

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>

March 14, 2014

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: Permits 64977, 64978, 66400, 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2015, with the provision that no further extensions will be granted for Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel@water.nv.gov](mailto:smcdaniel@water.nv.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Smcdaniel".

Shannon McDaniel  
Water Resource Specialist I

SM/dl

cc: TEC Civil Engineering Consultants

JA2418

SE ROA 2333

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  
(800) 992-0900  
(In Nevada Only)  
<http://water.nv.gov>

**FINAL NOTICE**

February 13, 2015

**FINAL NOTICE**

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000585965

**Re: Final Notice for Permit 64977, 64978, 66400, 73428, 73429, 73430 and 74327**

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Completion and Proof of Beneficial Use** on or before **February 11, 2015**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

jw

cc: TEC Civil Engineering Consultants (email)- All Permits  
Turnipseed Engineering, Ltd. (email)- Permits 73428, 73429 73430 and 74327 Only

**Schedule of Fees:**

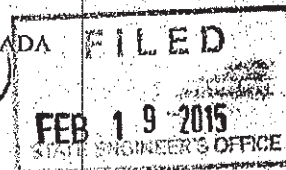
Fee for filing Proof of Completion - \$60  
Fee for filing Proof of Beneficial Use - \$60  
Fee for filing Request for Extension of Time - \$120

**JA2419**  
**SE ROA 2334**



BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME



Owner of Record Intermountain Water Supply, Ltd.

IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years

5. What is the expenditure on the project under this permit? Last year? \$17,573.43 Total to date? \$2,568,222.43

6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

proof of completion and proof of beneficial use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in the area of beneficial use. We have continued maintenance of the project by installing new caps on artesian flows to prevent waste. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters on the surface water. We have drastically reduced the price of the Project and have been actively working with potential investors to finance or purchase the project.

State of Nevada

County of Washoe

Subscribed and sworn to before me on February 19, 2015

by Robert W. Marshall

Signed

*Robert W. Marshall*

Permittee or Agent

Address 625 Onyo Way

Street Address or PO Box

Sparks, NV 89411

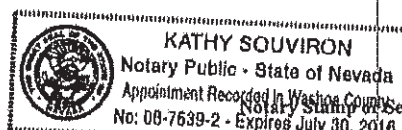
City, State, ZIP Code

Phone (775) 425-1161

E-mail

*Kathy Souvion*

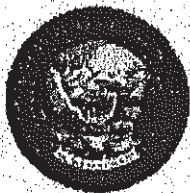
Signature of Notary Public Required



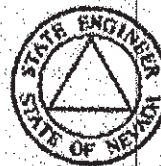
\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME  
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

Revised 07/13 - ext\_app

1-45  
000-180  
JAN 20 2015  
SE ROA 2335  
JA2420



**Division of Water Resources  
Receipt for Payment**



Intermountain Water Supply Ltd  
625 Onyo Way  
Spanish Springs, NV 89441

Check #: 1502  
Check Date: 2/19/2015  
Date Received: 2/19/2015  
Receipt #: 4,575

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2015	\$120.00	74327		- Extensions	Covers Ext No's 64977, 64978, 66400, 67037, 73428, 73429, 73430 and 74327

Check Total: \$960.00

2/20/2015

25

**JA2421**  
SE ROA 2336





InterMountain  
Water Supply

625 Onyo Way  
Spanish Springs, NV 89441

(775) 425-1161  
(775) 425-1327 FX

marshalls@aol.net

May 26, 2015

Kristen Geddes  
Chief, Hearings Section  
State of Nevada Division of Water Resources  
901 S. Stewart St., Suite 2002  
Carson City, NV 89701

Re: Extension of Time: Permit

Dear Ms. Geddes:

In my letter of March 12, 2015 with respect to the above permit. I enclosed statements from Parsons, Behle & Latimer law firm. To clarify, none of these statements included any of my time. These were bills I paid for time spent by firm personnel, other than me. Most of the time was billed by Rew Goodenow, a partner with the firm for appearances before the County Commission or for meetings with the District Attorneys' Office.

I have NEVER billed any of my time to this project during the 20+ years I have worked on it.

I trust this letter clarifies any questions that there may have been on this point.

Please place a copy of this letter in the file for each Intermountain Water Supply Ltd. Permit involved in the Project. The Permit numbers include Permits 64977, 64978, 66400, 72700, 73428, 73429, 73430, 74327, 66873, 73048, and 67037. I am enclosing copies for your convenience.

Sincerely,

INTERMOUNTAIN WATER SUPPLY

By:

*Robert W. Marshall*  
Robert W. Marshall, Manager

RWM/ks  
Enclosures  
cc: Jason King, P.E.

4827-3643-6260

RECEIVED  
2015 MAY 28 AM 10:01  
STATE ENGINEERS OFFICE

JA2422  
SE ROA 2337

STATE OF NEVADA

BRIAN SANDOVAL  
Governor



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>

June 4, 2015

Robert W. Marshall  
Intermountain Water Supply, Ltd.  
625 Onyo Way  
Sparks, Nevada 89441

Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978,  
66400, 73428, 73429, 73430 and 74327

Dear Mr. Marshall:

On March 12, 2015, you responded to the request for evidence concerning the extension of time filed concerning Permit 72700. Given the similarity of information stated on the request for extension of time concerning Permit 72700, and Permits 64977, 64978, 66400, 73428, 73429, 73430 and 74327, this response applies equally to all of the listed Permits (*i.e.*, "the Project").

Pursuant to NRS § 533.380(3) an application for the extension must in all cases be accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application. The measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances. NRS § 533.380(6). Further, when a project or integrated system is composed of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. *Id.*

In addition, in requests for extensions on permits for municipal use on any land referred to in NRS § 533.380(1)(b), or for any use which may be served by a county, city, town, public water district or public water company, requests an extension of time to apply the water to a beneficial use, the State Engineer shall also consider:

(a) Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;

**JA2423**  
SE ROA 2338

Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 2

(b) The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the county, city, town, public water district or public water company;

(c) Any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use;

(d) Any delays in the development of the land or the area being served by the county, city, town, public water district or public water company which were caused by unanticipated natural conditions; and

(e) The period contemplated in the:

(1) Plan for the development of a project approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(2) Plan for the development of a planned unit development recorded pursuant to chapter 278A of NRS,

→ if any, for completing the development of the land.

Your response included a written response, copies of the amendment to the Washoe County Regional Water Management Plan to Include the North Valley Strategy, Regional Water Planning Commission Minutes, a written Current Status of the Project, and various invoices for legal fees, consultant and professional fees, accountant fees and secretary of state fees. I have considered the evidence you submitted concerning the extension request and a discussion of my opinion concerning the evidence submitted as it relates to the extension request follows below.

1. Discussion of Amendment to the Regional Water Management Plan and Current Status of the Project

The Amendment to the Regional Water Management Plan to Include the North Valley Strategy (1995-2015), which was adopted March 31, 1997, identified four water supply alternatives, one of which included the Warm Springs Importation Project ("Project"). Although the Project was briefly described, the Plan Amendment makes clear that the County sought to pursue multiple projects simultaneously in order to maximize flexibility, to provide greater competitive position among negotiations with project proponents, and to secure a reliable water supply system beyond 2015. Therefore, it was recommended that, among other potential projects, your Project was to be aggressively pursued and implemented as needed and merited. Specific activities of the Regional Plan to implement the strategy included entering into agreements with project proponents to resolve remaining implementation issues and set performance criteria for proving viability of the projects. If the projects met the performance criteria, completed supporting technical analysis, submitted permit applications, prepared environmental documentation, completed preliminary engineering design, then the county would initiate formal discussions with project proponents to establish potential terms of an agreement to implement each project. Based on the results of these activities the County was to implement either the Project or the Green Gulch Project, or both.

**JA2424**  
SE ROA 2339



Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 3

Subsequent to the revision of the Regional Plan, the "Current Status of the Project" does identify a number of performance criteria that were carried out, including: conformance reviews completed by the Regional Water Planning Commission, a Record of Decision issued on the EIS, Special Permit issued by the County, a Utility Environmental Protection Act (UEPA) permit issued by the Public Utility Commission, easements and rights of way were obtained and the drilling of seven wells. You also state that a final report, the archeological survey, is due later this year.

From the foregoing history it is evident that in 1997, the County contemplated the Project as a potential water source for the North Valleys, and considered future implementation of the Project subject to later-met performance criteria. As you demonstrate in your response, many activities were carried out laying the groundwork for the Project until the economic slowdown beginning in or around 2008.

## 2. Discussion of invoices

You submitted a number of invoices for attorney's fees, which your response states were incurred from meetings with Washoe County commissioners and meetings with representatives of the Washoe County District Attorney's Office to develop an appropriate agreement for Washoe County to obtain the Project.<sup>1</sup> While you state that ultimately an agreement was not reached with the County, the attorney's fees which were incurred appear to support the portions of the Regional Water Management Plan that formal discussions between the County and you would occur concerning the potential terms of an agreement to implement the Project.

As well, the consultant fees paid to Robert Williams to draft a letter of support regarding the FEIS demonstrates new efforts toward project milestones.

However, I find that the invoices for professional accounting and tax preparation services, and annual Secretary of State filing fees, do not help demonstrate the steady application of effort to perfect the application. Rather, invoices for professional accounting and tax preparation services, annual Secretary of State filing fees are indicative of revolving administrative fees incurred by Intermountain Water Supply.

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<sup>1</sup> You later clarified that the attorney's fees were incurred by Rew Goodenew, of Parsons, Behle & Lattimer.

Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 4

3. Application of Bacher.

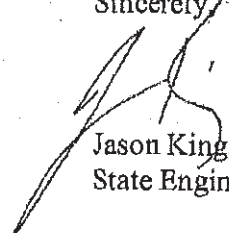
I decline at this time to apply the anti-speculation doctrine of the *Bacher* decision to deny the extensions on the basis of speculation. I would note, however, that the applications for extensions of time filed since 2011 have indicated you are seeking a buyer for the project. Inasmuch as negotiations with the County were unfruitful at the end of 2014, the inability to secure a buyer in future requests for extensions of time will not be considered good cause for extensions of time. See *Colorado River Water Conservation Dist. v. Vidler Tunnel Water Co.*, 594 P.2d 566 (Colo. 1979) (articulating anti-speculation doctrine adopted by *Bacher*, stating the right to appropriate is for use, not merely for profit).

In considering NRS 533.380(4), I find good cause for granting extensions on the Project permits. The area to be served is Lemmon Valley, which has existing developments with currently little to no recharge. It is true that economic conditions have been poor in recent years for which I have taken into consideration.

Notwithstanding that the extensions of time are being granted, please be advised that further requests for extensions on permits comprising the Project will be closely scrutinized to ensure the statutory criteria for granting extensions of time are adhered to. In that vein, for any future extensions of time filed regarding the Project, please submit evidence at the time the request for extensions are filed, which demonstrates good cause supporting future extension requests made pursuant to NRS 533.380.<sup>2</sup>

You will receive confirmation of the extension dates and new proof filing dates under separate cover. If you have any questions regarding the foregoing please do not hesitate to contact me.

Sincerely,

  
Jason King, P.E.  
State Engineer

cc: Chris Skinner, Sierra Pacific Industries

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<sup>2</sup> This also applies to Permits 66873 and 73048 referenced in your response.

**JA2426**  
SE ROA 2341

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>

June 15, 2015

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: Permit(s) 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2016, with the provision that no further extensions will be granted for the filing of Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter  
Water Resource Specialist I

CE/lr

cc: TEC Civil Engineering Consultants (email)  
Turnipseed Engineering, Ltd. (email)

**JA2427**  
SE ROA 2342



1 4185  
2 STEPHANIE KOETTING  
3 CCR #207  
4 75 COURT STREET  
5 RENO, NEVADA  
6

7 IN THE SECOND JUDICIAL DISTRICT COURT  
8 IN AND FOR THE COUNTY OF WASHOE  
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 SIERRA PACIFIC	)	
12 INDUSTRIES,	)	
	)	
13 Plaintiff,	)	Case No. CV15-01257
14 vs.	)	
	)	Department 7
15 JASON KING, P.E., et al.,	)	
	)	
16 Defendants.	)	

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17  
18  
19 TRANSCRIPT OF PROCEEDINGS  
20 ORAL ARGUMENTS  
21 December 14, 2015  
22 2:00 p.m.  
23 Reno, Nevada

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR  
Computer-Aided Transcription

1 APPEARANCES:

2 For the Plaintiff:

3 McDONALD, CARANO, WILSON  
4 By: DEBBIE LEONARD, ESQ.  
100 West Liberty  
5 Reno, Nevada

6 For the Defendant:

7 OFFICE OF THE ATTORNEY GENERAL  
By: MICHELINE FAIRBANK, ESQ.  
100 N. Division  
8 Carson City, Nevada

9 PARSONS, BEHLE & LATIMER  
10 By: JOHN ZIMMERMAN, ESQ.  
50 West Liberty  
11 Reno, Nevada

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1 RENO, NEVADA, December 14, 2015, 2:00 p.m.

2

3 --oOo--

4 THE CLERK: Case number CV15-01257, Sierra Pacific  
5 Industries versus Jason King. Matter set for oral arguments.  
6 Counsel, please state your appearance.

7 MS. LEONARD: Debbie Leonard on behalf of  
8 petitioner Sierra Pacific Industries.

9 MS. FAIRBANK: Micheline Fairbank on behalf of the  
10 Nevada State Engineer and Jason King.

11 MR. ZIMMERMAN: John Zimmerman on behalf of the  
12 intervenor Intermountain Water Supply.

13 THE COURT: Anyone else want to weigh in? All  
14 right. Thank you. Ms. Leonard.

15 MS. LEONARD: Thank you, your Honor. The matter  
16 before the Court is a petition for judicial review of a State  
17 Engineer decision issued on June 4th, 2015. And that  
18 decision granted an additional extension of time to the  
19 intervenor, Intermountain Water Supply, to prove a beneficial  
20 use of 3,000 acre feet of underground water in Dry Valley.

21 The proposed use of the project is a water  
22 importation project into the Lemmon Valley area. And the  
23 record before the Court shows clearly that the use is  
24 speculative. In fact, Intermountain concedes that it's been



1 engaging in water speculation, because it has no intent to  
2 itself put the water to beneficial use.

3 When granting the extensions, the State Engineer  
4 violated Nevada's law that prohibits water speculation, and  
5 the State Engineer failed to satisfy the requisite statutory  
6 criteria. The State Engineer has no discretion to grant this  
7 extension under this situation and should have denied the  
8 extension and cancelled the permits.

9 So what I'd like to do, and I think it would be  
10 helpful to the Court, is I'd like to run through the time  
11 line of how we got to where we are now.

12 In the mid 1990s, Washoe County was a municipal  
13 water purveyor and Lemmon Valley was within Washoe County  
14 service territory. There was a water entity, water planning  
15 entity, called the Regional Water Planning Commission of  
16 Washoe County that was created pursuant NRS Chapter 540A.  
17 And the Regional Planning Commission of Washoe County  
18 developed a water planning document for the time frame 1995  
19 to 2015.

20 In 1997, the Regional Water Planning Commission of  
21 Washoe County amended its water planning document to add what  
22 it called the North Valley Strategy and recommended to  
23 aggressively pursue water importation projects, including  
24 water importation from the Dry Valley area. And also

1 directed that the counties enter into agreements with the  
2 project proponents to set performance criteria for proving  
3 the viability of the projects.

4           So Intermountain started to file water rights  
5 applications in Dry Valley around 1999. And from 2000 to  
6 2008, the State Engineer granted Intermountain various  
7 permits for a total of nearly 3,000 acre feet of water, and  
8 this 3,000 acre feet constitutes the entire available water  
9 as determined by the State Engineer from the Dry Valley  
10 hydrographic basin.

11           Importantly, the permits under Nevada law are  
12 conditional. They require the permit holder to prove up  
13 beneficial use. And that requires the construction of the  
14 diversion works and actually putting the water to the use  
15 that it was permitted for. So from 2005 to the present,  
16 Intermountain has sought and received from the State Engineer  
17 extensions of time to prove up beneficial use.

18           In the meantime, in 2007, the legislature passed a  
19 new law, and that's SB 487, and we included that in the  
20 addendum to the materials that were provided. And,  
21 importantly, this law repealed the general law found in NRS  
22 Chapter 540A for the regional water planning by a Board of  
23 County Commissioners, and the law was really focused on  
24 Washoe County. And rather than have Washoe County be engaged

1 in the water planning process, instead the legislation  
2 created the Western Regional Water Commission and created the  
3 Northern Nevada Water Planning Commission to provide  
4 technical support.

5 So the Western Regional Water Commission was  
6 tasked with creating a new water plan, which it did, and it  
7 had to do that by 2011. And the legislation, importantly,  
8 states that the former plan stays in effect until the new  
9 plan is created and approved, at which time the old plan is  
10 then superseded by the new plan.

11 So the plan amendment on which the State Engineer  
12 relied in his June 4th, 2015 decision was no longer in effect  
13 at the time that the State Engineer granted the extension.  
14 In their opposing briefs, the State Engineer contends that  
15 Sierra Pacific somehow had some obligation to inform the  
16 State Engineer with regard to what the law is. We posit that  
17 the State Engineer's obligation is to know the law and to  
18 apply it correctly.

19 So after the 2007 amendment, there was a company  
20 called Vidler Water Company that constructed its own water  
21 importation project to serve Lemmon Valley. And this  
22 information is in the record. Vidler financed its own  
23 project to the tune of somewhere near \$100 million, built all  
24 the infrastructure, got all the permits, got all the other



1 entitlements and created a source of water to import into the  
2 Lemmon Valley area.

3           So then at the end of 2014, three important things  
4 happen. First, that the Washoe County Department of Water  
5 Resources merged into the Truckee Meadows Water Authority.  
6 So that -- and I'll refer to it as TMWA -- so that TMWA was  
7 the surviving entity. In other words, as of December 31st,  
8 2014, Washoe County was no longer in the business of  
9 providing municipal water, and, therefore, would not be  
10 buying any municipal water projects.

11           The second important thing that happened at the  
12 end of 2014 was that Washoe County voted not to purchase  
13 these water rights from Intermountain. Intermountain had  
14 wanted the county to purchase the water rights as a, quote,  
15 investment, which would be further water speculation. But  
16 setting aside that issue, in the record, Intermountain said  
17 it engaged in negotiations for Washoe County to buy the,  
18 quote, project, but, in fact, those negotiations were to buy  
19 the water rights, and Intermountain conceded in its own  
20 information provided to the State Engineer that that effort  
21 failed due to, quote, political considerations.

22           And, in fact, the record before the State Engineer  
23 reflects that in volume 7, page 900 of the record on appeal  
24 that the talks with Washoe County terminated in September of

1 2014. So, in other words, Washoe County wasn't going to be a  
2 water purveyor anymore after December 31st, 2014. And after  
3 September 2014, it was clear that Washoe County wasn't going  
4 to be buying any of the water permits.

5 So the third important thing that happened at the  
6 end of December 2014 was that Intermountain had its deadline  
7 to prove up beneficial use of one of its permits, and this  
8 was permit 72700, and its other permits, their deadlines were  
9 in February of 2015.

10 But on December 18th, 2014, my client, Sierra  
11 Pacific Industries, filed an objection to the State Engineer  
12 saying you can't grant any more extensions, because it's  
13 clear that there is no longer a -- there's not going to be a  
14 project, because the water purveyor is not going to be Washoe  
15 County and that Sierra Pacific Industries -- excuse me --  
16 that Intermountain is engaging in water speculation.

17 So, thereafter, on June 4th, 2015, the State  
18 Engineer granted the extensions, notwithstanding this  
19 information regarding speculation. In support of that grant,  
20 the State Engineer relied on this 1997 North Valley Strategy  
21 document that Intermountain had provided to the State  
22 Engineer. Saying that in 1997, the county had contemplated  
23 this project as a potential water source for the North  
24 Valleys.

1 Well, there's two problems with that. One is that  
2 the 1997 document was superseded and was no longer the  
3 pertinent planning document. And the second problem was that  
4 it was the county that contemplated it, but the county was no  
5 longer a water purveyor for the area.

6 Also, in the June 4th, 2015 decision, the State  
7 Engineer acknowledged that there was no agreement made with  
8 Washoe County and that all negotiations were, quote,  
9 unfruitful. In fact, the State Engineer noted that in the  
10 materials provided by Intermountain to the State Engineer  
11 since 2011, so for the last four years, that Intermountain  
12 had been saying, we're looking for the buyer for these water  
13 rights. We're not going to finance the project on our own.  
14 We can't finance the project on our own. We have no  
15 intention to put the water to beneficial use. We just want  
16 to sell the water.

17 Notwithstanding this information, the State  
18 Engineer declined, and using his language, at this time, end  
19 quotes, to deny the applications based on the  
20 Anti-Speculation Doctrine. And the State Engineer also said  
21 in that June 4th, 2015 letter that he considered NRS 533.380,  
22 subsection four, and found that there was good cause for the  
23 extensions.

24 THE COURT: He did wag his finger towards the end

1 of the letter saying that any further extensions will be  
2 closely scrutinized.

3 MS. LEONARD: Well, be that --

4 THE COURT: When does the extension expire?

5 MS. LEONARD: On that permit, the extension would  
6 expire on December 18th.

7 THE COURT: This week?

8 MS. LEONARD: This week. And then the others  
9 would expire in February. But the way, and I'm sure the  
10 State Engineer can speak better to this, they would accept a  
11 permit, an application for an extension and take months as it  
12 did in this case to decide it. I mean, these extensions were  
13 due -- the ones that are at issue here were due in December  
14 of 2014, and the State Engineer didn't issue a decision until  
15 June of 2015. And I would also note that this is something  
16 that is capable of repetition and evading review.

17 So I don't think that this is something that the  
18 Court should just say, oh, I'm not going to decide the issue,  
19 because then my client will be in this endless quagmire of,  
20 you know, the State Engineer delaying any potential  
21 decisions.

22 With that time frame in mind, I'd like to just  
23 turn to the legal arguments. And I think the first thing I  
24 should start with is the standard of review, because the

1 State Engineer contends that de novo review of the legal  
2 issues is not appropriate here, and I submit that is simply  
3 not true. There are a number of legal errors that are raised  
4 here. One, the State Engineer failed to correctly apply NRS  
5 533.380.

6 THE COURT: For novation of transfers?

7 MS. LEONARD: No. This is 380, so this would be  
8 for an extension request.

9 THE COURT: I see.

10 MS. LEONARD: There are certain criteria in there,  
11 which I will discuss in a minute. The second legal error is  
12 that the State Engineer failed to account for the passage of  
13 SB 487, which rendered ineffective the 1997 amendment to the  
14 regional plan on which the State Engineer relied.

15 And also that the State Engineer failed to apply  
16 Nevada's prohibition against water speculation. Those are  
17 all legal issues that are subject to de novo review by this  
18 Court.

19 With regard to the matters that would be subject  
20 to an abuse of discretion or arbitrary and capricious review,  
21 the issue would be that there would be no substantial  
22 evidence to support the decision. I will submit and I will  
23 discuss in a moment that there's not substantial evidence of  
24 good cause, there's not substantial evidence of good faith



1 and reasonable diligence, and there's not substantial  
2 evidence to support any of the NRS 533.380 factors.

3           So let me turn to that issue and start with the  
4 statute itself, because the statute dictates the minimum  
5 requirements that the State Engineer has to follow.

6           The State Engineer needs to find substantial  
7 evidence that the proponent is acting in good faith with  
8 reasonable diligence to, quote, perfect the application,  
9 meaning to put the water to beneficial use, must show good  
10 cause for failing to put the water to beneficial use, and  
11 where in this case there's an interbasin transfer, there are  
12 a number of other criteria that the statute requires the  
13 State Engineer to look at. The number of parcels or  
14 residential units to be served, any economic conditions that  
15 prevented the water from being put to beneficial use, any  
16 development delays caused by unanticipated natural  
17 conditions, and the period of time that is contemplated in  
18 the regional plan for a development that is set to be served  
19 by the water.

20           Well, the June 4th, 2015 decision is quite clear  
21 that the State Engineer didn't do the required analysis. He  
22 only made a conclusory statement that he considered the  
23 factors, but there's nothing in the record to show that he  
24 considered them. And a conclusory statement that he

1 considered them does not substitute for actual evidence.

2           Now, why did he not show that he did the analysis?  
3 Because he couldn't have possibly have looked at these  
4 factors, because there is no development that is going to be  
5 served by this project. The Lemmon Valley area is already  
6 being served with municipal water. The Vidler Water project  
7 is in place, and there's information in the record with  
8 regard to that, and it's already serving the area.

9           The applications that, or excuse me, the extension  
10 requests have never identified the area that they are going  
11 to be serving, never identified a single parcel, a single  
12 commercial unit, a single residential unit, any particular  
13 development, because Intermountain doesn't own any of those  
14 things. So as a matter of law, the statutory criteria are  
15 not satisfied.

16           Also, the record is clear that Intermountain does  
17 not itself plan to put the water to beneficial use and seeks  
18 only to sell the water. As a matter of law, speculation in  
19 water cannot be considered good faith. As a matter of law,  
20 speculation does not constitute reasonable diligence to  
21 perfect the application.

22           So in response to our opening brief, Intermountain  
23 indicated that it's expended certain sums of money in the  
24 past in advancement of this project. But those sums in the

1 past are now irrelevant where there is no project, there is  
2 no municipal water purveyor that is going to use this  
3 project. And it's clear from the record that the project  
4 proponent has no intention to itself develop the project and  
5 put the water to beneficial use. So that cannot be good  
6 cause and it is also not reasonable diligence.

7 Intermountain relied on these amounts to suggest  
8 that the changing economic conditions or any economic  
9 conditions that might have existed in the Washoe County area  
10 since 2008 are something that the State Engineer should  
11 consider.

12 But looking at the information that was provided  
13 by Intermountain and relied on by the State Engineer, the  
14 economic conditions are only affecting whether Intermountain  
15 is able to sell the water on speculation. It's not that  
16 there's a certain development that didn't get built because  
17 of the economic conditions. It's that there's nobody who  
18 wants to buy the water rights. That is not an economic  
19 condition that can support an extension.

20 Also, as I mentioned, the 1997 planning document  
21 on which the State Engineer relied was obsolete and was  
22 superseded. So none of these elements, none of the factors  
23 in NRS 533.380 are satisfied and there's simply not  
24 substantial evidence to support them.

1           Now, I want to turn and talk a little bit about  
2 the Anti-Speculation Doctrine, because in their answering  
3 briefs, the State Engineer and Intermountain suggests that  
4 the Anti-Speculation Doctrine does not apply to extensions,  
5 it only applies to new applications. And that argument turns  
6 Nevada water law entirely on its head.

7           It is clear in Nevada water law that there is a  
8 requirement in order to perfect water rights, that an  
9 applicant or a permit holder must put the water to beneficial  
10 use. Beneficial use requires that there not be any water  
11 speculation, because if you're speculating on water, you  
12 can't put the water to beneficial use, which is precisely  
13 what's occurring here.

14           There's nowhere for them to put the water to  
15 beneficial use, because they're not trying to build a  
16 project. They're trying to sell water rights, and that is  
17 speculation, and it makes no sense that the State Engineer  
18 can grant an application and once the project -- and once the  
19 permit holder is holding a permit is then able to speculate  
20 on water. I mean, that just defies Nevada water law.

21           And this is shown in numerous places that we've  
22 cited in the record, but particularly the State Engineer  
23 himself, first of all, in the June 4th, 2015 decision,  
24 acknowledged that the Anti-Speculation Doctrine applies to

1 extension requests. Because he cites to the case of Bacher,  
2 B-a-c-h-e-r, and said, I'm just not going to apply that right  
3 now at this time. But he clearly indicates that he knows the  
4 Anti-Speculation Doctrine should be applied when somebody is  
5 seeking an extension request.

6 Also, the State Engineer's own decisions, and  
7 we've provided these in the addendum as well, particularly  
8 ruling 6063, says that in the Bacher opinion, the Court  
9 addressed absolute fundamentals of Nevada water law, such as  
10 the right to use water for a beneficial use depends on a  
11 party actually using the water.

12 Again, the State Engineer himself acknowledges  
13 that is a fundamental of Nevada water law, that the person  
14 who is holding the permit has to be able to put the water to  
15 beneficial use themselves, and that is simply not the case  
16 here.

17 Now, Bacher went on and said that the person can  
18 have a contractual relationship with the water entity, but  
19 that also doesn't exist here. Intermountain acknowledged in  
20 the very materials provided to the State Engineer that the  
21 negotiations with Washoe County fell flat at the end of 2014,  
22 and Washoe County is not even in the business of providing  
23 municipal water anymore. So they can never show that they  
24 have a contract with a municipal water provider, they haven't



1 shown it here, and they can't contend that once they hold the  
2 permits that they can speculate on water.

3 And I pointed out in the reply, and I've cited to  
4 the legislative history of NRS 533.380. Now, that is the  
5 specific statutory reference that contains the criteria that  
6 the State Engineer has to consider for extension requests.

7 The legislative history of that provision is quite  
8 clear in case it's not clear from the face of the statute  
9 that the requirement of good faith and reasonable diligence  
10 is designed to prevent speculation in water. So that the  
11 State Engineer and Intermountain now suggest that  
12 Intermountain can speculate in water, because it holds  
13 permits, just defies Nevada water law. They have to prove a  
14 beneficial use. That prevents speculation.

15 And I would note that the State Engineer was  
16 present at the legislative hearings on that statute and  
17 acknowledged the applicability of the Anti-Speculation  
18 Doctrine, again, in that June 4th, 2014 decision. So he had  
19 no discretion in deciding to apply the Anti-Speculation  
20 Doctrine at this time. He has to apply it, because it's  
21 Nevada law, and he's obliged to apply Nevada law.

22 I want to turn for a second and talk about our  
23 request for judicial notice. As I've indicated in my remarks  
24 today, and also in our reply, the Court doesn't need any of

1 those documents to reach the result that the State Engineer's  
2 decision, June 4th, 2014 decision was clear error.

3 THE COURT: Good.

4 MS. LEONARD: There was legal error and there was  
5 an absence of substantial evidence.

6 THE COURT: Correct.

7 MS. LEONARD: But they underscore exactly the  
8 problem here, that the State Engineer can't ignore the  
9 existing law, cannot choose to reply on irrelevant documents.  
10 They merely point out, here is what the relevant documents  
11 say, but they're not necessary. But they're certainly -- the  
12 Court can take judicial notice of them and I submit that --

13 THE COURT: Do you believe that the -- of those  
14 documents that you wish us to take judicial notice of, the  
15 regional water plan of 2010 to 2030 is one of those?

16 MS. LEONARD: It is, and it is in the process of  
17 actually being updated now as well. But it's simply -- those  
18 documents simply support the fact that the 1997 document on  
19 which the State Engineer relied is not accurate.

20 THE COURT: Okay.

21 MS. LEONARD: It's not the proper document. And  
22 the new documents show that, hey, look, the new water  
23 purveyor might be willing to talk about or look into  
24 importation projects, but it's not going to be responsible

1 for financing them. It's up to a project proponent who wants  
2 it to finance the infrastructure, get it built, and then the  
3 water purveyor will decide whether it wants to accept that  
4 water. But Intermountain has not indicated that it has  
5 engaged in any negotiations with the Truckee Meadows Water  
6 Authority, or that it has a contract in place with the  
7 existing water supplier.

8 Just summing up, basically, what happened here is  
9 Intermountain wagered on Washoe County buying this project.  
10 They decided they would expend money to try to get a water  
11 project built thinking they were going to profit off of the  
12 sale of the water rights. Now, when Washoe County stopped  
13 being a water purveyor on December 31st, 2014, that  
14 possibility completely dried up and that was long before the  
15 June 4th, 2015 decision.

16 After that, Intermountain tried to use its  
17 political influence to get Washoe County to buy water rights  
18 as an investment, and Washoe County voted to reject that  
19 proposal, again, at the end of 2014. So this is a failed  
20 project.

21 Now, that might be hard that somebody has invested  
22 money in an attempt to profit off of their investment, but  
23 that is not a reason why the State Engineer can grant an  
24 extension. In fact, that is absolutely the antithesis of

1 what the State Engineer should be looking at. The State  
2 Engineer should be looking at whether the permit holder can  
3 put the water to beneficial use.

4 And in this case, we have a record that is clear,  
5 and we have concessions from the project proponent that  
6 there's no intention of the project proponent to put the  
7 water to beneficial use. There's only an intention to sell  
8 the water rights. The State Engineer acknowledges that, and,  
9 therefore, had no discretion to grant these extensions,  
10 because of the water speculation that is going on here.

11 So as a result, we believe that the Court must  
12 order that these extensions be denied and the permits be  
13 cancelled as a matter of law. And I would reserve some time  
14 to respond to their remarks.

15 THE COURT: I'll give you all the time you need.

16 MS. LEONARD: Thank you.

17 THE COURT: Thank you, Ms. Leonard.

18 All right. Counsel, Ms. Fairbank.

19 MS. FAIRBANK: Thank you, your Honor. There's two  
20 major issues in this particular case, and those two issues  
21 is, first off, whether or not the Nevada State Engineer  
22 appropriately reviewed the applications for extension of time  
23 on behalf of Intermountain under NRS 533.380, and whether or  
24 not Nevada's Anti-Speculation Doctrine applies to

1 Intermountain's 2015 applications for extension of time.

2           The State Engineer's position is that he  
3 appropriately reviewed the applications as required under  
4 533.380. As my esteemed colleague has pointed out, the  
5 history of the project is absolutely significant and  
6 important and imperative in evaluating the State Engineer's  
7 analysis under the statute.

8           NRS 533.380, subsection four, specifically  
9 requires the State Engineer to consider, it doesn't expressly  
10 state the manner of consideration, the method of  
11 consideration, but that the State Engineer consider whether  
12 or not good cause exists for not placing the water to a  
13 beneficial use. The number of parcels or units for the land  
14 being developed or served, those economic conditions which  
15 affect the ability to complete placing the water to its  
16 intended beneficial use or constructing the necessary  
17 improvements, delays in the development caused by  
18 unanticipated natural conditions, and the period contemplated  
19 for development project approval or record of development.

20           A couple of things I think are very substantial  
21 and significant to point out. The statute doesn't require  
22 that under NRS 533.380, the statute doesn't require skipping  
23 past all of the processes and procedures necessary to get to  
24 placing water to beneficial use.



1           And I think that's one of the considerations  
2 that's important for the Court to consider in that my  
3 colleague has kind of glanced over. And that is, certainly,  
4 placing water to a beneficial use, that's the end goal. But  
5 in a large scale development, such as the Intermountain,  
6 their project, and the development of the Dry Valley water,  
7 this is not a residential well, this is not a municipal well  
8 that is going to service a specific location.

9           THE COURT: What is it going to service?

10          MS. FAIRBANK: The intent of the project was a  
11 larger development, and certainly I will allow my colleague  
12 on behalf of Intermountain to talk about the details and the  
13 nuances of that project.

14          THE COURT: All right.

15          MS. FAIRBANK: But the State Engineer looks at  
16 various different projects, and so the considerations on  
17 these large scale projects, sometimes these are incremental  
18 movements on a forward basis. It's not getting to beneficial  
19 use. It's making the construction of improvements, which is  
20 set forth under NRS 533.380. It specifically identifies  
21 construction of works, and that's one of those  
22 considerations.

23               And so I think it's important for that to be  
24 acknowledged and recognized that in this particular case,

1 part of what's contained in the record, part of what the  
2 State Engineer reviewed when evaluating each and every one of  
3 the numerous permit application files were those different  
4 components. So the State Engineer did consider each and  
5 every one of those factors.

6 And the State Engineer in its June 2015 letter  
7 articulated its analysis of these factors. The State  
8 Engineer considered Intermountain's permit application files,  
9 which talked about the development that they were going to be  
10 serving. The State Engineer considered the prior  
11 applications for extension of time. The State Engineer also  
12 considered the 2015 applications for extension of time, as  
13 well as Intermountain's response to the State Engineer's  
14 February of 2015 request for additional information that was  
15 largely in response to Sierra Pacific Industries' objection.

