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Sep 08 2017 02:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

10 SIERRA PACIFIC INDUSTRIES, a California  
11 Corporation,

12 Petitioner,

13 vs.

14 JASON KING, P.E. in his capacity as Nevada  
15 State Engineer, and the DIVISION OF  
16 WATER RESOURCES, DEPARTMENT OF  
17 CONSERVATION, an agency of the State of  
18 Nevada,

19 Respondent,

20 and,

21 INTERMOUNTAIN WATER SUPPLY,  
22 LTD., a Nevada limited liability company,

23 Intervenor-Respondent.

**Case No. CV16-01378**

**Dept. No. 1**

**NOTICE OF APPEAL**

24 TO: JASON KING, P.E., Nevada State Engineer of the DIVISION OF WATER  
25 RESOURCES, DEPARTMENT OF CONSERVATION, and INTERMOUNTAIN  
26 WATER SUPPLY, LTD., and their attorneys of record, Senior Deputy Attorney General  
27 Micheline N. Fairbank, Esq., and Rick Elmore, Esq. respectively:

28 Notice is hereby given that, SIERRA PACIFIC INDUSTRIES, by and through its  
attorney of record Debbie Leonard of McDonald Carano, hereby appeals to the Supreme Court  
of Nevada from the Order Denying Petition for Judicial Review entered by the above-entitled

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Court on August 21, 2017 and all interlocutory orders related thereto. A copy of the Notice of Entry of Order is attached hereto as Exhibit 1.

AFFIRMATION

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

DATED this 6th day of September, 2017.

McDONALD CARANO

By: /s/ Debbie Leonard  
Debbie Leonard  
Nevada State Bar No. 8260  
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T: (775) 788-2000  
[dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
Attorneys for *Sierra Pacific Industries*

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**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that I am an employee of McDONALD CARANO <sup>LLP</sup> and that on September 6, 2017, I caused to be electronically filed the foregoing NOTICE OF APPEAL with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorneys of record as set forth below:

Richard L. Elmore, Chtd.  
Richard L. Elmore, Esq.  
3301 So. Virginia Street, Suite 125  
Reno, NV 89502

Office of the Attorney General  
Micheline N. Fairbank, Esq.  
100 N. Carson Street  
Carson City, NV 89701

Executed on September 6, 2017 at Reno, Nevada.

/s/ Pamela Miller  
An Employee of McDonald Carano

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Index of Exhibits

<u>Ex. #</u>	<u>Document Description</u>	<u>Number of Pages</u>
1	Notice of Entry and Order	14

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2017-09-06 11:20:20 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6284794

**EXHIBIT 1**

**EXHIBIT 1**

1 2545  
2 RICHARD L. ELMORE, CHTD.  
3 Richard L. Elmore, Esq.  
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Reno, NV 89502  
(775) 357-8170

5 *Attorney for Intervenor-Respondent*  
6 *Intermountain Water Supply*

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9  
10 SIERRA PACIFIC INDUSTRIES, a California  
11 Corporation,

12 Petitioner,

Case No. CV16-01378

13 vs.

Dept. No. 1

14 JASON KING, P.E., in his capacity as Nevada  
15 State Engineer, and the DIVISION OF WATER  
16 RESOURCES, DEPARTMENT OF  
CONSERVATION, an agency of the State of  
Nevada,

17 Respondent,

18 and,

19 INTERMOUNTAIN WATER SUPPLY, LTD.,  
a Nevada limited liability company,

20 Intervenor-Respondent.

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was entered in the  
23 above-entitled matter on August 21, 2017. A copy of said order is attached hereto as Exhibit 1.

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1 **AFFIRMATION**

2 The undersigned does hereby affirm that the preceding document filed in Second Judicial  
3 District Court does not contain the Social Security number of any person.

4 DATED: August 22, 2017.

5  
6 RICHARD L. ELMORE, CHTD.

7 By: /s/ Richard L. Elmore  
8 Richard L. Elmore, Esq.  
9 Nevada Bar No. 1405  
10 3301 So. Virginia Street, Suite 125  
11 Reno, NV 89502  
12 (775) 357-8170  
13  
14 *Attorney for Intervenor-Respondent*  
15 *Intermountain Water Supply*  
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1  
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am the principal of RICHARD L. ELMORE, CHTD. and that on  
4 this date I personally caused to be served a true copy of the foregoing **NOTICE OF ENTRY**  
5 **OF ORDER** by the method indicated and addressed to the following:

6  
7 Debbie Leonard, Esq. \_\_\_\_\_ Via U.S. Mail  
8 MCDONALD CARANO WILSON LLP \_\_\_\_\_ Via Overnight Mail  
9 P.O. Box 2670 \_\_\_\_\_ Via Hand Delivery  
10 100 W. Liberty St., 10th Floor \_\_\_\_\_ Via Facsimile  
11 Reno, NV 89501-2670  X  Via ECF

12  
13 \_\_\_\_\_  
14 Micheline N. Fairbank, Esq. \_\_\_\_\_ Via U.S. Mail  
15 OFFICE OF THE ATTORNEY GENERAL \_\_\_\_\_ Via Overnight Mail  
16 100 N. Carson Street, \_\_\_\_\_ Via Hand Delivery  
17 Carson City, NV 89701 \_\_\_\_\_ Via Facsimile  
18  X  Via ECF

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DATED this 22<sup>nd</sup> Day of August, 2017.

/s/ Richard L. Elmore   
Richard L. Elmore



**INDEX OF EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. Pages</b>
1	Order Denying Petition for Judicial Review	9

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Transaction # 6261790

# **EXHIBIT 1**

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

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SIERRA PACIFIC INDUSTRIES, a  
California Corporation,

13

Petitioner,

14

vs.

15

JASON KING, P.E., in his capacity as  
Nevada State Engineer, and the  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION,  
an agency of the State of Nevada,

16

17

18

Respondent,

19

and,

20

INTERMOUNTAIN WATER SUPPLY,  
LTD., a Nevada limited liability company,

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22

Intervenor-Respondent.

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**ORDER DENYING PETITION FOR JUDICIAL REVIEW**

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This matter comes before the Court on Sierra Pacific Industries' (SPI) Petition for  
Judicial Review of the State Engineer's June 1, 2016, decision granting Intermountain  
Water Supply, Ltd. (Intermountain) a one-year extension of time to complete the  
diversion works and place to beneficial use the water appropriated under Permit  
Nos. 64977, 64978, 73428, 73429, 73430, 74327 and 72700. The petition for judicial

1 review has been fully briefed and oral arguments heard on May 24, 2017. At oral  
2 argument, SPI was represented by Debbie Leonard, Esq., the State Engineer was  
3 represented by Senior Deputy Attorney General Micheline N. Fairbank, and  
4 Intermountain was represented by Rick Elmore, Esq.

5 The Court having reviewed the record on appeal, considered the arguments of the  
6 parties, the applicable law and findings of fact by the State Engineer, and all pleadings  
7 and papers on file in this matter, hereby makes the following Findings, Conclusions of  
8 Law and Order Denying the Petition.

### 9 I. STANDARD OF REVIEW

10 NRS 533.450 provides for judicial review of orders and decisions of the State  
11 Engineer made under NRS 533.270 through NRS 533.445 (setting forth the statutory  
12 procedure for appropriation). Nevada water laws, and all proceedings under it, are  
13 special in character and its provisions not only prescribe the method of procedure, but  
14 strictly limit procedure to the method set forth under the law. *In re Filippini*, 66 Nev. 17,  
15 27, 202 P.2d 535, 540 (1949). Where there is a challenge to a decision of the State  
16 Engineer in court, “[t]he decision of the State Engineer is prima facia correct, and the  
17 burden of proof is upon the party attacking the same.” NRS 533.450(10); *Office of State*  
18 *Eng’r v. Morris*, 107 Nev. 699, 701, 703, 819 P.2d 205 (1992); *Town of Eureka v. State*  
19 *Eng’r*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1992). Decisions of the State Engineer are  
20 entitled to deference both as to their factual basis and their legal conclusions.  
21 NRS 533.450(1). *See also Bacher v. State Engineer*, 122 Nev. 1110, 1118, 146 P.3d 793,  
22 798 (2006) (“While the State Engineer’s interpretation of a statute is not controlling, it is  
23 persuasive.”).

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.  
26 782, 786, 603 P.2d 262 (1979). Substantial evidence is “that which a reasonable mind  
27 might accept as adequate to support a conclusion.” *Bacher*, 122 Nev. at 1121, 146 P.3d

28 ///

1 at 800. Thus, in evaluating the present matter, this Court may not "pass upon the  
2 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  
5 Court has explained that "an agency charged with the duty of administering an act is  
6 impliedly clothed with power to construe it as a necessary precedent to administrative  
7 action," and therefore, "great deference should be given to the agency's interpretation  
8 when it is within the language of the statute." *State v. State Engineer*, 104 Nev. 709, 713,  
9 766 P.2d 263, 266 (1988) (citing *Clark Co. Sc. Dist. v. Local Gov't*, 90 Nev. 332, 446,  
10 530 P.2d 114, 117 (1974)).

