Permit 12544.

**RULING**

The protests are upheld and Application 75154 is hereby denied on the grounds that its approval would conflict with existing rights.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 15th day of  
February, 2011.

# APPENDIX

## TAB 19

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

IN THE MATTER OF PERMIT 17109, )  
CERTIFICATE 6439, AND PERMIT )  
17110, CERTIFICATE 6002, FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS WITHIN THE BLACK ROCK )  
DESERT HYDROGRAPHIC BASIN )  
(28), PERSHING COUNTY, NEVADA. )

**RULING**

**#6131**

**GENERAL**

**I.**

Permit 17109 was issued on August 26, 1958, to Constant Minerals Separation Process, Inc., to appropriate 5.0 cubic feet per second (cfs) of groundwater from Barrel Spring and/or well for placer mining, milling, and domestic purposes within the Black Rock Desert Hydrographic Basin, Pershing County, Nevada. The point of diversion is identified as a well located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 33, T.34N., R.29E., M.D.B.&M.<sup>1</sup>

**II.**

Permit 17110 was issued on August 26, 1958, to Constant Minerals Separation Process, Inc., to appropriate 5.0 cfs of groundwater Janke Spring and/or well for placer mining and domestic purposes within the Black Rock Desert Hydrographic Basin, Pershing County, Nevada. The point of diversion is identified as a well located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 33, T.34N., R.29E., M.D.B.&M.<sup>2</sup>

**FINDINGS OF FACT**

**I.**

On April 25, 1967, Constant Minerals Separation Process, Inc., submitted a Proof of Beneficial Use for Permit 17109, and Certificate 6439 was issued on January 12, 1968, for 2.0 cfs. On April 26, 1965, Constant Minerals Separation Process, Inc. submitted a Proof of Beneficial Use for Permit 17110, and Certificate 6002 was issued March 14, 1966, for 1.5 cfs.

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<sup>1</sup> File No. 17109, official records in the Office of the State Engineer.

<sup>2</sup> File No. 17110, official records in the Office of the State Engineer.



## II.

The ownership of Permits 17109 and 17110 passed to Pershing Gold through a merger and corporate name change. The original holder of the permits, Constant Minerals Separation Process, Inc., merged with Industrial and Petroleum, Inc., on September 1, 1961. The surviving entity was Industrial and Petroleum Inc.; however, documentation of the merger was not received in the State Engineer's office until sometime after March 1989. All documentation and correspondence in Permit files 17109 and 17110 is done under the name of Constant Minerals Separation Process, Inc.

No activity is recorded in the Permit files 17109 and 17110 from the time of issuance of Certificate 6002 until July 22, 1988, when the State Engineer sent a letter to Dale K. Barker of Salt Lake City, Utah concerning other pending applications.<sup>1</sup> A hand written note at the bottom of that letter states Permits 17109 and 17110 were also being assigned to Pershing Gold. On March 9, 1989, an Amendment to the Articles of Incorporation of Industrial and Petroleum Inc., was submitted to the Office of the State Engineer that changed the name of Industrial and Petroleum Inc., to Pershing Gold effective July 1987. Since 1989 there has been no further correspondence in the file of Permit 17109.

On September 15, 2009, the database for the Office of the State Engineer was checked and no record of pending conveyance documents was on file transferring the water rights to any other water right holder. The State Engineer finds no report of conveyance transferring ownership of Permit 17109 and 17110 has ever been filed in the Office of the State Engineer and the holder of the permits in the record of the office is Pershing Gold.

## III.

On August 25, 2009, staff from the Office of the State Engineer conducted an informal field investigation at the points of diversion under Permits 17109 and 17110, and found the wells open, abandoned, and dry. No placer mining activity was discerned in the area.<sup>3</sup> There are no valid mining claims in the name of Pershing

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<sup>3</sup> See, Field Investigation No. 1118, official records in the Office of the State Engineer.

Gold covering the place of use.<sup>4</sup> Nevada Alaska Mining Co., Inc., currently owns mining claims covering the place of use of Permits 17109 and 17110; however, they have not filed applications for water rights with the Office of the State Engineer as of September 15, 2009.

On or about July 26, 2011, the State Engineer inquired with the Nevada Secretary of State as to whether Pershing Gold was an active company in the state of Nevada. The Secretary of State had no records indicating such a company is in existence.

Based on the evidence, that the permittee has failed to provide a current address for more than 20 years, that Pershing Gold does not exist as a business in the state of Nevada, that no entity or person has requested conveyance of the water right into the name of another water right holder in nearly 20 years, that no water is being used under the permits and the wells have been abandoned, the State Engineer finds there substantial evidence of an intent to abandon the water rights.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

#### **II.**

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holders non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 17109, Certificate 6439, and Permit 17110, Certificate 6002, have been intentionally abandoned by the permit holder.

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<sup>4</sup> USDI Bureau of Land Management, Land and Mineral LR 2000 database.

<sup>5</sup> NRS Chapters 533 and 534.

**RULING**

Permit 17109, Certificate 6439, and Permit 17110, Certificate 6002, are hereby declared abandoned.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JK' with a stylized flourish.

JASON KING, P.E.  
State Engineer

Dated this 28th day of  
July, 2011.

# APPENDIX

## TAB 20

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

IN THE MATTER OF PERMIT 2372, )  
CERTIFICATE 242, FILED TO )  
APPROPRIATE SURFACE WATER )  
WITHIN THE JERSEY VALLEY )  
HYDROGRAPHIC BASIN (132), )  
LANDER COUNTY, NEVADA. )

**RULING**

**#6137**

**GENERAL**

**I.**

Permit 2372 was issued July 10, 1912, to Jersey Valley Mines, Company to appropriate 2.0 cubic feet per second (cfs) of water from Rock Spring for mining and domestic purposes within the Jersey Valley Hydrographic Basin, Lander County, Nevada. The point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, T.27N., R.40E., M.D.B.&M.<sup>1</sup>

**II.**

The owner of record of Permit 2372 is Jersey Valley Mines, Company of Battle Mountain, Nevada. After filing proof of beneficial use of the water, the State Engineer issued Certificate 242 for 0.20 cfs of water on December 12, 1914.

There appears to be a discrepancy in the actual point of diversion described on the permit and certificate. The application described both the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35 and the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34. Both Rock Spring and Abel Spring are shown on the supporting water right map submitted by the owner. The Proof of Completion of Work filed on August 21, 1912, clearly depicts Abel Spring as the point of diversion described as being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, T.27N., R.40E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Mining activities commenced in the Jersey Canyon shortly after discovery of silver and lead in 1874. Ore was shipped from the area from 1880 to 1910. Small shipments were made during the years of 1921 and 1929.<sup>2</sup> John W. Abel worked the mining claims sometime before 1905.<sup>3</sup> In

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<sup>1</sup> File No. 2372, official records in the Office of the State Engineer.

<sup>2</sup> Nevada Bureau of Mines and Geology, Open File Report 85-3, pp. 75-76.

<sup>3</sup> Allen C. Bragg, *Humboldt County 1905*, The North Central Nevada Historical Society, p. 9 (1976).

November 1911, Abel's heirs sold land and appurtenant water rights to Jersey Valley Mines, Company.<sup>1</sup> On March 9, 1912, Jersey Valley Mines, Company filed Application 2372.<sup>1</sup>

A letter dated, December 15, 1919, written by J. L. Durrett in support of Application 5234 states that Jersey Valley Mines, Company had not operated their property in four or five years and that all the equipment "is practically all moved out of the mill at this writing."<sup>4</sup>

On October 4, 1929, a field investigation was conducted by the Division of Water of Resources. It was learned that a Marius Allard and George Hermilin had purchased the improvements of the Jersey Valley Mines, Company from Pershing County, presumably for back taxes; however, no record of conveyance was ever filed with the Office of the State Engineer.<sup>5</sup>

There is no evidence of Jersey Valley Mines, Company being registered with the Nevada Secretary of State's office. Recent field investigations showed no signs of mining activity and that the point of diversion and mill site are abandoned.

It is readily apparent that Jersey Valley Mines, Company had clearly abandoned its mining claim and therefore its water rights by 1915. There is no correspondence from any officer or successor in interest of Jersey Valley Mines, Company in File No. 2372.

The State Engineer finds there is no evidence of the continued existence of Jersey Valley Mines, Company. The State Engineer finds no water from Abel Spring has been placed to beneficial use for the manner described under Certificate 242 for a long period of time and no entity or person has ever formally requested conveyance of the water right into the name of another water right holder. The State Engineer finds that the evidence indicates that the waters from Abel Spring have not been used for over 95 years and the mining project of Jersey Valley Mines, Company has been long abandoned.

## **CONCLUSIONS**

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

### **II.**

Nevada Revised Statute § 533.060 provides for the loss of a water right by abandonment. The Nevada Supreme Court has also determined that a surface water right may be lost due to

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<sup>4</sup> File No. 5234, official records in the Office of the State Engineer.

<sup>5</sup> File No. 8214, official records in the Office of the State Engineer.

<sup>6</sup> NRS Chapters 533 and 534.

abandonment.<sup>7</sup> Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 2372, Certificate 242 has been intentionally abandoned by the permit holder.

**RULING**

Permit 2372, Certificate 242 is hereby declared abandoned.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 5th day of  
August, 2011.

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<sup>7</sup> *In re Manse Spring and its Tributaries*, 60 Nev. 280, 287, 289-291, 108 P. 2d 311 (1940).

# APPENDIX

## TAB 21



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

IN THE MATTER OF PERMIT 10284, )  
CERTIFICATE 3110, FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS WITHIN THE BLACK ROCK )  
DESERT HYDROGRAPHIC BASIN )  
(28), HUMBOLDT COUNTY, NEVADA. )

**RULING**  
**#6152**

**GENERAL**

**I.**

Permit 10284 was issued June 27, 1939, to A. R. Weeter to appropriate 3.0 cubic feet per second (cfs) of groundwater for mining and domestic purposes within the Black Rock Desert Hydrographic Basin, Humboldt County, Nevada. The point of diversion is identified as a well located within the SE¼ NW¼ of Section 26, T.35N., R.29E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

The original holder of Permit 10284 was A. R. Weeter of Sulphur, Nevada. Mr. Weeter conveyed the water right to O. J. Streeter on April 4, 1942, who then conveyed the Permit to W. S. Peterson on January 15, 1948. After filing proof of beneficial use of the water on January 29, 1948, the State Engineer issued water right Certificate 3110 for 0.5 cfs to Mr. Peterson.

In the ensuing 61 years, four inquiries<sup>2</sup> have been received concerning Permit 10284 by the State Engineer's office requesting information of said Permit. The first three requests were never followed up by additional letters. The last inquiry, by telephone, was in April 2009, by Will Peterson who was advised by letter dated April 21, 2009, to submit a Report of Conveyance and corresponding deeds to update ownership of the certificated water right.<sup>1</sup> As of October 26, 2009, no correspondence has been received and there has been no correspondence with W. S. Peterson since the Certificate was issued in 1948.

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<sup>1</sup> File No. 10284, official records in the Office of the State Engineer.

<sup>2</sup> See letter received in the Office of the State Engineer, from Joan Louise Siegel dated February 23, 1971, letter received from Frank Lewis dated December 5, 1982, telephone call received from William Peterson on December 2, 1988, and telephone call from Will Peterson received April 21, 2009.

## II.

On August 25, 2009, staff from the Office of the State Engineer conducted an informal field investigation at the point of diversion under Permit 10284 and found the well (Sulphur Well) in disrepair and no placer mining activity in the area.<sup>3</sup> The place of use was the Sulphur Mill. The mill site is in a state of complete disrepair. The buildings are collapsed and numerous rusted iron parts and wood remnants are strewn about the site. Old piles of sulphur ore are overgrown with greasewood. The wooden structure at the point of diversion is collapsed; the standing water is overgrown with algae and grasses and rusted pipes and valves are visible and have clearly not been used in years.<sup>3</sup> The mill site and well are now on mining claims controlled by the Hycroft Gold mine and there was no evidence that the Hycroft mine ever used the water.

The State Engineer finds there is no evidence of Mr. Peterson using the water for a very long period of time, and no entity or person has requested conveyance of the water right into the name of another water right holder in nearly 60 years, demonstrating an intent to abandon the water right.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>4</sup>

### II.

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holder's non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 10284, Certificate 3110, has been intentionally abandoned by the permit holder.

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<sup>3</sup> See Field Investigation No. 1118, File No. 10284, official records in the Office of the State Engineer.

<sup>4</sup> NRS Chapters 533 and 534.

**RULING**

Permit 10284, Certificate 3110, is hereby declared abandoned.

Respectfully submitted,

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

Dated this 2nd day of  
December, 2011.

# APPENDIX

## TAB 22

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

IN THE MATTER OF APPLICATIONS 80453, 80454, )  
80455 AND 80456 FILED TO CHANGE THE )  
PUBLIC WATERS OF NEGRO CREEK AND )  
TRIBUTARIES WITHIN THE SPRING VALLEY )  
HYDROGRAPHIC BASIN (184), WHITE PINE )  
COUNTY, NEVADA. )

**RULING**  
**#6159**

**GENERAL**

**I.**

Application 80453 was filed on January 12, 2011, by the Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints to change the point of diversion, place and manner of use of 1.6 cubic feet per second (cfs) of water from Negro Creek previously appropriated under Permit 3186, Certificate 567. The proposed manner of use is unchanged and is described as being for irrigation; however, the season of use is changed from April 1 to October 1 of each year to January 1 to December 31 of each year. The proposed place of use is described as being located within the E $\frac{1}{2}$  of Section 34, N $\frac{1}{2}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  of Section 35, T.17N., R.67E., and the N $\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 2, NE $\frac{1}{4}$  of Section 3, T.16N., R.67E., M.D.B.&M. The existing place of use is described as being located within the N $\frac{1}{2}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 35, T.17N., R.67E., M.D.B.&M. The change requested by Application 80453, if approved, would transfer the Applicant's existing point of diversion from the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.16N., R.67E., M.D.B.&M. to a point that is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.16N., R.68E., M.D.B.&M.<sup>1</sup>

**II.**

Application 80454 was filed on January 12, 2011, by the Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints to change the point of diversion and place of use of 1.512 cfs, not to exceed 544.86 acre-feet per season, of water from Negro Creek previously appropriated under Permit 8393, Certificate 3213. The manner of use is unchanged and is described as being for irrigation purposes. The season of use remains the same and will be from October 1 to April 1 of the following year. The proposed place of use is the same as described

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<sup>1</sup> File No. 80453, official records in the Office of the State Engineer.

under Application 80453. The existing place of use is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, T.17N., R.67E., and the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.16N., R.67E., M.D.B.&M. The change requested by Application 80454, if approved, would transfer the Applicant's existing point of diversion from the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.16N., R.67E., M.D.B.&M. to a point that is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.16N., R.68E., M.D.B.&M.<sup>2</sup>

### III.

Application 80455 was filed on January 12, 2011, by the Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints to change the point of diversion and place of use of 2.873 cfs, not to exceed 1,149.2 acre-feet per year, of water from Negro Creek and Tributaries previously appropriated under Permit 10487, Certificate 5042. The manner of use is unchanged and is described as being for irrigation purposes. The season of use remains the same and will be from January 1 to December 31 of each year. The proposed place of use is the same as described under Application 80453. The existing place of use is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 2, NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 3, T.16N., R.67E., M.D.B.&M. and the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 34, SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 35, T.17N., R.67E., M.D.B.&M. The change requested by Application 80455, if approved, would transfer the Applicant's existing point of diversion from the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, T.16N., R.67E., M.D.B.&M. to a point that is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.16N., R.68E., M.D.B.&M.<sup>3</sup>

### IV.

Application 80456 was filed on January 12, 2011, by the Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints to change the point of diversion and place of use of a portion of water previously appropriated under Proof of Appropriation V-01080, Certificate 31. The proposed manner of use is unchanged and is described as being as Decreed. The proposed place of use is the same as described under Application 80453. The existing place of use is described as being located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17 and the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, all in T.16N., R.68E., M.D.B.&M. The change requested by Application 80456, if

<sup>2</sup> File No. 80454, official records in the Office of the State Engineer.

<sup>3</sup> File No. 80455, official records in the Office of the State Engineer.

approved, would transfer the Applicant's existing point of diversion from the NW¼ NE¼ of Section 16, T.16N., R.68E., M.D.B.&M. to a point that is located within the NW¼ NW¼ of Section 17, T.16N., R.68E., M.D.B.&M.<sup>4</sup>

**V.**

Applications 80453, 80454, 80455 and 80456 were timely protested by George Eldridge & Son, Inc. on March 10, 2011, on the following grounds:

These applications would change the point of diversion from the lower ranch to the upper ranch to facilitate putting all of the Applicant's Negro Creek water into a pipeline, which would transport the stream to the lower ranch, thus eliminating percolation through the streambed. George Eldridge & Son, Inc. holds irrigation rights to North and South Millick Springs, which lie at the toe of the Negro Creek alluvial fan and it is believed those springs are fed by percolation through the fan. The Applicant and Protestant may hold vested stockwater rights on either of those springs, and the springs rise on two federal 40-acre Public Water Reserves. Due to the likelihood that eliminating percolation through the Negro Creek alluvial fan will severely impair flows from both North and South Millick Springs, the Protestant anticipates its rights being impaired or destroyed. Also for Applications 80454 and 80455, approximately 145 acres in the NE¼ of Section 3, T. 16N., R. 67E., M.D.B.&M. has not been irrigated since 1956 and, if it ever was irrigated prior to 1956 and after filing proof of beneficial use, has obviously been abandoned; therefore, Certificates 3213 and 5042 should be reduced accordingly.

**FINDINGS OF FACT**

**I.**

Nevada Revised Statutes § 533.365(4) 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 sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Applications 80453 through 80456 and a hearing is not necessary.

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<sup>4</sup> File No. 80456, official records in the Office of the State Engineer.

## II.

The Decree of Negro Creek was the result of ongoing contention as to the delivery of Negro Creek water with respect to Permits 3186 and 10487 appurtenant to the Rogers property (Lower Property). As Negro Creek flows out of the mountains it was first used at a property located at the base of the mountain block and start of the alluvial fan (Upper Property) and then flowed across the alluvial fan to the west and northwest to the Lower Property at or near the floor of Spring Valley. At that time, the Upper and Lower Properties were separately owned.

The waters of Negro Creek and its Tributaries were decreed in the Seventh Judicial Court of the State of Nevada in and for the County of White Pine by decree filed on April 1, 1935.<sup>5</sup> A search of the records of the Office of the State Engineer show the current appropriations on Negro Creek and are tabulated below:

| App    | Status | Div CFS | Use | Period of use | Duty    | Units | Owner of Record                      |
|--------|--------|---------|-----|---------------|---------|-------|--------------------------------------|
| 10487  | Cer.   | 2.873   | Irr | Annual        | 1149.2  | AFA   | Corp. of Church of Latter-Day Saints |
| 3186   | Cer.   | 1.600   | Irr | 4/1-10/1      | 640.00  | AFS   | Corp. of Church of Latter-Day Saints |
| 8393   | Cer.   | 1.512   | Irr | 10/1-4/1      | 544.86  | AFS   | Corp. of Church of Latter-Day Saints |
| V01080 | VST    | 0.940   | Irr | 4/1-11/1      | 266.52  | AFS   | Corp. of Church of Latter-Day Saints |
| Sum    |        | 6.925   |     |               | 2600.58 | AF    |                                      |

As can be seen on the above table, the Applicant now owns all the water rights, which divert water from Negro Creek and its tributaries. The purpose of Applications 80453 through 80456 is, in part, to change the existing points of diversion to a point near the Upper Property for the purpose of conveying the water via pipeline to the Lower Property. Piping the water will reduce any conveyance losses that may occur when the water flows in the natural channel across the alluvial fan.

A review of records on file in the Office of the State Engineer show that the average calculated flow of Negro Creek between July 2002 and November 2010 is 1.33 cfs. The calculated median over the same time period is 0.87 cfs.<sup>6</sup> The committed resource on the creek

<sup>5</sup> Judgment and Decree, *Washington Rogers v R. A. Yellard*, In the Seventh Judicial District Court In and For the County of White Pine, Nevada April 1, 1935.

<sup>6</sup> Spring Valley Hydrographic Basin 10-184 NRS § 533.364 Inventory, NDWR, August 2011, official records in the Office of the State Engineer.



totals 6.925 cfs. The higher diversions were likely granted due to the fact that Negro Creek can be considered a flash stream or a small stream, whereby the head-waters are in the higher elevations of the mountain range where spring snowmelt and seasonal precipitation events can be intense, but usually of a short duration.

Based on the stream flow data and the existing water rights on the source, the State Engineer finds Negro Creek to be fully appropriated. The State Engineer finds that all active water rights on Negro Creek are now owned by the Applicant. The State Engineer finds that the Applicant, by Applications 80453 through 80456, is attempting to utilize its water more efficiently to provide increased water supply to its Lower Property.

### III.

The Protestant asserts that the approval of Applications 80453, 80454 and 80455 would change the points of diversion from Section 2, T.16N., R.67E. to Section 17, T.17N., R.68E., and would enclose the entire flow of Negro Creek into a pipeline for transmission to the new place of use. Protestant George Eldridge and Son, Inc., holds irrigation rights on North and South Millick Springs, which lie at the toe of the Negro Creek alluvial fan. It is asserted that these springs are fed by percolation of Negro Creek water through the fan. By eliminating this source of recharge the Protestant argues that its water rights within the Negro Creek alluvial fan will be severely impaired or destroyed, particularly the flows of North and South Millick Springs.

A search of the records of the Office of the State Engineer shows three active water rights appurtenant to North and South Millick Springs as tabulated below:

| App   | Status | Div<br>CFS | Use  | Duty    | Units | Owner of Record                         |                      |
|-------|--------|------------|------|---------|-------|---|----------------------|
| 10921 | Cer.   | 0.79       | Irr. | 570.73  | AFA   | George Eldridge & Son, Inc.             | South Millick Spring |
| 10993 | Cer.   | 0.60       | Irr. | 433.62  | AFA   | George Eldridge & Son, Inc.             | North Millick Spring |
| 8721  | Cer.   | 0.02       | STK  | 14.49   | AFA   | Corp. of Church of Latter-Day<br>Saints | South Millick Spring |
|       | Sum    | 1.41       |      | 1018.84 | AFA   |   |                      |

The average calculated flow from records submitted to the Office of the State Engineer of North Millick Spring between June 2004 and November 2010 is 0.56 cfs and the calculated median of the same period is 0.59 cfs.<sup>6</sup> Comparing the difference in the average flow and the median flow reveals that the relative difference is small. The average calculated flow from

records submitted to the Office of the State Engineer of South Millick Spring between June 2004 and November 2010 is 1.04 cfs and the calculated median of the same period is 1.00 cfs. Again, comparing the difference in the average flow and the median flow reveals that the relative difference is small.

Analysis of North and South Millick Springs indicate that the springs are primarily groundwater that is emerging with the assistance of past excavation to increase access to the water source. The overflow of the springs then flows out of the spring area and seeps back into the ground. A review of topographic maps shows that North and South Millick Springs are approximately 1 to 2 miles north of the proposed place of use of Applications 80453 through 80456. North and South Millick Springs are not within the immediate drainage of Negro Creek. North and South Millick Springs appear to arise at the geologic intersection of the alluvial fan and the valley floor. An examination of the topography and spring characteristics indicate that the springs could be recharged from the adjacent alluvial fan and mountain block and could include some component of recharge from Negro Creek.

The table below shows the priority dates for the water rights of Negro Creek and North and South Millick Springs germane to the water rights considered in this ruling:

| Water right Number | Change Application Number | Priority date | Source               | Owner                                |
|--------------------|---------------------------|---------------|----------------------|--------------------------------------|
| 3186               | 80453                     | 11/27/1914    | Negro Creek          | Corp. of Church of Latter-Day Saints |
| 8393               | 80454                     | 11/18/1927    | Negro Creek          | Corp. of Church of Latter-Day Saints |
| 10487              | 80455                     | 4/8/1940      | Negro Creek          | Corp. of Church of Latter-Day Saints |
| V01080             | 80456                     | 1/1/1887      | Negro Creek          | Corp. of Church of Latter-Day Saints |
| 10921              |                           | 2/3/1943      | South Millick Spring | George Eldridge & Son, Inc.          |
| 10933              |                           | 9/1/1943      | North Millick Spring | George Eldridge & Son, Inc.          |
| 8721               |                           | 10/13/1928    | South Millick Spring | Corp. of Church of Latter-Day Saints |

The priority date is the date of establishment of a water right; the officially recognized date associated with a water right. Relative to other water rights, the priority date may make a water right senior or junior. Nevada water law is modeled on the concept of the doctrine of prior appropriation. The prior appropriation doctrine is a concept in water law under which a right to a given quantity of water is determined by such a procedure as having the earliest priority date. This system for allocating water is used in most of the western United States due to arid

conditions limiting the supply of water. The prior appropriation doctrine can be simply stated as “first in time, first in right,” with higher priority or senior rights satisfied before junior rights. However, case law has concluded in some instances that junior right holders have a right to the continuation of conditions as they existed at the time of their appropriation. The data is inconclusive as to whether the change proposed by these applications will affect the Protestant’s spring rights albeit junior in priority; therefore, the State Engineer finds that if Applications 80453, 80454, 80455 and 80456 are approved, a monitoring plan must be submitted and approved by the State Engineer before water can be diverted.

#### IV.

The abandonment of a water right in Nevada is the relinquishment of a right with the intention to forsake it. Within the meaning of the term abandonment an intent to abandon is a necessary element. The protest alleges non-use of a portion of the water rights sought for change; however, non-use of a surface water right is only some evidence of an intent to abandon the right and does not create a rebuttable presumption of abandonment under Nevada law. The Applicant’s intent to place the water to beneficial use is evidence by the filing of Applications 80453, 80454, 80455 and 80456.

The State Engineer finds that the water that forms the basis for the change applications is in good standing and that the Applicant has shown no intent to abandon these water rights.

### CONCLUSIONS

#### 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 a permit under a change application that requests to appropriate 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

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<sup>7</sup> NRS Chapter 533.

<sup>8</sup> NRS § 533.370(2).

D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that the Applicant is the sole water right holder on Negro Creek and the Applicant does not intend to abandon its water rights.

**IV.**

Based on the findings, the State Engineer concludes that the proposed change applications will not conflict with existing rights or threaten to prove detrimental to the public interest; therefore, the protest claims may be overruled.

**RULING**

The protest to Applications 80453, 80454, 80455 and 80456 is hereby overruled and the applications are granted subject to existing rights and payment of the statutory permit fees and an approved monitoring plan by the State Engineer.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 1st day of  
February, 2012.

# APPENDIX

## TAB 23

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

IN THE MATTER OF APPLICATION 75531 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION OF A PORTION OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 27331, CERTIFICATE 9514, WITHIN )  
THE CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, NEVADA. )

**RULING**

**#6177**

**GENERAL**

**I.**

Application 75531 was filed on April 9, 2007, by the Donna I. Buddington Family Trust, dated May 24<sup>th</sup>, 2001, to change the point of diversion of 0.2175 cubic feet per second (cfs), not to exceed 40.0 acre-feet seasonally, a portion of water previously appropriated under Permit 27331, Certificate 9514, from an underground source for irrigation purposes. The place of use is described as being 6.1 acres within the NE¼ SE¼ of Section 3, and 3.9 acres within the NW¼ SW¼ of Section 2, T.12N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 2, T.12N., R.19E., M.D.B.&M. The existing point of diversion is described as being located within the SE¼ SW¼ of Section 3, T.12N., R.19E., M.D.B.&M. The period of use, May 1<sup>st</sup> to October 1<sup>st</sup>, is unchanged.<sup>1</sup>

**II.**

Application 75531 was protested by the Pyramid Lake Paiute Tribe (Tribe) on grounds as summarized below:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the groundwater available in the basin resulting in the inability of the perennial yield to serve existing permits and commitments with groundwater, and in light of the obligations of the State Engineer pursuant to NRS Chapters 533, 534 and 278 to require that there be adequate plans to protect existing rights, uses and commitments of groundwater and to exercise all appropriate authority

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<sup>1</sup> File No. 75531, official records in the Office of the State Engineer.

and discretion to control over-demand on the source and to protect both the public and other right holders of surface water and groundwater rights.

2. Upon information and belief, the rights in question have been forfeited and/or abandoned and the application should therefore be denied.
3. Granting the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest by depleting flows in the Carson River and to Lahontan Reservoir, for the reasons stated above and because of the connection, both legal and physical, between the groundwater and surface water in the basin to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which are the primary source to satisfy their rights and would impact Pyramid Lake and its fishery and impair instream flows.
4. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise before the application is actually considered by the State Engineer.
5. Granting the application would threaten to prove detrimental to the public interest.
6. This Protestant incorporates any other protest filed by any other Protestant.

### **FINDINGS OF FACT**

#### **I.**

Nevada Revised Statute (NRS) § 533.365(4) 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 Nevada. The State Engineer finds that in the case of protested Application 75531 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 Protestant asserts that the permitted and certificated groundwater rights in the Carson Valley Hydrographic Basin far exceed the estimated perennial yield, and as such, the pumping of groundwater is or will be taking flows in the Carson River surface water that is claimed by senior water right holders in the Newlands Project; thus, the use of groundwater is impacting existing rights, the Truckee River and Pyramid Lake and its fishery. It should be noted that the Protestant is not a water right holder on the Carson River, does not have any existing decreed right to

Carson River surface water, and is not the owner of record of any groundwater within the Carson Valley Hydrographic Basin. Pyramid Lake is the terminus of the Truckee River.

The Nevada Division of Water Resources (Division) spends a significant amount of time in the Carson Valley area performing fieldwork. Pumpage inventories have been conducted since 1987 to monitor the quantity of water pumped in the Carson Valley Hydrographic Basin. In conjunction with this field work, the Division enforces permit compliance and investigates improper use of groundwater. Also, water levels are measured at selected sites and field investigations are conducted throughout the year as needed.

When water rights are dedicated for municipal use, the dedication policy of the Division is designed to cover the maximum amount of water ever anticipated to be used, and historically actual use has been demonstrated to be less than the total amount dedicated. Relinquishments of water rights are also required for domestic well subdivisions even though domestic wells normally are exempt from the permitting provisions of Nevada water law. Finally, the Division has consistently performed its obligation to protect existing rights, and to assure water is available for development, through signatory authority over subdivision maps.

Water level data collected by the Division fails to indicate any significant declining trends that would support the allegation that the basin is over-appropriated.<sup>2</sup> In addition, annual surface-water discharges as measured at the United States Geological Survey gauge for the Main Stem of the Carson River near Carson City actually increased over 4% for the 30-year period of 1976 through 2005 when compared to the prior 30-year period.<sup>3</sup>

In State Engineer's Ruling No. 5791, an in-depth analysis of the groundwater resources showed the Carson Valley Hydrographic Basin is not severely over-appropriated and is not over-pumped.<sup>4</sup> The State Engineer finds that the analysis contained in State Engineer's Ruling No. 5791 is still valid, and hereby adopts the findings and conclusions of State Engineer's Ruling No. 5791.

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<sup>2</sup> Water Level Data for Carson Valley Hydrographic Basin (105), official records in the Office of the State Engineer.

<sup>3</sup> *Evaluation of Available Stream Flow Data for the Carson River and Review of Random Lithologic Records of Drilled Wells within the Carson Valley, Douglas County, Nevada*, prepared by R.O. Anderson Engineering, Inc. in collaboration with Turnipseed Engineering, Ltd., p. 8.

<sup>4</sup> State Engineer's Ruling No. 5791, October 23, 2007, official records in the Office of the State Engineer.



The State Engineer finds that the Division has and continues to perform its obligations in regards to management of the water resources of the Carson Valley Hydrographic Basin. The State Engineer further finds that the Carson Valley Hydrographic Basin is not over-appropriated and an analysis of the data collected by the Division, such as, pumpage inventories and water levels, support this finding. The State Engineer finds that the water sought for change under change Application 75531 has already been accounted for in the groundwater basin budget and therefore, will have no additional effect on the groundwater resource.

### III.

Application 75531 is not requesting a new appropriation of water. Rather, the application is seeking to change only the point of diversion of an existing certificated water right. Permit 27133, Certificate 9514, provides the Applicant with a supplemental groundwater right to its decreed Mott Creek surface water rights. Under the existing water right, the Applicant obtains water from a point of diversion located within the SE¼ SW¼ of Section 3, T.12N., R.19E., M.D.B.&M., and Application 75531 would move the point of diversion approximately 3,300 feet to the east - northeast to the Applicant's property.<sup>1</sup>

The Applicant states that the water right in question has neither been forfeited nor abandoned. Historically, groundwater has been delivered to the Applicant's property via an irrigation ditch from the existing well under Permit 27331, Certificate 9514. However, due to recent home construction, it has become difficult for the Applicant to reliably obtain water. Therefore, Application 75531 was filed to transfer the point of diversion to a well located directly on the Applicant's property to allow easier access to the Applicant's certificated supplemental groundwater right.<sup>5</sup>

The State Engineer finds that the application before him changes an existing certificated water right and the application does not seek a new appropriation of water. The State Engineer finds the proposed change will have no additional impact on the Carson Valley Hydrographic Basin and no effect upon the Protestant.

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<sup>5</sup> See, letter of August 6, 2007, File No. 75531, official record in the Office of the State Engineer.

#### IV.

Application 75531 was protested on the grounds that the water rights have been forfeited and/or abandoned. A review of File No. 27331, shows that the water right is certificated and in good standing at this time.<sup>6</sup> Nevada Revised Statute § 533.030 provides that water may be appropriated for a beneficial use and not otherwise. Nevada Revised Statute § 533.035 provides that beneficial use is the basis, the measure and the limit of the right to the use of water. Abandonment is a question of fact to be determined from all the surrounding circumstances and an intent to forsake the water right is a necessary element. In the case of Permit 27331, Certificate 9514, the Applicant has filed a change application to move the point of diversion to a well located on the Applicant's property to allow for easier access to the water. This is evidence that the Applicant does not intend to abandon its water right and seeks to ensure that the water can be placed to beneficial use as needed to supplement its surface water.

The State Engineer finds that the water sought for change under Application 75531, represented by a portion of Permit 27331, Certificate 9514, is currently in good standing and is not subject to abandonment or forfeiture.

#### V.

The Protestant alleges that granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to it, but which may arise before the application is actually considered by the State Engineer. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled.

#### VI.

The Protestant alleges that granting the application would threaten to prove detrimental to the public interest and the protest seeks to incorporate any other issues raised by any other protestant. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney, and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled. It is noted that there are no other protests to the application.

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<sup>6</sup> File No. 27331, 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>7</sup>

### **II.**

The State Engineer is prohibited by law from granting a permit 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 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.**

Application 75531 seeks to move the point of diversion approximately 3,300 feet to the east - northeast of its current location. The existing water right is a certificated underground supplemental water right in good standing and the only change sought is in the location of the point of diversion. All other elements of the existing water right will remain unchanged. The State Engineer concludes that the protest issues raised are without merit and may be overruled.

### **IV.**

The State Engineer concludes that change Application 75531 will not conflict with existing rights and protectible interests in existing domestic wells, and will not threaten to prove detrimental to the public interest.

### **V.**

The State Engineer concludes that the water sought for change is in good standing, is not subject to forfeiture or abandonment, and the filing of a change application on this existing water right is allowed by Nevada water law.<sup>9</sup>

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<sup>7</sup> NRS Chapters 533 and 534.

<sup>8</sup> NRS § 533.370(2).


<sup>9</sup> NRS § 533.040(2).

**RULING**

The protest to Application 75531 is hereby overruled and Application 75531 is approved subject to:

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

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 4th day of  
May, 2012.

# APPENDIX

## TAB 24

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

IN THE MATTER OF PERMIT 9008, CERTIFICATE )  
1831 AND PERMIT 9061, CERTIFICATE 1832 )  
FILED TO APPROPRIATE THE PUBLIC WATERS )  
OF STAR CANYON CREEK WITHIN THE BUENA )  
VISTA VALLEY HYDROGRAPHIC BASIN (129), )  
PERSHING COUNTY, NEVADA. )

**RULING**

**#6182**

**GENERAL**

**I.**

On August 10, 1929, the Office of the State Engineer received a water right application from the Central Pacific Railway Company, which was assigned the serial number 9008. This application requested a new appropriation of water from Star Canyon Creek for general railroad and domestic use at the town of Imlay, which lies approximately 13 miles to the northwest. It was the Applicant's intention to divert 1.25 cubic feet per second of the flow of Star Canyon Creek into a concrete diversion box located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.31N., R.34E., M.D.B.&M. and convey it through a 6" – 8" pipeline to a 350,000 gallon water storage tank at the Imlay rail yards.

Permit 9008 was issued on December 15, 1930, and is fourth in priority among the five water rights that have been issued for appropriations of water from Star Canyon Creek.<sup>1</sup> The water right was perfected and Certificate 1831 was issued on June 16, 1932.

**II.**

A second water right filing, Application 9061, was received from the Central Pacific Railway Company on September 20, 1929, requesting a change in the point of diversion, place of use and manner of use of a portion of an existing decreed water right. Decreed Proof V-01177, emerged from the Star Canyon Creek adjudication as the senior decreed water right on Star Canyon Creek. Permit 9061, issued on May 28, 1930, allowing the Central Pacific Railway Company to change the manner of use from irrigation on the Star Creek Ranch to general railroad and domestic use within the same area described under Application 9008. The Applicant also intended to

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<sup>1</sup> File No. 9008, official records in the Office of the State Engineer.

combine the seasonal periods of use requested under Applications 9008 and 9061 to allow a year round use of the creek.

Application 9061, upon its approval, also inherited the priority date of its base right permit, which in this instance would be the 1862 priority established under Proof V-01177. Therefore, Permit 9061 and Proof V-01177 share the same priority date, that being the senior priority on Star Canyon Creek.<sup>2</sup> The water right was perfected and Certificate 1832 was issued on June 16, 1932.

### **FINDINGS OF FACTS**

#### **I.**

Conflicts arising over the use of water from Star Creek have existed for many years, foremost among these being civil action *Gallio v. Ryan*, which was settled through the formal adjudication of Star Canyon Creek and Santa Clara Creek.<sup>3</sup> A more recent dispute between agricultural and mining interests was resolved by State Engineer's Ruling No. 6150. In Ruling No. 6150 the State Engineer through a series of findings of fact and conclusions of law approved an additional appropriation of Star Canyon Creek water for mining and milling purposes. A determination was made that during those months when Proof V-01177 and Permit 2925, Certificate 575, were outside of their respective periods of use, a limited amount of surface water could be diverted to support a proposed placer gold operation.

A pair of certificated railroad permits was also addressed in the findings of fact of Ruling No. 6150. Based upon the records of the Office of the State Engineer, it was found that Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832 had an extended period of non-use.<sup>4</sup> The State Engineer chose at the time of his ruling not to pursue an abandonment of these surface water rights, but finds that recent interest in additional appropriations of water from Star Canyon Creek has spurred consideration of Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832 and their possible abandonment.

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<sup>2</sup> File No. 9061, official records in the Office of the State Engineer.

<sup>3</sup> *Gallio v. Ryan*, Sixth Judicial District Court of the State of Nevada, In and For The County of Pershing, May 6, 1927.

<sup>4</sup> State Engineer's Ruling No. 6150, dated September 19, 2011, official records in the Office of the State Engineer.

## II.

In Nevada, abandonment of a water right is the voluntary “relinquishment of the right by the owner with the intention to forsake and desert it.” *In re Manse Spring*, 108 P.2d 311, 315 (Nev. 1940). Abandonment requires both action and intent, and under Nevada law is “a question of fact to be determined from all the surrounding circumstances.” *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).<sup>5</sup>

[U]nder Nevada law, a determination of whether there exists an intent to abandon requires a consideration of all the relevant circumstances. *See Revert*, 603 P.2d at 264; *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration).<sup>6</sup>

Non-use for a period of time may inferentially be some evidence of intent to abandon.<sup>7</sup> Although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption.<sup>8</sup>

At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon.<sup>9</sup>

In the case of the subject permits, not only does each of these permits have an extensive history of non-use, but the required intent to voluntarily relinquish the water rights also exists.

The evidence for non-use centers upon the manner of use that was perfected under each of these permits. Certificates of Appropriation Nos. 1831 and 1832 were approved on June 6, 1932, and describe in general terms, the water related activities that were taking place within their common place of use. The descriptions of the manner of use for both certificates are identical and described as “locomotive water columns, fire hydrants, railroad shops, other railroad facilities and dwellings.”

The degree to which the manner of use established under Permits 9008 and 9061 has deteriorated can be determined from information provided by several outside sources in addition to

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<sup>5</sup> *U.S. v. Alpine Land & Reservoir Company*, 340 F.3d 903 (9th Cir. 2003).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961).

<sup>8</sup> *U.S. v. Orr Water Ditch Company*, 256 F.3d 935,945 (9th Cir. 2001).

<sup>9</sup> *U.S. v. Alpine Land & Reservoir Company*, 291 F.3d 1062, 1077 (9th Cir. 2002).



the records of the Office of the State Engineer. Of particular interest is the current state of the Imlay rail yards. At its zenith, Imlay's population and industry was dominated by the railroad, and it must be assumed that it had a significant land position within the town. It can also be assumed that as the railroad's presence lessened, its property holdings dwindled. A search of the Pershing County Assessors' online property information confirms that there are 17 parcels owned by the Union Pacific Railroad, two being vacant commercial with the remainder being classified as vacant single family.<sup>10</sup> Further insight into the railroads decline is evidenced by recent aerial imagery of the town of Imlay. Faint surface traces of the former rail center can be found within the place of use and an active rail line skirts the town to the north, but the 350,000 gallon water tank, large shops and locomotive sheds so vital to past operations, are no longer present.<sup>11</sup> The absence of the railroad facilities coupled with the knowledge that the last commercial steam locomotives left Southern Pacific Railroad service in 1957, strongly supports the contention that the manner of use authorized under Permits 9008 and 9061 has ceased to exist for at least the last 50 years.

While most of the structures that once comprised the Central Pacific Railroad Company's rail center have been either razed or removed, a significant portion of the Star Canyon Creek pipeline still exists. Both the railroad's intake valve on the Star Creek Ranch's diversion dam and the nearby exposed portions of the pipe appear to be in fair condition.<sup>12</sup> Due to the fact that the pipeline passes over several sections of public land, a right-of-way was required from the federal government. The original right-of-way is depicted upon the Bureau of Land Management's (BLM) Master Title Plat, for T.31N., R.34E., M.D.B.&M.<sup>13</sup> Information provided by the BLM indicates that a right-of-way for the pipeline was issued by the federal government on June 8, 1931. Eventually, the Union Pacific Railroad filed a relinquishment of the Star Canyon Creek pipeline right-of-way due to its lack of use.<sup>14</sup> It should be noted that the Central Pacific Railroad was acquired by the Union Pacific Railroad on June 30, 1959.

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<sup>10</sup> Pershing County Assessors' Website, Online Property Information, May 10, 2012.

<sup>11</sup> Google Earth Imagery as viewed on May 10, 2012.

<sup>12</sup> Field Investigation No. 1144, dated March 29, 2011, official records in the Office of the State Engineer.

<sup>13</sup> Bureau of Land Management Land Records website, Master Title Plat.

<sup>14</sup> File No. 9008, e-mail from Bureau of Land Management, received May 9, 2012, official records in the Office of the State Engineer.

The Star Canyon Creek pipeline was not the single source of water for the town of Imlay. A second, older pipeline transported surface water from the springs in Prince Royal Canyon and Eagle Canyon to the town.<sup>15</sup> To improve the efficiency of this system the State Engineer allowed Pershing County to replace the aging spring boxes and pipelines with several infiltration wells. A search of the Nevada Division of Water Resources water right database indicates that the Prince Royal Canyon wells are now the major source of municipal water for the Imlay Water Company. At one time, the Star Canyon Creek pipeline is thought to have augmented the Prince Royal Canyon municipal water supply, but this is no longer the case. On June 11, 2007, the Pershing County Board of Commissioners submitted an application to the BLM to revive the Star Canyon Creek right-of-way, which was approved on November 7, 2007.<sup>14</sup> Approval of the right-of-way, does not, however, resurrect the nonexistent railroad use. The granting of the second right-of-way as it relates to a renewed use of the water is further rendered moot by Pershing County's position that it does not have any interest in Permits 9008 and 9061 or the remnants of the Star Canyon Creek pipeline.<sup>16</sup>

The final point that supports the finding of abandonment is based upon transfer of title, or in this case, the lack of it. The Central Pacific Railway Company filed both applications over 70 years ago. Letters received by the Office of the State Engineer suggest that by 1932, Permits 9008 and 9061 had been acquired by the Southern Pacific Company. It is also thought that the Union Pacific Railroad may have at one time acquired the permittee's interests. Except for general inquiries by several outside parties, there have been no written communications between the Central Pacific Railway Company, the Union Pacific Railroad or the Southern Pacific Company and the State Engineer's office since May 12, 1932, nor has there been any attempt to transfer title from the original applicant.<sup>1,2</sup> The State Engineer finds that this prolonged period of silence supports a lack of interest in maintaining the active status of Permits 9008 and 9061.

The State Engineer finds there is evidence of a significant period of non-use of the water rights and that relinquishment of the right-of-way demonstrates a voluntary intent to permanently

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<sup>15</sup> File No. 145, official records in the Office of the State Engineer.

<sup>16</sup> File No. 9008, e-mail from Pershing County, May 8, 2012, official records in the Office of the State Engineer.

desert the right to appropriate Star Canyon Creek water in the manner perfected under Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>17</sup>

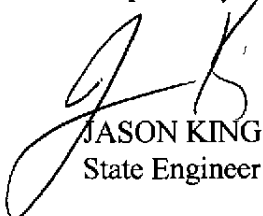
**II.**

The record establishes that there is sufficient evidence of non-use and intent to abandon and relinquish possession by the owner of record under Permit 9008, Certificate 1831 and Permit 9061, Certificate 1832.

**RULING**

Permit 9008, Certificate 1931 and Permit 9061, Certificate 1932 are hereby declared abandoned.

Respectfully submitted,

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

Dated this 15th day of  
June, 2012.

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<sup>17</sup> NRS Chapter 533.

# APPENDIX

## TAB 25

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

IN THE MATTER OF PERMIT 18580, )  
CERTIFICATE 5590, FILED TO APPROPRIATE )  
THE UNDERGROUNDWATERS WITHIN THE )  
BLACK ROCK DESERT HYDROGRAPHIC )  
BASIN (28), HUMBOLDT COUNTY, NEVADA. )

**RULING**

**#6191**

**GENERAL**

**I.**

Permit 18580 was issued December 14, 1960, to H. C. Crofoot to appropriate 3.0 cubic feet per second (cfs) of groundwater for mining, milling, manufacturing, and domestic purposes within the Black Rock Desert Hydrographic Basin, Humboldt County, Nevada. The point of diversion is identified as a well located within the NE¼ NE¼ of Section 34, T.35N., R.29E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

On June 13, 1963, H. C. Crofoot submitted a Proof of Beneficial Use for Permit 18580 and Certificate 5590 was issued on August 19, 1963, for 0.96 cfs.

**II.**

There was no activity involving Permit 18580 until July 3, 1974, when Jack Hamson submitted quit claim deeds to change the ownership of Permit 18580. The deeds were returned to Mr. Hamson on October 9, 1974, because they failed to include a legal land description that tied the documents to place of use or point of diversion under Permit 18580.<sup>1</sup>

On May 23, 1989, a Deed of Trust, Assignment of Rents and Fixtures between Hycroft Resources and Development, Inc. and Hycroft Lewis Mine, Inc. to Shearson Lehman Commercial Corporation was filed in the Office of the State Engineer. It included Permit 18580 as a water right under Exhibit A-3. There was no additional documentation on how Hycroft obtained the water right. A Deed of Reconveyance was filed on May 8, 1992, to Stewart Title of Northern Nevada.

On September 15, 2009, the State Engineer checked the database for the Nevada Division of

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<sup>1</sup> File No. 18580, official records in the Office of the State Engineer.

Water Resources and there is no record of pending conveyance documents on file transferring the water rights to any other water right holder. The State Engineer finds no report of conveyance transferring ownership of Permit 18580 has ever been filed in the Office of the State Engineer.

### III.

On August 25, 2009, staff from the Division of Water Resources conducted an informal field investigation of the point of diversion under Permit 18580. The well casing appeared to have been buried, the platform used to pump water was still in place and a ten foot section of three inch black plastic pipe protruded from the well location.<sup>2</sup> Black plastic pipe was traced several hundred feet to the east in the direction of the Hycroft Mine where it was apparently used during the period 1989 to 1992. The pump and motor works have been removed. There are two places of use for Permit 18580; one is currently part of the reactivated Hycroft Mine and the other is at the town site of Sulphur, which no longer exists. There is no placer mining in the vicinity of the well or the described places of use and there are no valid mining claims in the name of H. C. Crofoot covering the place of use.<sup>3</sup>

Based on the evidence, that the permittee has failed to provide a current address for more than 16 years, on evidence that indicates the Applicant has passed away,<sup>4</sup> on the fact that the works of diversion have been dismantled and there is no indication of any water use and no entity or person has requested conveyance of the water right into the name of another water right holder in nearly 16 years, the State Engineer finds there is substantial evidence of an intent to abandon the water right.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>5</sup>

### II.

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by

<sup>2</sup> See, Field Investigation No. 1118, File No. 18580, official records in the Office of the State Engineer.

<sup>3</sup> U.S.D.I. Bureau of Land Management, Land and Mineral LR2000 database, August 17, 2009.

<sup>4</sup> See, letter from Hamson, dated July 3, 1974, describing a Decree of Distribution in the Estate of Henry Crofoot, File No. 18580, official records in the Office of the State Engineer.

<sup>5</sup> NRS Chapters 533 and 534.


abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holders non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 18580, Certificate 5590, has been intentionally abandoned by the permit holder.

**RULING**

Permit 18580, Certificate 5590, is hereby declared abandoned.

Respectfully submitted,

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

Dated this 6th day of  
August, 2012.

# APPENDIX

## TAB 26



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

IN THE MATTER OF PERMIT 7689 CERTIFICATE )  
1606, PERMIT 7693 CERTIFICATE 1610, PERMIT 7694 )  
CERTIFICATE 1611, PERMIT 7695 CERTIFICATE )  
1612 AND PERMIT 7696 CERTIFICATE 1613 FILED )  
TO APPROPRIATE THE PUBLIC WATERS OF )  
VARIOUS SURFACE WATER SOURCES WITHIN )  
THE RED ROCK VALLEY HYDROGRAPHIC BASIN )  
(99), WASHOE COUNTY, NEVADA. )

**RULING**

**#6201**

**GENERAL**

**I.**

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7689. This application requested a new appropriation of water from Horse Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cubic feet per second (cfs) for the watering of 500 head of cattle, 50 horses and 2,000 sheep located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, T.22N., R.18E., M.D.B.&M. Permit 7689 was issued on August 28, 1926. The water right was perfected and Certificate 1606 was issued on January 15, 1930, for 0.0016 cfs or sufficient water to water 50 head of cattle. The spring was developed by being dug out and walled up with rock and water conveyed through 22 feet of 1-inch galvanized pipe into a watering trough.

**II.**

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7693. This application requested a new appropriation of water from Mountain Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cfs for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, T.23N., R.18E., M.D.B.&M. Permit 7693 was issued on August 28, 1926. The water right was perfected and Certificate 1609 was issued on January 15, 1930, for 0.016 cfs or sufficient water to water 50 head of cattle. The spring was developed by being dug out and cribbed up and water conveyed through 40 feet of 1 $\frac{1}{4}$ -inch pipe into one wooden watering trough and one galvanized watering trough.

### III.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7694. This application requested a new appropriation of water from Choke Cherry Spring for stock water purposes. It was the Applicant's intention to divert 0.01 cfs for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NW¼ NE¼ of Section 21, T.23N., R.18E., M.D.B.&M. Permit 7694 was issued on August 28, 1926. The water right was perfected and Certificate 1611 was issued on January 16, 1930, for 0.003 cfs or water sufficient to water 100 head of cattle. The spring was developed by being cleaned out and cribbed and water conveyed through 16 feet of 1-inch pipe into a watering trough.

### IV.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7695. This application requested a new appropriation of water from Upper and Lower Willow Springs for stock water purposes. It was the Applicant's intention to divert 0.025 cfs for the watering of 500 head of cattle, 50 horses and 2,000 sheep located within the SE¼ SW¼ of Section 16, T.23N., R.18E., M.D.B.&M. Permit 7695 was issued on August 28, 1926. The water right was perfected and Certificate 1612 was issued on January 16, 1930, for 0.0019 cfs or sufficient to water 60 head of cattle. At the upper spring, water conveyed through 22-feet of one inch galvanized pipe into a watering trough. At the lower spring, a cut 25 feet long was made and water conveyed through 22 feet of 1-inch pipe into a watering trough.

### V.

On April 5, 1926, the Office of the State Engineer received a water right application from the Washoe County Title Guarantee Co., which was assigned the serial number 7696. This application requested a new appropriation of water from Dick's Tunnel Spring for stock water purposes. It was the Applicant's intention to divert 0.015 cubic feet per second for the watering of 200 head of cattle, 20 horses and 1,000 sheep located within the NW¼ NE¼ of Section 21, T.23N., R.18E., M.D.B.&M. Permit 7696 was issued on August 28, 1926. The water right was perfected and Certificate 1613 was issued on January 16, 1930, for 0.0016 cfs or sufficient to water 50 head of cattle. The spring was developed by digging a 30-foot long cut and water conveyed through 50 feet of 1-inch galvanized pipe into a watering trough.

## VI.

According to records on file in the Office of the State Engineer, the current owner of record for all of the subject permits is Red Rock Ranch, Ltd.

### FINDINGS OF FACTS

#### I.

In Nevada, abandonment of a water right is the voluntary “relinquishment of the right by the owner with the intention to forsake and desert it.” *In re Manse Spring*, 108 P.2d 311, 315 (Nev. 1940). Abandonment requires both action and intent, and under Nevada law is “a question of fact to be determined from all the surrounding circumstances.” *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).<sup>1</sup>

[U]nder Nevada law, a determination of whether there exists an intent to abandon requires a consideration of all the relevant circumstances. *See Revert*, 603 P.2d at 264; *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration).<sup>2</sup>

Non-use for a period of time may inferentially be some evidence of intent to abandon.<sup>3</sup> Although a prolonged period of non-use may raise an inference of intent to abandon, it does not create a rebuttable presumption.<sup>4</sup>

At a minimum, proof of continuous use of the water right should be required to support a finding of lack of intent to abandon.<sup>5</sup>

In the case of the subject permits, not only does each of these permits have an extensive history of non-use, but the required intent to voluntarily relinquish the water rights also exists.

On May 1, 2012, the Office of the State Engineer received an application to appropriate water from Hillside Spring for stock water purposes from DS Ranches, LLC. DS Ranches, LLC indicated on the application form that they are the permitted user for the Antelope and Red Rock grazing allotments. When an application to appropriate water becomes ready-for-action, the assigned basin engineer will conduct the research necessary to obtain sufficient information for a decision to approve, deny or otherwise take action on the application. It was discovered that there

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<sup>1</sup> *U.S. v. Alpine Land & Reservoir Company*, 340 F.3d 903 (9th Cir. 2003).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Franktown Creek Irrigation Co., Inc. v. Marlette Lake Company and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961).

<sup>4</sup> *U.S. v. Orr Water Ditch Company*, 256 F.3d 935, 945 (9th Cir. 2001).

<sup>5</sup> *U.S. v. Alpine Land & Reservoir Company*, 291 F.3d 1062, 1077 (9th Cir. 2002).

was an existing water right permit on Hillside Spring for stock water purposes (Permit 7692, Certificate 1609). The U.S. Bureau of Land Management (BLM) was contacted and asked to provide information on the authorized range user in this area. The BLM confirmed that DS Ranches, LLC is the authorized range user and Red Rock Ranch, Ltd. is no longer the grazing allotment holder. With this information in hand, the basin engineer then conducted an informal field investigation of Hillside Spring and the other spring sources in the area in an effort to determine, in part, whether Red Rock Ranch, Ltd. was still utilizing the sources of water.

By certified letter, Red Rock Ranch, Ltd. was informed that the informal field investigation discovered that its certificated water rights had not been used for the beneficial use of stock watering for many years and that the BLM informed the Office of the State Engineer that it is not the current grazing allotment holder. Red Rock Ranch, Ltd. was provided 30 days from the date of the letter to provide information and was cautioned that failure to provide the information would result in a declaration of abandonment of its water rights. The State Engineer finds the United States Postal Service returned the State Engineer's certified letters indicating that the addresses are no longer valid. On August 7, 2012, the Office of the State Engineer made inquiries to the Nevada Secretary of State's office, through their official website, regarding the corporate status of Red Rock Ranch, Ltd. A search of the corporate information database did not reveal any company under that name. A review of the associated water right files confirms that there has been no evidence of any correspondence from Red Rock Ranch, Ltd. since about 1973.

The State Engineer finds there is evidence of a significant period of non-use of the water rights by Red Rock Ranch, Ltd. and that relinquishment of its grazing permit and failure to respond to the certified notice demonstrates intent to abandon the water rights.

## II.

On August 6, 2012, the Office of the State Engineer received correspondence from the representative for D.S. Ranches, LLC. This information indicates that the grazing permit file shows a chain of conveyance from Red Rock Ranch, Ltd. in 1972, through various permit holders, and to Sparrowk Livestock and D.S. Ranches, LLC. The D.S. Ranches, LLC has expressed an intent to update ownership on Red Rock Ranch, Ltd. existing water rights for springs currently used for stock watering purposes. These springs are Cottonwood Spring (Permit 7687, Certificate 1605), Lake Spring (Permit 7691, Certificate 1608), Hillside Spring (Permit 7692, Certificate 1609), and Blitz Spring (Permit 25001, Certificate 8096). For the remaining Red Rock Ranch, Ltd. water rights on Horse Spring (Permit 7689, Certificate 1606), Mountain Spring (Permit 7693, Certificate

1610), Choke Cherry Spring (Permit 7694, Certificate 1611), Upper and Lower Willow Spring (Permit 7695, Certificate 1612), and Dick's Tunnel Spring (Permit 7696, Certificate 1613), it is indicated that there is no beneficial use of these sources by D.S. Ranches, LLC.

The State Engineer finds that Red Rock Ranch, Ltd. no longer has a grazing permit in the area and there is no beneficial use of the waters associated with Permit 7689, Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612 and Permit 7696 Certificate 1613, and that decades of non-use demonstrate an intent to abandon the water rights.

### **CONCLUSIONS**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

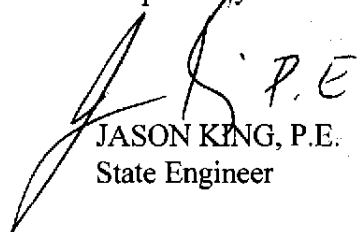
#### **II.**

The record establishes that Red Rock Ranch, Ltd. has abandoned its water rights under Permit 7689 Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612, and Permit 7696 Certificate 1613.

### **RULING**

Permit 7689 Certificate 1606, Permit 7693 Certificate 1610, Permit 7694 Certificate 1611, Permit 7695 Certificate 1612 and Permit 7696 Certificate 1613 are hereby declared abandoned.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 12th day of  
October, 2012

---

<sup>6</sup> NRS Chapter 533.

APPENDIX  
TAB 27

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

IN THE MATTER OF APPLICATIONS 62405, )  
62619, 62830, 62831, 62897, 63005, 63006,) )  
63008, 63009, 63025, 63026, 63027, 63034,) )  
63056, 63057, 63060, 63061, 63073, 63097,) )  
63098, 63104, 63105, 63106, 63137, 63138,) )  
63209, 63220, 63243, 63244, 63253, 63268,) )  
63280 AND 63283 FILED TO CHANGE POINTS OF )  
DIVERSION, PLACES OR MANNER OF USE OF )  
TRUCKEE RIVER DECREED WATER RIGHTS, IN )  
THE TRUCKEE CANYON SEGMENT GROUNDWATER )  
BASIN (91) AND TRUCKEE MEADOWS )  
GROUNDWATER BASIN (87), WASHOE COUNTY, )  
NEVADA )

INTERIM RULING  
ON STANDING

#4602

GENERAL

I.

Since about 1980, the majority of the municipal growth in the Cities of Reno and Sparks has been served by converting irrigation water rights that are the subject of the Orr Ditch Decree<sup>1</sup> to municipal use by the filing of change applications with the Nevada State Engineer.<sup>2</sup> Between August 23, 1996 and July 25, 1997, (33) thirty three change applications were filed to convert water rights from irrigation to municipal use.

These (33) thirty three applications were protested by the City of Fallon and/or Churchill County primarily on the basis that:

- A. the water rights that are the subject of the change applications have been abandoned and, the reactivation of these water rights would interfere with existing water rights and would be detrimental to the public interest;
- B. the water rights that are the subject of the change applications have been forfeited for non-use, and the reactivation of these water rights would interfere with

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<sup>1</sup>Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D. Nev. 1944) (hereinafter "Orr Ditch Decree").

<sup>2</sup>General provisions in the Orr Ditch Decree allow for the point of diversion, place, manner or means of use to be changed in the manner provided by law as set forth in NRS Chapter 533.

existing water rights and would threaten to prove detrimental to the public interest;

- C. the reactivation of these water rights would be in violation of the Endangered Species Act; and
- D. the reactivation of these water rights would be in violation of Public Law 101-618.

After notification by certified mail to all applicants, protestants and interested parties the State Engineer held a pre-hearing conference on December 12, 1997. The purpose of the pre-hearing conference was to better define and streamline the issues, determine which issues required a factual determination by evidence and testimony, and which issues were purely legal and could be covered by written briefing. In addition, the purpose of the pre-hearing conference was to determine what dates might be appropriate for an evidentiary hearing, if needed, what the applicants have in the way of witnesses, testimony and exhibits, and likewise, what the protestants have in the way of witnesses, exhibits and testimony.

At the pre-hearing conference, the issue of the standing of the protestants was raised. The applicants<sup>3</sup> do not believe that the City of Fallon nor Churchill County have standing to bring these protests. To resolve that issue before the evidentiary hearings could commence, the State Engineer ordered that there be a time for the applicants to file motions on the issue of standing, for the protestants to file responses on standing, and for the applicants to file replies. The applicants' motion to summarily dismiss the protests was received on January 5, 1998, oppositions to the motion to summarily dismiss the protests of Churchill County

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<sup>3</sup>Developers in the Reno and Sparks area must relinquish water rights to the City of Reno, City of Sparks, Washoe County or Sierra Pacific Power Company in order to get their development approved. In many of these applications the real party in interest is the developer and not necessarily the name on the application.



and the City of Fallon were received from those entities on January 20, 1998, and the applicants' reply was received on February 4, 1998. Washoe County filed a notice that the real parties in interest in these applications were developers that brought the water to Washoe County as required by various development ordinances, and that Washoe County would defer to those positions taken by the developers on the motion to summarily dismiss.

FINDINGS OF FACT

I.

Attorneys for the applicants refer to the State Engineer's Ruling on Remand No. 4591 issued on December 22, 1997, which overruled protests by the Pyramid Lake Tribe on similar change applications filed within the Newlands Project, which is within Churchill County and surrounding the City of Fallon. The issues in that ruling were whether the water rights had ever been perfected, i.e., put to beneficial use in the first place; whether the water rights were subject to statutory forfeiture for exceeding the five year period of non-use; or whether the water rights were the subject of common law abandonment. Attorneys for the applicants in this case contend that it is disingenuous for Churchill County and the City of Fallon to allege forfeiture and abandonment as to the applications that are the subject of this ruling, yet at the same time applaud and subscribe to the ruling on the same issues for those change applications filed within the Newlands Project, which held that neither forfeiture nor abandonment had been proven as to those water rights. Attorneys for the applicants are further accusing Churchill County and the City of Fallon for being in the wrong forum, arguing that they are asking the State Engineer to act as a special master in the Orr Ditch Court adjudicating the issues of forfeiture and abandonment without proper jurisdiction when that jurisdiction properly belongs in the Orr Ditch Court. The State Engineer finds that where similar issues were raised by the Pyramid Lake Tribe and the United

States in the Newlands Project change applications the Federal District Court and the Ninth Circuit Court of Appeals found that those issues were properly before the Nevada State Engineer.<sup>4</sup> The State Engineer finds it interesting that the protestants are on one side of the issue in one portion of the state and on the opposite side of the issue in another part of the state; however, forfeiture and abandonment are absolute. If the facts are present it matters not who brings those facts to the surface.

## II.

Attorneys for the applicants argue there is no evidence in the protests that the exercise of the rights that are the subject of these change applications will at any time cause a reduction in the water to the Carson Division or to groundwater recharge within the Carson Division of the Newlands Project. Attorneys for the City of Fallon and Churchill County argue that each has title and ownership of both surface and underground rights within the Newlands Project and various studies<sup>5</sup> show that a substantial portion of the underground water in the Fallon area available for capture is a result of ditch loss, canal loss and applied irrigation within the Project. The City of Fallon argues that their municipal wells serve 8,200 residents and that it has a statutory duty to protect the health, safety and welfare of its inhabitants and to protect against threats to the City's assets. It further points to a

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<sup>4</sup>U.S. v. Alpine Land and Reservoir Co., 878 F.2d 1217, 1227 (9th Cir. 1989).

<sup>5</sup>Glancy, P.A., Geohydrology of the Basalt and Unconsolidated Sedimentary Aquifers in the Fallon Area, Churchill County, Nevada, U.S.G.S., Water Supply-Paper 2263 (1986); Maurer, D.K., Johnson, A.K., Welch, A.H., Hydrogeology and Potential Effects of Changes in Water Use, Carson Desert Agricultural Area, Churchill County, Nevada, U.S.G.S., Open File Report 93-463 (1994).

notice of curtailment<sup>6</sup> of issuing new appropriations issued by the Nevada State Engineer in 1995.

The State Engineer finds that although the protestants did not articulate what the injury might be, the fact that they each own surface and groundwater rights that might be impacted and claim such in their protest does not prejudice their case to bring such detailed information to the hearing and make it a part of the record on which the State Engineer will base his ruling. The State Engineer further finds that the majority of the ground water available for capture by wells is contributed by land application of surface water from both the Carson and Truckee Rivers. The amount contributed by the Truckee River for the purposes of this ruling is yet unknown.

### III.

Attorneys for the applicants argue that the protestants lack standing because they do not fit the definition of person under NRS § 0.039. NRS § 0.039 provides "[e]xcept as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government." Applicants further contend that the protestants do not fit the definition of person under NRS § 533.010 which states "[a]s used in this chapter, "person" includes the United States and this state." Attorneys for Churchill County and City of Fallon argue that if they do not fall under the category of person under

---

<sup>6</sup>The State Engineer in Order No. 1116 curtailed new appropriations of ground water larger than 4,000 gpd because of the conversion of surface water irrigation water rights to wetlands use thereby reducing the recharge to the groundwater system that is available for capture by wells.

those two statutes then neither does the City of Reno and the Washoe County Water Conservancy District in their protests to the Pyramid Lake Tribe's applications to appropriate the unappropriated water on the Truckee River and, therefore, their protests must also fail for lack of standing. Counsel for the protestants further point out that if they do not meet the criteria under definition of person under NRS § 533.365 which allows "an interested person" to protest an application then neither do they qualify under the definition of person under NRS § 533.325 which allows "persons" to appropriate water.

The State Engineer finds that the definition of person found in NRS § 0.039 is a fairly generic definition, and the definition of person in NRS § 533.010 expands the definition to include the United States and this State. Counsel for the applicants disregard an additional definition in NRS § 534.014 which provides for including in the definition of person any municipal corporation, power district, political subdivision of this state or any state or an agency of the United States Government. The State Engineer additionally finds that he attempted to resolve the differences in the two definitions in a legislative study committee that came out of the 1993 legislative session (Senate Bill 327)<sup>7</sup>. Although a bill was drafted for the 1995 session of the legislature, there was no consensus on what the definition of person should include and, therefore, the bill failed to pass out of the 1995 session of the legislature. Therefore, the State Engineer must look at legislative intent when it enacted NRS § 533.010 and 534.014.

---

<sup>7</sup>S.B. 327 (1993) called for an interim legislative subcommittee to study water management, the water law and the appropriation of water. That study committee work resulted in Legislative Counsel Bureau Bulletin #95-4 and several bills in the 1995 session of the legislature. The bill to clarify the definition of person was S.B. 100 of the 1995 session of the Nevada Legislature.

The long held principle of statutory construction is that differing provisions bearing upon the same question should be harmonized whenever possible so as to make the statutes consistent and to arrive at the true legislative intent in so doing.<sup>8</sup> To read NRS § 533.010 and NRS § 534.014 harmoniously allowing the State Engineer to administer the Nevada Water Law in a consistent manner, it is necessary for each definition to incorporate the items listed in the other definition of person. The State Engineer finds that the statutory scheme supports his long standing interpretation of NRS § 533.365 allowing those who timely protest an application based on any of the criteria in NRS 533.370(1) to participate in the administrative process.

The State Engineer further finds that the legislature intended cities and political subdivisions of this state to be able to appropriate water under NRS § 533.325 and to discard those political subdivisions from appropriating water because they fail to meet the definition of person would have an absurd result.

#### IV.

Attorneys for the applicants point to the phrase "any person interested" found in NRS § 533.365 and believes that past rulings of the State Engineer have ignored the word "interested." Counsel argue that the legislature put the word interested in the statute to have some meaning and that the protestants have no interest in the outcome of these change applications. Attorneys for the applicants point to the Nebraska case of Metropolitan Utilities District v. Twin Platte Natural Resources District, wherein the equivalent of the Nebraska State Engineer denied standing to the

---

<sup>8</sup>State ex. rel. Allen v. Brodigan, 34 Nev. 486, 492, 125 P.699 (1912); City Council of Reno v. Reno Newspapers, Inc., 105 Nev. 886, 892, 784 P.2d 974 (1989).

Twin Platte Natural Resources District<sup>9</sup> and the Nebraska Supreme Court upheld that decision. Attorneys for the protestants argue that the issue of standing should be interpreted to be much broader in an administrative hearing than in a judicial setting. The State Engineer must rely on criteria found in NRS § 533.370, amongst other statutes, when ruling on applications to appropriate water and change applications like those that are the subject of this ruling. One of the criteria found in NRS 533.370 is whether a change application "threatens to prove detrimental to the public interest." For instance, the State Engineer could not approve a change application, if in doing so, it would kill the last Bald Eagle on earth. "Persons interested" may bring these types of issues to the forefront and make them part of the administrative record provided they have the science to substantiate their claim. The protestants certainly have an "interest" in the outcome of these change applications. The State Engineer finds that the Nebraska case is distinguishable from the case at hand since the Twin Platte Natural Resources District is some 250 miles upstream from the proposed point of diversion by the Metropolitan Utilities District and further that Twin Platte Natural Resources District holds no water rights and did not make a public interest argument. The State Engineer further finds that the protestants in this case are downstream and hold existing surface and groundwater rights and, therefore, qualify as an "interested party."

#### CONCLUSIONS

##### I.

The State Engineer concludes that the protestants can oppose findings of forfeiture and abandonment in the Newlands project and at the same time argue for forfeiture and abandonment in the Truckee Meadows. The facts needed to prove abandonment or

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<sup>9</sup>Metropolitan Utilities District v. Twin Platte Resources Dist., 550 N.W. 2d 907 (Neb. 1996).

forfeiture are independent of who brings forth the issue. There are several hundred separate owners of water rights to Truckee River waters. One may have intended to abandon a water right and forsake the use of that water forever while another owner may not have the same intent. It doesn't matter who carries the burden of proving the facts. If the facts are present, a water right can be lost through abandonment or forfeiture.<sup>10</sup>

II.

The State Engineer concludes that the protestants hold water rights to both surface and ground water and they lie downstream of the water rights that are the subject of the change applications. Although the Operating Criteria and Procedures, promulgated by the Secretary of Interior, regulates the amount of water that can be diverted from the Truckee River to the Newlands Project, there may be circumstances where the approval of these change applications would conflict with the protestants water rights.

III.

The State Engineer concludes that the protestants are political subdivisions of this state and, therefore, fall under the definition of person found in NRS § 534.014. The fact that they do not fit the definition of person in NRS § 533.010 is insufficient to disqualify them as a bona fide protestant.

IV.

Although the State Engineer has historically been fairly liberal in allowing standing to protestants, it does not mean that he will entertain frivolous protests. In the case at hand, the State Engineer concludes that the protestants have a genuine interest in the outcome of these change applications and, therefore, are bona fide protestants under NRS § 533.365.

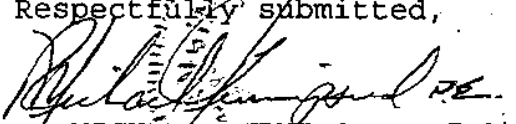
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<sup>10</sup>NRS § 533.060 and NRS § 534.090.

RULING

For the above reasons, the applicants' motion to summarily dismiss the protests of Churchill County and the City of Fallon is hereby denied and the evidentiary hearing will proceed as scheduled.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/bk

Dated this 24th day of  
February, 1998.



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Attorneys for Petitioner

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

RODNEY ST. CLAIR,

Petitioner,

vs.

JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

\* \* \*

CASE NO.: CV 20112

DEPT. NO.: II

TAMARA S. SPEND  
DIST. COURT CLERK

2015 JUN -3 PM 2:50

FILED

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER'S REPLY BRIEF**

Petitioner, RODNEY ST. CLAIR (hereinafter "Petitioner"), by and through its attorney of record, PAUL G. TAGGART, ESQ. and RACHEL L. WISE, ESQ. of the law firm of TAGGART & TAGGART, LTD., hereby requests this Court take judicial notice of the following documents, true and correct copies of which are attached hereto, in support of Petitioner's Reply Brief, filed February 27, 2015, pursuant to Nevada Revised Statutes ("NRS") 47.130 *et. seq.*:

**Exhibit 1:** State Engineer's July 24, 2002 *Appellee Nevada State Engineer's Answering Brief* in Ninth Circuit Court of Appeals Case Nos.: 01-15665; 01-15814; 01-15816; of the case *United States of America, and Pyramid Lake Paiute Tribe of Indians v. Alpine Land and Reservoir Company, et. al., Defendants, and Nevada State Engineer ("Alpine V")*, Real-Party-in-

S

1 Interest/Appellee; which was filed in the matter that resulted in the decision that is published at 291  
2 F.3d 1062.

3 **Exhibit 2:** The State Engineer Ruling on Remand #5464-K, issued as a result of the Ninth  
4 Circuit District Court's Decision that is commonly known as *Alpine V*.

5 **Exhibit 3:** The *Nevada State Engineer's Answering Brief* filed in the Ninth Circuit District  
6 Court of Appeals, Case No.: 06-15738, filed on or around November 22, 2006 relating to the *Alpine*  
7 Decrees.

8 The accompanying Memorandum of Points and Authorities states the grounds for this  
9 request. The Declaration of Rachel L. Wise, Esq., attached as Exhibit 4, presents and authenticates  
10 the above exhibits.

#### 11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 NRS 47.130 and NRS 47.150 allows the court to take judicial notice of the fact that the State  
13 Engineer made the arguments and statements that are included in the documents that are offered  
14 herein for judicial notice. The admissibility of these documents cannot be challenged because they  
15 are official judicial court documents or records of the State Engineer. See NRS 51.155. Accordingly,  
16 Exhibits 1, 2, and 3 can be considered by the Court because they are all generally known within the  
17 Court's jurisdiction and the accuracy cannot reasonably be questioned. Accordingly, the Court can  
18 take judicial notice of Exhibits 1, 2, and 3.

19 Petitioners request that this Court take judicial notice of prior briefs filed and argued by the  
20 Nevada State Engineer related to the above-captioned matter. All three Exhibits exemplify the State  
21 Engineer's previous position regarding the application of *Alpine V* pursuant to non-use as well as the  
22 separate application of *Alpine V* to intrafarm transfers. In the case at bar, the State Engineer argues  
23 that *Alpine V* held "proof of continuous use of the water rights should be required to support a finding  
24 of lack of intent to abandon." SE Answering Brief at 8:13-15. The State Engineer made the opposite  
25 argument in briefs that were filed in the case that resulted in *Alpine V* and the cases that followed the  
26 remand in *Alpine V*.

27 Exhibit 1, the State Engineer's July 24, 2002 Answering Brief in the Ninth Circuit, actually  
28 led to the *Alpine V* decision. Exhibit 1 discusses specifically the idea that the intrafarm change

1 applications were not subject to the doctrines of forfeiture and abandonment. SE Answering 2002  
2 Brief at 32, 35, 37, 51-52. This argument was expressly addressed by the Ninth Circuit in the *Alpine*  
3 *V* decision under Section B of the decision. The Ninth Circuit's response to the State Engineer's  
4 argument in 2002 was to remand the case to the State Engineer for a review of the specific issue of  
5 intrafarm transfers.

6 Exhibit 2 is the State Engineer's Ruling on Remand #5464-K which analyzes the entire history  
7 of the *Alpine Decree* cases and expresses the understanding of what analysis should apply to the  
8 remanded intrafarm transfer matters. Ruling 5464-K at 1. The State Engineer now argues that the  
9 intrafarm transfer analysis of abandonment from the Ninth Circuit should be the blanket analysis  
10 regarding all abandonment situations.

11 Exhibit 3, is the State Engineer's answering brief in the appeal from Ruling on Remand 5464-  
12 K. The State Engineer presents the history of the *Alpine Decree* and states "[t]he *Alpine III* Court  
13 also rejected the Tribe's argument that nonuse of water by the owner of a water right gives rise to a  
14 rebuttable presumption of intent to abandon under Nevada law." State Engineer 2006 Answering  
15 Brief at 1-9.

16 Exhibits 1, 2, and 3 are solely necessary to exemplify the State Engineer's prior arguments.  
17 Under NRS 47.130, there can be no reasonable fact dispute to the reality that these briefs and rulings  
18 exist and that the State Engineer presented them. See Nevada Rules of Civil Procedure ("NRCP")  
19 11(a).

20 The State Engineer's prior briefs and rulings are judicially noticeable under NRS 47.130. See  
21 *Aetna Cas. & Sur. Co. v. Jeppesen & Co.*, 440 F. Supp. 394, 399 (D. Nev. 1977); *United States v.*  
22 *Wilson*, 631 F.2d 118, 120 (9th Cir. 1980); 771 F. Supp. 1064, 1068 (D. Nev. 1991) aff'd, 980 F.2d  
23 738 (9th Cir. 1992); *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (holding the  
24 close relationship between two cases justifies the district court taking judicial notice of the prior  
25 proceedings). All materials are cognizable history that "[s]heds light on the collegial view of the  
26 Legislature as a whole." See *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*

27 ///

28 ///

1 133 Cal. App. 4<sup>th</sup> 26, 30 (2005). For the above reasons, the Court should take judicial notice of the  
2 attached to this request.

3 DATED this 2nd day of June, 2015.

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6 Carson City, Nevada 89703  
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9 By: 

10 PAUL G. TAGGART, ESQ.  
11 Nevada State Bar No. 6136  
12 RACHEL L. WISE, ESQ.  
13 Nevada State Bar No. 12303  
14 Attorneys for *Petitioner*  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PETITIONER'S REPLY BRIEF** as follows:

☒ By U.S. Mail: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Jerry Snyder, Esq.  
Senior Deputy Attorney General  
Attorney General's Office  
100 North Carson Street  
Carson City, NV 89701

DATED this 2 day of June, 2015.

  
Employee of TAGGART & TAGGART, LTD.

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**INDEX OF EXHIBITS**

|           |  |          |
|-----------|--|----------|
| Exhibit 1 | State Engineer's July 24, 2002 <i>Appellee Nevada State Engineer's Answering Brief</i> in Ninth Circuit Court of Appeals case nos.: 01-15665; 01-15814; 01-15816 | 49 pages |
| Exhibit 2 | The State Engineer Ruling on Remand #5464-K  | 6 pages  |
| Exhibit 3 | The <i>Nevada State Engineer's Answering Brief</i> filed in the Ninth Circuit District Court of Appeals, Case No.: 06-15738                                      | 61 pages |
| Exhibit 4 | Declaration of Rachel L. Wise, Esq.  | 1 page   |

# EXHIBIT 1

# EXHIBIT 1

Nos. 01-15665, 01-15814, 01-15816  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, and  
PYRAMID LAKE PAIUTE TRIBE OF  
INDIANS,

Plaintiffs/Appellants/Cross-Appellees,

v.

ALPINE LAND & RESERVOIR, CO., et al.,

Defendants.

and

NEVADA STATE ENGINEER,

Real-Party-in-Interest/Appellee.

APPLICANT LOUIS A. GUAZZINI, JR., et  
al.,

Appellees/Cross-Appellants.

DC NO. D-184-LDG  
Nevada (Reno)

FILED

JUL 24 2002

CATHY A. CATTERSON, CLERK  
U. S. COURT OF APPEALS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

**APPELLEE NEVADA STATE ENGINEER'S ANSWERING BRIEF**

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Attorneys for Appellee Nevada State Engineer



## TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| TABLE OF AUTHORITIES .....   | iii         |
| I. STATEMENT OF JURISDICTION .....   | 1           |
| II. ISSUES PRESENTED FOR REVIEW .....  | 1           |
| III. STATEMENT OF THE CASE .....   | 2           |
| A. Nature of the Case .....  | 2           |
| B. Course of the Proceedings .....   | 2           |
| C. Disposition Below .....   | 4           |
| IV. STATEMENT OF FACTS .....   | 4           |
| A. Background of the Newlands Project and the <i>Alpine</i><br>Litigation .....  | 4           |
| B. Statement of Facts Related to the Specific Change<br>Applications at Issue Here .....   | 10          |
| V. SUMMARY OF THE ARGUMENT .....   | 13          |
| VI. STANDARD OF REVIEW .....   | 14          |
| VII. ARGUMENT .....  | 18          |
| A. Ruling 4798 Should Be Remanded So That Each<br>Change Application May Be Considered on an<br>Individual Basis to Determine if Equitable Relief<br>Is Appropriate .....  | 18          |
| B. Ruling 4798 Should Be Remanded So That Each<br>Change Application May Be Considered Individually to<br>Determine Whether There Was Intent to Abandon, But the<br>State Engineer Should Be Allowed to Make That<br>Determination Based on All of the Surrounding<br>Circumstances and Not in the Limited Manner<br>Advocated by the Appellants ..... | 20          |
| C. The State Engineer Correctly Concluded That Transport<br>of Water Through On-Farm Dirt-Lined Ditches Together<br>With Associated Uses Is a Beneficial Use of Water and<br>the Lands Used for That Purpose Must Be Considered to<br>Have Appurtenant Water Rights .....  | 26          |

## **TABLE OF CONTENTS**

|  | <b><u>Page</u></b> |
|--|--------------------|
| D. The Issue of Whether the Ditches at Issue Are On-Farm Dirt-Lined Ditches, and Whether Their Use Constitutes a Beneficial Use of Water Is a Factual as Well as a Legal Question, and Since No Evidence Was Received Below on This Issue, It Would Be Inappropriate for This Court to Rule on This Issue at This Time ..... | 39                 |
| E. The State Engineer Correctly Determined That PLPT Had Failed to Show Nonuse of the Water By Clear and Convincing Evidence as Is Necessary to Establish Forfeiture or Abandonment .....  | 42                 |
| F. There Is Substantial Evidence in the Record to Support the State Engineer's Finding of Abandonment as to Applications 47809, 49111, and 49285 .....   | 48                 |
| VIII. CONCLUSION .....   | 51                 |
| BRIEF FORMAT CERTIFICATION PURSUANT TO CIRCUIT RULE 32-1 .....   | 53                 |
| STATEMENT OF RELATED CASES .....   | 54                 |
| CERTIFICATE OF SERVICE .....   | 55                 |

## TABLE OF AUTHORITIES

### Page

### CASES

|   |                   |
|---|-------------------|
| <i>California v. United States</i> , 438 U.S. 645 (1978) .....  | 14                |
| <i>Chevron U.S.A., Inc. v. N.R.D.C.</i> , 467 U.S. 837 (1984) .....   | 17                |
| <i>Export Group v. Reef Industries, Inc.</i> , 54 F.3d 1466 (9th Cir. 1995) .....   | 22                |
| <i>Franktown Creek Irrigation Co. v. Marlette Lake Co.</i> , 77 Nev. 348,<br>364 P.2d 1069 (1961) .....   | 24                |
| <i>Hage v. United States</i> , 42 Fed. Cl. 249 (1998) ( <i>Hage III</i> ),<br><i>rescinded in part and affirmed in part by Hage v. United</i><br><i>States</i> , 51 Fed. Cl. 570 (2002) ..... | 32, 33,<br>35, 41 |
| <i>Huddleston v. United States</i> , 485 U.S. 681 (1988) .....  | 17                |
| <i>In re Waters of Manse Spring</i> , 60 Nev. 280, 108 P.2d 311 (1940) .....  | 23, 36            |
| <i>Jones v. Rosner</i> , 102 Nev. 215, 719 P.2d 805 (1986) .....  | 16                |
| <i>Kent v. Smith</i> , 62 Nev. 30, 140 P.2d 357 (1943) .....  | 15                |
| <i>Nevada v. United States</i> , 464 U.S. 875 (1983) .....  | 6, 32,<br>35      |
| <i>Prosole v. Steamboat Canal Co.</i> , 37 Nev 154, 140 P. 720 (1914) .....   | 35                |
| <i>Pyramid Lake Paiute Tribe v. Washoe County</i> , 112 Nev. 743,<br>918 P.2d 697 (1996) .....  | 17                |
| <i>Revert v. Ray</i> , 95 Nev. 782, 603 P.2d 262 (1979) .....   | 15, 23            |
| <i>State v. State Engineer</i> , 104 Nev. 709, 766 P.2d 263 (1988) .....  | 16, 17            |
| <i>State Employment Security Dept. v. Hilton Hotels Corp.</i> , 102 Nev.<br>606, 729 P.2d 497 (1986) .....  | 16                |
| <i>State Engineer v. Curtis Park</i> , 101 Nev. 30, 692 P.2d 495 (1985) .....   | 15                |
| <i>State Engineer v. Morris</i> , 107 Nev. 699, 819 P.2d 203 (1991) .....   | 15, 16,<br>49     |
| <i>Town of Eureka v. State Engineer</i> , 108 Nev. 163, 826 P.2d 948 (1992) ...   | 15, 16,<br>36, 42 |
| <i>Travelers' Ins. Co. v. Pomerantz</i> , 246 N.Y. 63, 158 N.E. 21 (1927) .....   | 17                |

## TABLE OF AUTHORITIES

### Page

### CASES

|  |                 |
|--|-----------------|
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 503 F. Supp. 877<br>(D. Nev. 1980), <i>substantially aff'd</i> , 697 F.2d 851 (9th Cir.),<br><i>cert. denied</i> , 464 U.S. 863 (1983) ..... | 1, 5,<br>14     |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 697 F.2d 851<br>(9th Cir. 1983), <i>cert. denied</i> , 464 U.S. 863 (1983) ( <i>Alpine I</i> ) .....   | 6, 14,<br>41    |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 878 F.2d 1217<br>(9th Cir. 1989), <i>cert. denied</i> , 498 U.S. 817 (1990) ( <i>Alpine II</i> ) .....                                       | <i>Passim</i>   |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 983 F.2d 1487<br>(9th Cir. 1993) ( <i>Alpine III</i> ) .....   | 3, 7,<br>14, 15 |
| <i>United States v. Alpine Land &amp; Reservoir Co.</i> , 919 F. Supp. 1470<br>(D. Nev. 1996) .....  | 15              |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 27 F. Supp. 2d 1230<br>(D. Nev. 1999) ( <i>Alpine IV</i> ) .....   | <i>Passim</i>   |
| <i>United States v. Alpine Land and Reservoir Co.</i> , 279 F.3d 1189<br>(9th Cir. 2002) ( <i>Alpine V</i> ) .....   | <i>Passim</i>   |
| <i>United States v. Orr Water Ditch Co.</i> , Equity No. A-3 (D. Nev.<br>Sept 4, 1944) .....   | 5               |
| <i>United States v. Orr Water Ditch Co.</i> , 256 F.3d 935 (9th Cir.<br>2001) ( <i>Orr Ditch</i> ) .....   | <i>Passim</i>   |
| <i>United States v. Pinjuv</i> , 218 F.3d 1125 (9th Cir. 2000) .....   | 22              |
| <i>United States v. Pruneda-Gonzalez</i> , 953 F.2d 190 (5th Cir. 1992),<br><i>cert. denied</i> , 504 U.S. 978 (1992) .....  | 18              |
| <i>United States v. Rothrock</i> , 806 F.2d 318 (1st Cir. 1986) .....  | 17              |
| <i>United States v. Tsinnijinnie</i> , 601 F.2d 1035 (9th Cir. 1979) .....   | 22              |
| <i>United States v. Vaccaro</i> , 816 F.2d 443 (9th Cir. 1987) .....   | 17              |

## **TABLE OF AUTHORITIES**

### **Page**

#### **FEDERAL STATUTES**

|                           |    |
|---------------------------|----|
| 28 U.S.C. § 1291 .....    | 1  |
| 43 U.S.C. § 371—390 ..... | 6  |
| 43 C.F.R. § 426.4 .....   | 50 |

#### **NEVADA STATUTES**

|                      |        |
|----------------------|--------|
| NRS 533.060 .....    | 36     |
| NRS 533.370(3) ..... | 14, 15 |
| NRS 533.450(1) ..... | 15     |

## **I. STATEMENT OF JURISDICTION**

The District Court maintains ongoing jurisdiction of *United States v. Alpine Land & Reservoir Co.*, Case No. D-184-LDG, of which this case is a part, under 28 U.S.C. § 1345. See *United States v. Alpine Land & Reservoir Co.*, 503 F. Supp. 877, 879 (D. Nev. 1980); *United States v. Alpine Land & Reservoir Co.*, 878 F.2d 1217, 1219 n.2 (9th Cir. 1989). This Court has jurisdiction of this appeal under 28 U.S.C. § 1291.

## **II. ISSUES PRESENTED FOR REVIEW**

A. Whether in light of the holding of *United States v. Alpine Land and Reservoir Co.*, 291 F.3d 1062 (9th Cir. 2002) (*Alpine V*)<sup>1</sup>, this matter should be remanded for consideration of the appropriateness of equitable relief for each of the applications to change the place of use of water on an individual basis.

B. Whether this matter should be remanded for reconsideration of the issue of abandonment of water rights and whether the State Engineer may consider all of the surrounding circumstances in determining whether there was an intent to abandon.

C. Whether the State Engineer properly concluded that dirt-lined on-farm ditches have appurtenant water rights.

---

<sup>1</sup> The *Alpine V* decision was originally reported at 279 F.3d 1189 (9th Cir. 2002) but was amended by the Court on June 5, 2002. The amended decision is reported at 291 F.3d 1062 (9th Cir. 2002).

## APPENDIX F

### 42 Major Aqueducts Longer Than 20 Miles

Including

Pipelines, Pump Lifts, Tunnels, Canals, Grade Conduits

| Overall Length Miles | Location                                    | Year Installed |
|----------------------|---|----------------|
| 600                  | Feather River Aqueduct - California         | 1972           |
| 351                  | Coolgardie - Australia                      | 1902           |
| 340                  | Los Angeles Aqueduct - California - First   | 1913           |
| 266                  | Apullan Aqueduct - Italy                    | 1915           |
| 242                  | Colorado River Aqueduct - California        | 1939           |
| 154                  | Hetch Hetchy Aqueduct - California - First  | 1931           |
| 154                  | Hetch Hetchy Aqueduct - California - Second | 1949           |
| 154                  | Hetch Hetchy Aqueduct - California - Third  | 1968           |
| 120                  | New York City Aqueduct                      | 1906           |
| 100                  | Los Angeles Aqueduct - California - Second  | 1968           |
| 98                   | Winnipeg, Canada                            | 1918           |
| 90                   | Mokelumne Aqueduct - California - First     | 1924           |
| 90                   | Mokelumne Aqueduct - California - Second    | 1947           |
| 90                   | Mokelumne Aqueduct - California - Third     | 1962           |
| 65                   | Newark, New Jersey                          | 1891           |
| 60                   | San Diego Aqueduct - California - First     | 1946           |
| 60                   | San Diego Aqueduct - California - Second    | 1958           |

|    |   |      |
|----|---|------|
| 60 | San Diego Aqueduct - California - Third | 1971 |
| 60 | Tulsa, Oklahoma                         | 1928 |
| 44 | Birmingham, Alabama - First             | 1936 |
| 44 | Birmingham, Alabama - Second            | 1963 |
| 38 | Victoria, British Columbia              | 1915 |
| 36 | Adelaide, Australia                     | 1951 |
| 36 | Vancouver, British Columbia             | 1909 |
| 32 | Phoenix, Arizona                        | 1928 |
| 30 | Medford, Oregon                         | 1950 |
| 27 | Butte, Montana                          | 1914 |
| 26 | Rochester, New York                     | 1893 |
| 26 | Philadelphia, Pennsylvania              | 1906 |
| 25 | Denver, Colorado                        | 1927 |
| 25 | Portland, Oregon - First                | 1895 |
| 25 | Portland, Oregon - Second               | 1910 |
| 25 | Portland, Oregon - Third                | 1923 |
| 25 | Portland, Oregon - Fourth               | 1953 |
| 24 | Springfield, Massachusetts              | 1905 |
| 23 | Fort Smith, Arkansas                    | 1935 |
| 22 | Everett, Washington - First             | 1928 |
| 22 | Everett, Washington - Second            | 1937 |
| 22 | Vallejo, California                     | 1924 |
| 20 | Pittsburgh, Pennsylvania                | 1895 |
| 20 | Norfolk, Virginia                       | 1925 |
| 20 | Portsmouth, Virginia                    | 1927 |

## APPENDIX G

### STEEL WATER PIPELINE FIELD JOINTS

Steel water pipe sections can be connected together in the field by various types of joints as indicated below:

1. Riveted
2. Drive
3. Mechanical couplings
4. Threaded
5. Flanged
6. Butt-welded, single or double
7. Butt-strap
8. Bell and spigot for calking
9. Slip bell for lap welding
10. Bell and spigot O-ring rubber gasket

#### Riveted Joints

Used now primarily for large diameter steel pipe having thick plate walls.

#### Drive Joints

Used for light gage steel pipes having asphalt or coal-tar enamel coatings, and operating under relatively low pressures. Ends of a section are slightly belled and tapered so as to fit tightly when driven together for several inches.

#### Mechanical Couplings

Represented by sleeve and clamp type couplings. They provide flexibility, ease of installation, and permanent watertightness. They avoid field welding and permit a certain amount of expansion and contraction movement. Sleeve couplings have been used since 1891. Clamp couplings are used generally on smaller sizes of steel pipe, and require a groove or bar at the ends of the pipe sections in order to house the rubber gasket tightly. An advantage of this joint is its portability for aboveground construction water lines.

#### Threaded Joints

Used primarily in small diameters of mill steel pipe, where sections can be connected with threaded couplings for use in water service lines or industrial piping.

#### Flanged Joints

AWWA Standard C 207 gives the proper design of flanges for steel water pipe. Flanges are not used

generally for field joints on large diameter steel pipe because of their high cost and lack of flexibility. They are advantageous, however, for special conditions, such as connections to flanged gate valves, meters, bridge crossings, pumps, industrial piping, etc.

#### Butt-Welded Joints

These joints develop full strength, but will require more care in fitting up in the field.

#### Butt-Strap Joints

They are advantageous where ease in fitting up butt-welded joints is desired. The strap acts as a back-up bar. These joints are expensive for general use.

#### Bell and Spigot Joints for Calking

These joints have bell and spigot formed ends, which are calked together with dry pack neat cement. They are easy to install, and can be used on steel pipe sizes up to 48 inches diameter, where internal pressure does not exceed 200 psi. The inside pipe lining remains unaffected by the assembly of this joint.

#### Slip Bell for Lap Welding

This joint is widely used because of its flexibility, ease in forming, ease in laying, simplicity, and its absolute watertightness. Small angle changes up to about 4° can be made in each joint. It possesses high strength, and will resist settlement, shocks, washouts, etc. A single fillet weld inside or out is sufficient to maintain full pipeline integrity.

#### Bell and Spigot Rubber Gasket Joints

This latest type of O-ring joint has become very popular for steel water pipelines because of its great flexibility, watertightness, rapid installation, and economical cost without any field welding or damage to the inside lining. It will permit deflection angles in alignment up to at least 4° dependent on diameter.

Field joints in steel water pipelines are always completely watertight, and there are fewer of them because of the longer lengths of pipe sections obtainable. They lend themselves to good work organization, provide uniform quality and trouble-free performance.

## APPENDIX H

### STEEL WATER PIPE SPECIFICATIONS

There are a number of specifications that provide for high quality, modern welded steel water pipe, or the steel material used in its manufacture. The American Water Works Association has developed the best and most up-to-date standards for this product. They are as follows:

AWWA STANDARD C 201 for *Fabricated Electric Fusion Welded Steel Pipe*.

AWWA STANDARD C 202 for *Mill Type of Steel Pipe*.

AWWA STANDARD C 203 for *Coal Tar Enamel Protective Coatings for Steel Pipe*.

AWWA STANDARD C 205 for *Cement Mortar Protective Coatings for Steel Pipe*.

AWWA STANDARD C 206 for *Field Welding of Steel Pipe Joints*.

AWWA STANDARD C 207 for *Steel Pipe Flanges*.

AWWA STANDARD C 208 for *Dimensions of Steel Water Pipe Fittings*.

AWWA STANDARD C 602 for *Cement Mortar Protective Lining of 16" size and larger Steel Pipe in place*.

AWWA STANDARD C 201 accepts the following types of steel material:

ASTM A 245 Grade A (Light Gage Structural Quality Flat Hot-Rolled Carbon Steel. Yield Point = 25,000 psi).

ASTM A 283 Grades, B, C, or D (Low and Intermediate Tensile Strengths of Carbon Steel Plate for Structural Quality. Yield Points = 27,000; 30,000; and 33,000 psi respectively).

API Standard 5LX Grade X-42 Steel Plate (for high pressure water lines. Yield Point = 42,000 psi).

AWWA STANDARD C 202 accepts the following types of steel material:

|            |                           |
|------------|---------------------------|
| Grade A    | (30,000 psi yield point.) |
| Grade B    | (35,000 psi yield point.) |
| Grade X-42 | (42,000 psi yield point.) |

Other Specifications used for Steel Pipe are as follows:

ASTM A 53 Welded and Seamless Steel Pipe up to 24 in. size

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 120 Welded and Seamless Steel Pipe for Ordinary Uses up to 12 in. size

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 134 Electric Fusion Welded Steel Plate Pipe Size 16 in. and over.

ASTM A 135 Electric Resistance Welded Steel Pipe Size 30 in. and under.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 139 Electric Fusion Welded Steel Pipe Sizes 4 in and over.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 211 Spiral Welded Steel or Iron Pipe Sizes 4 in. to 48 in.

API 5L Line Pipe - Sizes up to 24 in.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

API 5LX High-Test Line Pipe - Sizes up to 48 in.

|            |                           |
|------------|---------------------------|
| Grade X-42 | (42,000 psi yield point.) |
| Grade X-46 | (46,000 psi yield point.) |
| Grade X-52 | (52,000 psi yield point.) |
| Grade X-60 | (60,000 psi yield point.) |
| Grade X-65 | (65,000 psi yield point.) |

FEDERAL SPEC. WW-P-1432 - Pipe, Steel, Sizes 4 in. through 144 in.

FEDERAL SPEC. SS-P-385a - Pipe, Steel, Sizes 4 in. through 42 in.

FEDERAL SPEC. WW-P-404 and 406 - Mill Steel Pipe, Sizes up to 12 in.

All of the specifications listed above are suitable for steel water pipe for their particular conditions. However, for the most up-to-date specifications on an overall basis, AWWA Standard C 201 is recommended as the most practical and modern one to use for steel water pipe service.

## APPENDIX I

### TYPES OF STEEL WATER PIPE

The various types of steel pipe available for water service lines are as follows:

**Fusion Welded** - Briefly, fusion welded steel pipe is manufactured by planing the edges of steel plates to size, forming or rolling the plates to cylindrical shape, and welding them together by means of submerged arc welding using the automatic process. It is readily possible to obtain a welded joint strength equal to that of the plate. This type of pipe is fabricated in sizes of 4" diameter to 20" diameter and in thicknesses of 14 gage to 2" and heavier. Lengths generally are 40', however

quite often they are welded together in the shop and delivered to the site in 80' or 120' sections.

**Resistance or Flash Welded** - This type of pipe is manufactured by forming sheets or plates to cylindrical shape and fusing them together by means of pressure and of heat generated by high amperage electric current, without the addition of any electrode material. This pipe can be furnished in sizes of 4" diameter to 36" diameter and in thicknesses of 12 gage to 1/2". Lengths generally are 30' to 80'.

**Spiral Welded** - This type of pipe is made by forming skelp sheets spirally into cylindrical shape and either butt welding or lap welding the spiral seams together. It can be furnished in sizes of 4" diameter to 96" diameter, in thicknesses of 14 gage to 1/2", and in lengths of 30' to 40'.



**Attachment 6: Drill Rig Photo and Literature**

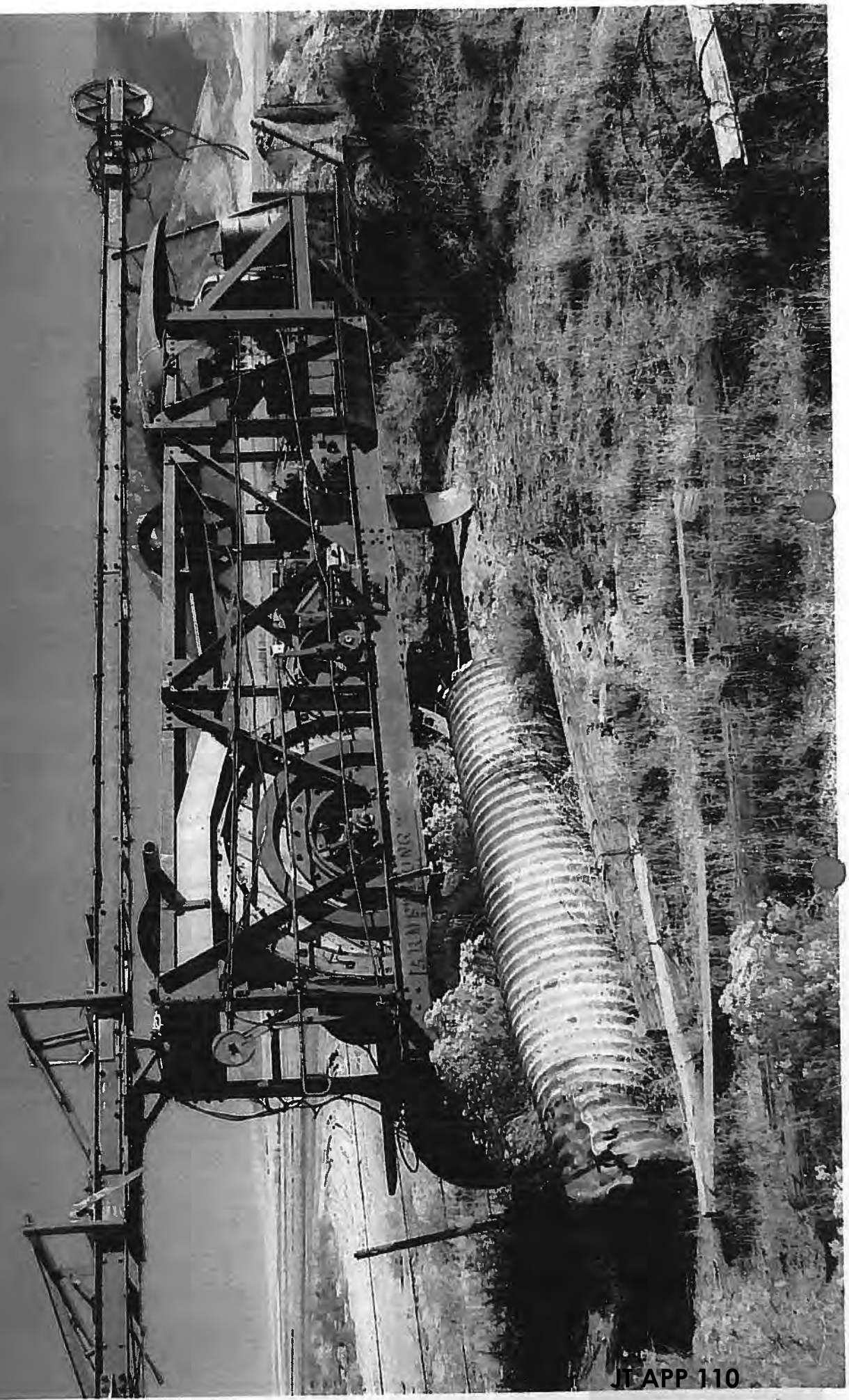
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**JT APP 109**

SE ROA 0098



JT APP 110

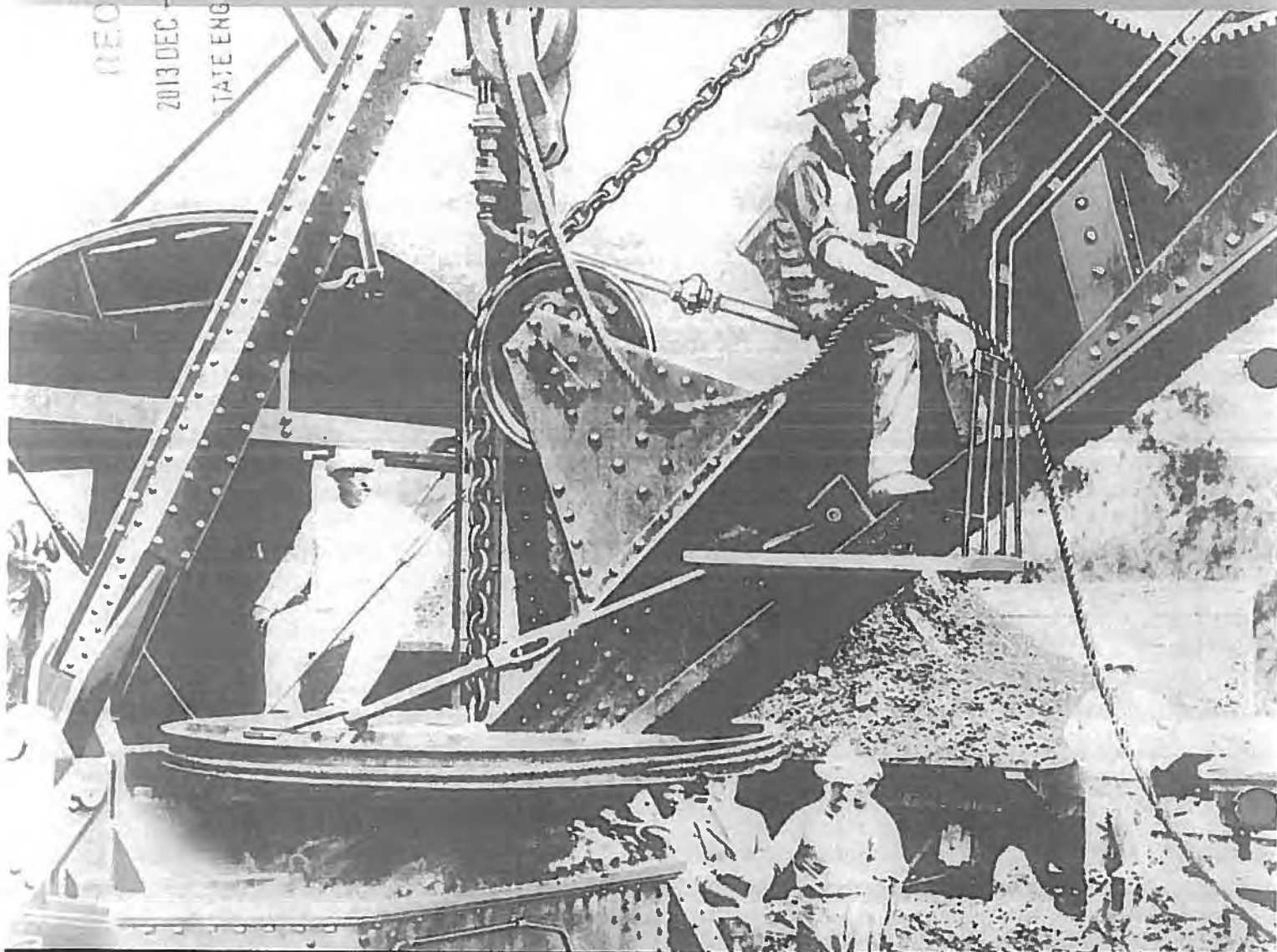
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# The Bucyrus Legacy



JT APP 111

SE ROA 0100



## Pivotal Mergers

In 1911 the Bucyrus Co., Atlantic Equipment Co. and Vulcan Steam Shovel Co. merged to become "Bucyrus Company", a public corporation. This marked the end of the Bucyrus organization as a family corporation.

As a result of the Vulcan purchase, the first fully revolving shovels to carry the Bucyrus name, Models 14B and 18B steamers, were produced. The 120B was introduced in 1925 as the first heavy duty, fully revolving, caterpillar (crawler) mounted loading shovel. The last of this model is still operating in a mine in Eastern Canada.

In 1927, Bucyrus merged with the Erie Steam Shovel Company. The Erie Steam Shovel Company was the country's leading manufacturer of small excavators, with a history as rich as Bucyrus. A description of the newly named company, Bucyrus-Erie Company, appeared on the New York Stock Exchange. Their focus was "...to bring together under one management, manufacturing plants, the products of which naturally supplement one another in the field of excavating machinery, by establishing a company handling power shovels, and other machinery for excavating and handling materials, of a number of sizes with the ability to sell these products with increased economy and efficiency, especially in foreign markets."

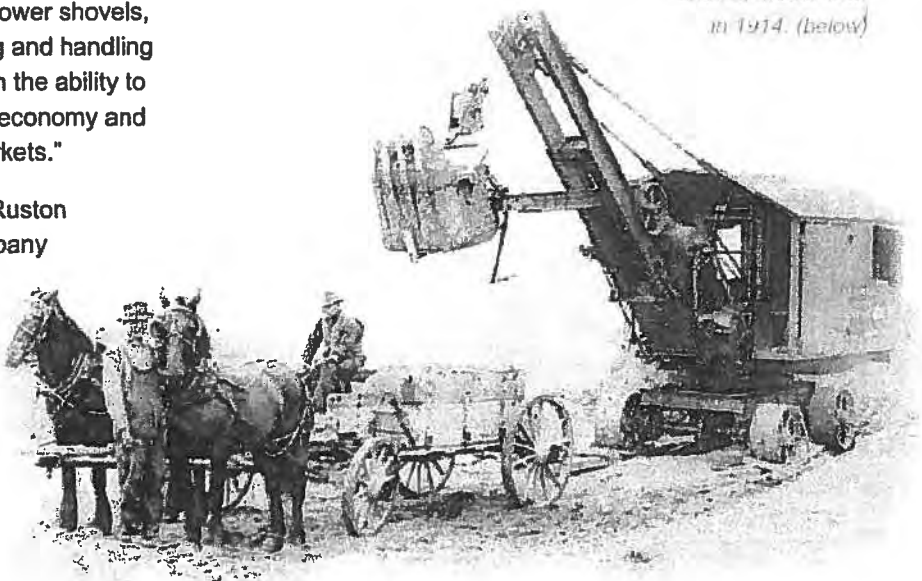
In 1930, Bucyrus-Erie joined with Ruston & Hornsby, Ltd., the foremost company in the British excavating-machinery industry, to form Ruston-Bucyrus, Limited. This enabled Bucyrus to expand internationally.

In 1913, Oscar Martinson, of the Monighan Machine Company of Chicago, patented the "Martinson Tractor Drive" to create the first walking dragline. In 1931, Bucyrus purchased the Monighan Walking Dragline Company of Chicago, Illinois and changed its name to Bucyrus-Monighan Company.



In 1941, the Bucyrus Monighan dragline, model 15W, (above)

The first Bucyrus shovel, model 14B, in 1914. (below)





# Product Line Expansion

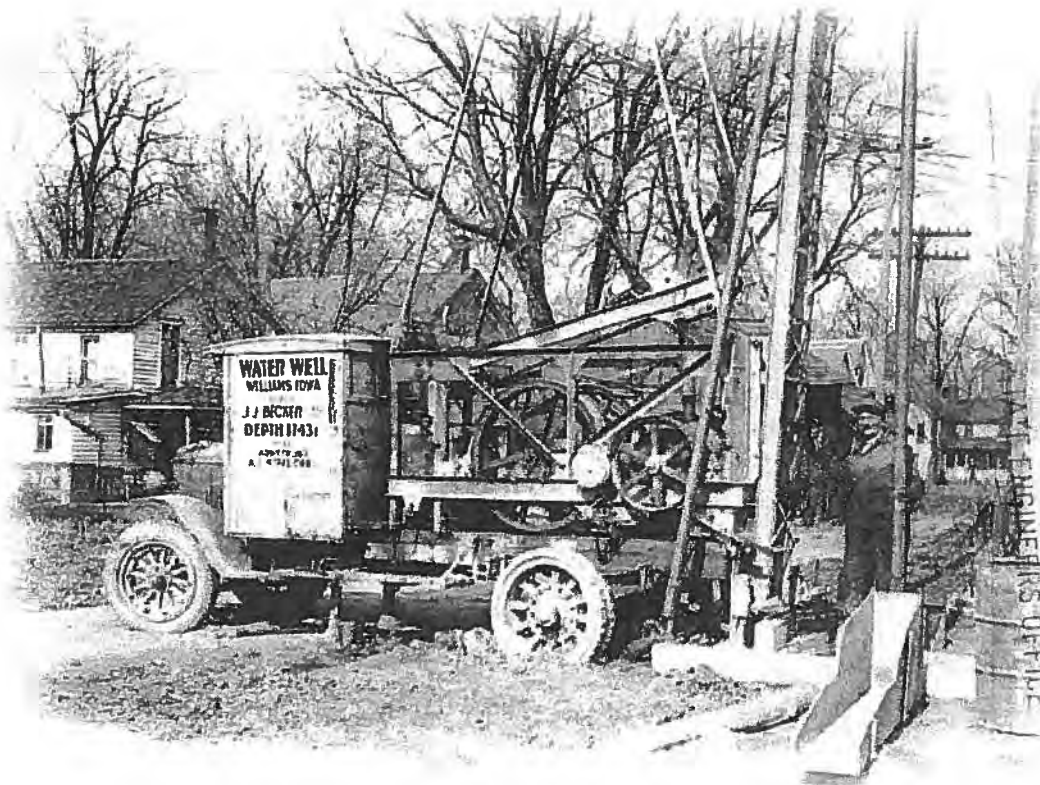
Between 1931 and 1939, Bucyrus' product line expanded to include walking draglines, drills and tractor equipment.

In 1933 Bucyrus first entered the-drill market by acquiring the manufacturing rights to the Armstrong Drill product line. The acquisition included drill tools, bit dressers and the highly successful line of churn drills for water well and blast-hole work. From 1933 to 1943 Bucyrus manufactured these products under the "BUCYRUS-ARMSTRONG" name.

By 1939, total annual shipments of the newly expanded product line had risen to 50 percent of the company's older lines, contributing to earnings in every year since inception. Sales of these machines increased and the future looked promising.

With the outbreak of World War II, Bucyrus experienced a greater demand for excavators. Virtually the entire production from 1942 to 1945 was devoted to the war. This allowed Bucyrus to expand its regular product line for civilian purchases, production of its regular line for the Government, and the design and production of special ordinance equipment, specifically gun carriages.

Following the war, Bucyrus invested \$2 million in an expansion program that increased plant capacity. Through the purchase of other companies and their patents, Bucyrus continued to expand its product line to include contractor-size cranes and excavators, and all-hydraulic truck cranes.

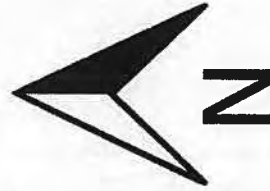


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**Attachment 7: July 1954 Aerial**

GS-VEQ 1-101 7/11/1954



NW Corner of  
Section 8,  
T. 42 N., R. 37 E.,  
M.D.B.&M.

JT APP 115

SE ROA 0104

BRIAN SANDOVAL  
GOVERNOR

STATE OF NEVADA



LEO DROZDOFF  
DIRECTOR

JASON KING, P.E.  
STATE ENGINEER

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
**DIVISION OF WATER RESOURCES**

901 SOUTH STEWART STREET, SUITE 2002

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[HTTP://WATER.NV.GOV](http://water.nv.gov)

December 2, 2013

Rodney and Virginia St. Clair  
8319 Clark Road  
Marsing, Idaho 83639

Re: Proof of Appropriation No. V-010493

Dear Mr. and Mrs. St. Clair:

On November 8, 2013, Proof of Appropriation No. V-010493 was submitted to the Office of the State Engineer by your agent, Michael A. Stanka, P.E. Review of this proof showed some discrepancies that will need to be corrected and/or elaborated on in order for the proof to be acceptable to this office.

There are typographical errors and several omissions in Proof of Appropriation No. V-010493.

The point of diversion's bearing and tie to a found corner on the application do not match the bearing and tie on the supporting map.

In question #1, your address is incomplete as there is no mention of a town/municipality or zip code. The above address was obtained using your name, partial address and telephone number. Without verification of this information, the "owner of record" is incomplete.

In question #2, the means of diversion employed is listed as "natural downhill drainage from POD." The gradient in this area, although slight, is to the west toward the Quinn river. How was the water transported to the eastern part of the NW¼ of Section 8, T.42N., R.37E.?



December 2, 2013

Page 2

In question #15, the application states that the water claimed *has not* been used for irrigation each and every year since the right was initiated.

The response to question #16 is inadequate in the description of what years the water was not used and why. In order for a claim of vested right (Proof of Appropriation) to be valid, beneficial use must be perpetuated from the inception of the right to the present time. Supporting documentation concerning the beneficial use of the water claimed under the proof is inadequate to address this issue. The newspaper articles supplied mention production in the area but do not reference the Crossley property directly. The steel pipe information concerning the drill casing does support a possible drilling date of 1924 and the rig used at the time might have been the drill rig in the supplied photograph or one very similar to it. The square outlined area in the 1954 aerial photograph is actually the NW¼ NW¼ (40 acres) of Section 8 and is inconclusive as far as surface disturbance and is subject to alternative interpretation when viewed with the adjacent photographs in the flight line and with additional aerial photographs taken in 1968, 1975, 1986, 1999, 2006 and 2013, which suggest no surface disturbance or development. Please be aware that even unadjudicated proofs of appropriation from an underground source are subject to the same statutes concerning forfeiture (NRS § 533.090) such as 5 or more consecutive years of non-use.

To correct these errors, you or your agent could come to our office to correct the proofs in person or to file amended proofs. Currently, there is no charge to file amendments or make corrections to Proofs of Appropriation. Please note that any amended Proof of Appropriation must have both an original signature and original notary stamp and signature. Photocopies of the returned proof with corrections will not be accepted. The mylar map will be returned to your agent for the necessary modifications. Please note that delays in making these corrections will impact the ability of the Office of the State Engineer to act upon application 83246T.

Blank application forms to amend or correct these proofs can be viewed and printed from our website at <http://water.nv.gov>. Please call me at (775) 684-2822 if you have any questions regarding this correspondence.

Sincerely,



Daniel Taylor  
Water Resource Specialist II

DT/jm

Enclosure: *Copy of proof V-010493 and supporting map*

cc: Michael A. Stanka, P.E.

# Stanka Consulting, LTD

A Professional Engineering Company

3032 Silver Sage Drive, Suite 101

Carson City, Nevada 89701

(775) 885-9283

[michael@stankaconsulting.com](mailto:michael@stankaconsulting.com)

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STATE ENGINEERS OFFICE  
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## Nevada Division of Water Resources

November 8, 2013

Attn: Mr. Jason King

901 S. Stewart St., Suite 2002

Carson City, Nevada 89701

RE: V-10498 [Additional Information]

Jason,

V-10493

This office is submitting additional information regarding the Vested Claim for underground rights by Rodney and Virginia St. Clair [ V-10498]. Attached is a copy of the Testimony of Claimant that was signed by George J. Crossley as part of the final paperwork required to complete the Homestead Act land acquisition.

This document was signed and notarized on February 19<sup>th</sup> 1924 and states that the 160 acres within the NW ¼ of Section 8, Township 42 North, Range 37 East, M.D.B.&M. was cultivated. Additionally, this document lists under improvement a "bored well, 56 feet, cased with 8 inch casing". This well description is consistent with the well that was documented with the initial submission of V-10498.

Please contact me at the above phone or email address if you have any questions.

Michael A. Stanka, P.E., WRS

Stanka Consulting, LTD

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Route 1

4-268

Form (Orig.) 3-\_\_\_\_\_ Form approved by the Secretary of the Interior November 14, 1914.

EXCESS \$ .....

Comp (Fin) \$12<sup>00</sup>3:12<sup>24</sup> DEPARTMENT OF THE INTERIOR.

PUR Nsn \$

## HOMESTEAD ENTRY.

**Test 2095**

U. S. LAND OFFICE, CARSON CITY, NEVADA.

No. 114185  
2738299-14<sup>00</sup>

**FINAL PROOF**

**Receipt No.**.....

## TESTIMONY OF CLAIMANT.

**QUESTION 1. What is your full name, age, and post-office address?**

ANSWER. George J. Crossley, age 61 years.

**Orovada, Humboldt County, Nevada.**

**QUESTION 2.** Are you a native-born citizen of the United States, and if so, in what State or Territory were you born? (If foreign born, or if native born and later naturalized in a foreign country, see Note 1.)

ANSWER. Yes, I was born in New York and reside in Nevada.

012930 QUESTION 3. Are you the same person who made Homestead Entry No. \_\_\_\_\_ and \_\_\_\_\_

014185....., at the..... Carson City..... Land Office on ~~the~~  
July Dec 9, 1920 & .....  
July 23, 1923..... ~~disposition~~..... 19 ~~xxx~~, for the

.....N 1/2 of S.E. 1/4 Section 7; the N 1/2 of S.W. 1/4.....

..... and N.W. 1/4 ..... of ..... Section 8

Township 42 North, Range 37 East, Mount Diablo Base and Meridian?  
If not, give relationship to entryman.

ANSWER: I am the same identical person.

QUESTION 4. Are you married or single? ANSWER. Married,.....

QUESTION 5. If married, of whom does your family consist?

ANSWER. Just my wife. ....

QUESTION 6. If a married woman, state whether your husband now has an unperfected homestead entry, and during what time he has resided on this land with you. Also state his citizenship qualifications. (See Note 1 at bottom of third page.)

ANSWER: ~~1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100~~  
QUESTION 7. When did you first establish actual residence upon this land?

ANSWER. About March 8, 1921.

QUESTION 8: When was your house built on this land?

During the summer I lived in a tent house,

ANSWER. / and finished my dwelling house on October 1, 1921. ....  
QUESTION 9. Have either you or your family ever been absent from  
the homestead since establishing residence?

ANSWER. I have been away for short periods.

QUESTION 10. If there has been such absence, give the dates covered by each absence; and as to each absence state whether you, your family, or both, were thus absent and the reason for each such absence.

ANSWER. I was away from the homestead for about ten days in

March, 1928, performing jury duty at Winnemucca, Nevada. I have

been away from the homestead three or four times on trips to

Winnemucca, on business and for supplies, but always returned

home the same day.

QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|        |        | Subdivision. | Acres cultivable. | Acres timbered. | Foot timber. |
|--------|--------|--------------|-------------------|-----------------|--------------|
| NE 1/4 | SE 1/4 | Sect. 7      | sandy loam,       | 10              | none         |
| NE 1/4 | SE 1/4 | Sect. 7      | " "               | 40              | "            |
| NW 1/4 | SW 1/4 | Sect. 8      | " "               | 40              | "            |
| NE 1/4 | SW 1/4 | Sect. 8      | " "               | 40              | "            |
| NW 1/4 | NW 1/4 | Sect. 8      | " "               | 40              | "            |
| NE 1/4 | NW 1/4 | Sect. 8      | " "               | 40              | "            |
| SW 1/4 | NW 1/4 | Sect. 8      | " "               | 40              | "            |
| SE 1/4 | NW 1/4 | Sect. 8      | " "               | 40              | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 19 21. On NW 1/4 of NW 1/4 Sect. 8, 40 acres, cleared, ploughed, 19 harrowed, seeded in barley, no crop raised, no water, to late in season.  
 On NE 1/4 of SE 1/4 Sect 7, cleared, ploughed and cultivated, and seeded 10 acres in alfalfa, and barley, also assorted vegetables. 19 no grain raised, fair crop of vegetables raised.  
 19 22. On NW 1/4 of NW 1/4 Sect. 8, about 20 acres seeded in white blossom sweet clover, about 25% stand left on ground, no returns.  
 On NE 1/4 of SE 1/4 Sect. 7, seeded two acres in Bromus grass, about six 19 acres seeded in white blossom sweet clover.

QUESTION 13. Describe fully and in detail the amount and kind of improvements and number of acres under cultivation on each subdivision. State total value of improvements on the claim.

ANSWER.

| Subdivision.                 | Character of improvements.   |
|------------------------------|--|
| NE 1/4 of SE 1/4 Sect. 7,    | Dwelling house, 2 rooms, 12 x 26 ft., \$400.00   |
| " "                          | Tool House, size 8 x 10 ft 40.00   |
| " "                          | Cellar, " 10 x 12 ft., 40.00   |
| " "                          | Ten acres is fenced with rabbit proof wire, also two barb wires, cost of wire, posts & labor. 125.00 |
| On NW 1/4 of NW 1/4 Sect. 8. | Forty acres fenced with rabbit proof wire  |
| " "                          | two barb wires, cost of wire, posts and labor, 328.00  |
| " "                          | One bored well, 56 feet, cased with 8 in. casing, 175.00   |

QUESTION 14. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

ANSWER. No.

QUESTION 15. Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

ANSWER. There is no indications of coal, salines, or minerals of any kind on this land.

QUESTION 16. Have you sold, conveyed, or agreed to sell or convey any portion of the land? If so, to whom and for what purpose?

ANSWER. No.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|                  |                  |         | Subdivision. | Acres cultivable. | Acres timbered. | Foot timber. |
|------------------|------------------|---------|--------------|-------------------|-----------------|--------------|
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | sandy loam,  | 10                | None            | None         |
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | " "          | 20                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 19 21. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and potatoes. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres cleared, ploughed and seeded with white blossom sweet clover, this seed was put in in the fall. Bromus grass seeded came up but not cut, did not head, the 6 acres of clover, no crop raised, no water, average crop of vegetables was raised in 1922.

1923. About 12 acres on NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, additional land was ploughed, cultivated and seeded in Bromus grass and clover, this seed put in in the fall, and at present time has started to come up.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, about 20 acres seeded in white blossom sweet clover, sowed in the spring, had fair stand but left it for to seed itself. On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, about two acres seeded in assorted vegetables and potatoes, fair crop raised.

1924. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, in this month I have reseeded 40 acres in sweet blossom white clover, by having second seeding this land will be reseeded each year.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, About 18 acres additional land has been cleared, ploughed, getting the ground ready to plant seed as soon as weather permits.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, all cultivated,

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Section 8, all cultivated.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  " 7, all cultivated, and seeded except 18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

02-1234

QUESTION 18. Have you any personal property of any kind elsewhere

JT APP 121

SE ROA 0110



QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|                  |                  |         | Subdivision. | Acres cultivable. | Acres timbered. | Foot timber. |
|------------------|------------------|---------|--------------|-------------------|-----------------|--------------|
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | sandy loam,  | 10                | none            | 0            |
| NE $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | NE $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | NE $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 1921. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

On NE $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed

and about two acres planted in assorted vegetables, and

|  |   |        |
|--|---|--------|
| On NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sect. 8. | Forty acres fenced with rabbit proof wire         |        |
|  | also two barb wires, cost of wire, posts & labor. | 125.00 |
| On NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sect. 8. | Forty acres fenced with rabbit proof wire         |        |
|  | two barb wires, cost of wire, posts and labor,    | 328.00 |
|  | One bored well, 56 feet, cased with 8 in. casing, | 175.00 |

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7. One bored well, 38 feet deep,  
8 in. casing, Wind mill installed, cost of well,  
casing and wind mill, ----- \$250.00

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, all cultivated,

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Section 8, all cultivated.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  " 7, all cultivated, and seeded except  
18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 18. Have you any personal property of any kind elsewhere

QUESTION 18. Have you any personal property of any kind elsewhere than on this claim? If so, describe the same, and state where the same is kept.

ANSWER. No.

QUESTION 19. Have you ever made any other homestead entry? If so, describe the same.

ANSWER. No.

QUESTION 20. Have you, since August 30, 1890, made any entry or filing (not mineral) other than homestead? If so, describe the same by legal subdivisions, or by number, kind of entry, and office where made.

ANSWER. Yes. I filed under the Desert Land Laws, on Feb 1, 1921, relinquished this land back to the Government on October 24, 1922, and then filed on the same land as an additional Homestead.

*George J. Lenoire*  
(Sign plainly, with full (printed) name.)

NOTE 1.—If applicant is alien born, he should state the fact and file evidence of citizenship in due form, either a certificate of his own naturalization in a court of competent jurisdiction, or, if claiming to be a citizen by virtue of his father's naturalization and his own minority and residence in the United States at the date thereof, or, if a married woman claiming citizenship by virtue of her husband's nativity or naturalization, then record evidence of the naturalization of the father, or husband, or an affidavit as to the nativity of the latter. Applicants who were at one time citizens of the United States, but who later became citizens of a foreign country, must file record evidence of their naturalization. Any female citizen of the United States involving the benefits of the act of October 17, 1914 (38 Stat., 740), shall make oath showing the nationality of her husband, and that he is entitled to become a citizen of the United States.

NOTE 2.—The officer before whom the proof is made will see that all answers are complete and responsive to the questions.

NOTE 3.—The officer before whom the deposition is taken should call the attention of the witness to section 123 of the U. S. Criminal Code (over), and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

I HEREBY CERTIFY that the deponent was examined separately and apart from the other witnesses in the case; that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that I verily believe deponent to be the identical person hereinbefore described, and that said deposition was duly subscribed

and sworn to before me at my office, in Winnemucca, Humboldt County,

State of Nevada, within the Carson City land district,

this 19th day of February, 1924.

*J. W. Lavery*  
County Clerk and Ex. Officer of the State Judicial District  
Court of the State of Nevada, in and for the County of Humboldt.  
(Printed designation of officer.)

# Stanka Consulting, LTD

A Professional Engineering Company

3032 Silver Sage Drive, Suite 101  
Carson City, Nevada 89701  
(775) 885-9283  
[michael@stankaconsulting.com](mailto:michael@stankaconsulting.com)

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## Nevada Division of Water Resources

November 8, 2013

Attn: Mr. Jason King  
901 S. Stewart St., Suite 2002  
Carson City, Nevada 89701

RE: V-10498 [Additional Information]

Jason, V-10493

This office is submitting additional information regarding the Vested Claim for underground rights by Rodney and Virginia St. Clair [ V-10498]. Attached is a copy of the Testimony of Claimant that was signed by George J. Crossley as part of the final paperwork required to complete the Homestead Act land acquisition.

This document was signed and notarized on February 19<sup>th</sup> 1924 and states that the 160 acres within the NW ¼ of Section 8, Township 42 North, Range 37 East, M.D.B.&M. was cultivated. Additionally, this document lists under improvement a "bored well, 56 feet, cased with 8 inch casing". This well description is consistent with the well that was documented with the initial submission of V-10498.

Please contact me at the above phone or email address if you have any questions.

Michael A. Stanka, P.E., WRS

Stanka Consulting, LTD

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SE ROA 0114

QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|        |        |         | Subdivision. | Acres cultivable. | Acres timbered. | Feet timber. |
|--------|--------|---------|--------------|-------------------|-----------------|--------------|
| NE 1/4 | SE 1/4 | Sect. 7 | sandy loam,  | 40                | none            | 0            |
| NW 1/4 | SE 1/4 | Sect. 7 | " "          | 40                | "               | "            |
| NE 1/4 | SW 1/4 | Sect. 8 | " "          | 40                | "               | "            |
| NW 1/4 | SW 1/4 | Sect. 8 | " "          | 40                | "               | "            |
| NE 1/4 | NW 1/4 | Sect. 8 | " "          | 40                | "               | "            |
| NW 1/4 | NW 1/4 | Sect. 8 | " "          | 40                | "               | "            |
| SE 1/4 | NW 1/4 | Sect. 8 | " "          | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 19 21. On NW 1/4 of NW 1/4 Sect. 8, 40 acres, cleared, ploughed, harrowed, seeded in barley, no crop raised, no water, to late in season.  
 On NE 1/4 of SE 1/4 Sect 7, cleared, ploughed and cultivated, and seeded 10 acres in alfalfa, and barley, also assorted vegetables.  
 no grain raised; fair crop of vegetables raised.  
 19 22. On NW 1/4 of NW 1/4 Sect. 8, about 20 acres seeded in white blossom sweet clover, about 25% stand left on ground, no returns.  
 On NW 1/4 of SE 1/4 Sect. 7, seeded two acres in Bromus grass, about six acres seeded in white blossom sweet clover.

QUESTION 13. Describe fully and in detail the amount and kind of improvements and number of acres under cultivation on each subdivision. State total value of improvements on the claim.

ANSWER.

| Subdivision.                 | Character of improvements.  |
|------------------------------|---|
| NE 1/4 of SE 1/4 Sect. 7,    | Dwelling house, 2 rooms, 12 x 26 ft. \$400.00   |
| " "                          | Tool House, size 8 x 10 ft 40.00  |
| " "                          | Cellar, " 10 x 12 ft, 40.00   |
| " "                          | Ten acres is fence with rabbit proof wire, also two barb wires, cost of wire, posts & labor. 125.00 |
| On NW 1/4 of NW 1/4 Sect. 8. | Forty acres fenced with rabbit proof wire   |
| " "                          | two barb wires, cost of wire, posts and labor. 328.00   |
| " "                          | One bored well, 56 feet, cased with 8 in. casing, 175.00  |

QUESTION 14. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

ANSWER. No.

QUESTION 15. Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

ANSWER. There is no indications of coal, salines, or minerals

of any kind on this land.

QUESTION 16. Have you sold, conveyed, or agreed to sell or convey any portion of the land? If so, to whom and for what purpose?

ANSWER. No.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|                  |                  |         | Subdivison. | Acres cultivable. | Acres timbered. | Feet timber. |
|------------------|------------------|---------|-------------|-------------------|-----------------|--------------|
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | sandy loam. | 10                | none            | "            |
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | " "         | 20                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "         | 40                | "               | "            |
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| NW $\frac{1}{4}$ | NE $\frac{1}{4}$ | Sect. 8 | " "         | 40                | "               | "            |
| NW $\frac{1}{4}$ | NE $\frac{1}{4}$ | Sect. 8 | " "         | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "         | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "         | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 1921. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and potatoes. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres cleared, ploughed and seeded with white blossom sweet clover, this seed was put in in the fall, Bromus grass seeded came up but not cut, did not head, the 6 acres of clover, no crop raised, no water, average crop of vegetables was raised in 1922.

1923. About 12 acres on NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, additional land was ploughed, cultivated and seeded in Bromus grass and clover, this seed put in in the fall, and at present time has started to come up.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, about 20 acres seeded in white blossom sweet clover, sowed in the spring, had fair stand but left it to seed itself. On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, about two acres seeded in assorted vegetables and potatoes, fair crop raised.

1924. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, in this month I have reseeded 40 acres in sweet blossom white clover, by having second seeding this land will be reseeded each year.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, About 18 acres additional land has been cleared, ploughed, getting the ground ready to plant seed as soon as weather permits.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, all cultivated,

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Section 8, all cultivated.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  " 7, all cultivated, and seeded except 18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 18. Have you any personal property of any kind elsewhere

JT APP 127

SE ROA 0116

QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|        |        |         | Subdivisions. | Acres cultivable. | Acres timbered. | Feet timber. |
|--------|--------|---------|---------------|-------------------|-----------------|--------------|
| NW 1/4 | SE 1/4 | Sect. 7 | sandy loam,   | 10                | None            | 5            |
| NW 1/4 | SE 1/4 | Sect. 7 | " "           | 40                | "               | "            |
| NW 1/4 | SW 1/4 | Sect. 8 | " "           | 40                | "               | "            |
| NW 1/4 | SW 1/4 | Sect. 8 | " "           | 40                | "               | "            |
| NW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                | "               | "            |
| NW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                | "               | "            |
| SW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                | "               | "            |
| SE 1/4 | NW 1/4 | Sect. 8 | " "           | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 1921. On NW 1/4 of NW 1/4 Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and

On NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed, and about two acres planted in assorted vegetables, and

On NW 1/4 of NW 1/4 Sect. 8, 40 acres, cleared, ploughed, and about two acres planted in assorted vegetables, and

On NE 1/4 of SE 1/4 Sect. 7. One bored well, 38 feet deep, 8 in. casing, Wind mill installed, cost of well, casing and wind mill, \$250.00

On NW 1/4 of NW 1/4 Sect. 8, all cultivated,

On NW 1/4 of SW 1/4 Section 8, all cultivated,

On NE 1/4 of SE 1/4 " 7, all cultivated, and seeded except 18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 18. Have you any personal property of any kind elsewhere

**QUESTION 18.** Have you any personal property of any kind elsewhere than on this claim? If so, describe the same, and state where the same is kept.

**ANSWER.** No.

**QUESTION 19.** Have you ever made any other homestead entry? If so, describe the same.

**ANSWER.** No.

**QUESTION 20.** Have you, since August 30, 1890, made any entry or filing (not mineral) other than homestead? If so, describe the same by legal subdivisions, or by number, kind of entry, and office where made.

**ANSWER.** Yes. I filed under the Desert Land Laws, on Feb 1, 1921, relinquished this land back to the Government on October 24, 1922, and then filed on the same land as an additional Homestead.

*George J. Lenoire*  
(Platypus, with full residence name)

**NOTE 1.**—If applicant is alien born, he should state the fact and file evidence of citizenship in due form, either a certificate of his own naturalization in a court of competent jurisdiction, or, if claiming to be a citizen by virtue of his father's naturalization and his own minority and residence in the United States at the date thereof, or, if a married woman claiming citizenship by virtue of her husband's nativity or naturalization, then record evidence of the naturalization of the father, or husband, or an affidavit as to the nativity of the latter. Applicants who were at one time citizens of the United States, but who later became citizens of a foreign country, must file record evidence of their naturalization. Any female citizen of the United States invoking the benefits of the act of October 17, 1914 (38 Stat., 740), shall make oath showing the nationality of her husband, and that he is entitled to become a citizen of the United States.

**NOTE 2.**—The officer before whom the proof is made will see that all answers are complete and responsive to the questions.

**NOTE 3.**—The officer before whom the deposition is taken should call the attention of the witness to section 183 of the U. S. Criminal Code (over), and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

I HEREBY CERTIFY that the deponent was examined separately and apart from the other witnesses in the case; that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that I verily believe deponent to be the identical person hereinbefore described, and that said deposition was duly subscribed

and sworn to before me at my office, in Winnemucca, Humboldt County, State of Nevada, within the Carson City land district,

this 19th day of February, 1924.

*J. W. Flary*  
County Clerk and Ex. Officio Clerk of the Territorial District Court of the State of Nevada, in and for the County of Humboldt.  
(Official designation of officer.)

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

STANKA CONSULTING, LTD  
MICHAEL STANKA P.E.  
3032 SILVERSAGE DR STE 101  
CARSON CITY NV 89701

## Receipt

|                                |          | Payment Method   | Check No.    | Receipt # |
|--------------------------------|----------|--|--------------|-----------|
|                                |          | Check  | 11611        | 283235    |
| Date                           | Item     | Description  | Amount       |           |
| 11/8/2013                      | PROOFIRR | FILING PROOF OF APPROPRIATION NO. V10493<br>FOR IRRIGATION | 120.00       |           |
| Received By: Catherine Orpilla |          |  | <b>Total</b> | \$120.00  |



Application No. 010493

STATE OF NEVADA  
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Underground Source

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source NW Section 8 Well

Name of ditch, flume or pipe line

at the following point(s) (List all points of diversion from this source, appending a sheet if necessary. Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated.)

within the NE 1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M. or at a point from which the NW Corner of said Section 8 bears N. 56° 59' 13.2" W., a distance of 1,527.2 ft.

(1) Name of claimant Rodney and Virginia St. Clair

Address 8319 Clark Rd. Marsing 83639, County of Owyhee

State of Idaho Telephone No. (208) 896-4352

(2) The means of diversion employed Natural Downhill Drainage from POD

Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was

(4) The construction of the ditch or other works was begun 1920's

and completed 1920's

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom N/A feet, width

on top N/A feet, depth N/A feet, on a grade of N/A feet per thousand feet.

(6) The conduit has not been enlarged. Note - If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun

and completed

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom \_\_\_\_\_ feet, width on top

\_\_\_\_\_ feet, depth \_\_\_\_\_ feet, on a grade of \_\_\_\_\_ feet per thousand feet.

(9) The claimant is the owner in the above-described conduit.

If claimant is an owner in the conduit, state interest held on this line.

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Rodney and Virginia St. Clair are current owners of Humboldt County APN #003-491-17, which corresponds to 160 acres in the NW Corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. (See Attachments)

have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

\_\_\_\_\_, \_\_\_\_\_ acres in the \_\_\_\_\_ of Sec \_\_\_\_\_, T \_\_\_\_\_, R \_\_\_\_\_, E \_\_\_\_\_.

(15) The water claimed has not been used for irrigation each and every year since the right was initiated.

**JT APP 132**  
SE ROA 0121



(16) The years during which no water was used for irrigation or during which the full water right was not used were (If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary.)

First recorded irrigation occurred in 1924. All irrigation of crop from underground source occurred prior to 1939 Nevada Underground Water Act. No water rights found on parcel in NW Corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of Humboldt  
County, said record being at page \_\_\_\_\_ of Book \_\_\_\_\_ of \_\_\_\_\_, and being a claim for  
\_\_\_\_\_ of water for the irrigation of  
\_\_\_\_\_ acres of land in the following legal subdivisions:

Note - Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Domestic

(19) The character of the soil is Sandy. A continuous flow of up to 2.0 cubic feet  
Sandy, gravelly, loam  
of water per second has been used to irrigate 160 acres of land and 640  
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks  
See Attachments.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by  
Rodney and Virginia St. Clair are full and correct to the best of his knowledge and belief.

I, Michael A. Stanka, am filing this Proof as acting agent for Rodney and Virginia St. Clair

If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.

Name Michael A. Stanka

Address 3032 Silver Sage Dr., Suite 101; Carson City, NV 89701


Telephone Number (775) 885 - 9283

State of Nevada

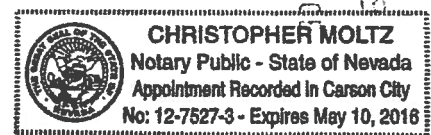
County of Carson City

Subscribed and sworn to before me on November 6, 2013

by Michael A. Stanka



Signature of Notary Public Required



Notary Stamp or Seal Required

**\$120 FILING FEE MUST ACCOMPANY PROOF**

Revised 07/13 - poa-irr

JT APP 134 SE ROA 0123

**Attachments for Proof of Appropriation of Water for Irrigation under Underground  
Source [NW Section 8 Well]**

(20) Remarks

The northwest corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. is currently owned by Rodney and Virginia St. Clair (claimants). This parcel is also listed as Humboldt County APN #003-491-17. The original owner was George J. Crossley who acquired the property in 1924 under the Homestead Act of 1862. Chain of title from the U.S. Government to Rodney and Virginia St. Clair is included as **Attachment 1**.

Per the Homestead Act of 1862, "...said entry is made for the purpose of actual settlement and cultivation." A copy of the Homestead Act of 1862 is included as **Attachment 2**. George J. Crossley wrote several articles for the Orovada Weekly Journal in 1924. These articles and others identify irrigation and irrigation practices in Orovada during the 1920's. Specifically it references alfalfa crop and the use of groundwater for irrigation. As can be seen in attached copies of articles from the 1924 Orovada Weekly Journal, the irrigation of crops through pumping underground water was occurring in the area at that time. Per the September 5, 1924 Orovada Weekly Journal, flow measurement for the Helbig was recorded at 1200 gpm. Additionally, per Orovada Weekly Journals it was reported that flows in the 1,000 gpm - 1,200 gpm were common for farmers in the Orovada Area in 1924. Copies of the Orovada Weekly Journal articles are included as **Attachment 3**.

Through a site survey (October 1913) of the referenced property, the well corresponding to this Vested Claim was located and documented. The well had a 8-inch casing made of rolled thin metal, with horizontal riveted seams. The casing was in short sections and connected with riveted collars. Pictures of the well are included as **Attachment 4**. This well is currently not operational and has been silted in. This construction technology was used until the mid 1930's. Excerpts from the History of Steel Water Pipe referencing the design are included as **Attachment 5**. Well drilling at the time of the well was completed using cable drill rigs. During the site survey, a relatively intact historic drill rig was located immediately adjacent to the property. The drill rig was a Armstrong Mfg Co: Waterloo, IA drill rig (aka Spudder). The Armstrong Mfg Co. ceased making these drill rigs in 1933. A recent photo of the drill rig and background literature regarding the drill rig is included as **Attachment 6**.

Review of historical areal (July 1954) shows land disturbance in the entire 160 acres of the NW1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M. An image of the areal is included as **Attachment 7**. Based on the information presented, the vested claim is for the entire 160 acres of land at a duty of 4.0 acre feet per acre (640 acre-feet). The diversion rate a 2.0 c.f.s. (896 g.p.m.) is listed, which is consistent with the amount required to irrigate 160 acres and also is within the range listed in Orovada Weekly Journal Article.