16 So when you're looking at this particular  
17 projects, you can't have a myopic view of looking at the  
18 endgame. You have to look at what takes to get to that  
19 endgame. And the reality is sometimes projects change.  
20 That's why in the statutory scheme under NRS 553, there's a  
21 provision for a change for place of use. A permit holder can  
22 apply to the State Engineer to have the place of use of their  
23 water changed. Certainly, it has to go through a review  
24 process and there's no promises or guarantees, but the

1 legislature has made that an option.

2           Moreover, the legislature has also made an option  
3 of changing the manner of use. Those are options that are  
4 available that the State Engineer can't -- doesn't have a  
5 crystal ball to see what's going to happen in the future.  
6 They have to look at the facts and information available to  
7 them and look at the good faith and diligent efforts a party,  
8 an applicant is making towards trying to develop their  
9 project. And they can't ignore years of time and investment,  
10 because that would be improper, when they have a statutory  
11 duty to look at the whole, big picture.

12           So I want to go ahead and talk about really what  
13 is this Court's scope of review? This Court, this review  
14 under NRS 533.450 is formal and summary. The review is  
15 limited to whether substantial evidence supports the State  
16 Engineer's decision. The State Engineer, as will be  
17 demonstrated, did follow the plain language of NRS 533.380.

18           The State Engineer has stated that based upon its  
19 review of the 2015 applications, the Anti-Speculation  
20 Doctrine does not apply, and I'll get to that in a little  
21 bit. But it's important to have the perspective that this  
22 really isn't a de novo. This isn't an opportunity for the  
23 Court to dig in and take new evidence.

24           The State Engineer applied the statute based upon

1 its face, and if the Court finds that there was insufficient  
2 evidence in the record to support the State Engineer's  
3 ruling, it goes back to the State Engineer for further  
4 consideration, or this Court can find that the State Engineer  
5 had sufficient evidence to support its ruling and affirm the  
6 State Engineer's decision.

7           The substantial evidence standard is evidence  
8 which a reasonable mind might accept as adequate to support a  
9 conclusion. And in Bacher versus State Engineer, which we're  
10 talking about the anti-speculation end, but it also provides  
11 a good analysis on the scope of review. The Supreme Court  
12 said this Court, like the District Court, may not substitute  
13 its judgment for the State Engineer's judgment.

14           The Court must grant substantial deference to the  
15 factual and legal conclusions that were made by the State  
16 Engineer. So the Court cannot and should not and must not  
17 consider extrinsic evidence, which was not considered by the  
18 State Engineer in rendering its decision.

19           My esteemed colleague tries to go ahead and argue  
20 that the State Engineer should be monitoring and keeping  
21 track of every single variable of changes to water plans  
22 throughout the State. But those are constantly under  
23 revision and review. That's not what the legislature has  
24 dictated that the State Engineer do, and it also would be

1 inappropriate to impose upon the State Engineer a duty to  
2 have forecast and chase after continually changing planning  
3 documents in every jurisdiction within the State.

4           Basically, to look at all the extrinsic evidence  
5 would result in substituting this Court's judgment for the  
6 judgment of the State Engineer, which contradicts the Nevada  
7 Supreme Court's findings in State Engineer versus Curtis Park  
8 Manor Water Users' Association. In that case, the Court  
9 stated in reviewing the order for an abuse of discretion, our  
10 function is to review the evidence upon which the engineer  
11 based his decision and ascertain whether that evidence  
12 supports the order. If so, this Court is bound to sustain  
13 the State Engineer's decision.

14           THE COURT: What evidence supports the State  
15 Engineer's decision in this case to grant the extension?

16           MS. FAIRBANK: Absolutely. There's the evidence  
17 of the different proof of works of completion of works that  
18 have been done on some of the permits that have been  
19 provided. There's the different financial investments that  
20 the permittee has done in terms of moving this project  
21 forward.

22           THE COURT: Are you talking about attorney's fees?

23           MS. FAIRBANK: The State Engineer explicitly said  
24 not attorney fees.



1 THE COURT: All right.

2 MS. FAIRBANK: You have to look at moving the  
3 project forward incrementally.

4 THE COURT: What else?

5 MS. FAIRBANK: Let's see, the State Engineer  
6 reviewed the different statements that were provided on  
7 behalf -- by the permittees with regards to the construction  
8 of works, the different efforts that they're making to place  
9 their water to beneficial use. And there's probably a  
10 mischaracterization, because there's no prohibition of a  
11 water permit, water rights holder from selling their water.  
12 If I own --

13 THE COURT: I'll give you that.

14 MS. FAIRBANK: -- several things of water, I'm  
15 allowed to sell my water. That's not speculation. And so  
16 that is one of the factors that the State Engineer is looking  
17 at is efforts, representations that the permit holder is  
18 trying to sell his water.

19 You know, we're talking about semantics of selling  
20 water versus selling permits, or selling the water rights,  
21 and those are the different things that will have to go into  
22 evaluation as time goes on, and those are the things that the  
23 State Engineer does look at. And we'll get to with respect  
24 to the analysis under the Anti-Speculation Doctrine. But

1 simply to sell one's water, which is permitted under the law,  
2 and to change the manner of use or change the place of use,  
3 which are all options are part of the analysis and the  
4 consideration.

5 THE COURT: At what point does is a State Engineer  
6 justified in saying, enough. I mean, it's been years in  
7 developing this project and nothing seems to have come to it.  
8 And we've come to the last -- well, perhaps not the last, but  
9 at least the latest roadblock in which Washoe County  
10 essentially says -- closes the door and says, we don't want  
11 any.

12 MS. FAIRBANK: That's why every single time the  
13 State Engineer has to engage in this review and this  
14 analysis, and to say what that bright line is that crosses  
15 over is really a case-by-case analysis.

16 THE COURT: I'll agree. Give it to me in this  
17 case.

18 MS. FAIRBANK: In this case, it depends on what  
19 has been done over the past year.

20 THE COURT: Or years.

21 MS. FAIRBANK: If there's been nothing done,  
22 because everything, like I said, the State Engineer looks at  
23 this on an incremental basis. And the State Engineer  
24 recognizes that they have a duty to look at those

1 particulars, the project that's before them. And, you know,  
2 there's kind of this innuendo in this particular case that  
3 the State Engineer should be considering, you know, the other  
4 permit, you know, applications out there.

5 THE COURT: I didn't read that in the petition.  
6 What I read in the petition is that enough is enough.

7 MS. FAIRBANK: Well, there's that, but there's  
8 also innuendo that there's other applications waiting in  
9 line.

10 THE COURT: I won't consider that.

11 MS. FAIRBANK: And the State Engineer can't  
12 consider that. That would be inappropriate. The State  
13 Engineer has to look at what information has been provided.  
14 Has there been measurable and reasonable steps made towards  
15 advancing this project forward? Have there been additional  
16 construction improvements? Have there been additional  
17 efforts to put the water to beneficial use, to find, if it's  
18 not going to be this particular project, it doesn't preclude  
19 the opportunity to put that water, to find somebody else who  
20 is going to purchase your water.

21 THE COURT: Okay.

22 MS. FAIRBANK: That's significant, and the State  
23 Engineer is not in a position right now to define what that  
24 bright line is going to be, because there's a -- you know, a

1 vast number of factors that are going to weigh into that  
2 analysis.

3 THE COURT: All right.

4 MS. FAIRBANK: So what we have here is really just  
5 a case where we're looking at the State Engineer's analysis  
6 of the totality of all of that record, of all the  
7 documentation, decades of information.

8 And so, specifically, the State  
9 Engineer's June 4th, 2015 letter, which he granted the  
10 extensions of time, did address the relevant factors under  
11 NRS 533.380. Now, there were no natural disasters or natural  
12 events that, you know, forestalled the development of the  
13 project. But the State Engineer identified each of the  
14 requirements. He set forth the requirements of NRS 533.380  
15 in his June 4th letter on page one and two, which is the  
16 record on appeal, eight and nine.

17 The State Engineer then specifically identified  
18 those documents that were provided by Intermountain, which  
19 were also evaluated in addition to the permit files that  
20 contain a variety of other information.

21 Then the State Engineer proceeded to walk through  
22 his analysis of those requirements under NRS 533.380,  
23 subsection four, with respect to Intermountain's  
24 applications.

1           Ultimately, the State Engineer found that  
2 Intermountain demonstrated that there was good cause to  
3 support the application, to granting the applications for  
4 extension of time. And the good cause, as this Court knows,  
5 is, you know, is a reasonable standard. It's a fairly, you  
6 know, loose standard in terms of what the party has to  
7 demonstrate.

8           So the State Engineer evaluated, you know, the  
9 history, you know, that Intermountain invested a lot of time  
10 pursuing the Washoe County project, specifically because  
11 Washoe County directed Intermountain to actively pursue the  
12 development of that project. So that's the consideration.

13           And then down the road, the fact that Washoe  
14 County decided to pull the table cloth from underneath it,  
15 that's part of the consideration was Intermountain intended  
16 and directly started to try to pursue that project and then  
17 things changed years down the road.

18           The State Engineer considered the incremental  
19 works being made and constructed while pursuing the  
20 development of the project, including those works that were  
21 performed during the economic downturn.

22           So the State Engineer walked through those  
23 different factors in looking at what was required under NRS  
24 533.380, subsection four. And that was what supported the

1 State Engineer's decision to find that there was good cause.

2 Now, talking about the Anti-Speculation Doctrine.  
3 Again, we're talking about it's a very fact specific type of  
4 analysis. And the State Engineer engaged in that fact  
5 specific analysis in 2015 based upon the 2015 applications,  
6 not the 2016, or '17, or '18 applications for extension of  
7 time, should there be them, but on the 2015 applications for  
8 extension of time.

9 And the State Engineer found that Intermountain  
10 had made appropriate incremental steps towards making the  
11 construction of the improvements and working towards trying  
12 to achieve that ultimate goal of placing the water to a  
13 beneficial use.

14 And so the State Engineer found that those  
15 incremental steps were good cause and were not in violation  
16 of Anti-Speculation Doctrine. The State Engineer is not  
17 saying that the Anti-Speculation Doctrine can never be  
18 considered under NRS 533.380. The State Engineer's position  
19 is that the Anti-Speculation Doctrine does not apply to the  
20 2015 applications, because the applications for extension of  
21 time are not in violation of the Anti-Speculation Doctrine.

22 So the State Engineer in looking at that did  
23 consider the fact that the negotiations with Washoe County  
24 were unfruitful at the end of 2014, but the timing and the

1 sequence of that, you know, was part of that consideration as  
2 to whether or not it was speculation or whether or not  
3 continued efforts to try to improve and put the water to its  
4 beneficial use, construct the works and achieve that ultimate  
5 goal.

6 In looking retrospectively, the State Engineer  
7 looked at the statutory obligation that the permittees,  
8 Intermountain, has to place its water to beneficial use.  
9 That's an overriding statutory obligation to accomplish that  
10 end goal, and that's always part of the consideration. So  
11 the State Engineer is very cognitive and was very cognitive  
12 in its June 4th, 2015 letter, because it specifically  
13 addressed it.

14 And as you already pointed out, your Honor, the  
15 State Engineer did kind of rattle the saber, saying, hey,  
16 look, we're getting to the point where something has got to  
17 move one way or the other. So the State Engineer is  
18 cognitive, but as to the applications in 2015, they hadn't --  
19 they hadn't demonstrated speculation. They demonstrated  
20 continuing efforts to put water to a beneficial use when you  
21 had a project that had been worked on and been a focus point  
22 for a period of time was truly never going to come to  
23 fruition based on the facts and circumstances present.

24 And one other thing I'd just like to kind of



1 briefly address, you know, the question of mootness has come  
2 up with respect to this. We have an application that, you  
3 know, is coming due very soon and we have other applications  
4 becoming due very quickly.

5           Now, there's certainly an issue to raise that with  
6 respect to the mootness argument. And I know, you know, my  
7 colleague stated, well, but this is an exception, it's  
8 capable of repetition of aiding review. But I think it's  
9 important to remember what the standard is. It sounds good  
10 as a lawyer to say that, but when we really look at what that  
11 standard means, and the Supreme Court in Personhood versus  
12 Bristol kind of laid it out and stated that the matter must  
13 be a matter of widespread statewide importance. I don't  
14 think this matter quite fits that. And in Personhood, it was  
15 a very fact specific analysis under the statute. This is not  
16 a matter of widespread statewide importance.

17           With regards to the 2016 applications, Sierra  
18 Pacific has already filed their objections. Again, this is  
19 going to kind of happen all over again, and here we are  
20 again. It is not capable of evading review. I think there's  
21 certainly some good value that they've already done that and  
22 that's kind of what the fact pattern was with Personhood.  
23 They said, look, we're going to do it again next time. The  
24 Nevada Supreme Court said, well, it's not really appropriate

1 for us, because then we would be engaging in providing an  
2 advisory opinion, which is prohibited under the Nevada  
3 Constitution.

4           Ultimately, at the end of the day, for this case  
5 not to be moot, this Court's order, this Court's judgment has  
6 to result in an actionable judgment. That's what makes a  
7 case have ripeness and just -- and we have to have the  
8 jurisdiction. I'm not sure that's here today. Under that  
9 basis, I think the State Engineer met its requirements under  
10 533.380, and I think the State Engineer's decision not to  
11 grant the applications should be affirmed.

12           THE COURT: Thank you, Ms. Fairbank.  
13 Mr. Zimmerman.

14           MR. ZIMMERMAN: Thank you, your Honor. Your  
15 Honor, this case has nothing to do with speculation. This  
16 case has to do with the appellate's need for water, because  
17 they're in a basin, and it's fully appropriated, and their  
18 only chance is to destroy the existing water rights of the  
19 owner in that basin. They're targeting Intermountain,  
20 because Intermountain controls most of the water that's in  
21 that basin.

22           But because they can no longer appeal the State  
23 Engineer's decision to grant them water rights, the only  
24 route is to attack the extensions of time that my client has

1 submitted and been approved.

2 THE COURT: What has your client done in terms of  
3 developing this project?

4 MR. ZIMMERMAN: Since my client obtained the  
5 permit, the water rights permit in 2002, 2006, 2008, he's  
6 worked with the BLM and gone through a NEPA process to get it  
7 to pipeline from Dry Valley. It's also important to note  
8 that Dry Valley is part of the project. There are other  
9 water rights from Newcomb Lake to Ridell Flat. There's small  
10 valleys.

11 The project links up all the water from the basins  
12 and collects them. So you have to have rights of way for the  
13 well locations. You have to have rights of way for the  
14 pipeline. You have also have to have rights of way for the  
15 electricity power line to bring power to those areas and to  
16 serve them.

17 And under the National Environment Policy Act,  
18 under NEPA, all of that requires an environmental impact  
19 statement. It's a federal obligation. Quite a bit of the  
20 land is on federal land administered by the BLM. There's  
21 also an environmental assessment that was done for some of  
22 the power lines and some of the rights of way to bring the  
23 infrastructure to develop the entire project. My clients  
24 also worked with Washoe County to get a special use for the

1 same purpose for the well locations in Washoe County.

2 He's obtained the State Engineer permits. That's  
3 not a small task. We talk about water right permits without  
4 taking into consideration that that comes at great expense.  
5 Not only do you have to get the hydro-geological experts to  
6 weigh in and to do test drilling, to model what will happen  
7 when a certain well is pumped, to determine if there will be  
8 impacts to existing users. So there's a process there.

9 The State Engineer may hold a hearing with these  
10 applications. He held a hearing and some of those rulings  
11 were subject to appeal. So my clients have had to expend  
12 money to go through those appeals.

13 He had to file a UEPA, a Uniform Environment  
14 Public Utility Act application with the Public Utilities  
15 Commission of Nevada. And so he's gone through all of these  
16 permitting processes. He spent over two and a half million  
17 dollars to try to get every, single authorization necessary.

18 He's also got private rights of way where the  
19 pipeline crossed private land or there was some other  
20 authorization needed. So he's done all of that.

21 And the appellant wants the Court just to look at  
22 essentially what has happened in the last year. But that's  
23 not what NRS 533.380 says. It talks about the totality of  
24 the circumstances. It talks about good faith and reasonable

1 diligence. And you can't just cast aside the money spent,  
2 the time, effort, the permits that were obtained by my  
3 client, money that was spent by my client to progress this  
4 project forward. No water project is developed overnight.  
5 It takes time.

6 Water permits are usually the first permits that  
7 are obtained by a developer in this type of project, because  
8 they know that if they don't get the water rights as soon as  
9 possible, they risk others coming into the basin and  
10 appropriating all the water. And so these water right  
11 permits are very important.

12 That's why you get them first, and then you go  
13 through the other processes to develop and get the other  
14 authorizations necessary to fully develop the project.  
15 That's why it takes time. And in the Desert Irrigation case  
16 that we cited, there were 15 applications for extensions of  
17 time in that case. Here's, we're talking at most eight  
18 extensions of time that have been granted.

19 The appellant, their arguments are flawed,  
20 because, number one, in their opening brief, they focused on  
21 Bacher and the Anti-Speculation Doctrine requirements in  
22 Bacher. Those requirements apply to NRS 533.370. That's the  
23 statute that the State Engineer uses to grant water rights.  
24 It's a different standard than subsection 380, which talks

1 about extensions of time to put water to beneficial use.

2 We're not saying that the anti -- we're not saying  
3 that the State Engineer has to allow speculation after the  
4 permits are granted. Certainly he does not. But the  
5 Anti-Speculation Doctrine requirements of Bacher, the  
6 contract, the agency relationship, those apply at the  
7 application to appropriate water stage, not the extension of  
8 time stage.

9 And the appellant, they devote several pages in  
10 the brief for their need for the water, but nowhere under  
11 subsection 380 is there any statements that the State  
12 Engineer must consider the appellant and the appellant's need  
13 for the water.

14 THE COURT: I'm not going to consider that, but I  
15 am moved by their argument that there's a lack of substantial  
16 evidence of good faith development that provides the  
17 substantial evidence, which this Court must find to support  
18 the engineer's decision in this case. That's what I'm  
19 focused on. I'm not focused on Sierra Pacific properties.

20 MR. ZIMMERMAN: Thank you, your Honor. Let me  
21 just shift to --

22 THE COURT: Not that I want to cut off any of your  
23 argument. I'm sure you worked on it. I'll be glad to listen  
24 to it. It's just that I'm not going to consider it.

1           MR. ZIMMERMAN: Understood. Getting back to  
2 Intermountain's project, it's not just the water rights, it's  
3 all the other permits and authorizations. It started with  
4 Washoe County and the Regional Planning Commission saying  
5 this would be a good project, a project that Intermountain  
6 should aggressively pursue and implement.

7           THE COURT: It certainly appeared to be the right  
8 project at the right time. It certainly did.

9           MR. ZIMMERMAN: And Intermountain brought the  
10 project to the Regional Planning Commission. Intermountain  
11 started this project. They were the ones that thought of it  
12 when they thought of moving water from Dry Valley and the  
13 other valleys into Lemmon Valley. They brought it to the  
14 Regional Water Commission, and the commission said it should  
15 be aggressively pursued. That was 1997. In 2000, they  
16 reaffirmed them.

17           These water rights were granted in 2002, 2006,  
18 2008, not that long ago, and my client since that time has  
19 put in over, again, over two and a half million dollars to  
20 develop all the necessary authorizations to make the project  
21 a go.

22           The appellant cites Washoe County and the deal  
23 that fell through in 2014 as evidence the project somehow is  
24 just a failed project. But that, that actually shows the



1 project was viable, the project was worthy of consideration  
2 by Washoe County. My client had obtained enough permits and  
3 had obtained enough -- and shown enough progress that Washoe  
4 County was interested in the project. Just because they  
5 couldn't agree on the deal terms doesn't mean that all of a  
6 sudden the project fails.

7 TMWA is not the only water purveyor in Lemmon  
8 Valley. There are private developers, there are other  
9 private municipal water suppliers that could use the money.  
10 And the finding of the Regional Water Planning Commission was  
11 that the project should be aggressively pursued and that Dry  
12 Valley could be a potential source of water for the North  
13 Valleys. That hasn't been superseded or withdrawn. It  
14 hasn't been picked up in the next edition of the plans, but  
15 these plans are continually moving, they're continually  
16 changing.

17 No one has come out and said, there's nothing in  
18 the record that says that TMWA or any other private municipal  
19 water purveyor will not use Intermountain's water. We're  
20 looking at increased demand with Tesla coming. There's  
21 increased -- there's going to be increased housing. There  
22 are other projects coming on line. And we're in the middle  
23 of a severe drought. The water situation is not looking up.  
24 It's always looking at more demand and greater challenges.

1           Let me just talk a little bit about the standard  
2 of review, because the appellant really plays lip service  
3 that they want to cherry pick specific points, specific  
4 evidence in the record that they say supports their position,  
5 but that's not the substantial evidence standard.  
6 Substantial evidence, you have to look at all of the evidence  
7 in the record and decide whether it's adequate to support a  
8 decision, whether a reasonable mind would consider it  
9 adequate to support a decision. The statute says the State  
10 Engineer's decision is presumed correct and it's the  
11 appellant's burden to prove otherwise.

12           Furthermore, even with legal questions, because  
13 the State Engineer has experience with Nevada water law, and  
14 because he is the factfinder, great deference should be given  
15 to his legal interpretations.

16           Your Honor, subsection 370, which the appellant  
17 relies on, is forward looking. It's the statute that the  
18 State Engineer uses to grant water rights. At that point, he  
19 doesn't know what the applicant -- whether the applicant is  
20 really going to put the water to use. He just has to look at  
21 what the applicant provides at that time, the evidence of  
22 what they plan to do.

23           NRS 533.380, on the other hand, looks at what a  
24 permittee has done, because after you get a water right

1 permit, it's a property right, although the appellant  
2 disputes that. There's a case directly on point, Carson City  
3 versus Lumpa, that says that once you apply water to  
4 beneficial use, you divert it and apply it to beneficial use,  
5 under the common law, or you appropriate it under state law,  
6 which is what these permits are, it becomes a property right  
7 that is regarded and protected as a property right. So I  
8 think it's important to make the distinction between 370 and  
9 NRS subsection 380, because we're dealing with the property  
10 rights.

11           Again, subsection 380 is clear and unambiguous.  
12 The State Engineer must determine whether the permittee is  
13 using good faith and reasonable diligence. The statute even  
14 goes on to define reasonable diligence as the steady  
15 application of effort to use water in a reasonably expedient  
16 and efficient manner under all facts and circumstances. It  
17 goes on to state, when a project is composed of multiple  
18 features, working on one feature counts towards the finding  
19 of reasonable diligence on all features. And, furthermore,  
20 when you're talking about water rights to be permitted for a  
21 municipal use, as is the case here, the State Engineer has to  
22 consider economic factors.

23           Your Honor, we would submit that based on  
24 Intermountain's progress, based on the property rights, and

1 the permits even through the great recession, they still  
2 worked towards putting this project and developing it to  
3 putting that water to beneficial use.

4           The ultimate goal, as the State Engineer's counsel  
5 said, is putting the water to beneficial use. But the steps  
6 before that, the steps of acquiring all the permits and  
7 authorizations shouldn't be cast aside just because somebody  
8 else in the basin wants the water.

9           I believe the appellant calls my project foolhardy  
10 and a bad gambling bet. Well, that's because that's what  
11 they want it to be, because they want the water. But that  
12 really belittles everything these agencies have done, my  
13 client's work, the BLM's approval and analysis of the  
14 project, the State Engineer's review and analysis of the  
15 project.

16           Basically, the appellant wants the Court to ignore  
17 everything that my client has done in the past and just look  
18 at what the status of the project is now. But the status of  
19 the project now is it's still moving forward. My client is  
20 still trying to get all the permits necessary to develop it,  
21 seek a willing partner if one is able to put the water to  
22 beneficial use, and he's still investing time in the project.  
23 Again, Washoe County, just because they didn't purchase the  
24 entire project doesn't mean that no one else will.

1           The appellant also says Intermountain lacks the  
2 intent and financial capability of using the water. Again,  
3 that's an untimely appeal. The intent to put the water to  
4 beneficial use, financial ability those issues were decided  
5 when the State Engineer granted these permits and that issue  
6 is no longer subject to appeal.

7           As to Bacher, I think I stated previously, it  
8 applies strictly when you're talking about interbasin  
9 applications to appropriate water for interbasin transfer.  
10 It doesn't apply strictly to extensions of time. That's  
11 because the applicant has obtained the permit, it's a  
12 property right. They've now invested time and money and  
13 resources into developing that water right. Simply because  
14 you might lose a contract doesn't mean that the State  
15 Engineer should automatically yank the permits and cancel it.

16           Because these permittees have put it in that time  
17 and effort, they should be able to develop it. If they lose  
18 a contract with one person, they should be able to take in  
19 good faith and reasonable diligence to obtain another  
20 contract with someone else to put that water to beneficial  
21 use.

22           The appellant relies on the TMWA plan. It's not  
23 part of the record, but even --

24           THE COURT: No. But she -- excuse me -- but the

1 petitioner also points out that the State Engineer relied  
2 upon the 1997 plan, which had been superseded by the TMWA  
3 plan.

4 MR. ZIMMERMAN: It was a new plan, but the  
5 findings in that 1997 amendment to the North Valley Strategy,  
6 I think are still valid. The new plan did not withdraw those  
7 findings. So I think it's reasonable for the State Engineer  
8 to look at the planning document and the findings there,  
9 because that's after a thoughtful, appropriate, thorough  
10 analysis in the 1997 plan. So I don't think it should be  
11 cast out or ignored.

12 THE COURT: All right. Thank you.

13 MR. ZIMMERMAN: So just in conclusion, your Honor,  
14 the State Engineer applied the correct standard under  
15 subsection 380, good faith and reasonable diligence. He  
16 found that my client was using good faith and reasonable  
17 diligence. He was not required to apply the Bacher  
18 Anti-Speculation Doctrine strictly to my client's interbasin  
19 transfer.

20 And also if you look at substantial evidence,  
21 there's substantial evidence in the record that shows, that  
22 supports the State Engineer's decision. Again, all of the  
23 permits, the drilling of test wells, conducting pump tests,  
24 the archeological work, all of those in-depth analyses show

1 that my client is trying, taking steps to develop a municipal  
2 water project.

3 I think it's important to note that under the  
4 petitioner's argument, there would be very little water  
5 development. Because if under Bacher you lose a contract  
6 with the person you're going to provide the water to, and  
7 your permit gets yanked, there would be very little  
8 investment in that type of a water project.

9 And, essentially, the petitioner is asking the  
10 Court to forfeit a valuable property right simply because  
11 they want the right to use the water. They purchased land in  
12 2014 and applied for water rights in 2015.

13 To sum up, your Honor, the State Engineer's  
14 decision is supported by substantial evidence and it's not  
15 legally inadequate. Thank you, your Honor.

16 THE COURT: Thank you, Mr. Zimmerman.  
17 Ms. Leonard.

18 MS. LEONARD: I think it's clear from what my  
19 colleague said that Intermountain was just seeking to profit  
20 off of this project. They invested some money and they were  
21 hoping to get a big return. Well, things didn't turn out as  
22 they had hoped. And that is not a reason for the State  
23 Engineer to grant them additional time to prolong this  
24 process.



1           The critical issue here, I think, is that  
2 Intermountain has no intention to itself put the water to  
3 beneficial use. Now, Mr. Zimmerman suggests that's okay,  
4 they don't -- Intermountain does not need to show that it  
5 intends to do so, but that's clearly speculation. In this  
6 situation where we have a permit holder who said, I'm not  
7 going to do it myself, I'm going -- I want to find a buyer,  
8 someone who is willing to further bet on the success of this  
9 potential project, that is simply not allowed under Nevada  
10 law.

11           And the question that the arguments of my  
12 colleagues raises, how long does this go on for?

13           THE COURT: I don't think they're the only ones  
14 that raised that question.

15           MS. LEONARD: I mean, they seem to suggest that  
16 the State Engineer's look back can be all the way until 1999  
17 when these applications were first filed. I don't think  
18 that's what the statute says. I think the statute says,  
19 every year the State Engineer needs to look at reasonable  
20 diligence, good faith and whether there's good cause for an  
21 extension, and each of the points with regards to the  
22 existence of a development or parcel or area that is going to  
23 be served.

24           I did not hear anything said by either of them

1 when you asked them about where's your substantial evidence  
2 to even describe a project, a development or a parcel or a  
3 unit or anything that is going to be served. There was  
4 nothing said about that and that is a critical factor that  
5 the State Engineer must consider.

6 Now, the State Engineer's attorney said, oh, he  
7 considered it, trust us, he considered it. But I look at  
8 that June 4th, 2015 decision and I don't see where he  
9 addressed each of those factors and I didn't hear anything  
10 today where they described that consideration. So in the  
11 Court review, it can't just -- it can't just accept the State  
12 Engineer's representation that he considered it. He's  
13 actually got to show what he did to consider it and that was  
14 not done here.

15 Going back to the question, how long does this go  
16 on for? I submit that the statute says, the State Engineer  
17 can only look back in the previous year, and if you look at  
18 the record, and this is the material submitted by  
19 Intermountain, this was at volume seven, page 900, where  
20 Intermountain provides a cost breakdown from the previous  
21 year's expenditures. It was \$16,000 total, six of which,  
22 more or less, was legal expense negotiating with Washoe  
23 County for Washoe County to purchase the water rights.

24 So it wasn't negotiating with Washoe County for

1 Washoe County to develop a contract with the county as a  
2 municipal water purveyor, because Washoe County was no longer  
3 going to be a municipal water purveyor. It was for Washoe  
4 County to buy the water rights, which, of course, in and of  
5 itself is speculation.

6 But \$6,000 of it was for that, and the State  
7 Engineer's attorney sat up there and said, oh, no, no, we did  
8 not accept that as good faith and reasonable diligence. But  
9 if you look at the June 4th, 2015 decision, it specifically  
10 says that you submitted a number of invoices for attorney's  
11 fees, and while you state that ultimately an agreement was  
12 not reached, the attorney's fees which were incurred appear  
13 to support the portions of the Regional Water Management Plan  
14 that formal discussions between the county and you would  
15 occur, regarding the potential terms of an agreement to  
16 implement the project.

17 But that is not what those discussions were about.  
18 The discussions were about the purchase of the water rights  
19 by Washoe County from Intermountain. The project wasn't  
20 happening with Washoe County, because Washoe County was not a  
21 water utility anymore and wasn't going to be after  
22 December 31st, 2015.

23 So the State Engineer did in fact rely on these  
24 attorney's fees as support of the extension. That was \$6,000

1 of the \$16,000 spent in the previous year. Then there was  
2 \$5,000 in consulting fees to draft a letter supporting the  
3 FEIS. That is what the State Engineer considered.

4 But then the State Engineer said, oh, but I won't  
5 consider the accounting and tax preparation services, the  
6 annual Secretary of State filings. Those don't show steady  
7 application of effort. There was \$8.56 in parts, recording,  
8 maintaining meters for about a hundred dollars, about \$500,  
9 miscellaneous. I mean, the State Engineer relied, this is  
10 not substantial evidence of reasonable diligence. This is  
11 just frankly nothing. I mean, you can't just sit on water  
12 rights that use up the entire yield of -- perennial yield of  
13 a basin by pending \$6,000 on an attorney. That just doesn't  
14 seem right.

15 And, again, it raises this issue, and the State  
16 Engineer for the first time here has suggested that this --  
17 that the Sierra Pacific's petition is moot, but their  
18 arguments underscore exactly why it is not moot, why the  
19 Court must act now. Because if the State Engineer can rely  
20 on that type of evidence and say that's substantial and say  
21 it will continue to look back for the entire 16-year history  
22 of these applications to determine whether an extension is  
23 warranted, there's no remedy for Sierra Pacific. So that  
24 can't be right.

1           One final point I just want to make is that  
2 Intermountain's attorney used the word forfeiture and that is  
3 not what is going on here at all. Permits for water are  
4 conditional. They require the permit holder to prove  
5 beneficial use. Intermountain has had 16 years to do so and  
6 has failed to do so. And the statute clearly allows for the  
7 cancellation of permits and the denial of extensions when a  
8 permit holder has failed to prove beneficial use.

9           Intermountain has no intention to itself put the  
10 water to beneficial use and just hopes to find a buyer to  
11 make some money off of these water rights, but that is not  
12 something that the statute allows. So if the Court has no  
13 further questions, that's all I have.

14           THE COURT: No. I'll give everybody another round  
15 and, Ms. Leonard, I'll give you the last call.

16           MS. FAIRBANK: Your Honor, I think the real  
17 substance is the June 4th letter does speak for itself. The  
18 June 4th letter articulates where the State Engineer  
19 addressed the amendment to the regional water plan, the  
20 current status of the project, recognized that that regional  
21 water plan and the agreement with Washoe County at the end of  
22 2014 was no longer available, but that in and of itself  
23 wasn't sufficient to deny the good faith efforts to move  
24 forward.

1 I think we have, and my esteemed colleague is  
2 trying to impose upon the State Engineer and a water rights  
3 permittee a standard, a duty, a level of involvement and  
4 proof that's not set forth in the statute. The steady  
5 application, the State Engineer did not consider the \$6,000  
6 invested in attorney's fees as evidence. That wasn't  
7 considered as part of that steady application.

8 Now, the efforts, the conversations, the  
9 communications, that's different than attorney's fees. What  
10 somebody bills for their work and gets paid for their work  
11 and what they're trying to accomplish through conversations  
12 and negotiations and communications are two separate and  
13 distinct things. So the State Engineer, there was no  
14 misrepresentation that the State Engineer didn't consider the  
15 attorney's fees. The State Engineer didn't consider the  
16 \$6,000.

17 But the State Engineer did consider the fact that  
18 they were maintaining. The State Engineer did consider they  
19 were working on additional permits and applications and there  
20 has to be a retrospective analysis. Absolutely, you have to  
21 look at what was done in the past year. That's why the  
22 statute provides that you can only get a one-year extension  
23 at a time after the first five years. That's why the statute  
24 has this annualized review is to impose upon the permit



1 holder a duty to make those good faith incremental steps.

2 But the statute acknowledges that Rome wasn't  
3 built in a day and neither is a large pipeline and neither is  
4 any large scale water project, whatever it may be. So I  
5 think there has to be a recognition that you do have  
6 retrospective analysis, as well as the contemporaneous  
7 analysis as to what occurred within that last year. And so  
8 you have to look at the two, because if you just look at what  
9 occurred in the last 12 months, you do a disservice to every  
10 water project that has very small steps to get them to where  
11 they need to be.

12 And you look at that, and that's the state of  
13 affairs throughout the state, and the State Engineer cannot  
14 be bound, it would -- that would be a gross misappropriation  
15 of the law and the standards and that's not what the intent  
16 behind the statute is. The statute is quite clear on its  
17 face. We don't have to dig any deeper.

18 And so in this particular case, the State Engineer  
19 walked through the analysis. You know, we talk about the  
20 number of residents served. This is Lemmon Valley. We know  
21 the current population that was part of the original permit  
22 application, that was all information contained within the  
23 permit files. That was part of the analysis that had to be  
24 done under 533.370 in terms of issuing the new application to



1 appropriate water. So they don't have -- the State Engineer  
2 doesn't have to go back through and prove it up every single  
3 year when that's part of the record.

4 So we have really the State Engineer walking  
5 through each of these different analyses, looked at the  
6 current status of the plan, looked at the discussion of what  
7 type of work was being done over the course of the year, and  
8 asked the permittees to provide them additional information  
9 to demonstrate that.

10 And the State Engineer found that it was a good  
11 faith application of steady effort to move this project  
12 forward given the totality of the circumstances. What had  
13 occurred in the last 12 months, what had occurred over the  
14 five years, what had occurred over the last ten years. And  
15 that's what's really important is you can't have a very  
16 narrow focus, because that's not what water law is.

17 Water law is around, we have cases that have been  
18 going on for 90 years, that deal with rights. So you can't  
19 have a very singular approach. That's just not the nature of  
20 the game.