11 Further, this Court is limited to consideration of the documents and records which  
12 were considered by the State Engineer in rendering his decision. NRS 533.450(1) states  
13 that actions to review decisions of the State Engineer are "in the nature of an appeal."  
14 The Nevada Supreme Court has interpreted NRS 533.450 to mean that a petitioner does  
15 not have a right to *de novo* review or to offer additional evidence at the district court.  
16 *Revert*, 95 Nev. at 786, 603 P.2d at 264. *See also Kent v. Smith*, 62 Nev. 30, 32, 140 P.2d  
17 357, 358 (1943) (a court may construe a prior judgment, but cannot properly consider  
18 extrinsic evidence). As a result, the function of the court is to review the evidence on  
19 which the State Engineer based his decision to ascertain whether the evidence supports  
20 the decision, and if so, the court is bound to sustain the State Engineer's decision. *State*  
21 *Engineer v. Curtis Park*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985). "[N]either the district  
22 court nor this court will substitute its judgment for that of the State Engineer: we will  
23 not pass upon the credibility of the witnesses nor reweigh the evidence, but limit  
24 ourselves to a determination of whether substantial evidence in the record supports the  
25 State Engineer's decision." *State Engineer v. Morris*, 107 Nev. 699, 701, 819 P.2d 203, 205  
26 (1991).

## 27 II. FINDINGS AND CONCLUSIONS OF LAW

28 In determining whether to grant an application for extension of time to perfect a

1 water right, the State Engineer must determine from the proof and evidence submitted to  
2 him that the permit holder is proceeding in good faith and reasonable diligence to perfect  
3 the application. NRS 533.380(3). Reasonable diligence is defined as "the steady  
4 application of effort to perfect the application in a reasonably expedient and efficient  
5 manner under all the facts and circumstances." NRS 533.380(6). "When a project or  
6 integrated system is composed of several features, work on one feature of the project or  
7 system may be considered in finding that reasonable diligence has been shown in the  
8 development of water rights for all features of the entire project or system. *Id.* Moreover,  
9 where the water rights are for municipal use, Nevada law defines several factors which  
10 the State Engineer must consider, including a demonstration of good cause, the number of  
11 parcels or units planned to be served, economic conditions, delays in development of land  
12 or area to be served, and the time period for development plan. NRS 533.380(4). The  
13 statute expressly affords the State Engineer discretion to "grant any number of  
14 extensions of time within which the construction work must be completed, or water must  
15 be applied to a beneficial use." NRS 533.380(3).

16 The State Engineer had before him SPI's objections to extensions of time sought by  
17 Intermountain, SPI's supplement to its objections to extensions of time for Intermountain,  
18 and Intermountain's applications for extensions of time. State Engineer's Record on  
19 Appeal (SE ROA) at 5-426, 430-579, 587-602, 605-616. Within the evidence before the  
20 State Engineer was a sworn affidavit by Robert W. Marshall, a Manager of Intermountain  
21 (Affidavit), submitted as "proof and evidence" of Intermountain's reasonable diligence.  
22 SE ROA at 612-15. The Affidavit described the works which had historically been  
23 completed in advancing the project toward development. SE ROA at 612-13.  
24 Additionally, the Affidavit stated that Intermountain had entered in an option agreement  
25 with two engineering and construction firms and that in addition to those agreements,  
26 and that after extensive negotiations with the water company, Intermountain  
27 had reached an agreement for water service in northern Washoe County, Nevada.  
28 SE ROA at 614. Additionally, the Affidavit identified the number of residential units to

1 be served by the project at "nearly 10,000 houses" and specified the present status of the  
2 housing projects and time period to have agreements with those developers. *Id.*

3 In deciding whether to grant Intermountain's applications for extension of time  
4 pursuant to NRS 533.380, the State Engineer considered whether Intermountain had  
5 sufficiently demonstrated good faith and reasonable diligence in advancing the project,  
6 thus warranting the granting of the extensions of time and had addressed the elements  
7 set forth under NRS 533.380(4). SE ROA at 638-39, 641. The State Engineer further  
8 considered SPI's objections. SE ROA at 618-24. However, the Court notes that SPI was  
9 not afforded an opportunity to respond to the Affidavit submitted by Intermountain in  
10 support of its applications. While SPI was not afforded an opportunity to respond, the  
11 Court finds that there was no violation of due process or NRS 533.380, which does not set  
12 forth a procedure for objections to an application for extension of time.

13 Nevada law defines reasonable diligence as the steady application of effort to  
14 perfect an application in a reasonably expedient and efficient manner. NRS 533.380(6).  
15 The concept of reasonable diligence is not a recent concept in Nevada water law. Rather,  
16 the Nevada Supreme Court in *Ophir Mining Co. v. Carpenter*, stated:

17 Where the right to the use of running water is based upon  
18 appropriation, and not upon an ownership in the soil, it is the  
19 generally recognized rule here that priority of appropriation  
20 gives the superior right. When any work is necessary to be done  
21 to complete the appropriation, the law gives the claimant a  
22 reasonable time within which to do it, and although the  
23 appropriation is not deemed complete until the actual diversion  
or use of the water, still if such work be prosecuted with  
reasonable diligence, the right relates to the time when the first  
step was taken to secure it. If, however, the work not be  
prosecuted with diligence, the right does not so relate, but  
generally dates from the time when the work is completed or the  
appropriation is fully perfected. 4 Nev. 534, 543-33 (1869).

24 Thus, the State Engineer is required to review the evidence before him to determine  
25 whether the evidence reflects a "steady application to business of any kind, constant effort  
26 to accomplish an undertaking." *Id.*

27 In this case, the record reflects that the State Engineer considered the totality of  
28 the evidence before him, which included evidence of Intermountain's steady application

1 effort to perfect its water rights. While SPI is highly critical of the Affidavit submitted in  
2 support of Intermountain's applications, it is a statement with representations presented  
3 under the penalty of perjury to an administrative agency. SE ROA at 612-15. The State  
4 Engineer was reasonable in his reliance upon the representations contained within the  
5 Affidavit. The basis for SPI's criticism of Intermountain's applications is that  
6 subjectively, SPI does not believe it to be good enough; however, that is not the standard  
7 in this case.

8 Here, the State Engineer engaged in an extensive analysis, ultimately concluding  
9 that Intermountain demonstrated good faith and reasonable diligence.  
10 SE ROA at 637-639. Contrary to SPI's position, Nevada law does not impose a duty upon  
11 the State Engineer to "test the reliability or accuracy" of Intermountain's evidence. The  
12 Nevada Supreme Court has found that "mere statements" without more is insufficient to  
13 demonstrate reasonable diligence. *Desert Irr. Ltd. v. State*, 113 Nev. 1049, 1057 (1997).  
14 And, in this case, Intermountain has, since the initial granting of its applications to  
15 appropriate water, provided the State Engineer with evidence of its incremental efforts to  
16 perfect its water rights. The State Engineer has taken into consideration the history of  
17 Intermountain's efforts to develop its water, and the consideration of the totality of the  
18 evidence is sufficient to support the State Engineer's decision. SE ROA at 618-24. The  
19 State Engineer considered the totality of factors required by NRS 533.380, and concluded  
20 that substantial evidence supported granting Intermountain's applications for extensions  
21 of time. *Id.* The State Engineer's findings in his June 1, 2016, decision granting  
22 Intermountain's extension of time applications is supported by substantial evidence.

23 Further, the State Engineer considered SPI's contention that Intermountain's  
24 applications violate the anti-speculation doctrine as established by the Nevada Supreme  
25 Court in *Bacher v. State Engineer*, 122, Nev. 1110 (2006). In granting Intermountain's  
26 applications for extension of time, the State Engineer found that there was not a violation  
27 of the anti-speculation doctrine because Intermountain's applications for extensions of  
28 time demonstrate that the company is making measureable steps toward perfecting its



1 water rights. SE ROA at 605-624. Nevada law allows a permittee to find an alternative  
2 use of its water where the originally intended project may not be realized. The Nevada  
3 Supreme Court in *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. Adv. Op. 48,  
4 245 P.3d 1145 (2010), found that the State Engineer did not err when granting  
5 applications to change the point of use for existing groundwater permits. In that decision,  
6 the water right holder, Nevada Land and Resource Company (NLRC), had secured  
7 groundwater permits for the temporary use of water in a mining and milling project.  
8 *Pyramid Lake Paiute Tribe of Indians*, 245 P.3d at 1146. In that case, however, the  
9 mining and milling project was unfruitful, and during an approximate 20-year period of  
10 time, the water rights were maintained in good standing using the application for  
11 extension of time process. *Id.* Ultimately, NLRC sought to change the permitted use  
12 from mining and milling to industrial power generation purposes and from a temporary to  
13 permanent use. *Id.* Though the NLRC's anticipated power plant project was cancelled,  
14 and the water rights were later negotiated for use by the City of Fernley, the court did not  
15 find there to be a violation of the anti-speculation doctrine. *Id.* at n.1. Thus, the Court in  
16 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, which was decided four years after *Bacher*,  
17 did not assert any contention that the maintenance of the water rights by NLRC in good  
18 standing for nearly 20 years while seeking a buyer for its groundwater source was a  
19 violation of the anti-speculation doctrine. *Id.*

20 The project which Intermountain's water rights have been intended to benefit is  
21 the same as the time it sought its applications for new appropriations of water. However,  
22 Intermountain has commenced looking for other entities which may be better suited to  
23 fully develop the project and ultimately place the water to its intended beneficial use.  
24 Whether Intermountain ultimately sells the totality of its project, or sells an interest in  
25 the project, is not of the State Engineer's concern under current Nevada law. The law  
26 requires the State Engineer to determine whether Intermountain has, in good faith,  
27 demonstrated a steady application of effort to perfect its water rights, and second, since  
28 this is a municipal project, considering the factors set forth in 533.380(4). Here, the State

1 Engineer has performed his legal duties in evaluating Intermountain's applications  
2 for extensions of time and considered all relevant factors contained within NRS 533.380;  
3 thus, based upon substantial evidence before him, the State Engineer reasonably  
4 determined that there was not violation of the anti-speculation doctrine.  
5 SE ROA at 639-41.