**Attachment 1: Chain of Title**

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| Chain of Title for NW Corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. |   |   |                  |   |
|--|---|---|------------------|---|
| No.  | Old Owner   | New Owner(s)  | Date Of Transfer | Document  |
| 1  | United States of America                                      | George J. Crossley  | 4/21/1924        | Deed, Recorded Patent Number 936734   |
| 2  | George J. Crossley  | Albert H. Trathen   | 6/19/1924        | Deed of Gift, Deeds Bk. 55, Pg. 516   |
| 3  | Albert H. Trathen   | Frank L. Trathen  | 8/26/1927        | Deed of Gift, Deeds Bk. 60, Pg. 5052  |
| 4  | Frank F. Trathen (Deceased)                                   | Florence D. Trathen (1/4 Por)<br>Grace F. Trathen (1/4 Por)<br>Harold F. Trathen (1/4 Por)<br>Albert F. Trathen (1/4 Por) | 5/22/1973        | Order Approving, Allowing and Settling First and Final Account and Decree of Distribution, Book 75, Pg. 387, Frame 2, 4, and 6. |
| 5  | Florence D. Trathen (Deceased) - 1/4 Portion                  | Grace F. Trathen (1/3 Por)<br>Harold F. Trathen (1/3 Por)<br>Albert F. Trathen (1/3 Por)                                  | 4/13/1987        | Order To Set Aside Estate, Book 228, Pg. 13, Frame 2-3  |
| 6  | Harold F. Trathen (Deceased) - 1/3 Portion                    | Grace F. Methven aka<br>Grace F. Trathen (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 4/6/2009         | Order Setting Aside Estate Without Administration, 2009 1116  |
| 7  | Grace F. Methven (Deceased) - 1/2 Portion                     | Grace T. Methven Revocable Trust (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 6/10/2013        | Order Setting Aside Estate Less Than \$100,000.00 in Value, 2013 2605   |
| 8  | Grace T. Methven Revocable Trust - 1/2 Portion                | John F. Methven, Jr. (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 7/11/2013        | Grant, Bargain and Sale Deed, 2013 3099   |
| 9  | John F. Methven, Jr. - 1/2 Por<br>Albert F. Trathen - 1/2 Por | Rodney and Virginia St. Clair   | 8/12/2013        | Grant, Bargain and Sale Deed, 2013 3755   |

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1  
\* Carson City 012930 and 014185

4-1008-B.

## The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Carson City, Nevada, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of George J. Crossley has been established and duly consummated, in conformity to law, for the north half of the southeast quarter of Section seven and the north half of the southwest quarter and the northwest quarter of Section eight in Township forty-two north of Range thirty-seven east of the Mount Diablo Meridian, Nevada, containing three hundred twenty acres,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Calvin Coolidge,

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the TWENTY-FIRST

(SEAL)

day of APRIL In the year of our Lord one thousand nine hundred and TWENTY-FOUR and of the Independence of the United States the one hundred and FORTY-EIGHTH

By the President:

By

Calvin Coolidge  
Vista B. Engle, Secretary.  
M. P. LeRoy  
Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number. 936734

7-5071

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JT APP 138 SE ROA 0127

rents, issues and profits thereof. And also all the estate, right, title, interest, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above-mentioned and described premises together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed, Sealed and Delivered in the Presence of) Robert C. Vandenberg. (Seal)  
Belle Vandenberg (Seal)

STATE OF CALIFORNIA, }  
COUNTY OF SANTA CLARA. } SS.

On this 25th day of February in the year one thousand nine hundred and twenty-four before me, Charles J. Clark a Notary Public in and for said County of Santa Clara, State of California, personally appeared Belle Vandenberg, known to me to be the person whose name is subscribed to the within instrument, and she duly acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in City of San Jose, County and State aforesaid, the day and year in this certificate first above written:

(Notarial Seal) Charles J. Clark  
Notary Public in and for the County of Santa Clara, State of California.

STATE OF CALIFORNIA, }  
COUNTY OF ALAMEDA. } SS.

On this 23rd day of February A.D. one Thousand nine hundred and Twenty Four, before me Charles B. Coit a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Robert C. Vandenberg known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written.

(Notarial Seal) Charles B. Coit  
Notary Public in and for said County of Alameda, State of California.

Recorded at request of Bert C. Alford May 19, 1924 at 45 min past 3 o'clock P M File No 49080.

*J. German* COUNTY RECORDER.

Carson City 012930 and 014185, 4-1005.

THE UNITED STATES OF AMERICA,  
To all to whom these presents shall come, Greeting.

WHEREAS, a Certificate of the Register of the Land Office at Carson City, Nevada, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of George J. Cresalay has been established and duly consummated, in conformity to law, for the north half of the southeast quarter of Section seven and the north half of the southwest quarter and the northwest quarter of Section eight in Township forty-two north of Range thirty-seven east of the Mount Diablo Meridian, Nevada, containing three hundred twenty acres, according to the official plat of the Survey of the said land, returned to the General Land Office by the Surveyor-General;

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimant the tract of land above described;

(4)

*Wendell Bk 55 Pg. 490-491*

STATE ENGINEER'S OFFICE  
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April 22nd 1924  
AM 11:00

5

Homestead Act

TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Calvin Coolidge, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the Twenty-First day of April in the year of our Lord one thousand nine hundred and Twenty-Four and of the Independence of the United States the One hundred and Forty-eighth.

By the President: Calvin Coolidge  
By Viola B. Pugh, Secretary.

(Seal of Gen'l. Land Office) M.P. LeROY.  
Recorder of the General Land Office.

Recorded: Patent Number 936734.

Recorded at request of J.W. Davey May 20, 1924 at 30 min past 1 o'clock P M File No 49024.

*J. German* COUNTY RECORDER.

THIS INDENTURE, made the twentieth day of May, one thousand nine hundred and Twenty-four Between Martin Oyarcabal and Pete Bertrandy, co-partners doing business under the firm name and style of Martin Oyarcabal & Co., and Martin Oyarcabal the parties of the first part, and The First National Bank of Winnemucca, Nev., a corporation, the party of the second part, WITNESSETH: That the said parties of the first part, in consideration of the sum of Ten & 00/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, and sell unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces or parcels of land situate in the County of Humboldt State of Nevada, and bounded and described as follows, to-wit: The East half of the northeast quarter of Section Eleven, and the West half of the Northwest quarter of Section Twelve, all in Township Forty-three North, Range Thirty East M.D.B. & M. containing one hundred and sixty acres, or thereabouts. Together with all the water right and water thereunto belonging, and heretofore granted to one, Theodoro Martinez by the State Engineer of Nevada, and described in Permit No. 2482 to appropriate the waters of Pole Creek; also, the water and water right unto said lands, <sup>belonging</sup> and heretofore granted to the said Martinez in Permit No. 4958 to appropriate the waters of Big Creek, to which Permits reference is hereby made for further particulars. (\$4.50 R. Stamps attached and cancelled)

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands the day and year first above written.

(Signed and Delivered in the Presence of) Martin Oyarcabal Co  
By Martin Oyarcabal  
Martin Oyarcabal.

STATE ENGINEERS OFFICE  
2013 NOV -8 AM 11:00  
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DEED OF GIFT.

THIS INDENTURE, Made this Nineteenth day of June in the year of Our Lord, One Thousand Nine Hundred and Twenty-four. BETWEEN George J. Crossley, a single man, and Albert H. Trathen WITNESSETH: That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection and livelihood of the said party of the second part, does by these presents GIVE, GRANT, ALIEN and CONFIRM unto the said party of the second part and to his heirs and assigns forever, All that certain lot piece or parcel of land, situate, lying and being in the State of Nevada County of Humboldt and bounded and particularly described as follows, to-wit: The Northwest quarter (N.W. 1/4) of Section Eight (8) Township Forty-two North (42N), Range No. 37 East (37E) Mount Diablo Base and Meridian, containing one hundred and sixty acres, TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders issues and profits thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part; His heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of) George J. Crossley. (Seal)  
W S. Angwin

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } SS.

On this 19th day of June A.D. One Thousand Nine Hundred and Twenty four, before me, W S Angwin Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared George J. Crossley a single man known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal) W.S. Angwin,  
Notary Public in and for said County of Alameda State of California.

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA, } SS.

I, Geo. E. Gross, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a Court of Record of the State of California, having by law a seal, do hereby certify that W.S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgment or affidavit, was at the time of taking such proof, acknowledgment or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California; and I further certify that an impression of the seal of the said notary Public is not required by law to be filed in my office.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal this 20th day of June 1924.

(Court Seal) Geo. E. Gross,  
County Clerk of the County of Alameda and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda.  
Recorded at request of Albert H. Trathen July 16, 1924 at 30 min past 1 o'clock P M File No 49170.

J. Germano COUNTY RECORDER.

#####

Deed from  
Crossley to Alber  
Trathen  
June 19th 1924

STATE ENGINEERS OFFICE

2013 NOV - 8 AM 11:00

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... along the fence line to the east side of Melarkey Street; thence N 47° 11' W  
63.00 feet along the east side of Melarkey Street to the point of beginning. Said tract  
of land facing 62.50 feet on Third Street and 63.00 feet on Melarkey Street. The said  
land and premises being described in Book 58 of Deeds, pages 549 and 561 thereof,  
official records of Humboldt County.

TO HAVE AND TO HOLD the said premises together with all the rights, privileges and  
appurtenances aforesaid, unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set its hand the day  
and year first above written.

C. P. Hoskins.  
Mayor Pro Tem

(Corporate Seal.)

Mary M Cosby  
City Clerk

(\$6.50 Revenue Stamps attached and cancelled.)

STATE OF NEVADA

County of Humboldt ss

On this 27 day of July, 1937, personally appeared before me, a Notary Public in and  
said County and State, C. P. HOSKINS and MARY M. COSBY, known to me to be the same  
persons described in and who executed the above and foregoing instrument, who duly  
acknowledged to me that they executed the same freely and voluntarily and for all the  
uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the  
day and year in this certificate first above written.

J G Moore  
Notary Public

(Notarial Seal.)

Recorded At Request of H. A. Johnson July 30, 1937 At 36 Min. Past 4 O'Clock P. M.,  
File No. 61892.

J. L. Germain  
County Recorder.

#####

DEED OF GIFT

This Indenture, Made this twenty-sixth day of August in the year of Our Lord One  
Thousand Nine Hundred and Twenty Seven

Between Albert H. Trathen the party of the first part, And Frank L. Trathen the  
party of the second part,

WITNESSETH: That the party of the first part, for and in consideration of the love  
and affection which the said party of the first part has and bears unto the said party  
of the second part, as also for the better maintenance, support, portection and livelihood  
of the said party of the second part, does by these presents GIVE, GRANT, ALIEN and  
CONFIRM unto the said party of the second part, and to his heirs and assigns forever,

All that certain lot piece or parcel of land, situated, lying and being in the  
County of Humboldt  
State of Nevada and bounded and particularly described as follows, to-wit:

The Northwest quarter (N.W.  $\frac{1}{4}$ ) of Section Eight (8) Township Forty-two North  
(42 N.), Range No. 37 East (37E) Mount Diablo Base and Meridian, containing one  
hundred and sixty acres.

TOGETHER with all and singular the tenements, hereditaments and appurtenances  
thereunto belonging or in anywise appertaining, and the reversion and reversions,

Deeds BK 60 Pg. 50-52

STATE ENGINEERS OFF  
2013 NOV - 8 AM 11:11  
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JT APP 142  
E ROA 0131

16

remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED. IN )

THE PRESENCE OF

Albert H. Trathen SEAL

W. S. Angwin

J A Angwin

STATE OF CALIFORNIA, )

County of Alameda

SS

On this 26th day of August A. D. One Thousand Nine Hundred and twenty seven, before me, W. S. ANGWIN a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Albert H Trathen known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

W S Angwin  
Notary Public

(Notarial Seal.)

In and for said County of Alameda  
State of California

STATE OF CALIFORNIA, )  
COUNTY OF ALAMEDA, )

SS.

COUNTY CLERK'S CERTIFICATE AS TO NOTARY PUBLIC No. 19020  
I, GEO. E. GROSS, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a court of record of the State of California, having by law a seal, do hereby certify that W. S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgement or affidavit, was at the time of taking such proof, acknowledgement or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California, and I further certify that an impression of the seal of the

STATE ENGINEERS OFFICE

2013 NOV -8 AM 11:00

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STATE OF CALIFORNIA, }  
County of Alameda } SS

On this 26th day of August A. D. One Thousand Nine Hundred and twenty seven, before me, W. S. ANGWIN a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Albert H Trathen known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

W S Angwin  
Notary Public

(Notarial Seal.)

In and for said County of Alameda  
State of California

STATE OF CALIFORNIA, }  
COUNTY OF ALAMEDA, } SS.

COUNTY CLERK'S CERTIFICATE AS TO NOTARY PUBLIC No. 19020

I, GEO. E. GROSS, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a court of record of the State of California, having by law a seal, do hereby certify that W. S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgement or affidavit, was at the time of taking such proof, acknowledgment or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California, and I further certify that an impression of the seal of the said Notary Public is not required by law to be filed in my office.

In witness whereof I have hereunto set my hand, and affixed my official seal this 30 day of August 1927.

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2013 NOV -8 AM 11:04  
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BOOK 25 PAGE 387 FRAME 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

IN THE MATTER OF THE ESTATE  
OF  
FRANK L. TRATHEN,  
Deceased.

No. 2337

**FILED**

AUG 31 1973

GRACE W. BELL  
CLERK OF DIST. COURT

ORDER APPROVING, ALLOWING AND SETTLING

FIRST AND FINAL ACCOUNT AND DECREE OF DISTRIBUTION

The matter of the hearing of the First and Final Account and Petition for Distribution of JOHN M. DOYLE, Administrator of the Estate of FRANK L. TRATHEN, deceased, coming on regularly to be heard this 31st day of August, A. D. 1973, and proof being duly made and offered, the Court finds that said First and Final Account and Petition for Distribution was filed in the office of the Clerk of the above-entitled Court on the 13th day of August, A. D. 1973; that on the same day the Clerk of the above-entitled Court appointed the 31st day of August, A. D. 1973, as the day for the hearing and settlement thereof; that notice of the time and place of said hearing and settlement has been given as required by law; that Notice to Show Cause why said account should not be settled and why said Petition should not be granted and said distribution made was issued by the Clerk of the above-entitled Court, and notice was given as required by law by causing the same to be posted in front of the Court House in the City of Winnemucca, County of Humboldt, State of Nevada, all of which is shown by the Affidavit of ANTONIA JETER on file herein; that due and legal notice to show cause why said account should not be approved, allowed and settled and said distribution made has been given as required by law.

JOHN M. DOYLE  
ATTORNEY AT LAW  
WINNEMUCCA, NEVADA

JT APP 145  
SE ROA 0134



1 to Petitioner, the names and residences of the heirs, devisees  
2 and legatees of the deceased are as follows, to-wit:

| 3 | <u>NAME</u>         | <u>RELATIONSHIP</u> | <u>RESIDENCE</u>                     |
|---|---------------------|---------------------|--------------------------------------|
| 4 | FLORENCE D. TRATHEN | Wife                | 4800 Linda Vista<br>Napa, California |
| 5 | GRACE F. TRATHEN    | Daughter            | 4800 Linda Vista<br>Napa, California |
| 6 |                     |                     |                                      |
| 7 | HAROLD F. TRATHEN   | Son                 | 4800 Linda Vista<br>Napa, California |
| 8 |                     |                     |                                      |
| 9 | ALBERT F. TRATHEN   | Son                 | 4800 Linda Vista<br>Napa, California |

10 12. Outstanding Claims and Taxes. So far as is known  
11 to Petitioner any and all estate and income taxes and claims  
12 against the estate and the decedent have heretofore been paid in  
13 full and there remain no outstanding claims of creditors or unpaid  
14 taxes against said estate.

15 13. Remaining Expenses. All administrative expenses  
16 which have been incurred will be paid outside of the administration.

17 14. Condition of Estate. The estate is now in a con-  
18 dition to be wound up, settled and finally closed.

19 15. Finding of Fact. The Court expressly finds from  
20 the records and files herein, and the evidence given upon this  
21 hearing, that all of the allegations contained in said account  
22 and petition are true and correct; that the Administrator has  
23 accounted for all of the assets now belonging to said estate, or  
24 those which with reasonable diligence could be ascertained or  
25 discovered; that there were no items for which the Administrator  
26 asks to be allowed credit; and the Court further expressly finds  
27 that all costs and expenses of administration will be paid outside  
28 the administration.

29 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
30 DECREED:



5  
BOOK 228 PAGE 13 FRAME 2

FILED

1 NO. 3111

APR 13 1987

2 DEPT. 1

SUSAN E. HARRER  
CLERK OF DIST. COURT

3 BY \_\_\_\_\_

4  
5  
6 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7 IN AND FOR THE COUNTY OF HUMBOLDT.

8 IN THE MATTER OF THE ESTATE

9 OF

ORDER TO SET ASIDE ESTATE

10 FLORENCE DELIA TRATHEN,

11 Deceased.  
12 \_\_\_\_\_

13 The matter of the hearing of the Petition to Set  
14 Aside an Estate Less than the Value of Twenty-five Thousand  
15 Dollars (\$25,000.00), of FLORENCE DELIA TRATHEN, deceased,  
16 coming on regularly to be heard this 13th day of April A. D.  
17 1987, at the hour of 11:00 o'clock A. M. of said day, and proof  
18 being duly made and offered, the Court finds that said Petition  
19 was filed in the office of the Clerk of the above-entitled  
20 Court on the 30th day of March, A. D. 1987; that on the same  
21 day, the Clerk of the above-entitled Court appointed Monday,  
22 the 13th day of April, A. D. 1987, as the day for the hearing  
23 thereof; that notice of the time and place of said hearing has  
24 been given as required by law. And no person appearing to  
25 oppose or contest said Petition at this time fixed for the  
26 hearing thereof, the Court finds:

*John M. Doyle*  
JUDGE  
Post Office Box 1180  
Winnemucca, Nevada 89405

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2013 NOV - 8 AM 11:  
STATE ENGINEERS OFFICE  
JTAPP 148

GE-ROA 0137



BOOK 228 PAGE 13 FRAME 3

I

That said Petitioner is a resident of the County of Humboldt, State of Nevada, and over the age of twenty-one years.

II

That FLORENCE DELIA TRATHEN died on April 18, 1985, in the County of Napa, State of California, and was at that time a resident of the County of Napa, State of California.

III

That decedent left a valid Last Will and Testament dated June 28, 1973, an endorsed copy of which is on file herein; that said Will contains provisions for the distribution of the residue of decedent's estate which includes the real property located in the State of Nevada which is described herein.

IV

That the only property belonging to the estate in the County of Humboldt, State of Nevada, is as follows, to-wit:

The Northwest quarter (N.W.  $\frac{1}{4}$ ) of Section Eight (8) Township forty-two (42 N.), Range 37 East (R 37 E.) Mount Diablo Base Meridian, consisting of one hundred sixty acres.

V

That the expenses of the last illness and funeral expenses of the decedent have been paid in full.

////////

////////

John M. Doyle  
CREATED BY LEO  
Post Office Box 1180  
Winnemucca, Nevada 89406

2013 NOV -8 AM 11:04  
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2009 1118

FILED

2009 APR -6 AM 9:01

TAMI RAE SPERO  
DIST. COURT CLERK

1 APN: 03-491-17

2

3 Case No. PR 4063

4

Dept. No. 1

5

The undersigned affirm there are no Social  
Security numbers contained in this document

6

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8

9

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

10

IN AND FOR THE COUNTY OF HUMBOLDT.

11

---

12

IN THE MATTER OF THE ESTATE

13

OF

ORDER SETTING ASIDE ESTATE  
WITHOUT ADMINISTRATION

14

HAROLD F. TRATHEN,

15

16

Deceased.

17

18

19

20

21

22

It appearing to the satisfaction of the Court that a verified Petition to Set  
Aside the Nevada Estate of the above-named Decedent without administration has been  
filed, and that notice of the time and place of the hearing thereon has been duly given in  
the manner required by law, and that no one has objected or presented any reason why  
said Petition should not be granted;

23

24

25

26

The Court finds that the gross value of the entire Estate of the Decedent does  
not exceed One-Hundred Thousand Dollars (\$100,000.00), and that the Decedent left no  
debts in the State of Nevada nor debts anywhere that need to be satisfied out of the  
property of Decedent; and that this is a proper case for the whole of the Estate to be set

*John M. Doyle*  
ATTORNEY AT LAW  
Post Office Box 1100  
Wendover, Nevada 89401

2009 1116

1 aside to Decedent's surviving heirs and legatees and beneficiaries pursuant to NRS  
2 Chapter 146 and the laws of intestate succession.

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that  
4 the whole of the Nevada Estate of HAROLD F. TRATHEN, deceased, be, and the same is  
5 hereby assigned and set aside as follows:

6 An undivided one-third (1/3) interest in;  
7 The Northwest quarter (N.W.1/4) of Section Eight (8)  
8 Township Forty-two (42 N.), Range 37 East (R 37 E.) Mount  
9 Diablo Base Meridian, consisting of one hundred sixty acres.

10 APN: 03-491-17

11 UNTO GRACE F. METHVEN, Sister, an undivided one-half (1/2) interest in  
12 Decedent's undivided 1/3 interest in the real property situated in the  
13 County of Humboldt, State of Nevada bounded and described herein above:

14 UNTO ALBERT F. TRATHEN, Brother, an undivided one-half (1/2) interest  
15 in Decedent's undivided 1/3 interest in the real property situated in the  
16 County of Humboldt, State of Nevada bounded and described herein above:

17 TOGETHER WITH any and all other assets of said Estate now known or hereafter  
18 discovered in the State of Nevada.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Estate not be  
20 further administered upon.

21 All tax notices should be mailed to Grace F. Methven, 1273 Orchard Avenue, Napa,  
22 California 94558.

23 DATED this 6<sup>th</sup> day of April, 2009.

24 The document with this certificate is  
25 attached in a true and correct copy of  
26 the original filed for record in my office.  
DATE: 4/6/2009

Tami Rae Spivey, County Clerk and Clerk  
of the State of Nevada, District Court, in and for  
The County of Humboldt, State of Nevada.  
By: *[Signature]* Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in  
no way affects the legality of the document.

*[Signature]*  
DISTRICT JUDGE

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*John M. Doyle*  
ATTORNEY AT LAW  
Post Office Box 1180  
Humboldt, Nevada 89304

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6

HUMBOLDT COUNTY RECORDER, NEVADA  
HARRY ANN HARRISON, RECORDER

FILED

2013 JUN 10 PM 1:41

TAMI RAE SPERO  
DIST. COURT CLERK

1 APN: 03-491-17

2 Case No. PR 4278

3 Dept. No. 2

4 The undersigned affirm there are no Social  
5 Security numbers contained in this document

06/10/2013 04:42:44PM  
PAGE 2 OF 4  
2013 2605

6  
7  
8  
9 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10 IN AND FOR THE COUNTY OF HUMBOLDT.  
11

12 IN THE MATTER OF THE ESTATE

13 OF

ORDER SETTING ASIDE ESTATE  
LESS THAN \$100,000.00 IN VALUE

14 GRACE T. METHVEN, a/k/a  
15 GRACE TRATHEN METHVEN, a/k/a  
16 GRACE F. METHVEN, a/k/a  
17 GRACE FLORENCE METHVEN,

18 Deceased.

19 It appearing to the satisfaction of the Court that a verified Petition to Set  
20 Aside the Nevada Estate of the above-named Decedent without administration has been  
21 filed, and that notice of the time and place of the hearing thereon has been duly given in  
22 the manner required by law, and that no one has objected or presented any reason why  
23 said Petition should not be granted;

24 The Court finds that the gross value of the Estate of the Decedent does not  
25 exceed One-Hundred Thousand Dollars (\$100,000.00), and that the Decedent left no

John M. Doyle  
ATTORNEY AT LAW  
Post Office Box 1190  
Winnemucca, NV 89440

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JTAPP 152

SE ROA 0141

2013 2605

debts in the State of Nevada nor debts anywhere that need to be satisfied out of the property of Decedent; and that this is a proper case for the whole of the Estate to be set aside to Decedent's surviving heirs and legatees and beneficiaries pursuant to NRS Chapter 146 and the Last Will and Testament of the Decedent dated November 14, 2007.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that the whole of the Nevada Estate of GRACE T. METHVEN, a/k/a GRACE TRATHEN METHVEN, a/k/a GRACE F. METHVEN, a/k/a GRACE FLORENCE METHVEN, deceased, be, and the same is hereby assigned and set aside as follows:

UNTO the GRACE T. METHVEN REVOCABLE TRUST,  
JOHN F. METHVEN, JR., Trustee of the Grace T. Methven  
Revocable Trust dated November 14, 2007, the following real  
property:

Humboldt County, Nevada  
APN: 03-491-17

An undivided one-half (1/2) interest in;  
The Northwest quarter (N.W.1/4) of Section Eight (8)  
Township Forty-two North (42 N.), Range 37 East (R 37 E.)  
Mount Diablo Base Meridian, consisting of one hundred sixty  
acres.

TOGETHER WITH any and all other assets of said Estate now known or hereafter discovered in the State of Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Estate not be further administered upon.

All tax notices should be mailed to John F. Methven, Jr., 1273 Orchard Avenue, Napa, California 94558.



HUMBOLDT COUNTY RECORDER, NEVADA  
MARY ANN HAMMOND, RECORDER  
\$8.00 PAID \$15.00 JOHN M DOYLE  
[Barcode]

07/11/2013 04:36:53PM  
PAGE 1 OF 2

2013 3099 ✓

Assessor's Parcel No. 03-491-17

**MAIL RECORDED DOCUMENT AND  
TAX STATEMENTS TO:**

John F. Methven, Jr.  
1273 Orchard Avenue  
Napa, California 94558

**GRANT, BARGAIN AND SALE DEED**

THIS INDENTURE WITNESSETH:

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, JOHN F. METHVEN, JR., Trustee of the GRACE T. METHVEN REVOCABLE TRUST Dated November 14, 2007, does hereby GRANT, BARGAIN, SELL and CONVEY to JOHN F. METHVEN, JR., a single man, and to the heirs and assigns of such Grantee forever, all the following real property situated in the County of Humboldt, State of Nevada bounded and described as follows:

An undivided one-half (1/2) interest in;  
The Northwest quarter (N.W.1/4) of Section Eight (8)  
Township Forty-two North (42 N.), Range 37 East (R 37 E.)  
Mount Diablo Base Meridian, consisting of one hundred sixty  
acres.

APN: 03-491-17

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversion, remainders, rents, issues or profits thereof.

DATED July 1, 2013.

John F. Methven Jr  
JOHN F. METHVEN, JR.  
Trustee of the  
GRACE T. METHVEN  
REVOCABLE TRUST

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2013 NOV -8 AM 11:04  
STATE ENGINEERS OFFICE

(9)

HUMBOLDT COUNTY, NEVADA  
MARY ANN HAMMOND, RECORDER  
PAID \$174.00 eTRCo, LLC

08/21/2013 03:38 PM  
PAGE 1 of 5

APN#: 003-491-17  
RPTT: \$156.00



2013 3755

Recording Requested By:  
Western Title Company

Escrow No.: 059797-WIN

When Recorded Mail To:

Rodney D. St. Clair and  
Virginia M. St. Clair  
8319 Clark Road  
Marsing, ID  
83639

Mail Tax Statements to: (deeds only)  
Same as Above

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted  
for recording does not contain the social security number of any person or persons.  
(Per NRS 239B.030)

Signature S. Crutcher Agent  
Print name Title

---

**Grant, Bargain, and Sale Deed**

This page added to provide additional information required by NRS 111.312  
(additional recording fee applies)

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JT APP 155

SE ROA 0144



2013 3755

**GRANT, BARGAIN AND SALE DEED**

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Albert F. Tralhen, a single man, as to an undivided one-half (1/2) interest and John F. Methven, Jr., a single man, as to an undivided one-half (1/2) interest,

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

Rodney D. St. Clair and Virginia M. St. Clair, husband and wife, as joint tenants with right of survivorship,

and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of Winnemucca, County of Humboldt State of Nevada bounded and described as follows:

All that certain real property situate in the County of Humboldt, State of Nevada, described as follows:

TOWNSHIP 42 NORTH, RANGE 37 EAST, M.D.B&M.

Section 8: NW1/4

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 08/12/2013

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JT APP 156

SE ROA 0145





Grant, Bargain and Sale Deed - Page 2

2013 3755

THIS DOCUMENT IS BEING SIGNED IN COUNTER-PART.

John F. Methven Jr.

Albert F. Trathen  
Albert F. Trathen

STATE OF Arizona  
COUNTY OF MoHAVE

This instrument was acknowledged before me on

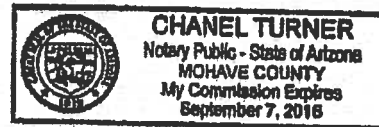
Date: 8/16/13

By John F. Methven Jr. and

Albert F. Trathen

[Signature]  
Notary Public

} ss



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2013 NOV -8 AM 11:01  
STATE ENGINEERS OFFICE  
JT APP 157



2013 3755

Grant, Bargain and Sale Deed - Page 2

John F. Methven Jr.

THIS DOCUMENT IS BEING SIGNED IN COUNTER-PART.  
Albert F. Trathen

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on

Date: \_\_\_\_\_

By John F. Methven, Jr. -and

Albert F. Trathen

} ss

*see attached acknowledgment.*  
\_\_\_\_\_  
Notary Public

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ACKNOWLEDGMENT

State of California  
County of Napa

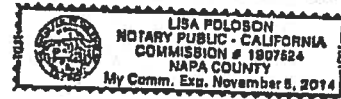
On 15 August 2013 before me, Lisa Poloson, Notary Public  
(insert name and title of the officer)

personally appeared John Frederick Mathew, Jr.,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



Grant, Bargain & Sale deed

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**Attachment 2: Homestead Act of 1862**

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November 5, 2013

## Transcript of Homestead Act (1862)

### CHAP. LXXV. —*An Act to secure Homesteads to actual Settlers on the Public Domain.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: Provided, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. And be it further enacted, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: Provided, however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: And provided, further, That in case of the death of both father and mother, leaving an infant child, or children, under twenty-one years of age, the right and fee shall ensure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. And be it further enacted, That the register of the land office shall note all such applications on the tract books and plats of, his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

SEC. 4. And be it further enacted, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

SEC. 5. And be it further enacted, That if, at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due

notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the government.

SEC. 6. And be it further enacted, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: Provided, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing preemption rights: And provided, further, That all persons who may have filed their applications for a preemption right prior to the passage of this act, shall be entitled to all privileges of this act: Provided, further, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

SEC. 7. And be it further enacted, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act.

SEC. 8. And be it further enacted, That nothing in this act shall be construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting preemption rights.

APPROVED, May 20, 1862.

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**Attachment 3: Orovada Weekly Newspaper Articles**

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# Orovada Weekly

VOL. I.

OROVADA, NEVADA, FRIDAY, SEPTEMBER 19, 1924

## SOME BOOSTER GEORGE CROSSLEY

(An open letter printed verbatim)  
Editor, Journal:

I must say I am more than surprised the way you have put the most beautiful producing Quinn River valley on the map, the coming agricultural valley of the state of Nevada, with its great underflowing water which has been proven out for all future time, for all future needs for irrigating this wonderful rich valley, as this being the driest year ever known and with all the big pumps running has not lowered the flow of water is something wonderful. It speaks of prosperity and success for the valley. ~~There are few places where they will get more crops of alfalfa and such things as the valley is doing this year~~ with all the garden vegetables your heart desires, now that the bottom has been reached throughout the whole country and agriculture prices also, lands will now jump ahead and the farmers future is now brighter than ever before, outside of the war prices, you may look forward for Quinn River valley, Humboldt County being second to none and when the U. S. Highway is finished that will shorten the travel from Oregon, Washington and Idaho several hundred miles to the Pacific Coast and a direct route to our City Winnemucca for the agriculture products of this vast and rich area, what better argument and guarantee does people want than to locate on some of the best Government land to be found and build up fortune and peaceful homes in this future wonderful rich valley. There are nothing to keep this valley from advancing to study the possibilities for the future, than are a number of important projects under way and more to be urged within a short time, are enough solid arguments for the successful future, happy homes, of those who are fortunate enough to locate and take up a future homestead among our happy community, which has proven to the pioneer homestead of this agriculturally valley, now with the Orovada Weekly Journal with its enterprising editor being published

## Teachers' Institute At Elko September 30

A state teachers' institute will be held at Elko September 30 to October 3, both inclusive, and no district institutes will be held this year, it has been announced.

Dr. Henry Suzzalo, president of the University of Washington, will be the principal institute speaker. Other speakers will be President W. E. Clark of the University of Nevada and Dr. Tully C. Knoles, president of the College of the Pacific.

## LIGHT FROST DID NO DAMAGE

The light frost last Friday night done no particular damage, the tender vegetation on the lower levels was killed but the crops were all matured, except in some instances where melon and tomato vines was still bearing, on the higher levels and foot hills places it had no effect and all vegetation still remains green.

## POTATO CROP IN SIXTY-EIGHT DAYS

Splendid potatoes were brought in to the Journal office a few days ago which were raised on the Granstrom place, these were dug just sixty-eight days from planting, they were of the netted gem variety and were of good size and quality.

## OVER FROM THE LOVELY VALLEY SECTION

Tom Minor, who has a large herd of cattle feeding this season in Lovely Valley, was over recently looking over his interests here, Tom says they have had splendid pasture there all season and that his stock are in the best condition, he subscribed for the JOURNAL, that he may keep in touch with the home happenings.

## WORD FROM THE WILLOW CREEK COUNTRY

Mrs. Albert McMillen was down from Willow Creek, a few days ago, she says Mr. McMillen is able to be up and around again, Mac has been laid up for some time with lumbago, we are glad to hear of his improvement, Mrs. McMillen reports they will harvest over two hundred sacks of potatoes from a planting of six sacks.

## Nimrods Get Ready To Hunt

As the Deer season opened on Monday many local sportsmen had their old trusty rifles all oiled up and ready for the fray, the deer are reported plentiful in the Santa Rosas, but the closed areas seems to hold out protection that the wary buck knows of, as numerous bands are continually seen in these areas, a number of Hunters that have been out have secured the limit the first couple of days of the season, also the Duck season opening on Tuesday will mean a number of hunters will seek the water holes for this kind of game, but the water being very low in the river and most of the sloughs that have harbored the ducks of previous years being entirely dry, duck hunting will not be much in these parts.

## Six Admitted To U. S. Citizenship

Six of a class of seven foreigners swore allegiance to Uncle Sam yesterday morning before Judge James A. Callahan and became citizens of the United States when they were accepted by Judge Callahan after passing a citizenship examination conducted in the district court rooms. Those who passed and received certificates were; Julian Juancha, of Platora, Joseph Heslin, of Golconda; Patrick Keogh, of Golconda; Paul Werner, of Orovada; Fermin Montero, of Winnemucca and Michael Mallon, of Golconda.

M. Bidaretta, of Platora, could not be present for the examination and he will have to wait until next March.

Richard Wright, U. S. Naturalization examiner, who has charge of the state of Nevada, could not be present at the hearings, although in town, on account of illness. Humboldt Star.

A subscription to the Journal, is acknowledged from Dr. W. F. Harlan of Arbutle, Calif., says he wants to help the cause along, as he expects to be here this fall.

Have you subscribed for the Journal?

Morrill & Co.

STEDDENSON

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## Orovada Weekly Journal

Vol. I.

OROVADA, NEVADA, FRIDAY, SEPTEMBER 8, 1925

No. 10

OUR BOW INTO THE  
NEWSPAPER FIELD

With this issue comes to life a new publication, the Orovada Weekly Journal, which will be devoted to the progress and up-building of Northern Humboldt County and the disseminating of news and events that transpire in our midst.

In a great commonwealth we are all equally interested in the development and progress of this district, and this in mind we trust that every resident of Northern Humboldt County will lend their unflinching support to this new project, as by so doing we may have a publication second to none, one that will be a credit to our efforts and that in the future we may point to with pride and feel that we all had a part in making it the success it will deserve.

As I am our aim and earnest desire to serve you in the fullest capacity possible and with your cooperation and support build a lasting monument in Northern Humboldt County.

Respectfully I: J. Studelaker.

LOCATES HOMESTEAD  
AND STONE QUARRY

Mr. J. I. Newberry, who has taken up a homestead including the Johnson spring on Pole Creek was in town a few days ago. Jim says he has plenty of water for his present needs, which includes the irrigating of a small field of alfalfa, a large garden and small orchard. He has also commenced the opening up of the Lamb stone quarry, which is a large deposit of stone that can be cut up into blocks with an ordinary saw and that makes splendid building material. If after further development this quarry proves all that is expected from present indications, it will mean much to this community, as it will furnish a cheap material for building purposes.

Opening up building stone quarry. The material can be saved up with an ordinary saw.

Subscribe for the Journal.

STEPHENSON  
DRUG CO.

Winnemucca, Nev.

The Drug Store that will serve you Service. A large and complete stock of Drugs and Sundries.

Mail orders filled same day received.

New Highway Will  
Aid Our Community

Now that the new highway from Paradise Hill to Winnemucca is open for travel, it brings our district closer to market and business conditions. It greatly facilitates transportation of freight and all products to and from Northern Humboldt County. It establishes a better intercourse and travel condition for the whole Northern Country.

From a standpoint of tourist travel, this highway when completed in the county, will mean one of the most important in the state, this fact being recognized by the Highway Department, we look for the early completion of this route to the Oroville at McDermitt. We are informed the Department now has Federal money on hand for this route.

## STOCK DISEASE

## SCARE ABATED

After careful investigation by authorities of the disease among cattle that was dying off north from McDermitt and which might have been Anthrax, hoof and mouth, or some other serious infection it was shown that the cattle were dying from some form of poisoning, either from the water they were drinking or from the dust. The officers requested the stockmen to move their cattle from the grounds upon which they were ranging and, as soon as this was done the stock stopped dying, proving the disease was not a contagious one.

## BUILDING HOUSE

## FOR SCHOOL TEACHER

Mr. Joseph Kerna a local carpenter is finishing up the house for Miss Esther Ripley and when completed will be a nifty residence. This will be a great convenience to Miss Ripley as it is close to her school and besides she will board a number of pupils which live to far away to make the daily trip to their studies.

## Wenael Destroys Poultry

Mrs. Herman Eselt who is specializing in poultry raising, reports that recently a pecky pest, in the form of a wenael got into their chicken house and killed nine young chickens which was of size to just fit the frying pan, then to finish off his voracious appetite he killed six young turkeys, truly the path of the farmer is a rough one.

## Returns From California

Mr. John Kaufman and family has returned from Oakland, where he has been working the past five months, he has moved back on his Homestead where he will live permanently and improve the place, we understand he contemplates installing a pumping plant next year, we are glad to see you back John.

If you are not an advertiser in the Journal, we both loose money.

Subscribe for the Journal.

Meeting to Organize  
Co-operative Ass'n.

Saturday next at two P. M. a meeting will be held at the Orovada Schoolhouse, for the purpose of organizing a cooperative association, the chief object being the fostering of the Dairy industry a good attendance is expected.

## HOOF AND MOUTH DISEASE

## STAMPED OUT

From all reports, there have been no further infections lately among the stock in California, this is a relief to the stockmen of Nevada, as the nearness of this dread disease to our borders, placed the stock on the ranges in jeopardy and caused a large expense and labor to the state to establish and maintain quarantine regulations, the efficient manner in which the state authorities handled the matter no doubt, kept the State clear of the disease.

## School Begins

School commenced at the Orovada Schoolhouse on Tuesday, only a fair attendance is reported, a number of the children live some distance from the school and they were not able to attend the first day, plans are being made to care for them in the near vicinity of the schoolhouse so they will not be forced out of school on account of bad weather and the distance they live from the school. The District is indeed fortunate in securing the efficient services of Miss Esther Ripley as instructor, this can be testified to by satisfactory manner she handled the school in the Sod House District last term.

## GRANSTROM, ELECTED

## JUSTICE OF PEACE

The primary election passed off quietly on Tuesday, however, much interest was manifested over the race for Justice of the Peace, as was shown by the closeness of the vote. Mr. Granstrom winning over Mr. Melody, by just two votes. Amos product is to be connected with the Rebel Creek potfart hereafter.

Subscribe for the Journal.

FARMING NOTES  
OF INTEREST

Then, southern exhaust of the all motor operation the several pumps of the place of G. O. Granstrom, near Lettman, for Harlan and Henry Helbig, all of which can at times be plainly heard from the Journal Office sounds like real business.

The pump, on the Granstrom place was apt started until about July first, but since that time has been operated about 16 hours each day, almost continuously. This furnishes water for about 18 acres of corn barley and alfalfa, the corn was planted after the 4th of July and the barley seeded after the 10th, of the same month, the alfalfa was of prior seeding but had no water last year or this until the pump was started. At this writing, the corn is about five feet high, the barley and alfalfa over 30 inches and is about ready to harvest, all of these crops will have an exceptionally heavy yield.

On the Lettman place two cuttings of alfalfa have been put up, about 40 tons were cut from ten acres, the third cutting will be ready to harvest about the 10th, this will give the seasons harvest about 80 tons from ten acres, Mr. Lettman has a 4 inch pump.

On the Mr. Harlan place a pumping plant of 800 to 1000 gallon capacity is installed, only a couple days are required to irrigate the 12 acres in alfalfa two cuttings have been harvested and the third is now ready for harvest we have not the field in this place, but know that the crops have been splendid.

The Helbig well was put down late in the season, the pumping plant has recently been installed, this plant is of 1000 to 1200 gallon per minute capacity and Mr. Helbig has had considerable trouble with entrained air in his well, but we understand this has been overcome and the plant is now being very successfully operated. Mr. Helbig has about 20 acres seeded to alfalfa and has plans for doubling this acreage in the near

(Continued on Page Three.)

## Morrall's Grocery

## SEASONABLE ITEMS

PEARS

TOMATOES

CUCUMBERS

CONCORD GRAPES

ELBERTA PEACHES

PICKLING ITEMS ON HAND

Phone, Write or Call APP 165

## FARMING NOTES OF INTEREST

(Continued from page One.)

On the McWhorter place where there are about 25 acres of alfalfa and up-to-date turbine plant installed, two crops of hay were taken off but on account of her demise the irrigation was discontinued and the amount of hay was greatly curtailed.

On a number of other places, splendid crops of potatoes, corn, melons and garden truck is being produced in abundance.

These operations and production, has certainly proved our district to be one of the foremost in the state.

This is the driest year in the history of the State according to reports, in this locality there was no early water for the wild hay meadows and no hay was put up, the streams and springs in most cases are nearly or entirely dry, this is forcing the large stockmen to ship their stock feed and water, this is being done, large numbers are being shipped to Wyoming.

The huge Grain Marketing cooperative organization has started operation, will it solve the wheat Growers problem?

The \$20,000,000 Grain Marketing Company started operations on August 5th, few matters have aroused as great interest among wheat growers as has the reports being published of this merger and no matter of such moment to be grain producer as the success of this concern.

The idea of forming a federation between the grain producer and the successful grain merchandising business is not new, and this merger is simply the crystallization of the farmer's own ideas, the farmer himself has come to realize the necessity

of a central selling agency, so the bringing about of this cooperative effort is the climax of their desire.

The merger of this selling agency was effected under the Copper-Tincher act which makes it legal from a federal standpoint, the merging of these five largest concerns in the world into one large company places an immense selling machine in the hands of the farmers directly.

The company is now in possession of 31 great terminal elevators, some 40 or more primary elevators, besides thousands of miles of leased wires, large office facilities and a great staff of the most experienced men in the business, they are already handling millions of bushels of grain, O. F. Bradford, President of the National Farm Bureau was one of the first that delivered grain to the company.

This huge undertaking was sponsored and worked out by the American Farm Bureau Federation and now that the farmer thru this central selling agency handles the marketing machinery as well as being the producer, it seems their dream of marketing their own products as far as grain is concerned has come true.

### ARRESTED ON CHARGE UNDER MANN ACT

Deputy U. S. Marshal Plummer took Mr. and Mrs. Radovan Simich, Joe Murillo and Emma Lane, to Carson City, where a hearing will be had on charges of violation of the Mann act, says the Elko Independent. Mr. and Mrs. Simich and Murillo are charged with having transported Emma Lane from Twin Falls, Idaho, to Jarbridge.

They were arrested in Jarbridge the other day and brought to Elko, but were later released under the habeas corpus proceedings, but were immediately arrested again by the U. S. Marshal, and will be taken to Carson for hearing.

## THE WEATHER FOR SEPTEMBER

Faher Rickard of the observatory of the University of Santa Clara gave out his forecast today in regard to the September weather and it is as follows:

1. Notice: Solar activity is awakening. It was also awakening in 1913, when the drought passed away. The inference is that September and October will be dry, November wet from five to six inches, December both wet and dry. The balance of the season to be studied in due time.

San Joaquin, beware. The rain-makers are mending their nets and getting new bait. There are gold mines in Tulare and Oro's Landing, and the price of wet commodity is high.

2. The weather schedule: September 1, 2 cloudless over the general coast.

September 3. In early morning, a shallow depression passing over the western Canadian provinces east bound, cloudy over Washington and British Columbia, fair in California and adjacent states.

September 4, 5, clear skies over the general coast.

September 6, quite early, a light disturbance behaving like the one of September 8.

September 7, generally fair, some cloudiness at the northward.

September 8, 9, a deeper and larger disturbance entering upon the northwestern coast, approaching over the North Pacific states, affecting Arizona, touching upon California and Nevada, running along the plateau with cloudiness, widely scattered rains, and thunderstorms. Possibly a trace of rainfall in California.

September 10, lingering cloudiness with breaks of sunshine.

September 11, 12, 13 an attenuated recurrence of the weather conditions of August 15, 16, 17, which means general cloudiness from Teracapi to Northwestern British Columbia with diminishing precipitation as we travel from north to south. Possibly a more trace from Central California to the northward.

September 14, somewhat under a cloud, while the previous area of low pressure is heading to the eastward.

September 15, generally fair all along the coast.

September 16, minor depression over Arizona and Western Canada, with some cloudiness in these parts.

September 17, fair from Oregon to Mexico.

September 18, 19, 20 a triple disturbance approaching as one will act in over Vancouver and the country around about, with some rain there and morning cloudiness or high fog along the California coast.

September 21, fair but cloudy or partly so, from Central California to the northward.

September 22, general fair.

September 23, depression of marked character will be found already well advanced over both the north and the south, producing cloudiness and sprinkles, even in California.

September 24, the storm passing away to the eastward with a balance of cloudiness over the general coast.

September 25, 26, fair from Alaska to Mexico.

September 27, a small depression running its course to the eastward, barely noticed in California.

September 28, 29, 30, fair along the

coast and far inland.  
N. B.—1. Disturbances to enter October 1, 2, 3.  
2.—Storm of September 19 is ascribed to the late opposition of the Earth with Mars.

## RICHARDS WINS CONGRESS RACE

With the lightest vote, ever recorded in the State of Nevada since the inception of the primary system in the state, Chas. L. Richards, Congressman from Nevada, defeated M. J. Sullivan Lieutenant-Governor for the democratic nomination for Congress, with an overwhelming majority of almost 1000 votes according to latest reports from Democratic headquarters in Reno.

In scattering returns every county but Clark and Lander, Richards, polled 2861 votes against 2198 for Maurice J. Sullivan. The returns showed that Sullivan had a lead in but Douglas, Esmeralda, Ormsby and Storey counties. Humboldt County gave Richards 182 votes against 55 for Sullivan.

The vote in the contest for university regent gave Pratt, who is now holding office, 4848 against 4148 for R. W. Hesson. Hesson received a heavy majority in Elko county, that section giving him 949 votes against 127 for Pratt. Consistent gains in the other counties; however, kept Pratt in the lead. Washoe county gave Pratt 2880 votes against 1260 for Hesson while Humboldt gave Hesson 168 to 102 for Pratt.

Funeral services for George B. Murphy, who died last Saturday, took place Monday from his late residence in Virginia City, Rev P. J. O'Reilly of St. Mary's church officiating. The funeral and interment in St. Mary's cemetery were private. Mr. Murphy was a native of Virginia City, aged forty-three years. He was a miner by occupation, working in the mines of that city and Bold Hill. About ten years ago, he served as chief of the fire department and as chief of police. He leaves besides his wife, a sister, Mrs. E. J. McManus, and a brother Thomas Murphy, both of Reno.

Faustina Rodriguez is in jail in Tonopah charged with the slaying of Aurelia Mojarrero following a quarrel over their ancestry. The trouble began in front of the police station and the men concluded to settle the matter with their fists at some less conspicuous spot. When hostilities were renewed, Mojarrero is said to have wounded Rodriguez and the latter, drawing a knife, slashed Mojarrero across the abdomen. Although fatally injured, Mojarrero walked to a hospital where he died three hours later. Rodriguez, according to the police, admitted the killing.

Word received from G. O. Gaunt, is to the effect that he with his family will return to their home-stand this month, they have been living at Sacramento, where Mr. Gaunt has been working during the summer.

Have you placed your subscription for the Journal?

Circumstances have done much for every man, and yet he has often missed for the

## FIRST NATIONAL BANK

Winnemucca, Nevada

Capital and Surplus ..... \$ 300,000.  
Assets over ..... \$ 2,800,000

The Oldest National Bank in Nevada

## ORGAN'S GROCERY

A. E. ORGAN, Prop.

### MEAT DEPT

All Kinds of  
FRESH MEATS  
Fresh Fish  
Smoked Hams  
and Bacon

### GROCERY DEPT

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THE STORE OF QUALITY

Winnemucca, Nevada

#### **Attachment 4: Well Pictures**





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JT APP 168



JT APP 169

SE ROA 0158

**Attachment 5: History of Steel Water Pipe**

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# **History of Steel Water Pipe**

## **Its Fabrication and Design Development**

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Prepared by  
Walter H. Cates, Civil Engineer-Hydraulics

April 1971

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JT APP 171

SE ROA 0160

The author, Walter H. Cates, has spent forty-seven years as a professional engineer in the Water Works field. After graduation in 1924 from the University of California at Berkeley in Civil Engineering, specializing in Irrigation and Hydraulics, he spent two years in hydraulics design work before associating with Western Pipe & Steel Company of California. This started a thirty-nine year continuous career with this firm and the Consolidated Western and American Bridge Divisions of United States Steel Corporation. Since retirement in 1965, he has continued in his chosen field as an active consultant.

During his long career as a registered Civil Engineer, he has been associated and worked with the American Society of Civil Engineers as a Life Member and Fellow; the American Water Works Association, Life Member; National Association of Corrosion Engineers, Certified Corrosion Engineer; and Institute for the Advancement of Engineering, recently becoming a Fellow.

Mr. Cates has authored numerous papers and presentations on pipelines, hydroelectric penstocks and irrigation systems, as well as a comprehensive Welded Steel Water Pipe Design Manual which has been kept current in numerous printings through 1970.



## PART I. HISTORY INTRODUCTION

The Age of Iron began about 1000 B.C. The Old Testament mentions iron 90 times. The Romans used iron throughout their empire and built the first Roman aqueduct in 312 B.C. requiring a considerable distribution system. Many years before, men had first learned the secret of conducting water through crude pipes. Even prior to the birth of Christ, the Chinese transported water through bamboo; a Babylonian king who reigned 4500 years ago had a bathroom with tile drain pipes; and a municipal reservoir served Carthage about 800 B.C.

The first water works system in America was constructed at Boston in 1652, however the principal water works development in the United States took place after 1850, at which time there were 83 water works in existence.

This paper presents the history and heritage of steel water pipe primarily in this country during its dynamic role as a servant and builder of numerous water projects for the benefit of our citizenry.

Iron, although used to a limited extent in cast form, could not be economically employed until the development of a practical process for the manufacture of welded wrought-iron pipe early in the nineteenth century. In 1812 machinery was invented in England for welding barrels for firearms and other cylindrical articles. Three years later William Murdock, a Scot, employed old musket barrels discarded after the Napoleonic wars to make gas pipe to light some of the gloomy streets of London. In 1824 James Russell, an Englishman, invented a process for the welding of tubes, with or without a mandrel, by a combination of tilt hammer and rolling operations. The following year Cornelius Whitehouse conceived a method of manufacturing pipe by drawing long, flat strips of hot metal, known as skelp, through a die or bell, forming a whole length of pipe in one operation. Then, for the first time, man had the basis for making strong pipe rapidly and economically.

### FOUR MAJOR DEVELOPMENT STAGES

Five years after the Whitehouse invention (1830), the first furnace in the United States for making wrought iron pipe was built by Morris, Tasker, and Morris in the basement of a Philadelphia shop. In 1836 this firm erected a large mill and machine shop, and in 1849 a still larger building was constructed by the company to house nine pipe-welding furnaces. Gradually other pipe mills came into being in the United States, and the services of this useful product were greatly expanded.

Variations of the Russell and Whitehouse methods for making pipe from hot metal in the mills, either butt or lap welded, continue to this day; first from wrought iron, then wrought steel and presently various grades of carbon steel.

Early transmission lines made use of this pipe but due to diameter limitations, it is now used in the water industry almost exclusively in pumping and distribution service.

Between 1850 and 1860 the Age of Steel was really born, making possible the second development stage, that of producing large diameter water pipe by cold forming of sheet or plate. This was due to the invention of the Bessemer process for making steel. Until then, steel had been available only by the pound. This new process, followed shortly by the open hearth furnace, made steel available by thousands of tons. It provided the steel needed for the development of railroads,

factories, tools, equipment, ships, skyscrapers, structural steel, penstocks, steel pipe for water as well as gas and oil service.

Five years after the historic 1849 Gold Rush in California, the Francis Smith Company established a shop in the mining town of Grass Valley, California, to produce water pipe for the gold miners. The pipe was made from thin English sheet iron riveted at the seams with cold rivets. It was transported by mule back to the mine sites for hydraulic operations. The pipe was laid by slipping the sections together like stove pipe. A water line of this material (22" to 11" diameter x 16 ga.) was laid at Railroad Flat, California in 1858 and has been in use almost continuously since that time. Then from 1863 to 1878, ten other riveted wrought steel water lines were installed in California and Nevada.

In 1887, near Riverside, California, about 45,000 feet of 24" diameter riveted steel water pipe was installed. Most of this line was still in service in the 1950's, but was finally removed due to obsolescence.

In 1878, the Weigle Pipe Works in Denver, Colorado began the manufacture of riveted steel pipe for placer mining, irrigation, power, and municipal service. It was made of copper bearing steel, and was laid with slip joint ends.

The small plant which formed the nucleus of the many enormous works of the National Tube Company was established in East Boston in 1868.

It should be observed that during the period of 1858 to 1900, nearly all of the water pipe made was fabricated of riveted construction; at least two million feet had been installed by the end of that period, (Appendix A) presently 71 to 113 years in age.

Most of this pipe had meager protective coating, such as bitumen, asphalt, mineral rubber, galvanizing, or was just bare.

A third major development stage started at the turn of the century and lasted until about 1930. In 1905 the East Jersey Pipe Company began fabrication of Lock-Bar steel pipe in 30' lengths with a new seam considered 100% efficient. Since single riveted seams were only 45% and double riveted seams 70% efficient, the new method made rapid inroads in the marketplace. Furthermore, the interior of this new pipe was smooth permitting 10% to 15% greater carrying capacity over riveted steel pipe and also superior to the latter as regards durability and cost.

During these three decades riveted steel pipe installation declined, especially after 1915, due to the development of Lock-Bar and later electric welding processes. However, a considerable quantity of riveted steel pipe was still being produced and a partial tabulation of installations from 1900 to 1915 indicates that about 3,000,000' of this type of pipe 20" and larger was manufactured and from 1916 to 1930 approximately 1,500,000' more for an overall 30 year total of 4,500,000' (Appendix A) as compared to 3,300,000' of Lock-Bar pipe for the same period (Appendix B).

Also during this same time, there were several other types of steel pipe manufactured.

National Tube Company for example produced Matheson joint pipe of lap welded construction in sizes of 2" to 30" diameters x .095" to .432" wall thickness, in 20' sections. The field joints consisted of a bell and spigot into which lead was poured. The steel had a tensile strength of 52,000 psi and a yield point of 30,000 psi. The interior of the pipe was smooth, and therefore had greater carrying capacity than the same size of riveted pipe. National Tube also produced standard weight lap welded steel pipe of 2" to 30" diameters; and hammer welded steel pipe of 20" to 96" diameters x 1/4" to 1-1/2" thickness; and seamless steel pipe up to 26" diameter.

In the 1920's, Taylor Forge & Pipe Works produced a spiral riveted steel pipe in sizes of 3" to 42" diameters; and Naylor Pipe Co. made a spiral lap welded line pipe in sizes of 4" to 12" in 20' sections using Toncan iron for the pipe shell.

The fourth stage started in the 1920's when automatic electric welded steel water pipe was developed. A partial tabulation of all sizes of this type produced during this decade indicates a total of about 1,700,000' (Appendix C). The first major electric welded steel water pipe line on the West Coast consisted of 116,000' of 24" and 22" diameter installed for the City of Vallejo, California in 1924. Also, during 1924, the East Bay Municipal Utility District (Oakland, California) started construction of the first unit of its Mokelumne aqueduct, which consisted of about 80 miles of 54" diameter electric welded steel pipe with heads up to 500'.

There were 10 major welded steel water pipelines produced in the 1920's, being the forerunners of this modern method of manufacture which has progressively improved to the present day.

During the Depression Years of the thirties, great progress was made in the technique of automatic welding with fluxes and the present day plasticized coal tar enamel was introduced. About 7,000,000' of pipe 20" and larger was produced in the period of 1922 to 1940 as well as an additional 15,000,000' of 4" to 20".

Although A. O. Smith of Milwaukee started the production of flash welded pipe for oil and gas transportation late in this decade, the development of automatic fusion welding in the water industry spread to the petroleum industry becoming a major impetus in the vast quantities produced immediately after World War II. The high working pressures required for gas transportation resulted in the production of higher strength steels than had ever been used in water transmission. In turn such steels up to 50,000 psi yield strength were then adopted for the water industry.

In 1939, a group of men representing steel pipe manufacturers known as the "Steel Water Pipe Manufacturers Technical Advisory Committee" was formed under the sponsorship of the American Water Works Association. This group (SWPMTAC) has prepared AWWA standards on riveted steel pipe, Lock-Bar steel pipe, welded steel pipe, coal tar enamel coatings, cement mortar coatings, field welding of steel pipe, steel flanges, steel pipe fittings, and a steel pipe design and installation manual (AWWA M11). This committee still exists, and

keeps all of the standards and manual updated for the benefit of the water works industry.

During the first half of the 1940's, production of steel water pipe was held to a minimum because of the restrictive allotment system of war requirements. However a number of straight seam resistance and fusion welded, as well as spiral fusion welded, facilities developed for water pipe production manufactured over 8,000 miles (more than 40,000,000') of highly portable aboveground utility pipe (water, gasoline and oil). Both the U. S. Army Corps of Engineers and the U. S. Navy bought this type of pipe in sizes ranging from 3" to 12" with wall thickness ranging from 14 ga. to 10 ga.

When steel was difficult to get from the mills during the war for non-military purposes, several major water utilities solved this problem by purchasing old existing steel water pipelines, removing them, transporting them to their new location, rehabilitating them, and relaying them complete. This illustrates the salvageability of steel water pipe on an economical basis.

In spite of the limited steel availability for four years, well over 2,000,000' of large diameter water pipe was produced in this decade as evidenced by a partial tabulation in Appendix C. This was influenced considerably by extreme population growth in certain areas of the country as well as delay of normal waterworks growth due to the war.

Then the decade of the fifties began the era of even larger diameter and longer transmission lines (see Appendix C), a period in which over 5,400,000' was produced in the larger sizes.

During the early forty war years, concrete pipe was available and this industry received wide acceptance in lower working pressures and particularly for its low cost and simple field joints with permissible leakage factor. Up to this time steel pipe had always been joined in the field by flanges, riveting, welding or by use of patented type couplings.

Not long post war, several steel pipe firms developed O-ring gasketed joints for small diameter pipe and by the early fifties the principle was applied to large diameters up to 9 feet. Today considerable steel pipe with this joint has been installed in the 10 to 14 foot diameter range.

The last decade of the sixties has produced welded steel water pipelines of giant sizes, and fabricated from many new types of steel developed during this period for special services.

## PART II. FABRICATION AND DESIGN DEVELOPMENT OF STEEL WATER PIPE

By the mid-1820's two methods of making wrought iron pipe from hot metal in the producing mills were developed; however it was not until the early 1850's that water pipe manufactured from sheet and plate was first rolled and riveted. This method of fabrication, well suited to production of pipe to economically meet the requirements of individually designed projects, continued with improvements into the 1930's. Pipe wall thicknesses could be readily varied to fit the different heads of a pipeline profile.

Because the early steels were of relatively low tensile strength and because the efficiency of cold riveted seams and riveted or drive stovepipe joints was also low, engineers of that day set a safe design stress at a low point of 10,000 psi. Their reasoning was probably also affected by the fact that there had been little experience

with protective coatings to prevent corrosion, with of course, no anticipation of the highly efficient present day coatings complemented with cathodic protection.

Over the years as this method of fabrication improved and higher strength steels were developed, design stresses progressed generally on a 4 to 1 safety factor of tensile from 10,000 psi to 12,500, to 13,750, to 15,000, but in the instance of riveted pipe were adjusted to the particular seam efficiency. This type of pipe was furnished in sizes ranging from 4" through 144" and in thickness from 16 ga. to 1 1/4". Fabrication methods consisted of single, double, triple and even quadruple riveted seams varying in efficiency from 45% to 90% dependent on design.

The general method of fabrication was to roll and rivet cans of 4' to 8' lengths, then assemble in longer sections with riveted round seams into lengths up to approximately 30'. One firm however developed a method of spirally forming and riveting steel pipe in sizes from 3" through 42".

Lock-Bar pipe introduced in 1905 nearly supplanted riveted pipe by 1930. Fabrication consisted of first planing 30' long plates to proper width, then after upsetting the longitudinal edges, rolling into half circle troughs 30' long. H shaped bars of special configuration were then applied to the mating edges of two 30' troughs making a full circle pipe section which was then clamped into position. This unit was then passed into a hydraulic pressing machine where the H bars were locked over the upset edges under a force of 350 tons per lineal foot of pipe.

Following the general procedure of the times, a 55,000 tensile steel was used which, with a 4 to 1 safety factor resulted in a 13,750 psi design stress. Lock-Bar pipe however had numerous advantages over riveted; it had only one or two straight seams and no round seams. These straight seams were considered as 100% efficient as compared to the generally 45% to 70% efficiency of riveted and then were smooth permitting 10% to 15% greater carrying capacity. Due to highly mechanized methods and fewer pieces to handle, production costs were somewhat lower.

Manufactured in sizes from 20" through 74" from plate ranging in thickness from 3/16" to 1/2", Lock-Bar took an increasingly greater part of the market until the advent of automatic electric welding in the mid-1920's. By the early 1930's both riveting and Lock-Bar methods gradually passed out of the picture.

Fabricators of automatic electric fusion welded pipe follow somewhat the same production sequences as for Lock-Bar. Through the thirties and into the forties, 30' plates were used; however by the fifties some firms had obtained 40' rolls and a few formed 40' lengths in presses. Plates are longitudinally edge prepared depending on thickness by planing square, single bevel or double bevel, followed by pressing or rolling a narrow portion of the edges to the desired pipe radius before forming into full circle in drop-end pyramid rolls or for larger diameters to half circle. These latter are then fitted up in jigs for tackwelding prior to entering automatic welding machine track and pipe support frames where the smooth efficient seams are accomplished. In the early days welding was accomplished by flux coated rod from reels with an open arc, however it was soon found to be more efficient to use bare rod covering the weld position with about an inch of bulk flux.

A successful alternative method to the above is to weld two (or more depending on diameter) plates together in the flat and rolling to full circle in pyramid rolls prior to the final weld.

The obvious advantages of welding: fewer pieces, fewer operations, faster production, smaller seam protrusion, and equal 100% seam efficiency soon permitted welded pipe to dominate the field.

Several other forming methods and types of welding are prominent in the waterworks field. Spirally formed and welded pipe was developed in the early thirties and was used extensively in diameters from 4" through 36". Welding was by the electric fusion method. After World War II, German machines were imported and subsequently domestic ones were developed that can spirally form and weld through 96" diameter.

Although some water pipe was manufactured by a firm that press formed and flash welded 30' lengths, this method was used almost exclusively for high pressure service.

Another important method developed for the smaller diameter ranges to 20" was that of forming from coils through continuously reducing rolls feeding into a resistance welding machine. This method is fast, efficient and can fabricate from 14 ga. through 3/8" thicknesses.

During the thirties, the developing decade of welding, a new approach was taken to design stresses. Whereas prior to this time it was common practice to work with a 4 to 1 safety factor of the tensile strength, the concept of using 50% of the yield was generally accepted. Shortly after World War II, when higher yield steels were being used by the gas and petroleum industries, the use of steels up to 50,000 yield was accepted by the waterworks industry with resultant design stresses up to 25,000 psi. In some instances 60% and 65% of yield were used in the 42,000 psi and under yields.

There are three other important factors that are considered in the design of steel water pipe lines; types of field joints, corrosion prevention and external loading.

Various field joints are available to suit any construction condition and all are bottle tight not requiring a permissible leakage rate per hour or day as for other types of pipe. The most popular are O-ring gasket joints either formed on the pipe ends or the Carnegie gasket retainer welded to the spigot end, both good for operating pressures up to 350 psi. Either can be used in dry trench work or with proper harness for underwater installations.

Of the several welded joints, the most popular is the lap joint due to its ease of fit-up and because a single round seam fillet weld has been proven sufficiently strong to meet the pressure requirements of the pipe. Welding is of particular value for the higher pressures.

Mechanical couplings of the collar and ring or the clamp type as well as flanged joints find their use in special conditions such as make-up sections, attachment to pumps or special fittings, or temporary lines that might be moved with relative ease at some future time.

Concerning corrosion, recognized in the Bible by the use of the word rust, it is no longer a problem if the proper inexpensive preventive methods are taken. Some of the earliest fabricated water pipe was protected by coating with asphalt derivatives mostly by the hot dip method. In some cases in the past, designers added a rule-of-thumb percentage of thickness to the steel for further protection. Today this is very definitely a waste of good steel and money. In the late nineteen-twenties, variations of coal tar enamel came on the market several of which were applied by the hot dip process until application of lining by spinning the pipe was developed, giving a more uniform and smooth surface. The exterior coat and wrap was applied by rotation of the pipe generally at a slower peripheral speed. One company has developed equipment to line, coat and wrap simultaneously. With the development of plasticized enamels and vastly improved primers, this product today is the most widely used whether on water, gas and oil lines or many other steel products coming in contact with soil such as liquid storage, sewage treatment and other pollution control tanks.

Another protective coating popular in some sections of the country is cement mortar applied on the interior by the spinning method, on the exterior by gun application or cast over rod wrapping or wire mesh. The lining can also be applied in a pipeline after installation and numerous steel water pipelines are protected on the exterior with highly dielectric coal tar enamel impervious to water seepage and with field applied mortar lining.

To thoroughly complete corrosion protection in areas where soil conditions are extreme, the addition of cathodic protection is the answer. To many, these words have been a bug-a-boo in the past. Today it is a simple and inexpensive application well worth proper investigation. Numerous installations prove that it generally costs in the neighborhood of less than half of one

percent of the price of the pipe delivered to the site, and if the impressed current method is used, the power cost is insignificant.

The next and very important design consideration to be considered is that of external loading. Pound for pound, steel has more strength than any other pipe material. As a result, very often internal pressure is not the controlling factor in determining wall thickness. This has been recognized for some time by engineers and there are those who have thought it necessary to answer the problem by rigidity. This approach is certainly not the answer as steel is a very strong, flexible material with a fine memory up to its yield point which is well above any working pressure.

Steel water pipe should be designed on a basis of economy and security without sacrificing quality or good performance. The generally accepted current criteria for the proper design of large diameter welded steel water pipelines as based on sound and economical engineering judgment and practice is as follows:

Determine the diameter, the head involved, and the depth of cover, if buried.

Then select the type of steel plate best suited for the service conditions. For low heads (under about 350'), use ASTM A283 C or D steel plate, and for high heads, use the ASTM A572 series of steels. (Special cases should consider other types of steel as indicated in Appendix E.)

Then for *buried* pipe, determine the wall thickness required for internal water pressure from the Barlow Hoop Tension Formula —

$$t = \frac{PD}{2S}$$

S is the design stress in the shell plate based on a value of at least 60% of the yield point, or 1/3 of the ultimate tensile strength, whichever is lowest. (Some major water utilities use a value of 65% of the yield point.)

Then determine the D/t ratio. If this ratio is less than 300, there is no danger of buckling. If this ratio is greater than 300, consideration should be given to using stulls in the pipe until the backfilling has been completed.

Then determine the deflection of the buried pipe from the Spangler or Watkins formula based on the thickness obtained for internal pressure, and the depth of cover using an 85% minimum compaction value for the backfill. Considering the most recent work of Dr. Watkins, an E' of 1500 is recommended. If the calculated deflection is less than 5% of the pipe diameter, the design is safe and sound. If the deflection should be greater than 5%, it can be reduced to proper limits by ellipsing the vertical diameter with stulls in the amount of the excess deflection. After the backfilling has been completed, the stulls can be removed, and the pipe will assume its proper position.

If the pipe will be laid above the ground, it can be supported by cradles or by ring girders. If the D/t ratio is less than 300, there is no danger of buckling; and if the D/t ratio is less than 158, there is no danger of pipe collapse from full vacuum. If the D/t ratio is greater than 300, consideration should be given to using some stiffener rings on the outside of the pipe.

When designing steel water pipelines, reference should be made to the latest edition of AWWA steel pipe standards, and good use can be made of the Steel Plate Fabricators Association's Welded Steel Water Pipe Manual and Federal Specification WW-P-1432 all readily obtainable.

### PART III. APPENDICES

**APPENDIX A** — Service life tabulation of riveted steel water pipe installations from 1858 to 1900; and tabulation of riveted steel water pipe installations from 1901 to 1933.