21 And so the State Engineer's position is that he  
22 did go through the statutory analysis, that he evaluated the  
23 statute correctly, he applied the particular evidence and  
24 information available to him, and it was substantial to

1 support his decision. And with that, thank you very much.

2 THE COURT: Thank you, Ms. Fairbank.

3 Mr. Zimmerman.

4 MR. ZIMMERMAN: Thank you, your Honor. Just  
5 quickly, under subsection 380, there's no restriction that  
6 you have to focus on what's happened in the last year. Yes,  
7 you have to show some progress in the last year towards  
8 developing the project, putting the water to beneficial use,  
9 but the State Engineer has to look past that. He has to look  
10 at what's been done since the permits were granted and since  
11 the proof of completion and proof of beneficial use were due.

12 In this case, your Honor, again, the earliest my  
13 clients' permits were granted, water rights were in 2002, and  
14 you also had water granted in 2006, 2008. The very first  
15 year, in every water right permit, the State Engineer  
16 includes two deadlines. One is a proof of completion to show  
17 that you've drilled the well and you've installed the  
18 pipeline. The second one is proof of beneficial use, showing  
19 that you used the water.

20 In this case, the first deadline for proof of  
21 beneficial use was 2007. The latest due date for proof of  
22 beneficial use for my client was 2013. So right in the  
23 permit terms, those were the two earliest dates my client was  
24 required to put the water to beneficial use by the State

1 Engineer. So it has not been 16 years of not putting the  
2 water to beneficial use.

3           Second, your Honor, my client knows that, and the  
4 State Engineer in his decision required my client and put my  
5 client on notice he's going to have to show some progress  
6 towards developing this project, towards reaching an  
7 agreement with someone to use the water. So my client is  
8 well aware that he has to continually develop this project,  
9 continually look for water users that will be part of the  
10 project in order to use the water.

11           And you asked how much is enough? Well, again,  
12 2007 and 2013 were not that long ago. My client has done all  
13 the work and tried to get all the permits he can, and he has  
14 practically all of them in order to put the -- to develop the  
15 project to put the water to beneficial use.

16           The petition cites the Vidler project, that  
17 project is huge. That's a hundred million dollar project,  
18 and yet it's been idle for ten years. So that shows these  
19 water projects take time. There's economic circumstances  
20 that must be considered and you shouldn't throw out all the  
21 prior work, all the prior investment, simply because in the  
22 last few years the economic conditions have not been ripe for  
23 finalizing this project towards bringing it to a completion  
24 and having the ultimate water user take the water.

1           Again, your Honor, I'll just leave you with, you  
2 have to look at the entire project, not just the water right  
3 permits. You have to look at everything my client has done  
4 to develop this project. They're all parts, they're all  
5 features of the entire project, and work on one should be  
6 considered work on others. Unless you have any questions,  
7 your Honor, I'll conclude.

8           THE COURT: I don't.

9           MR. ZIMMERMAN: Thank you.

10          THE COURT: Thank you, Mr. Zimmerman.

11          MS. LEONARD: Nothing further, your Honor.

12          THE COURT: All right. Thank you very much. I  
13 quote from Justice Hardesty in Bacher versus State Engineer,  
14 122, 1110, quote, water in Nevada belongs to the public and  
15 is a precious and increasingly scare resource. Consequently,  
16 state regulation, like that in NRS Chapters 533 and 534 is  
17 necessary to strike a balance between current and future  
18 needs of Nevada citizens and the stability of Nevada's  
19 environment.

20                 NRS Chapter 533 prescribes the general  
21 requirements that every applicant must meet to appropriate  
22 water. It's a fundamental requirement as articulated in NRS  
23 533.030, subsection one, is that water only be appropriated  
24 for beneficial use. In Nevada, beneficial use is the basis,

1 the measure and the limit of the right to the use of water,  
2 period. The right to use water for a beneficial use depends  
3 on a party actually using the water, close quote.

4 Before the Court is the petitioner's Sierra  
5 Pacific Industries' petition for judicial review of the State  
6 Engineer's letter of June 4th, 2015 granting an extension of  
7 time to Intermountain Water Supply. This extension  
8 apparently applies to permit 72700, but the response in the  
9 letter applies equally to all of the permits. Mr. Marshall,  
10 can you hear me?

11 MR. MARSHALL: Your Honor, I'm having a hard time,  
12 but that's my problem. I have the hearing aid up as much as  
13 I can.

14 THE COURT: It's not your problem, sir. I'll do  
15 my best to speak up.

16 MR. MARSHALL: You do whatever you want. Your  
17 Honor, I have a gentleman next to me who can hear much better  
18 than me.

19 THE COURT: All right. Thank you, sir. NRS  
20 533.380, subsection three, states that the State Engineer  
21 shall not grant an extension of time, unless the State  
22 Engineer determines from the proof in evidence so submitted  
23 that the applicant is proceeding in good faith and with  
24 reasonable diligence to perfect the application.

1           The statute further defines reasonable diligence  
2 thusly, under subsection six, quote, for the purposes of this  
3 section, the measure of reasonable diligence is the steady  
4 application of effort to perfect the application in a  
5 reasonably expedient and efficient manner under all of the  
6 facts and circumstances. When a project or integrated system  
7 is composed of several features, work on one feature of the  
8 project or system may be considered in finding that  
9 reasonable diligence has been shown in the development of  
10 water rights for all features of the entire project or  
11 system.

12           In his June 4th, 2015 letter, the State Engineer  
13 discusses the application for extension and the requirements  
14 that must be met for the State Engineer to grant such an  
15 extension. The letter goes on to cite not only the statute,  
16 but the evidence that was submitted by Intermountain in  
17 support of its application, which included a written  
18 response, copies of the amendment to the Washoe County  
19 Regional Water Management Plan to include the North Valley  
20 Strategy, Regional Water Planning Commission minutes, a  
21 written current status of the project, various invoices for  
22 legal fees, consultants and professional fees, accountant  
23 fees and Secretary of State fees.

24           The State Engineer says, I have considered the

1 evidence you submitted concerning the extension request, and  
2 a then discussion of his opinion concerning that evidence  
3 followed.

4           Now, of some concern, as raised by the petitioner  
5 here is the reliance of the State Engineer on the Regional  
6 Water Management Plan, which was adopted in 1997.  
7 Mr. Zimmerman, on the other hand, makes a valid point in that  
8 there are certain items relating to the North Valleys that  
9 are contained in that plan that probably are not outdated and  
10 probably are still applicable.

11           And while the Water Management Plan has been  
12 superseded by a new one from TMWA entitled Regional Water  
13 Plan 2010 to 2030, the Court finds that the State Engineer's  
14 reliance on the 1997 plan is not misplaced.

15           The standard of review limits this Court to a  
16 determination of whether the State Engineer's decision is  
17 supported by substantial evidence. And substantial evidence  
18 has been defined as that which a reasonable mind might accept  
19 as adequate to support a conclusion.

20           Of importance is the fact that this Court not  
21 substitute its decision regarding the credibility of  
22 witnesses or the weight of the evidence, but must give great  
23 deference and weight to the findings of the State Engineer,  
24 which is considered prima facie correct.

1           Nonetheless, as Sierra Pacific points out, NRS  
2 533.380 requires the State Engineer consider all the facts  
3 and circumstances, and if the State Engineer fails to  
4 consider pertinent information that was before it, this Court  
5 does have the authority to correct that error.

6           This is a close case. I think the writing is on  
7 the wall. The State Engineer has informed the applicant that  
8 further applications will be scrutinized closely. However,  
9 the State Engineer citing NRS 533.380 found good cause for  
10 granting the extension on the project permits.

11           This Court finds that decision was based on  
12 substantial evidence and was not clearly erroneous as a  
13 matter of law, and, therefore, the petition for judicial  
14 review is denied.

15           Ms. Fairbanks, please provide the order.

16           MS. FAIRBANK: Yes, your Honor.

17           THE COURT: Thank you very much, counsel.

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1 STATE OF NEVADA           )  
                                  ) ss.  
2 County of Washoe        )

3       I, STEPHANIE KOETTING, a Certified Court Reporter of the  
4 Second Judicial District Court of the State of Nevada, in and  
5 for the County of Washoe, do hereby certify;

6       That I was present in Department No. 7 of the  
7 above-entitled Court on December 14, 2015, at the hour of  
8 2:00 p.m., and took verbatim stenotype notes of the  
9 proceedings had upon the oral arguments in the matter of  
10 SIERRA PACIFIC INDUSTRIES, Plaintiff, vs. JASON KING, P.E.,  
11 et al., Defendants, Case No. CV15-01257, and thereafter, by  
12 means of computer-aided transcription, transcribed them into  
13 typewriting as herein appears;

14       That the foregoing transcript, consisting of pages 1  
15 through 63, both inclusive, contains a full, true and  
16 complete transcript of my said stenotype notes, and is a  
17 full, true and correct record of the proceedings had at said  
18 time and place.

19  
20       DATED: At Reno, Nevada, this 18th day of December 2015.

21  
22                                   S/s Stephanie Koetting  
23                                   STEPHANIE KOETTING, CCR #207  
24

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*Sierra Pacific Industries*

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

\* \* \* \* \*

SIERRA PACIFIC INDUSTRIES, a                      CASE NO.: CV16-01378  
California corporation,

Petitioner,    DEPT. NO.: 1

v.

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,

Respondents,

and

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

Intervenor-Respondent.

**PETITIONER SIERRA PACIFIC INDUSTRIES' OPENING BRIEF**

**JA2491**

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1 Petitioner Sierra Pacific Industries (“SPI”), through its attorney Debbie Leonard of  
2 McDonald Carano Wilson LLP, files this opening brief in support of its petition for judicial  
3 review. SPI seeks review of a June 1, 2016 decision by Respondent Jason King, the Nevada State  
4 Engineer (“the June 1, 2016 Decision”), which granted to Intervenor-Respondent Intermountain  
5 Water Supply (“Intermountain”) the latest extension of time to complete the diversion works and  
6 prove beneficial use of water that Intermountain proposes to divert through a 22-mile inter-basin  
7 pipeline to serve alleged municipal uses in Lemmon Valley, for which there is no proven demand.  
8 (ROA618-624). The State Engineer has been granting such extensions for over a decade.<sup>1</sup>

### 9 JURISDICTIONAL STATEMENT

10 This Court has jurisdiction under NRS 533.450. The State Engineer issued his decision  
11 on June 1, 2016, and SPI filed its Petition for Judicial Review on June 29, 2016. Under NRS  
12 533.450(1), SPI’s Petition is timely.

### 13 STATEMENT OF THE ISSUES

- 14 1. The “evidence” on which the State Engineer relied constituted unreliable hearsay statements  
15 regarding certain alleged documents that were not in the record. Should the State Engineer  
16 have denied Intermountain’s extension requests and canceled the permits because  
17 Intermountain failed to submit substantial and competent evidence to meet the statutory  
18 requirements for an extension?
- 19 2. The anti-speculation doctrine requires that a water appropriator intend to put the appropriated  
20 water to beneficial use or have a contractual or agency relationship with one who does. Did  
21 the State Engineer violate the anti-speculation doctrine and err as a matter of law where:
  - 22 a. Intermountain admits – and the State Engineer acknowledged – that Intermountain  
23 does not plan to put the permitted water to beneficial use, or have the financial  
24 means to do so, but rather is marketing the water for sale; and
  - 25 b. Intermountain has no contract or agency relationship with the Lemmon Valley  
26 municipal water purveyor to put the water to beneficial use?

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27  
28 <sup>1</sup> ROA 865, 999, 1124, 1571.

1 3. In 2015, the State Engineer informed Intermountain that “the inability to secure a buyer in  
2 future requests for extensions of time will not be considered good cause for extensions of  
3 time.” Did the State Engineer act arbitrarily and capriciously when, in 2016, he again granted  
4 extensions notwithstanding that Intermountain still had no buyer for the project?

### 5 **STATEMENT OF THE CASE**

6 Starting in 1999, Intermountain filed applications to appropriate groundwater in the Dry  
7 Valley Hydrographic Basin to export to the Lemmon Valley for municipal purposes.<sup>2</sup> Starting in  
8 2002, the State Engineer granted Intermountain permits 64977, 64978, 66400, 72700, 73428,  
9 73429, 73430 and 74327 for nearly all of the groundwater available for appropriation in the Dry  
10 Valley Basin (“the Permits”).<sup>3</sup> In the 14 years since the State Engineer started issuing the  
11 Permits, Intermountain has yet to commence construction of the pipeline and necessary  
12 infrastructure to put the permitted water to use. (ROA 612-614). Since 2005, the State Engineer  
13 has given Intermountain a series of one-year extensions to do so.<sup>4</sup>

14 In 2016, Intermountain yet again sought extensions of time to file proofs of completion  
15 and beneficial use (“the 2016 Extension Requests,” ROA 605, 634, 652, 669, 687, 705, 723, 739).  
16 SPI filed an objection because Intermountain’s unexercised Permits are obstructing SPI’s ability  
17 to expand its agricultural operations in Dry Valley. (ROA 5-12). Over SPI’s objection, on June  
18 1, 2016, the State Engineer granted Intermountain yet another extension. (ROA 636-642). SPI  
19 timely filed this petition for judicial review of the June 1, 2016 Decision.

### 20 **STATEMENT OF FACTS**

#### 21 **A. Dry Valley Hydrographic Basin**

22 Dry Valley is located in western Washoe County along the border of Lassen County,  
23 California. The State Engineer has estimated the perennial yield from Dry Valley – the amount of  
24 groundwater that may be withdrawn from the basin without causing overdraft – as approximately  
25

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26 <sup>2</sup> ROA 2, 626, 644, 662, 679, 697, 715, 733.

27 <sup>3</sup> ROA835, 981, 1102, 1699, 1984, 2099, 2200, 2303. Permits 73428, 73429 and 73430 also  
28 include Warm Springs Valley as a proposed place of use, but neither Intermountain nor the State  
Engineer contends that there is any municipal demand in that location. (ROA 609, 612, 623).

<sup>4</sup> See, e.g., ROA 625, 865, 871, 898, 903, 908, 911, 916, 921, 927, 940, 949.



1 3,000 acre feet. (ROA1690). The State Engineer has granted 3,021.60 acre feet of permits in Dry  
2 Valley, of which 2,996 acre feet are Intermountain's Permits. (ROA 2290-2291).

3 **B. The Permits Issued to Intermountain**

4 Intermountain proposes to export the permitted water from Dry Valley to supply what  
5 Intermountain has claimed to be anticipated municipal water demands in Lemmon Valley. (ROA  
6 752, 952, 1070, 2289). Since the State Engineer first started issuing the Permits in 2002,  
7 Intermountain has not commenced construction of the pipeline or necessary infrastructure to put  
8 the water to beneficial use. (ROA605-617). Intermountain also has not submitted any evidence  
9 that it has the ability to finance or obtain financing for the necessary capital expenditures to  
10 construct the well field, pipeline and treatment system. (ROA605-617). Likewise,  
11 Intermountain has not secured a contractual or agency relationship with a municipal water  
12 purveyor that would become the actual appropriator should the pipeline be constructed.  
13 (ROA605-617). In other words, Intermountain's proposed project remains conceptual in that its  
14 permits have not been, and as a practical matter, cannot be developed for their intended use.

15 The location of Intermountain's proposed pipeline is alongside an existing pipeline,  
16 known as the North Valleys Importation Project ("NVIP"), which was constructed in 2007 to  
17 supply municipal water demands in the North Valleys, including Lemmon Valley. (ROA 934-  
18 935). The NVIP sat idle for nearly a decade without municipal demand for its use, but is now  
19 part of the Truckee Meadows Water Authority's distribution system. (ROA 934). The NVIP is  
20 capable of serving anticipated municipal demands in Lemmon Valley for the foreseeable future,  
21 and TMWA would only use water from another water supply project such as Intermountain's if  
22 the owner has "the ability to assume the risk and invest the time and effort for permitting, design,  
23 construction, and financing," which Intermountain does not have. (ROA 571).

24 **C. Intermountain's Marketing Plan for the Permits**

25 Rather than itself develop the water under the Permits, Intermountain is actively seeking  
26 to market its "water project." (ROA182-190). On a website called [nevadawaterproject.com](http://nevadawaterproject.com),  
27 Intermountain is offering to sell its water and other permits for \$12,000,000. (ROA182).  
28 According to the website, "This 22 mile long, federally approved, proposed pipeline along with

1 3068.1 acre feet of water *is for sale* in northern Nevada. It's ready for implementation."  
2 (ROA182) (emphasis added). As Intermountain concedes, and the State Engineer acknowledged,  
3 Intermountain does not itself plan to finance infrastructure construction, bear the cost of operating  
4 and maintaining the municipal water system, or put the water to beneficial use.<sup>5</sup> Rather,  
5 Intermountain simply desires to sell its Permits for profit. (ROA182-190).

6 **D. Petitioner Sierra Pacific Industries' Current Ability to Put Dry Valley Groundwater**  
7 **to Beneficial Use**

8 **1. Wilburn Ranch Agricultural Operations**

9 SPI has significant ranching and farming operations, running upwards of 2,000 head of  
10 cattle across hundreds of parcels and leasing grazing rights for over 5,000 head of cattle on tens  
11 of thousands of acres. (ROA164-165). SPI's landholdings include lands located in Dry Valley  
12 and Long Valley in Lassen County, California and Washoe County, Nevada, collectively referred  
13 to as the Wilburn Ranch. (ROA165). SPI acquired the Wilburn Ranch in 2014 for agricultural  
14 production. (ROA166). Currently, 100 to 150 head of cattle graze on the Nevada parcels and 50  
15 to 100 head of cattle graze on the California parcels of Wilburn Ranch. (ROA166).

16 SPI has appropriated water in both Nevada and California for its Wilburn Ranch  
17 operations. (ROA166). In Nevada, water for livestock and some meadow irrigation is supplied  
18 by natural springs, which SPI has the right to appropriate under its permits 70423 and 70424.  
19 (ROA166). So far, no subsurface groundwater has been pumped in Nevada other than well  
20 testing, and no water has been transferred across the California/Nevada boundary. (ROA166). In  
21 California, the water is pumped from four different artesian springs and three different wells.  
22 Sprinklers and flood irrigation are used for crops. (ROA166).

23 **2. SPI's Applications 84688 and 84689**

24 On January 9, 2015, SPI submitted Applications 84688 and 84689 to the State Engineer to  
25 facilitate its proposed expansion of irrigated lands at Wilburn Ranch. (ROA147-149, 155-157).

26  
27  
28 <sup>5</sup> ROA 182, 623, 641, 948, 1043, 1047, 1055, 1059, 1743.

1 SPI has an immediate need for the water it seeks and can immediately put the water to beneficial  
2 use in its existing and proposed expanded agricultural operations. (ROA167).

3 Two protests to Applications 84688 and 84689 were filed: one by Buckhorn Land and  
4 Livestock, LLC and one by Washoe County, as holders of water rights in Dry Valley. (ROA150-  
5 154, 158-162). Both protestants argued that SPI's Applications should be denied because  
6 Intermountain's Permits encompass the entire perennial yield of Dry Valley, and according to the  
7 protests, no water remains available to appropriate. (ROA150-154, 158-162). Applications  
8 84688 and 84689 are currently pending with the State Engineer and were pending at the time that  
9 the State Engineer issued the June 1, 2016 Decision. (ROA147-149, 155-157).

10 **E. The State Engineer's June 4, 2015 Decision to Grant Additional Extensions of Time**  
11 **to Intermountain, Followed By SPI's 2015 Petition for Judicial Review**

12 In late 2014 and early 2015, as it had done throughout the previous decade, Intermountain  
13 filed applications for extensions of time to file proofs of completion of the diversion works and  
14 proofs of beneficial use (the "2015 Extension Requests").<sup>6</sup> Because Intermountain's unexercised  
15 Permits interfere with the SPI's ability to appropriate water in Dry Valley basin, SPI filed an  
16 objection to Intermountain's 2015 Extension Requests. (ROA 1756-1758).

17 On June 4, 2015, over SPI's objection, the State Engineer granted Intermountain yet  
18 another one-year extension of time. ("June 4, 2015 Decision," ROA 945-948). In the June 4,  
19 2015 Decision, the State Engineer made the express finding that "the applications for extensions  
20 of time filed since 2011 have indicated [Intermountain] is seeking a buyer for the project." (ROA  
21 948). The State Engineer warned that "the inability to secure a buyer in future requests for  
22 extensions of time *will not be considered good cause for extensions of time.*" (ROA 948)  
23 (emphasis added).

24 In the June 4, 2015 Decision, the State Engineer did not analyze NRS 533.380(4)'s  
25 statutory requirements for an extension. (ROA 945-948). Instead, the State Engineer only recited  
26 the statute and stated, "In considering NRS 533.380(4), I find good cause for granting

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27  
28 <sup>6</sup> ROA 942, 1059, 1189, 1754, 2026, 2132, 2236, 2335).

1 **extensions** on the Project permits. (ROA 948) (emphasis in the original). However, the State  
2 Engineer warned:

3 Notwithstanding that the extensions of time are being granted, please be advised  
4 that *further requests for extensions on permits comprising the Project will be*  
5 *closely scrutinized to ensure the statutory criteria for granting extensions of*  
6 *time are adhered to.* (ROA 948) (emphasis added).

7 SPI petitioned for judicial review of the June 4, 2015 Decision. (ROA 580-586). At oral  
8 argument, the district judge specifically noted: “*This is a close case. I think the writing is on the*  
9 *wall.* The State Engineer has informed the applicant that *further applications will be scrutinized*  
10 *closely.*” (ROA 2404) (emphasis added). With this in mind, the district court denied SPI’s 2015  
11 petition for judicial review. (ROA 580-586).

12 **F. The State Engineer Granted Yet Another Extension to Intermountain in 2016  
13 Without Evidence of a Contract With a Municipal Water Purveyor Who Plans to  
14 Put the Water to Beneficial Use**

15 In late 2015 and early 2016, Intermountain yet again filed applications for extensions of  
16 time. (ROA605-617). SPI filed an objection. (ROA 5-12). The sum total of the “evidence”  
17 submitted by Intermountain in support of its extension requests was an affidavit of its principal,  
18 Robert Marshall; a list of expenditures that Marshall contended were associated with the Permits;  
19 and alleged invoices for those expenditures. (ROA 587-617). In his affidavit, Marshall  
20 referenced certain “agreements” but did not submit those alleged “agreements” to the State  
21 Engineer. (ROA 614). The State Engineer did not request any substantiating documentation for  
22 the unsupported statements in Marshall’s affidavit or hold an evidentiary hearing to subject  
23 Marshall to cross examination. Intermountain provided no evidence that it had secured a buyer  
24 for the project. (ROA 587-617).

25 Nevertheless, on June 1, 2016, the State Engineer yet again granted Intermountain’s  
26 requests. (ROA618-624). In the June 1, 2016 Decision, the State Engineer expressly  
27 acknowledged that the anti-speculation doctrine applies to extension requests, but the State  
28 Engineer failed to hold Intermountain to the statutory or anti-speculation doctrine requirements.  
(ROA 622). Instead, the State Engineer granted the extensions based on Marshall’s  
unsubstantiated statement that Intermountain purportedly “has secured agreements with

1 engineering and construction firms, Utilities, Inc., and developers.” (ROA 622). Other than  
2 Marshall’s affidavit, there was no evidence in the record of such alleged agreements, and indeed,  
3 the State Engineer confirmed that they had not been submitted, stating that “**future extension**  
4 **requests** must be accompanied by copies of the agreements you indicated in Paragraphs 5, 6, and  
5 7 of your Affidavit that Intermountain has reached with engineering and construction firms,  
6 Utilities, Inc., and developers.” (ROA 624) (emphasis in the original). SPI timely filed this  
7 petition for judicial review.

## 8 SUMMARY OF THE ARGUMENT

9 The June 1, 2016 Decision epitomizes arbitrary and capricious decision making. In  
10 granting Intermountain’s extensions, the State Engineer relied exclusively on hearsay statements  
11 that lacked any indicia of reliability and failed to satisfy the necessary statutory criteria. And  
12 although the State Engineer recognized that the anti-speculation doctrine applies to extension  
13 requests, the State Engineer failed to hold Intermountain to the doctrine’s requirements. Instead,  
14 the State Engineer continues to facilitate Intermountain’s speculative conduct, allowing  
15 Intermountain to bide its time with the hope that, at some point, Intermountain might profit from  
16 the Permits. After more than a decade, enough is enough.

17 Water belongs to the public and cannot be held hostage by a water speculator such as  
18 Intermountain to the detriment of a would-be appropriator such as SPI, or others, who are  
19 currently prepared to put the Dry Valley resource to beneficial use. Because Intermountain failed  
20 to present substantial evidence that it can and will exercise the Permits, the State Engineer abused  
21 his discretion and violated Nevada law in granting the extensions to Intermountain. As a result,  
22 SPI requests that the Court grant this petition for judicial review, vacate the June 1, 2016  
23 Decision and remand to the State Engineer with instructions to cancel the Permits.

## 24 ARGUMENT

### 25 A. Standard of Review

26 NRS 533.450 makes orders and decisions of the State Engineer subject to judicial review.  
27 “With respect to questions of law, ... the State Engineer’s ruling is persuasive but not controlling,  
28 and the court must “review purely legal questions without deference to the State Engineer’s

1 ruling.” *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. Adv. Op. 48, 245 P.3d 1145,  
2 1148 (2010) (emphasis added). “Questions of statutory interpretation ... receive de novo  
3 review.” *In re Nevada State Eng’r Ruling No. 5823*, 128 Nev. Adv. Op. 22, 277 P.3d 449, 453  
4 (2012) (internal quotation omitted). The Court reviews the State Engineer’s factual findings to  
5 determine if they are supported by substantial evidence. *Revert v. Ray*, 95 Nev. 782, 786, 603  
6 P.2d 262, 264 (1979). Substantial evidence is that which “a reasonable mind might accept as  
7 adequate to support a conclusion.” *Bacher v. Office of State Eng’r*, 122 Nev. 1110, 1121, 146  
8 P.3d 793, 800 (2006). “An abuse of discretion occurs when the record does not contain  
9 substantial evidence supporting the administrative decision.” *City Plan Dev., Inc. v. Office of*  
10 *Labor Comm’r*, 121 Nev. 419, 426, 117 P.3d 182, 187 (2005). “An agency ruling without  
11 substantial evidentiary support is arbitrary or capricious and therefore unsustainable.” *State*  
12 *Indus. Ins. Sys. v. Christensen*, 106 Nev. 85, 88, 787 P.2d 408, 410 (1990).

13 **B. The State Engineer’s Decision is Not Supported by Substantial Evidence That The**  
14 **Required Factors in NRS 533.380 Were Satisfied by Intermountain**

15 To avoid cancellation of the Permits, Intermountain had to submit substantial evidence to  
16 satisfy two statutory requirements: (1) the “reasonable diligence” standard that applies to all  
17 extension requests (NRS 533.380(3); NRS 533.395(1)); and (2) the additional statutory mandates  
18 that apply to extension requests for municipal projects. *See* NRS 533.380(4). The absence of  
19 specific evidence to satisfy a statutory standard is a “**fundamental defect**” that constitutes an  
20 abuse of discretion. *Bacher*, 122 Nev. at 1122-23, 146 P.3d at 801 (emphasis added).

21 **1. There is Not Substantial Evidence That Intermountain is Proceeding in Good**  
22 **Faith and With Reasonable Diligence to Perfect its Applications**

23 The evidence submitted by Intermountain did not show a steady application of effort to  
24 construct the diversion works and put the permitted water to beneficial use within the statutorily  
25 designated time frame because, as Intermountain acknowledges, it does not intend to do so. A  
26 request for an extension of time must be accompanied by “proof and evidence of the reasonable  
27 diligence with which the applicant is pursuing the perfection of the application.” NRS  
28 533.380(3)(b); *see also* NRS 533.395(1) (requiring the State Engineer to cancel a permit where

1 the holder “is not proceeding in good faith and with reasonable diligence to perfect the  
2 appropriation”). “[T]he measure of reasonable diligence is the steady application of effort to  
3 perfect the application in a reasonably expedient and efficient manner under all the facts and  
4 circumstances.” NRS 533.380(6). The purpose of this statute is to ensure that appropriated water  
5 is put to beneficial use:

6 The preeminent public policy concern in Nevada regarding water rights is  
7 beneficial use... The legislature has recognized that water is a limited resource in  
8 Nevada and it belongs to the public; therefore, one who does not put it to a  
beneficial use should not be allowed to hold it hostage.

9 *Preferred Equities Corp. v. State Eng’r*, 119 Nev. 384, 389, 75 P.3d 380, 383 (2003). To that  
10 end, a “prospective appropriator [must] fulfill[ ] the strict conditions imposed by our statutory  
11 scheme.” *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997).

12 **a. Intermountain’s Effort to Maintain the Status Quo Does Not Constitute  
Reasonable Diligence to Perfect Its Applications**

13 Although Intermountain provided the State Engineer with a list of alleged expenses (ROA  
14 587-602), it omitted any evidence to show diligence in building the diversion works or  
15 developing the property to be served by the imported water, which was fatal for the purposes of  
16 NRS 533.380(3). The expenses claimed by Intermountain relate to the maintenance of existing  
17 test wells, fees charged by the State Engineer for applications of extension of time, costs  
18 associated with marketing pitches to sell the water on speculation and legal and other expenses  
19 related to holding and defending the unperfected permits. (ROA587-602). These alleged  
20 expenses do not show progress towards putting the water to beneficial use; rather, at most, they  
21 show an effort to maintain the status quo while Intermountain looks for a buyer. (ROA587-602).

22 Moreover, Marshall failed to explain the invoices, and they are not sufficiently descriptive  
23 to allow the State Engineer to do anything but speculate as to the work performed. (ROA 588-  
24 602). Where Intermountain frankly admits it has no intent to put the water to beneficial use,  
25 whatever the invoices may say, they support Intermountain’s marketing efforts, not perfection of  
26 the Permits. (ROA 588-602). As the State Engineer stated in the June 4, 2015 Decision, such  
27 marketing efforts are insufficient to show good cause for failing to put the water to beneficial use.  
28 (ROA 948). For these reasons, Intermountain did not satisfy the reasonable diligence standard.



1 *See Desert Irr.*, 113 Nev. at 1057, 944 P.2d at 841 (a mere statement of intent to put water to  
2 beneficial use, uncorroborated by any actual evidence, after twenty years of nonuse is insufficient  
3 to justify a sixteenth extension to file proof of beneficial use and warranted cancellation of the  
4 right); *see also Ophir Silver Min. Co. v. Carpenter*, 4 Nev. 534, 548–49 (1868) (finding lack of  
5 diligence in perfection of water rights where there was no construction of diversion works).

6 **b. The Marshall Affidavit Is Unreliable Hearsay That Fails to Meet the**  
7 **Substantial Evidence Standard**

8 After 14 years of Intermountain’s failure to construct the diversion works or prove  
9 beneficial use, it was not “reasonable” for the State Engineer to rely on speculation and hearsay to  
10 grant the extensions. The substantial evidence inquiry “presupposes the fullness and fairness of  
11 the administrative proceedings ...” *Revert*, 95 Nev. at 787, 603 P.2d at 264. In that regard, the  
12 “substantial evidence” on which the State Engineer relies must be “in the record before him.”  
13 *Eureka Cnty v. State Eng’r*, 131 Nev. Adv. Op. 84, 359 P.3d 1114, 1121 (2015) (reversing a State  
14 Engineer’s decision that was based on unsupported findings). Speculative statements do not  
15 satisfy the substantial evidence standard. *Bacher*, 122 Nev. at 1122-23, 146 P.3d at 801 n.37.

16 Here, the State Engineer relied on representations in Marshall’s affidavit, which was  
17 grossly unreliable, self-serving and deficient because Marshall failed to submit the alleged  
18 documents to which he refers. (ROA620). In particular, Paragraphs 5, 6 and 7 of the affidavit, to  
19 which the State Engineer specifically cited, do not satisfy the statutory criteria. (ROA 614).

20 **Paragraph 5:**

21 Paragraph 5 states that “During 2015, Intermountain entered into an Option Agreement  
22 with two world-wide engineering and construction firms, experienced in water systems  
23 development. One firm is located in Chicago, Illinois and the other is located in Tel Aviv Israel.”  
24 (ROA 614). This statement does not assert that either of these firms plans to put the water to  
25 beneficial use, as required to perfect the applications. *See* NRS 533.380(3). Indeed, it does not  
26 even assert that the alleged “Option Agreement” relates to the pipeline project at issue in this case  
27 and does not describe what is being “optioned.” (ROA 614). And while these firms purportedly  
28 engage in “engineering and construction,” there is no evidence that the purpose of the alleged

1 agreement is to provide those services for construction of the pipeline contemplated in  
2 Intermountain's permits. (ROA 614). Because the record is replete with representations that  
3 Intermountain has no ability to finance the construction of pipeline, the water treatment facility  
4 and related infrastructure,<sup>7</sup> the State Engineer could not assume otherwise. *See Eureka Cnty*, 131  
5 Nev. at \_\_\_, 359 P.3d at 1121.

6 **Paragraph 6:**

7 Paragraph 6 states: "...Intermountain, during 2015 and early 2016 has had extensive  
8 negotiations with Utilities Inc., Nevada and Arizona, a PUCN certified utility company to  
9 distribute Intermountain's water to its present and future customers in the Cold Springs area of  
10 Washoe County. An agreement has been reached and is in the process of being signed." (ROA  
11 614). This statement likewise is not substantial evidence to show reasonable diligence because  
12 the proposed place of use of Intermountain's permitted rights is not the Cold Springs area, but  
13 rather Lemmon Valley, an entirely separate hydrographic basin.<sup>8</sup> *See* Nevada Division of Water  
14 Resources Basin Boundary Map, [http://water.nv.gov/mapping/maps/designated\\_basinmap.pdf](http://water.nv.gov/mapping/maps/designated_basinmap.pdf)  
15 (identifying Lemmon Valley basin as 92A and 92B and Cold Springs basin as 100). It is well  
16 established Nevada law that a permit holder cannot obtain an extension of time based upon an  
17 intention to put the water to use on a parcel other than the described place of use in the permit.  
18 *See Desert Irr.*, 113 Nev. at 1057-58, 944 P.2d at 841.

19 **Paragraph 7:**

20 Paragraph 7 states:

21 Intermountain has had numerous meetings with Developers whose plans involve  
22 construction of nearly 10,000 houses. The developments are in various stages of  
23 permitting, with all but one small one, in the City of Reno. Much work has been  
24 done by the developers to date. All of the developments are adjacent to or very  
25 near the existing developed areas. Intermountain expects to have Developer  
26 agreements in hand within three to four months. (ROA 614).

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27 <sup>7</sup> ROA 948, 1043, 1047, 1055, 1059, 1743.

28 <sup>8</sup> ROA 835, 981, 1102, 1699, 1984, 2099, 2200, 2303.

1 This statement likewise does not show reasonable diligence because (1) it says nothing  
2 about whether the “developments” are located within the place of use of the permitted rights; (2)  
3 Marshall candidly admits that no agreements have been reached; and (3) there is no evidence that  
4 the “Developers” seek to use the permitted water to service their developments. (ROA 614).

5 A “reasonable mind,” the keystone of a substantial evidence inquiry, would not  
6 exclusively rely on hearsay and simply accept Marshall’s word that such agreements exist. *See*  
7 *id.*; *Eureka Cnty*, 131 Nev. at \_\_\_, 359 P.3d at 1121; *Revert*, 95 Nev. at 787, 603 P.2d at 264.  
8 Moreover, even if the documents exist, the fact that they exist should not have ended the State  
9 Engineer’s analysis. *See Revert*, 95 Nev. at 787, 603 P.2d at 264. The State Engineer needed to  
10 request those alleged documents to review their content and subject Marshall’s unsupported  
11 assertions to cross examination. *See id.*

12 What did the purported agreements say? Are they enforceable? Do the contracting  
13 parties seek to buy the water rights? Do they have the financial means to develop the diversion  
14 works and put the water to beneficial use in the foreseeable future? Do the documents justify  
15 Intermountain’s continued lock on the entire Dry Valley aquifer when the water belongs to the  
16 public, and SPI and others are presently prepared to put the water to beneficial use? *See NRS*  
17 *533.025*. In short, do the documents themselves really satisfy the statutory requirements, as the  
18 State Engineer assumed but did not corroborate? The State Engineer granted Intermountain’s  
19 extensions without substantial evidence to answer these essential questions.