6 Finally, SPI requests this Court to consider facts and evidence outside of the record  
7 before the State Engineer when issuing his June 1, 2016, decision. SPI is not entitled to a  
8 de novo review and the evidence SPI requests the Court to consider is beyond the scope of  
9 appellate review of the State Engineer's decision under NRS 533.450.

10 The Court, having reviewed the record in its entirety, and considered the argument  
11 of the parties and counsel finds that the State Engineer's June 1, 2016, decision to grant  
12 Intermountain's applications to extend time to complete works and place water to a  
13 beneficial use for Permit Nos. 64977, 64978, 73428, 73429, 73430, 74327 and 72700 is  
14 supported by substantial evidence.

15 IT IS HEREBY ORDERED that SPI's Petition for Judicial Review is hereby  
16 DENIED.

17 ORDERED this 21<sup>st</sup> day of August, 2017.

18 William C. Madrox  
19 DISTRICT JUDGE  
20  
21  
22

23 SUBMITTED BY:  
24 ADAM PAUL LAXALT  
25 Attorney General  
26 MICHELINE N. FAIRBANK  
27 Senior Deputy Attorney General  
28 100 North Carson Street  
Carson City, Nevada 89701-4717  
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CERTIFICATE OF SERVICE

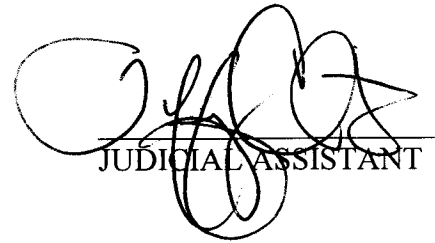
Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of August, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF

RICHARD ELMORE, ESQ. for INTERMOUNTAIN WATER SUPPLY, LTD.

MICHELINE FAIRBANK, ESQ. for JASON KING, P.E., DIVISION OF WATER RESOURCES

DEBBIE LEONARD, ESQ. for SIERRA PACIFIC INDUSTRIES



JUDICIAL ASSISTANT

1 1310  
2 Debbie Leonard  
3 Nevada State Bar No. 8260  
4 MCDONALD CARANO LLP.  
5 P.O. Box 2670  
6 100 W. Liberty St., 10<sup>th</sup> Floor  
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8 T: 775-788-2000  
9 [dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
10 Attorneys for the Petitioner Sierra Pacific Industries

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
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26 Respondent,  
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28 and,  
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30 INTERMOUNTAIN WATER SUPPLY,  
31 LTD., a Nevada limited liability company,  
32  
33 Intervenor-Respondent.

**Case No. CV16-01378**  
**Dept. No. 1**

**CASE APPEAL STATEMENT**

34 Petitioner, SIERRA PACIFIC INDUSTRIES, a California Corporation, submits the  
35 following Case Appeal Statement pursuant to Nevada Rules of Appellate Procedure 3(f):

**1. Name of Appellant filing this Case Appeal Statement:**

Sierra Pacific Industries.

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**2. Identify the judge issuing the decision, judgment, or order appealed from:**

The Honorable William Maddox, Senior District Judge sitting by designation in Department 1 of the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

**3. Identify each appellant and the name and address of counsel for each appellant:**

*Sierra Pacific Industries*  
Debbie Leonard, Esq.  
McDonald Carano LLP  
100 West Liberty St., 10<sup>th</sup> Floor  
Reno, NV 89501

**4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

*Jason King, P.E. and the Division of Water Resources, Department of Conservation and Natural Resources*  
Micheline N. Fairbank, Esq.  
Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701

*Intermountain Water Supply, Ltd.*  
Richard L. Elmore, Esq.  
Richard L. Elmore, Chtd.  
3301 So. Virginia Street, Suite 125  
Reno, NV 89502

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

All attorneys are licensed in the State of Nevada.

///  
///

1           **6. Indicate whether appellant was represented by appointed or retained counsel in**  
2 **the district court:**

3           Retained counsel.

4           **7. Indicate whether appellant is represented by appointed or retained counsel on**  
5 **appeal:**

6           Retained counsel.

7           **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**  
8 **the date of entry of the district court order granting such leave:**

9           No.

10           **9. Indicate the date the proceedings commenced in the district court (e.g., date**  
11 **complaint, indictment, information, or petition was filed):**

12           Sierra Pacific Industries filed the Petition for Judicial Review on June 29, 2016.

13           **10. Provide a brief description of the nature of the action and result in the district**  
14 **court, including the type of judgment or order being appealed and the relief granted by the**  
15 **district court:**

16           This is an appeal of a District Court Order denying Sierra Pacific Industries' Petition for  
17 Judicial Review of the State Engineer's June 1, 2016, decision, which granted Intermountain  
18 Water Supply, Ltd. a one-year extension of time to complete the diversion works and place to  
19 beneficial use the water appropriated under specific permits.

20           **11. Indicate whether the case has previously been the subject of an appeal to or**  
21 **original writ proceeding in the Supreme Court, and if so, the caption and Supreme Court**  
22 **Docket number of the prior proceeding:**

23           This case has not previously been subject of an appeal or writ.

24           **12. Indicate whether this appeal involves child custody or visitation:**

25           This appeal does not involve child custody or visitation.

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**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

Based upon the nature of this dispute, Sierra Pacific Industries does not believe that settlement is possible.

**AFFIRMATION**

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

DATED this 6th day of September 2017.

McDONALD CARANO LLP

By: /s/ Debbie Leonard  
Debbie Leonard  
Nevada State Bar No. 8260  
McDonald Carano, LLP  
P.O. Box 2670  
Reno, NV 89505-2670  
T: (775) 788-2000  
[dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
Attorney for *Sierra Pacific Industries*

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**CERTIFICATE OF SERVICE**

I hereby certify, under penalty of perjury, that I am an employee of McDONALD CARANO and that on September 6, 2017, I caused to be electronically filed the foregoing *CASE APPEAL STATEMENT* with the Clerk of the Court using the ECF system, which will automatically e-serve the same on the attorneys of record as set forth below:

Richard L. Elmore, Chtd.  
Richard L. Elmore, Esq.  
3301 So. Virginia Street, Suite 125  
Reno, NV 89502

Office of the Attorney General  
Micheline N. Fairbank, Esq.  
100 N. Carson Street  
Carson City, NV 89701

Executed on September 6, 2017 at Reno, Nevada.

/s/ Pamela Miller  
An Employee of McDonald Carano LLP



**SECOND JUDICIAL DISTRICT COURT**

**STATE OF NEVADA**

**COUNTY OF WASHOE**

**Case History - CV16-01378**

**Case Description: SIERRA PACIFIC INDUSTRIES VS JASON KING ETAL (D8)**

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**Case Number: CV16-01378 Case Type: OTHER JUDICIAL REVIEW/APPEAL - Initially Filed On: 6/29/2016**

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**Parties**

<u>Party Type &amp; Name</u>	<u>Party Status</u>
JUDG - CONNIE J. STEINHEIMER - D4	Party ended on: 7/27/2016 8:00:07AM
JUDG - KATHLEEN DRAKULICH - D1	Party ended on: 8/23/2017 10:45:23AM
JUDG - BARRY L. BRESLOW - D8	Active
PLTF - SIERRA PACIFIC INDUSTRIES - @1233405	Active
DEFT - JASON KING, P.E. - @1207594	Active
DEFT - DIVISION OF WATER RESOURCES - @891347	Active
AG - Micheline N. Fairbank, Esq. - 8062	Active
ATTY - Richard L. Elmore, Esq. - 1405	Active
ATTY - Debbie Leonard, Esq. - 8260	Active
DINV - INTERMOUNTAIN WATER SUPPLY, LTD. - @1107453	Active

**Disposed Hearings**

- 1 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 1/5/2017 at 16:03:00  
Extra Event Text: PETITION FOR JUDICIAL REVIEW(NO ORDER PROVIDED)  
Event Disposition: S200 - 2/23/2017
- 2 Department: D1 -- Event: PETITION FOR JUDICIAL REVIEW -- Scheduled Date & Time: 1/17/2017 at 13:30:00  
  
Event Disposition: D845 - 1/5/2017
- 3 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 1/30/2017 at 16:59:00  
Extra Event Text: MOTION TO SUPPLEMENT THE RECORD (NO ORDER PROVIDED)  
Event Disposition: S200 - 2/6/2017
- 4 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 1/30/2017 at 16:58:00  
Extra Event Text: MOTION TO EXCEED PAGE LIMIT (NO ORDER PROVIDED)  
Event Disposition: S200 - 2/6/2017
- 5 Department: D1 -- Event: PETITION FOR JUDICIAL REVIEW -- Scheduled Date & Time: 5/4/2017 at 13:30:00  
  
Event Disposition: D843 - 4/26/2017
- 6 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 5/18/2017 at 14:18:00  
Extra Event Text: SECOND MOTION TO SUPPLEMENT THE RECORD OR IN THE ALTERNATIVE FOR JUDICIAL NOTICE (NO ORDER PROVIDED)  
Event Disposition: S200 - 5/24/2017
- 7 Department: D1 -- Event: PETITION FOR JUDICIAL REVIEW -- Scheduled Date & Time: 5/24/2017 at 09:00:00  
  
Event Disposition: D355 - 5/24/2017

**Actions**

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Filing Date - Docket Code & Description