**APPENDIX B** — Tabulation of Lock-Bar steel water pipe installations from 1905 to 1932.

**APPENDIX C** — Tabulation of welded steel water pipe installations from 1922 to 1970 by decade periods:

1922 to 1930  
1931 to 1940  
1941 to 1950  
1951 to 1960  
1961 to 1970

**APPENDIX D** — Summary of Appendices A, B and C.

**APPENDIX E** — Types of steel available for steel water pipe service.

**APPENDIX F** — Long major aqueducts tabulation.

**APPENDIX G** — Steel water pipeline field joints.

**APPENDIX H** — Steel water pipe specifications.

**APPENDIX I** — Types of steel water pipe.

**APPENDIX A**  
**SERVICE LIFE OF STEEL WATER PIPE**  
 Partial Tabulation of Steel Water Pipe Installations  
 (Prior to 1900 including some early wrought iron pipe)

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness     | Footage<br>Feet | Type    |
|-------------------|-----------------------------------|--------------------|---------------|-----------------|---------|
| 1858              | Railroad Flat, California         | 22 - 11            | 16 Ga.        | —               | Riveted |
| 1860              | New York, New York                | 90                 | 1/2"          | 1,000           | Riveted |
| 1863              | San Francisco, California         | 37 - 30            | 1/4"          | 27,280          | Riveted |
| 1868              | Humburg, California               | 26                 | 16 Ga.        | —               | Riveted |
| 1868              | San Francisco, California         | 30                 | 12 Ga.        | 80,000          | Riveted |
| 1870              | San Francisco, California         | 30                 | 12 Ga.        | 42,240          | Riveted |
| 1870              | Magalia, California               | 30                 | 10 Ga.        | —               | Riveted |
| 1870              | Ploche, Nevada                    | 5                  | 14 Ga.        | 8,000           | Riveted |
| 1871              | Lawrence, Massachusetts           | 77                 | 3/8"          | —               | Riveted |
| 1871              | San Francisco, California         | 22                 | 9 Ga.         | 2,105           | Riveted |
| 1871              | North Bloomfield, California      | 14 - 10            | —             | —               | Riveted |
| 1873              | Santa Rosa, California            | 11 - 9             | 16 Ga.        | 10,000          | Riveted |
| 1873              | Virginia City, Nevada             | 12                 | 5/16" - 1/16" | 37,000          | Riveted |
| 1874              | Carson City, Nevada               | 12 - 7             | 16 Ga.        | 10,000          | Riveted |
| 1874              | Pittsburgh, Pennsylvania          | 50                 | —             | 2,900           | Riveted |
| 1874              | Rochester, New York               | 36                 | —             | 50,000          | Riveted |
| 1875              | San Francisco, California         | 22                 | 9 Ga.         | 12,226          | Riveted |
| 1875              | Oakland, California               | 24                 | 3/16"         | —               | Riveted |
| 1876              | Rochester, New York               | 24                 | —             | 10,451          | Riveted |
| 1878              | Texas Creek, California           | 17                 | 9 - 14 Ga.    | 4,000           | Riveted |
| 1880              | Los Angeles, California           | 44                 | 1/8"          | 17,000          | Riveted |
| 1880              | San Fernando, California          | 8                  | —             | —               | Riveted |
| 1881              | Lawrence, Massachusetts           | 77                 | 3/8"          | —               | Riveted |
| 1882              | San Francisco, California         | 30 - 22            | 1/4" - 1/8"   | 14,000          | Riveted |
| 1882              | Longmont, Colorado                | 6                  | —             | 23,000          | Riveted |
| 1882              | Holyoke, Massachusetts            | 103                | —             | —               | Riveted |
| 1883              | Fort Collins, Colorado            | 10                 | 3/16"         | 18,000          | Welded  |
| 1883              | San Francisco, California         | 30                 | 3 Ga.         | 3,480           | Riveted |
| 1884              | San Francisco, California         | 33                 | 1/4"          | 2,409           | Riveted |
| 1885              | San Francisco, California         | 44 - 30            | 1/4" - 6 Ga.  | 103,409         | Riveted |
| 1886              | Lawrence, Massachusetts           | 84                 | —             | —               | Riveted |
| 1886              | San Francisco, California         | 30                 | 3 Ga.         | 4,513           | Riveted |
| 1887              | Alhambra, California              | 10 - 4             | 16 Ga.        | 3,200           | Riveted |
| 1887              | Riverside, California             | 24                 | —             | 45,000          | Riveted |
| 1887              | San Francisco, California         | 36                 | 9 Ga.         | 100,000         | Riveted |
| 1887              | Pasadena, California              | 6                  | —             | —               | Riveted |
| 1888              | San Francisco, California         | 22                 | —             | 12,000          | Riveted |
| 1888              | Pasadena, California              | 22                 | 14 Ga.        | 18,000          | Riveted |
| 1888              | Sierra Madre, California          | 6 - 4              | 16 Ga.        | 15,000          | Riveted |
| 1888              | Altadena, California              | 8                  | 16 Ga.        | 1,200           | Riveted |
| 1888              | Redlands, California              | 24                 | 11 Ga.        | 2,200           | Riveted |
| 1888              | Chula Vista, California           | 6                  | 12 Ga.        | —               | Riveted |
| 1889              | Nephi, Utah                       | 3                  | 16 Ga.        | 1,500           | Riveted |
| 1889              | Alhambra, California              | 7                  | 16 Ga.        | 900             | Riveted |
| 1889              | San Francisco, California         | 44                 | 3 Ga.         | 4,878           | Riveted |
| 1889              | Pasadena, California              | 13                 | 14 Ga.        | 6,000           | Riveted |
| 1890              | San Jose, California              | 18                 | 12 Ga.        | 31,000          | Riveted |
| 1890              | Santa Cruz, California            | 14                 | 9 Ga.         | —               | Riveted |
| 1890              | Detroit, Michigan                 | 72                 | —             | —               | Riveted |
| 1890              | Redlands, California              | 8                  | —             | 6,000           | Riveted |
| 1890              | Walla Walla, Washington           | 20 - 6             | 7 - 14 Ga.    | 100,000         | Riveted |
| 1891              | Newark, New Jersey                | 48                 | 3/8" - 1/4"   | 111,800         | Riveted |
| 1891              | Newark, New Jersey                | 36                 | 1/4"          | 23,980          | Riveted |
| 1891              | Pittsburgh, Pennsylvania          | 50                 | 5/8"          | 3,600           | Riveted |
| 1891              | The Dalles, Oregon                | 10                 | 10 Ga.        | 8,000           | Riveted |
| 1891              | Pocatello, Idaho                  | 12                 | 16 Ga.        | 6,000           | Riveted |
| 1892              | Pasadena, California              | 20 - 4             | 14 Ga.        | 5,000           | Riveted |
| 1892              | Butte, Montana                    | 20                 | —             | 3,114           | Riveted |
| 1893              | Syracuse, New York                | 54                 | 3/8"          | 6,500           | Riveted |
| 1893              | Rochester, New York               | 38 - 36            | 5/16"         | 136,000         | Riveted |
| 1894              | Portland, Oregon                  | 42 - 33            | 5/16" - 6 Ga. | 132,000         | Riveted |
| 1894              | Passaic Valley, New Jersey        | 30                 | 5/16"         | 12,300          | —       |
| 1895              | Whittier, California              | 10                 | 10 Ga.        | 15,000          | Riveted |
| 1895              | National City, California         | 24                 | 11 Ga.        | 26,000          | Riveted |
| 1895              | Altadena, California              | 12                 | 14 Ga.        | 5,000           | Riveted |
| 1895              | Pasadena, California              | 8                  | 14 Ga.        | 1,200           | Riveted |
| 1895              | Vancouver, British Columbia       | 22 - 16            | 12 Ga.        | 52,000          | Riveted |
| 1895              | San Francisco, California         | 30                 | 1/4"          | 4,090           | Riveted |
| 1895              | Kearney, New Jersey               | 42                 | —             | 8,800           | Riveted |
| 1895              | Colorado                          | 8 - 6              | 16 Ga.        | 42,700          | Riveted |
| 1895              | Cambridge, Massachusetts          | 42                 | —             | 20,000          | —       |
| 1896              | Minneapolis, Minnesota            | 48                 | —             | 31,680          | Riveted |
| 1896              | Newark, New Jersey                | 48 - 42            | 1/4"          | 126,000         | Riveted |
| 1896              | Passaic Valley, New Jersey        | 42                 | 3/8" - 1/4"   | 8,700           | Riveted |
| 1896              | New Bedford, Massachusetts        | 48                 | 5/16"         | 42,000          | Riveted |
| 1896              | Bayonne, New Jersey               | 30                 | —             | 44,000          | —       |
| 1896              | New Westminster, British Columbia | 14                 | —             | 70,000          | Riveted |
| 1896              | New York, New York                | 72                 | —             | —               | Riveted |
| 1897              | Minneapolis, Minnesota            | 50                 | 7/16" - 5/16" | 16,605          | Riveted |
| 1897              | Ogden, Utah                       | 72                 | 11/16" - 3/8" | 4,600           | Riveted |
| 1897              | Patterson, New Jersey             | 42                 | 5/16"         | 40,000          | Riveted |
| 1897              | Jersey City, New Jersey           | 48                 | 1/2"          | —               | Riveted |
| 1897              | Colorado                          | 18 - 6             | 6 - 16 Ga.    | 4,400           | Riveted |
| 1898              | Red Bluff, California             | 7                  | 14 Ga.        | 9,000           | Riveted |
| 1898              | Duluth, Minnesota                 | 42                 | 1/2" - 1/4"   | 30,500          | Riveted |
| 1898              | Allegheny, Pennsylvania           | 50                 | —             | —               | Riveted |
| 1898              | Albany, New York                  | 48                 | —             | 8,000           | Riveted |
| 1899              | Colorado                          | 18 - 10            | 14 - 16 Ga.   | 22,000          | Riveted |
| 1899              | Little Falls, New Jersey          | 66 - 36            | —             | —               | —       |
| 1899              | Lawrence, Massachusetts           | 108                | 3/8"          | 154             | Riveted |
| 1899              | Los Angeles                       | 44                 | —             | —               | Riveted |
| 1899              | Passaic Valley, New Jersey        | 51                 | 7/16" - 1/4"  | 44,600          | Riveted |
| 1899              | Seattle, Washington               | 42                 | 1/4"          | 32,000          | Riveted |
| 1899              | Kern, California                  | 60 - 48            | 1/2" - 12 Ga. | 5,000           | Riveted |

# APPENDIX A (Cont'd.)

| Year Installed | Location                   | Diameter Inches | Thickness | Footage Feet | Type    |
|----------------|----------------------------|-----------------|-----------|--------------|---------|
| 1899           | Newark, New Jersey         | 51 - 48         | 1/4"      | 47,000       | Riveted |
| 1899           | Pittsburgh, Pennsylvania   | 48              | —         | 4,400        | —       |
| 1900           | Redlands, California       | 4               | 14 Ga.    | 3,000        | Riveted |
| 1900           | San Francisco, California  | 36              | 7 Ga.     | 420          | Riveted |
| 1900           | Victor, Colorado           | 29              | 3/16"     | 2,500        | Riveted |
| 1900           | Marquette, Michigan        | 42              | —         | 600          | Riveted |
| 1900           | Butte, Montana             | 26              | —         | 33,910       | Riveted |
| 1900           | Montebello, California     | 16              | 10 Ga.    | 5,000        | Riveted |
| 1900           | Colorado                   | 17              | 4 - 8 Ga. | 1,920        | Riveted |
| 1900           | Passaic Valley, New Jersey | 42              | 5/16"     | 18,600       | Riveted |

APPROXIMATE TOTAL FOOTAGE = 2,000,000

## Partial Tabulation of Riveted Steel Water Pipe Installations 1901 to 1933

| Year Installed | Location                    | Diameter Inches | Thickness      | Footage Feet |
|----------------|-----------------------------|-----------------|----------------|--------------|
| 1901           | Pittsburgh, Pennsylvania    | 50 - 42         | 3/8"           | 17,000       |
| 1901           | Atlantic City, New Jersey   | 30              | 1/4"           | 27,000       |
| 1901           | Niagara, New York           | 84              | —              | 6,500        |
| 1901           | Seattle, Washington         | 42              | —              | 61,000       |
| 1902           | Montebello, California      | 20              | 12 Ga.         | —            |
| 1902           | Jersey City, New Jersey     | 72              | 11/16" - 5/16" | 93,000       |
| 1903           | Boston, Massachusetts       | 90              | 7/16"          | 4,000        |
| 1903           | Pittsburgh, Pennsylvania    | 48              | 1/2"           | 4,000        |
| 1903           | Sacramento, California      | 24              | 1/4"           | 9,000        |
| 1903           | Newark, New Jersey          | 60 - 48         | 5/16"          | 40,000       |
| 1903           | Jersey City, New Jersey     | 72              | 11/16" - 5/16" | —            |
| 1903           | Kansas City, Missouri       | 36              | —              | 35,000       |
| 1903           | Troy, New York              | 33              | 3/8"           | 35,000       |
| 1903           | Schenectady, New York       | 36              | —              | 23,716       |
| 1904           | Bayonne, New Jersey         | 30              | 3/8" - 1/4"    | 4,000        |
| 1904           | Astoria, New York           | 60              | —              | 15,000       |
| 1904           | Erie, Pennsylvania          | 60              | —              | 7,920        |
| 1904           | Toronto, Ontario            | 72              | —              | 6,000        |
| 1904           | Red Bluff, California       | 12              | 10 Ga.         | 1,600        |
| 1904           | San Bernardino, California  | 20              | 10 Ga.         | 16,800       |
| 1905           | Troy, New York              | 33              | —              | 35,780       |
| 1905           | Los Angeles, California     | 98 - 16         | 1/2" - 3/16"   | 1,108,000    |
| 1905           | St. Louis, Missouri         | 84              | 1/2"           | 18,960       |
| 1905           | Cincinnati, Ohio            | 84              | —              | 1,521        |
| 1905           | Springfield, Massachusetts  | 54 - 42         | —              | 63,500       |
| 1905           | Los Angeles, California     | 24 - 16         | 3/16"          | 13,200       |
| 1906           | Brooklyn, New York          | 72              | —              | 42,300       |
| 1906           | Pittsburgh, Pennsylvania    | 72 - 30         | 3/8" - 1/4"    | 47,000       |
| 1906           | Fair Oaks, California       | 28 - 24         | 12 Ga.         | 14,210       |
| 1906           | San Francisco, California   | 36 - 30         | 9 - 7 Ga.      | 139,400      |
| 1907           | Pittsburgh, Pennsylvania    | 36              | 3/8"           | 3,700        |
| 1907           | Niagara, New York           | 108             | 5/16" - 1/4"   | 564          |
| 1907           | St. Louis, Missouri         | 84              | —              | 20,000       |
| 1907           | Kern, California            | 84 - 60         | 1-3/8" - 5/16" | 4,175        |
| 1907           | Philadelphia, Pennsylvania  | 48 - 36         | —              | 54,000       |
| 1908           | Canyon, California          | 36              | 12 Ga.         | 2,450        |
| 1908           | Passaic Valley, New Jersey  | 30              | 1/4"           | 15,400       |
| 1908           | Philadelphia, Pennsylvania  | 132             | —              | 1,590        |
| 1908           | Colorado                    | 34              | 8 - 16 Ga.     | 31,910       |
| 1909           | Seattle, Washington         | 51 - 48         | 3/8" - 5/16"   | 10,700       |
| 1909           | Boulder, Colorado           | 60              | 1/2"           | 2,640        |
| 1909           | Erie, Pennsylvania          | 56              | —              | 5,280        |
| 1909           | Vancouver, British Columbia | 24              | 1/4" - 3/16"   | 73,000       |
| 1910           | New York, New York          | 36              | 3/16"          | 11,000       |
| 1910           | New York, New York          | 135 - 114       | 3/4" - 7/16"   | 33,000       |
| 1910           | Montrose, California        | 36 - 26         | —              | 5,200        |
| 1910           | Pittsburgh, Pennsylvania    | 24              | —              | 5,000        |
| 1910           | Brooklyn, New York          | 48              | —              | 16,200       |
| 1910           | Paterson, New Jersey        | 42              | 5/16"          | 2,000        |
| 1911           | Pasadena, California        | 30              | 10 Ga.         | 10,297       |
| 1911           | Calgary, Alberta            | 144 - 114       | 1/2"           | 516          |
| 1911           | Tacoma, Washington          | 46 - 39         | 1/2" - 1/4"    | 7,300        |
| 1911           | New York, New York          | 66              | —              | 8,510        |
| 1911           | Medford, Oregon             | 60 - 48         | 3/8" - 1/4"    | 1,093        |
| 1911           | Verdi, Nevada               | 78              | 3/8" - 1/4"    | 790          |
| 1912           | Juneau, Alaska              | 42 - 30         | 1/4" - 3/16"   | 1,655        |
| 1912           | Alaska                      | 40 - 30         | 1/2" - 1/4"    | 9,000        |
| 1912           | Los Angeles, California     | 68 - 64         | 3/8" - 5/16"   | 28,940       |
| 1912           | Pittsburgh, Pennsylvania    | 30              | 1/2"           | 5,300        |
| 1912           | Seattle, Washington         | 42              | —              | 13,243       |
| 1912           | Pittsburgh, Pennsylvania    | 72 - 60         | 1/2" - 3/8"    | 5,280        |
| 1912           | Altman, New York            | 138 - 96        | 5/8"           | 2,000        |
| 1912           | Belleville, Ohio            | 168             | —              | 2,920        |
| 1912           | Montclair, New Jersey       | 24              | —              | 7,343        |
| 1912           | Chihuahua, Mexico           | 102             | —              | 1,400        |
| 1913           | Los Angeles, California     | 72              | —              | —            |
| 1913           | Los Angeles, California     | 84              | 1/2" - 3/8"    | 1,378        |
| 1913           | Baltimore, Maryland         | 120             | 7/16"          | 2,465        |
| 1913           | Murray City, Utah           | 26 - 22         | 7 Ga.          | 3,882        |
| 1913           | Vancouver, British Columbia | 36 - 26         | 3/8" - 1/4"    | 46,250       |
| 1913           | Kansas City, Missouri       | 48              | —              | 1,220        |
| 1913           | Cleveland, Ohio             | 48              | 1/4"           | 2,265        |
| 1913           | Falls Village, Connecticut  | 108             | 3/8" - 5/16"   | 826          |
| 1913           | Niagara, New York           | 96 - 72         | 5/8" - 5/16"   | 3,400        |
| 1913           | Lock Raven, Maryland        | 120             | 7/16"          | 2,464        |
| 1913           | Ocoee, Tennessee            | 96              | 5/8"           | 1,320        |
| 1913           | Croghan, New York           | 114             | —              | 2,555        |
| 1913           | Altman, New York            | 138             | 5/8"           | 1,194        |
| 1913           | Los Angeles, California     | 132 - 90        | 1-1/8" - 1/4"  | 49,575       |
| 1914           | Pittsburgh, Pennsylvania    | 48 - 42         | —              | 3,060        |
| 1914           | Butte, Montana              | 24              | —              | 12,950       |



# APPENDIX A (Cont'd.)

| Year<br>Installed | Location                       | Diameter<br>Inches | Thickness     | Footage<br>Feet |
|-------------------|--------------------------------|--------------------|---------------|-----------------|
| 1914              | Baltimore, Maryland            | 120                | 7/16"         | —               |
| 1914              | Tacoma, Washington             | 30                 | 1/4"          | 550             |
| 1914              | Springfield, Massachusetts     | 42                 | —             | —               |
| 1914              | Fremont, Ohio                  | 168                | —             | 2,861           |
| 1914              | Cleveland, Ohio                | 48                 | —             | 1,320           |
| 1914              | Massena, New York              | 24                 | 3/8" - 1/4"   | 22,000          |
| 1914              | Miami, Arizona                 | 152                | —             | 1,670           |
| 1914              | Riverside, California          | 30 - 20            | —             | 40,400          |
| 1914              | Niagara, New York              | 120                | 1/4"          | 1,106           |
| 1914              | Cleveland, Ohio                | 72 - 66            | —             | 3,960           |
| 1915              | Baltimore, Maryland            | 84                 | 7/16"         | 4,000           |
| 1915              | Pittsburgh, Pennsylvania       | 48                 | 1/2"          | 3,900           |
| 1915              | Greeley, Colorado              | 20                 | —             | 5,280           |
| 1915              | Massena, New York              | 24                 | 3/8" - 5/16"  | 5,000           |
| 1915              | Ogden, Utah                    | 24                 | —             | 17,250          |
| 1915              | San Bernardino, California     | 20                 | 3/16"         | 3,500           |
| 1915              | Victoria, British Columbia     | 36                 | 3/8" - 5/16"  | 56,677          |
| 1915              | Placerville, California        | 30                 | 1/2" - 3/16"  | 915             |
| 1916              | Foilsabee, West Virginia       | 30                 | —             | 288             |
| 1916              | Minneapolis, Minnesota         | 48 - 40            | —             | 6,555           |
| 1916              | Painesville, Ohio              | 54                 | —             | 1,320           |
| 1916              | Braden Copper Company          | 80                 | —             | 4,134           |
| 1917              | Terra Bella, California        | 36 - 20            | 14 Ga.        | 200,000         |
| 1917              | Lindsay-Strathmore, California | 36                 | 10 Ga.        | 1,200           |
| 1917              | Everett, Washington            | 28                 | 1/4"          | 20,300          |
| 1917              | Minneapolis, Minnesota         | 48                 | —             | 835             |
| 1917              | Olmstead, Utah                 | 90 - 72            | 5/8" - 1/2"   | 4,580           |
| 1917              | Portsmouth, Ohio               | 48                 | 1/4"          | 880             |
| 1917              | Talluha Falls, Georgia         | 60                 | —             | 1,224           |
| 1917              | Oakland, California            | 24                 | —             | 4,130           |
| 1917              | Georgia Railway Company        | 156                | —             | 680             |
| 1918              | Salinas, California            | 34                 | 3/16"         | 3,362           |
| 1919              | Butte, Montana                 | 26 - 24            | —             | 33,485          |
| 1920              | Wessels, Duval Company         | 60 - 42            | 11/16" - 1/4" | 3,781           |
| 1920              | J. G. White Company            | 36 - 30            | 3/8" - 1/4"   | 23,000          |
| 1920              | Spring Valley, California      | 30 - 22            | 5/16"         | —               |
| 1921              | Sacramento, California         | 30                 | 3/8" - 1/4"   | 7,964           |
| 1922              | Sacramento, California         | 60 - 42            | 3/8" - 5/16"  | 1,819           |
| 1922              | Bay City, Michigan             | 38 - 26            | —             | 31,800          |
| 1922              | Honolulu, T.H.                 | 30                 | 5/16"         | 400             |
| 1922              | Madison, Iowa                  | 108                | 7/16" - 3/8"  | 1,037           |
| 1922              | Minneapolis, Minnesota         | 48                 | —             | 1,320           |
| 1922              | Oakland, California            | 30                 | 1/4"          | 7,174           |
| 1922              | Seattle, Washington            | 66 - 48            | 9/16" - 5/16" | 29,200          |
| 1922              | Shasta, California             | 84                 | 5/16"         | 320             |
| 1922              | Walla Walla, Washington        | 24                 | 5/16"         | 11,182          |
| 1922              | Georgia Railway Company        | 56                 | 1/4"          | 128             |
| 1923              | Oakland, California            | 24 - 20            | —             | 18,500          |
| 1923              | San Francisco, California      | 60                 | 7/16" - 5/16" | 100,000         |
| 1923              | Covina, California             | 54 - 28            | —             | —               |
| 1923              | Cleveland, Ohio                | 48 - 36            | —             | 1,317           |
| 1923              | Cleveland, Ohio                | 72                 | 1/2"          | 201             |
| 1923              | Florence, Alabama              | 108                | —             | 1,048           |
| 1923              | Longview, Washington           | 48                 | 3/8"          | 1,158           |
| 1923              | Philadelphia, Pennsylvania     | 48 - 30            | —             | 2,640           |
| 1923              | Phoenix, Oregon                | 100 - 36           | —             | 188             |
| 1923              | Portland, Oregon               | 100                | 3/8" - 5/16"  | 1,285           |
| 1923              | Wheeling, West Virginia        | 31                 | —             | 26,400          |
| 1923              | Cuba                           | 57                 | —             | 1,742           |
| 1924              | Gage Canal, California         | 62                 | 5/16"         | 1,123           |
| 1924              | Dominguez, California          | 33 - 20            | —             | 100,000         |
| 1924              | Fillmore, California           | 36 - 24            | —             | 20,000          |
| 1924              | Albany, New York               | 48 - 26            | —             | 1,340           |
| 1924              | Badin, North Carolina          | 180                | 11/16" - 1/2" | 302             |
| 1924              | Irvington-Niles, California    | 44                 | 1/4"          | 21,120          |
| 1924              | Irvington-Redwood, California  | 60                 | 7/16" - 5/16" | 102,432         |
| 1924              | Oakland, California            | 30 - 20            | 3/16"         | 40,000          |
| 1924              | Philadelphia, Pennsylvania     | 48 - 20            | —             | 19,934          |
| 1924              | Pittsburgh, Pennsylvania       | 42                 | 1/2"          | 440             |
| 1924              | St. Paul, Minnesota            | 60 - 32            | —             | 8,300           |
| 1924              | Tacoma, Washington             | 48 - 30            | 5/16" - 1/4"  | 2,295           |
| 1924              | San Salvador, Central America  | 48                 | 1/4" - 3/16"  | 815             |
| 1925              | Providence, Rhode Island       | 66                 | 3/8" - 5/16"  | 10,500          |
| 1925              | Puente, California             | 20                 | 14 Ga.        | 18,000          |
| 1925              | Hemet, California              | 30                 | —             | 50,000          |
| 1925              | Detroit, Michigan              | 44                 | —             | 21,120          |
| 1925              | Flint, Michigan                | 50                 | —             | 16,500          |
| 1925              | Philadelphia, Pennsylvania     | 48                 | —             | 1,200           |
| 1925              | Pittsburgh, Pennsylvania       | 20                 | —             | 1,340           |
| 1925              | Pottdsam, New York             | 72                 | 1/4"          | 2,510           |
| 1925              | St. Louis, Missouri            | 62 - 49            | —             | 95,000          |
| 1926              | Santa Paula, California        | 30 - 24            | —             | 10,000          |
| 1926              | Boston, Massachusetts          | 30                 | 3/8"          | 7,230           |
| 1926              | Brooklyn, New York             | 60                 | 1/2"          | 13,100          |
| 1926              | Detroit, Michigan              | 50                 | —             | 2,680           |
| 1926              | Flint, Michigan                | 50 - 44            | 3/8" - 5/16"  | 1,385           |
| 1926              | Honolulu, T.H.                 | 20                 | 3/16"         | 4,500           |
| 1926              | Minneapolis, Minnesota         | 66 - 50            | —             | 8,464           |
| 1926              | New York, New York             | 30                 | 1/2"          | 2,800           |
| 1926              | Philadelphia, Pennsylvania     | 30                 | —             | 5,280           |
| 1926              | Cisal Chopia                   | 84                 | 1/2"          | 413             |
| 1927              | San Jacinto, California        | 30 - 20            | —             | 5,000           |
| 1927              | Yorba Linda, California        | 26                 | —             | 20,000          |
| 1927              | Allen Falls, New York          | 84                 | 9/16" - 5/16" | 10,255          |
| 1927              | New York, New York             | 36                 | 1/2"          | 4,430           |
| 1927              | Buhl, Idaho                    | 90                 | 1/4"          | 1,127           |
| 1927              | Detroit, Michigan              | 36                 | 3/16"         | 350             |
| 1927              | Saginaw, Michigan              | 36 - 30            | —             | 21,120          |

DATE ENGINEERS OFFICE

Page Nine

# APPENDIX A (Cont'd.)

| Year Installed | Location                      | Diameter Inches | Thickness     | Footage Feet |
|----------------|-------------------------------|-----------------|---------------|--------------|
| 1927           | St. Louis, Missouri           | 60 - 48         | 1/2"          | 1,700        |
| 1928           | Vancouver, British Columbia   | 60 - 20         | 9/16" - 1/4"  | 100,000      |
| 1928           | Detroit, Michigan             | 96 - 48         | 3/4"          | 774          |
| 1928           | Honolulu, T.H.                | 31              | 5/16"         | 826          |
| 1928           | Kenka Lake, New York          | 42              | 1/2"          | 840          |
| 1928           | San Francisco, California     | 44              | 1/4"          | 6,650        |
| 1928           | New York, New York            | 48 - 36         | 1/2"          | 5,000        |
| 1928           | Philadelphia, Pennsylvania    | 93 - 30         | 9/16" - 5/16" | 38,450       |
| 1928           | Pittsburgh, Pennsylvania      | 30 - 24         | 1/2"          | 6,000        |
| 1928           | Youngstown, Ohio              | 88              | —             | 548          |
| 1929           | New York, New York            | 77 - 66         | 1/2"          | 7,210        |
| 1929           | Cleveland, Ohio               | 48 - 30         | 5/8" - 1/2"   | 2,173        |
| 1929           | Detroit, Michigan             | 72 - 42         | 5/8" - 1/2"   | 7,850        |
| 1929           | Erie, Pennsylvania            | 72              | 1/2"          | 7,900        |
| 1929           | Harper, Oregon                | 153             | 5/16"         | 3,308        |
| 1929           | Kearney, New Jersey           | 33              | 5/16"         | 680          |
| 1929           | Wanaque, New Jersey           | 84              | 9/16"         | 6,520        |
| 1930           | Philadelphia, Pennsylvania    | 30 - 24         | 3/8"          | 7,120        |
| 1930           | Boston, Massachusetts         | 48              | 3/4"          | 2,200        |
| 1930           | Detroit, Michigan             | 72 - 48         | 5/8"          | 20,921       |
| 1930           | Erie, Pennsylvania            | 72              | —             | 11,695       |
| 1930           | Los Angeles, California       | 30              | 3/8"          | 12,312       |
| 1930           | New York, New York            | 72 - 36         | 1/2"          | 21,940       |
| 1930           | Pittsburgh, Pennsylvania      | 84 - 72         | 3/8"          | 673          |
| 1930           | Seattle, Washington           | 66 - 48         | 9/16" - 1/2"  | 5,635        |
| 1930           | U.S.B.R. - Vale, Oregon       | 101             | 7/16" - 5/16" | 7,130        |
| 1931           | U.S.B.R. - Yakima, Washington | 145             | 3/4" - 7/16"  | 552          |
| 1931           | Detroit, Michigan             | 72              | 5/8"          | 2,150        |
| 1931           | Los Angeles, California       | 48 - 45         | 3/8" - 1/4"   | 5,043        |
| 1931           | New York, New York            | 72 - 20         | 1/2"          | 2,020        |
| 1931           | Pittsburgh, Pennsylvania      | 84 - 72         | —             | 673          |
| 1931           | Placerville, California       | 30              | 1/4"          | 795          |
| 1933           | New York, New York            | 30              | 1/2"          | 196          |

APPROXIMATE TOTAL FOOTAGE = 5,220,000

# APPENDIX B

## Partial Tabulation of Lock-Bar Steel Water Pipe Installations 1905 to 1932

| Year Installed | Location                    | Diameter Inches | Thickness     | Footage Feet |
|----------------|-----------------------------|-----------------|---------------|--------------|
| 1905           | Passaic Valley, New Jersey  | 48 - 42         | 1/4"          | 10,000       |
| 1905           | Pittsburgh, Pennsylvania    | 50 - 30         | 3/8" - 1/4"   | 28,500       |
| 1905           | Lynchburg, Virginia         | 30              | —             | 11,500       |
| 1905           | Wilmington, Delaware        | 48 - 43         | —             | 20,000       |
| 1905           | Paterson, New Jersey        | 48 - 42         | 1/4"          | 11,500       |
| 1906           | Philadelphia, Pennsylvania  | 48 - 36         | —             | 86,980       |
| 1906           | New York, New York          | 72              | 7/16"         | 125,000      |
| 1906           | Honolulu, Hawaii            | 30              | —             | 8,000        |
| 1907           | Wilmington, Delaware        | 48 - 43         | 7/16" - 3/8"  | 20,340       |
| 1907           | Trenton, New Jersey         | 48              | 5/16"         | 7,000        |
| 1907           | Lockport, New York          | 30              | 1/4"          | 68,640       |
| 1907           | Vancouver, British Columbia | 30 - 22         | 5/16" - 1/4"  | 65,000       |
| 1907           | Montreal, Canada            | 36              | —             | 11,000       |
| 1907           | Gary, Indiana               | 36              | 1/4"          | 4,000        |
| 1908           | Springfield, Massachusetts  | 54 - 42         | 7/16" - 1/4"  | 75,000       |
| 1908           | Seattle, Washington         | 42              | 3/8" - 1/4"   | 17,394       |
| 1908           | Michigan City, Indiana      | 30              | —             | 4,000        |
| 1908           | Montreal, Canada            | 36              | —             | 25,000       |
| 1909           | Springfield, Massachusetts  | 42 - 30         | 3/8"          | 24,200       |
| 1909           | Portland, Oregon            | 48 - 24         | 1/4"          | 17,600       |
| 1909           | Brooklyn, New York          | 72              | —             | 83,000       |
| 1910           | Ensley, Alabama             | 50              | 3/8" - 5/16"  | 8,840        |
| 1910           | New York, New York          | 48              | 7/16"         | 16,000       |
| 1910           | Pittsburgh, Pennsylvania    | 24              | —             | 5,000        |
| 1910           | Portland, Oregon            | 52 - 44         | 1/4"          | 128,000      |
| 1910           | Seattle, Washington         | 42 - 24         | 1/4"          | 23,600       |
| 1910           | Seattle, Washington         | 32              | —             | 4,050        |
| 1910           | Butte, Montana              | 42              | —             | 1,200        |
| 1910           | Washington, D.C.            | 30              | 1/4"          | 1,220        |
| 1910           | Cuba                        | 36 - 28         | —             | 1,300        |
| 1911           | Pennsylvania Railroad       | 20              | —             | 7,770        |
| 1911           | Denver, Colorado            | 60              | 3/8"          | 1,200        |
| 1911           | Portland, Oregon            | 52 - 44         | 5/16" - 1/4"  | 130,000      |
| 1911           | Seattle, Washington         | 42 - 44         | 1/4"          | 16,000       |
| 1911           | Montreal, Canada            | 48 - 30         | —             | 7,300        |
| 1911           | Lakeland, Florida           | 20              | —             | 4,000        |
| 1911           | Massena, New York           | 24              | —             | 1,323        |
| 1911           | Marquette, Michigan         | 66              | —             | 8,000        |
| 1911           | Philadelphia, Pennsylvania  | 20              | —             | 7,770        |
| 1912           | Omaha, Nebraska             | 48              | —             | 10,550       |
| 1912           | Ottawa, Canada              | 42              | 3/16"         | 2,400        |
| 1912           | Union Bay, British Columbia | 50              | —             | 1,320        |
| 1912           | Rochester, New York         | 66              | —             | 9,200        |
| 1912           | Washington, D.C.            | 36 - 24         | 1/4"          | 471          |
| 1912           | Winnipeg, Canada            | 36              | —             | 42,500       |
| 1912           | Akron, Ohio                 | 36              | 7/16" - 1/4"  | 56,000       |
| 1912           | Denver, Colorado            | 60              | —             | —            |
| 1913           | Minneapolis, Minnesota      | 54 - 48         | 7/16" - 5/16" | 39,000       |
| 1913           | Montclair, New Jersey       | 24              | 1/4"          | 7,325        |
| 1913           | Utica, New York             | 36              | 1/4"          | 1,000        |
| 1913           | Winnipeg, Canada            | 36              | 1/4"          | 42,000       |
| 1913           | Schenectady, New York       | 24              | 1/4"          | 2,420        |



# APPENDIX B (Cont'd.)

| Year<br>Installed | Location                     | Diameter<br>Inches | Thickness     | Footage<br>Feet |
|-------------------|------------------------------|--------------------|---------------|-----------------|
| 1913              | Massena, New York            | 24                 | —             | 1,200           |
| 1913              | Wilkes-Barre, Pennsylvania   | 36                 | —             | 1,335           |
| 1914              | Minneapolis, Minnesota       | 48                 | 1/2" - 1/4"   | 11,970          |
| 1914              | New York, New York           | 66                 | 1/2" - 7/16"  | 12,500          |
| 1914              | Utica, New York              | 30                 | 1/4"          | 1,000           |
| 1914              | Brooklyn, New York           | 66                 | —             | 12,200          |
| 1914              | Ottawa, Canada               | 51                 | —             | 15,000          |
| 1914              | Schenectady, New York        | 36                 | 3/8"          | 10,500          |
| 1914              | Winnipeg, Canada             | 36                 | 1/4"          | 21,569          |
| 1914              | Essex Junction, Vermont      | 36                 | —             | 2,440           |
| 1914              | Rochester, New York          | 66 - 48            | —             | 1,120           |
| 1914              | Rutland, Vermont             | 54                 | —             | 2,750           |
| 1915              | Minneapolis, Minnesota       | 48                 | —             | 7,355           |
| 1915              | Ottawa, Canada               | 51                 | —             | 15,000          |
| 1916              | Seattle, Washington          | 42                 | —             | 2,625           |
| 1916              | Ottawa, Canada               | 51                 | —             | 1,945           |
| 1916              | Minneapolis, Minnesota       | 48 - 40            | —             | 7,341           |
| 1916              | Rochester, New York          | 37                 | —             | 50,754          |
| 1916              | St. Louis, Missouri          | 36                 | —             | 26,700          |
| 1916              | Brandon, Vermont             | 36                 | —             | 2,344           |
| 1916              | Gary, Indiana                | 36                 | —             | 1,865           |
| 1917              | Eastman-Kodak                | 42                 | —             | 7,910           |
| 1917              | Rochester, New York          | 37                 | —             | 42,140          |
| 1917              | Carnegie Gas Company         | 54 - 30            | —             | 48,537          |
| 1918              | Carnegie Gas Company         | 40                 | —             | 12,000          |
| 1919              | Akron, Ohio                  | 48                 | —             | 12,000          |
| 1919              | Jersey City, New Jersey      | 72                 | —             | 88,000          |
| 1920              | Elyria, Ohio                 | 36                 | —             | 24,500          |
| 1920              | Port Henry, Vermont          | 40 - 36            | —             | 3,000           |
| 1920              | Passaic, New Jersey          | 30                 | —             | 12,300          |
| 1920              | Salt Lake City, Utah         | 36                 | —             | 1,200           |
| 1920              | Bayonne, New Jersey          | 48                 | —             | 44,000          |
| 1920              | Akron, Ohio                  | 48                 | —             | 21,250          |
| 1920              | Detroit, Michigan            | 48                 | —             | 21,930          |
| 1921              | Detroit, Michigan            | 48                 | —             | 19,000          |
| 1921              | Saginaw, Michigan            | 36                 | —             | 5,000           |
| 1921              | Philadelphia, Pennsylvania   | 72 - 36            | —             | 10,500          |
| 1922              | Cleveland, Ohio              | 60                 | —             | 20,000          |
| 1922              | Montreal, Canada             | 48 - 36            | —             | 13,000          |
| 1922              | Detroit, Michigan            | 36                 | —             | 5,000           |
| 1922              | Bay City, Michigan           | 48                 | —             | 4,000           |
| 1923              | Cleveland, Ohio              | 60                 | —             | 10,400          |
| 1923              | Brooklyn, New York           | 72 - 60            | —             | 58,230          |
| 1923              | Detroit, Michigan            | 24                 | —             | 7,890           |
| 1923              | Kearney, New Jersey          | 30                 | —             | 5,600           |
| 1923              | Elyria, Ohio                 | 36                 | —             | 1,400           |
| 1923              | Portland, Oregon             | 58 - 50            | 5/16" - 1/4"  | 132,000         |
| 1924              | Boston, Massachusetts        | 68 - 56            | —             | 44,359          |
| 1924              | Kearney, New Jersey          | 30                 | —             | 5,150           |
| 1924              | Philadelphia, Pennsylvania   | 48                 | —             | 9,100           |
| 1924              | Cleveland, Ohio              | 48 - 42            | —             | 7,720           |
| 1924              | Seattle, Washington          | 54 - 24            | —             | 28,217          |
| 1925              | Seattle, Washington          | 54 - 24            | —             | 18,779          |
| 1925              | Philadelphia, Pennsylvania   | 36 - 30            | —             | 10,300          |
| 1925              | New York, New York           | 72                 | —             | 14,360          |
| 1925              | Cleveland, Ohio              | 48 - 36            | —             | 19,025          |
| 1925              | Tacoma, Washington           | 64                 | —             | 2,276           |
| 1925              | Detroit, Michigan            | 60 - 48            | —             | 33,686          |
| 1925              | Montreal, Canada             | 48 - 42            | —             | 13,583          |
| 1925              | Garfield, New Jersey         | 30                 | —             | 7,600           |
| 1925              | Omaha, Nebraska              | 48                 | —             | 21,970          |
| 1926              | Garfield, New Jersey         | 30                 | —             | 7,600           |
| 1926              | Seattle, Washington          | 54                 | —             | 8,330           |
| 1926              | Portland, Oregon             | 40 - 24            | —             | 22,775          |
| 1926              | Tacoma, Washington           | 52                 | —             | 2,600           |
| 1926              | Fairbanks, Alaska            | 56 - 46            | 7/16" - 1/4"  | 34,380          |
| 1926              | San Diego, California        | 36                 | 1/2" - 5/16"  | 88,791          |
| 1926              | New York, New York           | 36                 | —             | 1,072           |
| 1926              | Montreal, Canada             | 36                 | —             | 2,583           |
| 1926              | Garfield, New Jersey         | 30                 | —             | 5,185           |
| 1926              | Kearny, New Jersey           | 36                 | —             | 4,300           |
| 1926              | Oakland, California          | 54                 | 7/16"         | 2,448           |
| 1927              | Miami, Florida               | 51 - 45            | —             | 3,050           |
| 1927              | San Francisco, California    | 54                 | —             | 55,000          |
| 1927              | Kearny, New Jersey           | 48 - 30            | —             | 24,287          |
| 1927              | Minneapolis, Minnesota       | 48                 | —             | 49,130          |
| 1927              | Sacramento, California       | 42 - 24            | 5/16" - 1/4"  | 8,700           |
| 1928              | New York, New York           | 48 - 36            | —             | 9,270           |
| 1928              | San Francisco, California    | 54                 | 7/16" - 1/4"  | 56,097          |
| 1928              | Grove, New Jersey            | 54                 | —             | 3,257           |
| 1928              | Kearny, New Jersey           | 48 - 42            | —             | 9,670           |
| 1928              | St. John, New Brunswick      | 36                 | —             | 5,465           |
| 1929              | Wanaque Aqueduct, New Jersey | 74                 | 1/2" - 7/16"  | 171,500         |
| 1929              | Seattle, Washington          | 54                 | —             | 28,000          |
| 1929              | Newark, New Jersey           | 60                 | —             | 25,400          |
| 1929              | Minneapolis, Minnesota       | 48                 | —             | 15,500          |
| 1929              | Pittsburgh, Pennsylvania     | 36                 | —             | 1,100           |
| 1929              | Detroit, Michigan            | 60 - 48            | —             | 14,700          |
| 1930              | Seattle, Washington          | 54 - 24            | 7/16" - 5/16" | 34,900          |
| 1930              | New York, New York           | 48                 | 1/2"          | 8,200           |
| 1930              | Minneapolis, Minnesota       | 48 - 42            | 5/16"         | 31,000          |
| 1930              | Kearny, New Jersey           | 36                 | 3/8"          | 9,555           |
| 1931              | New Jersey                   | 52                 | 1/2"          | 30,000          |
| 1931              | Minneapolis, Minnesota       | 60 - 50            | 7/16" - 3/8"  | 2,000           |
| 1931              | Kearny, New Jersey           | 36                 | 3/8"          | 11,400          |
| 1932              | Minneapolis, Minnesota       | 42 - 36            | —             | 22,000          |
| 1932              | Newark, New Jersey           | 42                 | —             | 2,750           |

APPROXIMATE TOTAL FOOTAGE = 3,400,000

# APPENDIX C

## Partial Tabulation of WELDED Steel Water Pipe Installations - 1922 to 1970 1922 to 1930

| Year<br>Installed | Location                    | Diameter<br>Inches | Thickness     | Footage<br>Feet |
|-------------------|-----------------------------|--------------------|---------------|-----------------|
| 1922              | Walla Walla, Washington     | 24 - 20            | 3/16"         | 6,108           |
| 1922              | Spokane, Washington         | 30 - 24            | 1/4" - 7/32"  | 3,030           |
| 1923              | Astoria, Oregon             | 22                 | 1/4"          | 39,510          |
| 1923              | Banta, California           | 48                 | 3/16"         | 4,000           |
| 1923              | Tacoma, Washington          | 30                 | 1/4"          | 1,159           |
| 1924              | Vallejo, California         | 24 - 22            | 1/4" - 3/16"  | 116,160         |
| 1924              | Oakland, California         | 54                 | 3/8" - 1/2"   | 435,000         |
| 1925              | Oakland, California         | 42                 | 1/4"          | 4,210           |
| 1925              | San Francisco, California   | 30                 | 3/16"         | 4,500           |
| 1925              | Stockton, California        | 36                 | 3/16"         | 1,128           |
| 1926              | Laguna Beach, California    | 30                 | 3/16"         | 43,442          |
| 1926              | San Rafael, California      | 30 - 26            | 1/4"          | 37,400          |
| 1926              | Roseville, California       | 25 - 22            | 3/16"         | 8,212           |
| 1926              | Bakersfield, California     | 30                 | 3/16"         | 17,000          |
| 1926              | Bunker, California          | 48                 | 1/4"          | 470             |
| 1926              | Newark, California          | 60 - 48            | 3/8" - 1/4"   | 577             |
| 1926              | Pacific Grove, California   | 22                 | 3/16"         | 2,500           |
| 1926              | San Francisco, California   | 36 - 20            | 3/16"         | 10,700          |
| 1926              | Storrie, California         | 36 - 20            | 1/4" - 3/16"  | 42,240          |
| 1926              | La Mesa, California         | 24                 | 10 Ga.        | 21,120          |
| 1927              | Oakland, California         | 54 - 20            | 1/2" - 3/16"  | 4,400           |
| 1927              | Santa Cruz, California      | 24 - 20            | 3/16"         | 1,015           |
| 1927              | Springfield, Massachusetts  | 72 - 36            | 1/2" - 5/16"  | 37,000          |
| 1927              | Yakima, Washington          | 24                 | 1/4" - 3/16"  | 17,903          |
| 1928              | Everett, Washington         | 30                 | -             | 115,000         |
| 1928              | Boston, Massachusetts       | 30                 | 3/8"          | 19,000          |
| 1928              | Mt. Clemens, Michigan       | 30                 | -             | 5,000           |
| 1928              | Tacoma, Washington          | 51 - 48            | 5/16"         | 1,650           |
| 1928              | New York, New York          | 60 - 36            | 1/2"          | 25,390          |
| 1928              | Oakland, California         | 20                 | 3/16"         | 1,200           |
| 1928              | Pacific Grove, California   | 30                 | 1/4"          | 12,890          |
| 1928              | San Francisco, California   | 24 - 20            | 1/4" - 3/16"  | 31,760          |
| 1929              | Boston, Massachusetts       | 60 - 36            | 1/2"          | 8,800           |
| 1929              | Cleveland, Ohio             | 36 - 30            | 1/2"          | 1,340           |
| 1929              | Detroit, Michigan           | 66 - 48            | 1/2"          | 26,237          |
| 1929              | Honolulu, T.H.              | 30                 | 3/16"         | 351             |
| 1929              | Madera, California          | 30                 | 1/4"          | 12,829          |
| 1929              | Kansas City, Missouri       | 54                 | 7/16"         | 1,114           |
| 1929              | San Francisco, California   | 30 - 20            | 1/4" - 3/16"  | 35,400          |
| 1929              | Linden, New Jersey          | 28                 | 1/4"          | 340             |
| 1929              | Monroe, Michigan            | 36                 | 3/8"          | 5,200           |
| 1929              | Oakland, California         | 54 - 36            | 7/16" - 5/16" | 3,906           |
| 1929              | New York, New York          | 60 - 36            | 1/2"          | 18,525          |
| 1929              | Oakland, California         | 54 - 24            | 3/8" - 1/4"   | 2,198           |
| 1929              | Youngstown, Ohio            | 48 - 24            | 3/8"          | 134,590         |
| 1929              | Los Angeles, California     | 24                 | 5/16"         | 22,000          |
| 1930              | Boston, Massachusetts       | 60                 | 1/2"          | 5,400           |
| 1930              | Clyde, California           | 36 - 24            | 5/16" - 1/4"  | 16,628          |
| 1930              | Detroit, Michigan           | 48 - 24            | 1/2"          | 22,000          |
| 1930              | East Chicago, Indiana       | 54                 | -             | 10,000          |
| 1930              | Everett, Washington         | 52 - 24            | 1/2" - 3/16"  | 47,000          |
| 1930              | Los Angeles, California     | 40 - 24            | 3/8"          | 34,307          |
| 1930              | New York, New York          | 30                 | 1/2"          | 8,740           |
| 1930              | Oakland, California         | 24 - 20            | 5/16" - 1/4"  | 22,731          |
| 1930              | Salter, California          | 54 - 42            | 7/16" - 3/16" | 7,740           |
| 1930              | San Francisco, California   | 24 - 20            | 1/4" - 3/16"  | 14,080          |
| 1930              | Washington, D.C.            | 20                 | 8 Ga.         | 3,000           |
| 1930              | San Diego, California       | 40 - 36            | 3/8" - 3/16"  | 86,000          |
| 1930              | Tacoma, Washington          | 52 - 42            | -             | 20,000          |
| 1930              | Vancouver, British Columbia | 36 - 26            | -             | 50,000          |

APPROXIMATE TOTAL FOOTAGE = 1,700,000

## 1931 to 1940

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness      | Footage<br>Feet |
|-------------------|-----------------------------------|--------------------|----------------|-----------------|
| 1931              | Boston, Massachusetts             | 60                 | 1/2" - 3/8"    | 54,299          |
| 1931              | Cleves, Ohio                      | 54                 | 9/16"          | 332             |
| 1931              | Flint, Michigan                   | 44 - 30            | 5/16"          | 1,806           |
| 1931              | Little Falls, New Jersey          | 90 - 30            | 5/8" - 3/8"    | 844             |
| 1931              | Los Angeles, California           | 144 - 24           | 7/8" - 1/4"    | 263,000         |
| 1931              | New York, New York                | 72 - 20            | 1/2"           | 57,000          |
| 1931              | Oakland, California               | 24                 | 1/4"           | 7,310           |
| 1931              | Portland, Maine                   | 36                 | 3/8"           | 3,584           |
| 1931              | San Francisco, California         | 75 - 36            | 1/2" - 1/4"    | 464,000         |
| 1931              | San Leandro, California           | 30                 | 1/4"           | 23,000          |
| 1931              | Vancouver, British Columbia       | 36 - 20            | -              | 35,000          |
| 1931              | Vancouver, British Columbia       | 70                 | 3/4" - 11/16"  | 4,700           |
| 1931              | Anacortes, Washington             | 24                 | 3/16"          | 29,416          |
| 1931              | Seattle, Washington               | 66 - 48            | -              | 85,307          |
| 1931              | Everett, Washington               | 52 - 48            | 3/8" - 1/4"    | 52,000          |
| 1932              | Panther Valley, Pennsylvania      | 30                 | -              | 50,000          |
| 1932              | Boston, Massachusetts             | 60 - 20            | 1/2"           | 10,785          |
| 1932              | Los Angeles, California           | 84 - 24            | 3/8"           | 86,000          |
| 1932              | St. Louis, Missouri               | 36 - 28            | 5/8" - 7/16"   | 17,000          |
| 1932              | San Francisco, California         | 66 - 56            | 1/2" - 5/16"   | 2,408,000       |
| 1932              | Wilmette, Illinois                | 33                 | -              | 2,980           |
| 1933              | Ft. Wayne, Indiana                | 42                 | -              | 13,000          |
| 1933              | City of Los Angeles, California   | 94 - 80            | 1-1/16" - 3/8" | 18,000          |
| 1933              | Auburn, New York                  | 30                 | 3/8"           | 10,000          |
| 1933              | Vancouver, British Columbia       | 60                 | 3/4" - 9/16"   | 4,000           |
| 1933              | Washington, D.C.                  | 48                 | 9/16"          | 35,000          |
| 1934              | City of San Francisco, California | 66                 | 1/2" - 3/8"    | 80,000          |
| 1934              | Seattle, Washington               | 78                 | 5/16"          | 29,500          |

# APPENDIX C (Cont'd.)

| Year Installed | Location                          | Diameter Inches | Thickness      | Footage Feet |
|----------------|-----------------------------------|-----------------|----------------|--------------|
| 1934           | St. Louis, Missouri               | 60 - 48         | 7/16"          | 67,670       |
| 1934           | Hamilton, Ohio                    | 24              | 1/4"           | 33,450       |
| 1935           | Fort Smith, Arkansas              | 27              | —              | 118,800      |
| 1935           | Owyhee, Oregon                    | 126 - 108       | 13/16" - 3/8"  | 2,530        |
| 1935           | Tacoma, Washington                | 63 - 42         | 3/8" - 5/16"   | 35,785       |
| 1935           | Creede, California                | 84              | 3/8" - 1/4"    | 10,000       |
| 1935           | Boston, Massachusetts             | 48 - 36         | 1/2"           | 22,000       |
| 1935           | New Brunswick, New Jersey         | 24              | 5/16"          | 6,000        |
| 1935           | New York, New York                | 48 - 20         | 1/2"           | 39,000       |
| 1935           | Diamond Alkali Company            | 60              | 9/16"          | 3,200        |
| 1936           | City of San Francisco, California | 60              | 3/8"           | 82,000       |
| 1936           | Birmingham, Alabama               | 60 - 24         | —              | 147,000      |
| 1936           | Malheur, Oregon                   | 80              | 9/16" - 1/4"   | 23,178       |
| 1936           | Metropolitan Water District       | 138 - 116       | 1" - 1/2"      | 55,000       |
| 1936           | Metropolitan Water District       | 120 - 72        | —              | 6,000        |
| 1936           | Elyria, Ohio                      | 30              | —              | 18,480       |
| 1936           | Buffalo, New York                 | 36              | 1/2"           | 10,000       |
| 1936           | City of Los Angeles, California   | 40 - 24         | —              | 124,000      |
| 1936           | St. Louis, Missouri               | 60              | 9/16" - 1/2"   | 46,917       |
| 1937           | Denver, Colorado                  | 57 - 36         | —              | 19,440       |
| 1937           | San Gabriel Dam, California       | 120 - 51        | —              | 5,000        |
| 1937           | Salem, Oregon                     | 36 - 27         | —              | 60,000       |
| 1937           | Everett, Washington               | 52 - 30         | 7/16" - 1/4"   | 102,000      |
| 1937           | City of San Francisco, California | 60              | 3/8"           | 24,620       |
| 1938           | Grand Coulee, Washington          | 72              | 9/16" - 3/8"   | 955          |
| 1938           | Metropolitan Water District       | 55 - 51         | 15/32" - 3/8"  | 90,000       |
| 1938           | City of Los Angeles, California   | 36 - 24         | —              | 13,000       |
| 1938           | Lorain, Ohio                      | 30              | 7/16"          | 20,000       |
| 1938           | City of New York, New York        | 60              | —              | 14,510       |
| 1938           | Cleveland, Ohio                   | 36 - 24         | —              | 29,323       |
| 1938           | Grand Rapids, Michigan            | 54              | 9/16"          | 5,980        |
| 1938           | Grand Rapids, Michigan            | 42 - 36         | —              | 21,000       |
| 1939           | Polson, Montana                   | 48              | 3/8" - 1/4"    | 1,260        |
| 1939           | Spartanburg, South Carolina       | 24 - 20         | 1/4"           | 65,000       |
| 1939           | Metropolitan Water District       | 36 - 21         | 3/8" - 5/16"   | 38,000       |
| 1940           | Colorado Springs, Colorado        | 24              | 1-1/8" - 5/16" | 15,624       |
| 1940           | City of Los Angeles, California   | 78 - 36         | 1/2" - 3/8"    | 100,000      |
| 1940           | Montebello, Maryland              | 147             | 1/2"           | 11,625       |
| 1940           | Bremerton, Washington             | 24              | 1/4"           | 14,725       |

APPROXIMATE TOTAL FOOTAGE = 5,300,000

| 1941 to 1950   |                                    |                 |                |              |
|----------------|------------------------------------|-----------------|----------------|--------------|
| Year Installed | Location                           | Diameter Inches | Thickness      | Footage Feet |
| 1941           | Toledo, Ohio                       | 78 - 42         | 9/16"          | 90,000       |
| 1941           | Georgetown, South Carolina         | 24              | —              | 36,000       |
| 1941           | Bastrop, Louisiana                 | 28              | —              | 12,780       |
| 1941           | Birmingham, Alabama                | 42              | —              | 16,700       |
| 1942           | Decatur, Georgia                   | 30              | —              | 44,000       |
| 1942           | City of New York, New York         | 48 - 36         | —              | 5,400        |
| 1942           | Camp Hahn, California              | 24 - 20         | 5/16" - 3/16"  | 40,000       |
| 1942           | Springfield, Massachusetts         | 51              | 3/8"           | 12,500       |
| 1944           | Longmont, Colorado                 | 30              | 1/4"           | 18,000       |
| 1944           | Greeley, Colorado                  | 38 - 24         | 5/16" - 3/16"  | 190,000      |
| 1944           | Richland, Washington               | 42              | 17/32" - 5/16" | 117,964      |
| 1945           | U. S. Engineers                    | 60              | 3/4" - 5/8"    | 20,000       |
| 1946           | Tacoma, Washington                 | 48              | 5/16"          | 11,053       |
| 1946           | Monterey, California               | 30 - 24         | 1/4" - 3/16"   | 10,000       |
| 1946           | Grand Coulee, Washington           | 144             | 1" - 7/16"     | 9,373        |
| 1946           | U. S. Navy (San Diego, California) | 48              | 13/16" - 7/16" | 9,400        |
| 1946           | Oakland, California (E.B.M.U.D.)   | 30              | 3/16"          | 13,000       |
| 1946           | Sacramento, California             | 42 - 24         | 3/8" - 1/4"    | 35,220       |
| 1946           | City of San Francisco, California  | 60 - 36         | 1/2" - 3/16"   | 23,000       |
| 1947           | Seattle, Washington                | 48              | 3/8"           | 13,800       |
| 1947           | Oakland, California (E.B.M.U.D.)   | 69              | 1/2" - 3/8"    | 171,000      |
| 1947           | Salem, Oregon                      | 30              | 1/4"           | 8,000        |
| 1947           | City of New York, New York         | 36 - 30         | —              | 50,000       |
| 1947           | Saginaw, Michigan                  | 66              | —              | 10,427       |
| 1947           | Philadelphia, Pennsylvania         | 60 - 48         | 1/2" - 7/16"   | —            |
| 1947           | Syracuse, New York                 | 54              | 7/16"          | 4,264        |
| 1947           | Longmont, Colorado                 | 30              | 3/8" - 3/16"   | 20,000       |
| 1948           | Metropolitan Water District        | 46              | 3/8"           | 34,670       |
| 1948           | Savannah, Georgia                  | 48 - 36         | —              | 73,000       |
| 1948           | Macon, Georgia                     | 30              | —              | 19,200       |
| 1948           | Seattle, Washington                | 48              | —              | 13,740       |
| 1948           | Salem, Oregon                      | 24              | 1/4"           | 30,000       |
| 1948           | Springfield, Massachusetts         | 48              | 7/16" - 3/8"   | 26,000       |
| 1948           | City of San Francisco, California  | 60              | 7/8" - 3/8"    | 15,000       |
| 1948           | City of San Francisco, California  | 62              | 9/16" - 1/2"   | 113,000      |
| 1948           | California (Imperial Valley)       | 186             | 1/2"           | 720          |
| 1948           | Philadelphia, Pennsylvania         | 48 - 24         | 1/2" - 5/16"   | —            |
| 1948           | Jersey City, New Jersey            | 48              | 3/8"           | 12,000       |
| 1948           | Boston, Massachusetts              | 36 - 30         | 1/2"           | 4,450        |
| 1948           | Syracuse, New York                 | 49              | 5/16"          | —            |
| 1948           | Toledo, Ohio                       | 24              | 1/4"           | 13,148       |
| 1948           | Sterling, Colorado                 | 24              | 1/4" - 3/16"   | 7,500        |
| 1948           | Seaside, Oregon                    | 24              | 5/16"          | 11,280       |
| 1949           | City of New York, New York         | 85 - 48         | 1/2"           | —            |
| 1949           | Tulsa, Oklahoma                    | 30              | 5/16"          | 1,476        |
| 1949           | Golden, Colorado                   | 20              | 1/4" - 3/16"   | —            |
| 1949           | City of Los Angeles, California    | 67 - 58         | 1/2" - 3/8"    | 4,915        |
| 1949           | City of San Francisco, California  | 73              | 1/2" - 3/8"    | 91,000       |
| 1949           | New Orleans, Louisiana             | 50              | 3/8"           | 33,050       |
| 1949           | Seattle, Washington                | 66              | —              | 36,296       |
| 1950           | Medford, Oregon                    | 30 - 20         | 1/4" - 3/16"   | 62,434       |
| 1950           | San Francisco, California          | 62              | 1/2" - 7/16"   | 35,600       |
| 1950           | Seattle, Washington                | 42              | —              | 10,521       |

# APPENDIX C (Cont'd.)

| Year Installed | Location                 | Diameter Inches | Thickness    | Footage Feet |
|----------------|--------------------------|-----------------|--------------|--------------|
| 1950           | Tulsa, Oklahoma          | 36              | 5/16"        | 9,100        |
| 1950           | Portland, Oregon         | 36              | —            | 23,400       |
| 1950           | Cincinnati, Ohio         | 49              | 1/2"         | 8,400        |
| 1950           | Syracuse, New York       | 49              | 5/16"        | 8,350        |
| 1950           | Wilkesburg, Pennsylvania | 36 - 30         | 3/8" - 5/16" | 13,550       |
| 1950           | Boston, Massachusetts    | 36              | 1/2" - 7/16" | 27,100       |
| 1950           | Greeley, Colorado        | 27              | 3/16"        | 75,000       |
| 1950           | Allentown, Pennsylvania  | 36 - 30         | 3/8"         | 16,000       |
| 1950           | Cleveland, Ohio          | 48 - 24         | 9/16" - 3/8" | 33,500       |

APPROXIMATE TOTAL FOOTAGE = 2,000,000

| 1951 to 1960   |  |                 |                 |              |
|----------------|--|-----------------|-----------------|--------------|
| Year Installed | Location                                 | Diameter Inches | Thickness       | Footage Feet |
| 1951           | Hollywood, California                    | 83 - 66         | 1/2"            | 236          |
| 1951           | City of San Francisco, California        | 72              | 1/2" - 5/16"    | 90,000       |
| 1951           | City of Los Angeles, California          | 69              | 1 1/16" - 1/2"  | 23,902       |
| 1951           | City of Los Angeles, California          | 67 - 61         | 3/8"            | 32,200       |
| 1951           | City of Los Angeles, California          | 69              | 2" - 5/8"       | 4,400        |
| 1951           | City of Los Angeles, California          | 60              | 7/16"           | 900          |
| 1951           | City of Los Angeles, California          | 36              | 3/8"            | 3,000        |
| 1951           | Hamilton, Canada                         | 48 - 20         | 3/8"            | 38,000       |
| 1951           | Denver, Colorado                         | 54 - 36         | 1/4" - 3/16"    | 7,400        |
| 1951           | Pueblo, Colorado                         | 30 - 21         | 1/4" - 3/16"    | 35,000       |
| 1951           | Englewood, Colorado                      | 27 - 18         | —               | 30,000       |
| 1951           | Cleveland, Ohio                          | 48              | —               | 15,000       |
| 1951           | Tulahoma, Tennessee                      | 60              | 7/16"           | —            |
| 1951           | Philadelphia, Pennsylvania               | 54 - 48         | 1/2"            | 9,000        |
| 1951           | Cincinnati, Ohio                         | 48              | 1/2"            | 10,200       |
| 1952           | New Jersey                               | 72              | —               | 25,000       |
| 1952           | City of Los Angeles, California          | 61              | 1/2" - 3/8"     | 5,420        |
| 1952           | Williamsport, Pennsylvania               | 24              | 1/4"            | 1,600        |
| 1952           | Omaha, Nebraska                          | 48 - 36         | 3/8"            | 11,700       |
| 1952           | Pueblo, Colorado                         | 30 - 21         | 1/4"            | 36,000       |
| 1952           | San Jose, California                     | 30 - 18         | 5/16" - 10 Ga.  | 60,000       |
| 1952           | Atlanta, Georgia                         | 48              | 7/16"           | 6,000        |
| 1952           | New Orleans, Louisiana                   | 30 - 24         | 5/16" - 1/4"    | —            |
| 1952           | Santa Clara, California                  | 30              | 1/4"            | 15,000       |
| 1952           | Brazil                                   | 48 - 44         | 7/16"           | 2,060        |
| 1952           | Wheaton, Maryland                        | 31              | 3/8" - 5/16"    | 27,000       |
| 1952           | Boulder, Colorado                        | 24              | 1/4"            | 6,360        |
| 1952           | Metropolitan Water District              | 61 - 46         | 1/2" - 3/8"     | 51,000       |
| 1952           | City of Los Angeles, California          | 69 - 36         | 1/2" - 3/8"     | 7,923        |
| 1953           | Portland, Oregon                         | 66 - 56         | 1/2" - 5/16"    | 133,000      |
| 1953           | Metropolitan Water District              | 73 - 43         | 1 1/16" - 3/8"  | 86,477       |
| 1953           | Eastern Mun. Water District - California | 39 - 36         | 3/16"           | 38,510       |
| 1953           | City of Los Angeles, California          | 69 - 36         | 5/8" - 3/8"     | 23,658       |
| 1953           | City of Riverside, California            | 42 - 36         | 3/16"           | 9,977        |
| 1953           | Houston, Texas                           | 37              | 7/16"           | 37,929       |
| 1953           | Syracuse, New York                       | 49              | 5/16"           | 7,300        |
| 1953           | Tulahoma, Tennessee                      | 84 - 30         | 5/8" - 3/8"     | 25,000       |
| 1953           | Denver, Colorado                         | 36              | 3/8"            | 5,300        |
| 1953           | Philadelphia, Pennsylvania               | 43 - 30         | 7/16" - 3/8"    | 48,750       |
| 1953           | Colorado Springs, Colorado               | 42 - 30         | 5/16" - 3/16"   | 10,000       |
| 1953           | Augusta, Georgia                         | 36              | 5/16"           | 19,600       |
| 1953           | Calgary, Canada                          | 30              | 3/8"            | —            |
| 1953           | Omaha, Nebraska                          | 48 - 30         | 3/8"            | 2,720        |
| 1953           | Fort Smith, Arkansas                     | 30 - 22         | 3/16"           | 22,000       |
| 1953           | San Jose, California                     | 30 - 18         | 7 Ga. - 10 Ga.  | 57,000       |
| 1953           | Duluth, Minnesota                        | 30              | 5/16"           | 8,100        |
| 1953           | Lethbridge, Canada                       | 24 - 18         | 3/8" - 5/16"    | 14,500       |
| 1953           | Hemet, California                        | 24 - 20         | —               | 25,384       |
| 1953           | Fallbrook, California                    | 24              | —               | 23,311       |
| 1953           | San Francisco, California                | 61              | 7/16" - 3/8"    | 20,270       |
| 1954           | Hemet, California                        | 24 - 21         | 10 Ga. - 12 Ga. | 14,100       |
| 1954           | Las Vegas, Nevada                        | 24              | —               | 22,151       |
| 1954           | Colton, California                       | 24              | 10 Ga.          | 4,218        |
| 1954           | Covina, California                       | 25              | 10 Ga.          | 8,310        |
| 1954           | City of Los Angeles, California          | 60              | —               | 12,000       |
| 1954           | La Habra, California                     | 20              | 10 Ga.          | 16,000       |
| 1954           | City of Los Angeles, California          | 26 - 24         | 9/32" - 1/4"    | 5,500        |
| 1954           | Cincinnati, Ohio                         | 42              | 1/2"            | 11,800       |
| 1954           | Spartanburg, South Carolina              | 30 - 24         | 1/4"            | 48,980       |
| 1954           | Syracuse, New York                       | 39              | 3/8"            | 5,600        |
| 1954           | Pasco, Washington                        | 36 - 20         | 1/4" - 3/16"    | 13,850       |
| 1954           | Regina, California                       | 36              | 5/16" - 1/4"    | 190,000      |
| 1954           | Atikokan, Canada                         | 42 - 36         | 5/8" - 3/8"     | 61,000       |
| 1954           | Beaver Falls, Alaska                     | 48 - 24         | —               | 3,800        |
| 1954           | Nictaux, Nova Scotia                     | 66              | 5/8" - 3/8"     | 3,312        |
| 1954           | Omaha, Nebraska                          | 48 - 36         | 3/8"            | 9,700        |
| 1954           | Rifle, Colorado                          | 42 - 18         | 3/16"           | 3,844        |
| 1954           | Tuscaloosa, Alabama                      | 36 - 24         | 1/4"            | 26,900       |
| 1954           | Camino, California                       | 48 - 36         | 1/4"            | 29,712       |
| 1954           | City of New York, New York               | 72              | —               | 21,000       |
| 1954           | Colorado Springs, Colorado               | 30              | 1/2" - 1/4"     | 87,603       |
| 1954           | Tacoma, Washington                       | 78              | —               | 56,000       |
| 1954           | Muskegan Heights, Michigan               | 30              | 5/8"            | 4,500        |
| 1954           | Sparrows Point, Pennsylvania             | 96              | 5/8" - 1/2"     | 23,800       |
| 1954           | City of Los Angeles, California          | 71              | 1/4"            | 1,000        |
| 1954           | City of Riverside, California            | 36              | 1/4" - 3/16"    | 21,800       |
| 1954           | Tucson, Arizona                          | 36              | 1/4"            | 50,810       |
| 1954           | Las Vegas, Nevada                        | 39 - 36         | 3/16"           | 100,000      |
| 1954           | Metropolitan Water District              | 109 - 37        | 23/32" - 3/8"   | 102,250      |
| 1954           | City of Los Angeles, California          | 96 - 49         | 3/8" - 1/4"     | 18,940       |
| 1954           | Metropolitan Water District              | 120             | 3/4" - 3/8"     | 6,000        |
| 1954           | Santa Paula, California                  | 60              | 1/2"            | 800          |
| 1954           | La Canada, California                    | 39 - 36         | 7/32" - 3/16"   | 6,741        |

# APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness      | Footage Feet |
|----------------|---------------------------------|-----------------|----------------|--------------|
| 1955           | Tacoma, Washington              | 216             | 1" - 3/4"      | 950          |
| 1955           | Santa Paula, California         | 42 - 24         | 7 Ga. - 12 Ga. | 50,000       |
| 1955           | Pasadena, California            | 24              | 3/16"          | 5,600        |
| 1955           | Puente, California              | 28              | .21" - .13"    | 20,000       |
| 1955           | Worcester, Massachusetts        | 36 - 30         | -              | 34,300       |
| 1955           | Garden Grove, California        | 28 - 21         | 6 Ga.          | 50,000       |
| 1955           | Beverly Hills, California       | 24              | 9 Ga.          | 15,000       |
| 1955           | Metropolitan Water District     | 79 - 55         | 23/32" - 7/16" | 124,410      |
| 1955           | New Orleans, Louisiana          | 30              | -              | 25,000       |
| 1955           | City of Los Angeles, California | 61 - 36         | 13/32" - 1/4"  | 26,938       |
| 1955           | Riverside, California           | 36              | 1/4"           | 2,772        |
| 1955           | San Francisco, California       | 91              | 3/8"           | 5,105        |
| 1955           | San Francisco, California       | 61              | 7/16" - 3/8"   | 6,000        |
| 1955           | Colorado Springs, Colorado      | 24              | 3/8" - 1/4"    | 49,000       |
| 1955           | Wanship, Utah                   | 85              | -              | -            |
| 1955           | Cucamonga, California           | 24 - 21         | 3/16" - 12 Ga. | 20,000       |
| 1955           | San Bernardino, California      | 30              | 1/4"           | 1,800        |
| 1955           | Long Beach, California          | 24              | 5/16"          | 1,204        |
| 1955           | Casper, Wyoming                 | 24              | 1/4"           | 9,000        |
| 1955           | Reading, Pennsylvania           | 36 - 30         | 5/16" - 9/32"  | 33,000       |
| 1955           | Seattle, Washington             | 30              | 1/4"           | 5,300        |
| 1955           | Caracas, Venezuela              | 49              | 1" - 3/8"      | 90,000       |
| 1955           | Tulsa, Oklahoma                 | 48              | 1/2"           | 33,000       |
| 1955           | Philadelphia, Pennsylvania      | 48              | 7/16"          | 1,475        |
| 1955           | Loveland, Colorado              | 34              | 1/4"           | 10,000       |
| 1955           | Crossett, Arkansas              | 30 - 24         | 1/4"           | 40,800       |
| 1955           | Syracuse, New York              | 39 - 26         | 3/8" - 5/16"   | 4,502        |
| 1955           | Richmond, Virginia              | 66              | 1/2"           | 2,000        |
| 1955           | Shiprock, New Mexico            | 40              | 1/4"           | 8,695        |
| 1955           | Denver, Colorado                | 67              | 7/16"          | 4,000        |
| 1955           | Richmond, British Columbia      | 30 - 24         | 1/4"           | 30,000       |
| 1956           | Elsinore, California            | 33 - 20         | 10 Ga.         | 48,000       |
| 1956           | Lancaster, Pennsylvania         | 42              | 5/16"          | 55,500       |
| 1956           | Monrovia, California            | 24              | 11 Ga.         | 24,000       |
| 1956           | City of Los Angeles, California | 116 - 49        | 3/8" - 1/4"    | 23,925       |
| 1956           | Pomona, California              | 42              | 3/8" - 3/16"   | 19,578       |
| 1956           | Metropolitan Water District     | 73              | 31/32" - 7/16" | 116,685      |
| 1956           | Westwood, Massachusetts         | 36 - 30         | 1/4"           | 4,430        |
| 1956           | Oakley, California              | 24              | -              | 14,500       |
| 1956           | Oakdale, California             | 96 - 48         | 1-3/16" - 5/8" | -            |
| 1956           | San Rafael, California          | 24 - 20         | 1/4" - 3/16"   | 12,900       |
| 1956           | Pueblo, Colorado                | 42 - 24         | 3/8" - 1/4"    | 12,010       |
| 1956           | Seattle, Washington             | 48              | 5/16" - 1/4"   | 8,585        |
| 1956           | Littleton, Colorado             | 36              | 1/2"           | 5,640        |
| 1956           | Winter Park, Colorado           | 84              | 1/2" - 5/16"   | 3,960        |
| 1956           | Portland, Oregon                | 36              | 1/4"           | 8,000        |
| 1956           | Duluth, Minnesota               | 36              | 5/16"          | 11,120       |
| 1956           | Aurora, Colorado                | 27 - 12         | 1/4" - 10 Ga.  | 70,000       |
| 1956           | Omaha, Nebraska                 | 54 - 48         | -              | -            |
| 1956           | Lenoir, North Carolina          | 20              | 1/4"           | 53,000       |
| 1956           | Rupert, Idaho                   | 78              | -              | 1,500        |
| 1956           | North East, Pennsylvania        | 24 - 18         | 1/4"           | 9,550        |
| 1956           | Monrovia, California            | 24              | 11 Ga.         | 24,120       |
| 1956           | San Bernardino, California      | 20              | 1/4"           | 4,300        |
| 1956           | San Luis Obispo, California     | 24              | 3/16"          | 12,000       |
| 1956           | Elsinore, California            | 21              | 12 Ga.         | 3,882        |
| 1956           | Carlsbad, California            | 27 - 20         | 7/32" - 12 Ga. | 40,000       |
| 1956           | City of Los Angeles, California | 67 - 60         | 3/8"           | 1,920        |
| 1956           | City of Los Angeles, California | 30              | 1/4"           | 17,580       |
| 1956           | Long Beach, California          | 21              | -              | 7,590        |
| 1956           | Chino, California               | 24 - 20         | 12 Ga.         | 25,900       |
| 1956           | Newport Beach, California       | 24              | -              | 2,820        |
| 1957           | Metropolitan Water District     | 162 - 49        | 1-1/8" - 3/8"  | 227,703      |
| 1957           | City of Los Angeles, California | 61 - 36         | 3/8" - 5/16"   | 14,220       |
| 1957           | San Diego Aqueduct              | 76 - 73         | 1-1/8" - 3/8"  | 56,950       |
| 1957           | City of San Diego, California   | 36              | 3/16"          | 25,865       |
| 1957           | Ventura, California             | 39              | 1/4" - 10 Ga.  | 17,260       |
| 1957           | Newport Beach, California       | 30              | 3/16"          | 13,000       |
| 1957           | San Francisco, California       | 79              | 3/8"           | 7,400        |
| 1957           | City of Los Angeles, California | 22              | 3/8"           | 36,000       |
| 1957           | Englewood, Colorado             | 24              | -              | 12,000       |
| 1957           | Monte Vista, Colorado           | 84              | 3/8" - 1/4"    | 8,108        |
| 1957           | Gramercy, Louisiana             | 54              | 5/16" - 1/4"   | 4,400        |
| 1957           | Cleveland, Ohio                 | 54              | 11/16" - 9/16" | -            |
| 1957           | Philadelphia, Pennsylvania      | 36              | 3/8"           | 3,160        |
| 1957           | Brighton, Colorado              | 24 - 16         | 3/16" - 7 Ga.  | 12,900       |
| 1957           | Grand Junction, Colorado        | 20              | 7 Ga.          | 10,800       |
| 1957           | Medford, Oregon                 | 24              | 7 Ga.          | 7,500        |
| 1957           | Colton, California              | 30 - 20         | 10 Ga.         | 8,521        |
| 1957           | Torrance, California            | 24              | -              | 6,800        |
| 1957           | Camarillo, California           | 30 - 20         | 3 Ga. - 3/16"  | 16,000       |
| 1957           | San Bernardino, California      | 30              | -              | 3,405        |
| 1957           | Statesville, North Carolina     | 24              | 1/4"           | 28,000       |
| 1957           | Jefferson Co., Colorado         | 54              | 3/8"           | 5,300        |
| 1957           | Aberdeen, Washington            | 28-1/2          | 1/4"           | 13,474       |
| 1957           | Atlanta, Georgia                | 36              | 5/16"          | 4,900        |
| 1957           | Colorado Springs, Colorado      | 24              | 1/4"           | 57,000       |
| 1957           | Longmont, Colorado              | 27 - 24         | 3/16"          | 55,300       |
| 1958           | St. Paul, Minnesota             | 90 - 60         | 7/16" - 3/8"   | 64,000       |
| 1958           | Phoenix, Arizona                | 48 - 45         | 5/16" - 1/4"   | 36,879       |
| 1958           | City of Los Angeles, California | 49 - 37         | 11/32" - 1/4"  | 45,918       |
| 1958           | Oceanside, California           | 24              | 3/16" - 10 Ga. | 30,000       |
| 1958           | San Diego Co. Water Authority   | 75 - 66         | 5/8" - 5/16"   | 184,914      |
| 1958           | Metropolitan Water District     | 76              | 7/8" - 7/16"   | 31,315       |
| 1958           | San Bernardino, California      | 36              | 1/4"           | 780          |
| 1958           | City of Los Angeles, California | 61              | 5/16"          | 2,220        |
| 1958           | City of Los Angeles, California | 24 - 20         | 5/16" - 1/4"   | 4,500        |
| 1958           | San Rafael, California          | 27 - 24         | -              | 5,430        |