20 **c. The State Engineer Ignored His Previous Pledge To Closely Scrutinize**  
21 **Intermountain’s Extension Requests**

22 The defects in the June 1, 2016 Decision are particularly egregious because, according to  
23 the June 4, 2015 Decision, the State Engineer planned to “closely scrutinize” future extension  
24 requests. (ROA 948). On judicial review, the district court only affirmed the June 4, 2015  
25 Decision based upon the State Engineer’s stated commitment to engage in such close scrutiny,  
26 noting that “the writing is on the wall” as to whether Intermountain can continue to keep a choke  
27 hold on the entire Dry Valley resource in “this ... close case.” (ROA 2404). “Close scrutiny”  
28 means the State Engineer had an obligation to test the competency of Marshall’s unsubstantiated

1 statements by, at a minimum, requesting a copy of the actual documents that the Marshall  
2 affidavit purports to describe.

3 Rather than fulfill that obligation now, the State Engineer deferred it to Intermountain's  
4 next extension requests. (ROA 624). However, the State Engineer could only rest on substantial  
5 evidence "presently known" at the time the June 1, 2016 Decision was made, not on "information  
6 to be determined in the future." *Eureka Cnty.* 131 Nev. at \_\_\_, 359 P.3d at 1120. Because the  
7 State Engineer failed to closely scrutinize Intermountain's extension requests as he had pledged  
8 and instead relied on hearsay and speculation without subjecting Marshall to cross examination,  
9 on review, the Court can and should second guess the State Engineer's findings. *See Revert*, 95  
10 Nev. at 786, 603 P.2d at 264.

11 **d. The *Chevron* Case On Which The State Engineer Relied Is Not Analogous**

12 The State Engineer erroneously deemed Intermountain's "evidence" adequate to show  
13 "reasonable diligence" based on alleged parallels with evidence submitted in a case decided by  
14 the Colorado Supreme Court. ROA 620-621, citing *Mun. Subdistrict, N. Colo. Water Conserv.*  
15 *Dist. v. Chevron Shale Oil Co.*, 986 P.2d 918 (Colo. 1999). In numerous ways, Marshall's  
16 unsubstantiated affidavit is incomparable in quality and quantity to the evidence presented in  
17 *Chevron*. Compare ROA 612-616 to *Chevron*, 986 P.2d at 920-23.

18 **i. Unlike In *Chevron*, The State Engineer Did Not Test The Accuracy  
19 Or Reliability Of Intermountain's "Evidence"**

20 In contrast to Marshall's unsubstantiated representations accepted by the State Engineer,  
21 the evidence that the Colorado Supreme Court deemed sufficient to show reasonable diligence  
22 had been presented to Colorado's Water Court in a three-day trial, subject to cross examination.  
23 *Id.* at 920. At trial, the party opposing the extension did not dispute the evidence or challenge the  
24 accuracy of the water court's factual findings. *See id.* at 921-23. And on appeal, the Colorado  
25 Supreme Court independently reviewed the record and concluded that the water court's findings  
26 were supported by "competent evidence." *Id.* at 923.

27 Here, Marshall's affidavit provided no details as to the content of referenced documents,  
28 much less the documents themselves. (ROA 612-615). The State Engineer did not request copies

1 of the documents or seek any information as to their content. (ROA 624). Likewise, the State  
2 Engineer did not hold a hearing on Intermountain's extension requests to subject Marshall to  
3 cross examination on his statements or the invoices he submitted. Instead, the State Engineer  
4 simply accepted Marshall's unsupported representations at face value. (ROA 624). Where  
5 Intermountain's submission does not come close to the caliber of evidence heard and considered  
6 at trial by the Colorado Water Court, *Chevron* is not analogous.

7 **ii. Unlike In *Chevron*, Marshall Has No Intent Or Ability to Put The**  
8 **Permitted Water To Beneficial Use**

9 *Chevron* is also distinguishable because there, the holder of the conditional water rights  
10 (i.e. *Chevron*) itself "intend[ed] to perfect [its] rights at some point in the future by using the  
11 water for the production of shale oil and its by-products." *Chevron*, 986 P.2d at 920. The water  
12 rights were appropriated "for use in connection with *Chevron*'s shale oil project," and *Chevron*  
13 owned the oil shale lands where the water was to be put to beneficial use. *Id.* *Chevron* had  
14 pursued numerous activities to put the water to beneficial use in its project and submitted a  
15 planning document to the water court that contained various scenarios for the project start-up  
16 date. *Id.* at 921-922.

17 In contrast, here, it is undisputed that Intermountain has no intent to itself put the water to  
18 beneficial use but, rather, simply hopes to sell the water rights for profit. (ROA 182). Likewise,  
19 Intermountain does not own any land in Dry Valley or the proposed place of use, unlike *Chevron*,  
20 which made plans for and sought to use the water for its own development project on land it  
21 owned. *Compare Chevron*, 986 P.2d at 920-22 to ROA 182. Because Intermountain failed to  
22 submit any evidence of any comparable plans to put the water to beneficial use (because no such  
23 plans exist), the State Engineer's reliance on *Chevron* is misplaced. *See id.*

24 **2. There is No Evidence to Satisfy NRS 533.380(4)**

25 The Court also must vacate the June 1, 2016 Decision because there is no evidence in the  
26 record – much less substantial evidence – to satisfy the mandatory statutory requirements found  
27 in NRS 533.380(4). For the State Engineer to grant an extension of time for a proposed  
28 municipal use, the State Engineer:

1       *shall* ... consider, among other factors:

- 2           (a) Whether the holder has shown good cause for not having made a complete  
3           application of the water to a beneficial use;
- 4           (b) The number of parcels and commercial or residential units which are  
5           contained in or planned for the land being developed or the area being  
6           served by the county, city, town, public water district or public water  
7           company;
- 8           (c) Any economic conditions which affect the ability of the holder to make a  
9           complete application of the water to a beneficial use;
- 10          (d) Any delays in the development of the land or the area being served by the  
11          county, city, town, public water district or public water company which  
12          were caused by unanticipated natural conditions; and
- 13          (e) The period contemplated in the:
- 14               (1) Plan for the development of a project approved by the local  
15               government pursuant to NRS 278.010 to 278.460, inclusive; or
- 16               (2) Plan for the development of a planned unit development recorded  
17               pursuant to chapter 278A of NRS,
- 18               if any, for completing the development of the land.

19       NRS 533.380(4) (emphasis added). The Legislature's use of the word "shall" required the State  
20       Engineer to receive and consider substantial evidence to support each of these factors. *See State*  
21       *v. Am. Bankers Ins. Co.*, 106 Nev. 880, 882, 802 P.2d 1276, 1278 (1990).

22           **a. Intermountain Did Not Submit Evidence To Show Good Cause For Failing to**  
23           **Put The Water To Beneficial Use But Rather Admits It Does Not Intend To**  
24           **Do So**

25       The evidence before the State Engineer showed that Intermountain is marketing its water  
26       for sale, not planning to put it to beneficial use.<sup>9</sup> In the June 4, 2015 Decision, the State Engineer  
27       expressly stated that "the inability to secure a buyer in future requests for extensions of time **will**  
28       **not be considered good cause** for extensions of time." (ROA 948) (emphasis in the original).  
Yet in the June 1, 2016 Decision, the State Engineer completely ignored this mandate when he  
found good cause for the extensions even in the absence of any evidence that Intermountain had  
secured a buyer. (ROA 623). The State Engineer's grant of extensions of time in direct violation

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<sup>9</sup> ROA 182, 948, 1043, 1047, 1055, 1059, 1743.

1 of his own previous decision is the hallmark of arbitrary and capricious decision making. Where  
2 is it undisputed that Intermountain has no intention to itself put the water to beneficial use,  
3 Intermountain failed to satisfy the good-cause requirement in NRS 533.380(4)(a).

4 **b. Intermountain Failed To Submit Evidence Of Parcels That Allegedly Will Be**  
5 **Served By Its Permits**

6 Intermountain presented no evidence to the State Engineer of any particular development,  
7 residential or commercial parcel or unit that is slated to be served by the water appropriated under  
8 Intermountain's permits because there is no current or reasonably foreseeable demand for  
9 Intermountain's imported water. To skirt this "fundamental defect," *Bacher*, 122 Nev. at 1122-  
10 23, 146 P.3d at 801, Marshall made the unsubstantiated assertion that "Intermountain has had  
11 numerous meetings with Developers [*sic*] whose plans involve construction of nearly 10,000  
12 houses." (ROA 614). Marshall's inclusion of this statement in his affidavit does not satisfy the  
13 statutory standard for a number of reasons. *See* NRS 533.380(4)(b).

14 First, mere meetings with certain unidentified developers do not constitute substantial  
15 evidence of specific parcels that will be served by the appropriated water, as the statute requires.  
16 *Id.* Second, to the extent those purported developers actually plan to construct 10,000 houses,  
17 there is no evidence that those houses will be constructed in the proposed place of use identified  
18 in Intermountain's applications. (ROA 614). In which hydrographic basin are the houses  
19 located? In which water purveyor's service territory are the houses located? Are those houses  
20 slated to be served by other water source(s)? What are the proposed terms of the non-existent  
21 "Developer [*sic*] agreements"? (ROA 614). Marshall's affidavit does not address any of these  
22 questions and is precisely the type of "speculative evidence of development projects [that] is not  
23 sufficient to survive a substantial evidence inquiry on review." *Bacher*, 122 Nev. at 1122-23, 146  
24 P.3d at 801 n.37.

25 **c. Intermountain Failed to Submit Evidence of Economic Conditions That**  
26 **Prevented Intermountain From Putting the Water to Beneficial Use**

27 In that Intermountain concedes it has no plans to itself put the water to beneficial use,  
28 none of the evidence it submitted can be construed to demonstrate that economic conditions



1 prevented Intermountain, as the permit holder, from perfecting the permitted water. NRS  
2 533.380(4)(c) requires the State Engineer to consider “economic conditions which affect the  
3 ability *of the holder* to make a complete application of the water to a beneficial use.” (emphasis  
4 added). Here, it is undisputed that the permit “holder,” i.e. Intermountain, does not intend to put  
5 the water to beneficial use.<sup>10</sup> As a result, under no circumstance could Intermountain ever  
6 provide substantial evidence to satisfy this statutory standard. *See* NRS 533.380(4)(c).

7 Attempting to overcome this infirmity, Intermountain cited to portions of TMWA’s Draft  
8 2016-2035 Water Resource Plan to argue that it can satisfy NRS 533.380(4)(c). (ROA 610).  
9 Even if Intermountain could depend on these statements as “evidence,” they do not describe the  
10 economic conditions facing the Intermountain project in the previous extension period or even the  
11 previous three extension periods. (ROA 610). Rather, they only describe economic conditions in  
12 TMWA’s service territory through 2013. (ROA 610). In his June 1, 2016 Decision, the State  
13 Engineer cited the “severe economic downturn from 2007-2013” as support for his conclusion  
14 “that Intermountain’s efforts were reasonable.” (ROA 621 n.9). The State Engineer failed to  
15 look at the economic conditions from 2013 to the present, and there is not substantial evidence to  
16 show that current economic conditions are preventing Intermountain from perfecting the water  
17 rights. (ROA 606-615; ROA 621 n.9).

18 In fact, the TMWA Plan on which both Intermountain and the State Engineer relied  
19 demonstrates that there currently is no economic downturn, nor has there been for three years:

20 [A] number of key events ... have occurred over the past five years which  
21 include: ... A reversal of negative or stagnant economic trends dominating the  
22 region since 2007 which altered the economic activity and growth expectations  
23 for the Truckee Meadows. ***The region began experiencing a modest economic  
resurgence in late 2013 which continues today.*** (ROA 452 (emphasis added); *see*  
also ROA 465-467 (noting signs of economic recovery starting in 2012 and the  
corresponding increase in home buying and will-serve commitments)).

24 After 17 years without any evidence that construction of Intermountain’s interbasin pipeline  
25 would commence at all, the State Engineer needed to do more than simply note a past economic  
26 downturn that ended three years ago in order to justify further extensions.

27  
28 <sup>10</sup> ROA 182, ROA 948, 1043, 1047, 1055, 1059, 1743.

1 Intermountain failed to present any evidence of what economic conditions would be  
2 necessary before its speculative project would pencil out. Intermountain also failed to present any  
3 evidence of whether current population projections demonstrate anticipated demand in Lemmon  
4 Valley that could justify construction of a 22-mile long proposed pipeline, treatment plant and  
5 related infrastructure, as required for Intermountain's appropriations. Because the question of  
6 whether Intermountain's proposed project would ever be economical is purely speculative, the  
7 State Engineer's extension is not supported by substantial evidence. *See Bacher*, 122 Nev. at  
8 1122-23, 146 P.3d at 801 n.37.

9 **d. Intermountain Failed to Submit Evidence of Any Plan Developed Pursuant to**  
10 **NRS 278 or NRS 278A That Includes Use Of The Permitted Water**

11 In violation of NRS 533.380(4)(e), Intermountain's extension applications failed to  
12 identify any plan authorized by NRS 278.010 et seq. or NRS Chapter 278A that includes a  
13 development that Intermountain's proposed water importation project will serve. In the June 1,  
14 2016 Decision, the State Engineer did not cite to any evidence of such a plan, as he was required  
15 to consider under NRS 533.380(4)(e). Because the State Engineer's analysis of this and the other  
16 criteria in NRS 533.380(4) was mandatory, absent such evidence, the State Engineer's grant of  
17 the extensions to Intermountain was arbitrary, capricious and an abuse of discretion. *See Bacher*,  
18 122 Nev. at 1122-23, 146 P.3d at 80.

19 **C. The State Engineer Erred, as a Matter of Law, by Failing to Apply Nevada's Anti-**  
20 **Speculation Doctrine to Deny Intermountain's Extension Requests**

21 **1. Intermountain Failed to Submit Any Evidence of a Contractual or Agency**  
22 **Relationship With An Entity That Plans To Put The Permitted Water To**  
23 **Beneficial Use**

24 As the State Engineer recognized, a would-be water appropriator must prove both with its  
25 initial applications and with any extension request that it is not speculating in water. (ROA622).  
26 In addition to its statutory scheme that prohibits water speculation, Nevada has expressly adopted  
27 the anti-speculation doctrine, which "addresses the situation in which the purported appropriator  
28 does not intend to put water to use for its own benefit and has no contractual or agency  
relationship with one who does." *Bacher*, 122 Nev. at 1119, 146 P.3d at 799 (quoting *Three Bells*  
*Ranch v. Cache La Poudre*, 758 P.2d 164, 173 n. 11 (Colo. 1988)). Where a would-be

1 appropriator is speculating on anticipated need, the beneficial use requirement, which is the  
2 underpinning of Nevada water law, cannot as a matter of law be satisfied. *Id.*; *see also Preferred*  
3 *Equities*, 119 Nev. at 389, 75 P.3d at 383 (2003).

4 Here, the factual record is undisputed that Intermountain has no intention to itself develop  
5 the pipeline project, lacks the financial capacity to do so and has no agency or contractual  
6 relationship with the municipal water purveyor that serves the proposed place of use.<sup>11</sup> Instead,  
7 as Intermountain has admitted since 2011, it simply seeks to sell the water rights, not put the  
8 water to beneficial use.<sup>12</sup>

9 Because the June 1, 2016 Decision acknowledged that permits can be canceled for failure  
10 to comply with the anti-speculation doctrine, the State Engineer's statement that *Bacher* had not  
11 been decided when Intermountain's permits were first granted is irrelevant. (ROA 622). NRS  
12 533.395(1) protects against speculation by requiring proof that "the holder" of the permit act in  
13 good faith and with reasonable diligence to put the water to beneficial use.<sup>13</sup> If the permit holder  
14 does not intend to itself perfect the application, it is axiomatic that the water could only be put to  
15 beneficial use through a contract or agency relationship with someone who does. As a result,  
16 *Bacher* did not articulate some new rule that did not exist at the time Intermountain's permits  
17 were granted. It simply clarifies the statutory requirements.

18 In any event, each time the State Engineer considers an extension request, he must ensure  
19 that permit holder is exercising reasonable diligence to construct the diversion works and put the  
20

---

21 <sup>11</sup> ROA 182, ROA 948, 1043, 1047, 1055, 1059, 1743.

22 <sup>12</sup> *Id.* Contrary to the State Engineer's assertion, SPI does not invoke the anti-speculation doctrine  
23 to contend that there is any restriction on the alienability of Intermountain's water rights. (ROA  
24 622, *citing Adaven Mgmt., Inc. v. Mtn. Falls Acquisition Corp.*, 124 Nev. 770, 191 P.3d 1189  
25 (2008). Rather, SPI's position is that Intermountain violates the anti-speculation doctrine by  
26 having no intent or ability to put the water rights to beneficial use. Unlike Intermountain's  
27 permits, the water rights in *Adaven* had been put to beneficial use, and there was no question as to  
28 whether they had been perfected. *See id.* at 772, 191 P.3d at 1191.

<sup>13</sup> In addition to the statutory language, the legislative history of NRS 533.380 and 533.395 shows  
that the evidentiary requirements to obtain an extension were designed to protect against  
speculation. (ROA 406-408) (Assemblywoman Freeman, the bill's sponsor: "[A]ddressing the  
topic of reasonable diligence as it relates to water permits," the proposed statutory changes "will  
give the state engineer additional tools to prevent any speculation on water.").

1 water to use. If the permit holder has no such intention, it is the permit holder, i.e. Intermountain,  
2 who must demonstrate through substantial evidence how the permits will be perfected. NRS  
3 533.380(3)-(4); NRS 533.395(1). Intermountain failed to do so. Because Intermountain has no  
4 intention to put the water to beneficial use, in the absence of a contractual or agency relationship  
5 with the municipal water supplier, the State Engineer had no discretion to grant the extensions to  
6 Intermountain. *See Bacher*, 122 Nev. at 1119, 146 P.3d at 799.

## 7 **2. The Marshall Affidavit Is Not Competent Evidence to Satisfy The Anti-** 8 **Speculation Doctrine**

9 In the June 1, 2016 Decision, the State Engineer found that Intermountain purportedly  
10 complied with the anti-speculation doctrine by “affirm[ing] that it has secured agreements with  
11 engineering and construction firms, Utilities, Inc., and developers.” (ROA 622, citing paragraphs  
12 5, 6 and 7 of Marshall affidavit). Similar to its deficiencies in satisfying any statutory standards,  
13 the Marshall affidavit say nothing about a contractual or agency relationship with an entity that  
14 plans to put the water to beneficial use. (ROA 614). Specifically, the alleged “Option  
15 Agreement” with “engineering and construction firms” referenced in Paragraph 5; the alleged  
16 Utilities, Inc. agreement to distribute water in Cold Springs referenced in Paragraph 6; and the  
17 non-existent “Developer agreements” in Paragraph 7 do not purport to be with a municipal water  
18 purveyor or anyone else who intends – and has the financial means – to serve Lemmon Valley.  
19 Rather than satisfy the anti-speculation doctrine, Marshall’s unsubstantiated hearsay highlights  
20 that Intermountain is simply speculating in water, in violation of Nevada law.

## 21 **CONCLUSION**

22 In issuing the June 1, 2016 Decision and granting extensions to Intermountain in the  
23 absence of substantial evidence that showed compliance with the statutory mandates and anti-  
24 speculation doctrine, the State Engineer erred, as a matter of law, abused his discretion and acted  
25 in an arbitrary and capricious manner. SPI respectfully requests that the Court grant this Petition  
26 for Judicial Review, vacate the extensions granted to Intermountain for Permits 72700, 64977,  
27 64978, 66400, 73428, 73429, 73430 and 74327, and remand the matter to the State Engineer with  
28 instructions to cancel the permits.

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AFFIRMATION

Pursuant to NRS 239B.030, the Undersigned does hereby affirm that the preceding document does not contain the social security number of any persons.

Dated: October 7, 2016.

McDONALD CARANO WILSON LLP

By: /s/ Debbie Leonard  
Debbie Leonard  
100 West Liberty Street, 10<sup>th</sup> Floor  
Reno, Nevada 89501  
(775) 788-2000

*Attorney for Petitioner  
Sierra Pacific Industries*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of McDONALD  
3 CARANO WILSON LLP and that on October 7, 2016 I certify that I electronically filed the  
4 foregoing PETITIONER SIERRA PACIFIC INDUSTRIES' OPENING BRIEF with the Clerk of  
5 the Court by using the ECF system, which served the following parties electronically:

6 Micheline Fairbank  
7 Office of the Attorney General  
8 100 North Carson Street  
9 Carson City, Nevada 89701  
10 [mfairbank@ag.nv.gov](mailto:mfairbank@ag.nv.gov)

11 Rick Elmore  
12 3301 S. Virginia St., Suite 125  
13 Reno, NV 89502  
14 [relmore@rlepc.com](mailto:relmore@rlepc.com)

15 DATED: October 7, 2016.

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/s/ Kathleen L. Morris  
Kathleen L. Morris


**JA2517**

**RULING**

The protest claims are overruled and Applications 73428, 73429 and 73430 are hereby approved subject to:

1. Existing rights;
2. The payment of the statutory permit fees;
3. A monitoring program approved by the State Engineer prior to the diversion of any water appropriated under these permits.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 27th day of  
June, 2006.

**JA2377**

SE ROA 2292



RECEIVED

2006 JUL 25 AM 10:51

STATE ENGINEER'S OFFICE

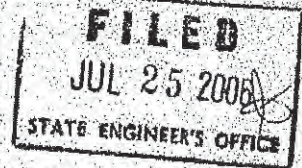
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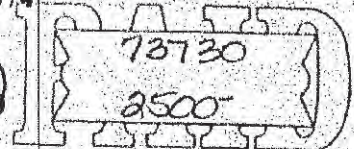
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STATE OF NEVADA  
COUNTY OF WASHOE

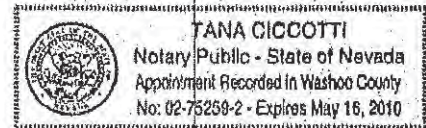
Date 8/4/06  
Warrant No. PV 576946

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **06/30/2006 - 07/21/2006**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: *Julia Kosta*

JUL 21 2006



*Tana Cicotte*

**Proof of Publication**

APPLICATION FOR WATER NO. 74327 NOTICE IS HEREBY GIVEN, that on the 23rd day of May 2006 Intermountain Water Supply Ltd. of Sparks, Nevada made application to the State Engineer of Nevada for permission to change the point of diversion of 0.623 c.f.s., a portion of water heretofore appropriated under Permit 64978. Water will be diverted from an underground source at a point located within the SW1/4 SE1/4 of Section 24, T24N, R18E, MDM or at a point from which the SE corner of said Section 24 bears S 88 degrees 46' 38" E., a distance of 1448.69 feet (17 miles north of Lemmon Valley, NV). Water will be used for municipal and domestic purposes from January 1st to December 31st of each year. The existing point of diversion was located within the NW1/4 NW1/4 of Section 11, T24N, R19E, MDM, or at a point from which the SE corner of Section 19, T24N, R20E, MDM, bears S 44 degrees 31' 55" E., a distance of 21449 feet. Water was used for municipal and domestic purposes from January 1st to December 31st of each year. Tracy Taylor, P.E. State Engineer Date of first pub 6/30/06 Date of last pub 7/21/06 No. 273783 June 30; July 7, 14, 21, 2006

Ad Number: 1000273783

Page 1 of 1

**JA2378**  
SE ROA 2293



JUN 22 2006

APPLICATION FOR WATER NO. 74327

NOTICE IS HEREBY GIVEN, that on the 23<sup>rd</sup> day of May 2006 Intermountain Water Supply Ltd. of Sparks, Nevada made application to the State Engineer of Nevada for permission to change the point of diversion of 0.623 c.f.s., a portion of water heretofore appropriated under Permit 64978. Water will be diverted from an underground source at a point located within the SW1/4 SE1/4 of Section 24, T24N, R18E, MDM or at a point from which the SE corner of said Section 24 bears S 88 degrees 46' 38" E., a distance of 1448.69 feet (17 miles north of Lemmon Valley, NV). Water will be used for municipal 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 NW1/4 NW1/4 of Section 11, T24N, R19E, MDM, or at a point from which the SE corner of Section 19, T24N, R20E, MDM, bears S 44 degrees 31' 55" E, a distance of 21449 feet. Water was used for municipal and domestic purposes from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

Tracy Taylor, P.E.

State Engineer

TT/ag

Date of first publication \_\_\_\_\_

Date of last publication \_\_\_\_\_

JA2379  
SE ROA 2294  
6/22/06

# Permit Terms Sheet

a. APPLICATION NO: 74327

i. Status of Basin Design Non-Design

b. Ready for Action August 20, 2006

j. Basin Name DRY VALLEY

c. Source UNDERGROUND

k. Basin Number 7-095

d. Amount 0.623 cfs

l. Reviewed: Office Engineer

e. No. of Units, Cattle Acres, etc

By

(451 AFA)

Reviewed: Groundwater Engineer

f. Manner of Use Municipal & Domestic

19 Sept 06 By Kurt

g. Period of Use 1/1 - 12/31

Reviewed: Surfacewater Engineer

h. Fees \$1,002.00

9/19/06 By RH3

Office Notes: FEES: \$100 + \$2(450.74AF) = \$1,001.48 The purpose of Application 74327 is to

change a portion of 64978 in upper Dry Valley near Warm Springs basin boundary, to a new

POD <sup>5</sup>~~4~~ miles to SW near South Fk. Dry Valley Ck. POU is in

the northern Reno-Sparks/North Valleys area via Intermountain Water Supply's proposed

pipeline to Lemmon Valley. *Ruling -> 73428, 30, 73429, 78, 6400 = 2996 AF*

See Ruling #5568 RE water under Appl. 69664 to change 64978 for Add. Info. - *Protect overruled. Show access or file new change app!*

Permit Plat Filed 50564

Supplemental to: See S (6) Term

Permit Terms: C ( c ) Point of diversion of a portion 64978/ 64978

S ( 2 )

S ( 3 )

S ( 11 )

S ( 6 ) 64977, 64978, 66400, 73428, 73429, 73430, & 74327 / 2996 AFA

QT-Rpt

~~Pumping subject to monitoring plan approved by DWR OR~~

This Permit is issued subject to State Engineer's Ruling No. 5622.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 0.623 cubic feet per second but not to exceed 450.74 acre-ft annually

Completion Feb 11, 2008

PBU Feb 11, 2009

PBU Map N/A

Date: Sept 13, 2006

By: ALE ALB

64978 PER 2cfs 1447AF TCD 2996  
- 69664(RFA) 2.0cfs (POD #64978)  
- 74327(RFA) 0.623cfs (POD portion of 64978)  
Remarks: "... replaces 69664..."

Please add  
attached to  
see letter



In addition to the permit fees, please submit a request to withdraw Application 69664. *Until this is received by this office, Permit 74327 will not be issued.*

**JA2382**  
SE ROA 2297



KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

Sep 20, 2006

Re: 74327

Intermountain Water Supply Ltd  
175 Stags Leap Circle  
Sparks NV 89436

Ladies and Gentlemen:

You are hereby advised that your application to change the public waters of the State of Nevada, under our Serial Number 74327 for the waters of an underground source is now ready to be presented to the State Engineer for approval.

You are further advised that in accordance with NRS 533.435 it will be necessary that you forward to this office, within sixty (60) days from the date hereof, permit fees of \$1,002.00 for the application listed above.

In addition to the permit fees, please submit a request to withdraw Application 69664. *Until this is received by this office, Permit 74327 will not be issued.*

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

In the event that this office does not receive the permit fee within sixty (60) days from this date, your application will be subject to denial.

Sincerely,

*Tracy Taylor, P.E.*

Tracy Taylor, P.E.  
State Engineer

TT/sc

cc: R. Michael Turnipseed, P. E.



# State of Nevada - Division of Water Resources

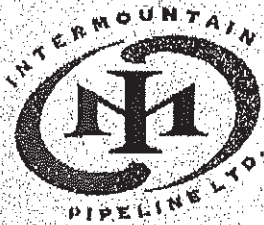
901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
175 STAGS LEAP CIR  
SPARKS NV 89436-7282

## Receipt

		Payment Method	Check No.	Receipt #
		Check	1256	206772
Date	Item	Description		Amount
9/21/2006	Change	PERMIT FEE - CHANGE NO. 74327		1,002.00
Received by: Sue Cox <i>SC</i>			<b>Total</b>	\$1,002.00

**JA2384**  
SE ROA 2299



8440 HOLCOMB LN.  
RENO, NV 89514

(775) 852-1161 PH  
(775) 852-2523 FX  
RWMARSHALL@SOURCEG.NET

9/22/06

To: Bob Zeisloft  
% State Engineer's office  
FAX: 684 2811

from: Bob Marshall  
ph - 425-1161

Bob -

re: Application # 74327

This is To withdraw application  
# 69664 which has been superseded  
by application # 74327 which is ready  
for the permit To be issued. We  
have already paid the fees.

Sincerely

Bob Marshall

JA2385

SE ROA 2300

No. 74327

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

Date of filing in State Engineer's Office MAY 23 2006

Returned to applicant for correction \_\_\_\_\_

Corrected application filed \_\_\_\_\_

Map filed JUN 14 2006

\*\*\*\*\*

The applicant Intermountain Water Supply Ltd hereby makes application for permission to change the Point of diversion Of a portion of water heretofore appropriated under Permit 64978.

\*\*\*\*\*

1. The source of water is underground water well
2. The amount of water to be changed 0.623 cfs
3. The water to be used for Same As Heretofore
4. The water heretofore permitted for Municipal and Domestic
5. The water is to be diverted at the following point within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 24, T.24N., R.18E., MDB&M or at a point from which the SE Corner of said Sec. 24 bears S. 88°46'38" E at a distance of 1448.69 feet. For map of prop POU use map to accompany this application
6. The existing permitted point of diversion is located within NW $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 11 T.24N., R.19E., MDB&M or at a point from which the SE corner of Section 19, T.24N., R.20E., MDB&M bear S. 44°31'55" E. a distance of 21449 feet
7. Proposed place of use Same As Heretofore
8. Existing place of use Sec. 1 through 36 inclusive T.21N., R.19E., MDB&M; Sec. 36, T.21N., R.18E., sec. 1 through 12 inclusive, 15, 16 and 17 T.20N., R.19E., MDB&M; and sec. 1 and 12 T.20N., R.18E., MDB&M
9. Use will be from 1/1 to 12/31 of each year.
10. Use was permitted from 1/1 to 12/31
11. Description of proposed works drilled well, pump, motor & distribution lines
12. Estimated cost of works \$10 Million
13. Estimated time required to construct works 5 years
14. Estimated time required to complete the application of water to beneficial use 10 years
15. Remarks: For map of existing POD use map on file under 64978 This application replaces appl. 69664 which transferred the rights from upper Dry Valley to Lower Dry Valley (see Ruling # 5568)

By R. Michael Turnipseed, P.E.  
s/ R. Michael Turnipseed P.E.  
204 N. Minnesota Street  
Carson City, NV 89703

Compared sc/ag it/ gkl

Protested \_\_\_\_\_

**JA2386**  
SE ROA 2301



\*\*\*\*\*

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion of a portion of the waters of an underground source as heretofore granted under Permit 64978 is issued subject to the terms and conditions imposed in said Permit 64978, and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the proof of completion of work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The total combined duty of water under Permits 64977, 64978, 66400, 73428, 73429, 73430 and 74327 shall not exceed 2996.0 acre-feet annually.

Monthly records shall be kept of the amount of water pumped from this well and the records submitted to the State Engineer on a quarterly basis within 15 days after the end of each calendar quarter.

This permit is issued subject to State Engineer's Ruling No. 5622.

(Continued on Page 3)

## (PERMIT TERMS CONTINUED)

The amount of water to be changed shall be limited to the amount which can be applied to beneficial use, and not to exceed 0.623 cubic feet per second, but not to exceed 450.74 acre-feet annually.

Work must be prosecuted with reasonable diligence and be completed on or before:

January 11, 2008

Proof of completion of work shall be filed on or before:

February 11, 2008

Water must be placed to beneficial use on or before:

January 11, 2009

Proof of the application of water to beneficial use shall be filed on or before:

February 11, 2009

Map in support of proof of beneficial use shall be filed on or before:

N/A

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set

my hand and the seal of my office,

this 29th day of September A.D. 2006

Tracy Taylor, P.E.  
State Engineer

Completion of work filed \_\_\_\_\_

Proof of beneficial use filed \_\_\_\_\_

Cultural map filed N/A

Certificate No. \_\_\_\_\_ Issued \_\_\_\_\_



KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN DIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

RE: 74327

September 29, 2006

Intermountain Water Supply LTD  
175 Stags Leap Circle  
Sparks, NV 89436

Dear Ladies and Gentlemen:

Enclosed herewith you will find Permit No. 74327 for the waters of an underground source.

You are advised that if the various proofs thereunder, together with any map which may be required, are not filed in this office prior to the dates set for such filings, the permit will be subject to cancellation. For your assistance a sheet is enclosed which will advise you of the requirements to fulfill the terms of your permit.

Please be advised that the Permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Also, please be advised that if this water right is sold, it is in the best interest of the new owner to file a report of conveyance notifying this office of the change in ownership to avoid future cancellation of the right.

Sincerely,

*Tracy Taylor*, P.E.

Tracy Taylor, P.E.  
State Engineer

TT/lt

Enclosures

Cc: R. Michael Turnipseed  
Bureau of Safe Drinking Water

JA2389  
SE ROA 2304

ALLEN BIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
**DIVISION OF WATER RESOURCES**

801 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701

Address All Communications to:  
The State Engineer  
Division of Water Resources  
Telephone (775) 684-2800

In reply refer to  
No.

February 20, 2008

73428 through 73430  
& 74327

Intermountain Water Supply LTD  
175 Stags Leap Circle  
Sparks, NV 89436-7280  
Certified Mail No. 71067808063000344852

The provisions of your permit(s) with the above serial number(s) to appropriate waters of the State of Nevada requires you to file **Proof of Completion of Work**

on or before **February 11, 2008**

Our records show that you have not filed said Proof(s) and therefore your permit(s) is/are in poor standing and subject to cancellation.