**Report Does Not Contain Sealed Cases or Confidential Information**

- 1 6/29/2016 - \$3550 - \$Pet for Judicial Review  
Additional Text: PETITION FOR JUDICIAL REVIEW (NRS 533.450) - Transaction 5585466 - Approved By: RKWATKIN : 06-29-2016:13:10:23
- 2 6/29/2016 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of \$260.00 was made on receipt DCDC545030.
- 3 6/29/2016 - 2610 - Notice ...  
Additional Text: OF FILING PETITION FOR JUDICIAL REVIEW - Transaction 5586354 - Approved By: MPURDY : 06-29-2016:14:34:51
- 4 6/29/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5586682 - Approved By: NOREVIEW : 06-29-2016:14:37:58
- 5 7/8/2016 - 4050 - Stipulation ...  
Additional Text: STIPULATION TO ALLOW INTERVENTION - Transaction 5600788 - Approved By: CSULEZIC : 07-11-2016:09:13:17
- 6 7/8/2016 - \$1560 - \$Def 1st Appearance - CV  
Additional Text: INTERMOUNTAIN WATER SUPPLY LTD. - Transaction 5600788 - Approved By: CSULEZIC : 07-11-2016:09:13:17
- 7 7/11/2016 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of \$213.00 was made on receipt DCDC545905.
- 8 7/11/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5601100 - Approved By: NOREVIEW : 07-11-2016:09:14:01
- 9 7/22/2016 - 3105 - Ord Granting ...  
Additional Text: ORDER GRANTING STIPULATION TO ALLOW INTERVENTION - Transaction 5621670 - Approved By: NOREVIEW : 07-22-2016:09:03:27
- 10 7/22/2016 - 2880 - Ord for Briefing Schedule  
Additional Text: Transaction 5621672 - Approved By: NOREVIEW : 07-22-2016:09:03:56
- 11 7/22/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5621673 - Approved By: NOREVIEW : 07-22-2016:09:04:16
- 12 7/22/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5621676 - Approved By: NOREVIEW : 07-22-2016:09:04:47
- 13 7/26/2016 - \$3375 - \$Peremptory Challenge  
Additional Text: RESP INTERVENOR INTERMOUNTAIN WATER SUPPLY LTD
- 14 7/26/2016 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of -\$450.00 was made on receipt DCDC547429.
- 15 7/27/2016 - 1312 - Case Assignment Notification  
Additional Text: Transaction 5628577 - Approved By: NOREVIEW : 07-27-2016:08:34:14
- 16 7/27/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5628587 - Approved By: NOREVIEW : 07-27-2016:08:37:02
- 17 7/28/2016 - 2665 - Ord Accepting Reassignment  
Additional Text: Transaction 5633105 - Approved By: NOREVIEW : 07-28-2016:16:41:18
- 18 7/28/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5633111 - Approved By: NOREVIEW : 07-28-2016:16:42:23

- 19 8/1/2016 - 3960 - Statement Intent Participate  
Additional Text: Transaction 5635227 - Approved By: YVILORIA : 08-01-2016:10:42:40
- 20 8/1/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5635534 - Approved By: NOREVIEW : 08-01-2016:10:43:35
- 21 8/2/2016 - CHECK - \*\*Trust Disbursement  
Additional Text: A Disbursement of \$450.00 on Check Number 32078
- 22 9/2/2016 - 2520 - Notice of Appearance  
Additional Text: MICHELINE N. FAIRBANK, AG / JASON KING, P.E. - Transaction 5690707 - Approved By: TBRITTON : 09-02-2016:13:31:23
- 23 9/2/2016 - 2610 - Notice ...  
Additional Text: NOTICE OF INTENT TO DEFEND - Transaction 5690713 - Approved By: MPURDY : 09-02-2016:13:14:11
- 24 9/2/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5691357 - Approved By: NOREVIEW : 09-02-2016:13:15:12
- 25 9/2/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5691435 - Approved By: NOREVIEW : 09-02-2016:13:32:22
- 26 9/2/2016 - 4050 - Stipulation ...  
Additional Text: STIPULATED REQUEST TO AMEND THE SCHEDULING ORDER - Transaction 5691552 - Approved By: SWOLFE : 09-02-2016:16:00:27
- 27 9/2/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5692046 - Approved By: NOREVIEW : 09-02-2016:16:01:25
- 28 9/8/2016 - 3746 - Record on Appeal  
Additional Text: SUMMARY OF RECORD ON APPEAL - Transaction 5697787 - Approved By: TBRITTON : 09-08-2016:14:18:51
- 29 9/8/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5698247 - Approved By: NOREVIEW : 09-08-2016:14:20:00
- 30 9/15/2016 - 1250 - Application for Setting  
Additional Text: Petition for Judicial Review - 1/17/17 @1:30 - Transaction 5709598 - Approved By: CSULEZIC : 09-15-2016:16:11:33
- 31 9/15/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5710385 - Approved By: NOREVIEW : 09-15-2016:16:12:33
- 32 10/5/2016 - 4105 - Supplemental ...  
Additional Text: SUPPLEMENTAL SUMMARY OF RECORD ON APPEAL - Transaction 5741254 - Approved By: MFERNAND : 10-05-2016:13:31:10
- 33 10/5/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5741825 - Approved By: NOREVIEW : 10-05-2016:13:33:38
- 34 10/7/2016 - 2640 - Opening Brief  
Additional Text: PETITIONER SIERRA PACIFIC INDUSTRIES OPENING BRIEF - Transaction 5746538 - Approved By: YVILORIA : 10-07-2016:13:33:46
- 35 10/7/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5746667 - Approved By: NOREVIEW : 10-07-2016:13:34:31
- 36 11/14/2016 - 4047 - Stip Extension of Time ...  
Additional Text: STIPULATED REQUEST TO AMEND THE SCHEDULING ORDER - Transaction 5804078 - Approved By: RKWATKIN : 11-14-2016:16:15:57

- 37 11/14/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5805442 - Approved By: NOREVIEW : 11-14-2016:16:16:53
- 38 11/17/2016 - 1170 - Answering Brief  
Additional Text: Respondent-Intervenor Intermountain Water Supply's Answering Brief - Transaction 5811764 - Approved By: PMSEWELL : 11-17-2016:13:55:37
- 39 11/17/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5811850 - Approved By: NOREVIEW : 11-17-2016:13:56:26
- 40 11/23/2016 - 3105 - Ord Granting ...  
Additional Text: STIPULATED REQUEST TO AMEND SCHEDULING ORDER - Transaction 5821853 - Approved By: NOREVIEW : 11-23-2016:13:54:27
- 41 11/23/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5821859 - Approved By: NOREVIEW : 11-23-2016:13:55:24
- 42 11/28/2016 - 1170 - Answering Brief  
Additional Text: Respondent State Engineer's - Transaction 5824016 - Approved By: CSULEZIC : 11-28-2016:16:16:01
- 43 11/28/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5824771 - Approved By: NOREVIEW : 11-28-2016:16:18:02
- 44 12/15/2016 - 4047 - Stip Extension of Time ...  
Additional Text: STIPULATION TO EXTEND TIME FOR REPLY BRIEF - Transaction 5856867 - Approved By: CSULEZIC : 12-15-2016:16:08:21
- 45 12/15/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5857246 - Approved By: NOREVIEW : 12-15-2016:16:09:20
- 46 12/20/2016 - 3030 - Ord Granting Extension Time  
Additional Text: TO FILE REPLY BRIEF BY 12/30/16 - Transaction 5864849 - Approved By: NOREVIEW : 12-20-2016:17:15:36
- 47 12/20/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5864851 - Approved By: NOREVIEW : 12-20-2016:17:16:39
- 48 12/30/2016 - 3795 - Reply...  
Additional Text: Reply Brief - Transaction 5878753 - Approved By: PMSEWELL : 12-30-2016:11:26:44
- 49 12/30/2016 - 2490 - Motion ...  
Additional Text: To Exceed Page Limit - Transaction 5878769 - Approved By: PMSEWELL : 12-30-2016:11:29:24
- 50 12/30/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5878775 - Approved By: NOREVIEW : 12-30-2016:11:27:41
- 51 12/30/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5878790 - Approved By: NOREVIEW : 12-30-2016:11:30:24
- 52 12/30/2016 - 2490 - Motion ...  
Additional Text: to Supplement the Record, or in the Alternative, for Judicial Notice - Transaction 5878810 - Approved By: PMSEWELL : 12-30-2016:11:39:03
- 53 12/30/2016 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5878835 - Approved By: NOREVIEW : 12-30-2016:11:40:13
- 54 1/5/2017 - 3860 - Request for Submission

Additional Text: - Transaction 5886504 - Approved By: PMSEWELL : 01-05-2017:15:57:40  
DOCUMENT TITLE: PETITION FOR JUDICIAL REVIEW(NO ORDER PROVIDED)  
PARTY SUBMITTING: DEBBIE LEONARD, ESQ.  
DATE SUBMITTED: JANUARY 5, 2017  
SUBMITTED BY: PMSEWELL  
DATE RECEIVED JUDGE OFFICE:

55 1/5/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 5886546 - Approved By: NOREVIEW : 01-05-2017:15:59:02

56 1/10/2017 - 3370 - Order ...

