

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 73933

SIERRA PACIFIC INDUSTRIES, a California Corporation,

Appellant,

v.

TIM WILSON, 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 IWS BASIN, LLC,
a Nevada Limited Liability Company,

Respondents

Appeal From Order Denying Petition for Judicial Review
District Court Case No.: CV16-01378
Second Judicial District Court of Nevada

**ADDENDUM TO
APPELLANT'S PETITION FOR
PARTIAL REHEARING REGARDING THE COURT'S
REMAND INSTRUCTIONS**

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Electronically Filed
May 20 2019 05:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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<u>EXHIBIT NO.</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>PAGES</u>
1.	Ruling #6421	Excerpted from Case No. 77413 Joint Appendix Volume I Pages JA 1-16,
2.	Excerpts of Transcript of Proceedings, June 7, 2017 Public Hearing Before Nevada Division of Water Resources	Excerpted from Case No. 77413 Joint Appendix Volume I, Pages JA 117-118, 154-172, Joint Appendix Volume II, Pages JA 279-288, 319
3.	Transcript of Oral Argument Proceedings, November 7, 2018, Case No. 73933	

Dated this 20th day of May, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano, LLP, and that on this 20th day of May, 2019, a copy of the foregoing **ADDENDUM TO APPELLANT'S PETITION FOR PARTIAL REHEARING** 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). Participants in the case who are registered with E-Flex as users will be served by the EFlex system and others not registered will be served via U.S. mail as follows:

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EXHIBIT 1

EXHIBIT 1

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

IN THE MATTER OF APPLICATIONS FOR)
EXTENSIONS OF TIME FOR FILING PROOFS OF)
COMPLETION AND BENEFICIAL USE CONCERNING)
PERMITS 64076, 64077, 64078 AND 64079 WITHIN)
THE WARM SPRINGS VALLEY HYDROGRAPHIC)
BASIN (84), PERMITS 64977, 64978, 66400, 72700,)
73428, 73429, 73430 AND 74327 WITHIN THE DRY)
VALLEY HYDROGRAPHIC BASIN (95), PERMITS)
66873 AND 73048 WITHIN THE BEDELL FLAT)
HYDROGRAPHIC BASIN (94), AND PERMIT 67037)
WITHIN THE NEWCOMB LAKE VALLEY)
HYDROGRAPHIC BASIN (96), WASHOE COUNTY,)
NEVADA.)

RULING
#6421

GENERAL

I.

This matter concerns applications for extensions of time to file Proofs of Completion of Work and Proofs of Beneficial Use for an interbasin transfer pipeline project by Intermountain Water Supply, Ltd. (Intermountain) to bring water from several north valley hydrographic basins in Washoe County, Nevada, to the Lemmon Valley Hydrographic Basin. Sierra Pacific Industries, Inc. (SPI) objected to the granting of additional extensions of time for Intermountain's Permits 64977, 64978, 66400, 72700, 73428, 73429, 73430 and 74327. An administrative hearing was held before the State Engineer on June 7 and July 10, 2017.

FINDINGS OF FACT

I.

Project Water Rights and Background

The Intermountain pipeline project (project) proposes to export water by a 24-mile pipeline from three north valley hydrographic basins in Washoe County, which include Bedell Flat, Dry Valley and Newcomb Lake Valley, to Lemmon Valley, also located in Washoe County. Water rights currently comprising the project include 368.1 acre-feet annually (afa) permitted in the Bedell Flat basin under Permit 66873 and Permit 73048; 2,996 afa permitted in the Dry Valley basin under Permit 64977, Permit 64978, Permit 66400, Permit 72700, Permit 73428, Permit 73429, Permit 73430 and Permit 74327; and 200 afa permitted in Newcomb Lake basin under Permit 67037.

JA000001

Additionally, Permits 64076, 64077, 64078, and 64079 were issued in Warm Springs Valley Hydrographic Basin to change existing water rights to allow water under those permits to be recharged in the basin and recovered at a later time to serve the project. In conjunction with the Warm Springs Valley permits, Intermountain holds Permit R-014 for the recharge, storage and recovery project required pursuant to Nevada Revised Statute (NRS) § 534.250, *et seq.*

Finally, Intermountain has two pending applications, including Application 66961 (2,000 afa) in Lower Dry Valley and Application 73049 (500 afa) in Bedell Flat that have not been acted upon by the State Engineer.

Robert Marshall, Esq., is the managing member of Intermountain. He is a Nevada-licensed attorney, with a great portion of his career having been devoted to practicing water law in addition to operating his ranch that he owns in Washoe County.¹ He testified that the project was conceived when he was approached around 1993 regarding potentially transferring the water rights located on his ranch to Lemmon Valley — an over-appropriated basin. A feasibility study was conducted, which demonstrated that a pipeline project was feasible. The Regional Water Planning Commission approved the project around 1997.² However, around 2000, Washoe County passed an ordinance prohibiting the export of groundwater out of the Warm Springs Valley, which prevented Mr. Marshall from exporting any water under his Warm Springs groundwater rights. This prompted him to examine nearby basins to determine if water was available for export to support a project.³ He determined water was available in nearby basins and he filed applications to appropriate the water in those basins.

Over a period of almost 10 years, Intermountain's water right applications were granted by the State Engineer. When each permit was granted, it contained required deadlines for the filing of Proof of Completion of Work and Proof of Beneficial Use.⁴ Table 1 identifies the relevant filing, approval, priority, proof dates and ruling number, if any, which granted the water right applications:

¹ Transcript, pp. 16, 18-19, public administrative hearing before the State Engineer, June 7, and July 10, 2017. Hereinafter, exhibits and the transcript will be referred to by exhibit number or transcript page.

² Transcript, pp. 19-20.

³ Transcript, pp. 20-21.

⁴ *See generally*, Exhibit 37.

TABLE 1

Basin	Permit No.	App. File Date	Priority Date	Permit Date	POC Due	PBU Due	SE Ruling No.
Warm Spr.	Permit 64076	5/1/98	4/19/74	1/2/02	2/2/04	2/2/12	Ruling 5066
Warm Spr.	Permit 64077	5/1/98	6/4/74	1/2/02	2/2/04	2/2/12	Ruling 5066
Warm Spr.	Permit 64078	5/1/98	6/4/74	1/2/02	2/2/04	2/2/12	Ruling 5066
Warm Spr.	Permit 64079	5/1/98	6/4/74	1/2/02	2/2/04	2/2/12	Ruling 5066
Dry Valley	Permit 64977 ⁵	3/24/99	3/24/99	1/11/02	2/11/05	2/11/07	N/A
Dry Valley	Permit 64978 ⁶	3/24/99	3/24/99	1/11/02	2/11/05	2/11/07	N/A
Dry Valley	Permit 66400 ⁷	5/22/00	5/22/00	1/11/02	2/11/05	2/11/07	N/A
Newcomb Lk.	Permit 67037	12/22/00	12/22/00	1/7/03	2/7/05	2/7/08	Ruling 5165
Dry Valley	Permit 73428 ⁸	11/3/05	5/22/00	6/29/06	2/11/08	2/11/09	Ruling 5622
Dry Valley	Permit 73429 ⁹	11/3/05	5/22/00	6/29/06	2/11/08	2/11/09	Ruling 5622
Dry Valley	Permit 73430 ¹⁰	11/3/05	5/22/00	6/29/06	2/11/08	2/11/09	Ruling 5622
Bedell Flat	Permit 66873	10/16/00	10/16/00	11/20/06	11/20/11	11/20/16	Ruling 5429
Dry Valley	Permit 72700 ¹¹	5/3/05	3/24/99	12/18/08	12/18/10	12/18/13	Ruling 5897
Bedell Flat	Permit 73048	7/14/05	7/14/05	12/29/10	11/20/12	11/20/16	Ruling 6073
Dry Valley	Permit 74327 ¹²	5/23/06	3/24/99	9/29/06	2/11/08	2/11/09	N/A

Subsequent to the original proof filing deadlines, Intermountain has requested, and the State Engineer has granted a number of extensions of time for Intermountain to file its Proofs of Completion of Work and Proofs of Beneficial use.¹³

II.