Unless the legally required Proof(s) or affidavit requesting an extension of time in which to file said Proof(s) for good cause shown is/are received and filed with the State Engineer within **thirty (30) days of the date of this final certified notice**, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Sincerely,

*Tracy Taylor, P.E.*

State Engineer

TT/dr

cc: R Michael Turnipseed

Enclosure(s): Proof of Completion of Work forms

Fee for filing Proof of Completion - \$10  
Fee for filing Proof of Beneficial Use - \$50  
Fee for filing Request for Extension of Time - \$100

Address all communications to the State Engineer, Division of Water Resources

FINAL NOTICE

**JA2390**  
SE ROA 2305



### APPLICATION FOR EXTENSION OF TIME

FILED  
MAR 17 1968

Figure 1. The effect of the concentration of the polymer solution on the apparent viscosity of the polymer solution. The apparent viscosity of the polymer solution increases with the concentration of the polymer solution. The apparent viscosity of the polymer solution is 1.5 Pa·s at 0.5 wt% concentration and 1.0 Pa·s at 0.1 wt% concentration.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

[illegible][illegible]

**Protein**

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1. 凡在本市行政区域内从事经营活动的个体工商户、企业法人、其他经济组织（以下统称“经营者”），均应当遵守本办法。

Figure 1. The effect of the concentration of the solution on the adsorption of the dye. The concentration of the solution was 0.01, 0.02, 0.03, 0.04, 0.05, 0.06, 0.07, 0.08, 0.09, 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0, 1.5, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, 9.0, 10.0, 15.0, 20.0, 30.0, 40.0, 50.0, 60.0, 70.0, 80.0, 90.0, 100.0, 150.0, 200.0, 300.0, 400.0, 500.0, 600.0, 700.0, 800.0, 900.0, 1000.0, 1500.0, 2000.0, 3000.0, 4000.0, 5000.0, 6000.0, 7000.0, 8000.0, 9000.0, 10000.0, 15000.0, 20000.0, 30000.0, 40000.0, 50000.0, 60000.0, 70000.0, 80000.0, 90000.0, 100000.0, 150000.0, 200000.0, 300000.0, 400000.0, 500000.0, 600000.0, 700000.0, 800000.0, 900000.0, 1000000.0, 1500000.0, 2000000.0, 3000000.0, 4000000.0, 5000000.0, 6000000.0, 7000000.0, 8000000.0, 9000000.0, 10000000.0, 15000000.0, 20000000.0, 30000000.0, 40000000.0, 50000000.0, 60000000.0, 70000000.0, 80000000.0, 90000000.0, 100000000.0, 150000000.0, 200000000.0, 300000000.0, 400000000.0, 500000000.0, 600000000.0, 700000000.0, 800000000.0, 900000000.0, 1000000000.0, 1500000000.0, 2000000000.0, 3000000000.0, 4000000000.0, 5000000000.0, 6000000000.0, 7000000000.0, 8000000000.0, 9000000000.0, 10000000000.0, 15000000000.0, 20000000000.0, 30000000000.0, 40000000000.0, 50000000000.0, 60000000000.0, 70000000000.0, 80000000000.0, 90000000000.0, 100000000000.0, 150000000000.0, 200000000000.0, 300000000000.0, 400000000000.0, 500000000000.0, 600000000000.0, 700000000000.0, 800000000000.0, 900000000000.0, 1000000000000.0, 1500000000000.0, 2000000000000.0, 3000000000000.0, 4000000000000.0, 5000000000000.0, 6000000000000.0, 7000000000000.0, 8000000000000.0, 9000000000000.0, 10000000000000.0, 15000000000000.0, 20000000000000.0, 30000000000000.0, 40000000000000.0, 50000000000000.0, 60000000000000.0, 70000000000000.0, 80000000000000.0, 90000000000000.0, 100000000000000.0, 150000000000000.0, 200000000000000.0, 300000000000000.0, 400000000000000.0, 500000000000000.0, 600000000000000.0, 700000000000000.0, 800000000000000.0, 900000000000000.0, 1000000000000000.0, 1500000000000000.0, 2000000000000000.0, 3000000000000000.0, 4000000000000000.0, 5000000000000000.0, 6000000000000000.0, 7000000000000000.0, 8000000000000000.0, 9000000000000000.0, 10000000000000000.0, 15000000000000000.0, 20000000000000000.0, 30000000000000000.0, 40000000000000000.0, 50000000000000000.0, 60000000000000000.0, 70000000000000000.0, 80000000000000000.0, 90000000000000000.0, 100000000000000000.0, 150000000000000000.0, 200000000000000000.0, 300000000000000000.0, 400000000000000000.0, 500000000000000000.0, 600000000000000000.0, 700000000000000000.0, 800000000000000000.0, 900000000000000000.0, 1000000000000000000.0, 1500000000000000000.0, 2000000000000000000.0, 3000000000000000000.0, 4000000000000000000.0, 5000000000000000000.0, 6000000000000000000.0, 7000000000000000000.0, 8000000000000000000.0, 9000000000000000000.0, 10000000000000000000.0, 15000000000000000000.0, 20000000000000000000.0, 30000000000000000000.0, 40000000000000000000.0, 50000000000000000000.0, 60000000000000000000.0, 70000000000000000000.0, 80000000000000000000.0, 90000000000000000000.0, 100000000000000000000.0, 150000000000000000000.0, 200000000000000000000.0, 300000000000000000000.0, 400000000000000000000.0, 500000000000000000000.0, 600000000000000000000.0, 700000000000000000000.0, 800000000000000000000.0, 900000000000000000000.0, 1000000000000000000000.0, 1500000000000000000000.0, 2000000000000000000000.0, 3000000000000000000000.0, 4000000000000000000000.0, 5000000000000000000000.0, 6000000000000000000000.0, 7000000000000000000000.0, 8000000000000000000000.0, 9000000000000000000000.0, 10000000000000000000000.0, 15000000000000000000000.0, 20000000000000000000000.0, 30000000000000000000000.0, 40000000000000000000000.0, 50000000000000000000000.0, 60000000000000000000000.0, 70000000000000000000000.0, 80000000000000000000000.0, 90000000000000000000000.0, 100000000000000000000000.0, 150000000000000000000000.0, 200000000000000000000000.0, 300000000000000000000000.0, 400000000000000000000000.0, 500000000000000000000000.0, 600000000000000000000000.0, 700000000000000000000000.0, 800000000000000000000000.0, 900000000000000000000000.0, 10000000

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**Table 1.** Summary of the study design and sample characteristics

	Sample size	Age range (years)	Gender (%)	Ethnicity (%)	Mean income (US\$)
Total	108	16-79	50% male	92% white	\$10,000
Control group	54	16-79	50% male	92% white	\$10,000
Case group	54	16-79	50% male	92% white	\$10,000

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1. The first step in the process of identifying a problem is to recognize that a problem exists. This involves gathering information about the situation and identifying the specific issue that needs to be addressed.

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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Hotel Europa

© 2006 The Authors  
Journal compilation © 2006 Blackwell Publishing Ltd

1. 2019年1月1日起，凡在境内销售货物、劳务、服务、无形资产和不动产的单位和个人，均应按照《增值税暂行条例》及其实施细则、《营业税改征增值税试点实施办法》（财税〔2016〕36号印发）等有关规定，计算缴纳增值税。

March 1964  
Patricia D. G. A.

[illegible]

1. The first step in the process is to identify the problem. This involves gathering information about the situation and understanding the needs of the stakeholders involved.

Figure 1. The effect of the number of iterations on the accuracy of the proposed algorithm. The accuracy of the proposed algorithm increases with the number of iterations. The accuracy of the proposed algorithm is 100% when the number of iterations is 1000.



THE FOLLOWING ELEMENTS ACCOMPANY THE APPLICATION FOR EXTENSION OF TIME:  
A SEPARATE APPLICATION MUST BE FILED FOR EACH ELEMENT.

**JA2391**  
SE ROA 2306



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

TURNIPSEED ENGINEERING LTD  
204 N MINNESOTA ST  
CARSON CITY NV 89703

## Receipt

		Payment Method	Check No.	Receipt #
		Check	878	222970
Date	Item	Description	Amount	
3/7/2008	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 73428, 73429, 73430, 74327 AND 67037	100.00	
Received by: Sue Cox <i>Sc</i>			Total	\$100.00

**JA2392**  
SE ROA 2307



ALLEN BIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

**DIVISION OF WATER RESOURCES**

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
<http://water.nv.gov>

Address All Communication to  
the State Engineer, Division  
of Water Resources

March 12, 2008

Telephone (775) 684-2800 or  
1-800-992-0900 x 2400  
(In Nevada Only)

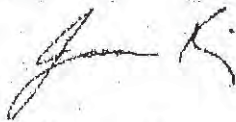
Intermountain Water Supply, Ltd.  
c/o Robert W. and Nanette Marshall  
175 Stags Leap Circle  
Sparks, Nevada 89436-7280

**RE: Permits 73428, 73429, 73430 and 74327**

This is to inform you that Application for Extension of Time has been granted to  
**February 11, 2009** for filing of the **Proof of Completion**.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Sincerely,



Jason King, P.E.  
Deputy State Engineer

JK/ef

Enclosure: Important Notice: "Future Application for Extension of Time Filings"  
cc: R. Michael Turnipseed, Turnipseed Engineering, Ltd.

**JA2393**  
SE ROA 2308



State of Nevada Division of Water Resources  
Request for Notice and Change of Address

In regards to permit number ....See Attached List..... : (Check applicable item.)

- ☒ Please add my name to the mailing list and send copies of all correspondence to the address below:  
(Fill in NEW ADDRESS information only.)
- ☐ Please change the address for copies to be sent as indicated below:  
(Fill in NEW ADDRESS and OLD ADDRESS information.)
- ☐ I am the permit holder. Please change my address as indicated below:  
(Fill in NEW ADDRESS and OLD ADDRESS information.)

NEW ADDRESS

NAME: Gregory M. Bilyeu

FIRM: TEC Civil Engineering Consultants

ADDRESS: 9480 Double Diamond Parkway, Suite 200

CITY, STATE, ZIP: Reno, NV 89521

TELEPHONE: (775) 352-7800

OLD ADDRESS

NAME: \_\_\_\_\_

FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

I am the:

- ☒ Individual named above. (Complete signature below only.)
- ☐ Agent or representative. (Complete the signature, name, and address below.)

This form accurately reflects the mailing address for the permit holder or other individual identified above.

SIGNATURE: \_\_\_\_\_

NAME: Gregory M. Bilyeu

ADDRESS: 9480 Double Diamond Parkway, Suite 200

CITY, STATE, ZIP: Reno, NV 89521

**JA2394**

SE ROA 2309



Request for Notice of Water Rights Correspondence

Permit/Application

64977

64978

66400

66961

72700

73428

73429

73430

74327

RECEIVED  
2009 FEB -4 PM 4:02  
STATE ENGINEERING DIV.

**JA2395**  
SE ROA 2310

## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

FILED

FEB 19 2009

STATE ENGINEER'S OFFICE

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.IN THE MATTER OF PERMIT No. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OFUnderground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall, the Agent

Person Signing Application

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

- Does this permit have multiple owners? ☐ YES ☒ NO (Check the Appropriate Box)
- If "YES" on question No. 1 is checked, is this request for an extension of time submitted on behalf of all the owners?  
☐ YES ☒ NO (Check the Appropriate Box)
- If "NO" on question No. 2 is checked, on whose behalf is this extension being filed?
- How much time is needed to construct the works of diversion or place the water to beneficial use? 4 - 5 years
- What is the expenditure on the project under this permit? Last year? \$240,000.00 ± Total to date? \$2,490,000.00 ±
- The permittee requests an extension of time for 1 year within which to comply with the provisions  
(Not to exceed 1 year)  
for filing the Proof of Completion and Proof of Beneficial Use  
(Proof of completion of work and/or Proof of beneficial use)
- Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):  
Completed power line EA, obtained BLM right of way grant for power line, completed archeological field work, formed technical work group with Washoe County to evaluate our resources. Economic conditions have reduced current demand for new water in Lemmon Valley to near zero.

Subscribed and sworn to before me this 18<sup>th</sup> day ofFebruary, 2009Kathryn Souvion  
Signature of Notary Public RequiredNotary Public in and for the County of WashoeState of NevadaMy commission expires 7-30-12Signed Robert W. Marshall

Permittee or Agent

Address 625 Onyo Way

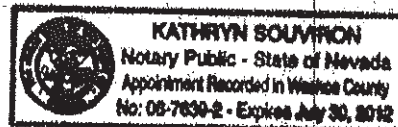
Street No. or P.O. Box No.

Sparks, NV 89441

City, State, Zip Code No.

Phone 775-425-1161

e-mail \_\_\_\_\_



Notary Stamp or Seal Required

**\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME.**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT.**

Revised 11/1/07

**JA2396**  
**SE ROA 2311**

1 up  
 per  
 per  
 2/23/09  
 SSM

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
175 STAGS LEAP CIR  
SPARKS NV 89436-7282

## Receipt

Payment Method		Check No.	Receipt #
Check		1413	232868
Date	Item	Description	Amount
2/19/2009	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	100.00
Received by: Sue Cox		Total	\$100.00

**JA2397**  
SE ROA 2312



JIM GIBBONS  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

TRACY TAYLOR, 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>

February 25, 2009

Intermountain Water Supply, Ltd.  
175 Stags Leap Circle  
Sparks, NV 89436

RE: 64977, 64978, 66400, 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to **February 11, 2010** for filing of the **Proof of Beneficial Use (permits 73428, 73429, 73430, 74327) only.**

This is to inform you that the Application for Extension of Time has been granted to **February 11, 2010** with the provision that no further extensions will be granted for filing of the **Proof of Completion of Work (all permits) and Proof of Beneficial Use (66400, 64977 and 64978 only).** except for good cause shown as provided under NRS 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact Sam Monteleone at (775) 684-2800.

Sincerely,

A handwritten signature in cursive script that reads "Gloria Lash".  
Gloria Lash  
Administrative Assistant III

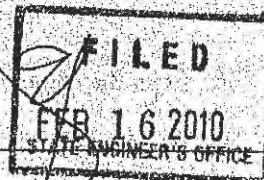
cc: TEC Civil Engineering Consultants  
R. Michael Turnipseed

**JA2398**  
SE ROA 2313



## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
Underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? 4 - 5 Years5. What is the expenditure on the project under this permit? Last year? \$16,407.38 Total to date? \$2,506,400.00±6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

Proof of Completion and Proof of Beneficial Use.

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

Worked with Washoe County staff on water availability, conducted continual monitoring, worked with hydrologists addressed legal issues. Economic conditions have continued to deteriorate eliminating all current demand for water in the North Valleys.

Signed

Robert W. Marshall  
Permittee or AgentSubscribed and sworn to before me this 10<sup>th</sup> day ofFeb, 20 10Dana Rael

Signature of Notary Public Required

Notary Public in and for the County of Carson CityState of NV

My commission expires

June 15, 2012

Address

625 Onyo Way

Street Address or PO Box

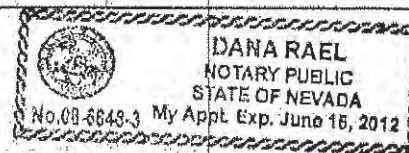
Sparks, NV 89441

City, State, ZIP Code

Phone

775-425-1161

E-mail



Notary Stamp or Seal Required

**\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 07/09 - ext of time

**JA2399**  
**SE ROA 2314**



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPANISH SPRINGS NV 89441

## Receipt

Date	Item	Description	Amount
2/16/2010	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 64977, 64978, 66400, 73428, 73429, 73430 AND 74327  <div>EFFECTIVE JULY 01, 2009, FEES WILL INCREASE, PLEASE VISIT THE DIVISION'S WEBSITE AT <a href="http://water.nv.gov">water.nv.gov</a> FOR A LIST OF THE NEW FEE SCHEDULE</div>	100.00
Received by: Sue Cox <i>SC</i>			Total \$100.00

**JA2400**  
SE ROA 2315



JIM GIBBONS  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

TRACY TAYLOR, 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>

March 4, 2010

Intermountain Water Supply, Ltd.  
175 Stags Leap Circle  
Sparks, Nevada 89436-7280

RE: Permits 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2011, for filing of the Proof of Beneficial Use.

This is to inform you that the Application for Extension of Time has been granted to February 11, 2011, with the provision that no further extensions will be granted for filing of the Proof of Completion except for good cause shown as provided under NRS 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact Sam Monteleone at (775) 684-2800.

Sincerely,

A handwritten signature in cursive script that reads "Erica Fagan".

Erica Fagan  
Administrative Assistant

cc: Robert W. Marshall  
R. Michael Turnipseed, Turnipseed Engineering, Ltd.  
TEC Civil Engineering Consultants

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  
(800) 992-0900  
(In Nevada Only)  
<http://water.nv.gov>

FINAL NOTICE

February 17, 2011

FINAL NOTICE

Robert W. Marshall  
Intermountain Water Supply  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000455503

Re: Final Notice for Permit 73428, 73429, 73430 & 74327

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Completion of Work & Proof of Beneficial Use on or before February 11, 2011.**

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

dr  
cc: R.Michael Turnipseed  
TEC

Schedule of Fees:  
Fee for filing Proof of Completion - \$50  
Fee for filing Proof of Beneficial Use - \$50  
Fee for filing Request for Extension of Time - \$100

**JA2402**  
SE ROA 2317



## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.**FILED**

FEB 25 2011

IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OFUnderground

STATE ENGINEER'S OFFICE

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners? ☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$2,663.00Total to date? \$2,514,280 ±6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

Proof of Completion and Proof of Beneficial Use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

Worked with potential water buyer on due diligence; conducted continual monitoring, worked with hydrologists; addressed legal issues. Economic conditions have continued to deteriorate eliminating all current demand for water in the North Valleys.

Signed

Robert W. Marshall

Permittee or Agent

Subscribed and sworn to before me this 25 day ofFebruary, 20 11Joy G. Elwood

Signature of Notary Public Required

Notary Public in and for the County of CarsonState of NevadaMy commission expires July 29, 2013Address 625 Onyo Way

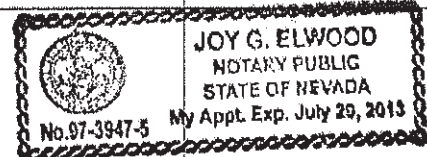
Street Address or PO Box

Sparks, NV 89441

City, State, ZIP Code

Phone 775-425-1161

E-mail



Notary Stamp or Seal Required

**\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 07/09 - ext of time

**JA2403**  
**SE ROA 2318**

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPANISH SPRINGS NV 89441

## Receipt

Payment Method		Check No.	Receipt #
Check		1437	256094

Date	Item	Description	Amount
2/25/2011	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	100.00
Received by: Sue Cox			<b>Total</b> \$100.00

**JA2404**  
SE ROA 2319



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>

March 10, 2011

Intermountain Water Supply, Ltd  
625 Onyo Way  
Sparks, NV 89441

RE: PERMITS 64977, 64978, 66400, 67037, 73428 through 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2012, with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2835 or [smonteleone@water.nv.gov](mailto:smonteleone@water.nv.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Monteleone".

Sam Monteleone  
Staff / Associate Engineer

SEM/ml  
c: TEC Civil Engineering  
Turnipseed Engineering

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  
(800) 992-0900  
(In Nevada Only)  
<http://water.nv.gov>

**FINAL NOTICE**

February 16, 2012

**FINAL NOTICE**

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000489379

**Re: Final Notice for Permit 64977, 64978, 66400, 73428, 73429, 73430, and 74327**

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Completion and Proof of Beneficial Use** on or before **February 11, 2012**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

sm

cc: TEC Civil Engineering Consultants (email)  
Michael Turnipseed

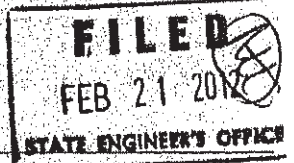
**Schedule of Fees:**

Fee for filing Proof of Completion - \$50  
Fee for filing Proof of Beneficial Use - \$50  
Fee for filing Request for Extension of Time - \$100

**JA2406**  
SE ROA 2321

## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.
 IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
Underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?  
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$6,005.00 Total to date? \$2,526,622.00
 6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
 (Not to exceed 1 year)

Proof of Completion and Proof of Beneficial Use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

Worked with potential water buyer on due diligence; conducted continual monitoring, worked with hydrologists; addressed legal and tax issues, performed maintenance work on test wells. Economic conditions have continued to deteriorate eliminating all current demand for water in the North Valleys.

Signed Robert W. Marshall

Permittee or Agent

Subscribed and sworn to before me this 21 day ofFeb, 20 12Susan Cox

Signature of Notary Public Required

Notary Public in and for the County of Carson CityState of NevadaMy commission expires 4-14-13Address 625 Onyo Way

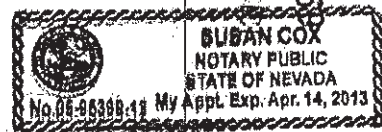
Street Address or P.O. Box

Sparks, NV 89441

City, State, ZIP Code

Phone 775-425-1161

E-mail



Notary Stamp or Seal Required

\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME

A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

Revised 07/09 - ext of time

**JA2407**  
 SE ROA 2322

 RECEIVED  
 2012 FEB 21 AM 11:50  
 STATE ENGINEER'S OFFICE

 1/12  
 Joe  
 PBU  
 2/23/2012  
 JWC



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

ROBERT MARSHALL  
625 ONYO WAY  
SPARKS NV 89441

## Receipt

Payment Method		Check No.	Receipt #
Check		10506	266352

Date	Item	Description	Amount
2/21/2012	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	100.00
Received by: Sue Cox			<b>Total</b> \$100.00

**JA2408**  
SE ROA 2323





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>

February 27, 2012

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: PERMITS 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2013 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2835 or [smonteleone@water.nv.gov](mailto:smonteleone@water.nv.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Monteleone".

Sam Monteleone  
Water Resource Specialist 1

SEM/mt

c: TEC Civil Engineering Consultants (via email)  
Turnipseed Engineering, Ltd.



JIM GIBBONS  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director  
TRACY TAYLOR  
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>

FINAL NOTICE

February 13<sup>th</sup>, 2013

FINAL NOTICE

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000519076

**Re: Final Notice for Permit(s) 64977, 64978, 66400, 73428 through 73430, and 74327**

The provisions of your above referenced permit(s) to appropriate waters of the State of Nevada required you to file a **Proof of Completion and Proof of Beneficial Use on or before February 11<sup>th</sup>, 2013.**

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.410, if the required proof or extension of time is not received within thirty (30) days of the date of this letter your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Applications for extension of time and all necessary supplemental forms are located on our website at <http://water.nv.gov/forms>. If there are any questions regarding this notice please contact our office at (775) 684-2800.

kp

cc: TEC Civil Engineering Consultants (email)  
Turnipseed Engineering, LLC (email)

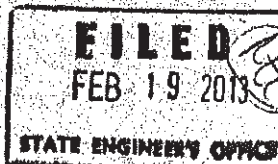
Schedule of Fees:

Fee for filing Proof of Completion - \$10  
Fee for filing Proof of Completion - \$50 -- *effective 7/1/2009 AB480*  
Fee for filing Proof of Beneficial Use - \$50  
Fee for filing Request for Extension of Time - \$100

Rev. 5/2009

**JA2410**  
SE ROA 2325

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
Underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes☐ No

(Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$8,153.50 Total to date? \$2,534,775.006. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

Proof of Completion and Proof of Beneficial Use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in this area. We have continued maintenance of the Project. We had to oppose a PUCN staff effort to nullify a favorable PUCN order on our UEPA application. After briefing and oral argument, we were successful. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters. We have drastically reduced the price of the Project and have been actively working with two interested buyer-user groups, one local group and one group located in Southern California. The outcome of the election does not bode well for the economy.

State of Nevada

County of WashoeSubscribed and sworn to before me on February 19, 2013by Robert W. Marshall

Signed

Permittee or Agent

Address 625 Onyo Way

Street Address or P.O. Box

Sparks, NV 89441

City, State, ZIP Code

Phone 775-425-1161

E-mail



Notary Stamp or Seal Required

**\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 05/12 - ext of time

**JA2411**  
**SE ROA 2326**

RECEIVED  
 FEB 19 AM 10:54  
 STATE ENGINEER'S OFFICE



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPANISH SPRINGS NV 89441

## Receipt

		Payment Method	Check No.	Receipt #
		Check	1457	275712
Date	Item	Description		Amount
2/19/2013	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 74327  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327		100.00
Received by: Sue Cox			Total	\$100.00

**JA2412**  
SE ROA 2327



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>

March 1, 2013

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: PERMITS 73428, 73429, 73420 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2014 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel.water.nv.gov](mailto:smcdaniel.water.nv.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon McDaniel".

Shannon McDaniel  
Water Resource Specialist 1

SM/mt

c: TEC Civil Engineering Consultants (via email)  
Turnipseed Engineering, Ltd. (via 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

<http://water.nv.gov>

March 13, 2013

**Corrected Letter**

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

**RE: PERMITS 73428, 73429, 73430 and 74327**

This is to inform you that the Application for Extension of Time has been granted to February 11, 2014 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel@water.nv.gov](mailto:smcdaniel@water.nv.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Shannon McDaniel".

Shannon McDaniel  
Water Resource Specialist 1

SM/mt

c: TEC Civil Engineering Group (via email)  
Turnipseed Engineering, Ltd. (via email)

Rev. 9/2011

**JA2414**  
SE ROA 2329





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

(800) 992-0900

(In Nevada Only)

<http://water.nv.gov>

**FINAL NOTICE**

February 13, 2014

**FINAL NOTICE**

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000552158

**Re: Final Notice for Permit 64977, 64978, 66400, 73428, 73429, 73430, and 74327**

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use** on or before **February 11, 2014**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

jw  
cc: TEC Civil Engineering Consultants (email)

**Schedule of Fees:**

Fee for filing Proof of Completion - \$60

Fee for filing Proof of Beneficial Use - \$60

Fee for filing Request for Extension of Time - \$120

**JA2415**  
**SE ROA 2330**



BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.

**FILED**

FEB 19 2014

STATE ENGINEER'S OFFICE

IN THE MATTER OF PERMIT NO. 74327 FILED TO APPROPRIATE/CHANGE THE WATERS OF

underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years

5. What is the expenditure on the project under this permit? Last year? \$17,034.00 Total to date? \$2,550,649.00

6. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the proof of completion and proof of beneficial use (Not to exceed 1 year)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in the area of beneficial use. We have continued maintenance of the project. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters. We have drastically reduced the price of the Project and have been actively working with a public agency to purchase the project.

State of Nevada

County of Washoe

Subscribed and sworn to before me on February 18, 2014

by Robert W. Marshall

Signed

Permittee or Agent

Address 625 Onyo Way

Street Address or PO Box

Sparks, NV 89411

City, State, ZIP Code

Phone (775) 425-1161

E-mail

Kathy Souvion  
Signature of Notary Public Required



**\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME  
A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 07/13 - ext\_app

**JA2416**  
**SE ROA 2331**

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPARKS NV 89441

## Receipt

		Payment Method	Check No.	Receipt #
		Check	1483	286438
Date	Item	Description	Amount	
2/19/2014	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO. 74327  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	120.00	
Received By: Catherine Orpilla			Total	\$120.00

**JA2417**  
SE ROA 2332



isotopes. Wells to be sampled, schedule of sample collection, and list of parameters are included in **Attachments A, B, and C.**

- Frequency, sampling location, and water quality parameters may be reviewed by the TAC on an annual basis, and reduced or expanded in scope upon its recommendation to the WAC.

#### **Precipitation Stations**

- Precipitation stations would be established in each of the following locations: eastern Honey Lake Valley, western Dry Valley, and central Bedell Flat. Existing precipitation stations may be used where possible. The purpose of collecting precipitation data is to support conclusions regarding changes in groundwater levels with corresponding changes in precipitation, if it occurs.
- All precipitation data would be entered into the project database.

#### **Quality of Data**

- The TAC would ensure that the entity or entities that collect water resources data follow standard protocols of data collection, recording and analysis (e.g., USGS and EPA), unless otherwise agreed to by the Parties.
- The water quality sampling program would include standard field and laboratory quality control procedures.

#### **Reporting**

- All data collected under or as described in this Plan, would be fully and cooperatively shared among the Parties, and made available to the public after appropriate QA/QC evaluation procedures have confirmed its accuracy.
- All water resources information collected for the North Valleys Projects would be downloaded to the project database and updated periodically on a website that is accessible to all Parties and the public.
- In addition to updating the water resources project database on a regular basis, an annual summary report would be prepared by the TAC that summarizes all information collected during the previous calendar year, including an analysis of any trends. These reports would be provided to the WAC for annual assessment of potential impacts to water resources resulting from groundwater extraction in Honey Lake Valley, Dry Valley, and Bedell Flat.



## **MANAGEMENT REQUIREMENTS**

### **Water Advisory Committee (WAC) and Technical Advisory Committee (TAC)**

These two committees are to establish and carry out policy (WAC), and to provide the technical scientific expertise (TAC) necessary to impartially develop, evaluate and analyze data. Separation of the roles and responsibilities of these two bodies is crucial to the maintenance of scientific impartiality of the data program.

- The Parties would establish a Water Advisory Committee (WAC) with membership created from representatives from cooperating agencies listed above, BLM, Project Proponents, and Nevada State Engineer. The WAC may also include representatives from the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. A representative of the Nevada State Engineer's Office would be invited to participate as the chair of the WAC.
- The WAC would create a Technical Advisory Committee (TAC) as a subcommittee to the WAC. TAC members would be appointed by the WAC.
- The WAC would meet in the first quarter of each year, or at other times as mutually agreed upon.
- The TAC would meet initially to establish and execute the monitoring plan and, thereafter, at intervals deemed appropriate to review and analyze data.
- Roles and responsibilities of the WAC and TAC would be determined by the Parties under advisement of the Nevada State Engineer's Office.

### **Suggested purposes and functions of the WAC would be to:**

1. Provide a forum for discussion of relevant data and analyses.
2. Share information regarding modeling efforts and model results, if used as part of the monitoring and management program.
3. Discuss needs for additional data collection and scientific investigations as recommended by the TAC.
4. Provide status reports and recommendations to the Parties.
5. Form recommendations for groundwater management actions based on reports from the TAC.
6. Recommend values for monitored variables (water levels, spring discharges, etc.) known as "action criteria", which, if exceeded, could be of concern to the parties. The values would be based on evaluations of historic hydrologic conditions and trends reported by the TAC.
7. Determine what constitutes an "unreasonable adverse impact" on a case-by-case basis.



8. Provide the Nevada State Engineer, Washoe County, and other relevant agencies with results of any analyses or technical evaluations, along with recommendations for specific mitigation.

**Suggested purposes and functions of the TAC would be to:**

1. Review proposed project monitoring plans and recommend implementation as appropriate.
2. Review historic groundwater level trends, spring and creek flows to determine historic hydrologic trends. Where possible identify wet and dry regimes, climate effects on groundwater recharge rates and base flows in surface waters. Where possible identify critical lows for detrimental impacts on habitat and resource sustainability.
3. Develop/refine standards and quality control procedures for data collection, management and analysis.
4. Evaluate monitoring plans and data to determine whether data gaps exist, make appropriate recommendations to the WAC.
5. Evaluate all monitoring data to determine if any action criteria have been exceeded, indicating a possible unreasonable adverse impact, report findings to the WAC.

**Numerical Ground-Water Flow Models**

- The TAC can recommend if numerical groundwater flow models that have previously been prepared for the North Valleys Projects for each of the three basins could be updated for use by the TAC/WAC for predicting future impacts.
- If deemed appropriate by the TAC/WAC, the full TAC or members of the TAC could update each model at the request of the Nevada State Engineer. Model output could be in the form of drawdown maps at appropriate intervals as requested by the State Engineer, plots of simulated water levels for the aquifer systems, and results of model calibration. The TAC would provide scientific review of modeling updates and hydrogeologic assumptions.

**Action Criteria**

- Specific quantitative criteria (action criteria) would be developed by the WAC, based on data developed by the TAC, and recommended to the Nevada State Engineer for possible use to "trigger" management actions.
- Action criteria would be developed by the WAC and recommended to the Nevada State Engineer to provide early warning of unreasonable adverse impacts to public resources and prior water rights of other appropriators. These criteria would be based on changes in groundwater levels, flow of springs, water quality, and/or changes in wetland/riparian habitat that can be attributed to groundwater extraction by the Project(s).



- If and when any action criterion is reached, the following management actions could be triggered:
  1. The WAC would request that the TAC conduct a thorough fact-finding to determine the level and extent of impacts, the TAC would report findings to the WAC;
  2. If WAC members agree that the action criterion exceedance is attributable to groundwater extraction by the Project(s), then the TAC would make recommendations to the WAC for possible mitigation actions to alleviate the impacts;
  3. The WAC members would determine whether or not to implement the recommended mitigation actions. The Nevada State Engineer's Office would determine whether the appropriate actions were implemented to conserve the resource.
- In the event that adverse environmental impacts are found to be unrelated to Project operations, the Nevada State Engineer should consult with the USGS regarding regional hydrologic conditions that may be contributing to the impacts.
- Any member of the WAC may propose a change to any action criterion. Any such change could be presented in writing to other members of the WAC, and accompanied by data and scientific analyses to support the proposed change. If the supporting analyses are found to be technically sound, then the WAC may recommend to the Nevada State Engineer that the action criterion be adjusted, as appropriate.

#### **Decision-Making Process**

- If the WAC determines that an action criterion is exceeded and attributed to groundwater extraction by the Project(s), based on reports from the TAC, the WAC can recommend a course-of-action (i.e., management activity or mitigation measure). If within the WAC, there are: (1) different interpretations regarding relationship of an adverse impact to the Project's groundwater extraction; or (2) different opinions on the course-of-action, the Parties may jointly agree to conduct additional data collection and/or data review and analysis directed at resolving the different interpretations or opinions, if possible. If that is not successful, the Parties could refer the issue to their respective managers and the Nevada State Engineer. Nothing herein limits or changes the Nevada State Engineer's authority, and any Party can petition the State Engineer to consider the issue.
- In the event that any of the Parties disagree as to whether the Proponents' proposed or ongoing groundwater extraction will result in unreasonable adverse impacts, any Party may petition the Nevada State Engineer to request that it determine whether there is or is not adverse impact(s) that require implementation of management or mitigation measures.



## **MITIGATION MEASURES**

- The Project(s) can mitigate unreasonable adverse impacts either as agreed upon by the Parties or after the Nevada State Engineer determines whether there are unreasonable adverse impacts due to Project(s) groundwater extraction. The Parties may take necessary steps to ensure that mitigation actions are feasible and reasonable.
- The mitigation portion of the plan should include a bond or escrow account established by the Project Proponents to fund possible mitigation actions.
- Mitigation measures may include one or more of the following:
  1. Geographic redistribution of groundwater extraction;
  2. Reduction or cessation of groundwater extraction from one or more wells;
  3. Restoration/modification of existing habitat;
  4. Establishment of new habitat;
  5. Augmentation of water resources with groundwater extracted for the Project(s);
  6. Purchase other water rights in the area, if available;
  7. Other measures as agreed to by the Parties and/or required by the Nevada State Engineer.

## **MODIFICATION OF THE PLAN**

- The Parties may modify this Plan by mutual agreement. The Parties also acknowledge that the Nevada State Engineer has authority to modify this Plan. In addition, the Parties may individually or jointly petition the Nevada State Engineer to modify this Plan in the event that mutual agreement cannot be reached. Any such petition shall only be filed after 90 days written notice to the remaining Party members. Any Party member, including the Proponents, may submit written comments to the Nevada State Engineer regarding the merits of any such petition for modification.



# **ATTACHMENT B**

## **PROPOSED MONITORING PLAN FOR DRY VALLEY**

### **ATTACHMENT B PROPOSED WATER RESOURCES MONITORING PLAN FOR DRY VALLEY AREA**

This water resources monitoring program is proposed by Intermountain Water Supply for groundwater extraction of up to 2,000 acre-feet per year (af/yr) from five production wells located in Dry Valley, Nevada. The monitoring program would document changes that could be caused by the pumping and transfer of water from Dry Valley to the Stead/Lemmon Valley areas.

#### **GROUNDWATER LEVELS**

Depth to groundwater will be measured in all production wells (DV-1 through DV-5) on a daily basis using pressure transducers or sounding probes. Each production well will be equipped with a flow meter to record cumulative water production. Cumulative well production will be recorded at least once per month.

A network of 15 monitoring well sites will be measured for water levels on a minimum quarterly basis. Locations are shown on **Figure D-2** and listed in **Table D-1**. Two of the sites located near the CA-NV state line are nested piezometers (DVM-15/-16 and DVM-17/-18/-19) recently installed by the USGS. All of the wells are located on private property, with the exception of DVM-1 which is located on BLM public land. Permission is still needed from some land owners to gain access to some of the monitoring wells.

Four 6-inch diameter test wells (DVM-1 through DVM-4) ranging in depth from 700 to 800 feet are being installed this year (2005) at the locations of proposed production wells. These test wells will be established as nearby monitoring wells for the production wells that will be installed at a later date. One new monitoring well is proposed for the center of the lower valley floor where deep monitoring wells are presently absent. This new well would be completed to a depth of 700 to 800 feet.