Additional Text: VACATING - Transaction 5891007 - Approved By: NOREVIEW : 01-10-2017:15:15:55

57 1/10/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 5891012 - Approved By: NOREVIEW : 01-10-2017:15:16:54

58 1/30/2017 - 3860 - Request for Submission

Additional Text: - Transaction 5924375 - Approved By: PMSEWELL : 01-30-2017:16:45:19  
DOCUMENT TITLE: MOTION TO EXCEED PAGE LIMIT (NO ORDER PROVIDED)  
PARTY SUBMITTING: DEBBIE LEONARD, ESQ.  
DATE SUBMITTED: JANUARY 30, 2017  
SUBMITTED BY: PMSEWELL  
DATE RECEIVED JUDGE OFFICE:

59 1/30/2017 - 3860 - Request for Submission

Additional Text: - Transaction 5924384 - Approved By: PMSEWELL : 01-30-2017:16:46:50  
DOCUMENT TITLE: MOTION TO SUPPLEMENT THE RECORD (NO ORDER PROVIDED)  
PARTY SUBMITTING: DEBBIE LEONARD, ESQ.  
DATE SUBMITTED: JANUARY 30, 2017  
SUBMITTED BY: PMSEWELL  
DATE RECEIVED JUDGE OFFICE:

60 1/30/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 5924688 - Approved By: NOREVIEW : 01-30-2017:16:46:50

61 1/30/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 5924697 - Approved By: NOREVIEW : 01-30-2017:16:47:49

62 2/6/2017 - S200 - Request for Submission Complet

*No additional text exists for this entry.*

63 2/6/2017 - S200 - Request for Submission Complet

*No additional text exists for this entry.*

64 2/6/2017 - 3060 - Ord Granting Mtn ...

Additional Text: Sierra Pacific Industries' Mtn to Supplement the Record - Transaction 5935056 - Approved By: NOREVIEW : 02-06-2017:10:47:58

65 2/6/2017 - 3060 - Ord Granting Mtn ...

Additional Text: Sierra Pacific Industries' Mtn to Exceed Page Limit - Transaction 5935056 - Approved By: NOREVIEW : 02-06-2017:10:47:58

66 2/6/2017 - NEF - Proof of Electronic Service

Additional Text: Transaction 5935058 - Approved By: NOREVIEW : 02-06-2017:10:48:52

67 2/23/2017 - S200 - Request for Submission Complet

*No additional text exists for this entry.*

68 2/23/2017 - 3347 - Ord to Set

Additional Text: Hearing on Petition for Judicial Review - Transaction 5964840 - Approved By: NOREVIEW : 02-23-2017:16:07:56

- 69 2/23/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5964847 - Approved By: NOREVIEW : 02-23-2017:16:08:52
- 70 3/8/2017 - 1250 - Application for Setting  
Additional Text: Petition for Judicial Review - 5/4/17 - Transaction 5987484 - Approved By: YVILORIA : 03-08-2017:16:59:59
- 71 3/8/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 5987487 - Approved By: NOREVIEW : 03-08-2017:17:00:48
- 72 4/26/2017 - 3347 - Ord to Set  
Additional Text: /RESET PETITION FOR JUDICIAL REVIEW - Transaction 6071842 - Approved By: NOREVIEW : 04-26-2017:16:49:07
- 73 4/26/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6071848 - Approved By: NOREVIEW : 04-26-2017:16:50:07
- 74 4/28/2017 - 1250 - Application for Setting  
Additional Text: PETITION FOR JUDICIAL REVIEW SET FOR 5/24/17 - Transaction 6075374 - Approved By: CSULEZIC : 04-28-2017:14:19:42
- 75 4/28/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6075464 - Approved By: NOREVIEW : 04-28-2017:14:20:40
- 76 5/5/2017 - 2490 - Motion ...  
Additional Text: Petitioner Sierra Pacific Industries' Second Motion to Supplement the Record, or in the Alternative, For Judicial Notice - Transaction 6088071 - Approved By: CSULEZIC : 05-08-2017:08:45:46
- 77 5/8/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6088259 - Approved By: NOREVIEW : 05-08-2017:08:46:49
- 78 5/8/2017 - 1120 - Amended ...  
Additional Text: AMENDED CERTIFICATE OF SERVICE - Transaction 6090008 - Approved By: TBRITTON : 05-08-2017:16:38:31
- 79 5/8/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6090345 - Approved By: NOREVIEW : 05-08-2017:16:39:53
- 80 5/9/2017 - 2645 - Opposition to Mtn ...  
Additional Text: RESPONDENT STATE ENGINEER'S LIMITED OPPOSITION TO PETITIONER'S SECOND MOTION TO SUPPLEMENT THE RECORD, OR IN THE ALTERNATIVE JUDICIAL NOTICE - Transaction 6092166 - Approved By: TBRITTON : 05-09-2017:15:49:09
- 81 5/9/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6092339 - Approved By: NOREVIEW : 05-09-2017:15:50:58
- 82 5/12/2017 - 4050 - Stipulation ...  
Additional Text: TO SHORTEN TIME FOR BRIEFING ON PETITIONER'S SECOND MOTION TO SUPPLEMENT THE RECORD - Transaction 6097379 - Approved By: PMSEWELL : 05-12-2017:08:56:25
- 83 5/12/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6097499 - Approved By: NOREVIEW : 05-12-2017:08:57:12
- 84 5/15/2017 - 3105 - Ord Granting ...  
Additional Text: STIPULATION TO SHORTEN TIME - Transaction 6101308 - Approved By: NOREVIEW : 05-15-2017:16:37:07
- 85 5/15/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6101314 - Approved By: NOREVIEW : 05-15-2017:16:37:57
- 86 5/15/2017 - 1830 - Joinder...

- Additional Text: RESPONDENT-INTERVENOR INTERMOUNTAIN WATER SUPPLY'S JOINDER TO THE STATE ENGINEER'S OPPOSITION TO PETITIONER'S SECOND MOTION TO SUPPLEMENT THE RECORD, OR IN THE ALTERNATIVE, FOR JUDICIAL NOTICE - Transaction 6101368 - Approved By: PMSEWELL : 05-16-2017:08:31:19
- 87 5/16/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6101595 - Approved By: NOREVIEW : 05-16-2017:08:32:24
- 88 5/18/2017 - 3795 - Reply...  
Additional Text: PETITIONER SIERRA PACIFIC INDUSTRIES' REPLY IN SUPPORT OF SECOND MOTION TO SUPPLEMENT THE RECORD, OR IN THE ALTERNATIVE, FOR JUDICIAL NOTICE - Transaction 6107293 - Approved By: PMSEWELL : 05-18-2017:13:54:50
- 89 5/18/2017 - 3860 - Request for Submission  
Additional Text: - Transaction 6107293 - Approved By: PMSEWELL : 05-18-2017:13:54:50  
DOCUMENT TITLE: SECOND MOTION TO SUPPLEMENT THE RECORD OR IN THE ALTERNATIVE FOR JUDICIAL NOTICE (NO ORDER PROVIDED)  
PARTY SUBMITTING: DEBBIE LEONARD, ESQ.  
DATE SUBMITTED: MAY 18, 2017  
SUBMITTED BY: PMSEWELL  
DATE RECEIVED JUDGE OFFICE:
- 90 5/18/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6107368 - Approved By: NOREVIEW : 05-18-2017:13:55:44
- 91 5/24/2017 - S200 - Request for Submission Complet  
*No additional text exists for this entry.*
- 92 5/24/2017 - MIN - \*\*\*Minutes  
Additional Text: PETITION FOR JUDICIAL REVIEW - 5/24/17 - Transaction 6116289 - Approved By: NOREVIEW : 05-24-2017:13:21:19
- 93 5/24/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6116291 - Approved By: NOREVIEW : 05-24-2017:13:22:18
- 94 8/21/2017 - 2840 - Ord Denying ...  
Additional Text: Petition for Judicial Review - Transaction 6259339 - Approved By: NOREVIEW : 08-21-2017:12:48:45
- 95 8/21/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6259342 - Approved By: NOREVIEW : 08-21-2017:12:49:44
- 96 8/21/2017 - F230 - Other Manner of Disposition  
*No additional text exists for this entry.*
- 97 8/22/2017 - 2540 - Notice of Entry of Ord  
Additional Text: Notice of Entry of Order Denying Petition for Judicial Review - Transaction 6261790 - Approved By: NOREVIEW : 08-22-2017:13:22:18
- 98 8/22/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6261795 - Approved By: NOREVIEW : 08-22-2017:13:23:15
- 99 8/22/2017 - 3161 - Ord of Recusal  
Additional Text: and for Random Reassignment - Transaction 6262825 - Approved By: NOREVIEW : 08-22-2017:17:01:25
- 100 8/22/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6262829 - Approved By: NOREVIEW : 08-22-2017:17:02:26
- 101 8/23/2017 - 1312 - Case Assignment Notification  
Additional Text: PER 8/22/17 ORDER OF RECUSAL, RANDOMLY REASSIGNED TO D8 FROM D1 - Transaction 6263748 - Approved By: NOREVIEW : 08-23-2017:11:46:10

- 102 8/23/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6263753 - Approved By: NOREVIEW : 08-23-2017:11:46:59
  
- 103 9/6/2017 - \$2515 - \$Notice/Appeal Supreme Court  
Additional Text: Transaction 6284794 - Approved By: YVILORIA : 09-06-2017:11:24:46
  
- 104 9/6/2017 - 1310 - Case Appeal Statement  
Additional Text: Transaction 6284802 - Approved By: YVILORIA : 09-06-2017:11:25:18
  
- 105 9/6/2017 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of \$34.00 was made on receipt DCDC585764.
  