SPI's Objections to Applications for Extensions of Time

In 2017, SPI filed an objection against Intermountain's applications for extensions of time in Dry Valley. SPI has Applications 84688 and 84689 pending in Dry Valley to support its agricultural operation on the Wilburn Ranch.¹⁴ SPI contends it can immediately place the water under those applications to beneficial use if its applications are granted, motivating it to object to

⁵ Exhibit 37, pp. SPI 0002-0004.

⁶ Exhibit 37, pp. SPI 0005-0009.

⁷ Exhibit 37, pp. SPI 0010-0016.

⁸ Exhibit 37, pp. SPI 0025-0028.

⁹ Exhibit 37, pp. SPI 0029-0032.

¹⁰ Exhibit 37, pp. SPI 0033-0036.

¹¹ Exhibit 37, pp. SPI 0017-0024.

¹² Exhibit 37, pp. SPI 0037-0044.

¹³ See generally, Exhibit 38.

¹⁴ Exhibit 47.

the State Engineer granting any additional extensions to Intermountain in Dry Valley.¹⁵ SPI filed similar objections against Intermountain in 2015 and 2016 (see Exhibit 39) and the State Engineer granted Intermountain extensions of time over the objection of SPI. In 2015, the State Engineer examined the evidence submitted by Intermountain, concluding that good cause existed to grant Intermountain's extensions of time.¹⁶ Likewise, in 2016, the State Engineer examined Intermountain's evidence submitted in support of the applications for extensions of time, and again, examined SPI's objection that Intermountain was not proceeding with good faith and reasonable diligence to develop the water rights and that Intermountain was speculating in water. The State Engineer concluded that good cause existed to grant Intermountain additional extensions of time.¹⁷ Notwithstanding, as Mr. Marshall represented in an affidavit that he had secured developer and purveyor agreements, the State Engineer required Mr. Marshall to submit copies of those agreements within the next extension-filing period.¹⁸ The State Engineer finds, in large part, that the arguments raised in SPI's 2017 objection have already been addressed in prior decisions by the State Engineer.¹⁹

III.

Timeliness of the 2017 Agreements

Mr. Marshall testified during the hearing that he had executed an Option for a Water Rights Purchase Agreement with Baran Global Engineering, Ltd., (Baran) and Galileo NV, LLC, (Galileo) on November 3, 2015.²⁰ Baran and Galileo were engineering and construction firms. Difficulties between the parties arose after the agreement was signed, including the buyer's late-stage attempts to renegotiate the agreement, the buyer's difficulty working with developers and ultimate default on its payment obligations.²¹ Consequently, by the time Mr. Marshall filed applications for extension of time in February 2016, the Galileo/Baran agreement was no longer operative, and accordingly, no copy was provided to the State Engineer with the 2016 or 2017

¹⁵ Exhibit 39, pp. SPI 0528, 0939-0983.

¹⁶ Exhibit 41.

¹⁷ Exhibit 42.

¹⁸ Exhibit 42 at SPI 1119.

¹⁹ Petitions for judicial review were filed in 2015 and 2016 and the district court affirmed the decisions of the State Engineer. Exhibit 11, pp. SE ROA 580-602. An appeal of the order denying judicial review concerning the 2016 extensions is currently pending before the Nevada Supreme Court in *Sierra Pacific Industries v. Jason King*, Nevada Supreme Court Case Number 73933.

²⁰ Exhibit 16.

²¹ Transcript, pp. 40-45.

applications for extension of time. Around the same time that Mr. Marshall secured the Galileo/Baran agreement, he testified he was negotiating an agreement with the water purveyor, Utilities Inc., (now known as Great Basin Water Company), and had reached a verbal agreement with that entity.²² Despite having a verbal agreement and drafts of the agreement having been exchanged, the agreement was not signed because Mr. Marshall did not yet have a developer agreement after the Galileo/Baran agreement failed. A developer agreement was executed between Intermountain and Genoa Ridge Investors, LLC on March 16, 2017, and the Agreement with Great Basin Water Co. was thereafter executed on May 26, 2017.²³ Both agreements were identified as exhibits to the administrative hearing; however, SPI argues that NRS § 533.380 limits the evidence the State Engineer can consider to the current extension period (February 11, 2016 to February 11, 2017) and objects to the State Engineer's consideration of the agreements on the basis that they were not submitted within the current extension period, as required by the State Engineer in his letter dated June 1, 2016.²⁴

Nevada Revised Statute § 533.380(3) states that the State Engineer must consider evidence submitted at the time an application for extension of time is filed; however, the State Engineer finds nothing in the statute that prohibits a party from supplementing its application for extension of time prior to the time the State Engineer issues a determination on the extension application. Further, a determination by the State Engineer that the permittee is not proceeding with good faith and reasonable diligence under NRS § 533.380 would also be grounds to cancel the permits pursuant to NRS § 533.395. Therefore, the State Engineer finds that NRS § 533.395 also applies. Nevada Revised Statute § 533.395(1) permits the State Engineer to require evidence of good faith and reasonable diligence *at any time* the State Engineer believes cancellation may be appropriate. Thus, the State Engineer finds NRS § 533.395(1) gives him broad discretion to consider the timing of any evidence going to the good faith and reasonable diligence inquiry.²⁵

²² Transcript, pp. 45, 49; Exhibit 11 at SE ROA 614.

²³ Exhibits 17 and 19.

²⁴ Transcript, p. 81; *and see*, e.g., NRS § 533.380(2) (an extension request must be accompanied by proof and evidence of reasonable diligence, and the State Engineer shall not grant an extension of time unless he determines from the proof and evidence *so submitted* that the applicant is proceeding in good faith and with reasonable diligence to perfect the application).

²⁵ *And see also*, e.g., *Desert Irrigation v. State Engineer*, 113 Nev. 1049, 944 P.2d 835 (1997) (applying both NRS § 533.380 and § 533.395).

Importantly, the lack of agreements with the 2017 applications for extensions of time motivated the State Engineer to hold a hearing to determine why no agreements had been submitted. Therefore, the State Engineer finds it would also undermine the State Engineer's purpose in holding a hearing to now exclude the evidence the State Engineer sought to ascertain by holding a hearing in the first place.