Continuous water level recorders will be installed on two shallow wells (DVM-6 and DVM-17) and two deep wells (DVM-5 and DVM-9 or DVM-18). This will allow daily tracking of water levels from these wells.



Ground surface and measuring point elevations will be measured at each production and monitoring well using a survey-grade GPS instrument. Groundwater level data will be downloaded at least semiannually into a project database and the accuracy of the measurements checked with manual measurements using an electronic sounder. Future groundwater monitoring will be accomplished by a combination of efforts of the well field operator and USGS.

TABLE D-1 Proposed Monitoring and Production Wells for Dry Valley, Nevada				
Well Number	Well Type	Well Depth (feet)	Well Diameter (inches)	Monitoring
DVM-1	Test/Mon. Well	710	6	Water Level Only
DVM-2	Test/Mon. Well	800	6	Water Level Only
DVM-3	Test/Mon. Well	700	6	Water Level Only
DVM-4	Test/Mon. Well	800	6	Water Level Only
DVM-5	Test/Mon. Well	600	2	Water Level Only
DVM-6	Monitoring Well	35	2	Water Level Only
DVM-7	Monitoring Well	20	2	Water Level Only
DVM-8	Monitoring Well	23	2	Water Level Only
DVM-9 (Lenz)	Domestic Well	100	6	Water Level Only
DVM-10 & -11	Monitoring Well	32	2	Water Level Only
DVM-12	Monitoring Well	Unknown	12	Water Level Only
DVM-13	Abandoned Domestic Well	28	8	Water Level Only
DVM-14	Test/Mon. Well	140	6	Water Level Only
DVM-15 & -16	Monitoring Well – Nested Piezometers	150, 385	2	Water Level Only
DVM-17, -18, & -19	Monitoring Well – Nested Piezometers	40, 250, 547	2	Water Level; Quality for DVM-17 & -18
DVM-20	Monitoring Well	20	2	Water Level Only
DV-1	Production Well	700 – 800	12 – 16	Water Level and Quality
DV-2	Production Well	700 – 800	12 – 16	Water Level and Quality
DV-3	Production Well	700 – 800	12 – 16	Water Level and Quality
DV-4	Production Well	700 – 800	12 – 16	Water Level and Quality
DV-5	Production Well	700 – 800	12 – 16	Water Level and Quality
New Well	Monitoring Well – To Be Completed	700 – 800	2	Water Level Only

See Figure D-2 for well locations.

## GROUNDWATER QUALITY

Groundwater quality samples will be collected from all five production wells and selected monitoring wells and analyzed by a laboratory for major ions, trace elements, and/or isotopes. The wells to be sampled for laboratory analysis include all production wells (DV-1 through DV-5) and the following two nested monitoring wells: DVM-17 (shallow) and DVM-18 (deep) located near the state line (**Figure D-2**).



The following parameters will be measured in each water sample:

- Field Parameters: Water temperature, pH, and specific conductance.
- Common Ions: Calcium, sodium, potassium, magnesium, chloride, fluoride, sulfate, bicarbonate, nitrate, total dissolved solids, and total suspended solids.
- Trace Elements: Arsenic, barium, copper, iron, lead, manganese, and zinc.
- Isotopes: Oxygen-18 and deuterium.

More extensive water quality analysis will be performed for samples from the production wells to meet Safe Drinking Water requirements. Samples will be collected and analyzed from the selected wells on a quarterly basis for the first two years of production well pumping to establish seasonal variations. Thereafter, the wells will be sampled and analyzed semiannually. An exception is that the isotopes will be analyzed only once per year for the first two years.

Frequency, sampling location, and water quality parameters will be reviewed by the WAC on an annual basis, and may be reduced or expanded in scope upon its recommendation.

### **STREAM FLOW**

Miscellaneous stream flow measurements in Dry Valley Creek and North Fork Dry Valley Creek have been made in the past 4 years by the USGS (Berger 2004) and Intermountain Water Supply. Perennial flow is observed to occur in the upgradient portions of these streams until the drainages discharge to the lower valley floor. The proposed production wells are located near the transition zone from perennial to ephemeral or intermittent flows. Approximately 2.5 miles farther downstream near the CA-NV state line, Dry Valley Creek is observed to maintain a small perennial flow for a short reach.

Three continuous stage recorders will be installed on lower North Fork Dry Valley Creek (S-1), upper Dry Valley Creek (S-2), and lower Dry Valley Creek (S-3 near the state line) (**Figure D-2**). The stage data will be converted to flow rate using rating curve information developed from various flow measurements made over a range of flow conditions. This information will better characterize baseline stream flow conditions, and provide a means to monitor potential effects of production wells pumping on surface water flow.

### **SPRINGS AND RIPARIAN AREAS**

Selected springs and associated riparian areas will be monitored in Dry Valley to determine if pumping from the production wells would have an adverse effect on flow and/or vegetative conditions. The springs selected for monitoring are: DVC-81 (seepage from Dry Valley Creek into a pond); and DVC-86 (Duckweed Spring) (**Figure D-2**). Monitoring activities will be conducted on a quarterly basis, with information

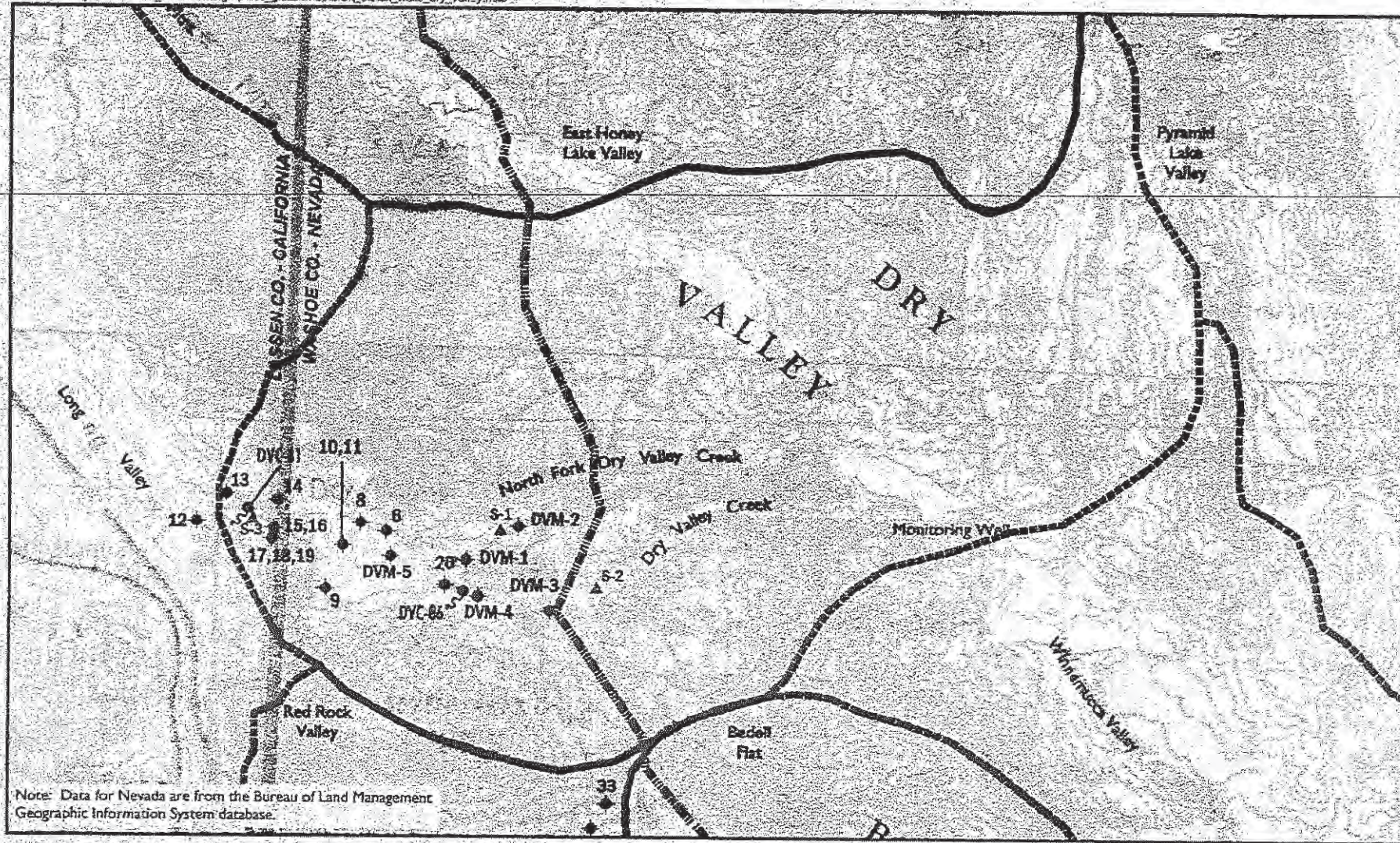
periodically entered into the project database. Monitoring activities will include the following:

- Flow: Flow rate of water discharging from the spring will be measured using a flow meter or portable flume. Alternatively, a staff gage can be installed to measure relative changes in water level if the flow is in a well-defined channel. For low flows or dispersed flows on the ground surface, flows can be estimated.
- Photo-Documentation of Vegetation: One or more photographs will be taken of the spring site from the same location each time so that relative changes in vegetation and overall site conditions can be evaluated.

### **PRECIPITATION**

A precipitation gage will be installed in Dry Valley to measure precipitation amount on a daily basis. This information will be recorded weekly by the well field operator, and periodically entered into the project database.





Note: Data for Nevada are from the Bureau of Land Management Geographic Information System database.



- 37 Monitoring Well (DVM-1 through DVM-5 are adjacent to proposed production wells)
- S-1 Stream Gage
- DYC-81 Spring

- Public Ownership
- Bureau of Land Management
- Tuscarora Natural Gas Pipeline
- Watershed Boundary

Proposed Monitoring Sites  
Dry Valley  
North Valleys Rights-of-Way Projects EIS  
Washoe County, Nevada  
FIGURE D-2

JA2356



App	Owner Name
64978	INTERMOUNTAIN PIPELINE LTD.
64978	INTERMOUNTAIN WATER SUPPLY, LTD.
65648	INTERMOUNTAIN ASPHALT SUPPLY, LLC
65883	INTERMOUNTAIN PIPELINE, LTD.
65884	INTERMOUNTAIN PIPELINE, LTD.
66400	INTERMOUNTAIN WATER SUPPLY, LTD.
66400	INTERMOUNTAIN PIPELINE LTD.
66873	INTERMOUNTAIN PIPELINE, LTD.
66873	INTERMOUNTAIN WATER SUPPLY, LTD.
66981	INTERMOUNTAIN PIPELINE LTD.
66981	INTERMOUNTAIN WATER SUPPLY, LTD.
67037	INTERMOUNTAIN WATER SUPPLY, LTD.
67037	INTERMOUNTAIN PIPELINE LTD.
68523T	INTERMOUNTAIN LAND CO.
69663	INTERMOUNTAIN PIPELINE, LTD.
69664	INTERMOUNTAIN PIPELINE, LTD.
69664	INTERMOUNTAIN WATER SUPPLY, LTD.
69665	INTERMOUNTAIN PIPELINE, LTD.
72700	INTERMOUNTAIN WATER SUPPLY, LTD.
73048	INTERMOUNTAIN WATER SUPPLY, LTD.
73049	INTERMOUNTAIN WATER SUPPLY, LTD.
73428	INTERMOUNTAIN WATER SUPPLY, LTD.
73428	INTERMOUNTAIN PIPELINE LTD.
73429	INTERMOUNTAIN PIPELINE, LTD.
73429	INTERMOUNTAIN WATER SUPPLY, LTD.
73430	INTERMOUNTAIN WATER SUPPLY, LTD.
73430	INTERMOUNTAIN PIPELINE, LTD. <i>Changes 66400</i>
74327	INTERMOUNTAIN WATER SUPPLY LTD <i>64978</i>
V02997	INTERMOUNTAIN LAND COMPANY (DBA)
V09531	INTERMOUNTAIN RANCHES, LTD.

App	Owner Name
7235	INTERMOUNTAIN RANCHES, LTD
8223	INTERMOUNTAIN RANCHES, LTD
11311	INTERMOUNTAIN RANCHES, LTD
11314	INTERMOUNTAIN RANCHES, LTD
27986	INTERMOUNTAIN LAND CO.
27987	INTERMOUNTAIN LAND CO.
27988	INTERMOUNTAIN LAND CO.
27989	INTERMOUNTAIN LAND CO.
27990	INTERMOUNTAIN LAND CO.
28272	INTERMOUNTAIN LAND CO.
28274	INTERMOUNTAIN LAND
28275	INTERMOUNTAIN LAND
28367	INTERMOUNTAIN LAND CO.
28368	INTERMOUNTAIN LAND COMPANY
28369	INTERMOUNTAIN LAND CO.
30327	INTERMOUNTAIN EXPLORATION CO.
32699	INTERMOUNTAIN EXPLORATION COMPANY
34960	INTERMOUNTAIN LAND COMPANY
34961	INTERMOUNTAIN LAND COMPANY
34962	INTERMOUNTAIN LAND COMPANY
34963	INTERMOUNTAIN LAND COMPANY
35452	INTERMOUNTAIN LAND AND CATTLE COMPAN
35927	INTERMOUNTAIN EXPLORATION COMPANY
36051	INTERMOUNTAIN LAND & CATTLE CO
37893	INTERMOUNTAIN LAND CO.
39593	INTERMOUNTAIN LAND CO.
40547	INTERMOUNTAIN LAND COMPANY
40548	INTERMOUNTAIN LAND CO.
46828	INTERMOUNTAIN EXPLORATION COMPANY
48740	INTERMOUNTAIN LAND CO.
48741	INTERMOUNTAIN LAND CO.
48819	INTERMOUNTAIN LAND CO.
49297	INTERMOUNTAIN EXPLORATION COMPANY
49689	INTERMOUNTAIN LAND
49670	INTERMOUNTAIN LAND
51034	INTERMOUNTAIN LAND AND CATTLE CO.
51074	INTERMOUNTAIN LAND AND CATTLE CO.
53147	INTERMOUNTAIN LAND CO.
53148	INTERMOUNTAIN LAND CO.
55126	INTERMOUNTAIN LAND CO.
55489	INTERMOUNTAIN LAND CO.
55490	INTERMOUNTAIN LAND CO.
58798T	INTERMOUNTAIN EXPLORATION COMPANY
60239	INTERMOUNTAIN LAND CO.
60331T	INTERMOUNTAIN EXPLORATION COMPANY
60384	INTERMOUNTAIN LAND COMPANY
60385	INTERMOUNTAIN LAND COMPANY
62106T	INTERMOUNTAIN LAND CO.
64977	INTERMOUNTAIN WATER SUPPLY, LTD.
64977	INTERMOUNTAIN PIPELINE LTD.



**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 **MAY 23 2006**

Returned to applicant for correction.....

Corrected application filed..... Map filed **JUN 14 2006**The applicant..... **Intermountain Water Supply Ltd.**.....of..... **175 Stags Leap Circle**..... **Sparks, NV 89436**.....  
Street and No. Or P.O. Box No. City or Town

hereby makes.... application for permission to change the.....

☒ Point of diversion☐ Place of use☐ Manner of use☐ Of a portionof water heretofore appropriated under..... **Permit 64978 (See Ruling #5568)**.....  
Identify existing right by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree identify right in Decree.1. The source of water is..... **underground water well**.....  
Name of stream, lake, underground, spring or other sources.2. The amount of water to be changed..... **0.623 cfs**.....  
feet, acre-feet. One second foot equals 448.83 gallons per minute.3. The water to be used for..... **Same As Heretofore**.....  
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..... **Municipal & Domestic**.....  
If for stock state number and kind of animals.5. The water is to be diverted at the following point... **within the SW 1/4 SE Corner, Sec. 29,**  
**T.24 N., R. 18E., MDB&M or at a point from which the SE Corner of said Sec. 29 bears S.**  
**88° 46' 38" E at a distance of 1448.69. For map of prop POU use map to accompany this**  
**application.**  
Describe as being within a 40-acre subdivision of public survey and by course and distance to a section corner.  
be stated.6. The existing point of diversion is located within..... **SE 1/4 SW 1/4 Sec. 10,**  
**MDB&M or at a point from which the SE corner of Section 10, T.24N.**  
**bear S. 80° 04' 55" E. a distance of 8077 feet.**  
**44° 31' 55" 21449**  
If point of diversion is not changed, do not a7. Proposed place of use.... **Same As Heretofore**.....  
Describe by legal subdivisions. If for irrigation state number of acres to be irrigated.



8. Existing place of use...Sec. 1 through 36 inclusive T.21N., R.19E., MDB&M; Sec. 36, T.21 N., R.18 E., sec. 1 through 12 inclusive, 15, 16 and 17 T.20N., R.19E. MDB&M; and sec. 1 and 12 T.20N., R.18E., MDB&M.....  
Describe by legal subdivisions. If permit is for irrigation, state number of acres irrigated. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.

9. Use will be from.....1/1.....to.....12/31.....of each year.  
Month and Day Month and Day

10. Use permitted from.....1/1.....to.....12/31.....  
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).....drilled well, pump, motor & distribution lines.....  
State manner in which water is to be diverted, i.e. diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.

12. Estimated cost of works.....\$10 Million.....

13. Estimated time required to construct works.....5 years.....  
If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use.....10 years.....

15. Remarks:.....For map of existing POD use map on file under 69667.....  
For use other than irrigation or stock watering, state number and type of units to be served or annual consumptive use.

*This application replaces appl. 69664 which transferred 6/7/06 the rights from upper Dry Valley to Lower Dry Valley (see ruling "5368")*

.....(775) 885-2101.....  
Phone No.

By.....R. Michael Turnipseed, P.E. ....  
Print or type name clearly

*[Signature]* P.E.  
Signature, applicant or agent

.....204 N. Minnesota Street.....  
Street and No., or P.O. Box No.

.....Carson City, NV 89703 .....  
City, State, Zip Code

APPLICATION MUST BE SIGNED  
BY THE APPLICANT OR AGENT

\$150 FILING FEE MUST ACCOMPANY APPLICATION

JA2360  
SE ROA 2275



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

TURNIPSEED ENGINEERING LTD  
204 N MINNESOTA ST  
CARSON CITY NV 89703

## Receipt

Payment Method		Check No.	Receipt #
Check		514	203065

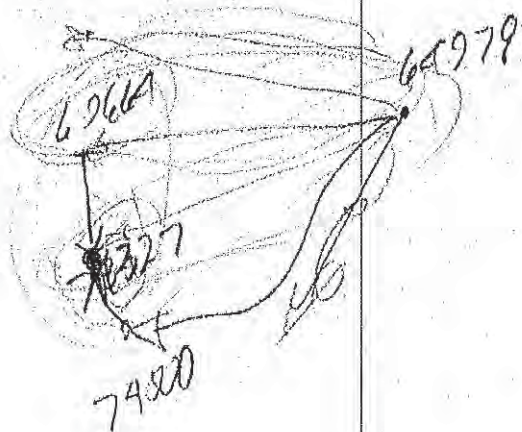
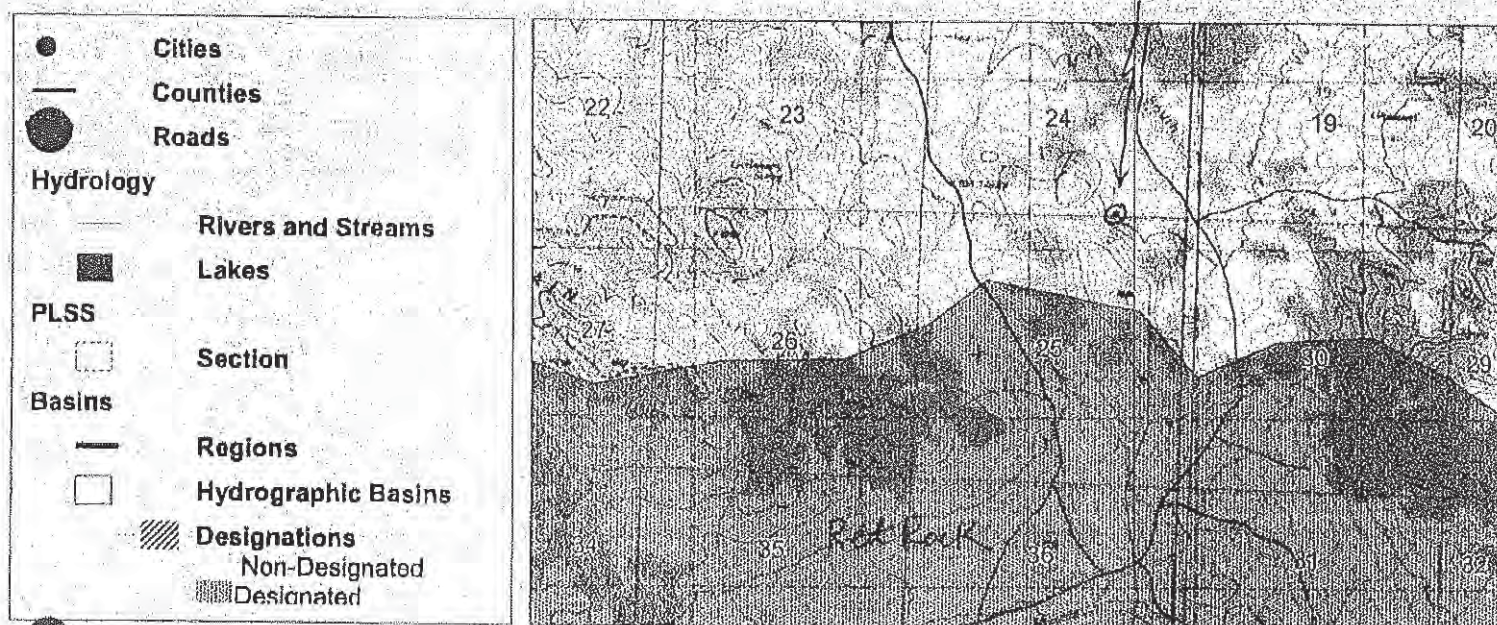
  

Date	Item	Description	Amount
5/23/2006	Permanant Change	APPLICATION TO CHANGE NO. 74327	150.00
Received by: Sue Cox <i>Sc</i>			<b>Total</b> \$150.00

**JA2361**  
SE ROA 2276



# State of Nevada Division of Water Resources





KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

HUGH RICCI, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

RE: 74327

June 08, 2006

Intermountain Water Supply Ltd.  
175 Stags Leap Circle  
Sparks, Nv 89436

Dear Ladies and Gentlemen:

Application No. 74327 for permission to appropriate water was filed in the Division of Water Resources on May 23, 2006 in the name of Intermountain Water Supply Ltd. by R. Michael Turnipseed as agent. The \$150.00 filing fee was received and Receipt No. 203065 was issued on May 23, 2006 to Turnipseed Engineering Ltd.

Please be advised that, in addition to the correspondence and notices sent to you from the Division of Water Resources relative to these water filings, a copy will be forwarded to R. Michael Turnipseed as agent unless we are otherwise instructed by you as the owner of record.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record, and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Very truly yours,

*Hugh Ricci, P.E.*

Hugh Ricci, P.E.  
State Engineer

HR/1a



KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

HUGH RICCI, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

June 12, 2006

RE: 74327

Intermountain Water Supply Ltd  
175 Stags Leap Circle  
Sparks NV 89436

Ladies and Gentlemen:

Please be advised that NRS 533.360 (3b) establishes certain noticing requirements, which must be met by any applicant for underground water for municipal, quasi-municipal, or industrial uses whose reasonably expected rate of diversion is 0.5 c.f.s. or greater. It appears that your Application Numbers 74327 is subject to this statute. I have enclosed a copy of NRS 533.360 for your information. The State Engineer **cannot** consider approval of your applications until the noticing requirements are met. If there are no domestic wells within 2,500 feet of the well site, please inform this office in writing.

If you have any questions on this matter, feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason King".

Jason King, P.E.  
Deputy State Engineer

JK/sc

cc: R. Michael Turnipseed, P.E.

Enclosures

KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

HUGH RICCI, P.E.  
State Engineer

2006 JUN 16 AM 10:04

STATE ENGINEER'S OFFICE

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

June 12, 2006

RE: 74327

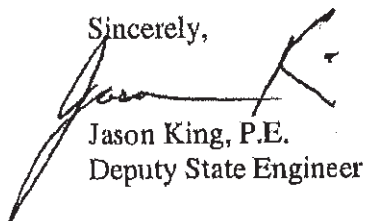
Intermountain Water Supply Ltd  
175 Stags Leap Circle  
Sparks NV 89436

Ladies and Gentlemen:

Please be advised that NRS 533.360 (3b) establishes certain noticing requirements, which must be met by any applicant for underground water for municipal, quasi-municipal, or industrial uses whose reasonably expected rate of diversion is 0.5 c.f.s. or greater. It appears that your Application Numbers 74327 is subject to this statute. I have enclosed a copy of NRS 533.360 for your information. The State Engineer **cannot** consider approval of your applications until the noticing requirements are met. If there are no domestic wells within 2,500 feet of the well site, please inform this office in writing.

If you have any questions on this matter, feel free to call me.

Sincerely,

  
Jason King, P.E.  
Deputy State Engineer

JK/sc

cc: R. Michael Turnipseed, P.E.

Enclosures

6/15/06  
There are no  
domestic wells  
within 2500 feet  
of the point of  
diversion of the  
above application  
at Marshall



KENNY C. GUINN  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

HUGH RICCI, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002

Carson City, Nevada 89701

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

June 19, 2006

Dorothy A. Timian-Palmer  
Chief Operating Officer  
Fish Springs Ranch, LLC  
3480 GS Richards Blvd., Suite 101  
Carson City, NV 89703

RE: Groundwater Monitoring and Management Plan for Future Pumping in the Fish Springs Ranch Area as Part of the North Valley's Right-of-Way Projects, Washoe County, Nevada.

Dear Ms. Timian-Palmer:

We have received your monitoring and management plan (Plan) for the Fish Spring's Ranch groundwater pumping associated with the North Valley's importation project. By your letter of May 23, 2006, the Plan submitted pursuant to the conditions of Ruling 3787 and 3787A is found as Attachment A of Appendix D, of the North Valleys Right-of-Way Projects Final EIS. Monitor wells and springs are shown on Figure D-1 of Attachment A. A list of the wells with survey coordinates was also attached to your correspondence of May 23, 2006.

There were a few minor differences between your attached list of proposed monitor wells and Figure D-1 of Attachment A. Figure D-1 shows well Headquarters MW-2, however the table lists Headquarters MW-1. Jennifer Morgan of your staff recently clarified that Headquarters MW-2 is the actual well to be monitored. In addition, Ms. Morgan indicated the well shown as BB MWA on Figure D-1 is the same as well BB-2A in your table.

As we discussed at our meeting of May 8, 2006, there must be two additional monitor wells in addition to the monitor wells shown on Figure D-1 of Attachment A. These wells will be Sand Pass MW-2, to be used in conjunction with Sand Pass MW-1 to determine hydraulic gradient in that location. Another new well is to be located near USGS-01 such that the two wells together will provide information on the groundwater gradient and change in gradient between the Fish Springs Ranch and the Sierra Army Depot. Well USGS-04 was shown on your list of May 23 but is not suitably located to identify changes in gradient between the pumping center and the

**JA2366**  
SE ROA 2281



Sierra Army Depot. These new wells shall be measured at least quarterly. Monitor wells LB2, USGS-04 and well 9 are shown on Figure D-1, but are not currently equipped with a recording pressure transducer. Are these wells part of the monitoring program, and if so, are you planning to equip them with recording devices or to measure manually?

You have requested to exclude High Rock Spring, designated as HL V-165 on Figure D-1, from the monitoring network. High Rock Spring is approximately 12 miles northwest of the center of the planned well field, and your request to remove the site from the network is approved.

The following table is believed to accurately list each of the planned monitor wells. Please contact me if you believe this list to be incorrect, incomplete or if you would like to propose changes. The Plan is tentatively approved subject to clarification on the status of USGS-04, LB2 and well 9 and to the addition of one new monitor well near USGS-01, whose location and depth must be pre-approved by this office. The Nevada Division of Water Resources reserves the right to amend this plan any time during the life of the project as conditions warrant.

Proposed Fish Springs Ranch Monitoring Well Network						
Well Name	Location		Elevation (feet m.s.l.)	Depth (feet)	Perf'd. interval (feet)	
	Latitude	Longitude				
1 Wilson MW-1	40° 05' 33.8160717"	119° 55' 49.3857934"	4000.36	440	146 - 440	
2 Ferrel MW-1	40° 05' 32.9996883"	119° 55' 00.0216541"	3998.5	252	63 - 252	
3 Ferrel Playa MW	40° 05' 49.6570620"	119° 54' 11.5199254"	3979.01	477	123 - 477	
4 Jarboe MW-1	40° 05' 07.4465484"	119° 53' 08.5930509"	4031.4	497	140 - 497	
5 Jarboe MW-2	40° 05' 07.4416921"	119° 53' 08.6736875"	4032.42	185	42 - 105	
6 Headquarters MW-2	40° 05' 51.1370577"	119° 52' 45.5207317"	4017.88	175	49 - 175	
7 BB-2A (BB-MWA)	40° 08' 55.7209986"	119° 51' 59.7122509"	3992.26	475	465 - 475	
8 Schaufus	40° 07' 42.6"	119° 50' 46.3"	4076	607	?	
9 Hodges MW-1	40° 07' 57.4227436"	119° 50' 31.5750895"	4018.75	260	50 - 260	
10 Cottonwood MW-2	40° 06' 46.0935517"	119° 49' 30.1465441"	4317.62	495	180 - 495	
11 Neversweat MW-2	40° 08' 49.1815573"	119° 48' 56.3318666"	4179.07	500	311 - 500	
12 Astor Pass MW-1	40° 11' 54.9722793"	119° 48' 28.129191"	4001.65	400	180 - 390	
13 Astor Pass MW-2	40° 12' 04.6771566"	119° 48' 58.067799"	4002.69	475	262 - 472	
14 Sand Pass MW-1	40° 13' 01.6915970"	119° 49' 30.6319558"	4076.99	712	546 - 712	
15 Sand Pass MW-2	40° 13' 23.8"	119° 49' 11.9"	4173.9	712	546 - 712	
16 USGS-01	40° 07' 39.0094955"	120° 00' 51.6643144"	4003.54			
17 West MW	To be determined					

Please contact me if you have any questions or concerns related to this monitor plan.

Sincerely,

*Richard A. Felling*

Richard A. Felling  
Chief, Hydrology Section

**JA2367**  
SE ROA 2282

ALLEN BIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
**DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701-9955

**JUN 22 2006**

In reply refer to  
No. **74327**

Address All Communications to  
the State Engineer, Division  
of Water Resources  
Telephone (775) 884-2800

**INTERMOUNTAIN WATER SUPPLY LTD  
175 STAGS LEAP CIRCLE  
SPARKS NV 89436**

Your application was received and filed in this office under the above mentioned serial number on **MAY 23, 2006**. The supporting map was received and filed on **JUNE 14, 2006**.

Today notice of publication has been mailed to **Reno Gazette Journal, Reno NV (Washoe County)**. In accordance with the law the notice will be published once a week for four consecutive weekly issues.

Sincerely,

*Tracy Taylor, P.E.*

State Engineer

TT/ag

cc: Michael Turnipseed

**JA2368**  
SE ROA 2283



**Angela Gault**

**From:** Angela Gault  
**Sent:** Thursday, June 22, 2006 10:03 AM  
**To:** legals@RGJ.com  
**Subject:** 74327

Washoe County/RGJ

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 proof of publication.*

Thank You,

Angela Gault  
Admin. Assist. II  
Nevada Division of Water Resources  
(775) 684-2800 Fax: (775) 684-2811

6/22/2006

**JA2369**  
SE ROA 2284



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

IN THE MATTER OF PROTESTED )  
APPLICATIONS 73428, 73429 AND 73430 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION OF THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 66400 )  
WITHIN THE DRY VALLEY HYDROGRAPHIC )  
BASIN (95), WASHOE COUNTY, NEVADA. )

**RULING**

**#5622**

**GENERAL**

**I.**

Application 73428 was filed on November 3, 2005, by Intermountain Pipeline, Ltd., and later assigned to Intermountain Water Supply, Ltd., to change the point of diversion of 0.45 cubic feet per second (cfs), not to exceed 325 acre-feet annually (afa), a portion of the underground water previously permitted for appropriation under Permit 66400. The proposed manner of use and place of use is described as being for municipal and domestic purposes within the Lemmon Valley Hydrographic Basin. The proposed place of use is further described as being located within Sections 1 through 36, T.21N., R.19E., M.D.B.&M., Section 36, T.21N., R.18E., M.D.B.&M., Sections 1 through 12, 15, 16, and 17, T.20N., R.19E., M.D.B.&M., and Sections 1 and 12, T.20N., R.18E., M.D.B.&M. The change requested by Application 73428, if approved, would transfer the Applicant's existing point of diversion from the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10, T.24N., R.18E., M.D.B.&M., to a point located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 11, T.24N., R.18E., M.D.B.&M.<sup>1</sup>

**II.**

Application 73429 was filed on November 3, 2005, by Intermountain Pipeline, Ltd., and later assigned to Intermountain Water Supply, Ltd., to change the point of diversion of 0.97 cfs, not to exceed 700 afa, a portion of the underground water previously permitted for appropriation under Permit 66400. The proposed manner of use and place of use is described on the application as being for municipal and domestic purposes within the Lemmon Valley Hydrographic Basin as described above. The change requested by Application 73429, if approved, would transfer the Applicant's existing point of diversion from the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of

<sup>1</sup> File No. 73428, official records in the Office of the State Engineer.



Section 10, T.24N., R.18E., M.D.B.&M., to a point located within the SE¼ NE¼ of Section 14, T.24N., R.18E., M.D.B.&M.<sup>2</sup>

### III.

Application 73430 was filed on November 3, 2005, by Intermountain Pipeline, Ltd., and later assigned to Intermountain Water Supply, Ltd., to change the point of diversion of 0.22 cfs, not to exceed 159 afa, a portion of the underground water previously permitted for appropriation under Permit 66400. The proposed manner of use and place of use is described on the application as being for municipal and domestic purposes within the Lemmon Valley Hydrographic Basin. The change requested by Application 73430, if approved, would transfer the Applicant's existing point of diversion from the SW¼ SE¼ of Section 10, T.24N., R.18E., M.D.B.&M. to a point located within the NW¼ SE¼ of Section 15, T.24N., R.18E., M.D.B.&M.<sup>3</sup>

### IV.

Applications 73428, 73429 and 73430 were timely protested by Washoe County on the following grounds:<sup>1,2,3</sup>

The above referenced applications propose to change the point of diversion of a portion of water rights appropriated under permit 66400 in Dry Valley Hydrographic Basin. Washoe County opposes the granting of these applications because: 1) there is no unappropriated water in the source; and, 2) granting of these permits could threaten to prove detrimental to the public interest. Washoe County's opposition to these applications are in accordance with County's Development Code adopted in 1992 which in part states:

"PSF.1.10.1 Washoe County shall work with state and federal agencies to manage local groundwater resources to provide for annual use of these resources which does not exceed levels sustainable at current rates of inflow and recharge."

And

"PSF 1.10.2 The Washoe County Board of County Commissioners shall not approve land development activities dependent upon groundwater supplies which will cause the groundwater basin(s) to fall below self sustaining levels as a result of the project's water consumption or effluent discharge method."

<sup>2</sup> File No. 73429, official records in the Office of the State Engineer.

<sup>3</sup> File No. 73430, official records in the Office of the State Engineer.



The State Engineer issued Ruling # 5568 dated February 28, 2006, in response to a similar protest on application 69664 filed to change the point of diversion of permit 64978. In this Ruling the State Engineer determined as follows:

"The State Engineer finds that the issues related to water availability and inter-basin transfer have been settled with the issuance of Permit 64978 and will not be revisited for a point of diversion change as proposed under Application 69664."