- 106 9/6/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6284825 - Approved By: NOREVIEW : 09-06-2017:11:27:48
  
- 107 9/6/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6284828 - Approved By: NOREVIEW : 09-06-2017:11:27:55
  
- 108 9/6/2017 - SAB - \*\*Supreme Court Appeal Bond  
Additional Text: Transaction 6284900 - Approved By: YVILORIA : 09-06-2017:11:44:41
  
- 109 9/6/2017 - PAYRC - \*\*Payment Received  
Additional Text: A Payment of \$500.00 was made on receipt DCDC585771.
  
- 110 9/6/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6284918 - Approved By: NOREVIEW : 09-06-2017:11:45:36
  
- 111 9/6/2017 - 1350 - Certificate of Clerk  
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 6285461 - Approved By: NOREVIEW : 09-06-2017:14:22:50
  
- 112 9/6/2017 - NEF - Proof of Electronic Service  
Additional Text: Transaction 6285462 - Approved By: NOREVIEW : 09-06-2017:14:23:40



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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

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SIERRA PACIFIC INDUSTRIES, a  
California Corporation,

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Petitioner,

14

vs.

15

JASON KING, P.E., in his capacity as  
Nevada State Engineer, and the  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION,  
an agency of the State of Nevada,

16

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Respondent,

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and,

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INTERMOUNTAIN WATER SUPPLY,  
LTD., a Nevada limited liability company,

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Intervenor-Respondent.

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**ORDER DENYING PETITION FOR JUDICIAL REVIEW**

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This matter comes before the Court on Sierra Pacific Industries' (SPI) Petition for  
Judicial Review of the State Engineer's June 1, 2016, decision granting Intermountain  
Water Supply, Ltd. (Intermountain) a one-year extension of time to complete the  
diversion works and place to beneficial use the water appropriated under Permit  
Nos. 64977, 64978, 73428, 73429, 73430, 74327 and 72700. The petition for judicial

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### 9 I. STANDARD OF REVIEW

10 NRS 533.450 provides for judicial review of orders and decisions of the State  
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## 27 II. FINDINGS AND CONCLUSIONS OF LAW

28 In determining whether to grant an application for extension of time to perfect a

1 water right, the State Engineer must determine from the proof and evidence submitted to  
2 him that the permit holder is proceeding in good faith and reasonable diligence to perfect  
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5 manner under all the facts and circumstances." NRS 533.380(6). "When a project or  
6 integrated system is composed of several features, work on one feature of the project or  
7 system may be considered in finding that reasonable diligence has been shown in the  
8 development of water rights for all features of the entire project or system. *Id.* Moreover,  
9 where the water rights are for municipal use, Nevada law defines several factors which  
10 the State Engineer must consider, including a demonstration of good cause, the number of  
11 parcels or units planned to be served, economic conditions, delays in development of land  
12 or area to be served, and the time period for development plan. NRS 533.380(4). The  
13 statute expressly affords the State Engineer discretion to "grant any number of  
14 extensions of time within which the construction work must be completed, or water must  
15 be applied to a beneficial use." NRS 533.380(3).

16 The State Engineer had before him SPI's objections to extensions of time sought by  
17 Intermountain, SPI's supplement to its objections to extensions of time for Intermountain,  
18 and Intermountain's applications for extensions of time. State Engineer's Record on  
19 Appeal (SE ROA) at 5-426, 430-579, 587-602, 605-616. Within the evidence before the  
20 State Engineer was a sworn affidavit by Robert W. Marshall, a Manager of Intermountain  
21 (Affidavit), submitted as "proof and evidence" of Intermountain's reasonable diligence.  
22 SE ROA at 612-15. The Affidavit described the works which had historically been  
23 completed in advancing the project toward development. SE ROA at 612-13.  
24 Additionally, the Affidavit stated that Intermountain had entered in an option agreement  
25 with two engineering and construction firms and that in addition to those agreements,  
26 and that after extensive negotiations with the water company, Intermountain  
27 had reached an agreement for water service in northern Washoe County, Nevada.  
28 SE ROA at 614. Additionally, the Affidavit identified the number of residential units to

1 be served by the project at "nearly 10,000 houses" and specified the present status of the  
2 housing projects and time period to have agreements with those developers. *Id.*

3 In deciding whether to grant Intermountain's applications for extension of time  
4 pursuant to NRS 533.380, the State Engineer considered whether Intermountain had  
5 sufficiently demonstrated good faith and reasonable diligence in advancing the project,  
6 thus warranting the granting of the extensions of time and had addressed the elements  
7 set forth under NRS 533.380(4). SE ROA at 638-39, 641. The State Engineer further  
8 considered SPI's objections. SE ROA at 618-24. However, the Court notes that SPI was  
9 not afforded an opportunity to respond to the Affidavit submitted by Intermountain in  
10 support of its applications. While SPI was not afforded an opportunity to respond, the  
11 Court finds that there was no violation of due process or NRS 533.380, which does not set  
12 forth a procedure for objections to an application for extension of time.

13 Nevada law defines reasonable diligence as the steady application of effort to  
14 perfect an application in a reasonably expedient and efficient manner. NRS 533.380(6).  
15 The concept of reasonable diligence is not a recent concept in Nevada water law. Rather,  
16 the Nevada Supreme Court in *Ophir Mining Co. v. Carpenter*, stated:

17 Where the right to the use of running water is based upon  
18 appropriation, and not upon an ownership in the soil, it is the  
19 generally recognized rule here that priority of appropriation  
20 gives the superior right. When any work is necessary to be done  
21 to complete the appropriation, the law gives the claimant a  
22 reasonable time within which to do it, and although the  
23 appropriation is not deemed complete until the actual diversion  
or use of the water, still if such work be prosecuted with  
reasonable diligence, the right relates to the time when the first  
step was taken to secure it. If, however, the work not be  
prosecuted with diligence, the right does not so relate, but  
generally dates from the time when the work is completed or the  
appropriation is fully perfected. 4 Nev. 534, 543-33 (1869).

24 Thus, the State Engineer is required to review the evidence before him to determine  
25 whether the evidence reflects a "steady application to business of any kind, constant effort  
26 to accomplish an undertaking." *Id.*

27 In this case, the record reflects that the State Engineer considered the totality of  
28 the evidence before him, which included evidence of Intermountain's steady application

1 effort to perfect its water rights. While SPI is highly critical of the Affidavit submitted in  
2 support of Intermountain's applications, it is a statement with representations presented  
3 under the penalty of perjury to an administrative agency. SE ROA at 612-15. The State  
4 Engineer was reasonable in his reliance upon the representations contained within the  
5 Affidavit. The basis for SPI's criticism of Intermountain's applications is that  
6 subjectively, SPI does not believe it to be good enough; however, that is not the standard  
7 in this case.

8 Here, the State Engineer engaged in an extensive analysis, ultimately concluding  
9 that Intermountain demonstrated good faith and reasonable diligence.  
10 SE ROA at 637-639. Contrary to SPI's position, Nevada law does not impose a duty upon  
11 the State Engineer to "test the reliability or accuracy" of Intermountain's evidence. The  
12 Nevada Supreme Court has found that "mere statements" without more is insufficient to  
13 demonstrate reasonable diligence. *Desert Irr. Ltd. v. State*, 113 Nev. 1049, 1057 (1997).  
14 And, in this case, Intermountain has, since the initial granting of its applications to  
15 appropriate water, provided the State Engineer with evidence of its incremental efforts to  
16 perfect its water rights. The State Engineer has taken into consideration the history of  
17 Intermountain's efforts to develop its water, and the consideration of the totality of the  
18 evidence is sufficient to support the State Engineer's decision. SE ROA at 618-24. The  
19 State Engineer considered the totality of factors required by NRS 533.380, and concluded  
20 that substantial evidence supported granting Intermountain's applications for extensions  
21 of time. *Id.* The State Engineer's findings in his June 1, 2016, decision granting  
22 Intermountain's extension of time applications is supported by substantial evidence.

23 Further, the State Engineer considered SPI's contention that Intermountain's  
24 applications violate the anti-speculation doctrine as established by the Nevada Supreme  
25 Court in *Bacher v. State Engineer*, 122, Nev. 1110 (2006). In granting Intermountain's  
26 applications for extension of time, the State Engineer found that there was not a violation  
27 of the anti-speculation doctrine because Intermountain's applications for extensions of  
28 time demonstrate that the company is making measureable steps toward perfecting its

1 water rights. SE ROA at 605-624. Nevada law allows a permittee to find an alternative  
2 use of its water where the originally intended project may not be realized. The Nevada  
3 Supreme Court in *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. Adv. Op. 48,  
4 245 P.3d 1145 (2010), found that the State Engineer did not err when granting  
5 applications to change the point of use for existing groundwater permits. In that decision,  
6 the water right holder, Nevada Land and Resource Company (NLRC), had secured  
7 groundwater permits for the temporary use of water in a mining and milling project.  
8 *Pyramid Lake Paiute Tribe of Indians*, 245 P.3d at 1146. In that case, however, the  
9 mining and milling project was unfruitful, and during an approximate 20-year period of  
10 time, the water rights were maintained in good standing using the application for  
11 extension of time process. *Id.* Ultimately, NLRC sought to change the permitted use  
12 from mining and milling to industrial power generation purposes and from a temporary to  
13 permanent use. *Id.* Though the NLRC's anticipated power plant project was cancelled,  
14 and the water rights were later negotiated for use by the City of Fernley, the court did not  
15 find there to be a violation of the anti-speculation doctrine. *Id.* at n.1. Thus, the Court in  
16 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, which was decided four years after *Bacher*,  
17 did not assert any contention that the maintenance of the water rights by NLRC in good  
18 standing for nearly 20 years while seeking a buyer for its groundwater source was a  
19 violation of the anti-speculation doctrine. *Id.*

20       The project which Intermountain's water rights have been intended to benefit is  
21 the same as the time it sought its applications for new appropriations of water. However,  
22 Intermountain has commenced looking for other entities which may be better suited to  
23 fully develop the project and ultimately place the water to its intended beneficial use.  
24 Whether Intermountain ultimately sells the totality of its project, or sells an interest in  
25 the project, is not of the State Engineer's concern under current Nevada law. The law  
26 requires the State Engineer to determine whether Intermountain has, in good faith,  
27 demonstrated a steady application of effort to perfect its water rights, and second, since  
28 this is a municipal project, considering the factors set forth in 533.380(4). Here, the State

1 Engineer has performed his legal duties in evaluating Intermountain's applications  
2 for extensions of time and considered all relevant factors contained within NRS 533.380;  
3 thus, based upon substantial evidence before him, the State Engineer reasonably  
4 determined that there was not violation of the anti-speculation doctrine.  
5 SE ROA at 639-41.