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# APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness       | Footage Feet |
|----------------|---------------------------------|-----------------|-----------------|--------------|
| 1958           | Riverside, California           | 30 - 20         | 3/16" - 10 Ga.  | 5,700        |
| 1958           | Fallbrook, California           | 20              | —               | 13,000       |
| 1958           | El Segundo, California          | 28              | 10 Ga.          | 1,300        |
| 1958           | San Francisco, California       | 90 - 80         | 1-5/8" - 3/4"   | 7,028        |
| 1958           | Orange, California              | 24              | —               | 3,688        |
| 1958           | Colton, California              | 30              | —               | 3,500        |
| 1958           | Carlsbad, California            | 20              | 10 Ga.          | 6,120        |
| 1958           | Vernon, California              | 24              | 10 Ga.          | 2,654        |
| 1958           | Oceanside, California           | 24              | 3/16" - 10 Ga.  | 30,000       |
| 1958           | San Diego Co. Water Authority   | 75 - 66         | 5/8" - 5/16"    | 184,914      |
| 1958           | Metropolitan Water District     | 76              | 7/8" - 7/16"    | 31,315       |
| 1958           | San Bernardino, California      | 36              | 1/4"            | 480          |
| 1959           | Los Banos, California           | 63 - 54         | 5/16"           | 12,000       |
| 1959           | Santa Monica, California        | 36              | 3/16"           | 7,639        |
| 1959           | City of Los Angeles, California | 70 - 36         | 15/32" - 3/16"  | 43,550       |
| 1959           | San Diego, California           | 36              | 3/16"           | 6,461        |
| 1959           | Metropolitan Water District     | 67 - 37         | 7/8" - 3/8"     | 76,580       |
| 1959           | Phoenix, Arizona                | 60 - 54         | 11/32" - 5/16"  | 20,530       |
| 1959           | Long Beach, California          | 36              | 10 Ga.          | 1,272        |
| 1959           | Terra Bella, California         | 54              | 5/16"           | 26,000       |
| 1959           | San Diego Co. Water Authority   | 69 - 66         | 15/16" - 3/8"   | 72,231       |
| 1959           | Wahluke, Washington             | 186             | 1-1/16" - 3/16" | 8,500        |
| 1959           | Atlanta, Georgia                | 36 - 30         | 5/16"           | 9,116        |
| 1959           | Green Springs, Oregon           | 48 - 32         | —               | 9,600        |
| 1959           | City of Los Angeles, California | 73 - 61         | 3/8" - 5/16"    | 8,400        |
| 1959           | City of Los Angeles, California | 67 - 31         | 5/16" - 1/4"    | 4,500        |
| 1959           | City of Los Angeles, California | 30 - 24         | 5/16" - 3/16"   | 16,000       |
| 1959           | Ontario, California             | 24 - 20         | 8 Ga. - 10 Ga.  | 3,750        |
| 1959           | Terra Bella, California         | 36 - 20         | 3/16" - 10 Ga.  | 30,000       |
| 1959           | Monrovia, California            | 24              | 12 Ga.          | 3,235        |
| 1959           | Pomona, California              | 20              | 11 Ga.          | 3,850        |
| 1959           | Weston, Massachusetts           | 48 - 36         | —               | 13,315       |
| 1960           | City of Los Angeles, California | 73 - 41         | 9/16" - 9/32"   | 15,575       |
| 1960           | Metropolitan Water District     | 61              | 3/4" - 3/8"     | 20,325       |
| 1960           | California Electric Power       | 60              | 1/4"            | 3,300        |
| 1960           | Phoenix, Arizona                | 54 - 36         | 1/2" - 1/4"     | 83,565       |
| 1960           | City of San Diego, California   | 51              | 1/2" - 5/16"    | 7,666        |
| 1960           | Anaheim, California             | 36              | 3/16"           | 5,214        |
| 1960           | Camarillo, California           | 54 - 36         | 1/4" - 3/16"    | 17,980       |
| 1960           | Metropolitan Water District     | 85 - 37         | 7/16" - 3/8"    | 905          |
| 1960           | San Bernardino, California      | 36              | 9/32" - 11 Ga.  | 28,070       |
| 1960           | Ontario, California             | 25              | 8 Ga.           | 3,400        |
| 1960           | Riverside, California           | 24              | —               | 1,287        |
| 1960           | Hemet, California               | 25 - 21         | 10 Ga.          | 10,600       |
| 1960           | Ventura, California             | 24              | —               | 18,610       |
| 1960           | Chino, California               | 30              | —               | 28,150       |
| 1960           | San Bernardino, California      | 30              | —               | 9,917        |
| 1960           | Navajo Dam, New Mexico          | 110             | —               | —            |
| 1960           | Santa Cruz, California          | 36 - 18         | —               | 13,025       |
| 1960           | Bellingham, Washington          | 40              | —               | 50,000       |
| 1960           | Fremont, California             | 30 - 18         | —               | 13,460       |
| 1960           | San Rafael, California          | 33              | —               | 32,300       |
| 1960           | Oakland, California             | 91-1/2 - 55     | 5/8" - 1/2"     | 4,921        |

APPROXIMATE TOTAL FOOTAGE = 5,400,000

| Year Installed | Location                             | Diameter Inches | Thickness     | Footage Feet |
|----------------|--------------------------------------|-----------------|---------------|--------------|
| 1961           | Toronto, Canada                      | 96              | 3/8"          | 4,150        |
| 1961           | Boston, Massachusetts                | 52 - 36         | —             | 16,000       |
| 1961           | Spartanburg, South Carolina          | 30              | —             | 14,250       |
| 1961           | San Jose, California                 | 48              | 1/4"          | 12,000       |
| 1961           | Seattle, Washington                  | 34              | —             | 25,000       |
| 1961           | City of Los Angeles, California      | 61 - 37         | 9/16" - 1/4"  | 23,873       |
| 1961           | Santiago Aqueduct, California        | 54 - 39         | 7/16" - 3/16" | 62,905       |
| 1961           | Calleguas, California                | 48              | 13/32" - 1/4" | 31,091       |
| 1961           | El Segundo, California               | 61              | 9/16"         | 3,009        |
| 1961           | San Diego, California                | 118             | 3/4"          | 13,000       |
| 1961           | Metropolitan Water District          | 145 - 97        | 1"            | 3,911        |
| 1961           | San Diego, California                | 42              | 3/8" - 9/32"  | 23,575       |
| 1961           | Tri-Cities, California               | 45 - 39         | 5/16" - 1/4"  | 30,520       |
| 1961           | Long Beach, California               | 42 - 36         | 3/16"         | 16,076       |
| 1961           | Sacramento, California               | 30 - 18         | —             | 21,574       |
| 1961           | Novato, California                   | 30              | —             | 53,900       |
| 1961           | Santa Maria, California              | 30 - 20         | —             | 30,275       |
| 1961           | City of Los Angeles, California      | 36 - 20         | 7/16" - 1/4"  | 16,030       |
| 1961           | Nevada (Aetron)                      | 42              | 7/16" - 1/4"  | 6,507        |
| 1961           | County of Los Angeles, California    | 30              | .225"         | 81,745       |
| 1961           | Calleguas, California                | 30 - 24         | 3/16" - 8 Ga. | 17,000       |
| 1961           | Pasadena, California                 | 24              | 3/16"         | 1,310        |
| 1961           | Carpinteria, California              | 30 - 24         | 5/16" - 3/16" | 1,640        |
| 1961           | Riverside, California                | 24 - 20         | 10 Ga.        | 13,700       |
| 1961           | Fruitvale, California                | 24              | .281"         | 2,374        |
| 1961           | Santa Fe Irrig. District, California | 20              | 10 Ga.        | 9,600        |
| 1961           | Hemet, California                    | 24 - 21         | 10 Ga.        | 15,600       |
| 1962           | Wisconsin Rapids, Wisconsin          | 20              | 1/4"          | 11,800       |
| 1962           | Rochester, New York                  | 60 - 48         | —             | 30,000       |
| 1962           | High Point, North Carolina           | 36 - 18         | —             | 11,287       |
| 1962           | St. Louis, Missouri                  | 42 - 36         | —             | 15,000       |
| 1962           | Las Vegas, Nevada                    | 36              | 3/16"         | 21,335       |
| 1962           | La Mesa, California                  | 60 - 36         | 1/4" - 3/16"  | 3,164        |
| 1962           | Calleguas, California                | 54 - 48         | 9/16" - 1/4"  | 153,000      |
| 1962           | Metropolitan Water District          | 79 - 55         | 31/32" - 3/8" | 125,360      |
| 1962           | Perris, California                   | 42 - 36         | 3/16"         | 15,000       |
| 1962           | Oakland, California                  | 27 - 24         | —             | 21,370       |
| 1962           | Oakland, California                  | 87 - 65         | 1/2" - 5/16"  | 188,000      |

# APPENDIX C (Cont'd.)

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness        | Footage<br>Feet |
|-------------------|-----------------------------------|--------------------|------------------|-----------------|
| 1962              | San Francisco, California         | 24                 | —                | 23,025          |
| 1962              | Alameda County, California        | 24                 | —                | 9,565           |
| 1962              | San Rafael, California            | 24                 | —                | 7,600           |
| 1962              | Burlingame, California            | 34                 | —                | 6,188           |
| 1962              | San Bernardino, California        | 20                 | 3/16"            | 9,407           |
| 1962              | Rainbow, California               | 36 - 20            | 1/4" - 12 Ga.    | 17,000          |
| 1962              | Rialto, California                | 24                 | —                | 7,700           |
| 1962              | Anaheim, California               | 24 - 21            | —                | 13,260          |
| 1962              | City of Los Angeles, California   | 24                 | 5/16"            | 10,000          |
| 1962              | Oceanside, California             | 42 - 24            | 3/16" - 12 Ga.   | 57,000          |
| 1962              | Hemet, California                 | 42 - 27            | 3/16" - 10 Ga.   | 47,000          |
| 1962              | Santa Ana, California             | 33 - 30            | 3/16" - 8 Ga.    | 29,650          |
| 1962              | El Toro, California               | 24 - 21            | 8 Ga. - 10 Ga.   | 12,690          |
| 1962              | City of Los Angeles, California   | 60                 | 7/16"            | 790             |
| 1962              | San Diego, California             | 36                 | 3/16"            | 7,988           |
| 1962              | Long Beach, California            | 36                 | 1/4" - 3/16"     | 2,243           |
| 1963              | Sacramento, California            | 60 - 48            | —                | —               |
| 1963              | Nevada                            | 88 - 36            | 3/4" - 5/8"      | 10,236          |
| 1963              | Oakland, California               | 78                 | —                | 1,700           |
| 1963              | Pasadena, California              | 24                 | 3/16"            | 7,170           |
| 1963              | Las Vegas, Nevada                 | 24                 | —                | 15,825          |
| 1963              | Fullerton, California             | 24                 | —                | 4,120           |
| 1963              | Los Alisos, California            | 27 - 21            | —                | 5,100           |
| 1963              | San Diego, California             | 36                 | 1/4" - 3/16"     | 42,361          |
| 1963              | Metropolitan Water District       | 49 - 43            | 17/32" - 3/8"    | 40,400          |
| 1963              | Calleguas, California             | 54 - 39            | 15/32" - 3/16"   | 92,538          |
| 1963              | Tucson, Arizona                   | 48 - 36            | 1/4" - 3/16"     | 50,925          |
| 1963              | City of Los Angeles, California   | 66 - 41            | 1/2" - 1/4"      | 6,320           |
| 1963              | Costa Mesa, California            | 42 - 36            | 5/16" - 3/16"    | 29,477          |
| 1963              | West Orange, California           | 36                 | 3/16"            | 13,500          |
| 1963              | Glendale, California              | 48                 | 1/4"             | 850             |
| 1963              | Phoenix, Arizona                  | 66                 | 1/4"             | 13,149          |
| 1963              | County of Los Angeles, California | 45                 | 3/8" - 3/16"     | 23,621          |
| 1963              | Birmingham, Alabama               | 60                 | —                | 180,000         |
| 1963              | San Francisco, California         | 79-1/2             | 1/2" - 3/8"      | 110,000         |
| 1963              | Ramona, California                | 20 - 18            | —                | 35,380          |
| 1963              | Ambridge, Pennsylvania            | 24                 | 5/16"            | 9,717           |
| 1963              | DeKalb County, Georgia            | 30                 | .281"            | 150,000         |
| 1963              | Reading, Pennsylvania             | 36 - 30            | —                | 31,000          |
| 1963              | Seattle, Washington               | 66 - 60            | —                | 15,000          |
| 1963              | South Bay Aqueduct, California    | 90 - 72            | 15/32" - 3/8"    | 120,000         |
| 1963              | Denver, Colorado                  | 96                 | 1/4"             | —               |
| 1963              | Norfolk, Virginia                 | 36                 | —                | 1,600           |
| 1964              | Colorado Springs, Colorado        | 36                 | 1/4"             | 60,000          |
| 1964              | St. Louis, Missouri               | 60 - 36            | —                | 50,000          |
| 1964              | Flagstaff, Arizona                | 36                 | 3/16"            | 19,270          |
| 1964              | Calleguas, California             | 48 - 36            | 1/4" - 3/16"     | 84,000          |
| 1964              | San Diego Co. Water Authority     | 66                 | 1" - 5/16"       | 40,090          |
| 1964              | Redlands, California              | 20                 | 12 Ga.           | 8,400           |
| 1964              | Long Beach, California            | 24                 | 5/16"            | 9,000           |
| 1964              | Las Vegas, Nevada                 | 24                 | —                | 57,569          |
| 1964              | Fullerton, California             | 24                 | —                | 5,710           |
| 1964              | Los Angeles County, California    | 27                 | 10 Ga.           | 24,016          |
| 1964              | Huntington Beach, California      | 30                 | —                | 18,200          |
| 1964              | Tempe, Arizona                    | 36 - 24            | —                | 7,690           |
| 1964              | Brushy Creek, California          | 63                 | 3/4" - 1/4"      | 4,000           |
| 1964              | Buena Park, California            | 36                 | 3/16"            | 7,835           |
| 1964              | Anaheim, California               | 36                 | 3/16"            | 1,720           |
| 1964              | San Diego, California             | 36                 | 3/16"            | 6,088           |
| 1964              | Oxnard, California                | 45 - 36            | 1/4" - 3/16"     | 35,686          |
| 1964              | City of Los Angeles, California   | 36                 | 3/8"             | 8,350           |
| 1964              | La Mesa, California               | 36                 | 3/16"            | 1,085           |
| 1964              | Los Banos, California             | 210 - 84           | 1-3/8" - 1-3/16" | 9,300           |
| 1965              | Martinez, California              | 36 - 18            | —                | 18,085          |
| 1965              | Houston, Texas                    | 60                 | 3/8"             | 9,300           |
| 1965              | Riverside, California             | 42                 | 3/16"            | 3,292           |
| 1965              | City of Los Angeles, California   | 77                 | 3/4" - 3/8"      | 54,300          |
| 1965              | Washington, D.C.                  | 66 - 36            | —                | 4,400           |
| 1965              | Delta, California                 | 180                | —                | 2,800           |
| 1966              | City of Los Angeles, California   | 88                 | 7/16" - 3/8"     | 46,222          |
| 1966              | City of Los Angeles, California   | 54                 | 11/32" - 3/8"    | 13,340          |
| 1966              | City of Los Angeles, California   | 54                 | 5/16"            | 8,747           |
| 1966              | Metropolitan Water District       | 151-1/2            | 1-1/4" - 1/2"    | 10,500          |
| 1966              | Metropolitan Water District       | 85 - 79            | 29/32" - 17/32"  | 70,000          |
| 1966              | Olean, New York                   | 20                 | —                | 6,620           |
| 1967              | Metropolitan Water District       | 85 - 79            | 1-3/16" - 1/2"   | 82,795          |
| 1967              | Metropolitan Water District       | 201                | —                | 411             |
| 1967              | City of Los Angeles, California   | 54                 | 3/8" - 11/32"    | 7,268           |
| 1967              | Metropolitan Water District       | 79                 | 7/8" - 21/32"    | 25,965          |
| 1967              | Las Vegas, Nevada                 | 60 - 48            | 1/4"             | 20,476          |
| 1967              | Bethlehem, Pennsylvania           | 42 - 36            | —                | 51,000          |
| 1967              | Bronx, New York                   | 48                 | —                | 16,000          |
| 1967              | Houston, Texas                    | 60                 | —                | 10,000          |
| 1967              | City of San Francisco, California | 60                 | 3/8" - 5/16"     | 23,000          |
| 1967              | Buena Vista, California           | 108                | 1/2" - 5/16"     | 4,673           |
| 1967              | Wind Gap, California              | 109                | 1/2" - 3/16"     | 10,000          |
| 1967              | Oso, California                   | 109                | 3/8"             | 9,000           |
| 1967              | Wheeler Ridge, California         | 109                | 9/16" - 5/16"    | 10,000          |
| 1967              | Tehachapi Lift, California        | 168 - 150          | 2-1/2" - 1/2"    | 16,000          |
| 1968              | Pastoria, California              | 192                | 5/8" - 9/16"     | 1,642           |
| 1968              | Las Vegas, Nevada                 | 60 - 42            | 1/4" - 3/16"     | 32,715          |
| 1968              | Little Lake, California           | 78                 | 15/16" - 3/8"    | 104,897         |
| 1968              | Jawbone, California               | 85 - 82            | 1-1/8" - 3/8"    | 54,708          |
| 1968              | Metropolitan Water District       | 100                | 3/4" - 9/16"     | 23,300          |
| 1968              | Metropolitan Water District       | 89                 | 1" - 1/2"        | 26,235          |
| 1968              | Metropolitan Water District       | 121-1/2            | 11/16"           | 5,270           |
| 1968              | Alexandria, Virginia              | 72                 | —                | 3,800           |

## APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness        | Footage Feet |
|----------------|---------------------------------|-----------------|------------------|--------------|
| 1968           | San Francisco, California       | 79-1/2          | 1/2" - 3/8"      | 250,000      |
| 1968           | Washington, D.C.                | 60              | —                | 23,000       |
| 1969           | Bethlehem, Pennsylvania         | 42 - 30         | —                | 46,644       |
| 1969           | San Francisco, California       | 96 - 90         | —                | 180,000      |
| 1969           | City of Los Angeles, California | 162 - 90        | 1-7/8" - 7/16"   | 6,000        |
| 1969           | City of Los Angeles, California | 103             | 5/8" - 1/2"      | 3,000        |
| 1969           | Pearblossom, California         | 103             | 1 1/16" - 5/8"   | 610          |
| 1970           | Metropolitan Water District     | 97 - 94         | 1-1/16" - 25/32" | 26,310       |
| 1970           | Henderson, Nevada               | 90 - 66         | 9/16" - 1/4"     | 74,640       |
| 1970           | San Diego Co. Water Authority   | 97              | 1" - 1/2"        | 59,295       |
| 1970           | Stanislaus River, California    | 276 - 72        | 1-1/4" - 5/16"   | 6,260        |
| 1970           | Rialto, California              | 137 - 122       | 1-1/4" - 1/2"    | 45,210       |

APPROXIMATE TOTAL FOOTAGE = 4,500,000

## APPENDIX D

### SUMMARY OF APPENDICES A, B AND C

The tabulations in Appendices A, B and C covering installations of riveted, Lock-Bar and welded steel water pipe from 1858 to 1970 are only partially complete, but do include most of the major installations known at this time. Except for the portion of Appendix A covering riveted steel water pipe installations up to 1900, all other tabulations include pipe sizes of 20" diameter and larger, and do *not* include any penstocks.

All of the tabulations include 311 installations of riveted steel pipe, 150 Lock-Bar steel pipe installations; and 563 welded steel pipe installations; or a grand total of 1,024 installations. Of the installations prior to 1900,

most of them are still in service, and will reach a useful service life of at least 100 years. Six installations have already reached the 100-year mark.

The grand total footage of all of these installations amounts to almost 30,000,000' of 20" diameter and larger. The breakdown by types and periods is as follows:

| Period      | Riveted     | Lock-Bar   | Welded      |
|-------------|-------------|------------|-------------|
| 1858 - 1900 | 2,000,000'  | —          | —           |
| 1901 - 1930 | 5,220,000'  | 3,400,000' | 1,700,000'  |
| 1931 - 1940 | —           | —          | 5,300,000'  |
| 1941 - 1950 | —           | —          | 2,000,000'  |
| 1951 - 1960 | —           | —          | 5,400,000'  |
| 1961 - 1970 | —           | —          | 4,500,000'  |
| TOTALS      | 7,220,000'  | 3,400,000' | 18,900,000' |
| GRAND TOTAL | 29,520,000' |            |             |

## APPENDIX E

### TYPES OF STEEL AVAILABLE FOR STEEL PLATE WATER PIPE

| ASTM Specification | Quality | Min. Tensile Strength PSI | Min. Yield Point PSI | Recommended Design Stress PSI | Remarks  |
|--------------------|---------|---------------------------|----------------------|-------------------------------|--|
| A36                | ST.     | 58,000                    | 36,000               | 19,300                        | Economical strength. Down to 5°F. temp.              |
| A131A              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to 5°F. temp.                                   |
| A131B              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to -25°F. temp. to 1/2" plate.                  |
| A131C              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to -25°F. temp. to 1" plate.                    |
| A283B              | ST.     | 50,000                    | 27,000               | 16,665                        | Economical low cost steel.                           |
| A283C              | ST.     | 55,000                    | 30,000               | 18,300                        | Economical low cost steel.                           |
| A283D              | ST.     | 60,000                    | 33,000               | 20,000                        | Economical low cost steel.                           |
| A285B              | P.V.    | 50,000                    | 27,000               | 16,665                        | Individual plate test.                               |
| A285C              | P.V.    | 55,000                    | 30,000               | 18,300                        | Individual plate test.                               |
| A441               | ST.     | 70,000                    | 50,000               | 25,000                        | Good strength and corrosion resistance above ground. |
| A514               | ST.     | 115,000                   | 100,000              | 50,000                        | High strength. Q&T. Notch toughness. Fine grain.     |
| A516-Gr. 60        | P.V.    | 60,000                    | 70,000               | 20,000                        | Down to -25°F. temp. to 1" plate.                    |
| A516-Gr. 70        | P.V.    | 32,000                    | 38,000               | 23,300                        | Down to -25°F. temp. to 1" plate.                    |
| A517               | ST.     | 115,000                   | 100,000              | 50,000                        | Killed steel. Fine grain. High strength. Q&T.        |
| A537A              | P.V.    | 70,000                    | 50,000               | 25,000                        | Normalized. Fine grain.                              |
| A537B              | P.V.    | 80,000                    | 60,000               | 30,000                        | Fine grain. Q&T.                                     |
| A572-Gr. 42        | ST.     | 60,000                    | 42,000               | 21,000                        | Good strength.                                       |
| A572-Gr. 45        | ST.     | 60,000                    | 45,000               | 22,500                        | Good strength.                                       |
| A572-Gr. 50        | ST.     | 65,000                    | 50,000               | 25,000                        | Good strength.                                       |
| A572-Gr. 55        | ST.     | 70,000                    | 55,000               | 27,500                        | Good strength.                                       |
| A572-Gr. 60        | ST.     | 75,000                    | 60,000               | 30,000                        | High strength.                                       |
| A572-Gr. 65        | ST.     | 80,000                    | 65,000               | 32,500                        | High strength.                                       |
| A573-Gr. 65        | ST.     | 65,000                    | 35,000               | 21,665                        | Fine grain.  |
| A573-Gr. 70        | ST.     | 70,000                    | 38,000               | 23,330                        | Fine grain.  |
| A588A              | ST.     | 70,000                    | 50,000               | 25,000                        | Fine grain. High corrosion resistance above ground.  |



## APPENDIX F

### 42 Major Aqueducts Longer Than 20 Miles

#### Including

#### Pipelines, Pump Lifts, Tunnels, Canals, Grade Conduits

| Overall Length Miles | Location                                    | Year Installed |
|----------------------|---|----------------|
| 600                  | Feather River Aqueduct - California         | 1972           |
| 351                  | Coolgardie - Australia                      | 1902           |
| 340                  | Los Angeles Aqueduct - California - First   | 1913           |
| 266                  | Apulian Aqueduct - Italy                    | 1915           |
| 242                  | Colorado River Aqueduct - California        | 1939           |
| 154                  | Hetch Hetchy Aqueduct - California - First  | 1931           |
| 154                  | Hetch Hetchy Aqueduct - California - Second | 1949           |
| 154                  | Hetch Hetchy Aqueduct - California - Third  | 1968           |
| 120                  | New York City Aqueduct                      | 1906           |
| 100                  | Los Angeles Aqueduct - California - Second  | 1968           |
| 98                   | Winnipeg, Canada                            | 1918           |
| 90                   | Mokelumne Aqueduct - California - First     | 1924           |
| 90                   | Mokelumne Aqueduct - California - Second    | 1947           |
| 90                   | Mokelumne Aqueduct - California - Third     | 1962           |
| 65                   | Newark, New Jersey                          | 1891           |
| 60                   | San Diego Aqueduct - California - First     | 1946           |
| 60                   | San Diego Aqueduct - California - Second    | 1958           |

|    |  |      |
|----|--|------|
| 60 | San Diego Aqueduct - California - Thrd | 1971 |
| 60 | Tulsa, Oklahoma                        | 1928 |
| 44 | Birmingham, Alabama - First            | 1936 |
| 44 | Birmingham, Alabama - Second           | 1963 |
| 38 | Victoria, British Columbia             | 1915 |
| 36 | Adelaide, Australia                    | 1951 |
| 36 | Vancouver, British Columbia            | 1909 |
| 32 | Phoenix, Arizona                       | 1928 |
| 30 | Medford, Oregon                        | 1950 |
| 27 | Butte, Montana                         | 1914 |
| 26 | Rochester, New York                    | 1893 |
| 26 | Philadelphia, Pennsylvania             | 1906 |
| 25 | Denver, Colorado                       | 1927 |
| 25 | Portland, Oregon - First               | 1895 |
| 25 | Portland, Oregon - Second              | 1910 |
| 25 | Portland, Oregon - Third               | 1923 |
| 25 | Portland, Oregon - Fourth              | 1953 |
| 24 | Springfield, Massachusetts             | 1905 |
| 23 | Fort Smith, Arkansas                   | 1935 |
| 22 | Everett, Washington - First            | 1928 |
| 22 | Everett, Washington - Second           | 1937 |
| 22 | Vallejo, California                    | 1924 |
| 20 | Pittsburgh, Pennsylvania               | 1895 |
| 20 | Norfolk, Virginia                      | 1925 |
| 20 | Portsmouth, Virginia                   | 1927 |

## APPENDIX G

### STEEL WATER PIPELINE FIELD JOINTS

Steel water pipe sections can be connected together in the field by various types of joints as indicated below:

1. Riveted
2. Drive
3. Mechanical couplings
4. Threaded
5. Flanged
6. Butt-welded, single or double
7. Butt-strap
8. Bell and spigot for calking
9. Slip bell for lap welding
10. Bell and spigot O-ring rubber gasket

#### Riveted Joints

Used now primarily for large diameter steel pipe having thick plate walls.

#### Drive Joints

Used for light gage steel pipes having asphalt or coal-tar enamel coatings, and operating under relatively low pressures. Ends of a section are slightly belled and tapered so as to fit tightly when driven together for several inches.

#### Mechanical Couplings

Represented by sleeve and clamp type couplings. They provide flexibility, ease of installation, and permanent watertightness. They avoid field welding and permit a certain amount of expansion and contraction movement. Sleeve couplings have been used since 1891. Clamp couplings are used generally on smaller sizes of steel pipe, and require a groove or bar at the ends of the pipe sections in order to house the rubber gasket tightly. An advantage of this joint is its portability for aboveground construction water lines.

#### Threaded Joints

Used primarily in small diameters of mill steel pipe, where sections can be connected with threaded couplings for use in water service lines or industrial piping.

#### Flanged Joints

AWWA Standard C 207 gives the proper design of flanges for steel water pipe. Flanges are not used

generally for field joints on large diameter steel pipe because of their high cost and lack of flexibility. They are advantageous, however, for special conditions, such as connections to flanged gate valves, meters, bridge crossings, pumps, industrial piping, etc.

#### Butt-Welded Joints

These joints develop full strength, but will require more care in fitting up in the field.

#### Butt-Strap Joints

They are advantageous where ease in fitting up butt-welded joints is desired. The strap acts as a back-up bar. These joints are expensive for general use.

#### Bell and Spigot Joints for Calking

These joints have bell and spigot formed ends, which are calked together with dry pack neat cement. They are easy to install, and can be used on steel pipe sizes up to 48 inches diameter, where internal pressure does not exceed 200 psi. The inside pipe lining remains unaffected by the assembly of this joint.

#### Slip Bell for Lap Welding

This joint is widely used because of its flexibility, ease in forming, ease in laying, simplicity, and its absolute watertightness. Small angle changes up to about 4° can be made in each joint. It possesses high strength, and will resist settlement, shocks, washouts, etc. A single fillet weld inside or out is sufficient to maintain full pipeline integrity.

#### Bell and Spigot Rubber Gasket Joints

This latest type of O-ring joint has become very popular for steel water pipelines because of its great flexibility, watertightness, rapid installation, and economical cost without any field welding or damage to the inside lining. It will permit deflection angles in alignment up to at least 4° dependent on diameter.

Field joints in steel water pipelines are always completely watertight, and there are fewer of them because of the longer lengths of pipe sections obtainable. They lend themselves to good work organization, provide uniform quality and trouble-free performance.

## APPENDIX H

### STEEL WATER PIPE SPECIFICATIONS

There are a number of specifications that provide for high quality, modern welded steel water pipe, or the steel material used in its manufacture. The American Water Works Association has developed the best and most up-to-date standards for this product. They are as follows:

AWWA STANDARD C 201 for *Fabricated* Electric Fusion Welded Steel Pipe.

AWWA STANDARD C 202 for *Mill* Type of Steel Pipe.

AWWA STANDARD C 203 for Coal Tar Enamel Protective Coatings for Steel Pipe.

AWWA STANDARD C 205 for Cement Mortar Protective Coatings for Steel Pipe.

AWWA STANDARD C 206 for Field Welding of Steel Pipe Joints.

AWWA STANDARD C 207 for Steel Pipe Flanges.

AWWA STANDARD C 208 for Dimensions of Steel Water Pipe Fittings.

AWWA STANDARD C 602 for Cement Mortar Protective Lining of 16" size and larger Steel Pipe *in place*.

AWWA STANDARD C 201 accepts the following types of steel material:

ASTM A 245 Grade A (Light Gage Structural Quality Flat Hot-Rolled Carbon Steel. Yield Point = 25,000 psi).

ASTM A 283 Grades, B, C, or D (Low and Intermediate Tensile Strengths of Carbon Steel Plate for Structural Quality. Yield Points = 27,000; 30,000; and 33,000 psi respectively).

API Standard 5LX Grade X-42 Steel Plate (for high pressure water lines. Yield Point = 42,000 psi).

AWWA STANDARD C 202 accepts the following types of steel material:

|            |                           |
|------------|---------------------------|
| Grade A    | (30,000 psi yield point.) |
| Grade B    | (35,000 psi yield point.) |
| Grade X-42 | (42,000 psi yield point.) |

Other Specifications used for Steel Pipe are as follows:

ASTM A 53 Welded and Seamless Steel Pipe up to 24 in. size

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 120 Welded and Seamless Steel Pipe for Ordinary Uses up to 12 in. size

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 134 Electric Fusion Welded Steel Plate Pipe Size 16 in. and over.

ASTM A 135 Electric Resistance Welded Steel Pipe Size 30 in. and under.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 139 Electric Fusion Welded Steel Pipe Sizes 4 in and over.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

ASTM A 211 Spiral Welded Steel or Iron Pipe Sizes 4 in. to 48 in.

API 5L Line Pipe — Sizes up to 24 in.

|         |                           |
|---------|---------------------------|
| Grade A | (30,000 psi yield point.) |
| Grade B | (35,000 psi yield point.) |

API 5LX High-Test Line Pipe — Sizes up to 48 in.

|            |                           |
|------------|---------------------------|
| Grade X-42 | (42,000 psi yield point.) |
| Grade X-46 | (46,000 psi yield point.) |
| Grade X-52 | (52,000 psi yield point.) |
| Grade X-60 | (60,000 psi yield point.) |
| Grade X-65 | (65,000 psi yield point.) |

FEDERAL SPEC. WW-P-1432 — Pipe, Steel, Sizes 4 in. through 144 in.

FEDERAL SPEC. SS-P-385a — Pipe, Steel, Sizes 4 in. through 42 in.

FEDERAL SPEC. WW-P-404 and 406 — Mill Steel Pipe, Sizes up to 12 in.

All of the specifications listed above are suitable for steel water pipe for their particular conditions. However, for the most up-to-date specifications on an overall basis, AWWA Standard C 201 is recommended as the most practical and modern one to use for steel water pipe service.

## APPENDIX I

### TYPES OF STEEL WATER PIPE

The various types of steel pipe available for water service lines are as follows:

**Fusion Welded** — Briefly, fusion welded steel pipe is manufactured by planing the edges of steel plates to size, forming or rolling the plates to cylindrical shape, and welding them together by means of submerged arc welding using the automatic process. It is readily possible to obtain a welded joint strength equal to that of the plate. This type of pipe is fabricated in sizes of 4" diameter to 20' diameter and in thicknesses of 14 gage to 2" and heavier. Lengths generally are 40', however

quite often they are welded together in the shop and delivered to the site in 80' or 120' sections.

**Resistance or Flash Welded** — This type of pipe is manufactured by forming sheets or plates to cylindrical shape and fusing them together by means of pressure and of heat generated by high amperage electric current, without the addition of any electrode material. This pipe can be furnished in sizes of 4" diameter to 36" diameter and in thicknesses of 12 gage to 1/2". Lengths generally are 30' to 80'.

**Spiral Welded** — This type of pipe is made by forming skelp sheets spirally into cylindrical shape and either butt welding or lap welding the spiral seams together. It can be furnished in sizes of 4" diameter to 96" diameter, in thicknesses of 14 gage to 1/2", and in lengths of 30' to 40'.

**Attachment 6: Drill Rig Photo and Literature**

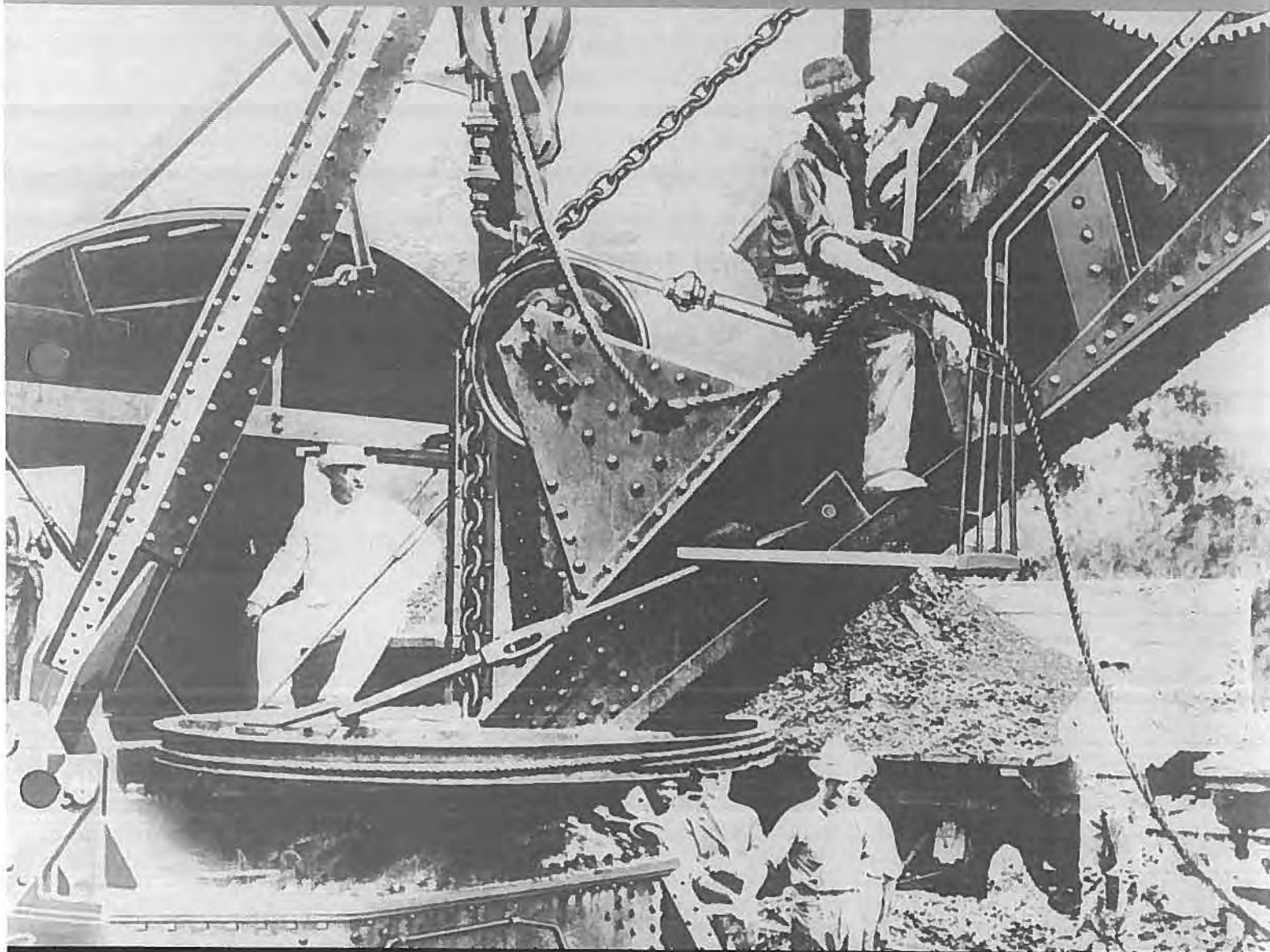
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IT APP 192

SE ROA 0181

# The Bucyrus Legacy



JT APP 193

SE ROA 0182





## Pivotal Mergers

In 1911 the Bucyrus Co., Atlantic Equipment Co. and Vulcan Steam Shovel Co. merged to become "Bucyrus Company", a public corporation. This marked the end of the Bucyrus organization as a family corporation.

As a result of the Vulcan purchase, the first fully revolving shovels to carry the Bucyrus name, Models 14B and 18B steamers, were produced. The 120B was introduced in 1925 as the first heavy duty, fully revolving, caterpillar (crawler) mounted loading shovel. The last of this model is still operating in a mine in Eastern Canada.

In 1927, Bucyrus merged with the Erie Steam Shovel Company. The Erie Steam Shovel Company was the country's leading manufacturer of small excavators, with a history as rich as Bucyrus. A description of the newly named company, Bucyrus-Erie Company, appeared on the New York Stock Exchange. Their focus was "...to bring together under one management, manufacturing plants, the products of which naturally supplement one another in the field of excavating machinery, by establishing a company handling power shovels, and other machinery for excavating and handling materials, of a number of sizes with the ability to sell these products with increased economy and efficiency, especially in foreign markets."

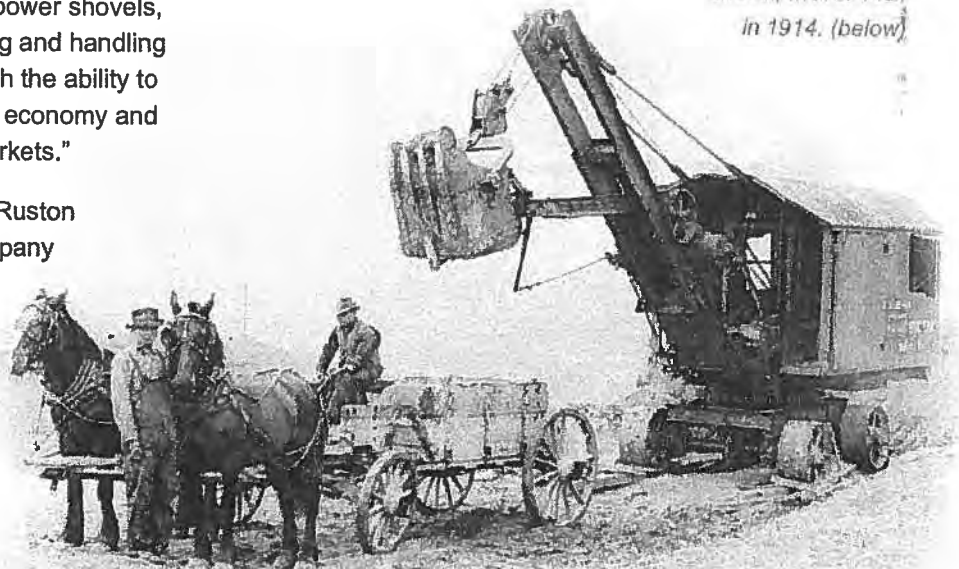
In 1930, Bucyrus-Erie joined with Ruston & Hornsby, Ltd., the foremost company in the British excavating-machinery industry, to form Ruston-Bucyrus, Limited. This enabled Bucyrus to expand internationally.

In 1913, Oscar Martinson, of the Monighan Machine Company of Chicago, patented the "Martinson Tractor Drive" to create the first walking dragline. In 1931, Bucyrus purchased the Monighan Walking Dragline Company of Chicago, Illinois and changed its name to Bucyrus-Monighan Company.



*In 1941, the Bucyrus-Monighan dragline, model 15W. (above)*

*The first Bucyrus shovel, model 14B, in 1914. (below)*



IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KING, P.E., NEVADA STATE  
ENGINEER, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Appellant,

vs.

RODNEY ST. CLAIR,

Respondent.

Electronically Filed  
Dec 09 2016 03:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 70458

**JOINT APPENDIX**

**Volume I of II  
(JT APP 001-556)**

| <b>DATE</b> | <b>DOCUMENT DESCRIPTION</b>   | <b>VOLUME</b> | <b>PAGE NOS.</b> |
|-------------|---|---------------|------------------|
| 01/22/15    | Answering Brief (Respondent's)  | I             | 218-232          |
| 02/27/15    | Appendix and APP 1-145 (Petitioner's)   | I             | 255-429          |
| 11/19/15    | Memorandum of Temporary Assignment (Judge Kosach)   | II            | 560-561          |
| 01/05/16    | Minutes - Oral Argument   | II            | 587              |
| 08/22/14    | Notice of Appeal  | I             | 001-003          |
| 05/23/16    | Notice of Appeal  | II            | 823-844          |
| 04/29/16    | Notice of Entry of Order  | II            | 805-822          |
| 03/21/16    | Objection to Petitioner's Proposed Order (Respondent's)                                       | II            | 672-749          |
| 12/08/14    | Opening Brief (Petitioner's)  | I             | 198-217          |
| 11/19/15    | Opposition to Petitioner's Request for Judicial Notice in Support of Petitioner's Reply Brief | II            | 562-566          |
| 11/16/15    | Order of Recusal (Judge Montero)  | II            | 557-559          |
| 04/22/16    | Order Overruling State Engineer's Ruling 6287   | II            | 792-804          |



| DATE     | DOCUMENT DESCRIPTION  | VOLUME | PAGE NOS. |
|----------|---|--------|-----------|
| 08/22/14 | Petition for Judicial Review  | I      | 004-007   |
| 02/27/15 | Reply Brief (Petitioner's)  | I      | 233-254   |
| 12/01/15 | Reply to Respondent's Opposition to Petitioner's Request for Judicial Notice in Support of Petitioner's Reply Brief | II     | 567-586   |
| 06/03/15 | Request for Judicial Notice in Support of Petitioner's Reply Brief  | I      | 430-556   |
| 03/30/16 | Response to State Engineer's Objection to Proposed Order (Petitioner's)   | II     | 750-755   |
| 09/25/14 | Summary of Record on Appeal and SE ROA 1-186  | I      | 008-197   |
| 04/11/16 | Transcript - Hearing on Objections to Proposed Order  | II     | 756-791   |
| 01/05/16 | Transcript - Oral Argument  | II     | 588-671   |

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RESPECTFULLY SUBMITTED this 9th day of December, 2016.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Justina A. Caviglia  
JUSTINA A. CAVIGLIA  
Deputy Attorney General  
Nevada Bar No. 9999  
100 North Carson Street  
Carson City, Nevada 89701-4717  
Tel: (775) 684-1222  
Fax: (775) 684-1108  
Email: [jcaviglia@ag.nv.gov](mailto:jcaviglia@ag.nv.gov)  
*Attorney for Appellant*

### **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General and that on this 9th day of December, 2016, I served a copy of the foregoing JOINT APPENDIX, by electronic service to:

Paul G. Taggart, Esq.  
Rachel L. Wise, Esq.  
TAGGART & TAGGART  
108 North Minnesota Street  
Carson City, Nevada 89703

/s/ Dorene A. Wright

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
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PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
GREGORY H. MORRISON, ESQ.  
Nevada State Bar No. 12454  
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(775)883-9900 - Facsimile  
Attorneys for Petitioner

RECEIVED  
2014 AUG 22 AM 11:53  
STATE ENGINEERS OFFICE

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

\* \* \*

RODNEY ST. CLAIR,  
Petitioner,  
vs.  
JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,  
Respondent.

CASE NO.: \_\_\_\_\_  
DEPT. NO.: \_\_\_\_\_

NOTICE OF APPEAL

RULING 6287 OF THE NEVADA STATE ENGINEER

COMES NOW, Petitioner, RODNEY ST. CLAIR (hereinafter "Petitioner"), by and through its attorney of record, PAUL G. TAGGART, Esq. and GREGORY H. MORRISON, ESQ. of the law firm of TAGGART & TAGGART, LTD., and hereby petitions the Court to reverse Ruling 6287 issued by Jason King, P.E., Nevada State Engineer, attached hereto as Exhibit "A". This Notice of Appeal and the related Petition for Judicial Review are filed pursuant to NRS 533.450.

On July 25, 2014, the State Engineer issued Ruling 6287 in which the State Engineer declared that Vested Claim V-010493 had been abandoned and denied application 83246T based on the grounds that no appropriated water was available. Through this Notice of Appeal and the related Petition for Judicial Review, Petitioner respectfully requests that this Court remand Ruling 6287 to

1 the State Engineer with instructions to reverse his finding of abandonment for V-010493 and grant  
2 application 83246T, and provide the full scope of protection that Vested Claim V-010493 is entitled  
3 to receive under the Nevada water law.

4  
5 **AFFIRMATION**  
6 **Pursuant to NRS 239B.030**

7 The Undersigned does hereby affirm that the preceding document does not contain the social  
8 security number of any persons.

9 DATED this 21 day of August, 2014.

10  
11  
12 TAGGART & TAGGART, LTD.  
13 108 North Minnesota Street  
14 Carson City, Nevada 89703  
15 (775)882-9900 - Telephone  
16 (775)883-9900 - Facsimile

17 By: 

18 PAUL G. TAGGART, ESQ.  
19 Nevada State Bar No. 6136  
20 GREORY H. MORRISON, ESQ.  
21 Nevada State Bar No. 12454  
22 Attorneys for Petitioner  
23  
24  
25  
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28

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Carson City, Nevada 89703  
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(775)883-9900 - Facsimile

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of this Notice of Appeal, as follows:

☐ By U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

☒ By HAND DELIVERY, via:

☐ Reno-Carson Messenger Service

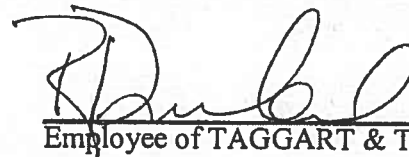
☒ Interoffice-type messenger

☐ other type of delivery service: \_\_\_\_\_

by placing a true and correct copy of the above-identified document in an envelope addressed as follows:

Jason King, P.E.  
Nevada Division of Water Resources  
901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701

DATED this 21 day of August, 2014.



Employee of TAGGART & TAGGART, LTD.

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1 PAUL G. TAGGART, ESQ.  
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2 GREGORY H. MORRISON, ESQ.  
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(775)883-9900 – Facsimile  
6 Attorneys for Petitioner

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STATE ENGINEERS OFFICE

7  
8 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF HUMBOLDT

\* \* \*

10 RODNEY ST. CLAIR,

11 Petitioner,

12 vs.

13 JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
14 RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
15 RESOURCES,

16 Respondent.

CASE NO.: \_\_\_\_\_

DEPT. NO.: \_\_\_\_\_

17  
18 **PETITION FOR JUDICIAL REVIEW**

19 COMES NOW, Petitioner, RODNEY ST. CLAIR (hereinafter "Petitioner"), by and through  
20 its attorney of record, PAUL G. TAGGART, Esq. and GREGORY H. MORRISON, ESQ. of the law  
21 firm of TAGGART & TAGGART, LTD., and hereby petitions the Court to reverse or remand Ruling  
22 No. 6287 issued by Jason King, P.E., Nevada State Engineer, attached hereto as Exhibit "A".

23 This Petition for Judicial Review as well as Notice of Appeal is filed pursuant to NRS  
24 533.450. The State Engineer's findings of fact, conclusions of law, and rulings in Ruling No. 6287  
25 will injure Petitioner's interests because the ruling, if upheld, will deprive Petitioners of a vested right  
26 to groundwater, and thereby greatly diminish the value of real property that is owned by Petitioners.

27 At least one of the conclusions reached by the State Engineer relied in an incorrect application  
28 of Nevada statute, as well as reliance on case law taken out of context and without support.

1 **I. JURISDICTIONAL STATEMENT**

2 Pursuant to NRS 533.450(1), rulings of the State Engineer are subject to judicial review “in  
3 the proper court of the county in which the matters affected or a portion thereof are situated.” The  
4 real property to which the water at issue in this appeal is appurtenant lies within Humboldt County.  
5 Therefore, the Sixth Judicial District Court of the State of Nevada in and for Humboldt County is the  
6 proper venue for judicial review of Ruling No. 6287.

7 **II. BACKGROUND**

8 Petitioner owns real property located in Humboldt County, Nevada, (Assessor’s Parcel  
9 Number (“APN”) 03-49-17), which it purchased in August, 2013. On November 8, 2013, Petitioner  
10 filed two documents with the State Engineer. The first was Proof of Appropriation V-010493,  
11 claiming a vested right to an underground water source for irrigation of 160 acres of land. The  
12 second was Application No. 83246T to change the point of diversion of the vested water claim. To  
13 support the vested claim, Petitioners presented evidence of application of the water to beneficial use  
14 prior to March 25, 1939, the operative date for the State Engineer to consider vested claims to  
15 groundwater.

16 On July 25, 2014, the State Engineer issued Ruling 6287 in which the State Engineer found  
17 that the Petitioner had presented sufficient evidence to prove a vested right to groundwater was  
18 established prior to March 25, 1939. Subsequent to that finding, the State Engineer declared that  
19 Proof of Appropriation V-010493 had been abandoned and denied application 83246T based on the  
20 grounds that no appropriated water was available.

21 In considering whether the vested right had been abandoned, the State Engineer cited multiple  
22 judicial interpretations of NRS 534.090(4)’s requirement that abandonment of a groundwater right  
23 requires a finding of intent to abandon that right. First, the State Engineer quoted the 9th Circuit  
24 Court of Appeals’ holding in *U.S. v. Orr Water Ditch Co.*, 256 F.3d 935, 945 (9th Cir. 2001), in  
25 which the Court stated that “[a]lthough a prolonged period of non-use may raise an inference of intent  
26 to abandon . . . it does not create a rebuttable presumption of abandonment.” State Eng’r Ruling 6287  
27 at 4 (July 25, 2014). The very next sentence then states that as a result of that holding, “proof of  
28 continuous use of the water right should be required to support a finding of *lack* of intent to

1 abandon.” *Id.* (emphasis in original). The State Engineer improperly applied the holding of this case,  
2 and made other errors which require reversal or remand of Ruling 6287.

3 **III. CONCLUSION**

4 For the reasons explained above, and others that may be discovered and raised during the  
5 pendency of this appeal, Petitioner respectfully requests that this Court reverse or remand Ruling No.  
6 6287 to the State Engineer with instructions to reverse the finding of abandonment on Vested Claim  
7 V-010493 and grant Application 83246T, and provide the full scope of protection that Vested Claim  
8 V-010493 is entitled to receive under the Nevada water law.

9 **AFFIRMATION**  
10 **Pursuant to NRS 239B.030**

11 The Undersigned does hereby affirm that the preceding document does not contain the social  
12 security number of any persons.

13 DATED this 21 day of August, 2014.

14 TAGGART & TAGGART, LTD.  
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16 Carson City, Nevada 89703  
17 (775)882-9900 – Telephone  
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19 By: 

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21 Nevada State Bar No. 6136  
22 GREORY H. MORRISON, ESQ.  
23 Nevada State Bar No. 12454  
24 Attorneys for Petitioner  
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28



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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of this Petition for Judicial Review, as follows:

☒ By **U.S. CERTIFIED, RETURN RECEIPT POSTAL SERVICE:** I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

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☐ Reno-Carson Messenger Service

☒ Interoffice-type messenger

☐ other type of delivery service: \_\_\_\_\_

by placing a true and correct copy of the above-identified document in an envelope addressed as follows:

Jason King, P.E.  
Nevada Division of Water Resources  
901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701

DATED this 21 day of August, 2014.

  
\_\_\_\_\_  
Employee of TAGGART & TAGGART, LTD.

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2014 SEP 25 PM 12:08

TAMI RAE SPERO  
DIST. COURT CLERK

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JERRY M. SNYDER  
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Email: [jsnyder@ag.nv.gov](mailto:jsnyder@ag.nv.gov)  
*Attorneys for Respondent*  
*Nevada State Engineer*

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

RODNEY ST. CLAIR,  
  
Petitioner,  
  
vs.

Case No: CV 20112  
Dept. No: 2

JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,  
  
Respondent.

AFFIRMATION (Pursuant to NRS 239B.030)  
The undersigned does hereby affirm that the  
preceding document does not contain the  
social security number of any person.

SUMMARY OF RECORD ON APPEAL

Jason King, P.E., Nevada State Engineer, Division of Water Resources, Department of Conservation and Natural Resources ("Nevada State Engineer"), by and through its counsel, Attorney General Catherine Cortez Masto and Sr. Deputy Attorney General Jerry M. Snyder, respectfully submits the attached documents constituting the record on appeal in this matter, which is a complete copy of the State Engineer's file regarding Application 83246T and Proof of Appropriation No. V-010493, Bates-stamped pages SE ROA 0001-0186.

1. Certificate of Record dated September 2, 2014. Bates-stamped SE ROA 0001.
2. Correspondence dated July 25, 2014, from Jason King, P.E., to Rodney and Virginia St. Clair. Bates-stamped SE ROA 0002-0003.

3. State Engineer Ruling #6287. Bates-stamped SE ROA 0004–0010.
4. Application No. 83246T. Bates-stamped SE ROA 0011.
5. Denial of State Engineer dated July 25, 2014. Bates-stamped SE ROA 0012.
6. Proof of publication. Bates-stamped SE ROA 0013–0015.
7. Certificate of Appropriation of Water. Bates-stamped SE ROA 0016–0017.
8. Correspondence dated December 5, 2013, from Karl Eitenmiller, PE, to Rodney and Virginia St. Clair. Bates-stamped SE ROA 0018–0020.
9. Correspondence dated December 9, 2013, from Amanda Ciminski of DWR to Rodney and Virginia St. Clair. Bates-stamped SE ROA 0021.
10. Receipt No. 283234 for Temporary Application to Change No. 83246T. Bates-stamped SE ROA 0022.
11. Publication for Application of Water No. 83246T and email of Amanda Ciminski to the Humboldt Sun for publication of same. Bates-stamped SE ROA 0023–0024.
12. Maps. Bates-stamped SE ROA 0025–0026.
13. Temporary Application No. 83246T filed November 8, 2013. Bates-stamped SE ROA 0027–0028.
14. Proof of Appropriation for File No. V10493. Bates-stamped SE ROA 0029.
15. Correspondence July 25, 2014, from Jason King, P.E. to Rodney and Virginia St. Clair. Bates-stamped SE ROA 0030.
16. Page noting oversized map contained in original application, Bates-stamped SE ROA 0031.
17. Amended Proof of Appropriation of Water for Irrigation for Application No. 010493. Bates-stamped SE ROA 0032–0036.
18. Correspondence dated November 8, 2013, from Michael Stanka, P.E. to Jason King, DWR, regarding V-10498 and submitting additional information regarding the Vested Claim for underground rights by Rodney and Virginia St. Clair. Bates-stamped SE ROA 0037–0104.

///


1 19. Correspondence dated December 2, 2013, from Daniel Taylor of DWR to  
2 Rodney and Virginia St. Clair. Bates-stamped SE ROA 105-106.

3 20. Correspondence dated November 8, 2013, from Michael Stanka, P.E. to Jason  
4 King, DWR, regarding V-10493 and submitting additional information regarding the Vested  
5 Claim for underground rights by Rodney and Virginia St. Clair. Bates-stamped SE ROA 0107-  
6 0186.

7 DATED this 23<sup>rd</sup> day of September, 2014.

8 CATHERINE CORTEZ MASTO  
9 Attorney General


10 By:

  
11 JERRY M. SNYDER  
12 Senior Deputy Attorney General  
13 Nevada State Bar No. 6830  
14 100 North Carson Street  
15 Carson City, Nevada 89701  
16 Tele: (775) 684-1208  
17 *Attorneys for Nevada State Engineer*

**CERTIFICATE OF SERVICE**

I, Ginny Brownell, hereby certify that I am an employee of the State of Nevada Office of the Attorney General and that on the 24<sup>th</sup> day of September, 2014, I served a true and correct copy of the foregoing **Summary of Record on Appeal**, via United States Postal Service, Carson City, Nevada, to the following addresses:

Paul G. Taggart, Esq.  
Gregory H. Morrison, Esq.  
TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, NV 89703

  
Ginny Brownell, Legal Secretary II  
Office of the Attorney General

CERTIFICATE OF RECORD

STATE OF NEVADA       )  
                                  ) ss  
CARSON CITY            )

I, Susan Joseph-Taylor, Deputy Administrator of the Division of Water Resources, State of Nevada, duly appointed and qualified, having full charge of the records and files of the Office of the State Engineer, do hereby certify that any copies of originals provided herein are full, complete and true copies as appear in the records and files of the Office of the State Engineer of Nevada.

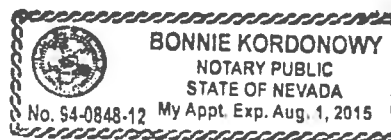
Susan Joseph-Taylor  
Susan Joseph-Taylor  
Deputy Administrator

9/2/14  
Date

SUBSCRIBED AND SWORN to before me  
by Susan Joseph-Taylor this

2nd day of September, 2014.

Bonnie Kordonowy  
Notary Public



Record on Review  
In the matter of Application 83246T

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 25, 2014

Rodney and Virginia St. Clair  
8319 Clark Road  
Marsing, Idaho 83639  
Certified Mail # 7106 7808 0630 0056 4205

Re: Proof of Appropriation No. V-010493 and Application 83246T

Dear Mr. and Mrs. St. Clair:

Enclosed is our official Ruling in the matter of Proof of Appropriation No. V-010493 and Application 83246T. Proof of Appropriation No. V-010493 has been declared abandoned and Application 83246T has been denied on the grounds as set forth in the Ruling.

Also enclosed is a copy of your application, which includes the endorsement of denial.

Sincerely,

  
Jason King, P.E.  
State Engineer

JK/jm  
Enclosures

cc: Michael A. Stanka, Stanka Consulting, LTD

2. Article Number

7J06 7808 0630 0056 4205

1. Article Addressed to:

Batch #:  
85756

Rodney and Virginia St. Clair  
8319 Clark Road  
Marsing, Idaho 83639

COMPLETE THIS SECTION ON DELIVERY

A. Signature

*[Signature]*

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

Murven Gibson

C. Date of Delivery

7-28-14

D. Is delivery address different from item 1? ☐ Yes  
If YES enter delivery address below: ☐ No

3. Service Type

☒ Certified

4. Restricted Delivery? (Extra Fee)

☐ Yes

Code2: 83246T/Ruling/KGjm

PS Form 3811

Domestic Return Receipt



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

IN THE MATTER OF APPLICATION 83246T )  
FILED TO CHANGE THE PUBLIC WATERS )  
OF AN UNDERGROUND SOURCE WITHIN )  
THE QUINN RIVER VALLEY-OROVADA )  
SUBAREA, HYDROGRAPHIC BASIN (33A), )  
HUMBOLDT COUNTY, NEVADA. )

**RULING**

**#6287**

**GENERAL**

**I.**

Application 83246T was filed on November 8, 2013, by Rodney and Virginia St. Clair to change the point of diversion of 1.57 cubic feet per second (cfs), a portion of Proof of Appropriation V-010493. The proposed point of diversion is described as being within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 10, T.42N., R.37E., M.D.B.&M. The existing point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T.42N., R.37E., M.D.B.&M. The proposed manner of use is unchanged and is for irrigation and domestic purposes, and the existing place of use is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, all in T.42N., R.37E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Rodney and Virginia St. Clair acquired the NW $\frac{1}{4}$  of Section 8, T.42 N., R.37E., M.D.B.&M, on August 12, 2013. The chain of title to the property reveals that George Crossley obtained a patent from the United States for this and other land<sup>2</sup> in 1924 pursuant to the Homestead Act of 1862. In his affidavit in support of his land patent application, Crossley affirmed that a well had been drilled in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, which was used to irrigate 40 acres of clover in that quarter-quarter, and 20 acres of clover in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, T.42 N., R.37E., M.D.B.&M.<sup>3</sup>

<sup>1</sup> File No. 83246T, official records in the Office of the State Engineer.

<sup>2</sup> The land patent also included portions of Section 7, which is not at issue in this Ruling.

<sup>3</sup> File No. V-010493, official records in the Office of the State Engineer.

Two months after the land patent was issued to Crossley, the land was deeded to Albert H. Trathen in June of 1924. Ownership of the property remained in the Trathen family through Albert Trathen's devisee's and descendants until 2013, when the Applicants purchased the property in August of 2013 from John Metheven, Jr., and Albert F. Trathen.<sup>3</sup>

## II.

Upon taking ownership of the property, Applicants discovered the remnants of the well casing in Section 8 purportedly drilled by Crossley in or around 1924. After discovering the casing, Applicants filed Proof of Appropriation V-010493. Proof of Appropriation V-010493 filed on November 8, 2013, and later amended on December 6, 2013, claims a vested right to an underground water source for the irrigation of 160.0 acres of land in the NW¼ of Section 8, T.42N., R.37E., M.D.B.&M.<sup>3</sup> In addition to filing the vested claim, Applicants also seek to change a portion of Proof of Appropriation V-010493 by Application 83246T.<sup>1</sup> In order to determine whether the State Engineer can grant Application 83246T, the State Engineer finds he must first examine the validity of Proof of Appropriation V-010493.

## III.

A vested right to underground percolating water must be demonstrated by diversion and application to beneficial use prior to March 25, 1939.<sup>4,5</sup> Applicants cite several pieces of evidence they contend supports Proof of Appropriation V-010493. First, Applicants assert that George Crossley acquired the land patent in 1924 pursuant to the Homestead Act of 1862, and the purpose of the Homestead Act was to settle and cultivate the land.<sup>3</sup> Next, Applicants include several articles authored by George Crossley for the Orovalda Weekly Journal, which articles identify irrigation and irrigation practices in Orovalda area in the 1920s, particularly irrigation of alfalfa occurring by the use of drilled wells.<sup>3</sup>

Applicants next point to the well casing itself, stating that the 8-inch well casing is made of rolled thin metal with horizontal riveted seams. The casing was placed in short

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<sup>4</sup> NRS § 534.080(1).

<sup>5</sup> Applicants failed, in Proof of Appropriation V-010493, to state when the ditch or other works was initiated and when it was completed, which may squarely identify whether Applicants are claiming a vested right to artesian or percolating groundwater. See NRS § 533.080(1). Applicants stated in response to Question 2 on the proof form that the "POD is a drilled 8" well with pump, [and that] water [is] pumped or gravity fed to place of use," and the State Engineer finds that the use of a pump indicates that Applicants' claim of vested right is to percolating groundwater.

sections and connected with riveted collars. This construction technology, Applicants assert, was used until the mid-1930s, and well drilling at the time the well was completed was made using cable drill rigs.<sup>3</sup> During Applicants' site survey, a relatively intact drill rig was located adjacent to the property, which was identified as an Armstrong Manufacturing Company: Waterloo, IA drill rig (a.k.a. Spudder). Applicants include evidence to assert that Armstrong Manufacturing Company ceased making these drill rigs in 1933.<sup>3</sup>

Finally, Applicants submit an aerial map which purports to show land disturbance in the NW¼ of Section 8 that they claim shows irrigation in that location in July, 1954.<sup>3</sup>

The State Engineer finds there is sufficient evidence to prove that a vested right to underground waters was established prior to March 25, 1939. The land patent application filed by Crossley in 1924 indicated a drilled well with 8-inch casing was used for irrigation of a portion of the NW¼ of Section 8. The evidence concerning the drilled well is consistent with well construction methodology at the time, and the drill rig located nearby, which may have been the same or similar model, ceased to be manufactured by 1933. Together, these facts evidence that underground waters were appropriated by the drilled well and used beneficially for irrigation prior to March 25, 1939.

On the other hand, the State Engineer finds that the newspaper articles do not help establish the perfection of the vested right. Of the two newspaper articles submitted from September, 1924, neither article mentions the Crossley property, but instead, one written by Crossley refers to irrigation generally in the Quinn River Valley; and the second article refers to G.L. Grandstrum, Fred Lettman, Dr. Harlan and Henry Helbig. Accordingly, the State Engineer rejects the newspapers articles as proof supporting the vested right. Notwithstanding, in light of the other evidence discussed above, the State Engineer finds sufficient evidence to demonstrate the establishment of a vested right to underground waters in support of Proof of Appropriation V-010493.

#### IV.

Even where there may be proof supporting the perfection of a vested right, the State Engineer must go one step further and determine whether the right continues to exist to present day, including determining whether the right has been abandoned.

Nevada Revised Statute § 534.090(4) addresses abandonment of underground waters.<sup>6</sup> Abandonment of a water right is the voluntary "relinquishment of the right by the owner with the intention to forsake and desert it." *In re Manse Spring*, 60 Nev. 280, 108 P.2d 311, 315 (1940). Abandonment is the union of acts and intent; and, under Nevada law is "a question of fact to be determined from all the surrounding circumstances." *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979); *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration).

Non-use for a period of time may inferentially be some evidence of intent to abandon a water right. *Franktown Creek Irr. Co., Inc. v. Marlette Lake Co. and the State Engineer of the State of Nevada*, 77 Nev. 348, 354 (1961). Although a prolonged period of non-use may raise an inference of intent to abandon, it has been held it does not create a rebuttable presumption of abandonment. *U.S. v. Orr Water Ditch Co.*, 256 F.3d 935, 945 (9th Cir. 2001). At a minimum, then, proof of continuous use of the water right should be required to support a finding of *lack* of intent to abandon. *U.S. v. Alpine Land & Reservoir Co.*, 291 F.3d 1062, 1077 (9th Cir. 2002).

As discussed above, the newspaper articles do not directly or even inferentially demonstrate continuous use of the water on the subject property. Indeed, when the articles were written in September, 1924, Crossley had already deeded the NW¼ of Section 8 to Trathen some three-months earlier in June of 1924. Thus, the newspaper articles are insufficient to prove continued irrigation was occurring in the NW¼ of Section 8.

The photographs of the well casing strongly support a case for abandonment of the water right. The casing is silted in and shows areas which are rusted through, confirming that the casing is unusable in its current condition and that it has gone unused for a significant period of time. As well, Proof of Appropriation V-010493 concedes the water

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<sup>6</sup> It states: "A right to use underground water whether it is vested or otherwise may be lost by abandonment. If the State Engineer, in investigating a groundwater source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his or her examination that an abandonment has taken place, the State Engineer shall so state in the ruling approving the application. If, upon notice by registered or certified mail to the owner of record who had the prior right, the owner of record of the prior right fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the alleged abandonment declaration as set forth by the State Engineer becomes final."

has not been used each and every year since the right was initiated; and, the response to Question 16 on the proof form likewise admits the land has not been irrigated recently, and, in fact, it is unknown what years the land was, or was not, irrigated. These facts favor finding that there has not been continuous use of the water since perfection of the water right by Crossley.

In correspondence from the Office of the State Engineer dated December 2, 2013, Applicants were advised that the aerial photograph they submitted only showed the NW¼ NW¼ of Section 8 (40 acres) – not the entire NW¼ of Section 8 (160 acres), as suggested by Applicants.<sup>3</sup> Further, the Office of the State Engineer informed Applicants that it was questionable whether the 1954 image showed disturbed land at all in light of future aerial images from 1968, 1975, 1986, 1999, 2006 and 2013, which showed no surface disturbance or development.<sup>3</sup> In the same letter, Applicants were informed that the evidence demonstrating continuous beneficial use to the present time was insufficient, yet no additional evidence was filed by Applicants in support of the Proof to demonstrate continuous beneficial use.<sup>7</sup>

Even if the State Engineer afforded Applicants every benefit of doubt by considering the 1954 aerial photograph for the quarter-quarter depicted, this singular piece of evidence to suggest continued beneficial use of the water is insufficient to overcome a finding of abandonment. No evidence has been presented to demonstrate that the water was used continuously between 1924 and 1954 or from 1954 to the present. *See Alpine Land & Reservoir Co., supra*. The State Engineer finds no evidence pointing to a *lack* of prior owners' intent to abandon the water right.

While sufficient evidence to support a vested right at the time the well was drilled and the land patent exists, the decayed state of the casing, Applicants' admission the water has not been used continuously coupled with the admission they are without knowledge of when it was, or was not used, in addition to the failure of evidence of continuous beneficial use of the water, compels the State Engineer to find that Proof of Appropriation V-010493 has been abandoned.

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<sup>7</sup> See, e.g., Nev. Op. Atty. Gen. 270 (June 28, 1927) (the State Engineer may compel the owner of a vested right to submit his proof of such right as authorized by law).

V.

"If [a person] voluntarily abandons his right to use water, the water becomes a part of the natural stream or source and again reverts to the state absolutely without any title to its use outstanding against the state." *In re Manse Spring*, 60 Nev. at 280, 108 P.2d at 315. In finding that the vested right claimed under Proof of Appropriation V-010493 has been abandoned, the State Engineer necessarily finds that the water sought to be changed by Application 83246T has reverted to the state absolutely, and is not available under the water right forming the basis for Application 83246T; consequently Application 83246T is subject to denial.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>8</sup>

II.

The State Engineer is prohibited by law from granting an application to change which requests to appropriate the public waters where:<sup>9</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 State Engineer concludes that Proof of Appropriation V-010493 is abandoned.

IV.

The State Engineer concludes that by the abandonment of vested right evidenced by Proof of Appropriation V-010493, the water reverted to the source; therefore, there is no water available under the water right that is the basis for Application 83246T and granting a change application based on an abandoned water right would threaten to prove detrimental to the public interest.