Washoe County respectfully disagrees with the above finding and the reasoning behind it. All permits issued by the State Engineer are subject to review and revision, under appropriate circumstances, at any time. The filing of change application allows the State Engineer the discretion to review all aspects of the original Permit, including those of water availability. Permits 64978, 64977 & 66400 were granted in January 2002 for a total combined duty of nearly 3,000.00 acre-feet annually. At that time there was limited objective information and data on the safe yield of the Dry Valley Hydrographic Basin.

Since the time of the granting of these permits, Washoe County through funding recommended by the Regional Water Planning Commission (RWPC) has employed the United States Geological Survey (U.S.G.S.) to conduct a detailed study of the groundwater discharge from Dry Valley. [Footnote omitted.] Extensive geophysical studies and hydrologic evaluation by the U.S.G.S. suggests that the original U.S.G.S. estimates of the perennial yield of 1,000 acre-feet annually for this basin were within reasonable range. The results of these studies were presented to the RWPC with the State Engineer's permanent staff assigned as a member to RWPC present and copies of reports provided for his review.

Furthermore, The Nevada Revised Statutes do not exempt "Change Applications" from the provisions of NRS 533.370 which prohibits the State Engineer from granting a permit if:

"1) There is no unappropriated water at the proposed source" and "2) the proposed use or change threatens to prove detrimental to the public interest." These issues can properly be heard "De Novo" in order to protect the public interest and prevent long-term groundwater mining.

It is Washoe County's position that neither one of these criteria can be satisfied in light of the recent findings by the U.S.G.S. and that therefore, the above referenced applications should be denied and the base permits amended as appropriate.



V.

Applications 73428, 73429 and 73430 were timely protested by Lassen County, on the following grounds:<sup>1, 2, 3</sup>

The U.S. Geological Survey in cooperation with Washoe County has completed a comprehensive Ground-Water Resource Evaluation of Dry Valley Washoe County, Nevada; Scientific Investigation Report 2004-5155 (EXHIBIT "B"). The objectives and scope of this 3-year study of the Nevada portion of Dry Valley were to: (1) describe the hydrologic framework; (2) characterize the groundwater flow system and water quality; and (3) quantify ground-water discharge. Results from the evaluation estimate total natural ground-water discharge from Dry Valley to range from a minimum of 700 acre-ft to a maximum of 1,000 acre-ft annually.

Based on the foregoing, and on information and belief, this Protestant offers the following reasons and following grounds:

1. Approval of the subject application will have an adverse impact on flows of Long Valley Creek and, accordingly, will adversely impact existing water rights and existing down-gradient ground-water users.
2. Approval of the subject application will, on information and belief, constitute a withdrawal of more water from the basin than is allowed by law, pursuant to Nevada Revised Statutes 533.271 (perennial yield principal), particularly when combined with other applications seeking to have the points of diversion changed to the same general area.
3. Approval of the subject application will, on information and belief, adversely impact existing water sources (springs and seeps) presently utilized and depended upon by livestock, wildlife, fisheries, and riparian vegetation.
4. Approval of the subject application is not in the public interest because on the information and belief, pumping of the volume of ground-water represented by the subject application, particularly when combined with other applications seeking to have the points of diversion changed to the same general area, will result in a water mining situation and long-term detrimental impact on the aquifer.
5. There is insufficient water in the proposed source.

**FINDINGS OF FACT**

I.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. The State Engineer finds that in the case of protested Applications 73428, 73429 and 73430 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 66400, which is the basis for change Applications 73428, 73429 and 73430, on January 11, 2002, for an individual duty of water that was not to exceed 1,549 afa. This permit was also approved with a condition that it would share a total combined duty of Permits 64977, 64978 and 66400 that was not to exceed 2,996 afa. Permit 66400 was approved for an inter-basin transfer of water with the point of diversion located in Dry Valley and the place of use in Lemmon Valley. In approving Permit 66400, the State Engineer made the determination that Permit 66400 complied with all the statutory requirements for approval including the inter-basin transfer provisions of NRS § 533.370. Applications 73428, 73429 and 73430 do not seek an additional appropriation of water, only a change in the point of diversion of an existing water right permit within Dry Valley.<sup>4</sup>

Protestant Washoe County has requested the State Engineer go back and re-evaluate Permit 66400 on the basis of new evidence found in U.S.G.S. Scientific Investigations Report 2004-5155. This new report suggests a revised perennial yield estimate of 1,000 afa for the Dry Valley Hydrographic Basin. In State Engineer's Ruling No. 5568, similar argument regarding re-evaluation of an existing permit was rejected by the State Engineer on the grounds that the issue of water availability and interbasin transfer were settled with the issuance of the base right permit and would not be revisited under a change in point of diversion. When Permits 64977, 64978 and 66400 were issued, the State Engineer made a determination, based on the limited information available at that time, that 2,996 afa of underground water was available for appropriation in the Dry Valley Hydrographic Basin and the statutory requirements for the proposed interbasin transfer had been met. From an administrative standpoint, it would be problematical for the State Engineer to reduce or extinguish water rights held by existing permit holders based solely upon a newer and lower estimate of perennial yield and the fact that a change application had been filed. When a permit is issued to appropriate the public waters of the state of Nevada there must be some expectation on the part of the permit holder that he may go forward with the development of his project, which necessitates certain expenses and obligations, without a cloud of uncertainty that some future hydrological report may be utilized to take all or a portion of his existing water right permits. This does not mean that existing water rights cannot be regulated. On the contrary, the Nevada Revised Statutes provide regulatory authority to the State Engineer should adverse effects from the pumping of existing groundwater

<sup>4</sup> Permit No. 66400, official records in the Office of the State Engineer.

permits occur.<sup>5</sup> Permit 66400 also carries a set of specific requirements referred to as permit terms, which provides additional regulatory authority to the State Engineer. The State Engineer finds the regulatory authority within the Nevada Revised Statutes and the terms of Permit 66400 provide additional protection for senior existing water right appropriators and domestic well owners.

The State Engineer finds that the issues related to water availability and inter-basin transfer have been settled with the issuance of Permit 66400 and will not be revisited for a point of diversion change as proposed under Applications 73428, 73429 and 73430. The State Engineer further finds that reducing the annual duty of Permits 64977, 64978 and 66400 is not appropriate and sufficient protections exist within the Nevada Revised Statutes to protect senior existing water right appropriators and domestic well owners from any adverse effects that may occur in the future.

### III.

A determination was made, after an examination of the records of the Office of the State Engineer, that there is only one additional water right permit, proof or claim filed for the proposed underground water source within the Dry Valley Hydrographic Basin exclusive of the Applicant's permits. This is a certificated water right for irrigation and domestic purposes at a duty not to exceed 25.60 afa. The permit number is Permit 28097, Certificate 10521 and the current owner of record is shown as John G. Lenz.<sup>6</sup> It should be noted that Mr. Lenz is not listed as a protestant to Applications 73428, 73429 and 73430. The State Engineer finds that the Protestants do not possess existing groundwater appropriations in the Dry Valley Hydrographic Basin.

### IV.

Records in the Office of the State Engineer indicate that up to nine domestic wells have been drilled in the Dry Valley Hydrographic Basin. The Applicant has indicated that there is currently only one house in Dry Valley utilizing an underground domestic water supply.<sup>7</sup> Nevada water law does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectible interests in existing domestic wells and the rights of existing appropriators can be satisfied. The State

<sup>5</sup> NRS § 534.110.

<sup>6</sup> Nevada Division of Water Resources, *Water Rights Database Special Hydrographic Abstract*, May 9, 2006.

<sup>7</sup> See, Intermountain Pipeline, Ltd. letter to State Engineer, October 3, 2005, within File No. 69604, official records in the Office of the State Engineer.



Engineer finds that protections exist within the Nevada water law to protect domestic well owners and existing water right holders from an unreasonable lowering of the water table, should such impacts occur as a result of pumping water at the proposed well site.

### CONCLUSIONS

#### 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 a change application 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 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.

When Permits 64977, 64978 and 66400 were issued, the State Engineer made a determination, based on the information available at that time, that 2,996 afa of water was available for appropriation in the Dry Valley Hydrographic Basin and the requirements for interbasin transfer were met. Applications 73428, 73429 and 73430 seek to change the point of diversion of Permit 66400 and do not request any additional water from the Dry Valley Hydrographic Basin. The State Engineer concludes he is not required to reevaluate the determination as to water availability under the change application and that the proposed changes in point of diversion will not threaten to prove detrimental to the public interest.

#### IV.

The State Engineer concludes that the protest issues regarding the inter-basin transfer of water and water availability were settled by the issuance of Permit 66400; therefore, those protest issues are dismissed.

<sup>8</sup> NRS chapters 533 and 534.

<sup>9</sup> NRS § 533.370 (5).

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No. 73933**

Electronically Filed  
Feb 09 2018 08:15 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

SIERRA PACIFIC INDUSTRIES, a California Corporation,

Appellant,

v.

JASON KING, P.E., in his capacity as Nevada State Engineer; THE  
DIVISION OF WATER RESOURCES, DEPARTMENT OF  
CONSERVATION, an agency of the State of Nevada; and  
INTERMOUNTAIN WATER SUPPLY, LTD., a Nevada Limited Liability  
Company,

Respondents

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Appeal From Order Denying Petition for Judicial Review  
District Court Case No.: CV16-01378  
Second Judicial District Court of Nevada

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**JOINT APPENDIX**

**VOLUME X**

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**McDONALD CARANO LLP**

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100 W. Liberty St., 10th Fl.  
Reno, NV 89501  
775-788-2000 (phone)  
775-788-2020 (fax)

[dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)

*Attorneys for Appellant  
Sierra Pacific Industries*

**RICHARD L. ELMORE CHTD.**

Richard L. Elmore, Esq.  
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*Attorneys for Respondent  
Intermountain Water Supply*

**NV ATTORNEY GENERAL**

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[mfairbank@ag.nv.gov](mailto:mfairbank@ag.nv.gov)

*Attorneys for Respondent  
NV State Engineer*

## CHRONOLOGICAL INDEX TO JOINT APPENDIX

<b><u>DATE</u></b>	<b><u>DESCRIPTION OF DOCUMENT</u></b>	<b><u>VOLUME</u></b>	<b><u>PAGE(S)</u></b>
6/29/2016	Notice of Filing Petition for Judicial Review (NRS 533.450) with 6/29/2016 filed Petition for Judicial Review and Exhibits	I	JA0001 – JA0028
7/22/2016	Order Granting Stipulation to Allow Intervention	I	JA0029 – JA0031
9/8/2016	State Engineer's Summary of Record on Appeal: SE ROA 1 – SE ROA 748	I – III	JA0032 – JA0790
	SE ROA 1-214	I	JA0043 – JA0256
	SE ROA 215-470	II	JA0257 – JA0512
	SE ROA 417-748	III	JA0513- JA0790
10/5/2016	State Engineer's Supplemental Summary of Record on Appeal: SE ROA 749 – SE ROA 2405	IV – X	JA0791 – JA2490
	SE ROA 749-965	IV	JA0830 – JA1046
	SE ROA 966-1220	V	JA1047 – JA1302
	SE ROA 1221-1471	VI	JA1303 – JA1554
	SE ROA 1472-1723	VII	JA1555 – JA1806
	SE ROA 1724-1974	VIII	JA1807 – JA2058
	SE ROA 1975-2225	IX	JA2059 – JA2308
	SE ROA 2226-2405	X	JA2309 – JA2490



<b><u>DATE</u></b>	<b><u>DESCRIPTION OF DOCUMENT</u></b>	<b><u>VOLUME</u></b>	<b><u>PAGE(S)</u></b>
10/7/2016	Petitioner's Sierra Pacific Industries' Opening Brief	X	JA2491 – JA2517
11/17/2016	Respondent-Intervenor Intermountain Water Supply's Answering Brief	XI	JA2518 – JA2561
11/28/2016	Respondent State Engineer's Answering Brief	XI	JA2562 – JA2583
12/30/2016	Petitioner's Sierra Pacific Industries' Reply Brief	XI	JA2584 – JA2603
12/30/2016	Exhibits 1-9: SROA 2406 – SROA 2475, to Petitioner Sierra Pacific Industries Motion to Supplement the Record, or in the Alternative, for Judicial Notice.	XI	JA2604 – JA2686
2/6/2017	Order Granting Sierra Pacific Industries' Motion to Supplement the Record	XI	JA2687 – JA2689
4/28/2017	Application for Setting via Teleconference	XI	JA2690 – JA2691
5/24/2017	Petition for Judicial Review – Minutes	XI	JA2692
5/24/2017	Petition for Judicial Review Oral Arguments Transcript	XI	JA2693 – JA2750
8/21/2017	Order Denying Petition for Judicial Review	XI	JA2751 – JA2759
8/22/2017	Notice of Entry of Order Denying Petition for Judicial Review (Order not recopied)	XI	JA2760 – JA2764
9/8/2017	Notice of Appeal with Clerk's Certificate (Notice of Entry & Order not recopied)	XI	JA2765 – JA2769

## ALPHABETICAL INDEX TO JOINT APPENDIX

<b><u>DESCRIPTION OF DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOLUME</u></b>	<b><u>PAGE(S)</u></b>
Application for Setting via Teleconference	4/28/2017	XI	JA2690 – JA2691
Exhibits 1-9: SROA 2406 – SROA 2475, to Petitioner Sierra Pacific Industries Motion to Supplement the Record, or in the Alternative, for Judicial Notice.	12/30/2016	XI	JA2604 – JA2686
Notice of Appeal with Clerk’s Certificate (Notice of Entry & Order not recopied)	9/8/2017	XI	JA2765 – JA2769
Notice of Entry of Order Denying Petition for Judicial Review (Order not recopied)	8/22/2017	XI	JA2760 – JA2764
Notice of Filing Petition for Judicial Review (NRS 533.450) with 6/29/2016 filed Petition for Judicial Review and Exhibits	6/29/2016	I	JA0001 – JA0028
Order Denying Petition for Judicial Review	8/21/2017	XI	JA2751 – JA2759
Order Granting Sierra Pacific Industries’ Motion to Supplement the Record	2/6/2017	XI	JA2687 – JA2689
Order Granting Stipulation to Allow Intervention	7/22/2016	I	JA0029 – JA0031
Petition for Judicial Review – Minutes	5/24/2017	XI	JA2692
Petition for Judicial Review Oral Arguments Transcript	5/24/2017	XI	JA2693 – JA2750
Petitioner’s Sierra Pacific Industries’ Opening Brief	10/7/2016	X	JA2491 – JA2517
Petitioner’s Sierra Pacific Industries’ Reply Brief	12/30/2016	XI	JA2584 – JA2603

<b><u>DESCRIPTION OF DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOLUME</u></b>	<b><u>PAGE(S)</u></b>
Respondent-Intervenor Intermountain Water Supply's Answering Brief	11/17/2016	X	JA2518 – JA2561
Respondent State Engineer's Answering Brief	11/28/2016	XI	JA2562 – JA2583
State Engineer's Summary of Record on Appeal: SE ROA 1 – SE ROA 748	9/8/2016	I – III	JA0032 – JA0790
SE ROA 1-214		I	JA0043 – JA0256
SE ROA 215-470		II	JA0257 – JA0512
SE ROA 417-748		III	JA0513- JA0790
State Engineer's Supplemental Summary of Record on Appeal: SE ROA 749 – SE ROA 2405	10/5/2016	IV – X	JA0791 – JA2490
SE ROA 749-965		IV	JA0830 – JA1046
SE ROA 966-1220		V	JA1047 – JA1302
SE ROA 1221-1471		VI	JA1303 – JA1554
SE ROA 1472-1723		VII	JA1555 – JA1806
SE ROA 1724-1974		VIII	JA1807 – JA2058
SE ROA 1975-2225		IX	JA2059 – JA2310
SE ROA 2226-2405		X	JA2311 – JA2490



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

## AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **JOINT APPENDIX VOLUME X** does not contain the social security number of any person.

DATED this 8<sup>th</sup> Day of February, 2018.

MCDONALD CARANO LLP

BY: /s/ Debbie Leonard  
Debbie A. Leonard, Esq.  
Nevada Bar No. 8260  
100 West Liberty Street, 10<sup>th</sup> Floor  
Reno, Nevada 89501  
Tel.: (775) 788-2000  
Fax: (775) 788-2020  
[dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)

*Attorneys for Appellant*

## **CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDonald Carano, LLP and that on February 8, 2018, **JOINT APPENDIX VOLUME X** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Pursuant to NRAP 30(f)(2), all Participants in the case will be served and provided an electronic copy via U.S. mail as follows:

Richard L. Elmore, Esq.  
3301 S. Virginia Street, Suite 125  
Reno, Nevada 89502

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

/s/ Pamela Miller  
An employee of McDonald Carano, LLP

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

ROBERT MARSHALL  
625 ONYO WAY  
SPARKS NV 89441

## Receipt

		Payment Method	Check No.	Receipt #
		Check	10506	266351
Date	Item	Description	Amount	
2/21/2012	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 73430  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	100.00	
Received by: Sue Cox			Total	\$100.00

**JA2309**  
SE ROA 2224





**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>

February 27, 2012

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

**RE: PERMITS 73428, 73429, 73430 and 74327**

This is to inform you that the Application for Extension of Time has been granted to February 11, 2013 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2835 or [smonteleone@water.nv.gov](mailto:smonteleone@water.nv.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sam Monteleone".

Sam Monteleone  
Water Resource Specialist 1

SEM/mt

c: TEC Civil Engineering Consultants (via email)  
Turnipseed Engineering, Ltd.

JIM GIBBONS  
Governor

STATE OF NEVADA

ALLEN BIAGGI  
Director  
TRACY TAYLOR  
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>

FINAL NOTICE

February 13<sup>th</sup>, 2013

FINAL NOTICE

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000519076

**Re: Final Notice for Permit(s) 64977, 64978, 66400, 73428 through 73430, and 74327**

The provisions of your above referenced permit(s) to appropriate waters of the State of Nevada required you to file a **Proof of Completion and Proof of Beneficial Use on or before February 11<sup>th</sup>, 2013.**

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.410, if the required proof or extension of time is not received within thirty (30) days of the date of this letter your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Applications for extension of time and all necessary supplemental forms are located on our website at <http://water.nv.gov/forms>. If there are any questions regarding this notice please contact our office at (775) 684-2800.

kp

cc: TEC Civil Engineering Consultants (email)  
Turnipseed Engineering, LLC (email)

Schedule of Fees:

Fee for filing Proof of Completion - \$10  
Fee for filing Proof of Completion - \$50 – *effective 7/1/2009 AB480*  
Fee for filing Proof of Beneficial Use - \$50  
Fee for filing Request for Extension of Time - \$100

Rev. 5/2009

**JA2311**  
SE ROA 2226



## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

Owner of Record Intermountain Water Supply, Ltd.IN THE MATTER OF PERMIT NO. 73430 FILED TO APPROPRIATE/CHANGE THE WATERS OFUnderground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?  
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$8,153.50 Total to date? \$2,534,775.006. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

Proof of Completion and Proof of Beneficial Use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in this area. We have continued maintenance of the Project. We had to oppose a PUCN staff effort to nullify a favorable PUCN order on our UEPA application. After briefing and oral argument, we were successful. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters. We have drastically reduced the price of the Project and have been actively working with two interested buyer-user groups, one local group and one group located in Southern California. The outcome of the election does not bode well for the economy.

State of Nevada

County of WashoeSubscribed and sworn to before me on February 19, 2013by Robert W. Marshall

Signed

Permittee or Agent

Address 625 Onyo Way

Street Address or PO Box

Sparks, NV 89441

City, State, ZIP Code

Phone 775-425-1161

E-mail

  
Signature of Notary Public Required


KATHY SOUVIRON  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No. 08-7839-2 - Expires July 30, 2018

Notary Stamp or Seal Required

\$100 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME

A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT

Revised 05/12 - ext of time

JA2312  
SE ROA 2227



# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPANISH SPRINGS NV 89441

## Receipt

		Payment Method	Check No.	Receipt #
		Check	1457	275711
Date	Item	Description	Amount	
2/19/2013	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO 73430  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327	100.00	
Received by: Sue Cox			Total	\$100.00

**JA2313**  
SE ROA 2228

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>  
March 1, 2013

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: PERMITS 73428, 73429, 73420 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2014 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel.water.nv.gov](mailto:smcdaniel.water.nv.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon McDaniel".

Shannon McDaniel  
Water Resource Specialist 1

SM/mt

c: TEC Civil Engineering Consultants (via email)  
Turnipseed Engineering, Ltd. (via email)





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>

March 13, 2013

Corrected Letter

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: PERMITS 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2014 with the provision that no further extensions will be granted for filing of the Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel@water.nv.gov](mailto:smcdaniel@water.nv.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon McDaniel".

Shannon McDaniel  
Water Resource Specialist 1

SM/mt

c: TEC Civil Engineering Group (via email)  
Turnipseed Engineering, Ltd. (via 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

(800) 992-0900

(In Nevada Only)

<http://water.nv.gov>

FINAL NOTICE

February 13, 2014

FINAL NOTICE

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 7106780806300552158

**Re: Final Notice for Permit 64977, 64978, 66400, 73428, 73429, 73430, and 74327**

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Beneficial Use on or before February 11, 2014.**

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

**Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.**

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

jw  
cc: TEC Civil Engineering Consultants (email)

Schedule of Fees:  
Fee for filing Proof of Completion - \$60  
Fee for filing Proof of Beneficial Use - \$60  
Fee for filing Request for Extension of Time - \$120

**JA2316**  
SE ROA 2231

## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

**FILED**

FEB 19 2014

Owner of Record Intermountain Water Supply, Ltd.

STATE ENGINEER'S OFFICE

IN THE MATTER OF PERMIT NO. 73430 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)
2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?  
☐ Yes ☐ No (Check the appropriate box)
3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$17,034.00 Total to date? \$2,550,649.006. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

proof of completion and proof of beneficial use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in the area of beneficial use. We have continued maintenance of the project. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters. We have drastically reduced the price of the Project and have been actively working with a public agency to purchase the project.

State of Nevada

County of WashoeSubscribed and sworn to before me on February 18, 2014by Robert W. Marshall

Signed

Robert W. Marshall

Permittee or Agent

Address 625 Onyo Way

Street Address or PO Box

Sparks, NV 89411

City, State, ZIP Code

Phone (775) 425-1161

E-mail

Kathy Souvion  
Signature of Notary Public Required



**\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 07/13 - ext\_app

**JA2317**  
**SE ROA 2232**

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
2nd Floor  
Carson City, NV 89701

INTERMOUNTAIN WATER SUPPLY LTD  
625 ONYO WAY  
SPARKS NV 89441

## Receipt

		Payment Method	Check No.	Receipt #
		Check	1483	286437
Date	Item	Description		Amount
2/19/2014	Extension of Time	APPLICATION FOR EXTENSION OF TIME UNDER PERMIT NO. 73430  COVERS EXT NO'S 64977, 64978, 66400, 67037, 73428, 73429, 73430 AND 74327		120.00
Received By: Catherine Orpilla			Total	\$120.00

**JA2318**  
SE ROA 2233



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>

March 14, 2014

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

RE: Permits 64977, 64978, 66400, 73428, 73429, 73430 and 74327

This is to inform you that the Application for Extension of Time has been granted to February 11, 2015, with the provision that no further extensions will be granted for Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2842 or [smcdaniel@water.nv.gov](mailto:smcdaniel@water.nv.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Shannon McDaniel".

Shannon McDaniel  
Water Resource Specialist I

SM/dl

cc: TEC Civil Engineering Consultants

**JA2319**  
SE ROA 2234

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  
(800) 992-0900  
(In Nevada Only)  
<http://water.nv.gov>

FINAL NOTICE

February 13, 2015

FINAL NOTICE

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441  
Certified Mail No. 71067808063000585965

Re: Final Notice for Permit 64977, 64978, 66400, 73428, 73429, 73430 and 74327

The provisions of your above referenced permit to appropriate waters of the State of Nevada require you to file a **Proof of Completion and Proof of Beneficial Use** on or before **February 11, 2015**.

Our records indicate that you have not filed the required proof(s) and your permit is in danger of cancellation unless the proof(s) or an application for an extension of time along with the appropriate filing fee(s) with which to file the required proof(s) is/are received and filed with the State Engineer within thirty (30) days of the date of this final certified notice.

Per NRS 533.390 and/or 533.410, if the required proof or extension of time is not received within thirty (30) days after the mailing of this notice, your permit will be cancelled.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

If there are any questions regarding this notice please contact our office at (775) 684-2800.

jw

cc: TEC Civil Engineering Consultants (email)- All Permits  
Turnipseed Engineering, Ltd. (email)- Permits 73428, 73429 73430 and 74327 Only

Schedule of Fees:

Fee for filing Proof of Completion - \$60  
Fee for filing Proof of Beneficial Use - \$60  
Fee for filing Request for Extension of Time - \$120

**JA2320**  
SE ROA 2235



## BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

## APPLICATION FOR EXTENSION OF TIME

FILED  
FEB 19 2015

STATE ENGINEER'S OFFICE

Owner of Record Intermountain Water Supply, Ltd.IN THE MATTER OF PERMIT NO. 73430 FILED TO APPROPRIATE/CHANGE THE WATERS OF  
underground

(Name of stream, lake, spring, underground or other source)

THIS APPLICATION IS RESPECTFULLY SUBMITTED.

Comes now Robert W. Marshall

, the

Agent

Permittee or Agent

who after being duly sworn and answering to the best of their knowledge the following questions in compliance with the requirements as set forth in the permit terms:

1. Does this permit have multiple owners? ☐ Yes ☒ No (Check the appropriate box)

2. If "Yes" on question 1 is checked, is this request for an extension of time submitted on behalf of all the owners?

☐ Yes ☐ No (Check the appropriate box)

3. If "No" on question 2 is checked, on whose behalf is this extension being filed?

4. How much time is needed to construct the works of diversion or place the water to beneficial use? Ten (10) years5. What is the expenditure on the project under this permit? Last year? \$17,573.43 Total to date? \$2,568,222.436. The permittee requests an extension of time for 1 year within which to comply with the provisions for filing the  
(Not to exceed 1 year)

proof of completion and proof of beneficial use

(Proof of completion of work and/or Proof of beneficial use)

7. Describe progress made during the last year and explain in detail why this request for an extension of time is being submitted (See instructions on back. Use additional pages if necessary):

The economy has not improved at all this past year. There is no growth occurring in the area of beneficial use. We have continued maintenance of the project by installing new caps on artesian flows to prevent waste. We have continued monitoring activities with Interflow Hydrology with continuous flow recording meters on the surface water. We have drastically reduced the price of the Project and have been actively working with potential investors to finance or purchase the project.

State of Nevada

County of WashoeSubscribed and sworn to before me on February 19, 2015by Robert W. Marshall

Signed

Robert W. Marshall

Permittee or Agent

Address

625 Onyo Way

Street Address or PO Box

Sparks, NV 89411

City, State, ZIP Code

Phone

(775) 425-1161

E-mail



KATHY SOUVION  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 08-7639-2 - Expires July 30, 2018

Notary Stamp or Seal Required

Kathy Souvion  
Signature of Notary Public Required

**\$120 FILING FEE MUST ACCOMPANY THIS APPLICATION FOR EXTENSION OF TIME**  
**A SEPARATE APPLICATION MUST BE FILED FOR EACH PERMIT**

Revised 07/13 - ext\_app

**JA2321**  
**SE ROA 2236**





**Division of Water Resources  
Receipt for Payment**



Intermountain Water Supply Ltd  
625 Onyo Way  
Spanish Springs, NV 89441

Check #: 1502  
Check Date: 2/19/2015  
Date Received: 2/19/2015  
Receipt #: 4,575

FY	Amount	Permit #	Invoice #	Fee Type/Fee desc	Notes
2015	\$120.00	73430		- Extensions	Covers Ext No's 64977, 64978, 66400, 67037, 73428, 73429, 73430 and 74327

Check Total: \$960.00

2/20/2015

24

**JA2322**  
SE ROA 2237



InterMountain  
Water Supply

625 Onyo Way  
Spanish Springs, NV 89441

(775) 425-1161  
(775) 425-1321 FX

marshall@imws.net

May 26, 2015

Kristen Geddes  
Chief, Hearings Section  
State of Nevada Division of Water Resources  
901 S. Stewart St., Suite 2002  
Carson City, NV 89701

Re: Extension of Time: Permit

Dear Ms. Geddes:

In my letter of March 12, 2015 with respect to the above permit, I enclosed statements from Parsons, Behle & Latimer law firm. To clarify, none of these statements included any of my time. These were bills I paid for time spent by firm personnel, other than me. Most of the time was billed by Rew Goodenow, a partner with the firm for appearances before the County Commission or for meetings with the District Attorneys' Office.

I have NEVER billed any of my time to this project during the 20+ years I have worked on it.

I trust this letter clarifies any questions that there may have been on this point.

Please place a copy of this letter in the file for each Intermountain Water Supply Ltd. Permit involved in the Project. The Permit numbers include Permits 64977, 64978, 66400, 72700, 73428, 73429, 73430, 74327, 66873, 73048, and 67037. I am enclosing copies for your convenience.

Sincerely,

INTERMOUNTAIN WATER SUPPLY

By:

  
Robert W. Marshall, Manager

RWM/ks  
Enclosures  
cc: Jason King, P.E.

4827-3643-6260

RECEIVED  
2015 MAY 28 AM 10:07  
STATE ENGINEERS OFFICE

**JA2323**  
SE ROA 2238



STATE OF NEVADA

BRIAN SANDOVAL  
Governor



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>

June 4, 2015

Robert W. Marshall  
Intermountain Water Supply, Ltd.  
625 Onyo Way  
Sparks, Nevada 89441

Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978,  
66400, 73428, 73429, 73430 and 74327

Dear Mr. Marshall:

On March 12, 2015, you responded to the request for evidence concerning the extension of time filed concerning Permit 72700. Given the similarity of information stated on the request for extension of time concerning Permit 72700, and Permits 64977, 64978, 66400, 73428, 73429, 73430 and 74327, this response applies equally to all of the listed Permits (*i.e.*, "the Project").

Pursuant to NRS § 533.380(3) an application for the extension must in all cases be accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application. The measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances. NRS § 533.380(6). Further, when a project or integrated system is composed of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. *Id.*

In addition, in requests for extensions on permits for municipal use on any land referred to in NRS § 533.380(1)(b), or for any use which may be served by a county, city, town, public water district or public water company, requests an extension of time to apply the water to a beneficial use, the State Engineer shall also consider:

(a) Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;

**JA2324**  
SE ROA 2239



Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 2

(b) The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the county, city, town, public water district or public water company;

(c) Any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use;

(d) Any delays in the development of the land or the area being served by the county, city, town, public water district or public water company which were caused by unanticipated natural conditions; and

(e) The period contemplated in the:

(1) Plan for the development of a project approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(2) Plan for the development of a planned unit development recorded pursuant to chapter 278A of NRS,

→ if any, for completing the development of the land.

Your response included a written response, copies of the amendment to the Washoe County Regional Water Management Plan to Include the North Valley Strategy, Regional Water Planning Commission Minutes, a written Current Status of the Project, and various invoices for legal fees, consultant and professional fees, accountant fees and secretary of state fees. I have considered the evidence you submitted concerning the extension request and a discussion of my opinion concerning the evidence submitted as it relates to the extension request follows below.

1. Discussion of Amendment to the Regional Water Management Plan and Current Status of the Project

The Amendment to the Regional Water Management Plan to Include the North Valley Strategy (1995-2015), which was adopted March 31, 1997, identified four water supply alternatives, one of which included the Warm Springs Importation Project ("Project"). Although the Project was briefly described, the Plan Amendment makes clear that the County sought to pursue multiple projects simultaneously in order to maximize flexibility, to provide greater competitive position among negotiations with project proponents, and to secure a reliable water supply system beyond 2015. Therefore, it was recommended that, among other potential projects, your Project was to be aggressively pursued and implemented as needed and merited. Specific activities of the Regional Plan to implement the strategy included entering into agreements with project proponents to resolve remaining implementation issues and set performance criteria for proving viability of the projects. If the projects met the performance criteria, completed supporting technical analysis, submitted permit applications, prepared environmental documentation, completed preliminary engineering design, then the county would initiate formal discussions with project proponents to establish potential terms of an agreement to implement each project. Based on the results of these activities the County was to implement either the Project or the Green Gulch Project, or both.

**JA2325**  
SE ROA 2240



Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 3

Subsequent to the revision of the Regional Plan, the "Current Status of the Project" does identify a number of performance criteria that were carried out, including: conformance reviews completed by the Regional Water Planning Commission, a Record of Decision issued on the EIS, Special Permit issued by the County, a Utility Environmental Protection Act (UEPA) permit issued by the Public Utility Commission, easements and rights of way were obtained and the drilling of seven wells. You also state that a final report, the archeological survey, is due later this year.

From the foregoing history it is evident that in 1997, the County contemplated the Project as a potential water source for the North Valleys, and considered future implementation of the Project subject to later-met performance criteria. As you demonstrate in your response, many activities were carried out laying the groundwork for the Project until the economic slowdown beginning in or around 2008.

## 2. Discussion of invoices

You submitted a number of invoices for attorney's fees, which your response states were incurred from meetings with Washoe County commissioners and meetings with representatives of the Washoe County District Attorney's Office to develop an appropriate agreement for Washoe County to obtain the Project.<sup>1</sup> While you state that ultimately an agreement was not reached with the County, the attorney's fees which were incurred appear to support the portions of the Regional Water Management Plan that formal discussions between the County and you would occur concerning the potential terms of an agreement to implement the Project.

As well, the consultant fees paid to Robert Williams to draft a letter of support regarding the FEIS demonstrates new efforts toward project milestones.

However, I find that the invoices for professional accounting and tax preparation services, and annual Secretary of State filing fees, do not help demonstrate the steady application of effort to perfect the application. Rather, invoices for professional accounting and tax preparation services, annual Secretary of State filing fees are indicative of revolving administrative fees incurred by Intermountain Water Supply.

---

<sup>1</sup> You later clarified that the attorney's fees were incurred by Rew Goodenew, of Parsons, Behle & Lattimer.

Re: Applications for Extension of Time concerning Permits 72700, 64977, 64978, 66400, 73428, 73429, 73430 and 74327

Page 4

3. Application of Bacher.


I decline at this time to apply the anti-speculation doctrine of the *Bacher* decision to deny the extensions on the basis of speculation. I would note, however, that the applications for extensions of time filed since 2011 have indicated you are seeking a buyer for the project. Inasmuch as negotiations with the County were unfruitful at the end of 2014, the inability to secure a buyer in future requests for extensions of time will not be considered good cause for extensions of time. See *Colorado River Water Conservation Dist. v. Vidler Tunnel Water Co.*, 594 P.2d 566 (Colo. 1979) (articulating anti-speculation doctrine adopted by *Bacher*, stating the right to appropriate is for use, not merely for profit).

In considering NRS 533.380(4), I find good cause for granting extensions on the Project permits. The area to be served is Lemmon Valley, which has existing developments with currently little to no recharge. It is true that economic conditions have been poor in recent years for which I have taken into consideration.

Notwithstanding that the extensions of time are being granted, please be advised that further requests for extensions on permits comprising the Project will be closely scrutinized to ensure the statutory criteria for granting extensions of time are adhered to. In that vein, for any future extensions of time filed regarding the Project, please submit evidence at the time the request for extensions are filed, which demonstrates good cause supporting future extension requests made pursuant to NRS 533.380.<sup>2</sup>

You will receive confirmation of the extension dates and new proof filing dates under separate cover. If you have any questions regarding the foregoing please do not hesitate to contact me.

Sincerely,

  
Jason King, P.E.  
State Engineer

cc: Chris Skinner, Sierra Pacific Industries

---

<sup>2</sup> This also applies to Permits 66873 and 73048 referenced in your response.

**JA2327**  
SE ROA 2242



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>

June 15, 2015

Intermountain Water Supply  
Robert W. Marshall  
625 Onyo Way  
Sparks, NV 89441

**RE: Permit(s) 64977, 64978, 66400, 73428, and 73430**

This is to inform you that the Application for Extension of Time has been granted to February 11, 2016, with the provision that no further extensions will be granted for the filing of Proof of Completion and Proof of Beneficial Use except for good cause shown as provided under NRS 533.380, 533.390 and 533.410.