6 Finally, SPI requests this Court to consider facts and evidence outside of the record  
7 before the State Engineer when issuing his June 1, 2016, decision. SPI is not entitled to a  
8 de novo review and the evidence SPI requests the Court to consider is beyond the scope of  
9 appellate review of the State Engineer's decision under NRS 533.450.

10 The Court, having reviewed the record in its entirety, and considered the argument  
11 of the parties and counsel finds that the State Engineer's June 1, 2016, decision to grant  
12 Intermountain's applications to extend time to complete works and place water to a  
13 beneficial use for Permit Nos. 64977, 64978, 73428, 73429, 73430, 74327 and 72700 is  
14 supported by substantial evidence.

15 IT IS HEREBY ORDERED that SPI's Petition for Judicial Review is hereby  
16 DENIED.

17 ORDERED this 21<sup>st</sup> day of August, 2017.

18 William C. Madrox  
19 DISTRICT JUDGE  
20  
21  
22

23 SUBMITTED BY:  
24 ADAM PAUL LAXALT  
25 Attorney General  
26 MICHELINE N. FAIRBANK  
27 Senior Deputy Attorney General  
28 100 North Carson Street  
Carson City, Nevada 89701-4717  
T: (775) 684-1225  
F: (775) 684-1108  
E: mfairbank@nvcourts.gov



CERTIFICATE OF SERVICE

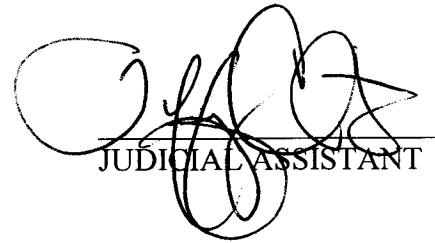
Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of August, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF

RICHARD ELMORE, ESQ. for INTERMOUNTAIN WATER SUPPLY, LTD.

MICHELINE FAIRBANK, ESQ. for JASON KING, P.E., DIVISION OF WATER RESOURCES

DEBBIE LEONARD, ESQ. for SIERRA PACIFIC INDUSTRIES



JUDICIAL ASSISTANT

1 2545  
2 RICHARD L. ELMORE, CHTD.  
3 Richard L. Elmore, Esq.  
4 Nevada Bar No. 1405  
3301 So. Virginia Street, Suite 125  
Reno, NV 89502  
(775) 357-8170

5 *Attorney for Intervenor-Respondent*  
6 *Intermountain Water Supply*

7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF WASHOE**

9  
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11 Corporation,

12 Petitioner,

Case No. CV16-01378

13 vs.

Dept. No. 1

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Nevada,

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18 and,

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a Nevada limited liability company,

20 Intervenor-Respondent.

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was entered in the  
23 above-entitled matter on August 21, 2017. A copy of said order is attached hereto as Exhibit 1.

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1 **AFFIRMATION**

2 The undersigned does hereby affirm that the preceding document filed in Second Judicial  
3 District Court does not contain the Social Security number of any person.

4 DATED: August 22, 2017.

5  
6 RICHARD L. ELMORE, CHTD.

7 By: /s/ Richard L. Elmore  
8 Richard L. Elmore, Esq.  
9 Nevada Bar No. 1405  
10 3301 So. Virginia Street, Suite 125  
11 Reno, NV 89502  
12 (775) 357-8170  
13  
14 *Attorney for Intervenor-Respondent*  
15 *Intermountain Water Supply*  
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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am the principal of RICHARD L. ELMORE, CHTD. and that on  
4 this date I personally caused to be served a true copy of the foregoing **NOTICE OF ENTRY**  
5 **OF ORDER** by the method indicated and addressed to the following:

6  
7 Debbie Leonard, Esq. \_\_\_\_\_ Via U.S. Mail  
8 MCDONALD CARANO WILSON LLP \_\_\_\_\_ Via Overnight Mail  
9 P.O. Box 2670 \_\_\_\_\_ Via Hand Delivery  
10 100 W. Liberty St., 10th Floor \_\_\_\_\_ Via Facsimile  
11 Reno, NV 89501-2670  X  Via ECF

12  
13 \_\_\_\_\_ Via U.S. Mail  
14 Micheline N. Fairbank, Esq. \_\_\_\_\_ Via Overnight Mail  
15 OFFICE OF THE ATTORNEY GENERAL \_\_\_\_\_ Via Hand Delivery  
16 100 N. Carson Street, \_\_\_\_\_ Via Facsimile  
17 Carson City, NV 89701  X  Via ECF

18 DATED this 22<sup>nd</sup> Day of August, 2017.

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20  
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*/s/ Richard L. Elmore*  
Richard L. Elmore

**INDEX OF EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. Pages</b>
1	Order Denying Petition for Judicial Review	9

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Clerk of the Court  
Transaction # 6261790

# **EXHIBIT 1**

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7 system may be considered in finding that reasonable diligence has been shown in the  
8 development of water rights for all features of the entire project or system. *Id.* Moreover,  
9 where the water rights are for municipal use, Nevada law defines several factors which  
10 the State Engineer must consider, including a demonstration of good cause, the number of  
11 parcels or units planned to be served, economic conditions, delays in development of land  
12 or area to be served, and the time period for development plan. NRS 533.380(4). The  
13 statute expressly affords the State Engineer discretion to "grant any number of  
14 extensions of time within which the construction work must be completed, or water must  
15 be applied to a beneficial use." NRS 533.380(3).

16 The State Engineer had before him SPI's objections to extensions of time sought by  
17 Intermountain, SPI's supplement to its objections to extensions of time for Intermountain,  
18 and Intermountain's applications for extensions of time. State Engineer's Record on  
19 Appeal (SE ROA) at 5-426, 430-579, 587-602, 605-616. Within the evidence before the  
20 State Engineer was a sworn affidavit by Robert W. Marshall, a Manager of Intermountain  
21 (Affidavit), submitted as "proof and evidence" of Intermountain's reasonable diligence.  
22 SE ROA at 612-15. The Affidavit described the works which had historically been  
23 completed in advancing the project toward development. SE ROA at 612-13.  
24 Additionally, the Affidavit stated that Intermountain had entered in an option agreement  
25 with two engineering and construction firms and that in addition to those agreements,  
26 and that after extensive negotiations with the water company, Intermountain  
27 had reached an agreement for water service in northern Washoe County, Nevada.  
28 SE ROA at 614. Additionally, the Affidavit identified the number of residential units to

1 be served by the project at "nearly 10,000 houses" and specified the present status of the  
2 housing projects and time period to have agreements with those developers. *Id.*

3 In deciding whether to grant Intermountain's applications for extension of time  
4 pursuant to NRS 533.380, the State Engineer considered whether Intermountain had  
5 sufficiently demonstrated good faith and reasonable diligence in advancing the project,  
6 thus warranting the granting of the extensions of time and had addressed the elements  
7 set forth under NRS 533.380(4). SE ROA at 638-39, 641. The State Engineer further  
8 considered SPI's objections. SE ROA at 618-24. However, the Court notes that SPI was  
9 not afforded an opportunity to respond to the Affidavit submitted by Intermountain in  
10 support of its applications. While SPI was not afforded an opportunity to respond, the  
11 Court finds that there was no violation of due process or NRS 533.380, which does not set  
12 forth a procedure for objections to an application for extension of time.

13 Nevada law defines reasonable diligence as the steady application of effort to  
14 perfect an application in a reasonably expedient and efficient manner. NRS 533.380(6).  
15 The concept of reasonable diligence is not a recent concept in Nevada water law. Rather,  
16 the Nevada Supreme Court in *Ophir Mining Co. v. Carpenter*, stated:

17 Where the right to the use of running water is based upon  
18 appropriation, and not upon an ownership in the soil, it is the  
19 generally recognized rule here that priority of appropriation  
20 gives the superior right. When any work is necessary to be done  
21 to complete the appropriation, the law gives the claimant a  
22 reasonable time within which to do it, and although the  
23 appropriation is not deemed complete until the actual diversion  
or use of the water, still if such work be prosecuted with  
reasonable diligence, the right relates to the time when the first  
step was taken to secure it. If, however, the work not be  
prosecuted with diligence, the right does not so relate, but  
generally dates from the time when the work is completed or the  
appropriation is fully perfected. 4 Nev. 534, 543-33 (1869).