Mr. Marshall testified that when the Agreements were referenced in his affidavit, verbal agreements had been reached and he believed he would have the written agreements in hand "within three to four months." This statement prompted the State Engineer to require that the agreements be provided by the next extension period.²⁶ In reality, the evidence demonstrates that securing executed agreements took Mr. Marshall and additional 12 to 15 months. It appears to the State Engineer that the water banking agreement was a sophisticated agreement that, by its terms, depended upon a developer agreement, and vice-versa. It is not particularly surprising that matters frequently take longer than anticipated, particularly where water rights may be involved. The statements in Mr. Marshall's affidavit were corroborated by Mr. Marshall's direct testimony at the hearing, which the State Engineer finds credible, in addition to the agreements themselves. Nevada Revised Statute § 533.380 allows the State Engineer to grant any number of extensions of time for good cause shown. The State Engineer finds that consideration of the agreements is not prohibited by NRS § 533.380(3), is supported by NRS § 533.395, and meets the "good cause" standard.²⁷

Mr. Marshall recounted the work historically performed on the project up through work performed during the last extension period, including: inception of the project by first changing the ranch rights to Lemmon Valley and getting the recharge application (R-014) approved;²⁸ filing a water right on an existing well in Bedell Flat and a well drilled in Upper Dry Valley, and drilling 5 test wells at a price of \$30,000 to \$60,000 each;²⁹ approval of the project by the Regional Water Planning Commission in 1997 and addition of the project to the North Valleys

²⁶ Exhibit 11 at SE ROA 671-677.

²⁷ SPI objected to numerous exhibits during the hearing on the same ground of timeliness of submission, and the State Engineer finds that same rationale applies to consideration of all the evidence admitted during the hearing.

²⁸ Transcript, p. 26; and see Ruling No. 5194, dated January 7, 2003, official records in the Office of the State Engineer (approving R-014).

²⁹ Transcript, pp. 22-24.

strategy;^{30,31} obtaining other approvals including a Utility Environmental Protection Act Permit (UEPA), a Washoe County special use permit, completion of the environmental impact statement (EIS) process and obtaining rights of way and private easements;³² that there was the economic recession from 2008-2015 during which Mr. Marshall continued reaching out to numerous companies regarding sale or investment in the project prior to and during the recession;³³ that the economy started turning around between 2016-2017 with the announcement of Tesla and other announcements by the Economic Development Authority of Western Nevada of companies locating in Nevada, ultimately spurring development which lead to the agreements at issue here.³⁴

IV.

The Loss of Some Approvals

Despite the various approvals discussed above, a great deal of testimony was elicited regarding the loss of two of Intermountain's prior approvals. In 2015, the Public Utility Commission (PUC) vacated Intermountain's UEPA permit issued February 27, 2007, because it had not completed any of the items required by a compliance order.³⁵ Additionally, Intermountain's special use permit issued by Washoe County expired two years after its issuance. Although SPI suggests that Mr. Marshall's failure to notify the State Engineer of the loss of these approvals is evidence of bad faith, the State Engineer does not agree. Mr. Marshall advised the State Engineer in Intermountain's 2012 extension of time that the PUC was attempting to vacate the UEPA permit; and, Mr. Marshall testified repeatedly that he was not aware of the expiration of the special use permit until the day prior to the hearing.³⁶

The loss of these other approvals reveals that Intermountain gained progress in some areas such as obtaining the developer and purveyor agreements, yet lost ground in other areas by the expiration of the special use permit and cancellation of the UEPA permit. The State Engineer finds that this is not necessarily fatal to extending the deadlines on the water right permits as the loss of the other approvals was without prejudice and Mr. Marshall testified he

³⁰ Transcript, pp. 27, 29.

³¹ A discussion of project's inclusion in various regional plans is included later herein.

³² Transcript, pp. 32-35, 55.

³³ Transcript, pp. 36-38.

³⁴ Transcript, p. 36.

³⁵ Exhibit 49 at SPI 01257.

³⁶ Exhibit 39, SPI 00070; and Transcript, pp. 32-33.

will re-file applications for the UEPA and special use permit.³⁷ The significant difference between the denial of requests for extension of time and cancellation of the water right permits and the expiration of the special use permit and the cancellation of the UEPA permit is that those latter decisions were without prejudice. The denial of extensions of time and the cancellation of the water right permits here may either lead to permanent loss of the water rights; or, if the permits are cancelled and for some reason later reinstated after a hearing, it would result in a loss in priority of 17 to 43 years on the permits (*see* NRS § 533.395(3)). Consequently, the State Engineer finds that an equal comparison between the expiration of the special use permit and the loss of the UEPA permit cannot be made to the cancellation of the water right permits.

Apart from the loss of these approvals, an additional consideration is that through the new agreements, Intermountain has created its own milestones moving forward on the project including drilling and testing municipal quality wells, filing necessary water right change applications and securing required permits and other approvals³⁸ and also including completing a schedule of the timing of Evans Ranch Development to include the start of utility service at the development, the annexation process, and pipeline design, financing and construction.³⁹

V.

SPI's Speculation Objection

SPI also argues that the work during the last extension period, namely securing agreements for a project in the Cold Springs Valley Hydrographic Basin (Cold Springs Valley), is not work on the project as contemplated by the terms of the permits and is therefore speculative. The State Engineer has addressed SPI's speculation arguments in prior decisions, and this ruling is accordingly limited solely to whether Intermountain's new Agreements that contemplate a proposed change in the place of use, renders the project speculative.

To begin with, Nevada law contemplates changes to water rights through change applications (NRS §§ 533.040, 533.345) and Intermountain states it intends to change the place of use as contemplated by the proposed development.

The notion that an element of a project cannot change without rendering the project speculative is not supported by the law, which allows for changing aspects of a water right. In the big-picture, "the project" has not changed and always has been and continues to be a water

³⁷ Transcript, p. 110.

³⁸ Exhibit 17 at IWS 00342-00344.

³⁹ Exhibit 19 at IWS 00366.

importation project. The fact that one component of the project may change (*i.e.*, the end point of the pipeline changing from the Stead Airport to Section 11, T.21N., R.18E., to a different place of use) does not render the project speculative.⁴⁰

It is true the permitted place of use is defined as a portion of Lemmon Valley; however, numerous examples exist which suggest it may have always been contemplated that the pipeline may be used to serve the “north valleys” area, which includes Lemmon and Cold Springs Valleys.

In 1995, Washoe County and the cities of Reno and Sparks sponsored legislation that resulted in the formation of the Regional Water Planning Commission.⁴¹ The Regional Water Planning Commission developed, approved and recommended the *1995-2015 Washoe County Comprehensive Regional Water Management Plan* to the Board of Washoe County Commissioners, who adopted the plan in January 1997. The plan was amended on March 31, 1997, to include the “North Valleys Strategy.”⁴² The North Valleys Strategy described the Warm Springs Valley Importation project (Intermountain’s project), and the amendment recommended that the county aggressively pursue Intermountain’s project (among others) and implement the project if certain performance criteria were met.⁴³

In June 2007, the Legislature approved Senate Bill (S.B.) 487, authorizing the creation of the Western Regional Water Commission (WRWC) and the Northern Nevada Water Planning Commission (NNWPC). S.B. 487 repealed certain sections of NRS Chapter 540A dealing with the Regional Water Planning Commission, but provided that the provisions of the comprehensive plan adopted would remain in effect until the Western Regional Commission adopted the Regional Water Plan. Thus, despite the repeal of certain provisions of NRS Chapter 540A, the prior amendment adding the North Valleys Strategy, and the direction to the county to consider Intermountain’s project as a potential importation project was not affected by the repeal of those sections.