Please be advised that the permittee is responsible for notifying the State Engineer's Office of any address change. Furthermore, when multiple addresses are used by the applicant or agent, the required legal notices will be sent to the latest address of record and not to earlier addresses unless proper written notification from the applicant or agent directs otherwise.

Should you have any questions regarding this notification please contact me at (775) 684-2807.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colette Easter".

Colette Easter  
Water Resource Specialist I

CE/lr

cc: TEC Civil Engineering Consultants (email) (All Permits)  
Turnipseed Engineering, Ltd. (email) (Permits 73428 and 73430 only)

**JA2328**  
SE ROA 2243



# APPLICATION TO CHANGE THE P.O.D. OF 64978 OF A PORTION

No. **74327** Date Filed **MAY 23 2006**

Indexed under		Well Log
Name of applicant		
Map	Basin <b>7 - 95</b>	
Stream	<b>DRY VALLEY</b>	
Township <b>24N</b> Range <b>18E</b>		County <b>WASHOE</b>

Point of diversion **SW 1/4 SE 1/4 Section 24**

Applicant **INTERMOUNTAIN WATER SUPPLY LTD.**

Source of Water **UNDERGROUND**

Returned for correction

Abrogated by **p 74872 T 0.207 Sep 11, 2000**

Corrected application received

Map filed **JUNE 14, 2006, PROP. POD; EXT. POD AND PROP. & EXT. PO4 UNDER 64977 ON MAY 28, 1999**

Sent for publication **JUN 22 2006**

Proof of publication filed **JUL 25 2006**

Investigated on ground by

Protested

Ready for action **AUG 20 2006**

Approved **September 29, 2006 0.623 cfs Same as Heretofore (MUN)**

Denied

	PROOF OF COMMENCEMENT	PROOF OF COMPLETION	PROOF OF BENEFICIAL USE	CULTURAL MAP
Date due		<b>Feb 11, 2008</b>	<b>Feb 11, 2008</b>	<b>N/A</b>
1st extension		<b>14 FEB 1510</b>	<b>14 FEB 1510</b>	
2nd extension				
		<b>NO FURTHER EXTENSION</b>	<b>NO FURTHER EXTENSION</b>	
Date filed				

Filed under map

CERTIFICATE NO.	ISSUED	AMOUNT
-----------------	--------	--------

Use

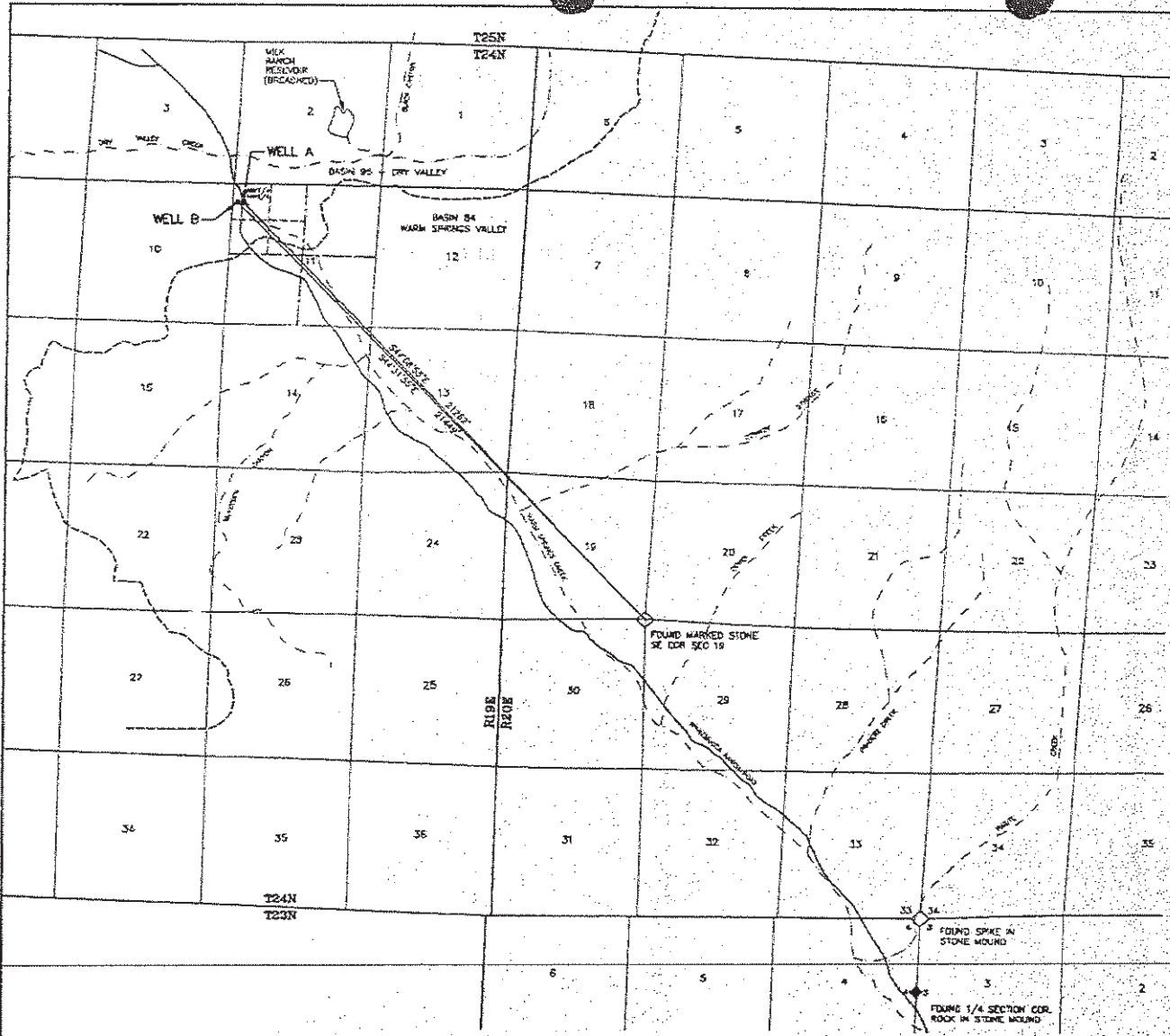
COMPUTER CHECK	File Entry	Publication	Permit	Certificate
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Map **KH** Application **KMG** ADDRESS

SEE APPLICATION 74872 T TO CHANGE P.O.U.

OF A PORTION





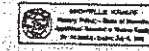
STATE OF NEVADA  
COUNTY OF WASHOE

I, Dwight L. Smith, being first duly sworn, depose and say that this map, consisting of 2 sheets, numbered from 1 to 2 inclusive, has been correctly drawn to the designated scale from field notes of a survey made by me or under my supervision and direction between the 14th day of May, 1999 and the 20th day of May, 1999; that it truly and correctly represents the proposed location and extent of the works used to divert water from an underground source and in Washoe County, Nevada by Intermountain Pipeline Ltd. for municipal and domestic purposes; that the point of diversion, the location and side of the diverting channel or other conduit, the place and manner of use, and the location and names of all other works or streams which are crossed by or connected with the said works are fully and correctly designated herein.

*Dwight L. Smith*  
DWIGHT L. SMITH  
STATE WATER RIGHT SURVEYOR NO. 1045  
PROFESSIONAL ENGINEER NO. 11926

Subscribed and sworn to before me this 24th day of May, 1999.

*Michelle Kraus*  
MICHELLE KRAUS  
NOTARY PUBLIC  
My commission expires: July 2002

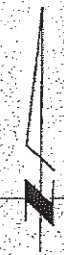


**BASIS OF READINGS**

NAD 1983, UTM ZONE 11; BASED ON A G.P.S. SURVEY  
THE PRECISION OF G.P.S. SURVEY IS ONE METER ±

**LEGEND**

- PROPOSED POINT OF DIVERSION
- WATERSHED BOUNDARY
- - - CREEK OR STREAM



**PROPOSED POINTS OF DIVERSION  
T25N, R19E, MDM**

**Stanley Consulting Inc.**  
190 Industrial Way  
Carroll, Nevada 89631 USA  
Tel: (775) 328-8931  
Fax: (775) 328-8934  
www.stanleyinc.com

STATE ENGINEER'S USE

64977  
64978  
**FILED**  
MAY 28 1999

RECEIVED  
MAY 28 1999

MAP TO ACCOMPANY APPLICATION  
TO APPROPRIATE WATER  
FOR MUNICIPAL AND DOMESTIC  
BY INTERMOUNTAIN PIPELINE LTD.  
FROM AN UNDERGROUND SOURCE  
IN WASHOE COUNTY, NEVADA

SE ROA 2245

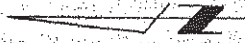
72700 69665 69664 69663 64978 64977 **JA2330**





LEGEND:

--- PROPOSED PLACE OF USE BOUNDARY



STATE ENGINEER'S USE

PROPOSED PLACE OF USE

Stanlec Consulting Inc.  
Survey, Mapping, Planning, Design  
1000 N. 10th Street  
Las Vegas, NV 89101  
Tel: (702) 333-3333  
Fax: (702) 333-3334  
www.stanlec.com



64977  
64978



RECEIVED  
MAY 28 1998  
DEPT. OF WATER RESOURCES

MAP TO ACCOMPANY APPLICATION  
TO APPROPRIATE WATER  
FOR MUNICIPAL AND DOMESTIC USE  
BY INTERMOUNTAIN PIPELINE LTD.  
FROM AN UNDERGROUND SOURCE  
IN WASHOE COUNTY, NEVADA



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

IN THE MATTER OF PROTESTED )  
APPLICATION 69664 FILED TO CHANGE THE )  
POINT OF DIVERSION OF THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 64978 WITHIN THE DRY VALLEY )  
HYDROGRAPHIC BASIN (95), WASHOE )  
COUNTY, NEVADA. )

**RULING**

**#5568**

**GENERAL**

**I.**

Application 69664 was filed on February 25, 2003, by Intermountain Pipeline, Ltd. and later assigned to Intermountain Water Supply, Ltd. a Nevada Limited Liability Company to change the point of diversion of 2.0 cubic feet per second (cfs) of underground water previously permitted for appropriation under Permit 64978. The proposed manner of use and place of use is described on the application as being for municipal and domestic purposes within the Lemmon Valley Hydrographic Basin. The proposed place of use is further described as being located within Sections 1 through 36, T.21N., R.19E., M.D.B.&M.; Section 36, T.21N., R.18E., M.D.B.&M.; Sections 1 through 12, 15, 16, and 17, T.20N., R.19E., M.D.B.&M.; and Sections 1 and 12, T.20N., R.18E., M.D.B.&M. The changes requested by Application 69664, if approved, would transfer the applicant's existing point of diversion from the NW¼ NW¼ of Section 11, T.24N., R.19E., M.D.B.&M. to a point which is located within the SE¼ SW¼ of Section 9, T.24N., R.18E., M.D.B.&M.<sup>1</sup>

**II.**

Application 69664 was timely protested by Norman Knox on the following grounds:<sup>1</sup>

I am owner of S½ Sec 9 T24N R18E and Intermountain has no permission to be on the land and I don't want the water to leeve [sic] the dry valley basin.

**III.**

Application 69664 was timely protested by Washoe County on the following grounds:<sup>1</sup>

The above referenced applications are filed by Intermountain Pipeline Ltd. to appropriate a total combined duty of 2997.00 acre-feet annually. The points of

<sup>1</sup> File No. 69664, official records in the Office of the State Engineer.



diversion for these applications are within Dry Valley Hydrographic Basin in Washoe County. U.S.G.S. Reconnaissance Report Number 43 estimates the perennial yield of this basin at 1000.00 acre-feet. Washoe County through the Regional Water Planning Commission has funded a study by U.S.G.S. to better define the discharge out of this basin which will lead to a better understanding of the perennial yield of this basin.

Washoe County hereby requests that Applications 69663, 69664, and 69665 be denied or that the total combined duty of Applications 69663, 69664, 69665, and 66961 (previously protested by Washoe County) be limited to the currently established perennial yield of 1000.00 acre-feet. The County's protest is based on the following grounds:

- Granting of these permits at quantities greater than the safe sustainable yield of this basin would constitute ground water mining and as such is contrary to public interest and contrary to Washoe County Development Code, Public Services and Facilities Element PSF1.10 and PSF1.10.2.
- Based on currently established data, there is only 1000.00 acre-feet of water available in the source.

#### IV.

Application 69664 was timely protested by Carolyn Mendoza, on the following grounds:<sup>1</sup>

Adversely impacts existing water rights for planned land use.  
They have NO access to the property unless Mr. Danfelt grants it to them.  
Detriment to public interest and to our community [sic].  
No easement has been granted to establish a third party well  
Detrimental to existing water rights

#### V.

Application 69664 was timely protested by John Matley & Son, on the following grounds:<sup>1</sup>

Dry Valley straddles boundary between NV and Ca  
Dry Valley drainage and aquifer [sic] flow west and feed the Long Valley aquifer [sic], important to many users. Water must not be extracted and transferred from this natural system to another unrelated basin as damage will result to the natural ecosystem as well as to agriculture interests in the Long Valley drainage.

#### VI.

Application 69664 was timely protested by Lassen County, on the following grounds:<sup>1</sup>

1. Approval of the subject application will have an adverse impact on flows of Long Valley Creek and, accordingly, will adversely impact existing rights.
2. Approval of the subject application will have an adverse impact on existing down-gradient ground-water users.



3. Approval of the subject application will adversely impact existing water sources presently utilized by livestock and wildlife in the form of springs and seeps as well as vegetation dependent on discharge in and around the proposed point of diversion.
4. Approval of the subject application is not in the public interest because pumping of the volume of ground-water represented by the subject application, particularly when combined with other applications seeking to have the points of diversion changed to the same general area, will result in a water mining situation and long-term detrimental impact on the aquifer.
5. The applicant does not own or control the land upon which it seeks to divert ground-water under the subject application.
6. There is insufficient water in the proposed source.

#### VII.

Application 69664 was timely protested by David Danfelt, beneficiary to the estate of William S. Dickinson, Wilburn Ranch, on the following grounds:<sup>1</sup>

- Adversely impacts existing water rights for planned land use.
- Truck traffic & access to property is an unwanted nuisance.
- Detriment to public interest.
- No easement has been granted to establish a third party well.
- Detriment to existing water rights.

#### VIII.

Application 69664 was timely protested by Wilburn Ranch and the Estate of William S. Dickinson, Jr., on the following grounds:<sup>1</sup>

- 1) Adverse effects on existing water rights and aquifer [sic] viability, to contiguous land holdings spanning Washoe and Lassen Counties.
- 2) Unknown easement provisions and possible negative effects from well access to new site(s), and abuse of any existing easements for other than original purposes.
- 3) Detrimental effects upon valuation and viability of private landholders in Dry Valley in favor of private landholders in Lemon [sic] Valley.
- 4) Unknown effects upon future public interests in Dry Valley, and detrimental effects upon existing domestic wells.

### FINDINGS OF FACT

#### I.

Nevada Revised Statute (NRS) § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 69664, 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.

Application 69664 seeks to change the point of diversion of water previously appropriated under Permit 64978. The proposed point of diversion is located within the SE¼ SW¼ of Section 9, T. 24N., R. 18E., M.D.B.&M. in Washoe County, Nevada. Records from the Washoe County Assessor's interactive website indicates that the land is owned by Wilburn Ranch, Inc.<sup>2</sup>

The applicant has indicated that it is aware that the proposed point of diversion is located upon Wilburn Ranch land. Additionally, the applicant understands that the issuance of a water right permit does not grant the applicant any rights of ingress or egress to the proposed point of diversion. By letter dated December 8, 2003, the applicant indicated that it would try to negotiate access with the landowner or exercise rights of condemnation.<sup>3</sup>

Since that time, the applicant has drilled four test wells in lower Dry Valley where access is available. The applicant has advised the Office of the State Engineer that, upon approval of change Application 69664, the applicant will file an additional application to change the point of diversion to an existing test well site. The applicant further suggested that any approval of Application 69664 be conditioned upon filing such application, which would render the access issue at the proposed point of diversion of Application 69664 moot.<sup>4</sup>

Water right permits are issued under a set of terms and conditions that further define the manner in which water can be appropriated for a beneficial use. One of the most common conditions placed on a permit is a provision that the issuance of the permit does not grant the permittee egress or ingress to the permitted point of diversion. Access to a water source, which is located upon private land not controlled by the applicant, must be obtained through understandings and agreements between the parties or some other legal method. Prior to the approval of a water right permit, it must be determined that there is a reasonable expectation that the water requested for appropriation will be placed to its proposed beneficial use. An examination of the land ownership records shows that the applicant does not own or control the land at the proposed point of diversion. However, the applicant has requested that any approval

<sup>2</sup> See, Office of the Washoe County Assessor Real Property Assessment Data and Assessor's Map, December 6, 2005, within File No. 69664, official records in the Office of the State Engineer.

<sup>3</sup> See, Intermountain Pipeline, Ltd. letter to State Engineer, December 8, 2003, within File No. 69664, official records in the Office of the State Engineer.

<sup>4</sup> See, Intermountain Pipeline, Ltd. letter to State Engineer, October 3, 2005, within File No. 69664, official records in the Office of the State Engineer.

of Application 69664 be conditioned upon the access issue being resolved. The applicant has indicated that the issue will be resolved through negotiating access with the landowner, condemnation, or the filing of an additional change application to a proposed point of diversion where there is legal access.

The State Engineer finds that the issue of access to the proposed point of diversion can be resolved through the conditioning of any approval of Application 69664.

### III.

The State Engineer issued Permit 64978, which is the basis for change Application 69664, on January 11, 2002, for an individual duty of 1,447 acre-feet annually (afa) and a total combined duty of Permits 64977, 64978 and 66400 not to exceed 2,996 afa. Permit 64978 was approved for an inter-basin transfer of water with the point of diversion in Dry Valley and the place of use in Lemmon Valley. In approving Permit 64978, the State Engineer made the determination that Permit 64978 complied with the provisions of NRS § 533.370. Application 69664 does not seek an additional appropriation of water, only a change in the point of diversion of an existing water right permit within Dry Valley.

The State Engineer finds that the issues related to water availability and inter-basin transfer have been settled with the issuance of Permit 64978 and will not be revisited for a point of diversion change as proposed under Application 69664.

### IV.

A determination was made, after an examination of the records of the Office of the State Engineer, that there is only one additional water right permit, proof or claim filed for the proposed underground water source within the Dry Valley Hydrographic Basin exclusive of the applicant's permits. This is a certificated water right for irrigation and domestic purposes at a duty not to exceed 25.60 afa. The permit number is Permit 28097, Certificate 10521 and the current owner of record is shown as John G. Lenz.<sup>5</sup> It should be noted that Mr. Lenz is not listed as a protestant to Application 69664. Additionally, the applicant has indicated that there is currently only one house in Dry Valley utilizing an underground domestic water supply.<sup>6</sup>

Evidence submitted by the applicant indicates that there will not be an unreasonable lowering of the water table in the vicinity of the proposed point of diversion.<sup>7</sup>

<sup>5</sup> Nevada Division of Water Resources, *Water Rights Database Special Hydrographic Abstract*, December 7, 2005.

<sup>6</sup> See, Intermountain Pipeline, Ltd. letter to State Engineer, October 3, 2005, within File No. 69664, official records in the Office of the State Engineer.

<sup>7</sup> See, Memorandum, *Intermountain Water Supply - Dry Valley Test Wells*, Smith, Dwight L., P.E., R.G., September 9, 2005, within File No. 69664, official records in the Office of the State Engineer.



Nevada water law does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectible interests in existing domestic wells and the rights of existing appropriators can be satisfied. Additionally, Nevada water law requires the State Engineer to include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any adverse effects on an existing domestic well located within 2,500 feet of the well.<sup>8</sup> A review of Application 69664 and NRS § 534.110, shows that any permit issued under Application 69664 would fall within the criteria of this statute and would include the above stated permit condition giving the State Engineer the authority to limit or prohibit the pumping of water at the proposed well site.

The State Engineer finds that protections exist within the Nevada water law to protect domestic well owners and existing water right holders from an unreasonable lowering of the water table, should such impacts occur as a result of pumping water at the proposed well site. The State Engineer further finds that none of the protestants currently hold water rights in the Dry Valley Hydrographic Basin.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>9</sup>

#### II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:<sup>10</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

<sup>8</sup> NRS § 534.110 (5).

<sup>9</sup> NRS chapters 533 and 534.

<sup>10</sup> NRS § 533.370 (4).

III.

There is one existing water right under Permit 28097, Certificate 10521 for irrigation and domestic purposes and it is associated with one house within the Dry Valley Hydrographic Basin. The owner of this existing right did not file a protest against Application 69664. Evidence from the applicant indicates that approval of Application 69664 will not result in an unreasonable lowering of the water table and therefore, will not impair existing rights or protectible interests in domestic wells. There are also additional protections for existing groundwater rights and existing domestic wells within the Nevada water law should it be determined by the State Engineer that an unreasonable lowering of the water table has occurred.

The State Engineer concludes that Application 69664 will not conflict with existing rights and will not conflict with protectible interests in existing domestic wells.

IV.

The protest issues regarding access to the proposed point of diversion can be resolved by conditioning the approval of any permit that may be issued under Application 69664; therefore, the State Engineer concludes that the proposed change in point of diversion will not threaten to prove detrimental to the public interest.

V.

The State Engineer concludes that none of the protestants to Application 69664 hold existing underground water rights within the Dry Valley Hydrographic Basin.

VI.

Application 69664 requests a change in the point of diversion of an existing water right permit issued by the State Engineer under Permit 64978. The State Engineer concludes that the protest issues regarding the inter-basin transfer of water and water availability were settled by the issuance of Permit 64978; therefore, those protest issues are dismissed.

RULING

The protests to Application 69664 are hereby overruled and the application is approved subject to:

1. Existing water rights;
2. Payment of the statutory permit fee;
3. Permit terms and conditions.

As a condition of approval, Application 69664 will be held in abeyance for a period of up to ninety (90) days from the date of this ruling. During that time period, the applicant must provide evidence of access to the proposed point of diversion or file a change application to



Ruling  
Page 8

move the point of diversion to a location where legal access can be obtained or the permit will not be issued.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/TW/jm

Dated this 28th day of

February, 2006.

**JA2339**  
SE ROA 2254





# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Carson City Field Office  
5665 Morgan Mill Road  
Carson City, Nevada 89701  
<http://www.nv.blm.gov>

2006 MAY -3 APR 17



MAY - 2 2006

In Reply Refer To:  
2800 (NV030)

Nevada Division of Water Resources  
Attn: Hugh Ricci, State Engineer  
901 S. Stewart St., Ste. 2002  
Carson City, NV 89701-5250

Dear Mr. Ricci:

On December 12, 2005, Terri Knutson, of my staff, and I met with Jason King, Robert Martinez, and Richard Felling, of your staff, to discuss the *North Valleys Rights-of-Way Projects Final Environmental Impact Statement - Fish Springs Ranch and Intermountain Water*. Included in Appendix D of this Final EIS is a document called *Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada* (Plan). As was discussed in the meeting in December, this Plan was developed and recommended in coordination with the Cooperating Agencies for the EIS and for your consideration. The Cooperating Agencies for the North Valleys EIS are: U.S. Fish & Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Truckee Meadows Regional Planning Agency; Airport Authority of Washoe County; City of Reno; and City of Sparks.

The Final EIS was released to the public on November 10, 2005 and the comment period ended on December 30, 2005. A total of 13 comment letters were received and seven of those letters were from Cooperating Agencies (BIA-Western Nevada Agency and Western Regional Office; Lassen County; California Water Resources; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; and Truckee Meadows Regional Planning Agency). All but one of the comment letters from the Cooperating Agencies contained revisions for the Plan. Attached is the revised Plan incorporating all comments received from the Cooperating Agencies.

The BLM Carson City Field Office strongly urges the implementation of the attached Plan. As stated in NRS 534.250(5.) "The State Engineer shall require the holder of a permit to monitor the operation of the project and the effect of the project on users of land and other water within the area of hydrologic effect of the project. In determining any monitoring requirements, the State Engineer shall cooperate with all government entities which regulate or monitor, or both, the quality of water." As described in the document, the BLM would not take a lead role in implementing the Plan but would be happy to help or facilitate in any other way needed. Please notify this office of any decisions you make in this matter. The record of decisions (RODs) for

**JA2340**  
SE ROA 2255

both the Fish Springs Ranch and Intermountain Water Projects should be issued within the next month.

Thank you for your consideration in review of this document. If you have any questions, please call either myself at 885-6000 or Terri Knutson at 885-6156.

Sincerely,



Donald T. Hicks  
Manager,  
Carson City Field Office

Enclosure: *Revised Recommended Water Resources Monitoring and Management Plan for Future Pumping in Honey Lake Valley, Dry Valley, and Bedell Flat, Nevada*

Cc: U.S. Fish & Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Geological Survey; Sierra Army Depot; Pyramid Lake Paiute Tribe; Susanville Indian Rancheria; California Department of Water Resources; California Department of Fish and Game; Lassen County, CA; Washoe County, NV; Truckee Meadows Water Authority; Truckee Meadows Regional Planning Agency; Airport Authority of Washoe County; City of Reno; and City of Sparks.

**JA2341**  
SE ROA 2256

**REVISED**  
**RECOMMENDED WATER RESOURCES MONITORING AND  
MANAGEMENT PLAN**

**FOR FUTURE PUMPING IN HONEY LAKE VALLEY,  
DRY VALLEY, AND BEDELL FLAT, NEVADA  
NORTH VALLEYS RIGHTS-OF-WAY PROJECTS**

(Submitted to the Nevada State Engineer)

The purpose of this Monitoring and Management Plan (**Plan**) is to describe monitoring and management activities of water resources and related potential impacts due to development of groundwater resources in eastern Honey Lake Valley, Dry Valley, and Bedell Flat associated with the proposed North Valleys Rights-of-Way Projects (**Projects**). This Plan applies to proposed groundwater extraction rates of up to 8,000 acre-feet per year (af/yr) in eastern Honey Lake Valley, 2,000 af/yr in Dry Valley, and 500 af/yr in Bedell Flat. The groundwater would be extracted from these valleys by Fish Springs Ranch and Intermountain Water Supply (**Proponents**) and conveyed via pipelines to the North Valleys Planning Area in Washoe County, Nevada, and also be subject to water right appropriations from the Nevada State Engineer and conformance with Nevada State law concerning adverse impacts to public resources. This Plan is prepared to cover both Proponents; site-specific proposed monitoring activities are presented in **Attachment A** (Honey Lake Valley), **Attachment B** (Dry Valley), and **Attachment C** (Bedell Flat).

It should be recognized that this recommended **Plan** was included in the Final EIS (FEIS) due to the lack of concurrence between Cooperating Agencies and the Project Proponents regarding the adequacy of existing data and hydrologic evaluations (contained in the FEIS) to substantiate sustainable annual groundwater extraction levels in the Project areas. This **Plan** is intended to provide the necessary data, provide an early warning capability and provide safeguards for responsible management of the water resources.

Along with the U.S. Bureau of Land Management (BLM) as lead agency, the following groups are cooperating agencies for the North Valleys Rights-of-Way Projects EIS: U.S. Geological Survey (USGS); U.S. Fish and Wildlife Service (USFWS); U.S. Bureau of Indian Affairs (BIA); Pyramid Lake Paiute Tribe; Sierra Army Depot; California Department of Water Resources; California Department of Fish and Game; Washoe County, Nevada; Lassen County, California; Truckee Meadows Water Authority; Truckee Meadows Regional Planning Agency; City of Reno; City of Sparks; Airport Authority of Washoe County; and Susanville Indian Rancheria. This group hereinafter is referred to as the "**Cooperating Agencies**". Because the two project Proponents would eventually be replaced by a local area water purveyor, this potential purveyor should also become a "Cooperating Agency".



The two agencies with primary importance with respect to this Plan are:

- Nevada State Engineer (Nevada Dept. of Conservation and Natural Resources – Division of Water Resources): This state agency has authority to administer the use of water resources in Nevada, including the issuance of water rights.
- U.S. Geological Survey (U.S. Dept. of the Interior): This federal agency is the primary water resources data collection agency in the United States. It is in the process of developing a regional groundwater monitoring program in west-central Nevada and adjoining portions of California.

Because these agencies have the jurisdiction, and over-riding authority and responsibility for the protection of water resources in Nevada and nationwide respectively, they should together provide impartial oversight for development of groundwater for this Project.

This Plan consists of four principal components:

1. Monitoring Requirements, related to production wells, monitoring wells, elevation control, spring flow, water quality, precipitation stations, quality of data, and reporting as proposed in Attachments A, B, and C to this document.

Incorporated in the development of the monitoring plan would be the inclusion of data from *Previous Monitoring*, related to monitoring of surface water and groundwater resources in Honey Lake Valley, Dry Valley, and Bedell Flat, including location of existing supply and monitoring wells, groundwater extraction rates, groundwater level measurements, flow from springs, water quality, precipitation data, and wetland/riparian conditions

2. Management Requirements, related to the creation and role of a Water Advisory Committee (WAC), and a subcommittee of the WAC – the Technical Advisory Committee (TAC), continued use of numerical groundwater flow models, establishment of action criteria, and details of the decision-making process;
3. Mitigation Measures, related to potential mitigation measures that could be implemented if "unreasonable adverse impacts" (to be defined) occur as a result of groundwater extraction associated with the North Valleys Projects; and
4. Modification of Plan, related to procedures that could be followed to modify the Plan if future changing conditions or mitigations warrant modifications.

The common goal of the Proponents, BLM, Cooperating Agencies, and the Nevada State Engineer (all referred to as "Parties") in proposing and adopting this plan is to develop water resources data relating to a better understanding and analysis to assist the



Nevada State Engineer in managing development of groundwater resources in Honey Lake Valley, Dry Valley, and Bedell Flat without resulting in unreasonable adverse impacts to public resources and the prior water rights of other appropriators (i.e., receptors). The Parties agree that groundwater extraction and management decisions can be based on data collected and analyzed for these proposed Projects and from the USGS proposed regional monitoring program. The Parties will collaborate via the WAC on technical data collection and analysis provided by the TAC.

The Parties acknowledge that pursuant to NRS 534.110(4) each right to appropriate groundwater in the State of Nevada carries with it the right to make a reasonable lowering of the static groundwater level at the appropriator's point of diversion and that pursuant to NRS 534.110(5) the Nevada State Engineer may allow, at his discretion, the groundwater level to be lowered at the point of diversion of a prior appropriator with the provision that rights of holders of existing appropriations can be satisfied under such express conditions.

The Parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada. The Pyramid Lake Reservation is held in Trust by the United States government. The U.S. and its representative, the BIA hold legal authority and jurisdiction over water resources located on the Reservation. Nothing contained in this Plan shall be construed as waiving or diminishing such authorities.

## MONITORING REQUIREMENTS

The Final EIS for the North Valleys Rights-of-Way Projects contains information about water resources data in Honey Lake Valley, Dry Valley, Bedell Flat, and surrounding areas. This information includes location of existing supply and monitoring wells, groundwater extraction rates, groundwater level measurements, flow from springs, water quality, precipitation data, and wetland/riparian conditions. This information, as well as data available from other local, state, and federal agencies, would be compiled into a central database that would be expanded as new data are collected.

*Where?  
Who compiles*

Generally, project specific monitoring may be the responsibility of the Proponents as recommended or agreed to by the TAC; however, the USGS is in the process of developing a regional groundwater monitoring program in west-central Nevada and adjoining portions of California (i.e., "Regional Study Area"). Objectives are to develop a network of monitoring wells in the Regional Study Area to monitor and document any regional effects of future groundwater development and management on groundwater levels, water quality, and groundwater discharge.

*Who is sponsoring  
this study?*

The USGS regional monitoring network would be designed to supplement rather than replace individual project monitoring programs. For example, Project monitoring would be conducted by the technical agents of the Proponents, while the USGS monitors other wells within Honey Lake Valley, Dry Valley, Bedell Flat, and surrounding basins. The USGS monitoring may include wells in the Project monitoring groups. In addition to



the Proponents, Washoe County, Lassen County, and/or other agencies also may volunteer to participate in some monitoring activities.

The term "as is feasible" as used in this Plan shall relate to mechanical failures or other events/reasons outside the control of the Parties, or agreed by the Parties, that do not permit data collection.

### **Production Wells**

- Discharge rates and groundwater levels may be measured in production wells on a continuous or frequent basis, as is feasible, using permanent recording devices. Water levels could be measured during pumping and non-pumping periods.
- The proposed action includes six production wells at the Fish Springs Ranch property in eastern Honey Lake Valley, five wells in Dry Valley, and two wells in Bedell Flat.
- All monitoring data may be entered into a project database recommended by the TAC.

### **Monitoring Wells**

- A network of monitoring wells has been proposed by the Proponents to measure groundwater levels over time. Monitoring wells are located in Honey Lake Valley (**Attachment A**), Dry Valley (**Attachment B**), Bedell Flat (**Attachment C**). These proposed monitoring networks would be subject to concurrence from the TAC. The USGS likely could establish additional monitoring wells in the Regional Study Area that includes some surrounding valleys that may be affected by groundwater extraction (e.g., Smoke Creek Desert, Pyramid Lake Valley, Warm Springs Valley, Antelope Valley, and/or Long Valley).
- Groundwater levels can be measured, as feasible, using permanent recording devices in selected monitoring wells. For those monitoring wells without continuous monitoring instruments, water levels could be measured initially on a quarterly basis to establish seasonal variations, followed by semi-annual or annual measurements after such seasonal trends have been established.
- The TAC may recommend that new monitoring well(s) be installed in key areas where there are no existing wells available for monitoring. These new wells can be located and constructed in a cost-effective manner, while meeting the objectives of early-warning detection of impacts, if any, from proposed groundwater extraction. Consideration could be given to completing nested wells that monitor individual aquifers at a single location. The Proponent(s) may be responsible for completing new monitoring well(s), unless another member of the Parties or the USGS agrees to complete the well(s).



- Initiation of groundwater level monitoring should commence as soon as possible, recognizing the desire to obtain baseline data prior to groundwater extraction. Groundwater levels should be measured in each aquifer from which ground water is extracted, as is feasible, in basins including and immediately surrounding Honey Lake Valley, Dry Valley, and Bedell Flat.
- Locations and monitoring frequency of the monitoring well network would be reviewed by the TAC on an annual basis, and may be reduced or expanded in scope upon its recommendation to the WAC.
- All groundwater level monitoring data would be entered into the project database on a regular basis, reflecting the monitoring interval chosen.

### **Elevation Control**

- Ground surface and measuring point elevations should be established using survey-grade GPS instrumentation at production and monitoring wells used as part of this Plan. Elevations for surface water and spring monitoring Locations should also be established. The common datum would allow a comparative base for all elevation associated data; including the possibility of the occurrence of subsidence due to groundwater extraction.
- All elevation measurements would be added to the project database that contains project data.

### **Monitoring Springs and Riparian Areas**

- Selected springs and associated riparian areas could be monitored on a quarterly basis located in Honey Lake Valley (**Attachment A**), Dry Valley (**Attachment B**), Bedell Flat (**Attachment C**), and some surrounding valleys that may be affected by groundwater extraction (e.g., Smoke Creek Desert). Monitoring may consist of measuring flow rate and photo-documenting general site conditions (see attachments for proposed site-specific monitoring activities). Flow can be estimated for low flow conditions or where flow is diffuse on the ground surface. Monitoring frequency may be reduced later as recommended by the TAC to semi-annually or annually.
- Initiation of monitoring for springs and riparian areas could commence as soon as possible, recognizing the desire to obtain baseline data prior to groundwater extraction. Monitoring data may be recorded using a standard format to be used for each monitoring event.

### **Water Quality**

- Groundwater quality samples may be collected from selected production and monitoring wells and analyzed by a laboratory for major ions, trace elements, and/or