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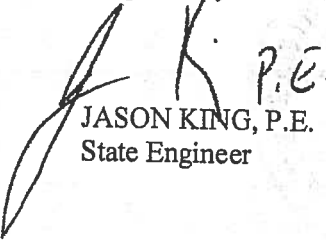
<sup>8</sup> NRS Chapters 533, 534.

<sup>9</sup> NRS § 533.370(2).

**RULING**

The State Engineer hereby declares Proof of Appropriation V-010493 abandoned. Application 83246T is hereby denied on the grounds that there is no unappropriated water available under the water right that is the basis for Application 83246T and that granting a change application based on an abandoned water right would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 25th day of  
July, 2014.

No. **83246T** Date Filed **NOV 08 2013**

|  |                       |       |               |            |                  |                     |
|--|-----------------------|-------|---------------|------------|------------------|---------------------|
| Application to appropriate   | Application to change | POD   | POU           | MOU        | Port.            |                     |
|  |                       | X     |               |            | X                | of VIO493           |
| Basin <b>2 - 33A</b> QUINN RIVER VALLEY - OROVADA SUBAREA County HUMBOLDT              |                       |       |               |            |                  |                     |
| POD <b>NE</b> 1/4 <b>NE</b> 1/4 Section <b>10</b> Township <b>42N</b> Range <b>37E</b> |                       |       |               |            |                  |                     |
| Applicant <b>RODNEY AND VIRGINIA ST. CLAIR</b>   |                       |       |               |            |                  |                     |
| Source of Water <b>UNDERGROUND</b>   |                       |       |               |            |                  |                     |
| Return for Correction Corrected Application Received                                   |                       |       |               |            |                  |                     |
| Maps Prop. POD   | <b>8/15/2013</b>      | Under | <b>23662</b>  | Exist. POD | <b>12/6/2013</b> | Under <b>VIO493</b> |
| Filed Prop. POL  | <b>12/6/2013</b>      | Jnder | <b>VIO493</b> | Exist. POU | <b>12/6/2013</b> | Under <b>VIO493</b> |
| Sent for Publication <b>DEC 09 2013</b> Ready for Action <b>FEB 02 2014</b>            |                       |       |               |            |                  |                     |
| Protested  |                       |       |               |            |                  |                     |

Approved / Denied **JUL 25 2014 Sec. Ruling #6287**

|                         |             |                 |
|-------------------------|-------------|-----------------|
| Due Dates               | Date Filed  | Well Logs       |
| Proof of Completion     |             |                 |
| Proof of Beneficial Use |             | Certificate no. |
|                         |             | Issued          |
|                         |             | Amount          |
| PBU Map Required        | Filed Under | Use             |

Other Dates

| Change Applications | To Change |     |     |       | Abrogation Amount or Action on Application to Change |
|---------------------|-----------|-----|-----|-------|--|
|                     | POD       | POU | MOU | Port. |  |
|                     |           |     |     |       |  |
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|                  |                |               |             |          |      |      |      |       |
|------------------|----------------|---------------|-------------|----------|------|------|------|-------|
| Map Table Review | App. <b>DR</b> | Map <b>KE</b> | Book Record | DB Entry | File | Pub. | Per. | Cert. |
|------------------|----------------|---------------|-------------|----------|------|------|------|-------|

137093





**TEMPORARY**  
**THE STATE OF NEVADA**  
**APPLICATION TO CHANGE THE PUBLIC WATERS**  
**OF THE STATE OF NEVADA HERETOFORE**  
**APPROPRIATED**

Name of Applicant: RODNEY AND VIRGINIA ST. CLAIR  
Source: UNDERGROUND  
Basin: QUINN RIVER VALLEY-OROVADA SUBAREA  
Manner of Use: IRRIGATION  
Period of Use: ONE YEAR FROM DATE OF ISSUANCE.  
Priority Date: 11/08/2013

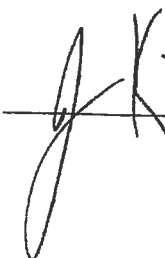
\*\*\*\*\*

**DENIAL OF STATE ENGINEER**

This application is hereby denied on the grounds that there is no unappropriated water available under the water right that is the basis for this application and that granting a change application based on an abandoned water right would threaten to prove detrimental to the public interest.

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the  
seal of my office, this 25th day of July, 2014

  
\_\_\_\_\_  
P.E.  
State Engineer

WINNEMUCCA PUBLISHING CO., INC.  
THE HUMBOLDT SUN/THE BATTLE MOUNTAIN BUGLE  
1022 S. Grass Valley Rd  
WINNEMUCCA, NV 89445  
(775) 623-5011

500007

INVOICE

01/03/14

DIVISION WATER RESOURCES

901 S STEWART ST STE 2004  
CARSON CITY NV 89701

01/03/14 APPLICATION 83246T 025886 \$50.00  
0.00 INCH  
Inserted on the following dates:  
12/13/13 12/20/13 12/27/13  
01/03/14

AFFIDAVIT

\$12.00

TOTAL DUE  
\$62.00

RECEIVED  
2014 JAN 13 AM 11:36  
STATE ENGINEERS OFFICE

500007

\$62.00

DIVISION WATER RESOURCES

901 S STEWART ST STE 2004  
CARSON CITY NV 89701

FILED  
JAN 13 2014  
STATE ENGINEER'S OFFICE

Legal Number 025886

AFFIDAVIT OF PUBLICATION

Heather Cunningham, Office Asst., for  
The Humboldt Sun, a twice weekly  
newspaper published in Winnemucca  
Humboldt County, Nevada, duly  
swears that the following

DIVISION WATER RESOURCES  
APPLICATION 83246T

a printed copy of which is affixed,  
was published 4 time(s)  
commencing 12/13/13  
and ending 01/03/14

*Heather Cunningham* *OK AC*  
Heather Cunningham

State of Nevada  
County of Humboldt  
Signed and sworn to before me by

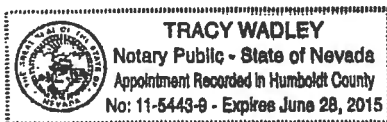
\*Heather Cunningham on\* *January 10, 2014*

*Tracy Wadley*

Legal No. 25886  
APPLICATION FOR WATER  
NO. 83246T  
NOTICE IS HEREBY  
GIVEN, that on the 8th day  
of November 2013 Rodney  
and Virginia St. Clair of  
Marsing, Idaho made  
application to the State  
Engineer of Nevada for  
permission to change the  
point of diversion of 1.57  
c.f.s. of water heretofore  
claimed under V10493.  
Water will be diverted from  
an underground source at a  
point located within the NE1/  
4 NE1/4 of Section 10,  
T42N, R37E, MDM or at a  
point from which the N1/4  
corner of said Section 10,  
bears N 81 degrees 14  
minutes W, a distance of  
2,605.00 feet (approx. 3  
miles SSW of Oroville, NV).  
Water will be used for  
irrigation and domestic  
purposes from January 1st  
to December 31st of each  
year. The existing point of  
diversion was located within  
the NE1/4 NW1/4 of Section  
8, T42N, R37E, MDM, or at  
a point from which the NW  
corner of said Section 8  
bears N 56 degrees 59  
minutes 13.2 seconds W, a  
distance of 1,527.2 feet.  
Water was used for irrigation  
and domestic purposes from  
January 1st to December  
31st of each year.

Jason King, P.E.  
State Engineer  
JK/ac

Published in the Humboldt  
Sun  
December 13, 20, 27, 2013  
January 3, 2014  
(Humboldt)



RECEIVED  
2014 JAN 13 AM 11:30  
STATE ENGINEERS OFFICE

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

STANKA CONSULTING, LTD  
MICHAEL STANKA P.E.  
3032 SILVERSAGE DR STE 101  
CARSON CITY NV 89701

## Receipt

|                                |         | Payment Method   | Check No. | Receipt # |
|--------------------------------|---------|--|-----------|-----------|
|                                |         | Check  | 11626     | 284151    |
| Date                           | Item    | Description  | Amount    |           |
| 12/6/2013                      | PUBFEES | ADDITIONAL PUBLICATION FEES UNDER APPLICATION NO. 83246T | 50.00     |           |
| Received By: Catherine Orpilla |         |  | Total     | \$50.00   |

**THE STATE OF NEVADA**  
**CERTIFICATE OF APPROPRIATION OF WATER**

WHEREAS, Robert F. Key has presented to the State Engineer of the State of Nevada Proof of Application of Water to Beneficial Use, from an underground source through drilled well, pump, and irrigation system for irrigation purposes. The point of diversion of water from the source is as follows: NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T. 42 N., R. 37 E., M.D.B.&M., or at a point from which the NW corner of said Section 10 bears N. 81° 14' W., a distance of 2605 feet. situated in Humboldt County, State of Nevada.

Now Know Ye, That the State Engineer, under the provisions of NRS 533.425, has determined the date, source, purpose, amount of appropriation, and the place where such water is appurtenant, as follows:

Name of appropriator Robert F. and Rosemary Key

Post-office address Orovada, Nevada

Amount of appropriation 27 c.f.s. but not to exceed 640.00 acre-feet annually

Period of use, from January 1st to December 31st of each year

\* Date of priority of appropriation September 28, 1959

Description of land to which the water is appurtenant:  
40.00 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T. 42 N., R. 37 E., M.D.B.&M.  
40.00 " " " NE $\frac{1}{4}$  NE $\frac{1}{4}$  " " " " "  
40.00 " " " SE $\frac{1}{4}$  NE $\frac{1}{4}$  " " " " "  
40.00 " " " SW $\frac{1}{4}$  NE $\frac{1}{4}$  " " " " "  
160.00 acres total

This certificate is issued subject to the terms of the permit, with the understanding that the total duty of water shall not exceed 4.0 acre-feet per acre from any and/or all sources.

\* This certificate changes the point of diversion of Permit 23662, which changed the point of diversion and place of use of Permit 18355, hence the date of priority of appropriation of this certificate is the same as Permit 18355.

The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place and for the purpose as set forth herein.

IN TESTIMONY WHEREOF, I, ROLAND D. WESTERGARD, State Engineer

Compared dc/is of Nevada, have hereunto set my hand and the seal of my office, this

Recorded 2-5-70 By 45 Page 249-1 3rd day of March, A.D. 1970

Humboldt County Records.

Roland D. Westergard  
 State Engineer

1923

# THE STATE OF NEVADA CERTIFICATE OF APPROPRIATION OF WATER

WHEREAS Robert F. Key has presented to the State Engineer of the State of Nevada Proof of Application of Water to Beneficial Use, from an underground source through drilled well, pump, and irrigation system for irrigation purposes. The point of diversion of water from the source is as follows: NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T. 42 N., R. 37 E., M.D.B. & M., or at a point from which the NW corner of said Section 10 bears N. 81° 14' W. a distance of 2605 feet. situated in Humboldt County, State of Nevada.

Now Know Ye, That the State Engineer, under the provisions of NRS 533.425, has determined the date, source, purpose, amount of appropriation, and the place where such water is appurtenant, as follows:

Name of appropriator Robert F. and Rosemary Key

Post-office address Orovada, Nevada

Amount of appropriation 2.7 c.f.s., but not to exceed 640.00 acre-feet annually

Period of use, from January 1st to December 31st of each year

\* Date of priority of appropriation September 28, 1959

Description of land to which the water is appurtenant:

|  |
|--|
| 40.00 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T. 42 N., R. 37 E., M.D.B. & M. |
| 40.00 " " " NE $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "  |
| 40.00 " " " SE $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "  |
| 40.00 " " " SW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " " "  |
| 160.00 acres total   |

This certificate is issued subject to the terms of the permit, with the understanding that the total duty of water shall not exceed 4.0 acre-feet per acre from any and/or all sources.

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IN TESTIMONY WHEREOF, I, ROLAND D. WESTERGARD, State Engineer

Compared dc/is

of Nevada, have hereunto set my hand and the seal of my office, this

Recorded 25-70 Bk 45 Page 249-1

3rd day of March, A.D. 1970

Humboldt County Records

Roland D. Westergard  
State Engineer



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

December 5, 2013

Rodney and Virginia St. Clair  
8319 Clark Road  
Marsing, ID 83639  
Certified Mail # 7106 7808 0630 0054 5396

RE: Temporary Application 83246T

Dear Mr. and Mrs. St. Clair:

Temporary Application 83246T was filed in this office on November 8, 2013. The application proposes to change the point of diversion of a portion of underground water claimed under V10493. The point of diversion and place of use under Temporary Application 83246T is within the Quinn River Valley – Orovada Sub-Area Hydrographic Basin.

The state engineer has determined that Temporary Application 83246T must be published in the local newspaper pursuant to Nevada Revised Statutes (NRS) 533.345(3). A \$50.00 fee is required for the cost of the publication. Please submit the required \$50.00 fee to this office within thirty (30) days from the date of this notice. If the publication fee is not received in this office within the above noted time frame, Temporary Application 83246T will become subject to denial.

If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

*Karl Eitenmiller, P.E.*

Karl Eitenmiller, PE  
Supervising Engineer IV

KE/dl

cc: Michael Stanka, email

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701-5250  
(775) 684-2800 • Fax (775) 684-2811  
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If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

Karl Eitenmiller, PE  
Supervising Engineer IV

KE/dl

cc: Michael Stanka, email

RECEIVED  
2013 DEC -6 PM 2:11  
STATE ENGINEERS OFFICE

JT APP 030

SE ROA 0019



|  |  |   |  |
|--|--|---|--|
| <b>2. Article Number</b>   |  | <b>COMPLETE THIS SECTION ON DELIVERY</b>  |  |
| 7106 7808 0630 0054 5396   |  | A. Signature<br>X <i>[Signature]</i> <input type="checkbox"/> Agent<br><input checked="" type="checkbox"/> Addressee                                      |  |
| 1. Article Addressed to:<br>Batch #:<br>82297  |  | B. Received by (Printed Name)<br><i>Rodney St Clair</i> C. Date of Delivery<br><i>12/13/13</i>  |  |
| Rodney and Virginia St. Clair<br>8319 Clark Road<br>Marsing, ID 83639<br>12/3/2013 1:37 PM |  | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES enter delivery address below: <input checked="" type="checkbox"/> No |  |
|  |  | 3. Service Type <input checked="" type="checkbox"/> Certified   |  |
|  |  | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes  |  |
| Code2:<br>File: dl/83246T Need Publication Fee <i>Karl E</i>                               |  |   |  |
| PS Form 3811 Domestic Return Receipt   |  |   |  |



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

December 9, 2013

Rodney and Virginia St. Clair  
8319 Clark Rd.  
Marsing, ID 83639

Re: 83146T

Dear Rodney and Virginia:

Your water rights application was received and filed in this office on **November 8, 2013**, in the name of **Rodney and Virginia St. Clair** and has been assigned application number **83146T**. The **\$180.00 application fee** was received and Receipt No. **283234** was issued on **November 8, 2013**, to **Stanka Consulting, LTD**.

Please be advised, in accordance with Nevada Revised Statutes, the required notices will be sent to the owner's latest address of record and it is the responsibility of the applicant to notify this office of any address change. Copies of the notices will be sent to **Stanka Consulting, LTD** as agent unless we are otherwise instructed by you, the owner of record.

Further, in accordance with NRS 533.360, notice of publication was sent to **Humboldt Sun (Humboldt County)** and the notice will be published once a week for four consecutive weeks.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Ciminski".

Amanda Ciminski  
Administrative Assistant

cc: Stanka Consulting, LTD

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

STANKA CONSULTING, LTD  
MICHAEL STANKA P.E.  
3032 SILVERSAGE DR STE 101  
CARSON CITY NV 89701

## Receipt

| Payment Method |  | Check No. | Receipt # |
|----------------|--|-----------|-----------|
| Check          |  | 11612     | 283234    |

| Date                           | Item             | Description                                | Amount                |
|--------------------------------|------------------|--|-----------------------|
| 11/8/2013                      | Temporary Change | TEMPORARY APPLICATION TO CHANGE NO. 83246T | 180.00                |
| Received By: Catherine Orpilla |                  |  | <b>Total</b> \$180.00 |

JT APP 033

SE ROA 0022

DEC 09 2013

APPLICATION FOR WATER NO. 83246T

NOTICE IS HEREBY GIVEN, that on the 8<sup>th</sup> day of November 2013 Rodney and Virginia St. Clair of Marsing, Idaho made application to the State Engineer of Nevada for permission to change the point of diversion of 1.57 c.f.s. of water heretofore claimed under V10493. Water will be diverted from an underground source at a point located within the NE1/4 NE1/4 of Section 10, T42N, R37E, MDM or at a point from which the N1/4 corner of said Section 10, bears N 81 degrees 14 minutes W., a distance of 2,605.00 feet (approx. 3 miles SSW of Orovada, NV). Water will be used for irrigation and domestic purposes from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The existing point of diversion was located within the NE1/4 NW1/4 of Section 8, T42N, R37E, MDM, or at a point from which the NW corner of said Section 8 bears N 56 degrees 59 minutes 13.2 seconds W, a distance of 1,527.2 feet. Water was used for irrigation and domestic purposes from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

Jason King, P.E.

State Engineer

JK/ac

Date of first publication \_\_\_\_\_

Date of last publication \_\_\_\_\_

12/9/13  
KE

JT APP 034

SE ROA 0023

**Amanda Ciminski**

---

**From:** Amanda Ciminski  
**Sent:** Monday, December 09, 2013 9:24 AM  
**To:** 'legals@winnemuccapublishing.net'  
**Subject:** 83246  
**Attachments:** 83246.doc

Humboldt Sun/Humboldt

Please publish this notice(s) in your paper once a week for four consecutive weekly issues, the first publication to commence in your first issue after receipt of this letter. *Upon completion of such publication it will be necessary for you to send to this office a proof of publication subscribed to before a Notary Public*, showing the dates of the issues of said newspaper wherein such publications were made, and that such newspaper is a newspaper having a general circulation, and that the affiant is the publisher or manager thereof. Also send your bill, which, in accordance with the statutes, must not exceed the sum of fifty dollars. The bill will be paid following receipt of publication.

Thank you,

Amanda Ciminski

Administrative Assistant II

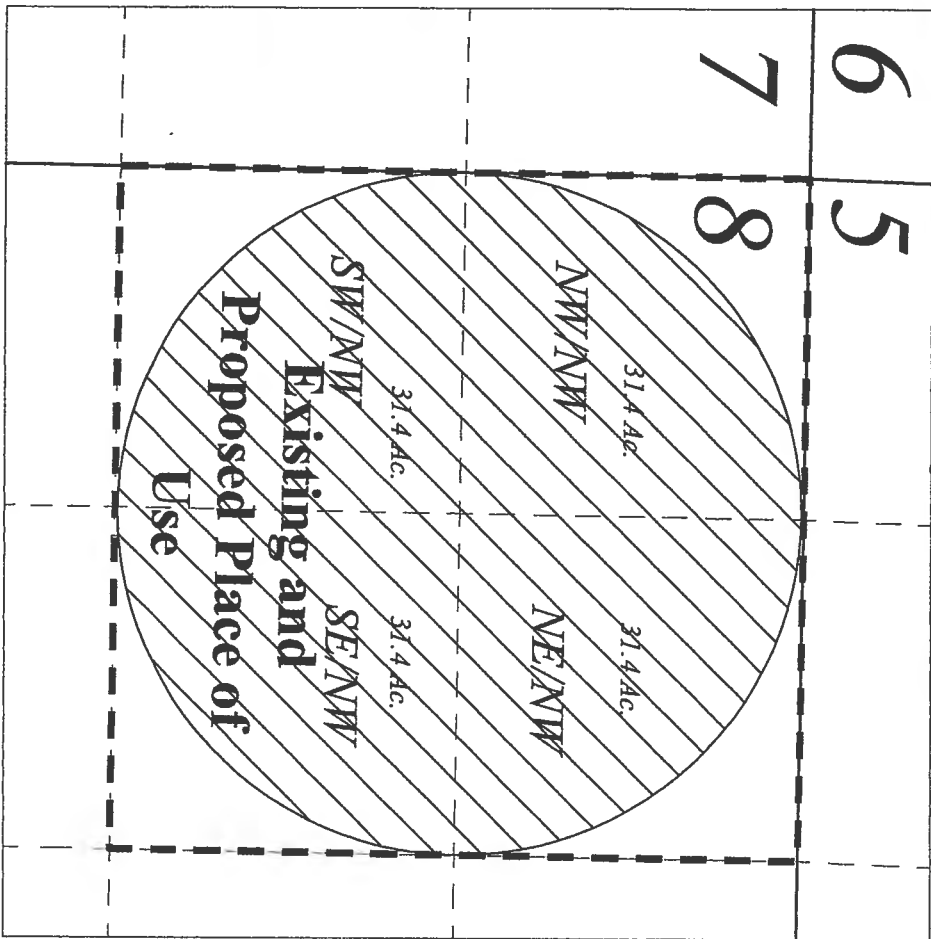
Division of Water Resources

901 S. Stewart Street, Suite 2002

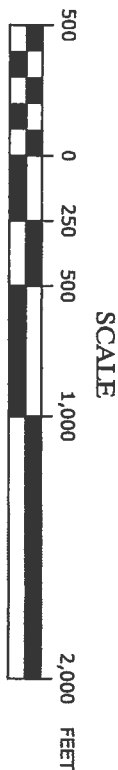
Carson City, NV 89701

6 5

7 8



| EXISTING AND PROPOSED PLACE OF USE |               |          |         |
|------------------------------------|---------------|----------|---------|
| SECTION                            | SUBDIVISION   | TOWNSHIP | ACREAGE |
| 8                                  | NE 1/4 NW 1/4 | 42 N.    | 31.4    |
| 8                                  | SE 1/4 NW 1/4 | 42 N.    | 31.4    |
| 8                                  | SW 1/4 NW 1/4 | 42 N.    | 31.4    |
| 8                                  | NW 1/4 NW 1/4 | 42 N.    | 31.4    |



**Stanka Consulting, LTD**  
A Professional Engineering Company

3021 Silver Sage Drive, Suite 101  
Ceres, CA 95308  
www.stankaconsulting.com

1-650-555-1525  
1-650-555-1525  
1-650-555-1525

(S)

PORTION OF TOWNSHIP 42 NORTH  
RANGE 37 EAST, M.D.B. & M.

OFFICE ENGINEER  
2011 MAY 8 - ADN 1122

MAP TO ACCOMPANY TEMPORARY CHANGE  
APPLICATION  
FOR  
IRRIGATION USE  
BY  
RODNEY AND VIRGINIA ST. CLAIR  
FROM  
UNDERGROUND SOURCE (NW SECTION 8 WELL)  
IN  
HUMBOLDT COUNTY, NEVADA.

836527 836517 836507



TEMPORARY

Application No.

**83246.T**

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER  
OF USE AND PLACE OF USE OF THE PUBLIC WATERS  
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office

**NOV 08 2013**

Returned to applicant for correction

Corrected application filed

Map filed

Aug 13 1968

under  
23662The applicant Rodney and Virginia St. Clair8319 Clark Rd.of Marsing

Street Address or PO Box

City or Town

Idaho 83639

State and ZIP Code

hereby make(s) application for permission to change the

☒ Point of diversion☐ Place of use☐ Manner of use☒ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Vested Claim V - 0104931. The source of water is Underground Source (NW Section 8 Well)

Name of stream, lake, underground, spring or other sources.

2. The amount of water to be changed 1.57 c.f.s. (502.4 acre feet annually)

Second feet, acre-feet. One second foot equals 448.83 gallons per minute.

3. The water to be used for Irrigation and domestic

Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use

4. The water heretofore used for Irrigation and domestic

If for stock, state number and kind of animals.

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

NE 1/4 NE 1/4 of Section 10, T. 42 N., R. 37 E., M.D.B.&M. or at a point from which the N1/4 Corner of said Section 10 bears N. 81° 14' W., a distance of 2605 feet. (See Beneficial Use Map Filed Under 23662 and referenced by 24633)

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

within the NE 1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M. or at a point from which the NW Corner of said Section 8 bears N. 56° 59' 13.2" W., a distance of 1,527.2 ft. (See Map Filed Under V- 010493)

**1,573.48 FT**

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Quinn River Valley - Orondo subarea  
33A

**JT APP 038**

SE ROA 0027



7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

unchanged

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

31.4 acres within the NE1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

31.4 acres within the SE1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

31.4 acres within the SW1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

31.4 acres within the NW1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

125.6 acres total [See attached map]

9. Proposed use will be from January 1st to December 31st of each year.  
Month and Day Month and Day

10. Existing use permitted from January 1st to December 31st of each year.  
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Pump, Meter, Pipeline, electrical, and Pivot already installed. No additional works required.

12. Estimated cost of works \$0.00

13. Estimated time required to construct works N/A - Works Already Completed.

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use 1 year

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

Pump, Meter, Pipeline, electrical, and Pivot already installed. No additional works required. Awaiting temporary permit approval so that pivot can be used for irrigation of alfalfa within the NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M.

16. Miscellaneous remarks:

michael@stankaconsulting.com

E-mail Address

(775) 885-9283

Phone No.

Ext.

Michael A. Stanka

Type or print name clearly

Signature, applicant or agent

Stanka Consulting, LTD

Company Name

3032 Silver Sage Dr., Suite 101

Street Address or PO Box

Carson City, NV 89701

City, State, ZIP Code

NOTICE: APPLICATION MUST BE SIGNED BY THE APPLICANT OR AGENT

Revised 07/13

\$180 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

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STATE ENGINEERS OFFICE

PROOF OF APPROPRIATION FOR IRRIGATION & DOMESTIC PURPOSES

File No. **V10493**

2 - 33A

INDEXED UNDER

|                  |  |
|------------------|--|
| Name of Claimant |  |
| Map              |  |
| Stream           |  |
| Township         |  |

QUINN RIVER VALLEY - OROVADA SUBAREA

HUMBOLDT County

Name of claimant RODNEY AND VIRGINIA ST. CLAIR

Source of water claimed UNDERGROUND

Date of filing proof NOV 08 2013

Date of filing map

Description of point of diversion NE 1/4 NW 1/4 Sec 8 T 42N R 37E MDB&M

**ABANDONED**

RULING NO. 6287

DATE JUL 25 2014

REMARKS

SEE APPLICATION 83246T TO CHANGE P.O.D. OF A PORTION Den. 7/25/14

|             |
|-------------|
| COMPUTER CH |
| File Entry  |
| Publication |
| Permit      |
| Certificate |

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

July 25, 2014

Rodney and Virginia St. Clair  
8319 Clark Road  
Marsing, Idaho 83639  
Certified Mail # 7106 7808 0630 0056 4205

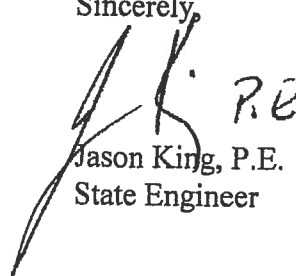
Re: Proof of Appropriation No. V-010493 and Application 83246T

Dear Mr. and Mrs. St. Clair:

Enclosed is our official Ruling in the matter of Proof of Appropriation No. V-010493 and Application 83246T. Proof of Appropriation No. V-010493 has been declared abandoned and Application 83246T has been denied on the grounds as set forth in the Ruling.

Also enclosed is a copy of your application, which includes the endorsement of denial.

Sincerely,

  
Jason King, P.E.  
State Engineer

JK/jm

Enclosures

cc: Michael A. Stanka, Stanka Consulting, LTD

**THIS PAGE CONSISTS OF AN  
OVERSIZED MAP CONTAINED IN  
THE ORIGINAL APPLICATION  
FILE**

Application No. 010493

STATE OF NEVADA  
PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Underground Source

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source NW Section 8 Well

Name of ditch, flume or pipe line

at the following point(s) (List all points of diversion from this source, appending a sheet if necessary. Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated.)

within the NE 1/4 NW 1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M. or at a point from which the NW Corner of said Section 8 bears N. 56° 59' 13.2" W., a distance of 1,573.48 ft.

(1) Name of claimant Rodney and Virginia St. Clair

Address 8319 Clark Rd., Marsing, Idaho 83639, County of Owyhee

State of Idaho Telephone No. (208) 896-4352

(2) The means of diversion employed POD is a drilled 8" well with pump, water pumped or gravity fed to place of use  
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was

(4) The construction of the ditch or other works was begun

and completed

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom N/A feet, width on top N/A feet, depth N/A feet, on a grade of N/A feet per thousand feet.

(6) The conduit has not been enlarged. Note - If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun

and completed

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom \_\_\_\_\_ feet, width on top \_\_\_\_\_ feet, depth \_\_\_\_\_ feet, on a grade of \_\_\_\_\_ feet per thousand feet.

(9) The claimant is the owner in the above-described conduit.

If claimant is an owner in the conduit, state interest held on this line.

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(10) The nature of the title to the land for which the water right is claimed is

Rodney and Virginia St. Clair are current owners of Humboldt County APN #003-491-17, which corresponds to 160 acres in the NW Corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. (See Attachments)

(11) Crops of Alfalfa, barley, vegetables, white blossom sweet clover

have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(12) The water has been used for irrigation from January 1st to December 31st of each year.  
Day of month Day of month

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

|      |      |              |         |        |   |     |       |     |       |      |
|------|------|--------------|---------|--------|---|-----|-------|-----|-------|------|
| 1924 | 40.0 | acres in the | NW¼ NW¼ | of Sec | 8 | , T | 42 N. | , R | 37 E. | , E. |
| 1924 | 40.0 | acres in the | NE¼ NW¼ | of Sec | 8 | , T | 42 N. | , R | 37 E. | , E. |
| 1924 | 40.0 | acres in the | SW¼ NW¼ | of Sec | 8 | , T | 42 N. | , R | 37 E. | , E. |
| 1924 | 40.0 | acres in the | SE¼ NW¼ | of Sec | 8 | , T | 42 N. | , R | 37 E. | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |
|      |      | acres in the |         | of Sec |   | , T |       | , R |       | , E. |

(14) The maximum acreage irrigated in any year was 160 acres.

(15) The water claimed has not been used for irrigation each and every year since the right was initiated.

(16) The years during which no water was used for irrigation or during which the full water right was not used were (If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary.)

See Attached Sheet

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of Humboldt  
County, said record being at page \_\_\_\_\_ of Book \_\_\_\_\_ of \_\_\_\_\_, and being a claim for  
\_\_\_\_\_ of water for the irrigation of  
\_\_\_\_\_ acres of land in the following legal subdivisions:

Note - Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

(19) The character of the soil is Sandy . A continuous flow of up to 2.676 cubic feet  
Sandy, gravelly, loam  
of water per second has been used to irrigate 160 acres of land and 640  
acre-feet per acre per annum have been used to irrigate the crops.

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(20) Remarks  
See Attachments.

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The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by  
Rodney and Virginia St. Clair are full and correct to the best of his knowledge and belief.

I, Michael A. Stanka, am filing this Proof as acting agent for Rodney and Virginia St. Clair

If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.

Name Michael A. Stanka

Address 3032 Silver Sage Dr., Suite 101; Carson City, NV 89701

Telephone Number (775) 885 - 9283

State of Nevada

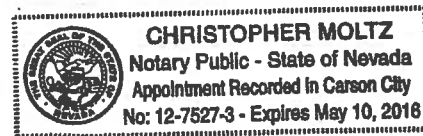
County of Carson City

Subscribed and sworn to before me on December 6, 2013

by Michael A. Stanka



Signature of Notary Public Required



Notary Stamp or Seal Required

**\$120 FILING FEE MUST ACCOMPANY PROOF**

Revised 07/13 - poa-irr

**JT APP 046**

SE ROA 0035



V-010493

Question (16)

The Northwest corner of section 8 was fully irrigated in 1924. This property was part of an 1862 Homestead Act land patent. Based on a signed and notarized affidavit by George Crossley dated February 19<sup>th</sup> 1924, the entire 160 acres was cultivated. Additionally, the signed affidavit lists a bored well, 56 feet deep with an 8 inch casing within the NW ¼ of Section 8 as a homestead improvement. This well was located and documented during a field visit to the site. This information was submitted previously to your office, but is also included here. Research of NDWR records show that no surface water rights are now or in the past been associated with this property.

Currently, the land has not been recently irrigated. The St. Clair's purchased the property in 2013 and plan to irrigate this property with their vested claim groundwater rights. It is unknown at this time when irrigation of this land was reduced, interrupted, or suspended. It is also unknown at this time the specific years this land was or was not irrigated – either fully or partially.

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# Stanka Consulting, LTD

A Professional Engineering Company

3032 Silver Sage Drive, Suite 101  
Carson City, Nevada 89701  
(775) 885-9283  
[michael@stankaconsulting.com](mailto:michael@stankaconsulting.com)

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COPY

Nevada Division of Water Resources

November 8, 2013

Attn: Mr. Jason King  
901 S. Stewart St., Suite 2002  
Carson City, Nevada 89701

RE: V-10498 [Additional Information]

Jason,

This office is submitting additional information regarding the Vested Claim for underground rights by Rodney and Virginia St. Clair [ V-10498]. Attached is a copy of the Testimony of Claimant that was signed by George J. Crossley as part of the final paperwork required to complete the Homestead Act land acquisition.

This document was signed and notarized on February 19<sup>th</sup> 1924 and states that the 160 acres within the NW ¼ of Section 8, Township 42 North, Range 37 East, M.D.B.&M. was cultivated. Additionally, this document lists under improvement a "bored well, 56 feet, cased with 8 inch casing". This well description is consistent with the well that was documented with the initial submission of V-10498.

Please contact me at the above phone or email address if you have any questions.

Michael A. Stanka, P.E., WRS

Stanka Consulting, LTD

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JT APP 048

SE ROA 0037

Poss \$

Comm (Orig) \$

Excess \$

Comp (Fin) \$1/2 <sup>3.12.24</sup> DEPARTMENT OF THE INTERIOR.

For Man \$

Test Fees \$

Interest U. S. LAND OFFICE CARSON CITY, NEVADA.

## HOMESTEAD ENTRY.

FINAL PROOF

Receipt No.

### TESTIMONY OF CLAIMANT.

QUESTION 1. What is your full name, age, and post-office address?

ANSWER. George J. Crossley, age 61 years.

Oroyada, Humboldt County, Nevada.

QUESTION 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born? (If foreign born, or if native born and later naturalized in a foreign country, see Note 1.)

ANSWER. Yes, I was born in New York and reside in Nevada.

QUESTION 3. Are you the same person who made Homestead Entry No. 012930 and

014185, at the Carson City Land Office on Dec 9, 1920 & July 28, 1923.

N 1/2 of S. 3. 1/4 Section 7, the N 1/2 of E. 1/4

and N.W. 1/4 of Section 8

Township 42 North, Range 37 East, Mount Diablo Base and Meridian? If not, give relationship to entryman.

ANSWER. I am the same identical person.

QUESTION 4. Are you married or single? ANSWER. Married.

QUESTION 5. If married, of whom does your family consist?

ANSWER. Just my wife.

QUESTION 6. If a married woman, state whether your husband now has an unperfected homestead entry, and during what time he has resided on this land with you? Also state his citizenship qualifications. (See Note 1 at bottom of third page.)

ANSWER. I am the same identical person.

QUESTION 7. When did you first establish actual residence upon this land?

ANSWER. About March 8, 1921.

QUESTION 8. When was your house built on this land?

ANSWER. During the summer I lived in a tent house, and finished my dwelling house on October 1, 1921.

QUESTION 9. Have either you or your family ever been absent from the homestead since establishing residence?

ANSWER. I have been away for short periods.

QUESTION 10. If there has been such absence, give the dates covered by each absence; and as to each absence state whether you, your family, or both, were thus absent and the reason for each such absence.

ANSWER. I was away from the homestead for about ten days in March, 1923, performing jury duty at Winnemucca, Nevada. I have been away from the homestead three or four times on trips to Winnemucca, on business and for supplies, but always returned home the same day.

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QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|                  |                  |         | Subdivision. | Acres cultivable. | Acres timbered. | Foot timber. |
|------------------|------------------|---------|--------------|-------------------|-----------------|--------------|
| NE $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | sandy loam,  | 10                | "               | "            |
| NE $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 19 21. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed, harrowed, seeded in barley, no crop raised, no water, to late in season. On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect 7, cleared, ploughed and cultivated, and seeded 10 acres in alfalfa, and barley, also assorted vegetables. 19 no grain raised; fair crop of vegetables raised. 19 22. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, about 20 acres seeded in white blossom sweet clover, about 25% stand left on ground, no returns. On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, seeded two acres in Bromus grass, about six 19 acres seeded in white blossom sweet clover.

QUESTION 13. Describe fully and in detail the amount and kind of improvements and number of acres under cultivation on each subdivision. State total value of improvements on the claim.

ANSWER.

| Subdivision.                                     | Character of Improvements.   |         |
|--|--|---------|
| NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sect. 7,    | Dwelling house, 2 rooms, 12 x 26 ft.   | 3400.00 |
| " "  | Tool House, size 8 x 10 ft   | 40.00   |
| " "  | Cellar, " 10 x 12 ft,  | 40.00   |
| " "  | Ten acres is fence with rabbit proof wire, also two barb wires, cost of wire, posts & labor. | 125.00  |
| On NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sect. 8. | Forty acres fenced with rabbit proof wire  |         |
| " "  | two barb wires, cost of wire, posts and labor.   | 328.00  |
| " "  | One bored well, 56 feet, cased with 8 in. casing,  | 175.00  |

QUESTION 14. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

ANSWER. No.

QUESTION 15. Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

ANSWER. There is no indications of coal, salines, or minerals of any kind on this land.

QUESTION 16. Have you sold, conveyed, or agreed to sell or convey any portion of the land? If so, to whom and for what purpose?

ANSWER. No.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

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QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|                  |                  |         | Subdivision. | Acres cultivable. | Acres timbered. | Feet timber. |
|------------------|------------------|---------|--------------|-------------------|-----------------|--------------|
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | sandy loam,  | 10                |                 |              |
| NW $\frac{1}{4}$ | SE $\frac{1}{4}$ | Sect. 7 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | SW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SW $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |
| SE $\frac{1}{4}$ | NW $\frac{1}{4}$ | Sect. 8 | " "          | 40                | "               | "            |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 19 21. On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and potatoes. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, 40 acres cleared, ploughed and seeded with white blossom sweet clover, this seed was put in in the fall, Bromus grass seeded came up but not cut, did not head, the 6 acres of clover, no crop raised, no water, average crop of vegetables was raised in 1922.

1923. About 12 acres on NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, additional land was ploughed, cultivated and seeded in Bromus grass and clover, this seed put in in the fall, and at present time has started to come up.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, about 20 acres seeded in white blossom sweet clover, sowed in the spring, had fair stand but left it for to seed itself. On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, about two acres seeded in assorted vegetables and potatoes, fair crop raised.

1924. On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Sect. 8, in this month I have reseeded 40 acres in sweet blossom white clover, by having second seeding this land will be reseeded each year.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Sect. 7, About 18 acres additional land has been cleared, ploughed, getting the ground ready to plant seed as soon as weather permits.

On NW $\frac{1}{4}$  of NW $\frac{1}{4}$  Sect. 8, all cultivated,

On NW $\frac{1}{4}$  of SW $\frac{1}{4}$  Section 8, all cultivated.

On NE $\frac{1}{4}$  of SE $\frac{1}{4}$  " 7, all cultivated, and seeded except 18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

QUESTION 18. Have you any personal property of any kind elsewhere JT APP 051

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QUESTION 11. Describe the land embraced in above entry by legal subdivisions, showing fully the character of same, and kind and amount of timber, if any.

ANSWER.

|        |        |         | Subdivisions. | Acres cultivable. | Acres timbered. | Feet timber. |
|--------|--------|---------|---------------|-------------------|-----------------|--------------|
| NW 1/4 | SE 1/4 | Sect. 7 | sandy loam,   | 10                |                 |              |
| NW 1/4 | SE 1/4 | Sect. 7 | " "           | 40                |                 |              |
| NW 1/4 | SW 1/4 | Sect. 8 | " "           | 40                |                 |              |
| NW 1/4 | SW 1/4 | Sect. 8 | " "           | 40                |                 |              |
| NW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                |                 |              |
| NW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                |                 |              |
| SW 1/4 | NW 1/4 | Sect. 8 | " "           | 40                |                 |              |
| SE 1/4 | NW 1/4 | Sect. 8 | " "           | 40                |                 |              |

QUESTION 12. State the number of acres cultivated, kind of crop planted, and amount harvested, each year.

ANSWER. 1921. On NW 1/4 of NW 1/4 Sect. 8, 40 acres, cleared, ploughed,

Continuation.

1922. and about two acres planted in assorted vegetables, and

On NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed

and sown with wheat.

Created by the State Engineer's Office for the purpose of showing the land in the NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed, and sown with wheat.

On NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed, and sown with wheat. On NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed, and sown with wheat.

On NW 1/4 of SW 1/4 Sect. 8, 40 acres, cleared, ploughed, and sown with wheat.

|                              |   |   |   |        |
|------------------------------|---|---|---|--------|
| "                            | " | " | Ten acres is fenced with rabbit proof wire,       |        |
|                              |   |   | also two barb wires, cost of wire, posts & labor. | 125.00 |
| On NW 1/4 of NW 1/4 Sect. 8. |   |   | Forty acres fenced with rabbit proof wire         |        |
| "                            | " | " | two barb wires, cost of wire, posts and labor,    | 328.00 |
| "                            | " | " | One bored well, 55 feet, cased with 8 in. casing, | 175.00 |

On NW 1/4 of SE 1/4 Sect. 7. One bored well, 38 feet deep, 8 in. casing, Wind mill installed, cost of well, casing and wind mill, ----- \$250.00

On NW 1/4 of NW 1/4 Sect. 8, all cultivated,

On NW 1/4 of SW 1/4 Section 8, all cultivated.

On NW 1/4 of SE 1/4 " 7, all cultivated, and seeded except 18 acres, which will be seeded as soon as weather permits.

QUESTION 17. Have you optioned, mortgaged, or agreed to option or mortgage, or convey this land, or any part thereof? If so, when, to whom, and for what purpose and in what amount?

ANSWER. No.

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QUESTION 18. Have you any personal property of any kind elsewhere than on this claim? If so, describe the same, and state where the same is kept.

ANSWER. No.

QUESTION 19. Have you ever made any other homestead entry? If so, describe the same.

ANSWER. No.

QUESTION 20. Have you, since August 30, 1890, made any entry or filing (not mineral) other than homestead? If so, describe the same by legal subdivisions, or by number, kind of entry, and office where made.

ANSWER. Yes. I filed under the Desert Land Laws, on Feb 1, 1921, relinquished this land back to the Government on October 24, 1922, and then filed on the same land as an additional Homestead.

*George J. Lenoir*  
(Type plainly, with full Christian name)

**NOTE 1.**—If applicant is alien born, he should state the fact and file evidence of citizenship in due form, either a certificate of his own naturalization in a court of competent jurisdiction, or, if claiming to be a citizen by virtue of his father's naturalization and his own minority and residence in the United States at the date thereof, or, if a married woman claiming citizenship by virtue of her husband's nativity or naturalization, then record evidence of the naturalization of the father, or husband, or an affidavit as to the nativity of the latter. Applicants who were at one time citizens of the United States, but who later became citizens of a foreign country, must file record evidence of their naturalization. Any female citizen of the United States invoking the benefits of the act of October 17, 1914 (38 Stat., 740), shall make oath showing the nationality of her husband, and that he is entitled to become a citizen of the United States.

**NOTE 2.**—The officer before whom the proof is made will see that all answers are complete and responsive to the questions.

**NOTE 3.**—The officer before whom the deposition is taken should call the attention of the witness to section 185 of the U. S. Criminal Code (over), and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

I HEREBY CERTIFY that the deponent was examined separately and apart from the other witnesses in the case; that the foregoing deposition was read to or by deponent in my presence before deponent affixed signature thereto; that I verily believe deponent to be the identical person hereinbefore described, and that said deposition was duly subscribed and sworn to before me at my office, in Winnemucca, Humboldt County, State of Nevada, within the Carson City land district, this 19th day of February, 1924.

*J. W. Flavy*  
County Clerk and Ex. Office Clerk for the Ninth Judicial District  
Court of the State of Nevada, in and for the County of Humboldt.  
(Official designation of officer.)

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**Attachments for Proof of Appropriation of Water for Irrigation under Underground  
Source [NW Section 8 Well]**

**(20) Remarks**

The northwest corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. is currently owned by Rodney and Virginia St. Clair (claimants). This parcel is also listed as Humboldt County APN #003-491-17. The original owner was George J. Crossley who acquired the property in 1924 under the Homestead Act of 1862. Chain of title from the U.S. Government to Rodney and Virginia St. Clair is included as Attachment 1.

Per the Homestead Act of 1862, "...said entry is made for the purpose of actual settlement and cultivation." A copy of the Homestead Act of 1862 is included as Attachment 2. George J. Crossley wrote several articles for the Orovida Weekly Journal in 1924. These articles and others identify irrigation and irrigation practices in Orovida during the 1920's. Specifically it references alfalfa crop and the use of groundwater for irrigation. As can be seen in attached copies of articles from the 1924 Orovida Weekly Journal, the irrigation of crops through pumping underground water was occurring in the area at that time. Per the September 5, 1924 Orovida Weekly Journal, flow measurement for the Helbig was recorded at 1200 gpm. Additionally, per Orovida Weekly Journals it was reported that flows in the 1,000 gpm - 1,200 gpm were common for farmers in the Orovida Area in 1924. Copies of the Orovida Weekly Journal articles are included as Attachment 3.

Through a site survey (October 1913) of the referenced property, the well corresponding to this Vested Claim was located and documented. The well had a 8-inch casing made of rolled thin metal, with horizontal riveted seams. The casing was in short sections and connected with riveted collars. Pictures of the well are included as Attachment 4. This well is currently not operational and has been silted in. This construction technology was used until the mid 1930's. Excerpts from the History of Steel Water Pipe referencing the design are included as Attachment 5. Well drilling at the time of the well was completed using cable drill rigs. During the site survey, a relatively intact historic drill rig was located immediately adjacent to the property. The drill rig was a Armstrong Mfg Co: Waterloo, IA drill rig (aka Spudder). The Armstrong Mfg Co. ceased making these drill rigs in 1933. A recent photo of the drill rig and background literature regarding the drill rig is included as Attachment 6.

Review of historical areal (July 1954) shows land disturbance in the entire 160 acres of the NW1/4 of Section 8, T. 42 N., R. 37 E., M.D.B.&M. An image of the areal is included as Attachment 7. Based on the information presented, the vested claim is for the entire 160 acres of land at a duty of 4.0 acre feet per acre (640 acre-feet). The diversion rate a 2.0 c.f.s (896 g.p.m.) is listed, which is consistent with the amount required to irrigate 160 acres and also is within the range listed in Orovida Weekly Journal Article.



| Chain of Title for NW Corner of Section 8, T. 42 N., R. 37 E., M.D.B.&M. |   |   |                  |   |
|--|---|---|------------------|---|
| No.  | Old Owner   | New Owner(s)  | Date Of Transfer | Document  |
| 1  | United States of America                                      | George J. Crossley  | 4/21/1924        | Deed, Recorded Patent Number 936734   |
| 2  | George J. Crossley  | Albert H. Trathen   | 6/19/1924        | Deed of Gift, Deeds Bk. 55, Pg. 516   |
| 3  | Albert H. Trathen   | Frank L. Trathen  | 8/26/1927        | Deed of Gift, Deeds Bk. 60, Pg. 50-52   |
| 4  | Frank F. Trathen (Deceased)                                   | Florence D. Trathen (1/4 Por)<br>Grace F. Trathen (1/4 Por)<br>Harold F. Trathen (1/4 Por)<br>Albert F. Trathen (1/4 Por) | 5/22/1973        | Order Approving, Allowing and Settling First and Final Account and Decree of Distribution, Book 75, Pg. 387, Frame 2, 4, and 6. |
| 5  | Florence D. Trathen (Deceased) - 1/4 Portion                  | Grace F. Trathen (1/3 Por)<br>Harold F. Trathen (1/3 Por)<br>Albert F. Trathen (1/3 Por)                                  | 4/13/1987        | Order To Set Aside Estate, Book 228, Pg. 13, Frame 2-3  |
| 6  | Harold F. Trathen (Deceased) - 1/3 Portion                    | Grace F. Methven aka<br>Grace F. Trathen (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 4/6/2009         | Order Setting Aside Estate Without Administration, 2009 1116  |
| 7  | Grace F. Methven (Deceased) - 1/2 Portion                     | Grace T. Methven Revocable Trust (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 6/10/2013        | Order Setting Aside Estate Less Than \$100,000.00 in Value, 2013 2605   |
| 8  | Grace T. Methven Revocable Trust - 1/2 Portion                | John F. Methven, Jr. (1/2 Por)<br>Albert F. Trathen (1/2 Por)   | 7/11/2013        | Grant, Bargain and Sale Deed, 2013 3099   |
| 9  | John F. Methven, Jr. - 1/2 Por<br>Albert F. Trathen - 1/2 Por | Rodney and Virginia St. Clair   | 8/12/2013        | Grant, Bargain and Sale Deed, 2013 3755   |

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①  
\* Carson City 012930 and 014185

4-1008-B.

# The United States of America,

Do all in whom these presents shall come. Greetings.

WHEREAS, a Certificate of the Register of the Land Office at Carson City, Nevada,  
has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862,  
"To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of  
George J. Crossley

has been established and duly commuted, in conformity to law, for the north half of the southeast  
quarter of Section seven and the north half of the southwest quarter  
and the northwest quarter of Section eight in Township forty-two north  
of Range thirty-seven east of the Mount Diablo Meridian, Nevada, contain-  
ing three hundred twenty acres,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described;  
TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereto, unto the said claimant and to the heirs and assigns of  
the said claimant forever subject to any vested and reserved water rights for mining, agricultural, manufacturing, or other purposes, and  
rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws,  
and decisions of courts; and there is reserved from the lands hereby granted a right of way thorough for ditches or canals constructed by the  
authority of the United States.

(IN TESTIMONY WHEREOF, I, Calvin Coolidge,

President of the United States of America, have caused these letters to be made  
Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the TWENTY-FIRST

(SEAL.)

day of APRIL

In the year of our Lord one thousand

nine hundred and TWENTY-FOUR

and of the Independence of the

United States the one hundred and FORTY-ETH

By the President

Calvin Coolidge

By

W. B. English

Secretary.

M. P. LeRoy

Register of the General Land Office.

RECORD OF PATENTS: Patent Number 936734

JT APP 056

SE ROA 0045

(4)

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Bk 55 Pg. 490-491

Homestead  
April 21<sup>st</sup> 1924

rents, issues and profits thereof. And also all the estate, right, title, interest, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular, the above-mentioned and described premises together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed, Sealed and Delivered in the Presence of) Robert C. Vandenberg. (Seal)  
Belle Vandenberg (Seal)

STATE OF CALIFORNIA,  
COUNTY OF SANTA CLARA.

SS. On this 25th day of February in the year one thousand nine hundred and twenty-four before me, Charles J. Clark a Notary Public in and for said County of Santa Clara, State of California, personally appeared Belle Vandenberg, known to me to be the person whose name is subscribed to the within instrument, and she duly acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, at my office in the City of San Jose, County and State aforesaid, the day and year in this certificate first above written.

(Notarial Seal) Charles J. Clark  
Notary Public in and for the County of Santa Clara, State of California.

STATE OF CALIFORNIA,  
COUNTY OF ALAMEDA.

SS. On this 23rd day of February A.D. one thousand nine hundred and Twenty Four, before me Charles B. Coit a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Robert C. Vandenberg known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written.

(Notarial Seal) Charles B. Coit  
Notary Public. In and for said County of Alameda, State of California.

Recorded at request of Bert C. Alford May 19, 1924 at 45 min past 3 o'clock P M File No 49020.  
J. Gorman COUNTY RECORDER.

Carson City 012980 and 014185,

4-1005.

THE UNITED STATES OF AMERICA,  
To all to whom these presents shall come, Greeting.

WHEREAS, a Certificate of the Register of the Land Office at Carson City, Nevada, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of George J. Cressley has been established and duly consummated, in conformity to law, for the north half of the southeast quarter of Section seven and the north half of the southwest quarter and the northwest quarter of Section eight in Township forty-two north of Range thirty-seven east of the Mount Diablo Meridian, Nevada, containing three hundred twenty acres, according to the official plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General;

NOW KNOW YE, That there is, therefore, granted by the United States unto the said claimant the tract of land above described;

RECORDED

5  
Homestead  
Act

TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Calvin Coolidge, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the Twenty-First day of April in the year of our Lord one thousand nine hundred and Twenty-Four and of the Independence of the United States the One hundred and Forty-eighth.

By the President: Calvin Coolidge  
By Viola B. Fugh. Secretary.

(Seal of Gen'l. Land Office)

M. P. LeROY.  
Recorder of the General Land Office.

Recorded: Patent Number 956734.

Recorded at request of J.W. Davey May 20, 1924 at 30 min past 1 o'clock P M File No 49024.

*G. German* COUNTY RECORDER.

#####

THIS INSTRUMENT, made the twentieth day of May, one thousand nine hundred and twenty-four Between Martin Oyarcabal and Pete Bertranhandy, co-partners doing business under the firm name and style of Martin Oyarcabal & Co., and Martin Oyarcabal the parties of the first part, and The First National Bank of Winnemucca, Nev., a corporation, the party of the second part, WITNESSETH: That the said parties of the first part, in consideration of the sum of Ten & 00/100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, and sell unto the said party of the second part, and to its successors and assigns forever, all these certain lots, pieces or parcels of land situate in the County of Humboldt State of Nevada, and bounded and described as follows, to-wit: The East half of the northeast quarter of Section Eleven, and the West half of the Northwest quarter of Section Twelve, all in Township Forty-three North, Range Thirty East M.D.B. & M. containing one hundred and sixty acres, or thereabouts. Together with all the water right and water thereunto belonging, and heretofore granted to one, Theodora Martinez by the State Engineer of Nevada, and described in Permit No. 2459 to appropriate the waters of Pole Creek; also, the water and water right unto said lands, <sup>belonging</sup> and heretofore granted to the said Martinez in Permit No. 4256 to appropriate the waters of Big Creek, to which Permits reference is hereby made for further particulars. (\$4.50 R. Stamps attached and cancelled)

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands the day and year first above written.

(Signed and Delivered in the Presence of)

Martin Oyarcabal Co  
By Martin Oyarcabal  
Martin Oyarcabal.

JT APP 058

SE ROA 0047

DEED OF GIFT.

THIS INDENTURE, Made this Nineteenth day of June in the year of Our Lord, One Thousand Nine Hundred and Twenty-four. BETWEEN George J. Crossley, a single man, and Albert H. Trathen WITNESSETH: That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection and livelihood of the said party of the second part, does by these presents GIVE, GRANT, ALIEN and CONFIRM unto the said party of the second part and to his heirs and assigns forever, All that certain lot piece or parcel of land, situate, lying and being in the State of Nevada County of Humboldt and bounded and particularly described as follows, to-wit: The Northwest quarter (N.W. 1/4) of Section Eight (8) Township Forty-two North (42N), Range No. 37 East (37E) Mount Diablo Base and Meridian, containing one hundred and sixty acres, TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of } George J. Crossley. (Seal)  
W S. Angwin

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } SS.

On this 19th day of June A.D. One Thousand Nine Hundred and Twenty four, before me, W S Angwin, Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared George J. Crossley a single man known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Notarial Seal) W.S. Angwin.  
Notary Public in and for said County of Alameda State of California.

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA, } SS.

I, Geo. E. Gross, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a Court of Record of the State of California, having by law a seal, do hereby certify that W.S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgment or affidavit, was at the time of taking such proof, acknowledgment or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California; and I further certify that an impression of the seal of the said notary Public is not required by law to be filed in my office.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my official seal this 20th day of June 1924.

(Court Seal) Geo E. Gross.  
County Clerk of the County of Alameda and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda.  
Recorded at request of Albert H. Trathen July 16, 1924 at 30 min past 1 o'clock P M File No 49170.

J. Germano COUNTY RECORDER.

Deed from  
Crossley to Albert  
Trathen  
June 19th 1924

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STATE ENGINEERS OFFICE

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63.00 feet along the east side of Melarky Street to the point of beginning. Said tract of land facing 62.50 feet on Third Street and 63.00 feet on Melarky Street. The said land and premises being described in Book 58 of Deeds, pages 549 and 561 thereof, official records of Humboldt County.

TO HAVE AND TO HOLD the said premises together with all the rights, privileges and appurtenances aforesaid, unto the party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set its hand the day and year first above written.

C. P. Hopkins.  
Mayor Pro Tem

(Corporate Seal.)

Mary M Cosby  
City Clerk

(\$6.50 Revenue Stamps attached and cancelled.)

STATE OF NEVADA ss  
County of Humboldt

On this 27 day of July, 1937, personally appeared before me, a Notary Public in and for said County and State, C. P. HOPKINS and MARY M. COSBY, known to me to be the same persons described in and who executed the above and foregoing instrument, who duly acknowledged to me that they executed the same freely and voluntarily and for all the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this certificate first above written.

J G Moore  
Notary Public

(Notarial Seal.)

Recorded At Request of H. A. Johnson July 30, 1937 At 36 Min. Past 4 O'Clock P. M., File No. 61892.

J. L. German  
County Recorder.

=====

DEED OF GIFT

This Indenture, Made this twenty-sixth day of August in the year of Our Lord One Thousand Nine Hundred and Twenty Seven

Between Albert E. Trathen the party of the first part, And Frank L. Trathen the party of the second part,

WITNESSETH: That the party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, portection and livelihood of the said party of the second part, does by these presents GIVE, GRANT, ALIEN and CONFIRM unto the said party of the second part, and to his heirs and assigns forever,

All that certain lot piece or parcel of land, situated, lying and being in the County of Humboldt State of Nevada and bounded and particularly described as follows, to-wit:

The Northwest quarter (N.W.¼) of Section Eight (8) Township Forty-two North (42 N.), Range No. 37 East (37E) Mount Diablo Base and Meridian, containing one hundred and sixty acres.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions,

Deeds BK 60 Pg. 50-52

3

16

remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

SIGNED, SEALED AND DELIVERED IN

THE PRESENCE OF

Albert H. Trathan SEAL

W. S. Angwin

J A Angwin

STATE OF CALIFORNIA,

County of Alameda

SS

On this 26th day of August A. D. One Thousand Nine Hundred and twenty seven, before me, W. S. ANGWIN a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Albert H Trathan known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

W S Angwin  
Notary Public

(Notarial Seal.)

In and for said County of Alameda  
State of California

STATE OF CALIFORNIA,  
COUNTY OF ALAMEDA,

SS.

COUNTY CLERK'S CERTIFICATE AS TO NOTARY PUBLIC No. 19020

I, GEO. E. GROSS, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a court of record of the State of California, having by law a seal, do hereby certify that W. S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgement or affidavit, was at the time of taking such proof, acknowledgement or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California, and I further certify that an impression of the seal of the said Notary Public is not required by law to be filed in my

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2013 DEC -6 PM 2:13  
STATE ENGINEERS OFFICE

JT APP 061

SE ROA 0050

AAF585



STATE OF CALIFORNIA,

County of Alameda

SS

On this 26th day of August A. D. One Thousand Nine Hundred and twenty seven, before me, W. S. ANGIN a Notary Public, in and for the County of Alameda State of California, residing therein, duly commissioned and sworn, personally appeared Albert H Trathen known to me to be the person described in and whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

W S Angwin  
Notary Public

(Notarial Seal.)

In and for said County of Alameda  
State of California

STATE OF CALIFORNIA,  
COUNTY OF ALAMEDA,

SS.

COUNTY CLERK'S CERTIFICATE AS TO NOTARY PUBLIC No. 19020  
I, GEO. E. GROSS, County Clerk of the County of Alameda, State of California, and ex-officio Clerk of the Superior Court of the State of California in and for the County of Alameda, which is a court of record of the State of California, having by law a seal, do hereby certify that W. S. Angwin whose name is subscribed to the attached certificate of proof, acknowledgment or affidavit, was at the time of taking such proof, acknowledgment or affidavit a Notary Public in and for said Alameda County, duly commissioned and qualified, and residing in said county, and was as such an officer of the State of California, duly authorized by the laws thereof to administer oaths or affirmations and to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given all his official acts as such Notary Public, and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to the attached certificate is his genuine signature and that the annexed instrument is executed and acknowledged according to the laws of the State of California, and I further certify that an impression of the seal of the said Notary Public is not required by law to be filed in my office.

In witness whereof I have hereunto set my hand, and affixed my official seal this 30 day of August 1927.



BOOK 75 PAGE 387 FRAME 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

IN THE MATTER OF THE ESTATE  
OF  
FRANK L. TRATHEN,  
Deceased.

No. 2337

**FILED**

AUG 31 1973

GRACE W. BELL  
CLERK OF DIST. COURT

ORDER APPROVING, ALLOWING AND SETTLING

FIRST AND FINAL ACCOUNT AND DECREE OF DISTRIBUTION

The matter of the hearing of the First and Final Account and Petition for Distribution of JOHN M. DOYLE, Administrator of the Estate of FRANK L. TRATHEN, deceased, coming on regularly to be heard this 31st day of August, A. D. 1973, and proof being duly made and offered, the Court finds that said First and Final Account and Petition for Distribution was filed in the office of the Clerk of the above-entitled Court on the 13th day of August, A. D. 1973; that on the same day the Clerk of the above-entitled Court appointed the 31st day of August, A. D. 1973, as the day for the hearing and settlement thereof; that notice of the time and place of said hearing and settlement has been given as required by law; that Notice to Show Cause why said account should not be settled and why said Petition should not be granted and said distribution made was issued by the Clerk of the above-entitled Court, and notice was given as required by law by causing the same to be posted in front of the Court House in the City of Winnemucca, County of Humboldt, State of Nevada, all of which is shown by the Affidavit of ANTONIA JETER on file herein; that due and legal notice to show cause why said account should not be approved, allowed and settled and said distribution made has been given as required by law.

JOHN M. DOYLE  
ATTORNEY AT LAW  
WINNEMUCCA, NEVADA

JT APP 063

SE ROA 0052



1 to Petitioner, the names and residences of the heirs, devisees  
2 and legatees of the deceased are as follows, to-wit:

| 3 | <u>NAME</u>         | <u>RELATIONSHIP</u> | <u>RESIDENCE</u>                     |
|---|---------------------|---------------------|--------------------------------------|
| 4 | FLORENCE D. TRATHEN | Wife                | 4800 Linda Vista<br>Napa, California |
| 5 | GRACE F. TRATHEN    | Daughter            | 4800 Linda Vista<br>Napa, California |
| 6 |                     |                     |                                      |
| 7 | HAROLD F. TRATHEN   | Son                 | 4800 Linda Vista<br>Napa, California |
| 8 |                     |                     |                                      |
| 9 | ALBERT F. TRATHEN   | Son                 | 4800 Linda Vista<br>Napa, California |

10 12. Outstanding Claims and Taxes. So far as is known  
11 to Petitioner any and all estate and income taxes and claims  
12 against the estate and the decedent have heretofore been paid in  
13 full and there remain no outstanding claims of creditors or unpaid  
14 taxes against said estate.

15 13. Remaining Expenses. All administrative expenses  
16 which have been incurred will be paid outside of the administration.

17 14. Condition of Estate. The estate is now in a con-  
18 dition to be wound up, settled and finally closed.

19 15. Finding of Fact. The Court expressly finds from  
20 the records and files herein, and the evidence given upon this  
21 hearing, that all of the allegations contained in said account  
22 and petition are true and correct; that the Administrator has  
23 accounted for all of the assets now belonging to said estate, or  
24 those which with reasonable diligence could be ascertained or  
25 discovered; that there were no items for which the Administrator  
26 asks to be allowed credit; and the Court further expressly finds  
27 that all costs and expenses of administration will be paid outside  
28 the administration.

29 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
30 DECREED:

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STATE ENGINEERS OFFICE

5  
BOOK 228 PAGE 13 FRAME 2

FILED

1 NO. 3111

APR 13 1987

2 DEPT. 1

SUSAN E. HARRER  
CLERK OF DIST. COURT

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IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

IN THE MATTER OF THE ESTATE

OF

ORDER TO SET ASIDE ESTATE

FLORENCE DELIA TRATHEN,

Deceased.

The matter of the hearing of the Petition to Set  
Aside an Estate Less than the Value of Twenty-five Thousand  
Dollars (\$25,000.00), of FLORENCE DELIA TRATHEN, deceased,  
coming on regularly to be heard this 13th day of April A. D.  
1987, at the hour of 11:00 o'clock A. M. of said day, and proof  
being duly made and offered, the Court finds that said Petition  
was filed in the office of the Clerk of the above-entitled  
Court on the 30th day of March, A. D. 1987; that on the same  
day, the Clerk of the above-entitled Court appointed Monday,  
the 13th day of April, A. D. 1987, as the day for the hearing  
thereof; that notice of the time and place of said hearing has  
been given as required by law. And no person appearing to  
oppose or contest said Petition at this time fixed for the  
hearing thereof, the Court finds:

*John M. Doyle*  
CRICKET 21-111  
Post Office Box 1138  
Winnemucca, Nevada 89401

JT APP 066

SE ROA 0055

BOOK 228 PAGE 13 FRAME 3

I

That said Petitioner is a resident of the County of Humboldt, State of Nevada, and over the age of twenty-one years.

II

That FLORENCE DELIA TRATHEN died on April 18, 1985, in the County of Napa, State of California, and was at that time a resident of the County of Napa, State of California.

III

That decedent left a valid Last Will and Testament dated June 28, 1973, an endorsed copy of which is on file herein; that said Will contains provisions for the distribution of the residue of decedent's estate which includes the real property located in the State of Nevada which is described herein.

IV

That the only property belonging to the estate in the County of Humboldt, State of Nevada, is as follows, to-wit:

The Northwest quarter (N.W.  $\frac{1}{4}$ ) of Section Eight (8) Township forty-two (42 N.), Range 37 East (R 37 E.) Mount Diablo Base Meridian, consisting of one hundred sixty acres.

V

That the expenses of the last illness and funeral expenses of the decedent have been paid in full.

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FILED

2009 APR -6 AM 9:01

TAM RAE SPERO  
DIST. COURT CLERK

1 APN: 03-491-17

2  
3 Case No. PR 4063

4 Dept. No. 1

5 The undersigned affirm there are no Social  
6 Security numbers contained in this document

7  
8 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
9  
10 IN AND FOR THE COUNTY OF HUMBOLDT.

11 ---  
12 IN THE MATTER OF THE ESTATE

13 OF

ORDER SETTING ASIDE ESTATE  
WITHOUT ADMINISTRATION

14 HAROLD F. TRATHEN,

15  
16 Deceased.  
17 \_\_\_\_\_

18 It appearing to the satisfaction of the Court that a verified Petition to Set  
19 Aside the Nevada Estate of the above-named Decedent without administration has been  
20 filed, and that notice of the time and place of the hearing thereon has been duly given in  
21 the manner required by law, and that no one has objected or presented any reason why  
22 said Petition should not be granted;

23 The Court finds that the gross value of the entire Estate of the Decedent does  
24 not exceed One-Hundred Thousand Dollars (\$100,000.00), and that the Decedent left no  
25 debts in the State of Nevada nor debts anywhere that need to be satisfied out of the  
26 property of Decedent; and that this is a proper case for the whole of the Estate to be set

*John M. Doyle*  
CLERK OF COURT  
Post Office Box 1170  
Humboldt, Nevada 89401

JT APP 068  
SE ROA 0057

2009 1118

1 aside to Decedent's surviving heirs and legatees and beneficiaries pursuant to NRS  
2 Chapter 146 and the laws of intestate succession.

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that  
4 the whole of the Nevada Estate of HAROLD F. TRATHEN, deceased, be, and the same is  
5 hereby assigned and set aside as follows:

6 An undivided one-third (1/3) interest in;  
7 The Northwest quarter (N.W.1/4) of Section Eight (8)  
8 Township Forty-two (42 N.), Range 37 East (R 37 E.) Mount  
9 Diablo Base Meridian, consisting of one hundred sixty acres.

10 APN: 03-491-17

11 UNTO GRACE F. METHVEN, Sister, an undivided one-half (1/2) interest in  
12 Decedent's undivided 1/3 interest in the real property situated in the  
13 County of Humboldt, State of Nevada bounded and described herein above:

14 UNTO ALBERT F. TRATHEN, Brother, an undivided one-half (1/2) interest  
15 in Decedent's undivided 1/3 interest in the real property situated in the  
16 County of Humboldt, State of Nevada bounded and described herein above:

17 TOGETHER WITH any and all other assets of said Estate now known or hereafter  
18 discovered in the State of Nevada.

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Estate not be  
20 further administered upon.

21 All tax notices should be mailed to Grace F. Methven, 1273 Orchard Avenue, Napa,  
22 California 94558.

23 DATED this 6<sup>th</sup> day of April, 2009.

24 The document is a true and correct copy of  
25 the original as shown to me by the Clerk of  
26 the Court, Humboldt County, Nevada. By \_\_\_\_\_  
Deputy

Per NRS 239 Sec. 6, the fee may be reflected, but in  
no way affects the legality of the document.

DISTRICT JUDGE

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John M. Doyle  
Notary Public  
Humboldt County, Nevada

JT APP 069

SE ROA 0058

1 APN: 03-491-17

2 Case No. PR 4278

3 Dept. No. 2

4 The undersigned affirm there are no Social  
5 Security numbers contained in this document

FILED

2013 JUN 10 PM 1:41

TAMI RAE SPERO  
DIST. COURT CLERK

HUMBOLDT COUNTY RECORDER, NEVADA  
TAMI RAE SPERO, RECORDER

6  
7  
8  
9 IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10 IN AND FOR THE COUNTY OF HUMBOLDT.  
11

12 IN THE MATTER OF THE ESTATE

13 OF

14 GRACE T. METHVEN, a/k/a  
15 GRACE TRATHEN METHVEN, a/k/a  
16 GRACE F. METHVEN, a/k/a  
GRACE FLORENCE METHVEN,

17 Deceased.  
18

ORDER SETTING ASIDE ESTATE  
LESS THAN \$100,000.00 IN VALUE

19 It appearing to the satisfaction of the Court that a verified Petition to Set  
20 Aside the Nevada Estate of the above-named Decedent without administration has been  
21 filed, and that notice of the time and place of the hearing thereon has been duly given in  
22 the manner required by law, and that no one has objected or presented any reason why  
23 said Petition should not be granted;

24 The Court finds that the gross value of the Estate of the Decedent does not  
25 exceed One-Hundred Thousand Dollars (\$100,000.00), and that the Decedent left no

*John M. Doyle*  
JUDICIAL CLERK  
Post Office Box 1100  
Humboldt, NV 89308

JT APP 070 SE ROA 0059



2013 2605

debts in the State of Nevada nor debts anywhere that need to be satisfied out of the property of Decedent; and that this is a proper case for the whole of the Estate to be set aside to Decedent's surviving heirs and legatees and beneficiaries pursuant to NRS Chapter 146 and the Last Will and Testament of the Decedent dated November 14, 2007.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that the whole of the Nevada Estate of GRACE T. METHVEN, a/k/a GRACE TRATHEN METHVEN, a/k/a GRACE F. METHVEN, a/k/a GRACE FLORENCE METHVEN, deceased, be, and the same is hereby assigned and set aside as follows:

UNTO the GRACE T. METHVEN REVOCABLE TRUST,  
JOHN F. METHVEN, JR., Trustee of the Grace T. Methven  
Revocable Trust dated November 14, 2007, the following real  
property:

Humboldt County, Nevada  
APN: 03-491-17

An undivided one-half (1/2) interest in;  
The Northwest quarter (N.W.1/4) of Section Eight (8)  
Township Forty-two North (42 N.), Range 37 East (R 37 E.)  
Mount Diablo Base Meridian, consisting of one hundred sixty  
acres.

TOGETHER WITH any and all other assets of said Estate now known or hereafter  
discovered in the State of Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said Estate not be  
further administered upon.

All tax notices should be mailed to John F. Methven, Jr., 1273 Orchard Avenue,  
Napa, California 94558.

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HUMBOLDT COUNTY RECORDER, NEVADA  
MARY ANN HAMMOND, RECORDER  
\$8.00 PAID \$15.00 JOHN M DOYLE  
[Barcode]

07/11/2013 04:36:53PM  
PAGE 1 OF 2

2013 3099 ✓

Assessor's Parcel No. 03-491-17

**MAIL RECORDED DOCUMENT AND  
TAX STATEMENTS TO:**

John F. Methven, Jr.  
1273 Orchard Avenue  
Napa, California 94558

**GRANT, BARGAIN AND SALE DEED**

**THIS INDENTURE WITNESSETH:**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, JOHN F. METHVEN, JR., Trustee of the GRACE T. METHVEN REVOCABLE TRUST Dated November 14, 2007, does hereby GRANT, BARGAIN, SELL and CONVEY to JOHN F. METHVEN, JR., a single man, and to the heirs and assigns of such Grantee forever, all the following real property situated in the County of Humboldt, State of Nevada bounded and described as follows:

An undivided one-half (1/2) interest in;  
The Northwest quarter (N.W.1/4) of Section Eight (8)  
Township Forty-two North (42 N.), Range 37 East (R 37 E.)  
Mount Diablo Base Meridian, consisting of one hundred sixty  
acres.

APN: 03-491-17

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversion, remainders, rents, issues or profits thereof.

DATED July 1, 2013.