⁴⁰ *And see also, e.g.*, Exhibit 20-8, at IWS 0585. When Washoe County was contemplating purchasing the project, its consultant, former State Engineer R. Michael Turnipseed, stated in his report that the place of use was Lemmon Valley; however, if Washoe County was going to use the water in other valleys north of Reno, change applications to change the place of use would be required to be filed and approved by the State Engineer.

⁴¹ Exhibit 39 at SPI 601.

⁴² Exhibit 38 at SPI 315.

⁴³ Exhibit 12-5 at SE ROA 1767-1769.

S.B. 487 required the NNWPC to develop a comprehensive plan for the planning area covering municipal uses and other issues to deal with current and future problems affecting planning areas. The planning area includes Washoe County and includes the hydrographic basins discussed in these proceedings, subject to certain exceptions.⁴⁴ The *2011-2030 Comprehensive Regional Water Management Plan* prepared by NNWPC and adopted by the WRWC recognized that the demand for potable water supplies in Cold Springs Valley would be met in the future using a combination of local groundwater resources, augmented with imported water supplies, such as the Fish Springs and *Intermountain* water importation projects.⁴⁵

The *Comprehensive Regional Plan* incorporated the Truckee Meadows Water Authority (TMWA) Resource Plans,⁴⁶ and TMWA's *2010-2030 Resource Plan* and the *2016-2035 Draft Resource Plan* recognized that Intermountain's project was a potential water supply project for the North Valleys.⁴⁷

Additionally, Ruling No. 5066, which granted the first permits for Intermountain's project in 2002, stated that the applications were "to export water to Lemmon Valley and surrounding areas for municipal and domestic purposes."⁴⁸ The State Engineer's hearing record from the 2001 hearing supporting Ruling No. 5066 was examined to determine what, if any, foundation existed for the reference to Lemmon Valley and surrounding areas. Testimony from the first day of a three-day hearing focused on the inclusion of the project in the North Valleys Strategy and the necessity of bringing water to the North Valleys. The transcript from the hearing supported that other parts of Lemmon Valley and Cold Springs Valley were not excluded from consideration as receiving water from the pipeline project.⁴⁹

The State Engineer finds that although Intermountain's permits include a defined place of use in Lemmon Valley, many pieces of evidence support a finding that Intermountain's project was considered a project which could be used to serve the North Valleys area.

⁴⁴ Exhibit 39 at SPI 599-600.

⁴⁵ Exhibit 39 at SPI 574.

⁴⁶ See Exhibit 39 at SPI 00390 (the legislative directive which modified regional water resource planning and created the WRWC required that TMWA's latest water resource strategies be incorporated into the comprehensive water plan).

⁴⁷ Exhibit 39 at SPI 00489-00503 (Chapter 6 of the 2010-2030 Plan: Future Water Resources); and SPI 00924-00934 (Chapter 6 of the 2016-2035 Plan: Future Water Resources).

⁴⁸ Ruling No. 5066, p. 13 (emphasis added), official records in the Office of the State Engineer.

⁴⁹ Administrative Hearing before the State Engineer, April 3-5, 2001, Vol. I.

VI.

Whether the Applications are Barred by Desert Irrigation, Ltd. v. State

SPI also argues that the pending extensions are precluded by the holding of *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 944 P.2d 835 (1997).⁵⁰ *Desert Irrigation* involved an application for extension of time concerning a residential development project known as Allen Estates in the Pahrump Valley Hydrographic Basin. Permit 26358 was issued for 665 afa to develop the Allen Estates project that the developer identified as 204 metered residential lots, 6 commercial lots and, and recreational park. The developer requested, and received 15 extensions of time to file proof of beneficial use. In 1991, the developer realized the Allen Estate project would not utilize the entire 665 afa, and filed an application to change 366.85 afa to a 160-acre parcel of undeveloped land 6 miles away from Allen Estates to serve a new proposed development.⁵¹ In all of its prior extensions of time, the developer had never mentioned the new development and the State Engineer concluded that the developer was not proceeding in good faith with reasonable diligence to perfect the uncommitted portion of the water and cancelled the 366.85 afa portion of the permit. After a hearing on the cancellation, the State Engineer affirmed the cancellation finding the developer had failed to present evidence of its good faith and reasonable diligence to develop the noncontiguous 160-acre parcel.⁵² *Desert Irrigation* appealed. The district court did not reverse the State Engineer, but did remand the matter for the State Engineer to consider *Desert Irrigation's* efforts in the context of NRS § 533.380(4). On remand, the State Engineer considered NRS § 533.380(4) in terms of the Allen Estates project, but refused to consider the developer's claim that it intended to put the excess water to beneficial use six miles away.⁵³ In a second appeal, the district court affirmed the State Engineer's ruling on remand. The Supreme Court affirmed the district court, but remanded the matter based upon equitable considerations.

⁵⁰ See Exhibit 45.

⁵¹ The developer initially filed proof of beneficial use (PBU) on the Allen Estates project after the 14th extension of time, but then withdrew the PBU and filed another extension request and the change application to move the uncommitted water — essentially conceding it did not require the uncommitted water for the Allen Estates Project.

⁵² *Desert Irrigation*, 113 Nev. at 838; and see State Engineer Ruling No. 4035 dated August 23, 1993, official records in the Office of the State Engineer.

⁵³ *Desert Irrigation*, 113 Nev. at 838-39; and see State Engineer Ruling on Remand No. 4134, August 8, 1994, official records in the office of the State Engineer.

The State Engineer finds this matter distinguishable from *Desert Irrigation*. First, *Desert Irrigation* involved a single permit issued for a discrete development consisting of 204 residential lots, 6 commercial lots and, a recreational park. Intermountain's project is a 22-mile pipeline served by 15 permitted water rights and a recharge, storage and recovery permit, and includes a large geographic area within the Lemmon Valley basin — not a single subdivision. Intermountain's project and the Allen Estates project are not comparable in size or scope, the relative permitting approvals or the amount of work needed to bring the project to fruition and placement of the water to beneficial use.