24 Thus, the State Engineer is required to review the evidence before him to determine  
25 whether the evidence reflects a "steady application to business of any kind, constant effort  
26 to accomplish an undertaking." *Id.*

27 In this case, the record reflects that the State Engineer considered the totality of  
28 the evidence before him, which included evidence of Intermountain's steady application

1 effort to perfect its water rights. While SPI is highly critical of the Affidavit submitted in  
2 support of Intermountain's applications, it is a statement with representations presented  
3 under the penalty of perjury to an administrative agency. SE ROA at 612-15. The State  
4 Engineer was reasonable in his reliance upon the representations contained within the  
5 Affidavit. The basis for SPI's criticism of Intermountain's applications is that  
6 subjectively, SPI does not believe it to be good enough; however, that is not the standard  
7 in this case.

8 Here, the State Engineer engaged in an extensive analysis, ultimately concluding  
9 that Intermountain demonstrated good faith and reasonable diligence.  
10 SE ROA at 637-639. Contrary to SPI's position, Nevada law does not impose a duty upon  
11 the State Engineer to "test the reliability or accuracy" of Intermountain's evidence. The  
12 Nevada Supreme Court has found that "mere statements" without more is insufficient to  
13 demonstrate reasonable diligence. *Desert Irr. Ltd. v. State*, 113 Nev. 1049, 1057 (1997).  
14 And, in this case, Intermountain has, since the initial granting of its applications to  
15 appropriate water, provided the State Engineer with evidence of its incremental efforts to  
16 perfect its water rights. The State Engineer has taken into consideration the history of  
17 Intermountain's efforts to develop its water, and the consideration of the totality of the  
18 evidence is sufficient to support the State Engineer's decision. SE ROA at 618-24. The  
19 State Engineer considered the totality of factors required by NRS 533.380, and concluded  
20 that substantial evidence supported granting Intermountain's applications for extensions  
21 of time. *Id.* The State Engineer's findings in his June 1, 2016, decision granting  
22 Intermountain's extension of time applications is supported by substantial evidence.

23 Further, the State Engineer considered SPI's contention that Intermountain's  
24 applications violate the anti-speculation doctrine as established by the Nevada Supreme  
25 Court in *Bacher v. State Engineer*, 122, Nev. 1110 (2006). In granting Intermountain's  
26 applications for extension of time, the State Engineer found that there was not a violation  
27 of the anti-speculation doctrine because Intermountain's applications for extensions of  
28 time demonstrate that the company is making measureable steps toward perfecting its

1 water rights. SE ROA at 605-624. Nevada law allows a permittee to find an alternative  
2 use of its water where the originally intended project may not be realized. The Nevada  
3 Supreme Court in *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. Adv. Op. 48,  
4 245 P.3d 1145 (2010), found that the State Engineer did not err when granting  
5 applications to change the point of use for existing groundwater permits. In that decision,  
6 the water right holder, Nevada Land and Resource Company (NLRC), had secured  
7 groundwater permits for the temporary use of water in a mining and milling project.  
8 *Pyramid Lake Paiute Tribe of Indians*, 245 P.3d at 1146. In that case, however, the  
9 mining and milling project was unfruitful, and during an approximate 20-year period of  
10 time, the water rights were maintained in good standing using the application for  
11 extension of time process. *Id.* Ultimately, NLRC sought to change the permitted use  
12 from mining and milling to industrial power generation purposes and from a temporary to  
13 permanent use. *Id.* Though the NLRC's anticipated power plant project was cancelled,  
14 and the water rights were later negotiated for use by the City of Fernley, the court did not  
15 find there to be a violation of the anti-speculation doctrine. *Id.* at n.1. Thus, the Court in  
16 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, which was decided four years after *Bacher*,  
17 did not assert any contention that the maintenance of the water rights by NLRC in good  
18 standing for nearly 20 years while seeking a buyer for its groundwater source was a  
19 violation of the anti-speculation doctrine. *Id.*

20       The project which Intermountain's water rights have been intended to benefit is  
21 the same as the time it sought its applications for new appropriations of water. However,  
22 Intermountain has commenced looking for other entities which may be better suited to  
23 fully develop the project and ultimately place the water to its intended beneficial use.  
24 Whether Intermountain ultimately sells the totality of its project, or sells an interest in  
25 the project, is not of the State Engineer's concern under current Nevada law. The law  
26 requires the State Engineer to determine whether Intermountain has, in good faith,  
27 demonstrated a steady application of effort to perfect its water rights, and second, since  
28 this is a municipal project, considering the factors set forth in 533.380(4). Here, the State

1 Engineer has performed his legal duties in evaluating Intermountain's applications  
2 for extensions of time and considered all relevant factors contained within NRS 533.380;  
3 thus, based upon substantial evidence before him, the State Engineer reasonably  
4 determined that there was not violation of the anti-speculation doctrine.  
5 SE ROA at 639-41.

6 Finally, SPI requests this Court to consider facts and evidence outside of the record  
7 before the State Engineer when issuing his June 1, 2016, decision. SPI is not entitled to a  
8 de novo review and the evidence SPI requests the Court to consider is beyond the scope of  
9 appellate review of the State Engineer's decision under NRS 533.450.

10 The Court, having reviewed the record in its entirety, and considered the argument  
11 of the parties and counsel finds that the State Engineer's June 1, 2016, decision to grant  
12 Intermountain's applications to extend time to complete works and place water to a  
13 beneficial use for Permit Nos. 64977, 64978, 73428, 73429, 73430, 74327 and 72700 is  
14 supported by substantial evidence.

15 IT IS HEREBY ORDERED that SPI's Petition for Judicial Review is hereby  
16 DENIED.

17 ORDERED this 21<sup>st</sup> day of August, 2017.

18 William C. Madrox  
19 DISTRICT JUDGE  
20  
21  
22

23 SUBMITTED BY:  
24 ADAM PAUL LAXALT  
Attorney General  
25 MICHELINE N. FAIRBANK  
Senior Deputy Attorney General  
26 100 North Carson Street  
Carson City, Nevada 89701-4717  
27 T: (775) 684-1225  
F: (775) 684-1108  
28 E: mfairbank@nvcourts.gov

CERTIFICATE OF SERVICE

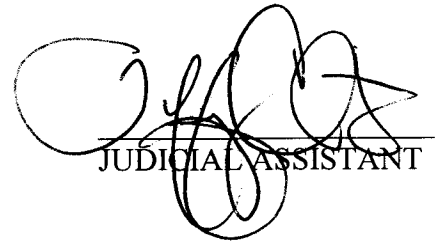
Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 21 day of August, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed the individuals listed herein and/or electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

VIA ECF

RICHARD ELMORE, ESQ. for INTERMOUNTAIN WATER SUPPLY, LTD.

MICHELINE FAIRBANK, ESQ. for JASON KING, P.E., DIVISION OF WATER RESOURCES

DEBBIE LEONARD, ESQ. for SIERRA PACIFIC INDUSTRIES



JUDICIAL ASSISTANT

DATE, JUDGE  
OFFICERS OF  
COURT PRESENT

APPEARANCES-HEARING

05/24/17

**PETITION FOR JUDICIAL REVIEW**

HONORABLE

WILLIAM MADDOX  
DEPT. NO. 1

Plaintiff, Sierra Pacific Industries, without a representative present and represented by Debbie Leonard, Esq.

M. Schuck  
(Clerk)

Defendant, Jason King, not present and represented by Micheline Fairbank, Esq.

L. Clarkson  
(Reporter)

Defendant, Division of Water Resources, with representative Malcolm Wilson present and represented by Micheline Fairbank, Esq.

Deputy Plunkett  
(Bailiff)

Defendant, Intermountain Water Supply, Ltd., with representative Bob Marshall present and represented by Richard Elmore, Esq.  
Matter convened at 9:04 a.m.

Counsel Leonard commenced her argument in favor of her Petition for Judicial Review. She requested the Court grant said petition. Counsel Fairbank presented her argument against Petition for Judicial Review.

Counsel Elmore presented his argument against Petition for Judicial Review.

Court interjected his questions and concerns during each argument.

Counsel Leonard presented her rebuttal to both Counsel Fairbank's and Counsel Elmore's arguments. She requested her Petition for Judicial Review be granted.

Court indicated there was substantial evidence and deferred to the previous view of the law.

**COURT denied** Petition for Judicial Review.

Court directed Counsel Fairbank to prepare the proposed Order and to email him a said proposed Order to his stated email.

Matter concluded at 10:43 a.m.



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**Code 1350**

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE**

**SIERRA PACIFIC INDUSTRIES, a  
California Corporation,**

**Case No. CV16-01378**

**Petitioner,**

**Dept. No. 1**

**vs.**

**JASON KING, P.E., in his capacity as Nevada State  
Engineer, and the DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION, an agency of the  
State of Nevada,**

**Respondent**

**and,**

**INTERMOUNTAIN WATER SUPPLY, LTD., a  
Nevada limited liability company**

**Intervenor-Respondent**

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**CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 6th day of September, 2017, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 6th day of September, 2017

Jacqueline Bryant  
Clerk of the Court  
By /s/ Yvonne Vilorio  
Yvonne Vilorio  
Deputy Clerk

**McDONALD**  **CARANO**

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TO THE  
ORDER  
OF

**Nevada Supreme Court**  
201 S. Carson Street  
Carson City, NV 89701

*CV16-01378*



2 SIGNATURES REQUIRED IF OVER \$2500.00

*[Handwritten Signature]*

MP

MP

VOID AFTER 120 DAYS

⑈ 102990 ⑈ ⑆ 122400779⑆ 0542004190 ⑈