John F. Methven Jr  
JOHN F. METHVEN, JR.  
Trustee of the  
GRACE T. METHVEN  
REVOCABLE TRUST



HUMBOLDT COUNTY, NEVADA  
MARY ANN HAMMOND, RECORDER  
PAID \$174.00 eTRCo, LLC

08/21/2013 03:38 PM  
PAGE 1 of 5

APN#: 003-491-17  
RPTT: \$156.00



2013 3755

Recording Requested By:  
Western Title Company  
Escrow No.: 059797-WIN  
When Recorded Mail To:  
Rodney D. St. Clair and  
Virginia M. St. Clair  
8319 Clark Road  
Marsing, ID  
83639

Mail Tax Statements to: (deeds only)  
Same as Above

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted  
for recording does not contain the social security number of any person or persons.  
(Per NRS 239B.030)

Signature S. Crutcher Agent  
Print name Title

---

**Grant, Bargain, and Sale Deed**

This page added to provide additional information required by NRS 111.312  
(additional recording fee applies)

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**GRANT, BARGAIN AND SALE DEED**

**THIS INDENTURE WITNESSETH: That**

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,**

**Albert F. Traihen, a single man, as to an undivided one-half (1/2) interest and John F. Methven, Jr., a single man, as to an undivided one-half (1/2) interest,**

**do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to**

**Rodney D. St. Clair and Virginia M. St. Clair, husband and wife, as joint tenants with right of survivorship,**

**and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of Winnemucca, County of Humboldt State of Nevada bounded and described as follows:**

**All that certain real property situate in the County of Humboldt, State of Nevada, described as follows:**

**TOWNSHIP 42 NORTH, RANGE 37 EAST, M.D.B&M.**

**Section 8: NW1/4**

**TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.**

**Dated: 08/12/2013**



Grant, Bargain and Sale Deed - Page 2

2013 3755

THIS DOCUMENT IS BEING SIGNED IN COUNTER-PART.

John F. Methven Jr.

Albert F. Trathen  
Albert F. Trathen

STATE OF Arizona  
COUNTY OF Mohave

This instrument was acknowledged before me on

Date: 8/16/13

By John F. Methven, Jr. and Albert F. Trathen

Albert F. Trathen

[Signature]  
Notary Public

} ss




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2013 3755

Grant, Bargain and Sale Deed - Page 4

  
John F. Methven Jr.

THIS DOCUMENT IS BEING SIGNED IN COUNTER-PART.  
Albert F. Trathen

STATE OF \_\_\_\_\_

} ss

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on

Date: \_\_\_\_\_

By John F. Methven, Jr. and \_\_\_\_\_

Albert F. Trathen

see attached acknowledgment.  
\_\_\_\_\_

Notary Public



2013 3755

ACKNOWLEDGMENT

State of California  
County of Napa

On 15 August 2013 before me, Lisa Poloson, Notary Public  
(insert name and title of the officer)

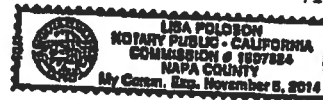
personally appeared John Frederick Mathew, Jr.  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



Grant, Bargain & Sale deed

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**Attachment 2: Homestead Act of 1862**



[www.ourdocuments.gov](http://www.ourdocuments.gov)[www.ourdocuments.gov](http://www.ourdocuments.gov)

November 5, 2013

**Transcript of Homestead Act (1862)****CHAP. LXXV. —An Act to secure Homesteads to actual Settlers on the Public Domain.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: Provided, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2. And be it further enacted, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: Provided, however, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall, prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne rue allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: And provided, further, That in case of the death of both father and mother, leaving an infant child, or children, under twenty-one years of age, the right and fee shall ensure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicil, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be en- titled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. And be it further enacted, That the register of the land office shall note all such applications on the tract books and plats of, his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

SEC. 4. And be it further enacted, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor.

SEC. 5. And be it further enacted, That if, at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due

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notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the government.

SEC. 6. And be it further enacted, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: Provided, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing preemption rights: And provided, further, That all persons who may have filed their applications for a preemption right prior to the passage of this act, shall be entitled to all privileges of this act: Provided, further, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years.

SEC. 7. And be it further enacted, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act.

SEC. 8. And be it further enacted, That nothing in this act shall be construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting preemption rights.

APPROVED, May 20, 1862.

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Page URL: <http://www.ourdocuments.gov/doc.php?doc=31&page=transcript>

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**Attachment 3: Orovada Weekly Newspaper Articles**

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# Orovada Weekly

VOL. I

OROVADA, NEVADA, FRIDAY, SEPTEMBER 19, 1924

## SOME BOOSTER GEORGE CROSSLEY

(An open letter printed verbatim in Editor Journal.)

I must say I am more than surprised the way you have put the most beautiful producing Quinn River valley on the map, the coming agricultural valley of the state of Nevada, with its great underflowing water, which has been proven out for all future time for all future needs, for irrigating this wonderful rich valley, as this being the driest year ever known and with all the big pumps running has not lowered the flow of water is something wonderful. It speaks of prosperity and success for the valley. ~~There are lots of people who will not believe it until they see it with their own eyes.~~ ~~There is no valley in the state with all the garden vegetables your heart desires now that the bottom has been reached throughout the whole country and agriculture prices also birds will now jump ahead and the farmers future is now brighter than ever before, outside of the war prices you may look forward for Quinn River valley, Humboldt County being second to none and when the I. O. N. Highway is finished that will shorten the travel from Oregon, Washington and Idaho several hundred miles to the Pacific Coast and a direct route to our City Winnemucca for the agriculture products of this vast and rich area, what better argument and guarantee does people want than to locate on some of the best Government land to be found and build up fortune and peaceful homes in this future wonderful rich valley. There are nothing to keep this valley from advancing to study the possibilities for the future, there are a number of important projects under way and more to be urged within a short time, are enough solid arguments for the successful future, happy homes, of those who are fortunate enough to locate and take up a future homestead among our happy community, which has proven to the pioneer homestead of this agricultural valley, now with the Orovada Weekly Journal with its enterprising editor being published~~

## Teachers' Institute At Elko September 30

A state teachers' Institute will be held at Elko September 30 to October 3, both inclusive, and no district Institutes will be held this year. It has been announced.

Dr. Henry Suzzala, president of the University of Washington will be the principal Institute speaker. Other speakers will be President W. E. Clark of the University of Nevada and Dr. Tully C. Knodes, president of the College of the Pacific.

## LIGHT FROST DID NO DAMAGE

The light frost last Friday night done no particular damage, the tender vegetation on the lower levels was killed but the crops were all matured except in some instances where melon and tomato vines were still bearing. on the higher levels and foot hills places it had no effect and all vegetation still remains green.

## POTATO CROP IN SIXTY-EIGHT DAYS

Splendid potatoes were brought in to the Journal office a few days ago which were raised on the Gransstrom place, these were dug just sixty-eight days from planting, they were of the netted gem variety and were of good size and quality.

## OVER FROM THE LOVELY VALLEY SECTION

Tom Minor, who has a large herd of cattle feeding this season in Lovely Valley, was over recently looking over his interests here. Tom says they have had splendid pasture there all season and that his stock are in the best condition. He subscribed for the JOURNAL that he may keep in touch with the home happenings.

## WORD FROM THE WILLOW CREEK COUNTRY

Mrs. Albert McMillen was down from Willow Creek, a few days ago, she says Mr. McMillen is able to be up and around again. Mac has been laid up for some time with lumbago. We are glad to hear of his improvement. Mrs. McMillen reports they will harvest over two hundred sacks of potatoes from a planting of six sacks.

## Nimrods Get Ready To Hunt

As the deer season opened on Monday many local sportsmen had their old trusty rifles all oiled up and ready for the fray. The deer are reported plentiful in the Santa Rosas, but the closed areas seems to hold out protection that the wary buck knows of, as numerous bands are continually seen in these areas, a number of hunters that have been out have secured the hunt the first couple of days of the season, also the duck season opening on Tuesday will mean a number of hunters will seek the water holes for this kind of game, but the water being very low in the river and most of the sloughs that have harbored the ducks of previous years being entirely dry, duck hunting will not be much in these parts.

## Six Admitted To U. S. Citizenship

Six of a class of seven foreigners swore allegiance to Uncle Sam yesterday morning before Judge James A. Callahan and became citizens of the United States when they were accepted by Judge Callahan after passing a citizenship examination conducted in the district court rooms.

Those who passed and received certificates were: Julian Juaneche, of Platora; Joseph Heslin, of Golconda; Patrick Keogh, of Golconda; Paul Werner, of Orovada; Fermin Montero, of Winnemucca and Michael Mullon, of Golconda.

M. Bidaretta, of Platora, could not be present for the examination and he will have to wait until next March.

Richard Wright, U. S. Naturalization examiner, who has charge of the state of Nevada, could not be present at the hearings, although in town, on account of illness.—Humboldt Star.

A subscription to the Journal, is acknowledged from Dr. W. F. Harlan of Arbutle, Calif., says he wants to help the cause along, as he expects to be here this fall.

Have you subscribed for the Journal?

## Morrall's

# Orovida Weekly Journal

OROVIDA, SHVEDA, FRIDAY, SEPTEMBER 1925

NO. 12

## OUR BOW INTO THE NEWSPAPER FIELD

With this issue comes to life a new institution, the Orovida Weekly Journal, which will be devoted to the progress and up-building of Northern Humboldt County and the disseminating of news and events that transpire in our midst.

In a great commonwealth we are all equally interested in the development and progress of this district, and this is what we trust that our residents of Northern Humboldt County will find their unflinching support to this new project, as by so doing we may have a publication second to none, one that will be a credit to our efforts and that in the future we may look back with pride and feel that we all had a part in making it the success it will deserve.

It is our aim and earnest desire to serve you in the fullest capacity possible and with your cooperation and support build a lasting monument in Northern Humboldt County.

Respectfully I. J. Studebaker.

## LOCATES HOMESTEAD AND STONE QUARRY

Mr. J. I. Newberry, who has taken up a homestead including the Johnson spring on Pole Creek was in town a few days ago. He says he has plenty of water for his present needs, which includes the irrigating of a small field of alfalfa, a large garden and small orchard. He has also commenced the opening up of the Lamb stone quarry, which is a large deposit of stone that can be cut up into blocks with an ordinary saw and that makes splendid building material. It after further development this quarry proves all that is expected from present indications. It will mean much to this community, as it will furnish a cheap material for building purposes.

Opening up building stone quarry. The material can be saved up with an ordinary saw.

Subscribe for the Journal.

## STEPHENSON DRUG CO.

Winnemucca, Nev.

The Drug Store that will serve you Service. A large complete stock of Drugs and Sundries.

Mail orders filled same day received.

## New Highway Will Aid Our Community

Now that the new highway from Paradise Hill to Winnemucca is open for travel, it brings our district closer to market and business conditions. It greatly facilitates transportation of freight and all products to and from Northern Humboldt County. It establishes a better intercourse and travel condition for the whole Northern Country.

From a standpoint of tourist travel, this highway when completed in the county, will mean one of the most important in the state, this fact being recognized by the Highway Department, we look for the early completion of this route to the Orovida at McMeritt. We are informed the Department now has Federal money on hand for this route.

## STOCK DISEASE

### SCARE ABATED

After careful investigation by authorities of the diseases among cattle that was dying off north from McMeritt and which might have been Anthrax, hoof and mouth, or some other serious infection it was shown that the cattle were dying from some form of poisoning, either from the water they were drinking or from the food. The officers requested the stockmen to move their cattle from the grounds upon which they were ranging and as soon as this was done the stock stopped dying, proving the disease was not a contagious one.

## BUILDING HOUSE FOR SCHOOL TEACHER

Mr. Joseph Kerns a local carpenter is finishing up the house for Miss Esther Ripley and when completed will be a tidy residence. This will be a great convenience to Miss Ripley as it is close to her school and besides she will have a number of pupils which live so far away to make the daily trip to their studies.

## WENDE DESTROYED POULTRY

Mrs. Hermann Loest who is specializing in poultry raising, reports that recently a pecky pest, in the form of a wasp got into their chicken house and killed nine young chickens which was of size to just at the frying pan, then to finish off his voracious appetite he killed six young turkeys, truly the path of the farmer is a rough one.

## Returns From California

Mr. John Kauffmann and family has returned from Oakland, where he has been working the past five months. He has moved back on his Homestead where he will live permanently and improve the place. We understand he contemplates installing a pumping plant next year. We are glad to see you back John.

If you are not an advertiser in the Journal, we both lose money.

Subscribe for the Journal.

## Meeting to Organize Co-operative Ass'n.

Saturday next at two P. M. a meeting will be held at the Orovida Schoolhouse, for the purpose of organizing a co-operative association, the chief object being the fostering of the Dairy Industry a good attendance is expected.

## HOOF AND MOUTH DISEASE STAMPED OUT

From all reports, there have been no further infections lately among the stock in California, this is a relief to the stockmen of Nevada, as the nervousness of this dread disease to our borders, placed the stock on the ranges in jeopardy and caused a large expense and labor to the state to establish and maintain quarantine regulations, the efficient manner in which the state authorities handled the matter no doubt, kept the State clear of the disease.

## School Begins

School commenced at the Orovida Schoolhouse on Tuesday, only a fair attendance is reported, a number of the children live some distance from the school and they were not able to attend the first day, plans are being made to care for them in the near vicinity of the schoolhouse so they will not be forced out of school on account of bad weather and the distance they live from the school. The District is indeed fortunate in securing the efficient services of Miss Esther Ripley as instructor, this can be testified to by satisfactory manner she handled the school in the Red House District last term.

## GRANSTROM ELECTED JUSTICE OF PEACE

The primary election passed off quietly on Tuesday, however, much interest was manifested over the race for Justice of the Peace, as was shown by the closeness of the vote. Mr. Granstrom winning over Mr. Melody, by just two votes. Amos precinct is to be connected with the Red House precinct hereafter.

Subscribe for the Journal.

## FARMING NOTES OF INTEREST

Then continue exhibit of the all nature operating the several pumps at the place of the 12 Granstrom place. Mr. Lettman, Dr. Martin and Henry Helbig, all of whom can be plainly heard from the Journal Office sounds like real business.

The pump on the Granstrom place was not started until about July first, but since that time has been operated about 10 hours each day, almost continuously. This furnishes water for about 10 acres of corn barley and alfalfa, the corn was planted after the 4th of July and the barley seeded after the 10th, of the same month. The alfalfa was of prior seeding but had no water last year or this until the pump was started. At this writing, the corn is about five feet high, the barley and alfalfa over 30 inches and is about ready to harvest, all of these crops will have an exceptionally heavy yield.

On the Lettman place two cuttings of alfalfa have been put up, about 40 tons were cut from ten acres, the third cutting will be ready to harvest about the 10th, this will give the seasons harvest about 60 tons from ten acres. Mr. Lettman has a 4 inch pump.

On the Dr. Martin place a pumping plant of 800 to 1000 gallon capacity is installed, only a couple days are required to irrigate the 12 acres in alfalfa. Two cuttings have been harvested and the third is now ready for harvest. We have had the field for this place but know that the crops have been splendid.

The Helbig well was put down late in the season, the pumping plant has recently been installed. This plant is of 1000 to 1200 gallon per minute capacity and Mr. Helbig has had considerable trouble with entrained air in his well, but we understand this has been overcome and the plant is now being very successfully operated. Mr. Helbig has about 20 acres seeded to alfalfa and has plans for doubling this acreage in the near

(Continued on Page Three.)

## Morrall's Grocery

### SEASONABLE ITEMS

PEARS

TOMATOES

CUCUMBERS

CONCORD GRAPES

ELBERTA PEACHES

PICKLING ITEMS ON HAND

Phone, Write or Come In

## FARMING NOTES OF INTEREST

(Continued from page One.)

On the ~~Winnemucca~~ place where there are about 20 acres in alfalfa and up-to-date ~~Winnemucca~~ plant installed, two crops of hay were taken out, but on account of her ~~Winnemucca~~ the irrigation was discontinued and the amount of hay was greatly cut.

On a number of other places, splendid crops of potatoes, corn, melons and garden truck is being produced in abundance.

These operations and production, has certainly proved our district to be one of the foremost in the state.

This is the driest year in the history of the State according to reports, in this locality there was no early water for the wild hay meadows and no hay was put up, the streams and springs in most cases are nearly or entirely dry, this is forcing the large stockmen to ship their stock feed and water, this is being done, large numbers are being shipped to Wyoming.

The huge Grain Marketing cooperative organization has started operation, will it solve the wheat growers problem?

The \$20,000,000 Grain Marketing Company started operations on August 5th, few matters have aroused as great interest among wheat growers as has the reports being published of this merger and no matter of much moment to be grain producer as the success of this concern.

The idea of forming a federation between the grain producer and the successful grain merchandising business is not new, and this merger is simply the crystallization of the farmer's own ideas, the farmer himself has come to realize the necessity

of a central selling agency, so the bringing about of this cooperative effort is the climax of their desire.

The merger of this selling agency was effected under the Capper-Tanquer act which makes it legal from a federal standpoint, the merging of these five largest concerns in the world into one large company places an immense selling machine in the hands of the farmers directly.

The company is now in possession of 31 great terminal elevators, some 40 or more primary elevators, besides thousands of miles of leased wires, large office facilities and a great staff of the most experienced men in the business, they are already handling millions of bushels of grain. O. P. Bradford, President of the National Farm Bureau was one of the first that delivered grain to the company.

This huge undertaking was sponsored and worked out by the American Farm Bureau Federation and now that the farmer thru this central selling agency handles the marketing machinery as well as buying the produce, it seems their dream of marketing their own produce as far as grain is concerned has come true.

### ARRESTED ON CHARGE UNDER MANN ACT

Deputy U. S. Marshal Plummer took Mr. and Mrs. Rudolph Simich, Joe Murillo and Emma Lane, to Carson City, where a hearing will be had on charges of violation of the Mann act, says the Elko Independent. Mr. and Mrs. Simich and Murillo are charged with having transported Emma Lane from Twin Falls, Idaho, to Jarbridge.

They were arrested in Jarbridge the other day and brought to Elko, but were later released under the habeas corpus proceedings, but were immediately arrested again by the U. S. Marshal, and will be taken to Carson for hearing.

## THE WEATHER FOR SEPTEMBER

Father Richard of the observatory of the University of Santa Clara gave out his forecast today in regard to the September weather and it is as follows:

1. Notice: Solar activity is awakening. It was also awakening in 1918, when the drought passed away. The inference is that September and October will be dry, November wet from five to six inches, December both wet and dry. The balance of the season to be studied in due time.

San Joaquin, beware. The rain-makers are mending their nets and getting new ball. There are gold mines in Tulare and Crow's Landing, and the price of wet commodity is high.

2. The weather schedule: September 1, 2 cloudless over the general coast.

September 3, in early morning, a shallow depression passing over the western Canadian provinces east bound, cloudy over Washington and British Columbia, fair in California and adjacent states.

September 4, 5, clear skies over the general coast.

September 6, quite early, a light disturbance behaving like the one of September 3.

September 7, generally fair, some cloudiness at the northward.

September 8, 9, a deeper and larger disturbance entering upon the northwestern coast, approaching over the North Pacific states, affecting Arizona, touching upon California and Nevada, running along the plateau with cloudiness, widely scattered rains, and thunderstorms. Possibly a trace of rainfall in California.

September 10, lingering cloudiness with breaks of sunshine.

September 11, 12, 13 an attenuated recurrence of the weather conditions of August 15, 16, 17, which means general cloudiness from Teraschapi to Northwestern British Columbia with diminishing precipitation as we travel from north to south. Possibly a more trace from Central California to the northward.

September 14, somewhat under a cloud, while the previous area of low pressure is heading to the eastward.

September 15, generally fair all along the coast.

September 16, minor depression over Arizona and Western Canada, with some cloudiness in these parts.

September 17, fair from Oregon to Mexico.

September 18, 19, 20 a triple disturbance approaching as one will set in over Vancouver and the country around about, with some rain there and morning cloudiness or high fog along the California coast.

September 21, fair but cloudy or partly so, from Central California to the northward.

September 22, general fair.

September 23, depression of marked character will be found already well advanced over both the north and the south, producing cloudiness and sprinkles, even in California.

September 24, the storm passing away to the eastward with a balance of cloudiness over the general coast.

September 25, 26, fair from Alaska to Mexico.

September 27, a small depression running its course to the eastward, barely noticed in California.

September 28, 29, 30, fair along the

coast and far inland.  
N. B.—1. Disturbances to enter October 1, 3, 6.  
2.—Storm of September 19 is ascribed to the late opposition of the Earth with Mars.

## RICHARDS WINS CONGRESS RACE

With the lightest vote, ever recorded in the State of Nevada since the inception of the primary system in the state, Chas. L. Richards, Congressman from Nevada, defeated M. L. Sullivan Lieutenant-Governor for the democratic nomination for Congress, with an overwhelming majority of almost 1000 votes according to latest reports from Democratic headquarters in Reno.

In returning returns every county but Clark and Lander, Richards, polled 2801 votes against 2108 for Maurice J. Sullivan. The returns showed that Sullivan had a lead in but Douglas, Esmeralda, Ormsby and Storey counties. Humboldt County gave Richards 182 votes against 55 for Sullivan.

The vote in the contest for university regent gave Pratt, who is now holding office, 4848 against 4148 for R. W. Henson. Henson received a heavy majority in Elko county, that section giving him 949 votes against 127 for Pratt. Consistent gains in the other counties, however, kept Pratt in the lead. Washoe county gave Pratt 2330 votes against 1260 for Henson while Humboldt gave Henson 168 to 102 for Pratt.

Funeral services for George B. Murphy, who died last Saturday, took place Monday from his late residence in Virginia City, Rev. P. J. O'Reilly of St. Mary's church officiating. The funeral and interment in St. Mary's cemetery were private. Mr. Murphy was a native of Virginia City, aged forty-three years. He was a miner by occupation, working in the mines of that city and Bold Hill. About ten years ago, he served as chief of the fire department and as chief of police. He leaves besides his wife, a sister, Mrs. E. J. McManus, and a brother Thomas Murphy, both of Reno.

Pinotino Rodriguez is in jail in Tonopah charged with the slaying of Aurelia Mojarrero following a quarrel over their ancestry. The trouble began in front of the police station and the men concluded to settle the matter with their fists at some less conspicuous spot. When hostilities were renewed, Mojarrero is said to have wrested Rodriguez and the latter, drawing a knife, slashed Mojarrero across the abdomen. Although fatally injured, Mojarrero walked to a hospital where he died three hours later. Rodriguez, according to the police, admitted the killing.

Word received from G. O. Gaunt, is to the effect that he with his family will return to their Homestead this month, they have been living at Sacramento, where Mr. Gaunt has been working during the summer.

Have you placed your subscription for the Journal

Circumstances have done much for every man, and yet he has stood in need of other circumstances.

## FIRST NATIONAL BANK

Winnemucca, Nevada

Capital and Surplus .....\$ 300,000.

Assets over .....\$ 2,800,000

The Oldest National Bank in Nevada

## ORGAN'S GROCERY

A. E. ORGAN, Prop.

### MEAT DEPT

All Kinds of  
FRESH MEATS  
Fresh Fish  
Smoked Hams  
and Bacon

### GROCERY DEPT

Staple and Fancy  
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Fresh Fruits and  
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THE STORE OF QUALITY

Winnemucca, Nevada



**Attachment 4: Well Pictures**

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JT APP 087

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**Attachment 5: History of Steel Water Pipe**

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# **History of Steel Water Pipe Its Fabrication and Design Development**

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Prepared by  
Walter H. Cates, Civil Engineer-Hydraulics

April 1971

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JT APP 089

SE ROA 0078

The author, Walter H. Cates, has spent forty-seven years as a professional engineer in the Water Works field. After graduation in 1924 from the University of California at Berkeley in Civil Engineering, specializing in Irrigation and Hydraulics, he spent two years in hydraulics design work before associating with Western Pipe & Steel Company of California. This started a thirty-nine year continuous career with this firm and the Consolidated Western and American Bridge Divisions of United States Steel Corporation. Since retirement in 1965, he has continued in his chosen field as an active consultant.

During his long career as a registered Civil Engineer, he has been associated and worked with the American Society of Civil Engineers as a Life Member and Fellow; the American Water Works Association, Life Member; National Association of Corrosion Engineers, Certified Corrosion Engineer; and Institute for the Advancement of Engineering, recently becoming a Fellow.

Mr. Cates has authored numerous papers and presentations on pipelines, hydroelectric penstocks and irrigation systems, as well as a comprehensive Welded Steel Water Pipe Design Manual which has been kept current in numerous printings through 1970.

## PART I. HISTORY INTRODUCTION

The Age of Iron began about 1000 B.C. The Old Testament mentions iron 90 times. The Romans used iron throughout their empire and built the first Roman aqueduct in 312 B.C. requiring a considerable distribution system. Many years before, men had first learned the secret of conducting water through crude pipes. Even prior to the birth of Christ, the Chinese transported water through bamboo; a Babylonian king who reigned 4500 years ago had a bathroom with tile drain pipes; and a municipal reservoir served Carthage about 800 B.C.

The first water works system in America was constructed at Boston in 1652, however the principal water works development in the United States took place after 1850, at which time there were 83 water works in existence.

This paper presents the history and heritage of steel water pipe primarily in this country during its dynamic role as a servant and builder of numerous water projects for the benefit of our citizenry.

Iron, although used to a limited extent in cast form, could not be economically employed until the development of a practical process for the manufacture of welded wrought-iron pipe early in the nineteenth century. In 1812 machinery was invented in England for welding barrels for firearms and other cylindrical articles. Three years later William Murdock, a Scot, employed old musket barrels discarded after the Napoleonic wars to make gas pipe to light some of the gloomy streets of London. In 1824 James Russell, an Englishman, invented a process for the welding of tubes, with or without a mandrel, by a combination of tilt hammer and rolling operations. The following year Cornelius Whitehouse conceived a method of manufacturing pipe by drawing long, flat strips of hot metal, known as skelp, through a die or bell, forming a whole length of pipe in one operation. Then, for the first time, man had the basis for making strong pipe rapidly and economically.

### FOUR MAJOR DEVELOPMENT STAGES

Five years after the Whitehouse invention (1830), the first furnace in the United States for making wrought iron pipe was built by Morris, Tasker, and Morris in the basement of a Philadelphia shop. In 1836 this firm erected a large mill and machine shop, and in 1849 a still larger building was constructed by the company to house nine pipe-welding furnaces. Gradually other pipe mills came into being in the United States, and the services of this useful product were greatly expanded.

Variations of the Russell and Whitehouse methods for making pipe from hot metal in the mills, either butt or lap welded, continue to this day; first from wrought iron, then wrought steel and presently various grades of carbon steel.

Early transmission lines made use of this pipe but due to diameter limitations, it is now used in the water industry almost exclusively in pumping and distribution service.

Between 1850 and 1860 the Age of Steel was really born, making possible the second development stage, that of producing large diameter water pipe by cold forming of sheet or plate. This was due to the invention of the Bessemer process for making steel. Until then, steel had been available only by the pound. This new process, followed shortly by the open hearth furnace, made steel available by thousands of tons. It provided the steel needed for the development of railroads,

factories, tools, equipment, ships, skyscrapers, structural steel, penstocks, steel pipe for water as well as gas and oil service.

Five years after the historic 1849 Gold Rush in California, the Francis Smith Company established a shop in the mining town of Grass Valley, California, to produce water pipe for the gold miners. The pipe was made from thin English sheet iron riveted at the seams with cold rivets. It was transported by mule back to the mine sites for hydraulic operations. The pipe was laid by slipping the sections together like stove pipe. A water line of this material (22" to 11" diameter x 16 ga.) was laid at Railroad Flat, California in 1858 and has been in use almost continuously since that time. Then from 1863 to 1878, ten other riveted wrought steel water lines were installed in California and Nevada.

In 1887, near Riverside, California, about 45,000 feet of 24" diameter riveted steel water pipe was installed. Most of this line was still in service in the 1950's, but was finally removed due to obsolescence.

In 1878, the Weigle Pipe Works in Denver, Colorado began the manufacture of riveted steel pipe for placer mining, irrigation, power, and municipal service. It was made of copper bearing steel, and was laid with slip joint ends.

The small plant which formed the nucleus of the many enormous works of the National Tube Company was established in East Boston in 1868.

It should be observed that during the period of 1858 to 1900, nearly all of the water pipe made was fabricated of riveted construction; at least two million feet had been installed by the end of that period, (Appendix A) presently 71 to 113 years in age.

Most of this pipe had meager protective coating, such as bitumen, asphalt, mineral rubber, galvanizing, or was just bare.

A third major development stage started at the turn of the century and lasted until about 1930. In 1905 the East Jersey Pipe Company began fabrication of Lock-Bar steel pipe in 30' lengths with a new seam considered 100% efficient. Since single riveted seams were only 45% and double riveted seams 70% efficient, the new method made rapid inroads in the marketplace. Furthermore, the interior of this new pipe was smooth permitting 10% to 15% greater carrying capacity over riveted steel pipe and also superior to the latter as regards durability and cost.

During these three decades riveted steel pipe installation declined, especially after 1915, due to the development of Lock-Bar and later electric welding processes. However, a considerable quantity of riveted steel pipe was still being produced and a partial tabulation of installations from 1900 to 1915 indicates that about 3,000,000' of this type of pipe 20" and larger was manufactured and from 1916 to 1930 approximately 1,500,000' more for an overall 30 year total of 4,500,000' (Appendix A) as compared to 3,300,000' of Lock-Bar pipe for the same period (Appendix B).

Also during this same time, there were several other types of steel pipe manufactured.

National Tube Company for example produced Matheson joint pipe of lap welded construction in sizes of 2" to 30" diameters x .095" to .432" wall thickness in 20' sections. The field joints consisted of a bell and spigot into which lead was poured. The steel had a tensile strength of 52,000 psi and a yield point of 30,000 psi. The interior of the pipe was smooth and therefore had greater carrying capacity than the same size of riveted pipe. National Tube also produced standard weight lap welded steel pipe of 2" to 30" diameters; and hammer welded steel pipe of 20" to 96" diameters x 1/4" to 1-1/2" thickness; and seamless steel pipe up to 26" diameter.

In the 1920's, Taylor Forge & Pipe Works produced a spiral riveted steel pipe in sizes of 3" to 42" diameters; and Naylor Pipe Co. made a spiral lap welded line pipe in sizes of 4" to 12" in 20' sections using Toncan iron for the pipe shell.

The fourth stage started in the 1920's when automatic electric welded steel water pipe was developed. A partial tabulation of all sizes of this type produced during this decade indicates a total of about 1,700,000' (Appendix C). The first major electric welded steel water pipe line on the West Coast consisted of 116,000' of 24" and 22" diameter installed for the City of Vallejo, California in 1924. Also, during 1924, the East Bay Municipal Utility District (Oakland, California) started construction of the first unit of its Mokelumne aqueduct, which consisted of about 80 miles of 54" diameter electric welded steel pipe with heads up to 500'.

There were 10 major welded steel water pipelines produced in the 1920's, being the forerunners of this modern method of manufacture which has progressively improved to the present day.

During the Depression Years of the thirties, great progress was made in the technique of automatic welding with fluxes and the present day plasticized coal tar enamel was introduced. About 7,000,000' of pipe 20" and larger was produced in the period of 1922 to 1940 as well as an additional 15,000,000' of 4" to 20".

Although A. O. Smith of Milwaukee started the production of flash welded pipe for oil and gas transportation late in this decade, the development of automatic fusion welding in the water industry spread to the petroleum industry becoming a major impetus in the vast quantities produced immediately after World War II. The high working pressures required for gas transportation resulted in the production of higher strength steels than had ever been used in water transmission. In turn such steels up to 50,000 psi yield strength were then adopted for the water industry.

In 1939, a group of men representing steel pipe manufacturers known as the "Steel Water Pipe Manufacturers Technical Advisory Committee" was formed under the sponsorship of the American Water Works Association. This group (SWPMTAC) has prepared AWWA standards on riveted steel pipe, Lock-Bar steel pipe, welded steel pipe, coal tar enamel coatings, cement mortar coatings, field welding of steel pipe, steel flanges, steel pipe fittings, and a steel pipe design and installation manual (AWWA M11). This committee still exists, and

keeps all of the standards and manual updated for the benefit of the water works industry.

During the first half of the 1940's, production of steel water pipe was held to a minimum because of the restrictive allotment system of war requirements. However a number of straight seam resistance and fusion welded, as well as spiral fusion welded, facilities developed for water pipe production manufactured over 8,000 miles (more than 40,000,000') of highly portable aboveground utility pipe (water, gasoline and oil). Both the U. S. Army Corps of Engineers and the U. S. Navy bought this type of pipe in sizes ranging from 3" to 12" with wall thickness ranging from 14 ga. to 10 ga.

When steel was difficult to get from the mills during the war for non-military purposes, several major water utilities solved this problem by purchasing old existing steel water pipelines, removing them, transporting them to their new location, rehabilitating them, and relaying them complete. This illustrates the salvageability of steel water pipe on an economical basis.

In spite of the limited steel availability for four years, well over 2,000,000' of large diameter water pipe was produced in this decade as evidenced by a partial tabulation in Appendix C. This was influenced considerably by extreme population growth in certain areas of the country as well as delay of normal waterworks growth due to the war.

Then the decade of the fifties began the era of even larger diameter and longer transmission lines (see Appendix C), a period in which over 5,400,000' was produced in the larger sizes.

During the early forty war years, concrete pipe was available and this industry received wide acceptance in lower working pressures and particularly for its low cost and simple field joints with permissible leakage factor. Up to this time steel pipe had always been joined in the field by flanges, riveting, welding or by use of patented type couplings.

Not long post war, several steel pipe firms developed O-ring gasketed joints for small diameter pipe and by the early fifties the principle was applied to large diameters up to 9 feet. Today considerable steel pipe with this joint has been installed in the 10 to 14 foot diameter range.

The last decade of the sixties has produced welded steel water pipelines of giant sizes, and fabricated from many new types of steel developed during this period for special services.

## **PART II. FABRICATION AND DESIGN DEVELOPMENT OF STEEL WATER PIPE**

By the mid-1820's two methods of making wrought iron pipe from hot metal in the producing mills were developed; however it was not until the early 1850's that water pipe manufactured from sheet and plate was first rolled and riveted. This method of fabrication, well suited to production of pipe to economically meet the requirements of individually designed projects, continued with improvements into the 1930's. Pipe wall thicknesses could be readily varied to fit the different heads of a pipeline profile.

Because the early steels were of relatively low tensile strength and because the efficiency of cold riveted seams and riveted or drive stovepipe joints was also low, engineers of that day set a safe design stress at a low point of 10,000 psi. Their reasoning was probably also affected by the fact that there had been little experience

with protective coatings to prevent corrosion, with of course, no anticipation of the highly efficient present day coatings complemented with cathodic protection.

Over the years as this method of fabrication improved and higher strength steels were developed, design stresses progressed generally on a 4 to 1 safety factor of tensile from 10,000 psi to 12,500, to 13,750, to 15,000, but in the instance of riveted pipe were adjusted to the particular seam efficiency. This type of pipe was furnished in sizes ranging from 4" through 144" and in thickness from 16 ga. to 1 1/4". Fabrication methods consisted of single, double, triple and even quadruple riveted seams varying in efficiency from 45% to 90% dependent on design.

The general method of fabrication was to roll and rivet cans of 4' to 8' lengths, then assemble in longer sections with riveted round seams into lengths up to approximately 30'. One firm however developed a method of spirally forming and riveting steel pipe in sizes from 3" through 42".



Lock-Bar pipe introduced in 1905 nearly supplanted riveted pipe by 1930. Fabrication consisted of first planing 30' long plates to proper width, then after upsetting the longitudinal edges, rolling into half circle troughs 30' long. H shaped bars of special configuration were then applied to the mating edges of two 30' troughs making a full circle pipe section which was then clamped into position. This unit was then passed into a hydraulic pressing machine where the H bars were locked over the upset edges under a force of 350 tons per lineal foot of pipe.

Following the general procedure of the times, a 55,000 tensile steel was used which, with a 4 to 1 safety factor resulted in a 13,750 psi design stress. Lock-Bar pipe however had numerous advantages over riveted; it had only one or two straight seams and no round seams. These straight seams were considered as 100% efficient as compared to the generally 45% to 70% efficiency of riveted and then were smooth permitting 10% to 15% greater carrying capacity. Due to highly mechanized methods and fewer pieces to handle, production costs were somewhat lower.

Manufactured in sizes from 20" through 74" from plate ranging in thickness from 3/16" to 1/2", Lock-Bar took an increasingly greater part of the market until the advent of automatic electric welding in the mid-1920's. By the early 1930's both riveting and Lock-Bar methods gradually passed out of the picture.

Fabricators of automatic electric fusion welded pipe follow somewhat the same production sequences as for Lock-Bar. Through the thirties and into the forties, 30' plates were used; however by the fifties some firms had obtained 40' rolls and a few formed 40' lengths in presses. Plates are longitudinally edge prepared depending on thickness by planing square, single bevel or double bevel, followed by pressing or rolling a narrow portion of the edges to the desired pipe radius before forming into full circle in drop-end pyramid rolls or for larger diameters to half circle. These latter are then fitted up in jigs for tackwelding prior to entering automatic welding machine track and pipe support frames where the smooth efficient seams are accomplished. In the early days welding was accomplished by flux coated rod from reels with an open arc, however it was soon found to be more efficient to use bare rod covering the weld position with about an inch of bulk flux.

A successful alternative method to the above is to weld two (or more depending on diameter) plates together in the flat and rolling to full circle in pyramid rolls prior to the final weld.

The obvious advantages of welding: fewer pieces, fewer operations, faster production, smaller seam protrusion, and equal 100% seam efficiency soon permitted welded pipe to dominate the field.

Several other forming methods and types of welding are prominent in the waterworks field. Spirally formed and welded pipe was developed in the early thirties and was used extensively in diameters from 4" through 36". Welding was by the electric fusion method. After World War II, German machines were imported and subsequently domestic ones were developed that can spirally form and weld through 96" diameter.

Although some water pipe was manufactured by a firm that press formed and flash welded 30' lengths, this method was used almost exclusively for high pressure service.

Another important method developed for the smaller diameter ranges to 20" was that of forming from coils through continuously reducing rolls feeding into a resistance welding machine. This method is fast, efficient and can fabricate from 14 ga. through 3/8" thicknesses.

During the thirties, the developing decade of welding, a new approach was taken to design stresses. Whereas prior to this time it was common practice to work with a 4 to 1 safety factor of the tensile strength, the concept of using 50% of the yield was generally accepted. Shortly after World War II, when higher yield steels were being used by the gas and petroleum industries, the use of steels up to 50,000 yield was accepted by the waterworks industry with resultant design stresses up to 25,000 psi. In some instances 60% and 65% of yield were used in the 42,000 psi and under yields.

There are three other important factors that are considered in the design of steel water pipe lines; types of field joints, corrosion prevention and external loading.

Various field joints are available to suit any construction condition and all are bottle tight not requiring a permissible leakage rate per hour or day as for other types of pipe. The most popular are O-ring gasket joints either formed on the pipe ends or the Carnegie gasket retainer welded to the spigot end, both good for operating pressures up to 350 psi. Either can be used in dry trench work or with proper harness for underwater installations.

Of the several welded joints, the most popular is the lap joint due to its ease of fit-up and because a single round seam fillet weld has been proven sufficiently strong to meet the pressure requirements of the pipe. Welding is of particular value for the higher pressures.

Mechanical couplings of the collar and ring or the clamp type as well as flanged joints find their use in special conditions such as make-up sections, attachment to pumps or special fittings, or temporary lines that might be moved with relative ease at some future time.

Concerning corrosion, recognized in the Bible by the use of the word rust, it is no longer a problem if the proper inexpensive preventive methods are taken. Some of the earliest fabricated water pipe was protected by coating with asphalt derivatives mostly by the hot dip method. In some cases in the past, designers added a rule-of-thumb percentage of thickness to the steel for further protection. Today this is very definitely a waste of good steel and money. In the late nineteen-twenties, variations of coal tar enamel came on the market several of which were applied by the hot dip process until application of lining by spinning the pipe was developed, giving a more uniform and smooth surface. The exterior coat and wrap was applied by rotation of the pipe generally at a slower peripheral speed. One company has developed equipment to line, coat and wrap simultaneously. With the development of plasticized enamels and vastly improved primers, this product today is the most widely used whether on water, gas and oil lines or many other steel products coming in contact with soil such as liquid storage, sewage treatment and other pollution control tanks.

Another protective coating popular in some sections of the country is cement mortar applied on the interior by the spinning method, on the exterior by gun application or cast over rod wrapping or wire mesh. The lining can also be applied in a pipeline after installation and numerous steel water pipelines are protected on the exterior with highly dielectric coal tar enamel impervious to water seepage and with field applied mortar lining.

To thoroughly complete corrosion protection in areas where soil conditions are extreme, the addition of cathodic protection is the answer. To many, these words have been a bug-a-boo in the past. Today it is a simple and inexpensive application well worth proper investigation. Numerous installations prove that it generally costs in the neighborhood of less than half of one

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percent of the price of the pipe delivered to the site, and if the impressed current method is used, the power cost is insignificant.

The next and very important design consideration to be considered is that of external loading. Pound for pound, steel has more strength than any other pipe material. As a result, very often internal pressure is not the controlling factor in determining wall thickness. This has been recognized for some time by engineers and there are those who have thought it necessary to answer the problem by rigidity. This approach is certainly not the answer as steel is a very strong, flexible material with a fine memory up to its yield point which is well above any working pressure.

Steel water pipe should be designed on a basis of economy and security without sacrificing quality or good performance. The generally accepted current criteria for the proper design of large diameter welded steel water pipelines as based on sound and economical engineering judgment and practice is as follows:

Determine the diameter, the head involved, and the depth of cover, if buried.

Then select the type of steel plate best suited for the service conditions. For low heads (under about 350'), use ASTM A283 C or D steel plate, and for high heads, use the ASTM A572 series of steels. (Special cases should consider other types of steel as indicated in Appendix E.)

Then for *buried* pipe, determine the wall thickness required for internal water pressure from the Barlow Hoop Tension Formula —

$$t = \frac{PD}{2S}$$

S is the design stress in the shell plate based on a value of at least 60% of the yield point, or 1/3 of the ultimate tensile strength, whichever is lowest. (Some major water utilities use a value of 65% of the yield point.)

Then determine the D/t ratio. If this ratio is less than 300, there is no danger of buckling. If this ratio is greater than 300, consideration should be given to using stulls in the pipe until the backfilling has been completed.

Then determine the deflection of the buried pipe from the Spangler or Watkins formula based on the thickness obtained for internal pressure, and the depth of cover using an 85% minimum compaction value for the backfill. Considering the most recent work of Dr. Watkins, an E' of 1500 is recommended. If the calculated deflection is less than 5% of the pipe diameter, the design is safe and sound. If the deflection should be greater than 5%, it can be reduced to proper limits by ellipsing the vertical diameter with stulls in the amount of the excess deflection. After the backfilling has been completed, the stulls can be removed, and the pipe will assume its proper position.

If the pipe will be laid above the ground, it can be supported by cradles or by ring girders. If the D/t ratio is less than 300, there is no danger of buckling; and if the D/t ratio is less than 158, there is no danger of pipe collapse from full vacuum. If the D/t ratio is greater than 300, consideration should be given to using some stiffener rings on the outside of the pipe.

When designing steel water pipelines, reference should be made to the latest edition of AWWA steel pipe standards, and good use can be made of the Steel Plate Fabricators Association's Welded Steel Water Pipe Manual and Federal Specification WW-P-1432 all readily obtainable.

### PART III. APPENDICES

**APPENDIX A** — Service life tabulation of riveted steel water pipe installations from 1858 to 1900; and tabulation of riveted steel water pipe installations from 1901 to 1933.

**APPENDIX B** — Tabulation of Lock-Bar steel water pipe installations from 1905 to 1932.

**APPENDIX C** — Tabulation of welded steel water pipe installations from 1922 to 1970 by decade periods:

1922 to 1930  
1931 to 1940  
1941 to 1950  
1951 to 1960  
1961 to 1970

**APPENDIX D** — Summary of Appendices A, B and C.

**APPENDIX E** — Types of steel available for steel water pipe service.

**APPENDIX F** — Long major aqueducts tabulation.

**APPENDIX G** — Steel water pipeline field joints.

**APPENDIX H** — Steel water pipe specifications.

**APPENDIX I** — Types of steel water pipe.



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**APPENDIX A**  
**SERVICE LIFE OF STEEL WATER PIPE**  
Partial Tabulation of Steel Water Pipe Installations  
(Prior to 1900 including some early wrought iron pipe)

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness     | Footage<br>Feet | Type    |
|-------------------|-----------------------------------|--------------------|---------------|-----------------|---------|
| 1858              | Railroad Flat, California         | 22 - 11            | 16 Ga.        | -               | Riveted |
| 1860              | New York, New York                | 90                 | 1/2"          | 1,000           | Riveted |
| 1863              | San Francisco, California         | 37 - 30            | 1/4"          | 27,280          | Riveted |
| 1868              | Humburg, California               | 26                 | 16 Ga.        | -               | Riveted |
| 1868              | San Francisco, California         | 30                 | 12 Ga.        | 80,000          | Riveted |
| 1870              | San Francisco, California         | 30                 | 12 Ga.        | 42,240          | Riveted |
| 1870              | Magalia, California               | 30                 | 10 Ga.        | -               | Riveted |
| 1870              | Floche, Nevada                    | 5                  | 14 Ga.        | 8,000           | Riveted |
| 1871              | Lawrence, Massachusetts           | 77                 | 3/8"          | -               | Riveted |
| 1871              | San Francisco, California         | 22                 | 9 Ga.         | 2,105           | Riveted |
| 1871              | North Bloomfield, California      | 14 - 10            | -             | -               | Riveted |
| 1872              | Santa Rosa, California            | 11 - 9             | 16 Ga.        | 10,000          | Riveted |
| 1873              | Virginia City, Nevada             | 12                 | 5/16" - 1/16" | 37,000          | Riveted |
| 1874              | Carson City, Nevada               | 12 - 7             | 16 Ga.        | 10,000          | Riveted |
| 1874              | Pittsburgh, Pennsylvania          | 50                 | -             | 2,900           | Riveted |
| 1874              | Rochester, New York               | 36                 | -             | 50,000          | Riveted |
| 1875              | San Francisco, California         | 22                 | 9 Ga.         | 12,226          | Riveted |
| 1875              | Oakland, California               | 24                 | 3/16"         | -               | Riveted |
| 1876              | Rochester, New York               | 24                 | -             | 10,451          | Riveted |
| 1878              | Texas Creek, California           | 17                 | 9 - 14 Ga.    | 4,000           | Riveted |
| 1880              | Los Angeles, California           | 44                 | 1/8"          | 17,000          | Riveted |
| 1880              | San Fernando, California          | 8                  | -             | -               | Riveted |
| 1881              | Lawrence, Massachusetts           | 77                 | 3/8"          | -               | Riveted |
| 1882              | San Francisco, California         | 30 - 22            | 1/4" - 1/8"   | 14,000          | Riveted |
| 1882              | Longmont, Colorado                | 6                  | -             | 23,000          | Riveted |
| 1882              | Holyoke, Massachusetts            | 103                | -             | -               | Riveted |
| 1883              | Fort Collins, Colorado            | 10                 | 3/16"         | 18,000          | Welded  |
| 1883              | San Francisco, California         | 30                 | 3 Ga.         | 2,480           | Riveted |
| 1884              | San Francisco, California         | 33                 | 1/4"          | 2,409           | Riveted |
| 1885              | San Francisco, California         | 44 - 30            | 1/4" - 6 Ga.  | 103,409         | Riveted |
| 1886              | Lawrence, Massachusetts           | 84                 | -             | -               | Riveted |
| 1886              | San Francisco, California         | 30                 | 3 Ga.         | 4,513           | Riveted |
| 1887              | Alhambra, California              | 10 - 4             | 16 Ga.        | 3,200           | Riveted |
| 1887              | Riverside, California             | 24                 | -             | 45,000          | Riveted |
| 1887              | San Francisco, California         | 36                 | 9 Ga.         | 100,000         | Riveted |
| 1887              | Pasadena, California              | 6                  | -             | -               | Riveted |
| 1888              | San Francisco, California         | 22                 | -             | 12,000          | Riveted |
| 1888              | Pasadena, California              | 22                 | 14 Ga.        | 18,000          | Riveted |
| 1888              | Sierra Madre, California          | 6 - 4              | 16 Ga.        | 15,000          | Riveted |
| 1888              | Altadena, California              | 8                  | 16 Ga.        | 1,200           | Riveted |
| 1888              | Redlands, California              | 24                 | 11 Ga.        | 2,200           | Riveted |
| 1888              | Chula Vista, California           | 6                  | 12 Ga.        | -               | Riveted |
| 1889              | Nephi, Utah                       | 3                  | 16 Ga.        | 1,500           | Riveted |
| 1889              | Alhambra, California              | 7                  | 16 Ga.        | 900             | Riveted |
| 1889              | San Francisco, California         | 44                 | 3 Ga.         | 4,378           | Riveted |
| 1889              | Pasadena, California              | 13                 | 14 Ga.        | 6,000           | Riveted |
| 1890              | San Jose, California              | 18                 | 12 Ga.        | 31,000          | Riveted |
| 1890              | Santa Cruz, California            | 14                 | 9 Ga.         | -               | Riveted |
| 1890              | Detroit, Michigan                 | 72                 | -             | -               | Riveted |
| 1890              | Redlands, California              | 8                  | -             | 6,000           | Riveted |
| 1890              | Walla Walla, Washington           | 20 - 6             | 7 - 14 Ga.    | 100,000         | Riveted |
| 1891              | Newark, New Jersey                | 48                 | 3/8" - 1/4"   | 111,800         | Riveted |
| 1891              | Newark, New Jersey                | 36                 | 1/4"          | 23,980          | Riveted |
| 1891              | Pittsburgh, Pennsylvania          | 50                 | 5/8"          | 3,600           | Riveted |
| 1891              | The Dalles, Oregon                | 10                 | 10 Ga.        | 8,000           | Riveted |
| 1891              | Pocatello, Idaho                  | 12                 | 16 Ga.        | 6,000           | Riveted |
| 1892              | Pasadena, California              | 20 - 4             | 14 Ga.        | 3,000           | Riveted |
| 1892              | Butte, Montana                    | 20                 | -             | 3,114           | Riveted |
| 1893              | Syracuse, New York                | 54                 | 3/8"          | 6,500           | Riveted |
| 1893              | Rochester, New York               | 38 - 36            | 5/16"         | 136,000         | Riveted |
| 1894              | Portland, Oregon                  | 42 - 33            | 5/16" - 6 Ga. | 132,000         | Riveted |
| 1894              | Pasadic Valley, New Jersey        | 30                 | 5/16"         | 12,300          | -       |
| 1895              | Whittier, California              | 10                 | 10 Ga.        | 15,000          | Riveted |
| 1895              | National City, California         | 24                 | 11 Ga.        | 26,000          | Riveted |
| 1895              | Altadena, California              | 12                 | 14 Ga.        | 5,000           | Riveted |
| 1895              | Pasadena, California              | 8                  | 14 Ga.        | 1,200           | Riveted |
| 1895              | Vancouver, British Columbia       | 22 - 16            | 12 Ga.        | 52,000          | Riveted |
| 1895              | San Francisco, California         | 30                 | 1/4"          | 4,090           | Riveted |
| 1895              | Kearney, New Jersey               | 42                 | -             | 8,800           | Riveted |
| 1895              | Colorado                          | 8 - 6              | 16 Ga.        | 42,700          | Riveted |
| 1895              | Cambridge, Massachusetts          | 42                 | -             | 20,000          | -       |
| 1896              | Minneapolis, Minnesota            | 48                 | -             | 31,680          | Riveted |
| 1896              | Newark, New Jersey                | 48 - 42            | 1/4"          | 126,000         | Riveted |
| 1896              | Pasadic Valley, New Jersey        | 42                 | 3/8" - 1/4"   | 8,700           | Riveted |
| 1896              | New Bedford, Massachusetts        | 48                 | 5/16"         | 42,000          | Riveted |
| 1896              | Bayonne, New Jersey               | 30                 | -             | 44,000          | -       |
| 1896              | New Westminster, British Columbia | 14                 | -             | 70,000          | Riveted |
| 1896              | New York, New York                | 72                 | -             | -               | Riveted |
| 1897              | Minneapolis, Minnesota            | 50                 | 7/16" - 5/16" | 16,605          | Riveted |
| 1897              | Ogden, Utah                       | 72                 | 11/16" - 3/8" | 4,600           | Riveted |
| 1897              | Patterson, New Jersey             | 42                 | 5/16"         | 40,000          | Riveted |
| 1897              | Jersey City, New Jersey           | 48                 | 1/2"          | -               | Riveted |
| 1897              | Colorado                          | 18 - 6             | 6 - 16 Ga.    | 4,400           | Riveted |
| 1898              | Red Bluff, California             | 7                  | 14 Ga.        | 9,000           | Riveted |
| 1898              | Duluth, Minnesota                 | 42                 | 1/2" - 1/4"   | 30,500          | Riveted |
| 1898              | Allegheny, Pennsylvania           | 50                 | -             | -               | Riveted |
| 1898              | Albany, New York                  | 48                 | -             | 8,000           | Riveted |
| 1899              | Colorado                          | 18 - 10            | 14 - 16 Ga.   | 22,000          | Riveted |
| 1899              | Little Falls, New Jersey          | 66 - 36            | -             | -               | -       |
| 1899              | Lawrence, Massachusetts           | 108                | 3/8"          | 154             | Riveted |
| 1899              | Los Angeles                       | 44                 | -             | -               | Riveted |
| 1899              | Pasadic Valley, New Jersey        | 51                 | 7/16" - 1/4"  | 44,600          | Riveted |
| 1899              | Seattle, Washington               | 42                 | 1/4"          | 32,000          | Riveted |
| 1899              | Kern, California                  | 60 - 48            | 1/2" - 12 Ga. | 5,000           | Riveted |

# APPENDIX A (Cont'd.)

| Year Installed | Location                   | Diameter Inches | Thickness | Footage Feet | Type    |
|----------------|----------------------------|-----------------|-----------|--------------|---------|
| 1899           | Newark, New Jersey         | 51 - 48         | 1/4"      | 47,000       | Riveted |
| 1899           | Pittsburgh, Pennsylvania   | 48              | -         | 4,400        | -       |
| 1900           | Redlands, California       | 4               | 14 Ga.    | 3,000        | Riveted |
| 1900           | San Francisco, California  | 36              | 7 Ga.     | 420          | Riveted |
| 1900           | Victor, Colorado           | 29              | 3/16"     | 2,500        | Riveted |
| 1900           | Marquette, Michigan        | 42              | -         | 600          | Riveted |
| 1900           | Butte, Montana             | 26              | -         | 33,910       | Riveted |
| 1900           | Montebello, California     | 16              | 10 Ga.    | 5,000        | Riveted |
| 1900           | Colorado                   | 17              | 4 - 8 Ga. | 1,920        | Riveted |
| 1900           | Passaic Valley, New Jersey | 42              | 5/16"     | 18,600       | Riveted |

APPROXIMATE TOTAL FOOTAGE = 2,000,000

## Partial Tabulation of Riveted Steel Water Pipe Installations 1901 to 1933

| Year Installed | Location                    | Diameter Inches | Thickness      | Footage Feet |
|----------------|-----------------------------|-----------------|----------------|--------------|
| 1901           | Pittsburgh, Pennsylvania    | 50 - 42         | 3/8"           | 17,000       |
| 1901           | Atlantic City, New Jersey   | 30              | 1/4"           | 27,000       |
| 1901           | Niagara, New York           | 84              | -              | 6,500        |
| 1901           | Seattle, Washington         | 42              | -              | 61,000       |
| 1902           | Montebello, California      | 20              | 12 Ga.         | -            |
| 1902           | Jersey City, New Jersey     | 72              | 11/16" - 5/16" | 93,000       |
| 1903           | Boston, Massachusetts       | 90              | 7/16"          | 4,000        |
| 1903           | Pittsburgh, Pennsylvania    | 48              | 1/2"           | 4,000        |
| 1903           | Sacramento, California      | 24              | 1/4"           | 9,000        |
| 1903           | Newark, New Jersey          | 60 - 48         | 5/16"          | 40,000       |
| 1903           | Jersey City, New Jersey     | 72              | 11/16" - 5/16" | -            |
| 1903           | Kansas City, Missouri       | 36              | -              | 35,000       |
| 1903           | Troy, New York              | 33              | 3/8"           | 35,000       |
| 1903           | Schenectady, New York       | 36              | -              | 23,716       |
| 1904           | Bayonne, New Jersey         | 30              | 3/8" - 1/4"    | 4,000        |
| 1904           | Astoria, New York           | 60              | -              | 15,000       |
| 1904           | Erie, Pennsylvania          | 60              | -              | 7,920        |
| 1904           | Toronto, Ontario            | 72              | -              | 6,000        |
| 1904           | Red Bluff, California       | 12              | 10 Ga.         | 1,600        |
| 1904           | San Bernardino, California  | 20              | 10 Ga.         | 16,800       |
| 1905           | Troy, New York              | 33              | -              | 35,780       |
| 1905           | Los Angeles, California     | 98 - 16         | 1/2" - 3/16"   | 1,108,000    |
| 1905           | St. Louis, Missouri         | 84              | 1/2"           | 18,960       |
| 1905           | Cincinnati, Ohio            | 84              | -              | 1,521        |
| 1905           | Springfield, Massachusetts  | 54 - 42         | -              | 63,500       |
| 1905           | Los Angeles, California     | 24 - 16         | 3/16"          | 13,200       |
| 1906           | Brooklyn, New York          | 72              | -              | 42,300       |
| 1906           | Pittsburgh, Pennsylvania    | 72 - 30         | 3/8" - 1/4"    | 47,000       |
| 1906           | Fair Oaks, California       | 28 - 24         | 12 Ga.         | 14,210       |
| 1906           | San Francisco, California   | 36 - 30         | 9 - 7 Ga.      | 139,400      |
| 1907           | Pittsburgh, Pennsylvania    | 36              | 3/8"           | 3,700        |
| 1907           | Niagara, New York           | 108             | 5/16" - 1/4"   | 564          |
| 1907           | St. Louis, Missouri         | 84              | -              | 20,000       |
| 1907           | Kern, California            | 84 - 60         | 1-3/8" - 5/16" | 4,175        |
| 1907           | Philadelphia, Pennsylvania  | 48 - 36         | -              | 54,000       |
| 1908           | Canyon, California          | 36              | 12 Ga.         | 2,450        |
| 1908           | Passaic Valley, New Jersey  | 30              | 1/4"           | 15,400       |
| 1908           | Philadelphia, Pennsylvania  | 132             | -              | 1,590        |
| 1908           | Colorado                    | 34              | 8 - 16 Ga.     | 31,910       |
| 1909           | Seattle, Washington         | 51 - 48         | 3/8" - 5/16"   | 10,700       |
| 1909           | Boulder, Colorado           | 60              | 1/2"           | 2,640        |
| 1909           | Erie, Pennsylvania          | 56              | -              | 5,280        |
| 1909           | Vancouver, British Columbia | 24              | 1/4" - 3/16"   | 73,000       |
| 1910           | New York, New York          | 36              | 3/16"          | 11,000       |
| 1910           | New York, New York          | 135 - 114       | 3/4" - 7/16"   | 33,000       |
| 1910           | Montrose, California        | 36 - 26         | -              | 5,200        |
| 1910           | Pittsburgh, Pennsylvania    | 24              | -              | 5,000        |
| 1910           | Brooklyn, New York          | 48              | -              | 16,200       |
| 1910           | Paterson, New Jersey        | 42              | 5/16"          | 2,000        |
| 1911           | Pasadena, California        | 30              | 10 Ga.         | 10,297       |
| 1911           | Calgary, Alberta            | 144 - 114       | 1/2"           | 516          |
| 1911           | Tacoma, Washington          | 46 - 39         | 1/2" - 1/4"    | 7,300        |
| 1911           | New York, New York          | 66              | -              | 8,510        |
| 1911           | Medford, Oregon             | 60 - 48         | 3/8" - 1/4"    | 1,093        |
| 1911           | Verdi, Nevada               | 78              | 3/8" - 1/4"    | 790          |
| 1912           | Juneau, Alaska              | 42 - 30         | 1/4" - 3/16"   | 1,655        |
| 1912           | Alaska                      | 40 - 30         | 1/2" - 1/4"    | 9,000        |
| 1912           | Los Angeles, California     | 68 - 64         | 3/8" - 5/16"   | 28,940       |
| 1912           | Pittsburgh, Pennsylvania    | 30              | 1/2"           | 5,300        |
| 1912           | Seattle, Washington         | 42              | -              | 13,243       |
| 1912           | Pittsburgh, Pennsylvania    | 72 - 60         | 1/2" - 3/8"    | 5,280        |
| 1912           | Altman, New York            | 138 - 96        | 5/8"           | 2,000        |
| 1912           | Belleville, Ohio            | 168             | -              | 2,920        |
| 1912           | Montclair, New Jersey       | 24              | -              | 7,343        |
| 1912           | Chihuahua, Mexico           | 102             | -              | 1,400        |
| 1913           | Los Angeles, California     | 72              | -              | -            |
| 1913           | Los Angeles, California     | 84              | 1/2" - 3/8"    | 1,378        |
| 1913           | Baltimore, Maryland         | 120             | 7/16"          | 2,465        |
| 1913           | Murray City, Utah           | 26 - 22         | 7 Ga.          | 3,882        |
| 1913           | Vancouver, British Columbia | 36 - 26         | 3/8" - 1/4"    | 46,250       |
| 1913           | Kansas City, Missouri       | 48              | -              | 1,220        |
| 1913           | Cleveland, Ohio             | 48              | 1/4"           | 2,265        |
| 1913           | Falls Village, Connecticut  | 108             | 3/8" - 5/16"   | 826          |
| 1913           | Niagara, New York           | 96 - 72         | 5/8" - 5/16"   | 3,400        |
| 1913           | Lock Raven, Maryland        | 120             | 7/16"          | 2,464        |
| 1913           | Ocoee, Tennessee            | 96              | 5/8"           | 1,320        |
| 1913           | Croghan, New York           | 114             | -              | 2,555        |
| 1913           | Altman, New York            | 138             | 5/8"           | 1,194        |
| 1913           | Los Angeles, California     | 132 - 90        | 1-1/8" - 1/4"  | 49,575       |
| 1914           | Pittsburgh, Pennsylvania    | 48 - 42         | -              | 3,060        |
| 1914           | Butte, Montana              | 24              | -              | 12,950       |

# APPENDIX A (Cont'd.)

| Year Installed | Location                       | Diameter Inches | Thickness     | Footage Feet |
|----------------|--------------------------------|-----------------|---------------|--------------|
| 1914           | Baltimore, Maryland            | 120             | 7/16"         | -            |
| 1914           | Tacoma, Washington             | 30              | 1/4"          | 550          |
| 1914           | Springfield, Massachusetts     | 42              | -             | -            |
| 1914           | Fremont, Ohio                  | 168             | -             | 2,861        |
| 1914           | Cleveland, Ohio                | 48              | -             | 1,320        |
| 1914           | Massena, New York              | 24              | 3/8" - 1/4"   | 22,000       |
| 1914           | Miami, Arizona                 | 152             | -             | 1,670        |
| 1914           | Riverside, California          | 30 - 20         | -             | 40,400       |
| 1914           | Niagara, New York              | 120             | 1/4"          | 1,106        |
| 1914           | Cleveland, Ohio                | 72 - 66         | -             | 3,960        |
| 1915           | Baltimore, Maryland            | 84              | 7/16"         | 4,000        |
| 1915           | Pittsburgh, Pennsylvania       | 48              | 1/2"          | 3,900        |
| 1915           | Greeley, Colorado              | 20              | -             | 5,280        |
| 1915           | Massena, New York              | 24              | 3/8" - 5/16"  | 5,000        |
| 1915           | Ogden, Utah                    | 24              | -             | 17,250       |
| 1915           | San Bernardino, California     | 20              | 3/16"         | 3,500        |
| 1915           | Victoria, British Columbia     | 36              | 3/8" - 5/16"  | 56,677       |
| 1915           | Placerville, California        | 30              | 1/2" - 3/16"  | 915          |
| 1916           | Follinsbee, West Virginia      | 30              | -             | 288          |
| 1916           | Minneapolis, Minnesota         | 48 - 40         | -             | 6,553        |
| 1916           | Painesville, Ohio              | 54              | -             | 1,320        |
| 1916           | Braden Copper Company          | 80              | -             | 4,134        |
| 1917           | Terra Bella, California        | 36 - 20         | 14 Ga.        | 200,000      |
| 1917           | Lindsay-Strathmore, California | 36              | 10 Ga.        | 1,200        |
| 1917           | Everett, Washington            | 28              | 1/4"          | 20,300       |
| 1917           | Minneapolis, Minnesota         | 48              | -             | 335          |
| 1917           | Olmitstead, Utah               | 90 - 72         | 5/8" - 1/2"   | 4,380        |
| 1917           | Portsmouth, Ohio               | 48              | 1/4"          | 880          |
| 1917           | Tallula Falls, Georgia         | 60              | -             | 1,224        |
| 1917           | Oakland, California            | 24              | -             | 4,130        |
| 1917           | Georgia Railway Company        | 156             | -             | 680          |
| 1918           | Salinas, California            | 54              | 3/16"         | 3,362        |
| 1919           | Butte, Montana                 | 26 - 24         | -             | 33,485       |
| 1920           | Wesch, Duval Company           | 60 - 42         | 11/16" - 1/4" | 3,781        |
| 1920           | J. G. White Company            | 36 - 30         | 3/8" - 1/4"   | 23,000       |
| 1920           | Spring Valley, California      | 30 - 22         | 5/16"         | -            |
| 1921           | Sacramento, California         | 30              | 3/8" - 1/4"   | 7,964        |
| 1922           | Sacramento, California         | 60 - 42         | 3/8" - 5/16"  | 1,819        |
| 1922           | Bay City, Michigan             | 38 - 26         | -             | 31,800       |
| 1922           | Honolulu, T.H.                 | 30              | 5/16"         | 400          |
| 1922           | Madison, Iowa                  | 108             | 7/16" - 3/8"  | 1,037        |
| 1922           | Minneapolis, Minnesota         | 48              | -             | 1,320        |
| 1922           | Oakland, California            | 30              | 1/4"          | 7,174        |
| 1922           | Seattle, Washington            | 66 - 48         | 9/16" - 5/16" | 29,200       |
| 1922           | Shasta, California             | 84              | 5/16"         | 320          |
| 1922           | Walla Walla, Washington        | 24              | 5/16"         | 11,182       |
| 1922           | Georgia Railway Company        | 56              | 1/4"          | 128          |
| 1923           | Oakland, California            | 24 - 20         | -             | 18,400       |
| 1923           | San Francisco, California      | 60              | 7/16" - 5/16" | 100,000      |
| 1923           | Covina, California             | 54 - 28         | -             | -            |
| 1923           | Cleveland, Ohio                | 48 - 36         | -             | 1,317        |
| 1923           | Cleveland, Ohio                | 72              | 1/2"          | 201          |
| 1923           | Florence, Alabama              | 108             | -             | 1,048        |
| 1923           | Longview, Washington           | 48              | 3/8"          | 1,158        |
| 1923           | Philadelphia, Pennsylvania     | 48 - 30         | -             | 2,640        |
| 1923           | Phoenix, Oregon                | 100 - 36        | -             | 188          |
| 1923           | Portland, Oregon               | 100             | 3/8" - 5/16"  | 1,285        |
| 1923           | Wheeling, West Virginia        | 31              | -             | 26,400       |
| 1923           | Cuba                           | 57              | -             | 1,742        |
| 1924           | Gage Canal, California         | 62              | 5/16"         | 1,123        |
| 1924           | Dominguez, California          | 53 - 20         | -             | 100,000      |
| 1924           | Filmora, California            | 36 - 24         | -             | 20,000       |
| 1924           | Albany, New York               | 48 - 26         | -             | 1,340        |
| 1924           | Badin, North Carolina          | 180             | 11/16" - 1/2" | 302          |
| 1924           | Irvington-Niles, California    | 44              | 1/4"          | 21,120       |
| 1924           | Irvington-Redwood, California  | 60              | 7/16" - 5/16" | 102,432      |
| 1924           | Oakland, California            | 30 - 20         | 3/16"         | 40,000       |
| 1924           | Philadelphia, Pennsylvania     | 48 - 20         | -             | 19,934       |
| 1924           | Pittsburgh, Pennsylvania       | 42              | 1/2"          | 440          |
| 1924           | St. Paul, Minnesota            | 60 - 32         | -             | 8,300        |
| 1924           | Tacoma, Washington             | 48 - 30         | 5/16" - 1/4"  | 2,295        |
| 1924           | San Salvador, Central America  | 48              | 1/4" - 3/16"  | 818          |
| 1925           | Providence, Rhode Island       | 66              | 3/8" - 5/16"  | 10,500       |
| 1925           | Puerto, California             | 20              | 14 Ga.        | 18,000       |
| 1925           | Hemet, California              | 30              | -             | 50,000       |
| 1925           | Detroit, Michigan              | 44              | -             | 21,120       |
| 1925           | Flint, Michigan                | 80              | -             | 16,500       |
| 1925           | Philadelphia, Pennsylvania     | 48              | -             | 1,200        |
| 1925           | Pittsburgh, Pennsylvania       | 20              | -             | 1,340        |
| 1925           | Pottsdam, New York             | 72              | 1/4"          | 2,510        |
| 1925           | St. Louis, Missouri            | 62 - 49         | -             | 95,000       |
| 1926           | Santa Paula, California        | 30 - 24         | -             | 10,000       |
| 1926           | Boston, Massachusetts          | 30              | 3/8"          | 7,230        |
| 1926           | Brooklyn, New York             | 60              | 1/2"          | 19,100       |
| 1926           | Detroit, Michigan              | 50              | -             | 2,580        |
| 1926           | Flint, Michigan                | 50 - 44         | 3/8" - 5/16"  | 1,585        |
| 1926           | Honolulu, T.H.                 | 20              | 3/16"         | 5,200        |
| 1926           | Minneapolis, Minnesota         | 66 - 50         | -             | 8,464        |
| 1926           | New York, New York             | 30              | 1/2"          | 2,800        |
| 1926           | Philadelphia, Pennsylvania     | 30              | -             | 2,800        |
| 1926           | Ciael Chopin                   | 84              | 1/2"          | 2,113        |
| 1927           | San Jacinto, California        | 30 - 20         | -             | 2,000        |
| 1927           | Yorba Linda, California        | 26              | -             | 20,000       |
| 1927           | Allen Falls, New York          | 84              | 9/16" - 5/16" | 10,255       |
| 1927           | New York, New York             | 36              | 1/2"          | 4,430        |
| 1927           | Buhl, Idaho                    | 90              | 1/4"          | 6,127        |
| 1927           | Detroit, Michigan              | 36              | 3/16"         | 350          |
| 1927           | Saginaw, Michigan              | 36 - 30         | -             | 21,120       |

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# APPENDIX A (Cont'd.)

| Year Installed | Location                      | Diameter Inches | Thickness     | Footage Feet |
|----------------|-------------------------------|-----------------|---------------|--------------|
| 1927           | St. Louis, Missouri           | 60 - 48         | 1/2"          | 1,700        |
| 1928           | Vancouver, British Columbia   | 60 - 20         | 9/16" - 1/4"  | 100,000      |
| 1928           | Detroit, Michigan             | 96 - 48         | 3/4"          | 774          |
| 1928           | Honolulu, T.H.                | 31              | 5/16"         | 826          |
| 1928           | Kauai Lake, New York          | 42              | 1/2"          | 848          |
| 1928           | San Francisco, California     | 44              | 1/4"          | 6,650        |
| 1928           | New York, New York            | 48 - 36         | 1/2"          | 5,000        |
| 1928           | Philadelphia, Pennsylvania    | 93 - 30         | 9/16" - 5/16" | 38,450       |
| 1928           | Pittsburgh, Pennsylvania      | 30 - 24         | 1/2"          | 6,000        |
| 1928           | Youngstown, Ohio              | 88              | —             | 548          |
| 1929           | New York, New York            | 77 - 66         | 1/2"          | 7,210        |
| 1929           | Cleveland, Ohio               | 48 - 30         | 5/8" - 1/2"   | 2,173        |
| 1929           | Detroit, Michigan             | 72 - 42         | 5/8" - 1/2"   | 7,850        |
| 1929           | Erie, Pennsylvania            | 72              | 1/2"          | 7,900        |
| 1929           | Harper, Oregon                | 153             | 5/16"         | 3,308        |
| 1929           | Kearney, New Jersey           | 33              | 5/16"         | 680          |
| 1929           | Wanaque, New Jersey           | 84              | 9/16"         | 6,520        |
| 1930           | Philadelphia, Pennsylvania    | 30 - 24         | 3/8"          | 7,120        |
| 1930           | Boston, Massachusetts         | 48              | 3/4"          | 2,200        |
| 1930           | Detroit, Michigan             | 72 - 48         | 5/8"          | 20,921       |
| 1930           | Erie, Pennsylvania            | 72              | —             | 11,695       |
| 1930           | Los Angeles, California       | 30              | 3/8"          | 12,312       |
| 1930           | New York, New York            | 72 - 36         | 1/2"          | 21,940       |
| 1930           | Pittsburgh, Pennsylvania      | 84 - 72         | 3/8"          | 673          |
| 1930           | Seattle, Washington           | 66 - 48         | 9/16" - 1/2"  | 5,635        |
| 1930           | U.S.B.R. - Vale, Oregon       | 101             | 7/16" - 5/16" | 7,130        |
| 1931           | U.S.B.R. - Yakima, Washington | 145             | 3/4" - 7/16"  | 552          |
| 1931           | Detroit, Michigan             | 72              | 5/8"          | 2,150        |
| 1931           | Los Angeles, California       | 48 - 45         | 3/8" - 1/4"   | 5,043        |
| 1931           | New York, New York            | 72 - 20         | 1/2"          | 2,020        |
| 1931           | Pittsburgh, Pennsylvania      | 84 - 72         | —             | 673          |
| 1931           | Placerville, California       | 30              | 1/4"          | 795          |
| 1938           | New York, New York            | 30              | 1/2"          | 196          |