Second, although Intermountain states a change in the permitted place of use is necessary pursuant to its Agreements, the end-point and place of use of the water imported is but one facet of "the project." "The project," in the State Engineer's view, continues to be a pipeline project, which has not changed. The distinction being that in *Desert Irrigation*, the developer was attempting to move the uncommitted water to a new development project after 20 years. The evidence in this case demonstrates that all of the water under Intermountain's permits continues to be committed to the original purpose: importation to serve overdrafted areas in the North Valleys.⁵⁴

Third, in *Desert Irrigation*, the State Engineer refused to consider the developer's new project on a non-contiguous 160-acre parcel, in part, because the State Engineer also found that there was no evidence that the developer had attempted to obtain approval from the Nevada Public Service Commission (now known as the Public Utilities Commission) to expand its service area to include the 160-acre parcel.⁵⁵ In this case, Intermountain's new contemplated place of use is contiguous to the current place of use⁵⁶ and the Agreement with Great Basin

⁵⁴ See *Desert Irrigation*, 113 Nev. at 841 (noting that other cases offered by the developer were distinguishable in that those involved developments where the all the water was committed to a specific use from the outset).

⁵⁵ Ruling No. 4134, p. 6, official records in the Office of the State Engineer.

⁵⁶ The development is located in Sections 1, 2 3 11 and a portion of Section 4 in T.21N., R.18E. Transcript, p. 145; and see Exhibit 48. The development is located in both Lemmon Valley and Cold Springs Valley Hydrographic Basins. Transcript, p. 154. However, the current permitted place of use of Intermountain's permits, while in the Lemmon Valley Hydrographic Basin, does not include the location of the proposed development. Compare, Exhibit 37 at SPI 43 (defining the permitted place of use by the dotted line), with Exhibit 48. The proposed development is located in the township immediately west of the permitted place of use.

Water Co. requires it to apply to the Public Utilities Commission to annex the new place of use into its service territory.⁵⁷

The State Engineer finds that Intermountain's project is distinguishable from the facts of those in the *Desert Irrigation* case, and that the applications for extensions of time are not precluded by *Desert Irrigation*.

VII.

SPI compares Intermountain's importation project to the importation project sponsored by Vidler Water Company (Vidler) known as the North Valleys Importation Project.⁵⁸ Vidler's project was approved near the time of Intermountain's project and serves the same general area as Intermountain's project. SPI points to the fact that Vidler's project has been constructed while Intermountain's has not, to suggest that Intermountain has not proceeded diligently in the construction of its project. In *Bailey v. State*, 95 Nev. 378, 594 P.2d 734 (1979), the Nevada Supreme Court reiterated that in considering extensions of time, the facts and circumstances of each case are to be considered on an individual basis, taking into account the nature of the task and the difficulties encountered in the project. *Bailey* calls for fact-dependent inquiry regarding the evidence of Intermountain's efforts — not a comparison to what another water right owner has or has not done. The State Engineer finds that the circumstances of different water right owners will never be identical, and for that reason, any comparison to Vidler's project or any other project is not helpful or appropriate.

Finally, the State Engineer has twice before rejected SPI's argument that its ability to place water to beneficial use under its applications is a basis to cancel Intermountain's permits. The State Engineer again rejects this argument and limits the examination to the requirements articulated in NRS § 533.380.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁵⁹

⁵⁷ Exhibit 19-7 at IWS 00363.

⁵⁸ See generally, e.g., Exhibit 39 at SPI 00491.

⁵⁹ NRS Chapters 533 and 534.

II.

An application for an extension of time in all cases must be: (a) made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS §§ 533.390 and 533.410; and (b) accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application.

The State Engineer shall not grant an extension of time unless the State Engineer determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required is *prima facie* evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.⁶⁰ For the purposes of determining whether good cause is present to grant a request for extension of time, 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.⁶¹

After receiving evidence at a hearing, the State Engineer concludes that Intermountain has demonstrated good faith and reasonable diligence to support granting the extensions of time. Intermountain has secured agreements with a developer and water purveyor concerning a development located in Lemmon and Cold Springs Valleys. While the current place of use is defined as a different place of use in Lemmon Valley, any new place of use is contiguous to the current place of use. Furthermore, an abundance of evidence strongly supports that the use of water from Intermountain's project was always considered as a potential source to serve the North Valleys, which includes Lemmon and Cold Springs Valleys, due to the over-appropriation of those basins. Additionally, despite any contemplated changes to Intermountain's permits, Intermountain's "project" has not changed and remains an importation project. For these reasons, the State Engineer further concludes that SPI's objections, including that the extensions are barred by the anti-speculation doctrine, do not preclude granting the extensions of time.

III.

Nevada Revised Statute § 533.380(4) requires that the State Engineer consider additional factors for permits issued for municipal use of water on any land referred to in NRS § 533.380(1)(b), including:

⁶⁰ NRS § 533.380(3).

⁶¹ NRS § 533.380(6).

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

The State Engineer concludes the extension applications are supported by good cause where Intermountain required additional time to secure its oral agreements in writing. There was no evidence of delays caused by unanticipated natural conditions and the evidence concerning economic conditions favors granting the extensions of time. Inasmuch as Intermountain's permits define a general place of use in Lemmon Valley and not a particular subdivision or planned unit development, the factors of NRS § 533.380(4)(b) and (e) are difficult to apply to the facts here. The permits were granted to import water to serve Lemmon Valley — a basin known to be over-appropriated and, consequently, no additional water rights within the basin are available. While not tied to a specific subdivision or development currently, as stated previously, Intermountain's project always was intended as a source to serve existing developments in Lemmon Valley and was also contemplated as a project that could serve other North Valleys. Because the permits have not been changed to support the Evans Ranch Development specifically, the State Engineer concludes it is not appropriate to consider any specifics regarding the number of parcels or units of the development that were testified to during the hearing. For these reasons, considering NRS § 533.380(4), State Engineer concludes that SPI's objections, including that the extensions are barred by *Desert Irrigation v. State*, do not preclude granting the extensions of time.

RULING

Sierra Pacific Industries, Inc.'s objections to Intermountain Water Supply, Ltd.'s applications for extensions of time are overruled, and the applications for extension of time concerning Permits 64076, 64077, 64078, 64079, 64977, 64978, 66400, 66873, 67037, 72700, 73048, 73428, 73429, 73430 and 74327, are hereby granted.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 9th day of

January, 2018.

EXHIBIT 2

EXHIBIT 2

CERTIFIED COPY

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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE KRISTEN GEDDES, HEARING OFFICER

---oOo---

RECEIVED

JUN 27 2017

STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATIONS FOR
EXTENSIONS OF TIME FOR FILING PROOFS
OF COMPLETION AND BENEFICIAL USE
CONCERNING PERMITS 64076, 64077, 64078,
64079, 64977, 64978, 66400, 66873, 67037,
72700, 73048, 73428, 73429, 73430, AND 74327
LOCATED WITHIN THE WARM SPRINGS VALLEY (84),
DRY VALLEY (95), BEDELL FLAT (94), AND
NEWCOMB LAKE VALLEY (96) HYDROGRAPHIC
BASINS, WASHOE COUNTY, NEVADA.

TRANSCRIPT OF PROCEEDINGS

PUBLIC HEARING

WEDNESDAY, JUNE 7, 2017

CARSON CITY, NEVADA

REPORTED BY:

CAPITOL REPORTERS
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1 there. And I knew at the time, but I didn't know it was
2 still on there, and she brought it up, it was 2015. I didn't
3 know it was still there. And I took it off and it hasn't
4 been on there since 2015, so we're not offering it there.

5 Q. In the time period from 2008 up through the end
6 of 2014 were you ever able to get a contract of any kind with
7 anyone --

8 A. No.

9 Q. -- to develop this water?

10 A. No. I worked with an outfit in Nebraska called
11 Aqua Capital. I had high hopes for them. I worked with an
12 outfit in southern California. What was their name? Summit
13 Global Management, Inc., I met with them. As a matter of
14 fact, ironically, their CEO used to be the CEO of Vidler
15 years ago and I talked to them and tried to work with them on
16 something. At one time I talked to Lennar. And Lennar at
17 one time was -- And this was in the probably 2006 or seven
18 range -- were interested in buying the project. And then, of
19 course, they backed away. I worked with the Airport
20 Authority. And at one time the Airport Authority -- And this
21 would have been in about I think 2003 or four -- were
22 interested in buying the whole project. And I worked with a
23 lady there. And they were -- they were getting -- she was
24 getting very close to recommending to the board that they buy
25 it because they could use the water. And then unfortunately

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1 that lady she contracted a debilitating sickness and she had
2 to leave. And she was no longer there and there was nobody
3 that would carry that project forward.

4 Q. All right. I want you to --

5 A. We've just done everything we could to move the
6 sale along.

7 Q. Come to 2015, if you will, please. Who did you
8 negotiate with in 2015 for an agreement to develop this
9 water?

10 A. Well, I negotiated with a guy by the name of Don
11 Padlock and another fellow by the name of Michael Barnes, who
12 is with Loomis Engineers, and they have put together a group
13 that is going to buy the Hines Ranch which is in Cold Springs
14 on 395. And so we actually had some draft agreements back
15 and forth. But it didn't seem like things were coming to
16 the. And I was approached by Tom Gallagher, who is Summit
17 Engineering, and he's been interested in the water. I know
18 him fairly well. Not intimately at all, but we've been
19 friendly over the years. He told me that there was a -- he
20 knew an outfit in Chicago and affiliated with another company
21 in Tel Aviv, Israel, that was interested in our project.

22 So he put me in touch with a man by the name of
23 Michael Monhait in Chicago and that was in October 2015. And
24 the company in Israel is called Baran Global International,
25 Inc., I think. Inc. I think.

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1 And so I met with Mr. Monhait. He was from
2 Chicago. And I met with him many times in October of 2015.
3 And by November 3rd, 2015, we signed a contract as an option
4 for them to buy the project.

5 And I understood that the company out of Tel Aviv
6 had done quite a few water projects around the world. I'm
7 not sure that Mr. Monhait and his company out of Chicago had
8 actually done a water project, but he had done construction
9 projects, notably power plants, and so he understood the
10 construction business. And so it sounded like just a great
11 opportunity for us. And we did sign up with him in 2015,
12 October -- No. November 3rd, 2015. But I've been dealing
13 with other companies too before that.

14 Q. All right. There was a signed agreement in
15 November of 2015 with Mr. Monhait's group?

16 A. Was it what?

17 Q. With Mr. Monhait's group?

18 A. Yeah. He was Galileo something. He was from
19 Chicago. And the name of his company was Galileo something.
20 And then the Israeli company was Baran Global International,
21 I think.

22 Q. All right. What happened with the contract with
23 Mr. Monhait's group?

24 A. Well, they had to make a payment in February of
25 2016. When it came time to make the payment, they wanted to
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1 change the deal on me. And I was very surprised at that
2 because I asked around and a lot of people said that that was
3 in that part of the world that's just -- that's the way of
4 doing business. And people started to tell me that people
5 try to renegotiate the deal when you're ready to close escrow
6 even. And I could just -- It made me very nervous.

7 And then they said that -- Well, let me back up.
8 I also had gotten concerned about Mr. Monhait not listening
9 to the developers. Because we talked to Bob Lissner. He was
10 a developer out in the Cold Springs area and also had a
11 couple of projects, one project in Lemmon Valley and another
12 one that spanned the Lemmon Valley/Cold Springs area. And
13 Mr. Lissner is a ten percent partner in our little company,
14 but he also is a developer of some note around here. He's
15 developed, what, 2500 homes I guess. And he's actively in
16 that area. I talked to him. I talked to Dan Douglas who had
17 another property out there. Years ago I talked to Bobby
18 Lyle. Well, I guess I talked to him once too.

19 So I was talking to these developers out there
20 and introducing them to Mr. Monhait. And I began to lose
21 confidence in Mr. Monhait's ability to work with developers
22 and listen to them. Because he wanted to have a guaranteed
23 profit before he would put out a dime and that isn't the way
24 the job is going to get done. And he just wouldn't listen to
25 it.

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1 So when he wouldn't go along with the deal, I
2 was -- I said, I'll only go along with the change if you
3 agree to hire somebody who can work with these developers and
4 you will listen to your person that you hire and you'll work
5 with them. And so he give the name of a lady by the name of
6 Patty Wade, who I knew slightly, and she was a very good
7 lady, had a great reputation. And so I told him this, I
8 said, well, okay, I will go along with the deal if you agree
9 to hire Patty Wade to work with the developers. But I said,
10 you got to understand, I've got a couple partners and they
11 also wanted the ranch at the same time and wanted to buy the
12 ranch as well as the water project.

13 So I said, I can't sell the ranch without my
14 wife's consent and I can't sell the water project without my
15 partner's consent. So you understand that even though I may
16 go along with this I got to square it with my partners.

17 So I get back and I presented their deal to my
18 wife on the ranch and their deal to my two partners. And
19 none of them liked the deal. So I had to tell Mr. Monhait
20 that we would not go along with that.

21 But I offered kind of a compromise I thought gave
22 him a little more time to exercise the option, made the
23 payment schedule a little bit easier. And we were back and
24 forth on that for a while. And then they were going to sue
25 me and it was a bad deal.

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1 And so it took us about 30 days before finally
2 they backed off and I backed off and we decided to go our
3 separate ways. So it was probably some time around the first
4 of March when we knew that that was a done deal with them.

5 Q. Do you remember when you made your application
6 for an extension of the subject permits?

7 A. I think it was March 8th, 2016, I think.

8 Q. 2015?

9 A. Yeah, I think so. I think it was March 8th.

10 Q. All right. And this agreement with Mr. Monhait's
11 group had gone away by that time?

12 A. About that time, yeah. About that time. I mean,
13 clearly they had defaulted in February. We were negotiating
14 on whether or not we changed the deal. I don't remember the
15 dates. But I think probably by the time that I filed the
16 application, it had gone away, yeah.

17 Q. All right. Now let's go to the group from Tel
18 Aviv. Who was the principal person that you talked to in
19 that group?

20 A. I met the guy just once and his name was Sentar,
21 I think, S-e-n-t-a-r. I don't remember his first name. I
22 just met him once.

23 Q. Okay. And what was the name of the entity that
24 was the Tel Aviv group that you were working with?

25 A. I think it was Baran Global International
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1 Incorporated, I think. It's in the contract that we
2 submitted.