APPROXIMATE TOTAL FOOTAGE = 5,220,000

# APPENDIX B

## Partial Tabulation of Lock-Bar Steel Water Pipe Installations 1905 to 1932

| Year Installed | Location                    | Diameter Inches | Thickness     | Footage Feet |
|----------------|-----------------------------|-----------------|---------------|--------------|
| 1905           | Passaic Valley, New Jersey  | 48 - 42         | 1/4"          | 10,000       |
| 1905           | Pittsburgh, Pennsylvania    | 50 - 30         | 3/8" - 1/4"   | 28,500       |
| 1905           | Lynchburg, Virginia         | 30              | —             | 11,500       |
| 1905           | Wilmington, Delaware        | 48 - 43         | —             | 20,000       |
| 1905           | Paterson, New Jersey        | 48 - 42         | 1/4"          | 11,500       |
| 1906           | Philadelphia, Pennsylvania  | 48 - 36         | —             | 86,980       |
| 1906           | New York, New York          | 72              | 7/16"         | 125,000      |
| 1906           | Honolulu, Hawaii            | 30              | —             | 8,000        |
| 1907           | Wilmington, Delaware        | 48 - 43         | 7/16" - 3/8"  | 20,340       |
| 1907           | Trenton, New Jersey         | 48              | 5/16"         | 7,000        |
| 1907           | Lockport, New York          | 30              | 1/4"          | 68,640       |
| 1907           | Vancouver, British Columbia | 30 - 22         | 5/16" - 1/4"  | 65,000       |
| 1907           | Montreal, Canada            | 36              | —             | 11,000       |
| 1908           | Gary, Indiana               | 36              | 1/4"          | 4,000        |
| 1908           | Springfield, Massachusetts  | 54 - 42         | 7/16" - 1/4"  | 75,000       |
| 1908           | Seattle, Washington         | 42              | 3/8" - 1/4"   | 17,394       |
| 1908           | Michigan City, Indiana      | 30              | —             | 4,000        |
| 1908           | Montreal, Canada            | 36              | —             | 25,000       |
| 1909           | Springfield, Massachusetts  | 42 - 30         | 3/8"          | 24,290       |
| 1909           | Portland, Oregon            | 48 - 24         | 1/4"          | 17,600       |
| 1909           | Brooklyn, New York          | 72              | —             | 83,000       |
| 1910           | Enley, Alabama              | 30              | 3/8" - 5/16"  | 8,840        |
| 1910           | New York, New York          | 48              | 7/16"         | 16,000       |
| 1910           | Pittsburgh, Pennsylvania    | 24              | —             | 5,000        |
| 1910           | Portland, Oregon            | 52 - 44         | 1/4"          | 128,000      |
| 1910           | Seattle, Washington         | 42 - 24         | 1/4"          | 23,600       |
| 1910           | Seattle, Washington         | 32              | —             | 4,050        |
| 1910           | Butte, Montana              | 42              | —             | 1,200        |
| 1910           | Washington, D.C.            | 30              | 1/4"          | 1,220        |
| 1910           | Cuba                        | 36 - 28         | —             | 1,300        |
| 1911           | Pennsylvania Railroad       | 20              | —             | 7,770        |
| 1911           | Denver, Colorado            | 60              | 3/8"          | 1,200        |
| 1911           | Portland, Oregon            | 52 - 44         | 5/16" - 1/4"  | 130,000      |
| 1911           | Seattle, Washington         | 42 - 44         | 1/4"          | 16,000       |
| 1911           | Montreal, Canada            | 48 - 30         | —             | 7,300        |
| 1911           | Lakeland, Florida           | 20              | —             | 4,000        |
| 1911           | Massena, New York           | 24              | —             | 1,323        |
| 1911           | Marquette, Michigan         | 66              | —             | 8,000        |
| 1911           | Philadelphia, Pennsylvania  | 20              | —             | 7,770        |
| 1912           | Omaha, Nebraska             | 48              | —             | 10,550       |
| 1912           | Ottawa, Canada              | 42              | 3/16"         | 2,400        |
| 1912           | Union Bay, British Columbia | 50              | —             | 1,320        |
| 1912           | Rochester, New York         | 66              | —             | 9,200        |
| 1912           | Washington, D.C.            | 36 - 24         | 1/4"          | 471          |
| 1912           | Winnipeg, Canada            | 36              | —             | 42,500       |
| 1912           | Akron, Ohio                 | 36              | 7/16" - 1/4"  | 56,000       |
| 1912           | Denver, Colorado            | 60              | —             | —            |
| 1913           | Minneapolis, Minnesota      | 54 - 48         | 7/16" - 5/16" | 39,000       |
| 1913           | Montclair, New Jersey       | 24              | 1/4"          | 7,325        |
| 1913           | Utica, New York             | 36              | 1/4"          | 1,000        |
| 1913           | Winnipeg, Canada            | 36              | 1/4"          | 42,000       |
| 1913           | Schenectady, New York       | 24              | 1/4"          | 2,420        |

# APPENDIX B (Cont'd.)

| Year<br>Installed | Location                     | Diameter<br>Inches | Thickness     | Footage<br>Feet |
|-------------------|------------------------------|--------------------|---------------|-----------------|
| 1913              | Massena, New York            | 24                 | —             | 1,200           |
| 1913              | Wilkes-Barre, Pennsylvania   | 36                 | —             | 1,335           |
| 1914              | Minneapolis, Minnesota       | 48                 | 1/2" - 1/4"   | 11,970          |
| 1914              | New York, New York           | 66                 | 1/2" - 7/16"  | 12,500          |
| 1914              | Utica, New York              | 30                 | 1/4"          | 1,000           |
| 1914              | Brooklyn, New York           | 66                 | —             | 12,200          |
| 1914              | Ottawa, Canada               | 51                 | —             | 15,000          |
| 1914              | Schenectady, New York        | 36                 | 3/8"          | 10,500          |
| 1914              | Winnipeg, Canada             | 36                 | 1/4"          | 21,569          |
| 1914              | Essex Junction, Vermont      | 36                 | —             | 2,440           |
| 1914              | Rochester, New York          | 66 - 48            | —             | 1,120           |
| 1914              | Rutland, Vermont             | 54                 | —             | 2,750           |
| 1915              | Minneapolis, Minnesota       | 48                 | —             | 7,355           |
| 1915              | Ottawa, Canada               | 51                 | —             | 15,000          |
| 1916              | Seattle, Washington          | 42                 | —             | 2,625           |
| 1916              | Ottawa, Canada               | 51                 | —             | 1,945           |
| 1916              | Minneapolis, Minnesota       | 48 - 40            | —             | 7,341           |
| 1916              | Rochester, New York          | 37                 | —             | 50,754          |
| 1916              | St. Louis, Missouri          | 36                 | —             | 26,700          |
| 1916              | Brandon, Vermont             | 36                 | —             | 2,344           |
| 1916              | Gary, Indiana                | 36                 | —             | 1,865           |
| 1917              | Eastman-Kodak                | 42                 | —             | 7,910           |
| 1917              | Rochester, New York          | 37                 | —             | 42,140          |
| 1917              | Carnegie Gas Company         | 54 - 30            | —             | 48,537          |
| 1918              | Carnegie Gas Company         | 40                 | —             | 12,000          |
| 1919              | Akron, Ohio                  | 48                 | —             | 12,000          |
| 1919              | Jersey City, New Jersey      | 72                 | —             | 88,000          |
| 1920              | Elyria, Ohio                 | 36                 | —             | 24,500          |
| 1920              | Port Henry, Vermont          | 40 - 36            | —             | 3,000           |
| 1920              | Passaic, New Jersey          | 30                 | —             | 12,300          |
| 1920              | Salt Lake City, Utah         | 36                 | —             | 1,200           |
| 1920              | Bayonne, New Jersey          | 48                 | —             | 44,000          |
| 1920              | Akron, Ohio                  | 48                 | —             | 21,250          |
| 1920              | Detroit, Michigan            | 48                 | —             | 21,930          |
| 1921              | Detroit, Michigan            | 48                 | —             | 19,000          |
| 1921              | Saginaw, Michigan            | 36                 | —             | 5,000           |
| 1921              | Philadelphia, Pennsylvania   | 72 - 36            | —             | 10,500          |
| 1922              | Cleveland, Ohio              | 60                 | —             | 20,000          |
| 1922              | Montreal, Canada             | 48 - 36            | —             | 13,000          |
| 1922              | Detroit, Michigan            | 36                 | —             | 8,000           |
| 1922              | Bay City, Michigan           | 48                 | —             | 4,000           |
| 1923              | Cleveland, Ohio              | 60                 | —             | 10,400          |
| 1923              | Brooklyn, New York           | 72 - 60            | —             | 58,230          |
| 1923              | Detroit, Michigan            | 24                 | —             | 7,890           |
| 1923              | Kearney, New Jersey          | 30                 | —             | 5,600           |
| 1923              | Elyria, Ohio                 | 36                 | —             | 1,400           |
| 1923              | Portland, Oregon             | 55 - 50            | 5/16" - 1/4"  | 132,000         |
| 1924              | Boston, Massachusetts        | 65 - 56            | —             | 44,359          |
| 1924              | Kearney, New Jersey          | 30                 | —             | 5,150           |
| 1924              | Philadelphia, Pennsylvania   | 48                 | —             | 9,100           |
| 1924              | Cleveland, Ohio              | 48 - 42            | —             | 7,720           |
| 1924              | Seattle, Washington          | 54 - 24            | —             | 28,217          |
| 1925              | Seattle, Washington          | 54 - 24            | —             | 18,779          |
| 1925              | Philadelphia, Pennsylvania   | 36 - 30            | —             | 10,300          |
| 1925              | New York, New York           | 72                 | —             | 14,360          |
| 1925              | Cleveland, Ohio              | 48 - 36            | —             | 19,025          |
| 1925              | Tacoma, Washington           | 64                 | —             | 2,276           |
| 1925              | Detroit, Michigan            | 60 - 48            | —             | 33,686          |
| 1925              | Montreal, Canada             | 48 - 42            | —             | 13,583          |
| 1925              | Garfield, New Jersey         | 30                 | —             | 7,600           |
| 1925              | Omaha, Nebraska              | 48                 | —             | 21,970          |
| 1926              | Garfield, New Jersey         | 30                 | —             | 7,600           |
| 1926              | Seattle, Washington          | 54                 | —             | 8,330           |
| 1926              | Portland, Oregon             | 40 - 24            | —             | 22,775          |
| 1926              | Tacoma, Washington           | 52                 | —             | 2,600           |
| 1926              | Fairbanks, Alaska            | 56 - 46            | 7/16" - 1/4"  | 34,380          |
| 1926              | San Diego, California        | 36                 | 1/2" - 5/16"  | 88,791          |
| 1926              | New York, New York           | 36                 | —             | 1,072           |
| 1926              | Montreal, Canada             | 36                 | —             | 2,653           |
| 1926              | Garfield, New Jersey         | 30                 | —             | 2,185           |
| 1926              | Kearny, New Jersey           | 36                 | —             | 4,300           |
| 1926              | Oakland, California          | 54                 | 7/16"         | 2,448           |
| 1927              | Miami, Florida               | 51 - 45            | —             | 3,050           |
| 1927              | San Francisco, California    | 54                 | —             | 55,000          |
| 1927              | Kearny, New Jersey           | 48 - 30            | —             | 24,287          |
| 1927              | Minneapolis, Minnesota       | 48                 | —             | 49,130          |
| 1927              | Sacramento, California       | 42 - 24            | 5/16" - 1/4"  | 8,700           |
| 1928              | New York, New York           | 48 - 36            | —             | 9,270           |
| 1928              | San Francisco, California    | 54                 | 7/16" - 1/4"  | 55,097          |
| 1928              | Grove, New Jersey            | 54                 | —             | 3,257           |
| 1928              | Kearny, New Jersey           | 48 - 42            | —             | 2,670           |
| 1928              | St. John, New Brunswick      | 36                 | —             | 5,465           |
| 1929              | Wanaque Aqueduct, New Jersey | 74                 | 1/2" - 7/16"  | 171,500         |
| 1929              | Seattle, Washington          | 54                 | —             | 28,000          |
| 1929              | Newark, New Jersey           | 60                 | —             | 25,400          |
| 1929              | Minneapolis, Minnesota       | 48                 | —             | 13,500          |
| 1929              | Pittsburgh, Pennsylvania     | 36                 | —             | 1,100           |
| 1930              | Detroit, Michigan            | 60 - 48            | —             | 14,700          |
| 1930              | Seattle, Washington          | 54 - 24            | 7/16" - 5/16" | 34,000          |
| 1930              | New York, New York           | 48                 | 1/2"          | 8,700           |
| 1930              | Minneapolis, Minnesota       | 48 - 42            | 5/16"         | 31,000          |
| 1930              | Kearny, New Jersey           | 36                 | 3/8"          | 9,555           |
| 1931              | New Jersey                   | 52                 | 1/2"          | 30,000          |
| 1931              | Minneapolis, Minnesota       | 60 - 50            | 7/16" - 3/8"  | 2,000           |
| 1931              | Kearny, New Jersey           | 36                 | 3/8"          | 11,100          |
| 1932              | Minneapolis, Minnesota       | 42 - 36            | —             | 22,000          |
| 1932              | Newark, New Jersey           | 42                 | —             | 2,750           |

APPROXIMATE TOTAL FOOTAGE = 3,400,000'

Page Eleven

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# APPENDIX C

## Partial Tabulation of WELDED Steel Water Pipe Installations - 1922 to 1970 1922 to 1930

| Year<br>Installed | Location                    | Diameter<br>Inches | Thickness     | Footage<br>Feet |
|-------------------|-----------------------------|--------------------|---------------|-----------------|
| 1922              | Walla Walla, Washington     | 24 - 20            | 3/16"         | 6,108           |
| 1922              | Spokane, Washington         | 30 - 24            | 1/4" - 7/32"  | 3,030           |
| 1923              | Astoria, Oregon             | 22                 | 1/4"          | 39,510          |
| 1923              | Banta, California           | 48                 | 3/16"         | 4,000           |
| 1923              | Tacoma, Washington          | 30                 | 1/4"          | 1,159           |
| 1924              | Vallejo, California         | 24 - 22            | 1/4" - 3/16"  | 116,160         |
| 1924              | Oakland, California         | 54                 | 3/8" - 1/2"   | 435,000         |
| 1925              | Oakland, California         | 42                 | 1/4"          | 4,210           |
| 1925              | San Francisco, California   | 30                 | 3/16"         | 4,500           |
| 1925              | Stockton, California        | 36                 | 3/16"         | 1,128           |
| 1926              | Laguna Beach, California    | 30                 | 3/16"         | 43,442          |
| 1926              | San Rafael, California      | 30 - 26            | 1/4"          | 37,400          |
| 1926              | Roseville, California       | 25 - 22            | 3/16"         | 8,212           |
| 1926              | Bakersfield, California     | 30                 | 3/16"         | 17,000          |
| 1926              | Bunker, California          | 48                 | 1/4"          | 470             |
| 1926              | Newark, California          | 60 - 48            | 3/8" - 1/4"   | 577             |
| 1926              | Pacific Grove, California   | 22                 | 3/16"         | 2,500           |
| 1926              | San Francisco, California   | 36 - 20            | 3/16"         | 10,700          |
| 1926              | Storrie, California         | 36 - 20            | 1/4" - 3/16"  | 42,240          |
| 1926              | La Mesa, California         | 24                 | 10 Ga.        | 21,120          |
| 1927              | Oakland, California         | 54 - 20            | 1/2" - 3/16"  | 4,400           |
| 1927              | Santa Cruz, California      | 24 - 20            | 3/16"         | 1,018           |
| 1927              | Springfield, Massachusetts  | 72 - 36            | 1/2" - 5/16"  | 37,000          |
| 1927              | Yakima, Washington          | 24                 | 1/4" - 3/16"  | 17,903          |
| 1928              | Everett, Washington         | 30                 | -             | 115,000         |
| 1928              | Boston, Massachusetts       | 30                 | 3/8"          | 19,000          |
| 1928              | Mt. Clemens, Michigan       | 30                 | -             | 5,000           |
| 1928              | Tacoma, Washington          | 51 - 48            | 5/16"         | 1,680           |
| 1928              | New York, New York          | 60 - 36            | 1/2"          | 25,390          |
| 1928              | Oakland, California         | 20                 | 3/16"         | 1,200           |
| 1928              | Pacific Grove, California   | 30                 | 1/4"          | 12,890          |
| 1928              | San Francisco, California   | 24 - 20            | 1/4" - 3/16"  | 31,760          |
| 1929              | Boston, Massachusetts       | 60 - 36            | 1/2"          | 8,800           |
| 1929              | Cleveland, Ohio             | 36 - 30            | 1/2"          | 1,340           |
| 1929              | Detroit, Michigan           | 66 - 48            | 1/2"          | 26,237          |
| 1929              | Honolulu, T.H.              | 30                 | 3/16"         | 351             |
| 1929              | Madera, California          | 30                 | 1/4"          | 12,829          |
| 1929              | Kansas City, Missouri       | 54                 | 7/16"         | 1,114           |
| 1929              | San Francisco, California   | 30 - 20            | 1/4" - 3/16"  | 35,400          |
| 1929              | Linden, New Jersey          | 28                 | 1/4"          | 340             |
| 1929              | Monroe, Michigan            | 36                 | 3/8"          | 5,200           |
| 1929              | Oakland, California         | 54 - 36            | 7/16" - 5/16" | 3,906           |
| 1929              | New York, New York          | 60 - 36            | 1/2"          | 18,625          |
| 1929              | Oakland, California         | 54 - 24            | 3/8" - 1/4"   | 2,198           |
| 1929              | Youngstown, Ohio            | 48 - 24            | 3/8"          | 134,590         |
| 1929              | Los Angeles, California     | 24                 | 5/16"         | 22,000          |
| 1930              | Boston, Massachusetts       | 60                 | 1/2"          | 5,400           |
| 1930              | Clyde, California           | 36 - 24            | 5/16" - 1/4"  | 16,628          |
| 1930              | Detroit, Michigan           | 48 - 24            | 1/2"          | 22,000          |
| 1930              | East Chicago, Indiana       | 54                 | -             | 10,000          |
| 1930              | Everett, Washington         | 52 - 24            | 1/2" - 3/16"  | 47,000          |
| 1930              | Los Angeles, California     | 40 - 24            | 3/8"          | 34,307          |
| 1930              | New York, New York          | 30                 | 1/2"          | 8,740           |
| 1930              | Oakland, California         | 24 - 20            | 5/16" - 1/4"  | 22,731          |
| 1930              | Salyer, California          | 54 - 42            | 7/16" - 3/16" | 7,740           |
| 1930              | San Francisco, California   | 24 - 20            | 1/4" - 3/16"  | 14,080          |
| 1930              | Washington, D.C.            | 20                 | 8 Ga.         | 3,000           |
| 1930              | San Diego, California       | 40 - 36            | 3/8" - 3/16"  | 86,000          |
| 1930              | Tacoma, Washington          | 52 - 42            | -             | 20,000          |
| 1930              | Vancouver, British Columbia | 36 - 26            | -             | 50,000          |

APPROXIMATE TOTAL FOOTAGE = 1,700,000

## 1931 to 1940

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness      | Footage<br>Feet |
|-------------------|-----------------------------------|--------------------|----------------|-----------------|
| 1931              | Boston, Massachusetts             | 60                 | 1/2" - 3/8"    | 54,299          |
| 1931              | Cleves, Ohio                      | 54                 | 9/16"          | 332             |
| 1931              | Flint, Michigan                   | 44 - 30            | 5/16"          | 1,806           |
| 1931              | Little Falls, New Jersey          | 90 - 30            | 5/8" - 3/8"    | 844             |
| 1931              | Los Angeles, California           | 144 - 24           | 7/8" - 1/4"    | 263,000         |
| 1931              | New York, New York                | 72 - 20            | 1/2"           | 87,000          |
| 1931              | Oakland, California               | 24                 | 1/4"           | 7,310           |
| 1931              | Portland, Maine                   | 36                 | 3/8"           | 3,584           |
| 1931              | San Francisco, California         | 75 - 36            | 1/2" - 1/4"    | 464,000         |
| 1931              | San Leandro, California           | 30                 | 1/4"           | 23,000          |
| 1931              | Vancouver, British Columbia       | 36 - 20            | -              | 35,000          |
| 1931              | Vancouver, British Columbia       | 70                 | 3/4" - 11/16"  | 4,700           |
| 1931              | Anacortes, Washington             | 24                 | 3/16"          | 29,416          |
| 1931              | Seattle, Washington               | 66 - 48            | -              | 85,307          |
| 1931              | Everett, Washington               | 52 - 48            | 3/8" - 1/4"    | 52,000          |
| 1932              | Panther Valley, Pennsylvania      | 30                 | -              | 50,000          |
| 1932              | Boston, Massachusetts             | 60 - 20            | 1/2"           | 10,785          |
| 1932              | Los Angeles, California           | 84 - 24            | 3/8"           | 85,000          |
| 1932              | St. Louis, Missouri               | 36 - 28            | 5/8" - 7/16"   | 17,000          |
| 1932              | San Francisco, California         | 66 - 56            | 1/2" - 5/16"   | 2,408,000       |
| 1932              | Waukegan, Illinois                | 33                 | -              | 2,980           |
| 1933              | Ft. Wayne, Indiana                | 42                 | -              | 13,000          |
| 1933              | City of Los Angeles, California   | 94 - 80            | 1-1/16" - 3/8" | 18,000          |
| 1933              | Auburn, New York                  | 30                 | 3/8"           | 10,000          |
| 1933              | Vancouver, British Columbia       | 60                 | 3/4" - 9/16"   | 4,000           |
| 1933              | Washington, D.C.                  | 48                 | 9/16"          | 35,000          |
| 1934              | City of San Francisco, California | 66                 | 1/2" - 3/8"    | 80,000          |
| 1934              | Seattle, Washington               | 78                 | 5/16"          | 29,500          |

# APPENDIX C (Cont'd.)

| Year Installed | Location                          | Diameter Inches | Thickness      | Footage Feet |
|----------------|-----------------------------------|-----------------|----------------|--------------|
| 1934           | St. Louis, Missouri               | 60 - 48         | 7/16"          | 67,670       |
| 1934           | Hamilton, Ohio                    | 24              | 1/4"           | 23,450       |
| 1935           | Fort Smith, Arkansas              | 27              | -              | 118,800      |
| 1935           | Owyhee, Oregon                    | 126 - 108       | 13/16" - 3/8"  | 2,530        |
| 1935           | Tacoma, Washington                | 63 - 42         | 3/8" - 5/16"   | 35,785       |
| 1935           | Cresce, California                | 84              | 3/8" - 1/4"    | 10,000       |
| 1935           | Boston, Massachusetts             | 48 - 36         | 1/2"           | 22,000       |
| 1935           | New Brunswick, New Jersey         | 24              | 5/16"          | 6,000        |
| 1935           | New York, New York                | 48 - 20         | 1/2"           | 39,000       |
| 1935           | Diamond Alkali Company            | 60              | 9/16"          | 3,200        |
| 1936           | City of San Francisco, California | 60              | 3/8"           | 82,000       |
| 1936           | Birmingham, Alabama               | 60 - 24         | -              | 147,000      |
| 1936           | Malheur, Oregon                   | 80              | 9/16" - 1/4"   | 23,178       |
| 1936           | Metropolitan Water District       | 138 - 116       | 1" - 1/2"      | 55,000       |
| 1936           | Metropolitan Water District       | 120 - 72        | -              | 6,000        |
| 1936           | Kyria, Ohio                       | 30              | -              | 18,480       |
| 1936           | Buffalo, New York                 | 36              | 1/2"           | 10,000       |
| 1936           | City of Los Angeles, California   | 40 - 24         | -              | 124,080      |
| 1936           | St. Louis, Missouri               | 60              | 9/16" - 1/2"   | 46,917       |
| 1937           | Denver, Colorado                  | 57 - 36         | -              | 19,440       |
| 1937           | San Gabriel Dam, California       | 120 - 51        | -              | 5,000        |
| 1937           | Salem, Oregon                     | 36 - 27         | -              | 60,000       |
| 1937           | Brazett, Washington               | 52 - 30         | 7/16" - 1/4"   | 102,000      |
| 1937           | City of San Francisco, California | 60              | 3/8"           | 24,620       |
| 1938           | Grand Coulee, Washington          | 72              | 9/16" - 3/8"   | 355          |
| 1938           | Metropolitan Water District       | 53 - 51         | 15/32" - 3/8"  | 90,000       |
| 1938           | City of Los Angeles, California   | 36 - 24         | -              | 13,000       |
| 1938           | Lorain, Ohio                      | 30              | 7/16"          | 20,000       |
| 1938           | City of New York, New York        | 60              | -              | 14,510       |
| 1938           | Cleveland, Ohio                   | 36 - 24         | -              | 29,323       |
| 1938           | Grand Rapids, Michigan            | 54              | 9/16"          | 5,980        |
| 1938           | Grand Rapids, Michigan            | 42 - 36         | -              | 21,000       |
| 1939           | Polson, Montana                   | 48              | 3/8" - 1/4"    | 1,260        |
| 1939           | Spartanburg, South Carolina       | 24 - 20         | 1/4"           | 65,000       |
| 1939           | Metropolitan Water District       | 36 - 21         | 3/8" - 5/16"   | 38,000       |
| 1940           | Colorado Springs, Colorado        | 24              | 1-1/8" - 5/16" | 15,624       |
| 1940           | City of Los Angeles, California   | 78 - 36         | 1/2" - 3/8"    | 100,000      |
| 1940           | Montebello, Maryland              | 147             | 1/2"           | 11,625       |
| 1940           | Bremerton, Washington             | 24              | 1/4"           | 14,725       |

APPROXIMATE TOTAL FOOTAGE = 5,300,000

| Year Installed | Location                           | Diameter Inches | Thickness      | Footage Feet |
|----------------|------------------------------------|-----------------|----------------|--------------|
| 1941           | Toledo, Ohio                       | 78 - 42         | 9/16"          | 90,000       |
| 1941           | Georgetown, South Carolina         | 24              | -              | 36,000       |
| 1941           | Bastrop, Louisiana                 | 28              | -              | 12,780       |
| 1941           | Birmingham, Alabama                | 42              | -              | 16,700       |
| 1942           | Ducatur, Georgia                   | 30              | -              | 44,000       |
| 1942           | City of New York, New York         | 48 - 36         | -              | 3,400        |
| 1942           | Camp Hahn, California              | 24 - 20         | 5/16" - 3/16"  | 40,000       |
| 1942           | Springfield, Massachusetts         | 51              | 3/8"           | 12,500       |
| 1944           | Longmont, Colorado                 | 30              | 1/4"           | 18,000       |
| 1944           | Greeley, Colorado                  | 58 - 24         | 5/16" - 3/16"  | 190,000      |
| 1944           | Richland, Washington               | 42              | 17/32" - 5/16" | 117,964      |
| 1945           | U. S. Engineers                    | 60              | 3/4" - 3/8"    | 20,000       |
| 1946           | Tacoma, Washington                 | 48              | 5/16"          | 11,053       |
| 1946           | Monterey, California               | 30 - 24         | 1/4" - 3/16"   | 10,000       |
| 1946           | Grand Coulee, Washington           | 144             | 1" - 7/16"     | 9,373        |
| 1946           | U. S. Navy (San Diego, California) | 48              | 13/16" - 7/16" | 9,400        |
| 1946           | Oakland, California (E.B.M.U.D.)   | 30              | 3/16"          | 13,000       |
| 1946           | Sacramento, California             | 42 - 24         | 3/8" - 1/4"    | 35,220       |
| 1947           | City of San Francisco, California  | 60 - 36         | 1/2" - 3/16"   | 23,000       |
| 1947           | Seattle, Washington                | 48              | 3/8"           | 13,800       |
| 1947           | Oakland, California (E.B.M.U.D.)   | 69              | 1/2" - 3/8"    | 171,000      |
| 1947           | Salem, Oregon                      | 30              | 1/4"           | 8,000        |
| 1947           | City of New York, New York         | 36 - 30         | -              | 50,000       |
| 1947           | Saginaw, Michigan                  | 66              | -              | 10,427       |
| 1947           | Philadelphia, Pennsylvania         | 60 - 48         | 1/2" - 7/16"   | -            |
| 1947           | Syracuse, New York                 | 54              | 7/16"          | 4,264        |
| 1947           | Longmont, Colorado                 | 30              | 3/8" - 3/16"   | 20,000       |
| 1948           | Metropolitan Water District        | 46              | 3/8"           | 34,670       |
| 1948           | Savannah, Georgia                  | 48 - 36         | -              | 73,000       |
| 1948           | Macon, Georgia                     | 30              | -              | 19,200       |
| 1948           | Seattle, Washington                | 48              | -              | 13,740       |
| 1948           | Salem, Oregon                      | 24              | 1/4"           | 30,000       |
| 1948           | Springfield, Massachusetts         | 48              | 7/16" - 3/8"   | 26,000       |
| 1948           | City of San Francisco, California  | 60              | 7/8" - 3/8"    | 15,000       |
| 1948           | City of San Francisco, California  | 62              | 9/16" - 1/2"   | 113,000      |
| 1948           | California (Imperial Valley)       | 186             | 1/2"           | 17,720       |
| 1948           | Philadelphia, Pennsylvania         | 48 - 24         | 1/2" - 5/16"   | -            |
| 1948           | Jersey City, New Jersey            | 48              | 3/8"           | 12,000       |
| 1948           | Boston, Massachusetts              | 36 - 30         | 1/2"           | 4,450        |
| 1948           | Syracuse, New York                 | 49              | 5/16"          | 7,200        |
| 1948           | Toledo, Ohio                       | 24              | 1/4"           | 13,148       |
| 1948           | Stirling, Colorado                 | 24              | 1/4" - 3/16"   | 7,200        |
| 1948           | Seaside, Oregon                    | 24              | 5/16"          | 11,280       |
| 1949           | City of New York, New York         | 88 - 48         | 1/2"           | 1,476        |
| 1949           | Tulsa, Oklahoma                    | 30              | 5/16"          | -            |
| 1949           | Golden, Colorado                   | 20              | 1/4" - 3/16"   | 4,915        |
| 1949           | City of Los Angeles, California    | 67 - 58         | 1/2" - 3/8"    | 91,000       |
| 1949           | City of San Francisco, California  | 73              | 1/2" - 3/8"    | 33,000       |
| 1949           | New Orleans, Louisiana             | 50              | 3/8"           | 36,296       |
| 1949           | Seattle, Washington                | 66              | -              | 162,434      |
| 1950           | Medford, Oregon                    | 30 - 20         | 1/4" - 3/16"   | 35,600       |
| 1950           | San Francisco, California          | 62              | 1/2" - 7/16"   | 10,521       |
| 1950           | Seattle, Washington                | 42              | -              | -            |

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# APPENDIX C (Cont'd.)

| Year Installed | Location                 | Diameter Inches | Thickness    | Footage Feet |
|----------------|--------------------------|-----------------|--------------|--------------|
| 1950           | Tulsa, Oklahoma          | 36              | 5/16"        | 9,100        |
| 1950           | Portland, Oregon         | 36              | —            | 23,400       |
| 1950           | Cincinnati, Ohio         | 49              | 1/2"         | 8,400        |
| 1950           | Syracuse, New York       | 49              | 5/16"        | 8,350        |
| 1950           | Wilkesburg, Pennsylvania | 36 - 30         | 3/8" - 5/16" | 13,550       |
| 1950           | Boston, Massachusetts    | 36              | 1/2" - 7/16" | 27,100       |
| 1950           | Greeley, Colorado        | 27              | 3/16"        | 75,000       |
| 1950           | Allentown, Pennsylvania  | 36 - 30         | 3/8"         | 16,000       |
| 1950           | Cleveland, Ohio          | 48 - 24         | 9/16" - 3/8" | 33,500       |

APPROXIMATE TOTAL FOOTAGE = 2,000,000

| 1951 to 1960   |  |                 |                 |              |
|----------------|--|-----------------|-----------------|--------------|
| Year Installed | Location                                 | Diameter Inches | Thickness       | Footage Feet |
| 1951           | Hollywood, California                    | 83 - 66         | 1/2"            | 236          |
| 1951           | City of San Francisco, California        | 72              | 1/2" - 5/16"    | 90,000       |
| 1951           | City of Los Angeles, California          | 69              | 11/16" - 1/2"   | 23,902       |
| 1951           | City of Los Angeles, California          | 67 - 61         | 3/8"            | 32,200       |
| 1951           | City of Los Angeles, California          | 69              | 2" - 5/8"       | 4,400        |
| 1951           | City of Los Angeles, California          | 60              | 7/16"           | 900          |
| 1951           | City of Los Angeles, California          | 36              | 3/8"            | 3,000        |
| 1951           | Hamilton, Canada                         | 48 - 20         | 3/8"            | 38,000       |
| 1951           | Denver, Colorado                         | 54 - 36         | 1/4" - 3/16"    | 7,400        |
| 1951           | Pueblo, Colorado                         | 30 - 21         | 1/4" - 3/16"    | 35,000       |
| 1951           | Englewood, Colorado                      | 27 - 18         | —               | 30,000       |
| 1951           | Cleveland, Ohio                          | 48              | —               | 15,000       |
| 1951           | Tulahoma, Tennessee                      | 60              | 7/16"           | —            |
| 1951           | Philadelphia, Pennsylvania               | 54 - 48         | 1/2"            | 9,000        |
| 1951           | Cincinnati, Ohio                         | 48              | 1/2"            | 10,200       |
| 1952           | New Jersey                               | 72              | —               | 25,000       |
| 1952           | City of Los Angeles, California          | 61              | 1/2" - 3/8"     | 5,420        |
| 1952           | Williamsport, Pennsylvania               | 24              | 1/4"            | 1,600        |
| 1952           | Omaha, Nebraska                          | 48 - 36         | 3/8"            | 11,700       |
| 1952           | Pueblo, Colorado                         | 30 - 21         | 1/4"            | 36,000       |
| 1952           | San Jose, California                     | 30 - 18         | 5/16" - 10 Ga.  | 60,000       |
| 1952           | Atlanta, Georgia                         | 48              | 7/16"           | 6,000        |
| 1952           | New Orleans, Louisiana                   | 30 - 24         | 5/16" - 1/4"    | —            |
| 1952           | Santa Clara, California                  | 30              | 1/4"            | 15,000       |
| 1952           | Brasil                                   | 48 - 44         | 7/16"           | 2,060        |
| 1952           | Wheaton, Maryland                        | 31              | 3/8" - 5/16"    | 27,000       |
| 1952           | Boulder, Colorado                        | 24              | 1/4"            | 6,360        |
| 1952           | Metropolitan Water District              | 61 - 46         | 1/2" - 3/8"     | 51,000       |
| 1952           | City of Los Angeles, California          | 69 - 36         | 1/2" - 3/8"     | 7,923        |
| 1953           | Portland, Oregon                         | 66 - 56         | 1/2" - 5/16"    | 133,000      |
| 1953           | Metropolitan Water District              | 73 - 43         | 11/16" - 3/8"   | 86,477       |
| 1953           | Eastern Mun. Water District - California | 39 - 36         | 3/16"           | 38,510       |
| 1953           | City of Los Angeles, California          | 69 - 36         | 5/8" - 3/8"     | 23,658       |
| 1953           | City of Riverside, California            | 42 - 36         | 3/16"           | 9,977        |
| 1953           | Houston, Texas                           | 37              | 7/16"           | 37,929       |
| 1953           | Syracuse, New York                       | 49              | 5/16"           | 7,300        |
| 1953           | Tulahoma, Tennessee                      | 84 - 30         | 5/8" - 3/8"     | 25,000       |
| 1953           | Denver, Colorado                         | 36              | 3/8"            | 5,300        |
| 1953           | Philadelphia, Pennsylvania               | 43 - 30         | 7/16" - 3/8"    | 48,750       |
| 1953           | Colorado Springs, Colorado               | 42 - 30         | 5/16" - 3/16"   | 10,000       |
| 1953           | Augusta, Georgia                         | 36              | 5/16"           | 19,600       |
| 1953           | Calgary, Canada                          | 30              | 3/8"            | —            |
| 1953           | Omaha, Nebraska                          | 48 - 30         | 3/8"            | 2,720        |
| 1953           | Fort Smith, Arkansas                     | 30 - 22         | 3/16"           | 22,000       |
| 1953           | San Jose, California                     | 30 - 18         | 7 Ga. - 10 Ga.  | 57,000       |
| 1953           | Duluth, Minnesota                        | 30              | 5/16"           | 8,100        |
| 1953           | Lehighbridge, Canada                     | 24 - 18         | 3/8" - 5/16"    | 14,500       |
| 1953           | Hemet, California                        | 24 - 20         | —               | 25,384       |
| 1953           | Fallbrook, California                    | 24              | —               | 23,311       |
| 1953           | San Francisco, California                | 61              | 7/16" - 3/8"    | 20,270       |
| 1954           | Hemet, California                        | 24 - 21         | 10 Ga. - 12 Ga. | 14,100       |
| 1954           | Las Vegas, Nevada                        | 24              | —               | 22,151       |
| 1954           | Colton, California                       | 24              | 10 Ga.          | 4,218        |
| 1954           | Covina, California                       | 25              | 10 Ga.          | 8,310        |
| 1954           | City of Los Angeles, California          | 60              | —               | 12,000       |
| 1954           | La Habra, California                     | 20              | 10 Ga.          | 16,000       |
| 1954           | City of Los Angeles, California          | 26 - 24         | 9/32" - 1/4"    | 5,500        |
| 1954           | Cincinnati, Ohio                         | 42              | 1/2"            | 11,800       |
| 1954           | Spartanburg, South Carolina              | 30 - 24         | 1/4"            | 48,980       |
| 1954           | Syracuse, New York                       | 39              | 3/8"            | 5,600        |
| 1954           | Pasco, Washington                        | 36 - 20         | 1/4" - 3/16"    | 13,850       |
| 1954           | Regina, California                       | 36              | 5/16" - 1/4"    | 190,000      |
| 1954           | Atikokan, Canada                         | 42 - 36         | 5/8" - 3/8"     | 61,000       |
| 1954           | Beaver Falls, Alaska                     | 48 - 24         | —               | 3,800        |
| 1954           | Nictaux, Nova Scotia                     | 66              | 5/8" - 3/8"     | 3,312        |
| 1954           | Omaha, Nebraska                          | 48 - 36         | 3/8"            | 9,700        |
| 1954           | Rifle, Colorado                          | 42 - 18         | 3/16"           | 3,844        |
| 1954           | Tuscaloosa, Alabama                      | 36 - 24         | 1/4"            | 26,900       |
| 1954           | Camino, California                       | 48 - 36         | 1/4"            | 29,712       |
| 1954           | City of New York, New York               | 72              | —               | 21,000       |
| 1954           | Colorado Springs, Colorado               | 30              | 1/2" - 1/4"     | 87,603       |
| 1954           | Tacoma, Washington                       | 78              | —               | 56,000       |
| 1954           | Muskegon Heights, Michigan               | 30              | 5/8"            | 4,500        |
| 1954           | Sparrows Point, Pennsylvania             | 96              | 5/8" - 1/2"     | 23,800       |
| 1954           | City of Los Angeles, California          | 71              | 1/4"            | 1,000        |
| 1954           | City of Riverside, California            | 36              | 1/4" - 3/16"    | 21,800       |
| 1954           | Tucson, Arizona                          | 36              | 1/4"            | 50,810       |
| 1954           | Las Vegas, Nevada                        | 39 - 36         | 3/16"           | 100,000      |
| 1954           | Metropolitan Water District              | 109 - 37        | 23/32" - 3/8"   | 102,250      |
| 1954           | City of Los Angeles, California          | 96 - 49         | 3/8" - 1/4"     | 18,940       |
| 1954           | Metropolitan Water District              | 120             | 3/4" - 3/8"     | 6,000        |
| 1954           | Santa Paula, California                  | 60              | 1/2"            | 800          |
| 1954           | La Canada, California                    | 39 - 36         | 7/32" - 3/16"   | 6,741        |



# APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness       | Footage Feet |
|----------------|---------------------------------|-----------------|-----------------|--------------|
| 1953           | Tacoma, Washington              | 216             | 1" - 3/4"       | 950          |
| 1953           | Santa Paula, California         | 42 - 24         | 7 Ga. - 12 Ga.  | 50,000       |
| 1953           | Pasadena, California            | 24              | 3/16"           | 5,600        |
| 1953           | Puente, California              | 28              | .21" - .13"     | 20,000       |
| 1953           | Worcester, Massachusetts        | 36 - 30         | -               | 34,300       |
| 1953           | Garden Grove, California        | 28 - 21         | 6 Ga.           | 50,000       |
| 1953           | Beverly Hills, California       | 24              | 9 Ga.           | 15,000       |
| 1953           | Metropolitan Water District     | 79 - 55         | 23/32" - 7/16"  | 124,410      |
| 1953           | New Orleans, Louisiana          | 30              | -               | 25,000       |
| 1953           | City of Los Angeles, California | 61 - 36         | 13/32" - 1/4"   | 26,938       |
| 1953           | Riverside, California           | 36              | 1/4"            | 2,772        |
| 1953           | San Francisco, California       | 91              | 3/8"            | 5,103        |
| 1953           | San Francisco, California       | 61              | 7/16" - 3/8"    | 6,000        |
| 1953           | Colorado Springs, Colorado      | 24              | 3/8" - 1/4"     | 49,000       |
| 1953           | Wanship, Utah                   | 85              | -               | -            |
| 1953           | Cucamonga, California           | 24 - 21         | 3/16" - 12 Ga.  | 20,000       |
| 1953           | San Bernardino, California      | 30              | 1/4"            | 1,800        |
| 1953           | Long Beach, California          | 24              | 5/16"           | 1,204        |
| 1953           | Casper, Wyoming                 | 24              | 1/4"            | 9,000        |
| 1953           | Reading, Pennsylvania           | 36 - 30         | 5/16" - 9/32"   | 33,000       |
| 1953           | Seattle, Washington             | 30              | 1/4"            | 5,300        |
| 1953           | Caracas, Venezuela              | 49              | 1" - 3/8"       | 90,000       |
| 1953           | Tulsa, Oklahoma                 | 48              | 1/2"            | 39,000       |
| 1953           | Philadelphia, Pennsylvania      | 48              | 7/16"           | 1,475        |
| 1953           | Loveland, Colorado              | 34              | 1/4"            | 10,000       |
| 1953           | Crossett, Arkansas              | 30 - 24         | 1/4"            | 40,800       |
| 1953           | Syracuse, New York              | 39 - 26         | 3/8" - 5/16"    | 4,502        |
| 1953           | Richmond, Virginia              | 66              | 1/2"            | 2,000        |
| 1953           | Shiprock, New Mexico            | 40              | 1/4"            | 8,695        |
| 1953           | Denver, Colorado                | 67              | 7/16"           | 4,000        |
| 1953           | Richmond, British Columbia      | 30 - 24         | 1/4"            | 30,000       |
| 1953           | Elsinore, California            | 33 - 20         | 10 Ga.          | 48,000       |
| 1953           | Lancaster, Pennsylvania         | 42              | 5/16"           | 55,500       |
| 1953           | Monrovia, California            | 24              | 11 Ga.          | 24,000       |
| 1953           | City of Los Angeles, California | 116 - 49        | 3/8" - 1/4"     | 23,925       |
| 1953           | Pomona, California              | 42              | 3/8" - 3/16"    | 19,578       |
| 1953           | Metropolitan Water District     | 73              | 31/32" - 7/16"  | 116,685      |
| 1953           | Westwood, Massachusetts         | 36 - 30         | 1/4"            | 4,430        |
| 1953           | Oakley, California              | 24              | -               | 14,500       |
| 1953           | Oakdale, California             | 96 - 48         | 1-3/16" - 5/8"  | -            |
| 1953           | San Rafael, California          | 24 - 20         | 1/4" - 3/16"    | 12,900       |
| 1953           | Fueblo, Colorado                | 42 - 24         | 3/8" - 1/4"     | 12,010       |
| 1953           | Seattle, Washington             | 48              | 5/16" - 1/4"    | 8,585        |
| 1953           | Littleton, Colorado             | 36              | 1/2"            | 5,640        |
| 1953           | Winter Park, Colorado           | 84              | 1/2" - 5/16"    | 3,960        |
| 1953           | Portland, Oregon                | 36              | 1/4"            | 8,000        |
| 1953           | Duluth, Minnesota               | 36              | 5/16"           | 11,120       |
| 1953           | Aurora, Colorado                | 27 - 12         | 1/4" - 10 Ga.   | 70,000       |
| 1953           | Omaha, Nebraska                 | 54 - 48         | -               | -            |
| 1953           | Lenoir, North Carolina          | 20              | 1/4"            | 53,000       |
| 1953           | Rupert, Idaho                   | 78              | -               | 1,800        |
| 1953           | North East, Pennsylvania        | 24 - 18         | 1/4"            | 9,550        |
| 1953           | Monrovia, California            | 24              | 11 Ga.          | 24,120       |
| 1953           | San Bernardino, California      | 20              | 1/4"            | 4,300        |
| 1953           | San Luis Obispo, California     | 24              | 3/16"           | 12,000       |
| 1953           | Elsinore, California            | 21              | 12 Ga.          | 3,882        |
| 1953           | Carlsbad, California            | 27 - 20         | 7/32" - 12 Ga.  | 40,000       |
| 1953           | City of Los Angeles, California | 67 - 60         | 3/8"            | 1,920        |
| 1953           | City of Los Angeles, California | 30              | 1/4"            | 17,580       |
| 1953           | Long Beach, California          | 21              | -               | 7,590        |
| 1953           | Chino, California               | 24 - 20         | 12 Ga.          | 25,900       |
| 1953           | Newport Beach, California       | 24              | -               | 2,820        |
| 1953           | Metropolitan Water District     | 162 - 49        | 1-1/8" - 3/8"   | 227,703      |
| 1953           | City of Los Angeles, California | 61 - 36         | 3/8" - 5/16"    | 14,220       |
| 1953           | San Diego Aqueduct              | 76 - 73         | 1-1/8" - 3/8"   | 56,950       |
| 1953           | City of San Diego, California   | 36              | 3/16"           | 25,865       |
| 1953           | Ventura, California             | 39              | 1/4" - 10 Ga.   | 17,240       |
| 1953           | Newport Beach, California       | 30              | 3/16"           | 13,000       |
| 1953           | San Francisco, California       | 79              | 3/8"            | 7,400        |
| 1953           | City of Los Angeles, California | 22              | 3/8"            | 36,000       |
| 1953           | Englewood, Colorado             | 24              | -               | 12,000       |
| 1953           | Monta Vista, Colorado           | 84              | 3/8" - 1/4"     | 8,108        |
| 1953           | Gramercy, Louisiana             | 54              | 5/16" - 1/4"    | 4,400        |
| 1953           | Cleveland, Ohio                 | 54              | 1 1/16" - 9/16" | -            |
| 1953           | Philadelphia, Pennsylvania      | 36              | 3/8"            | 3,160        |
| 1953           | Brighton, Colorado              | 24 - 16         | 3/16" - 7 Ga.   | 12,900       |
| 1953           | Grand Junction, Colorado        | 20              | 7 Ga.           | 10,800       |
| 1953           | Medford, Oregon                 | 24              | 7 Ga.           | 7,500        |
| 1953           | Colton, California              | 30 - 20         | 10 Ga.          | 8,321        |
| 1953           | Torrance, California            | 24              | -               | 6,800        |
| 1953           | Camarillo, California           | 30 - 20         | 3 Ga. - 3/16"   | 16,000       |
| 1953           | San Bernardino, California      | 30              | -               | 3,405        |
| 1953           | Statesville, North Carolina     | 24              | 1/4"            | 25,000       |
| 1953           | Jefferson Co., Colorado         | 54              | 3/8"            | 2,300        |
| 1953           | Aberdeen, Washington            | 28-1/2          | 1/4"            | 13,474       |
| 1953           | Atlanta, Georgia                | 36              | 5/16"           | 6,200        |
| 1953           | Colorado Springs, Colorado      | 24              | 1/4"            | 57,000       |
| 1953           | Longmont, Colorado              | 27 - 24         | 3/16"           | 57,000       |
| 1953           | St. Paul, Minnesota             | 90 - 60         | 7/16" - 3/8"    | 64,000       |
| 1953           | Phoenix, Arizona                | 48 - 45         | 5/16" - 1/4"    | 35,879       |
| 1953           | City of Los Angeles, California | 49 - 37         | 11/32" - 1/4"   | 46,918       |
| 1953           | Oceanside, California           | 24              | 3/16" - 10 Ga.  | 30,000       |
| 1953           | San Diego Co. Water Authority   | 75 - 66         | 5/8" - 5/16"    | 189,914      |
| 1953           | Metropolitan Water District     | 76              | 7/8" - 7/16"    | 31,315       |
| 1953           | San Bernardino, California      | 36              | 1/4"            | 480          |
| 1953           | City of Los Angeles, California | 61              | 5/16"           | 2,220        |
| 1953           | City of Los Angeles, California | 24 - 20         | 5/16" - 1/4"    | 4,500        |
| 1953           | San Rafael, California          | 27 - 24         | -               | 5,430        |

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# APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness       | Footage Feet |
|----------------|---------------------------------|-----------------|-----------------|--------------|
| 1958           | Riverside, California           | 30 - 20         | 3/16" - 10 Ga.  | 5,700        |
| 1958           | Falbrook, California            | 20              | —               | 13,000       |
| 1958           | El Segundo, California          | 28              | 10 Ga.          | 1,300        |
| 1958           | San Francisco, California       | 90 - 80         | 1-5/8" - 3/4"   | 7,628        |
| 1958           | Orange, California              | 24              | —               | 3,688        |
| 1958           | Colton, California              | 30              | —               | 3,500        |
| 1958           | Carlsbad, California            | 20              | 10 Ga.          | 8,120        |
| 1958           | Vernon, California              | 24              | 10 Ga.          | 2,654        |
| 1958           | Oceanside, California           | 24              | 3/16" - 10 Ga.  | 30,000       |
| 1958           | San Diego Co. Water Authority   | 75 - 66         | 5/8" - 5/16"    | 184,914      |
| 1958           | Metropolitan Water District     | 76              | 7/8" - 7/16"    | 31,315       |
| 1958           | San Bernardino, California      | 36              | 1/4"            | 480          |
| 1959           | Los Banos, California           | 63 - 54         | 5/16"           | 12,000       |
| 1959           | Santa Monica, California        | 36              | 3/16"           | 7,639        |
| 1959           | City of Los Angeles, California | 70 - 36         | 15/32" - 3/16"  | 43,550       |
| 1959           | San Diego, California           | 36              | 3/16"           | 6,461        |
| 1959           | Metropolitan Water District     | 67 - 37         | 7/8" - 3/8"     | 76,580       |
| 1959           | Phoenix, Arizona                | 60 - 54         | 11/32" - 5/16"  | 20,530       |
| 1959           | Long Beach, California          | 36              | 10 Ga.          | 1,272        |
| 1959           | Terra Bella, California         | 54              | 5/16"           | 26,000       |
| 1959           | San Diego Co. Water Authority   | 69 - 66         | 15/16" - 3/8"   | 72,231       |
| 1959           | Wahiuka, Washington             | 186             | 1-1/16" - 3/16" | 8,500        |
| 1959           | Atlanta, Georgia                | 36 - 30         | 5/16"           | 9,116        |
| 1959           | Green Springs, Oregon           | 48 - 32         | —               | 9,600        |
| 1959           | City of Los Angeles, California | 73 - 61         | 3/8" - 5/16"    | 8,400        |
| 1959           | City of Los Angeles, California | 67 - 31         | 5/16" - 1/4"    | 4,500        |
| 1959           | City of Los Angeles, California | 30 - 24         | 5/16" - 3/16"   | 16,000       |
| 1959           | Ontario, California             | 24 - 20         | 8 Ga. - 10 Ga.  | 3,750        |
| 1959           | Terra Bella, California         | 36 - 20         | 3/16" - 10 Ga.  | 30,000       |
| 1959           | Monrovia, California            | 24              | 12 Ga.          | 3,235        |
| 1959           | Pomona, California              | 20              | 11 Ga.          | 3,850        |
| 1959           | Weston, Massachusetts           | 48 - 36         | —               | 13,315       |
| 1960           | City of Los Angeles, California | 73 - 41         | 9/16" - 9/32"   | 15,575       |
| 1960           | Metropolitan Water District     | 61              | 3/4" - 3/8"     | 20,325       |
| 1960           | California Electric Power       | 60              | 1/4"            | 3,300        |
| 1960           | Phoenix, Arizona                | 54 - 36         | 1/2" - 1/4"     | 83,565       |
| 1960           | City of San Diego, California   | 51              | 1/2" - 5/16"    | 7,666        |
| 1960           | Anaheim, California             | 36              | 3/16"           | 5,214        |
| 1960           | Camarillo, California           | 54 - 36         | 1/4" - 3/16"    | 17,980       |
| 1960           | Metropolitan Water District     | 85 - 37         | 7/16" - 3/8"    | 905          |
| 1960           | San Bernardino, California      | 36              | 9/32" - 11 Ga.  | 28,070       |
| 1960           | Ontario, California             | 25              | 8 Ga.           | 3,400        |
| 1960           | Riverside, California           | 24              | —               | 1,287        |
| 1960           | Hemet, California               | 25 - 21         | 10 Ga.          | 10,600       |
| 1960           | Ventura, California             | 24              | —               | 18,610       |
| 1960           | Chino, California               | 30              | —               | 28,150       |
| 1960           | San Bernardino, California      | 30              | —               | 9,917        |
| 1960           | Navajo Dam, New Mexico          | 110             | —               | —            |
| 1960           | Santa Cruz, California          | 36 - 18         | —               | 13,025       |
| 1960           | Bellingham, Washington          | 40              | —               | 50,000       |
| 1960           | Fremont, California             | 30 - 18         | —               | 13,460       |
| 1960           | San Rafael, California          | 33              | —               | 32,300       |
| 1960           | Oakland, California             | 91-1/2 - 55     | 5/8" - 1/2"     | 4,921        |

APPROXIMATE TOTAL FOOTAGE = 5,400,000

| Year Installed | Location                             | Diameter Inches | Thickness     | Footage Feet |
|----------------|--------------------------------------|-----------------|---------------|--------------|
| 1961           | Toronto, Canada                      | 96              | 3/8"          | 4,150        |
| 1961           | Boston, Massachusetts                | 52 - 36         | —             | 16,000       |
| 1961           | Spartanburg, South Carolina          | 30              | —             | 14,250       |
| 1961           | San Jose, California                 | 48              | 1/4"          | 12,000       |
| 1961           | Seattle, Washington                  | 34              | —             | 25,000       |
| 1961           | City of Los Angeles, California      | 61 - 37         | 9/16" - 1/4"  | 23,873       |
| 1961           | Santiago Aqueduct, California        | 54 - 39         | 7/16" - 3/16" | 62,905       |
| 1961           | Calleguas, California                | 48              | 13/32" - 1/4" | 31,091       |
| 1961           | El Segundo, California               | 61              | 9/16"         | 3,009        |
| 1961           | San Diego, California                | 118             | 3/4"          | 13,000       |
| 1961           | Metropolitan Water District          | 145 - 97        | 1"            | 3,911        |
| 1961           | San Diego, California                | 42              | 3/8" - 9/32"  | 23,575       |
| 1961           | Tri-Cities, California               | 45 - 39         | 5/16" - 1/4"  | 30,520       |
| 1961           | Long Beach, California               | 42 - 36         | 3/16"         | 16,076       |
| 1961           | Sacramento, California               | 30 - 18         | —             | 21,574       |
| 1961           | Novato, California                   | 30              | —             | 53,900       |
| 1961           | Santa Maria, California              | 30 - 20         | —             | 30,275       |
| 1961           | City of Los Angeles, California      | 36 - 20         | 7/16" - 1/4"  | 16,030       |
| 1961           | Nevada (Astron)                      | 42              | 7/16" - 1/4"  | 6,507        |
| 1961           | County of Los Angeles, California    | 30              | .225"         | 81,745       |
| 1961           | Calleguas, California                | 30 - 24         | 3/16" - 8 Ga. | 17,000       |
| 1961           | Pasadena, California                 | 24              | 3/16"         | 1,310        |
| 1961           | Carpinteria, California              | 30 - 24         | 5/16" - 3/16" | 1,640        |
| 1961           | Riverside, California                | 24 - 20         | 10 Ga.        | 13,700       |
| 1961           | Fruitvale, California                | 24              | .281"         | 2,374        |
| 1961           | Santa Fe Irrig. District, California | 20              | 10 Ga.        | 9,600        |
| 1961           | Hemet, California                    | 24 - 21         | 10 Ga.        | 15,600       |
| 1962           | Wisconsin Rapids, Wisconsin          | 20              | 1/4"          | 11,800       |
| 1962           | Rochester, New York                  | 60 - 48         | —             | 30,000       |
| 1962           | High Point, North Carolina           | 36 - 18         | —             | 11,287       |
| 1962           | St. Louis, Missouri                  | 42 - 36         | —             | 15,000       |
| 1962           | Las Vegas, Nevada                    | 36              | 3/16"         | 21,335       |
| 1962           | La Mesa, California                  | 60 - 36         | 1/4" - 3/16"  | 3,164        |
| 1962           | Calleguas, California                | 54 - 48         | 9/16" - 1/4"  | 153,000      |
| 1962           | Metropolitan Water District          | 79 - 53         | 31/32" - 3/8" | 125,360      |
| 1962           | Parris, California                   | 42 - 36         | 3/16"         | 15,000       |
| 1962           | Oakland, California                  | 27 - 24         | —             | 21,370       |
| 1962           | Oakland, California                  | 87 - 63         | 1/2" - 5/16"  | 188,000      |

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## APPENDIX C (Cont'd.)

| Year<br>Installed | Location                          | Diameter<br>Inches | Thickness        | Footage<br>Feet |
|-------------------|-----------------------------------|--------------------|------------------|-----------------|
| 1962              | San Francisco, California         | 24                 | —                | 23,025          |
| 1962              | Alameda County, California        | 24                 | —                | 9,565           |
| 1962              | San Rafael, California            | 24                 | —                | 7,600           |
| 1962              | Burlingame, California            | 34                 | —                | 6,188           |
| 1962              | San Bernardino, California        | 20                 | 3/16"            | 9,407           |
| 1962              | Rainbow, California               | 36 - 20            | 1/4" - 12 Ga.    | 17,000          |
| 1962              | Rialto, California                | 24                 | —                | 7,700           |
| 1962              | Anaheim, California               | 24 - 21            | —                | 13,260          |
| 1962              | City of Los Angeles, California   | 24                 | 5/16"            | 10,000          |
| 1962              | Oceanside, California             | 42 - 24            | 3/16" - 12 Ga.   | 57,000          |
| 1962              | Hemet, California                 | 42 - 27            | 3/16" - 10 Ga.   | 47,000          |
| 1962              | Santa Ana, California             | 33 - 30            | 3/16" - 8 Ga.    | 29,650          |
| 1962              | El Toro, California               | 24 - 21            | 8 Ga. - 10 Ga.   | 12,650          |
| 1962              | City of Los Angeles, California   | 60                 | 7/16"            | 790             |
| 1962              | San Diego, California             | 36                 | 3/16"            | 7,988           |
| 1962              | Long Beach, California            | 36                 | 1/4" - 3/16"     | 2,243           |
| 1963              | Sacramento, California            | 60 - 48            | —                | —               |
| 1963              | Nevada                            | 88 - 36            | 3/4" - 5/8"      | 10,236          |
| 1963              | Oakland, California               | 78                 | —                | 1,700           |
| 1963              | Pasadena, California              | 24                 | 3/16"            | 7,170           |
| 1963              | Las Vegas, Nevada                 | 24                 | —                | 15,825          |
| 1963              | Fullerton, California             | 24                 | —                | 4,120           |
| 1963              | Los Alamos, California            | 27 - 21            | —                | 5,100           |
| 1963              | San Diego, California             | 36                 | 1/4" - 3/16"     | 42,361          |
| 1963              | Metropolitan Water District       | 49 - 43            | 17/32" - 3/8"    | 40,400          |
| 1963              | Calleguas, California             | 54 - 39            | 15/32" - 3/16"   | 92,588          |
| 1963              | Tucson, Arizona                   | 48 - 36            | 1/4" - 3/16"     | 50,925          |
| 1963              | City of Los Angeles, California   | 66 - 41            | 1/2" - 1/4"      | 6,320           |
| 1963              | Costa Mesa, California            | 42 - 36            | 5/16" - 3/16"    | 29,477          |
| 1963              | West Orange, California           | 36                 | 3/16"            | 13,800          |
| 1963              | Glendale, California              | 48                 | 1/4"             | 850             |
| 1963              | Phoenix, Arizona                  | 66                 | 1/4"             | 13,149          |
| 1963              | County of Los Angeles, California | 48                 | 3/8" - 3/16"     | 23,621          |
| 1963              | Birmingham, Alabama               | 60                 | —                | 180,000         |
| 1963              | San Francisco, California         | 79-1/2             | 1/2" - 3/8"      | 110,000         |
| 1963              | Ramona, California                | 20 - 18            | —                | 35,380          |
| 1963              | Ambridge, Pennsylvania            | 24                 | 5/16"            | 9,717           |
| 1963              | DeKalb County, Georgia            | 30                 | .281"            | 150,000         |
| 1963              | Reading, Pennsylvania             | 36 - 30            | —                | 31,000          |
| 1963              | Seattle, Washington               | 66 - 60            | —                | 15,000          |
| 1963              | South Bay Aqueduct, California    | 90 - 72            | 15/32" - 3/8"    | 120,000         |
| 1963              | Denver, Colorado                  | 96                 | 1/4"             | —               |
| 1963              | Norfolk, Virginia                 | 36                 | —                | 1,600           |
| 1964              | Colorado Springs, Colorado        | 36                 | 1/4"             | 60,000          |
| 1964              | St. Louis, Missouri               | 60 - 36            | —                | 50,000          |
| 1964              | Flagstaff, Arizona                | 36                 | 3/16"            | 19,270          |
| 1964              | Calleguas, California             | 48 - 36            | 1/4" - 3/16"     | 84,000          |
| 1964              | San Diego Co. Water Authority     | 66                 | 1" - 5/16"       | 40,090          |
| 1964              | Redlands, California              | 20                 | 12 Ga.           | 8,400           |
| 1964              | Long Beach, California            | 24                 | 5/16"            | 9,000           |
| 1964              | Las Vegas, Nevada                 | 24                 | —                | 57,569          |
| 1964              | Fullerton, California             | 24                 | —                | 5,710           |
| 1964              | Los Angeles County, California    | 27                 | 10 Ga.           | 24,016          |
| 1964              | Huntington Beach, California      | 30                 | —                | 18,200          |
| 1964              | Tempe, Arizona                    | 36 - 24            | —                | 7,690           |
| 1964              | Brushy Creek, California          | 63                 | 3/4" - 1/4"      | 4,000           |
| 1964              | Buena Park, California            | 36                 | 3/16"            | 7,835           |
| 1964              | Anaheim, California               | 36                 | 3/16"            | 1,720           |
| 1964              | San Diego, California             | 36                 | 3/16"            | 6,088           |
| 1964              | Oxnard, California                | 48 - 36            | 1/4" - 3/16"     | 35,686          |
| 1964              | City of Los Angeles, California   | 36                 | 3/8"             | 8,350           |
| 1964              | La Mesa, California               | 36                 | 3/16"            | 1,085           |
| 1964              | Los Banos, California             | 210 - 84           | 1-3/8" - 1-3/16" | 9,300           |
| 1965              | Martinez, California              | 36 - 18            | —                | 18,085          |
| 1965              | Houston, Texas                    | 60                 | 3/8"             | 9,300           |
| 1965              | Riverside, California             | 42                 | 3/16"            | 3,292           |
| 1965              | City of Los Angeles, California   | 77                 | 3/4" - 3/8"      | 54,300          |
| 1965              | Washington, D.C.                  | 66 - 36            | —                | 4,480           |
| 1965              | Delta, California                 | 180                | —                | 2,888           |
| 1966              | City of Los Angeles, California   | 88                 | 7/16" - 3/8"     | 46,222          |
| 1966              | City of Los Angeles, California   | 54                 | 1/32" - 3/8"     | 13,340          |
| 1966              | City of Los Angeles, California   | 54                 | 5/16"            | 8,747           |
| 1966              | Metropolitan Water District       | 151-1/2            | 1-1/4" - 1/2"    | 10,500          |
| 1966              | Metropolitan Water District       | 85 - 79            | 29/32" - 17/32"  | 70,000          |
| 1966              | Olean, New York                   | 20                 | —                | 6,620           |
| 1967              | Metropolitan Water District       | 85 - 79            | 1-3/16" - 1/2"   | 82,795          |
| 1967              | Metropolitan Water District       | 201                | —                | 411             |
| 1967              | City of Los Angeles, California   | 54                 | 3/8" - 11/32"    | 7,268           |
| 1967              | Metropolitan Water District       | 79                 | 7/8" - 21/32"    | 25,965          |
| 1967              | Las Vegas, Nevada                 | 60 - 48            | 1/4"             | 20,476          |
| 1967              | Bethlehem, Pennsylvania           | 42 - 36            | —                | 51,000          |
| 1967              | Bronx, New York                   | 48                 | —                | 16,000          |
| 1967              | Houston, Texas                    | 60                 | —                | 10,000          |
| 1967              | City of San Francisco, California | 60                 | 3/8" - 5/16"     | 23,000          |
| 1967              | Buena Vista, California           | 108                | 1/2" - 5/16"     | 4,673           |
| 1967              | Wind Gap, California              | 109                | 1/2" - 3/16"     | 10,000          |
| 1967              | Oso, California                   | 109                | 3/8"             | 9,000           |
| 1967              | Wheeler Ridge, California         | 109                | 9/16" - 5/16"    | 10,000          |
| 1967              | Tehachapi Lift, California        | 168 - 150          | 2-1/2" - 1/2"    | 16,000          |
| 1968              | Pastoria, California              | 192                | 5/8" - 9/16"     | 1,642           |
| 1968              | Las Vegas, Nevada                 | 60 - 42            | 1/4" - 3/16"     | 32,725          |
| 1968              | Little Lake, California           | 78                 | 15/16" - 3/8"    | 104,997         |
| 1968              | Jawbone, California               | 85 - 82            | 1-1/8" - 3/8"    | 154,708         |
| 1968              | Metropolitan Water District       | 100                | 3/4" - 9/16"     | 23,300          |
| 1968              | Metropolitan Water District       | 89                 | 1" - 1/2"        | 26,235          |
| 1968              | Metropolitan Water District       | 121-1/2            | 11/16"           | 5,270           |
| 1968              | Alexandria, Virginia              | 72                 | —                | 3,800           |

# APPENDIX C (Cont'd.)

| Year Installed | Location                        | Diameter Inches | Thickness        | Footage Feet |
|----------------|---------------------------------|-----------------|------------------|--------------|
| 1968           | San Francisco, California       | 79-1/2          | 1/2" - 3/8"      | 250,000      |
| 1968           | Washington, D.C.                | 60              | -                | 23,000       |
| 1969           | Bethlehem, Pennsylvania         | 42 - 30         | -                | 46,644       |
| 1969           | San Francisco, California       | 96 - 90         | -                | 180,000      |
| 1969           | City of Los Angeles, California | 162 - 90        | 1-7/8" - 7/16"   | 6,000        |
| 1969           | City of Los Angeles, California | 103             | 5/8" - 1/2"      | 3,000        |
| 1969           | Pearblossom, California         | 103             | 11/16" - 5/8"    | 610          |
| 1970           | Metropolitan Water District     | 97 - 94         | 1-1/16" - 25/32" | 26,310       |
| 1970           | Henderson, Nevada               | 90 - 66         | 9/16" - 1/4"     | 74,640       |
| 1970           | San Diego Co. Water Authority   | 97              | 1" - 1/2"        | 59,295       |
| 1970           | Stanislaus River, California    | 276 - 72        | 1-1/4" - 5/16"   | 6,260        |
| 1970           | Rialto, California              | 137 - 122       | 1-1/4" - 1/2"    | 45,210       |

APPROXIMATE TOTAL FOOTAGE = 4,500,000

## APPENDIX D

### SUMMARY OF APPENDICES A, B AND C

The tabulations in Appendices A, B and C covering installations of riveted, Lock-Bar and welded steel water pipe from 1858 to 1970 are only partially complete, but do include most of the major installations known at this time. Except for the portion of Appendix A covering riveted steel water pipe installations up to 1900, all other tabulations include pipe sizes of 20" diameter and larger, and do not include any penstocks.

All of the tabulations include 311 installations of riveted steel pipe, 150 Lock-Bar steel pipe installations; and 563 welded steel pipe installations; or a grand total of 1,024 installations. Of the installations prior to 1900,

most of them are still in service, and will reach a useful service life of at least 100 years. Six installations have already reached the 100-year mark.

The grand total footage of all of these installations amounts to almost 30,000,000' of 20" diameter and larger. The breakdown by types and periods is as follows:

| Period      | Riveted     | Lock-Bar   | Welded      |
|-------------|-------------|------------|-------------|
| 1858 - 1900 | 2,000,000'  | -          | -           |
| 1901 - 1930 | 5,220,000'  | 3,400,000' | 1,700,000'  |
| 1931 - 1940 | -           | -          | 5,300,000'  |
| 1941 - 1950 | -           | -          | 2,000,000'  |
| 1951 - 1960 | -           | -          | 5,400,000'  |
| 1961 - 1970 | -           | -          | 4,500,000'  |
| TOTALS      | 7,220,000'  | 3,400,000' | 18,900,000' |
| GRAND TOTAL | 29,520,000' |            |             |

## APPENDIX E

### TYPES OF STEEL AVAILABLE FOR STEEL PLATE WATER PIPE

| ASTM Specification | Quality | Min. Tensile Strength PSI | Min. Yield Point PSI | Recommended Design Stress PSI | Remarks  |
|--------------------|---------|---------------------------|----------------------|-------------------------------|--|
| A36                | ST.     | 58,000                    | 36,000               | 19,300                        | Economical strength. Down to 5°F. temp.              |
| A131A              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to 5°F. temp.                                   |
| A131B              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to -25°F. temp. to 1/2" plate.                  |
| A131C              | ST.     | 58,000                    | 32,000               | 19,300                        | Down to -25°F. temp. to 1" plate.                    |
| A283B              | ST.     | 50,000                    | 27,000               | 16,665                        | Economical low cost steel.                           |
| A283C              | ST.     | 55,000                    | 30,000               | 18,300                        | Economical low cost steel.                           |
| A283D              | ST.     | 60,000                    | 33,000               | 20,000                        | Economical low cost steel.                           |
| A285B              | P.V.    | 50,000                    | 27,000               | 16,665                        | Individual plate test.                               |
| A285C              | P.V.    | 55,000                    | 30,000               | 18,300                        | Individual plate test.                               |
| A441               | ST.     | 70,000                    | 50,000               | 25,000                        | Good strength and corrosion resistance above ground. |
| A514               | ST.     | 115,000                   | 100,000              | 50,000                        | High strength. Q&T. Notch toughness. Fine grain.     |
| A516-Gr. 60        | P.V.    | 60,000                    | 70,000               | 20,000                        | Down to -25°F. temp. to 1" plate.                    |
| A516-Gr. 70        | P.V.    | 62,000                    | 38,000               | 23,300                        | Down to -25°F. temp. to 1" plate.                    |
| A517               | ST.     | 115,000                   | 100,000              | 50,000                        | Killed steel. Fine grain. High strength. Q&T.        |
| A537A              | P.V.    | 70,000                    | 50,000               | 25,000                        | Normalized. Fine grain.                              |
| A537B              | P.V.    | 80,000                    | 60,000               | 30,000                        | Fine grain. Q&T.                                     |
| A572-Gr. 42        | ST.     | 60,000                    | 42,000               | 21,000                        | Good strength.                                       |
| A572-Gr. 45        | ST.     | 60,000                    | 45,000               | 22,500                        | Good strength.                                       |
| A572-Gr. 50        | ST.     | 65,000                    | 50,000               | 25,000                        | Good strength.                                       |
| A572-Gr. 55        | ST.     | 70,000                    | 55,000               | 27,500                        | Good strength.                                       |
| A572-Gr. 60        | ST.     | 75,000                    | 60,000               | 30,000                        | High strength.                                       |
| A572-Gr. 65        | ST.     | 80,000                    | 65,000               | 32,500                        | High strength.                                       |
| A573-Gr. 65        | ST.     | 65,000                    | 35,000               | 21,665                        | Fine grain.  |
| A573-Gr. 70        | ST.     | 70,000                    | 38,000               | 23,330                        | Fine grain.  |
| A588A              | ST.     | 70,000                    | 50,000               | 25,000                        | Fine grain. High corrosion resistance above ground.  |