3 Q. I'm coming up to the contract. You ultimately
4 got a signed agreement with Baran Global Engineering Limited?

5 A. Well, I got that on November 3rd, 2015.

6 Q. Okay. But there was a signed agreement?

7 A. Oh, yeah. Oh, yes.

8 Q. Between Baran and Intermountain Water?

9 A. Yeah. The buyers were Baran Global out of Tel
10 Aviv and this Galileo company out of Chicago. They were the
11 buyers in Intermountain. And, yeah, we had a written
12 contract on November 3rd, 2015. And in the extension of time
13 application I filed in early 2016, I made reference that we
14 had it in 2015, we had entered in to that contract, which is
15 absolutely true.

16 Q. At the time of the application for an extension
17 that was made in the spring of 2015, what was the status of
18 the Baran contract?

19 A. You mean 2016?

20 Q. I misspoke. The contract was signed in November
21 of 2015?

22 A. Right.

23 Q. What was the status of that contract at the time
24 of the requested extension in early 2016?

25 A. I think it had gone away. We might have still
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1 been in negotiations. But certainly the original contract
2 was not enforced at that point.

3 Q. That contract, from your opinion, wasn't in
4 existence any longer?

5 A. No, I think not.

6 Q. Now, Mr. Monhait's group had gone away, the Baran
7 contract was over. Was there anyone else who had a contract
8 with Intermountain for this water?

9 A. Well, I had a verbal contract with Utilities
10 Inc., the purveyor out there.

11 Q. All right. Stop -- Before we get to Utilities
12 Inc., stop for just a moment.

13 A. Okay.

14 Q. The written agreement with Baran is Exhibit 16
15 that has been produced or marked in this litigation, is it
16 not?

17 A. I guess so. I don't know the exhibit numbers.
18 But I'm sure it's in there because we submitted it.

19 MS. LEONARD: Are we going to have a copy of
20 these in the binders for the witnesses?

21 HEARING OFFICER GEDDES: Yes. Would you like a
22 copy?

23 THE WITNESS: I don't think I need it.

24 HEARING OFFICER GEDDES: Okay. That is Exhibit
25 16, an option of water rights purchase agreement.

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1 THE WITNESS: Okay.

2 MR. ELMORE: If I might, can I just show him my
3 Exhibit 16?

4 HEARING OFFICER GEDDES: Of course.

5 MS. LEONARD: Why don't we just use a whole set
6 of binders for the witnesses? Because I'm going to be
7 referring to exhibits as well. I assumed that's what we were
8 going to do so I didn't bring extra copies. And I'm
9 concerned with counsel using theirs, that there may be notes
10 on them.

11 HEARING OFFICER GEDDES: Okay. We can go ahead
12 and -- Why don't we take a break. We've been going over an
13 hour. So we can get the copies pulled up.

14 (Recess was taken)

15 HEARING OFFICER GEDDES: Mr. Elmore, can I ask a
16 clarifying question?

17 MR. ELMORE: Of course.

18 HEARING OFFICER GEDDES: You might be getting to
19 this. But I want to make sure I'm not confused. We stopped
20 talking about Exhibit 16, which is a written contract. Is
21 there another -- Are you saying there was another contract
22 before this option and purchase agreement or was there just
23 one agreement? I'm a little confused about how many November
24 2015 agreements there were.

25 THE WITNESS: A contract with those people?
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1 There was just one contract and that is Exhibit 16 with those
2 people.

3 HEARING OFFICER GEDDES: Okay. So that's Baran
4 and Galileo and that was the only one up until that point in
5 November?

6 THE WITNESS: Yes. I was trying to think if I
7 had any years before. No. I had a series of letters of
8 intent and that sort of thing back before the recession hit.
9 But that was the only contract I had in that time frame that
10 was with this Exhibit 16.

11 HEARING OFFICER GEDDES: Okay. Go ahead,
12 Mr. Elmore.

13 MR. ELMORE: Thank you.

14 Q. (By Mr. Elmore) Did you have a written agreement
15 with Mr. Monhait or his group?

16 A. Yes.

17 Q. And when was that agreement made?

18 A. November 3rd, 2015.

19 Q. So that agreement with Monhait is essentially in
20 the same time frame as the agreement with Baran Global
21 Engineering?

22 A. Yes. It's the same contract. Both of those
23 entities were the purchasers named in that contract. It's a
24 copy of Exhibit 16 is on the -- was handed to me or put on
25 the desk here. And Intermountain Water Supply Limited is the
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1 seller and Baran Global Engineering Limited, an Israeli
2 company, and Galileo Nevada LLC, an Illinois limited
3 liability company, are the buyers.

4 Q. It's the same agreement --

5 A. Yes.

6 Q. -- is my point here?

7 A. Yes.

8 Q. There was one agreement that applied to both of
9 these parties, Baran and Galileo?

10 MS. LEONARD: Can I just interject with an
11 objection. And I'd like to just do a standing objection to
12 the fact that this wasn't submitted with the original
13 extension application. I don't want to keep interrupting
14 with regard to that. And I know that you addressed it in the
15 motion to strike. But I just want to make sure that the
16 record reflects that I have a standing objection as to any
17 evidence that wasn't originally submitted with the initial
18 application for extension of time.

19 HEARING OFFICER GEDDES: Okay. That will be
20 noted for the record.

21 MS. LEONARD: Thank you.

22 MR. ELMORE: Thank you.

23 Q. (By Mr. Elmore) This agreement is the agreement
24 as well that you referred to earlier where the payment that
25 was contemplated to be made in February was not made,
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1 February of 2016?

2 A. Yes.

3 Q. Okay. And in this time period coming up to the
4 application of extension that was made in the spring of 2016,
5 is this the only written agreement that you had signed at
6 that time period or in that time period?

7 A. Yes.

8 Q. Now, were there negotiations, Mr. Marshall, with
9 any other entities that were going on at the same time that
10 you were negotiating with Baran and Galileo?

11 A. Yes.

12 Q. Okay. And who else were you negotiating with?

13 A. Utilities Inc.

14 Q. Okay. And what was the -- what was the nature of
15 the negotiations with Utilities Inc.?

16 A. Well, we were attempting to reach an agreement
17 with Utilities Inc. as the water purveyor in the Cold Springs
18 area. And that's the area that we were primarily focusing on
19 at that time. And Mr. Monhait and I held many meetings with
20 Wendy Barnett, who is the president of Utilities Inc.
21 Utilities Inc. is now called Great Basin Water Company.

22 We actually negotiated almost all of the terms,
23 practically all of the terms of the agreement. I think the
24 agreement was 18 pages long, but I could be mistaken. We
25 didn't sign it because we didn't have agreements with

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1 developers at that point and there were certain timelines
2 began to run under the negotiated agreement with Utilities
3 Inc. And it didn't make sense to get those timelines
4 beginning to run until we had contracts with developers. So
5 that's why we didn't sign it. But essentially it was pretty
6 well negotiated.

7 Before I made that representation to the State
8 Engineer in the application filed in I think it was March 8th
9 or something, of 2016, I had a meeting with Wendy Barnett.
10 And I think Mr. Monhait was there, but I could be wrong. And
11 I asked her specifically, I said, can I make a representation
12 to the State Engineer that we have an agreement, although
13 it's not signed, we have an agreement. And she said yes.

14 MS. LEONARD: I'm going to object on the basis of
15 hearsay and also on the basis that this, again, was a matter
16 that we asked to be able to subpoena a witness that he's now
17 describing a conversation with and the request was denied.
18 So I just want to make sure I have that objection on the
19 record.

20 And I would also like to object as to any
21 testimony regarding Cold Springs as irrelevant. And I
22 understand from your ruling with regard to the motion to
23 strike that you want to hear evidence with regard to that.
24 But I want to make sure that the record reflects that I have
25 a standing objection because these permits are only

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1 authorized to be used in certain areas of Lemmon Valley.

2 HEARING OFFICER GEDDES: Okay. I'll overrule the
3 objections. But those are certainly noted for the record.

4 Go ahead, Mr. Marshall.

5 THE WITNESS: I think I'm through answering. I
6 had her authorization to make that representation to the
7 State Engineer. And based upon that, I did put that in the
8 affidavit because it was true.

9 Q. (By Mr. Elmore) Now, no written agreement was
10 signed in 2016 with Utilities Inc.?

11 A. That's correct.

12 Q. Utilities Inc. ultimately became Great Basin
13 Water Company?

14 A. Yes.

15 Q. And that -- there is a written agreement that was
16 entered in to on the 26th day of May, 2017?

17 A. Yes.

18 Q. And that is Exhibit 19 in the packet of
19 information in front of you?

20 A. Yeah, I'm sure it is, if you tell me it is. Do
21 you want me to look and see? I'll take your word for it.

22 Q. Well, just to be clear, can you find Exhibit 19?

23 MS. LEONARD: I'd like to lodge a standing
24 objection as to the untimeliness of Exhibit 19.

25 HEARING OFFICER GEDDES: So noted.
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1 THE WITNESS: Yes.

2 Q. (By Mr. Elmore) Now, Mr. Marshall, when was a
3 written agreement, a draft of a written agreement, sent to
4 Utilities Inc.?

5 A. We had a number of drafts back and forth. It
6 would have been early 2016. I don't know the dates. But we
7 had quite a few drafts back and forth. And I think I even
8 had a draft after the Galileo, Baran Global contract had gone
9 away. I think I had even a draft after that. We had a lot
10 of drafts back and forth. And when it -- Well, I think I
11 answered the question.

12 Q. All right.

13 A. I could add more if you want.

14 Q. Well, I'm sure you can. But from your
15 perspective, when did you have an agreement with Utilities
16 Inc., now Great Basin Water Company?

17 A. Well, when we actually signed it then of course
18 there's no question about any terms at all because we had a
19 signed contract. When Mrs. Geddes issued the setting order
20 for this hearing requested by the protestant, she indicated
21 that we had until a certain date in May to file documents we
22 tended to rely on in this hearing in support of our
23 application for extension of time. Clearly, the date that I
24 had to file the applications for extension of time in 2017, I
25 had just gotten the agreement signed with Genoa Ridge. So I

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1 didn't have time after that to then say, okay, now, let's
2 sign the contract with Utilities Inc.

3 But once I realized that we had a window of
4 opportunity to submit additional information to the State
5 Engineer, I thought they wanted the written contract shown
6 with Utilities Inc. So I called up the buyer, Genoa Ridge, a
7 man by the name of Jeff Dingman, with whom I had negotiated
8 the contract with. And I also called up Wendy Barnett at
9 Utilities Inc. and said we have an opportunity to get this
10 contract signed before I have a deadline with the State
11 Engineer's office, could we do it. And I think we got -- the
12 agreement was so far along that we were able to get that
13 contract. We had to modify it a little bit because we now
14 had a definite developer buyer. Some time had gone by.
15 There was a couple of things in there that Mr. Monhait wanted
16 that nobody liked. We took those out. And it took us only a
17 couple of days, two or three days really, to get that thing
18 finalized and signed not only by Great Basin Water Company,
19 formerly Utilities Inc., also myself on behalf of
20 Intermountain Water Supply, approved by my partners and
21 approved by Genoa Ridge. So we got it done very quickly,
22 just like that, a couple three days. And we met the deadline
23 to get it in time for this hearing.

24 So that indicates, I think, anyway, how far along
25 we had the deal pretty well made. It's just we had to tweak

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1 it a little bit and sign it.

2 Q. Do you remember when this conversation occurred
3 with the representative of Utilities Inc. where she granted
4 authority to you to represent to the State Engineer that you
5 had an agreement with Utilities Inc.?

6 A. Well, it was some time before -- I think I filed
7 that thing on March 8th, 2016. And it would have been a
8 little bit before that. I don't know the date. But I think
9 it was within a two or three-week window of that -- before
10 that time.

11 Q. And you're talking about the application for
12 extension that was made in 2016?

13 A. '16, yeah. That's when I made the representation
14 that we had the agreement but it was not signed.

15 MR. ELMORE: Now, I'd like to offer Exhibit 16
16 and Exhibit 19, which are the two agreements that he's
17 referenced.

18 HEARING OFFICER GEDDES: I know your standing
19 objections. Any other objections, Ms. Leonard?

20 MS. LEONARD: So Exhibit 16, other than the
21 objections that I've already raised regarding Cold Springs,
22 untimeliness, I don't believe I have any other objects at
23 this time.

24 And Exhibit 19, same issues with regard to the
25 irrelevancy because it deals with Cold Springs and the
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1 untimeliness. I don't have any other objections at this
2 time.

3 HEARING OFFICER GEDDES: Okay. We're going to go
4 ahead and admit 16 and 19.

5 Q. (By Mr. Elmore) You've testified that the
6 agreement with Baran and Galileo didn't go much longer than,
7 say, February, early March of 2016. But was there a benefit
8 to Intermountain Water Service by virtue of having that --
9 having that agreement and the negotiations with those
10 entities?

11 A. Yes. To me the greatest benefit was that we
12 spent a lot of time actually negotiating the Utilities Inc.
13 contract. And so we came out of that. When I say we, I mean
14 Intermountain Water Supply. We came out of that contract
15 period with Galileo and Baran having negotiated virtually all
16 of the terms of the agreement with Utilities Inc. So that's
17 why it was so easy to get that job done just a couple weeks
18 ago.

19 And so Mr. Monhait was a very smart guy. He was
20 instrumental in those negotiations. And even though we
21 didn't end up ultimately with a contract with him, he was
22 very helpful in that and we did work together.

23 Q. Now, in the agreement that you had with Baran and
24 Galileo -- When I say you, I mean, of course,
25 Intermountain -- did that involve the sale prospectively of
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1 your permits, your easements, if any, the right of way that
2 you testified to this morning?

3 A. Yes. Yes. It was everything. All of our -- We
4 did have private easements and we had right-of-way grants
5 with the federal government and we had the water rights. And
6 any and all permits and everything else we had, yes, so it
7 was everything.

8 Q. Let's talk for a second because we didn't cover
9 this earlier. What easements did Intermountain need to
10 perfect in conjunction with this project?

11 A. We needed to get easements across three private
12 ownership lands in northern Bedell Flat and Lower Dry Valley.
13 And it was from Wilburn Ranches, which I think was the
14 predecessor of Ms. Leonard's client, Buckhorn Land and
15 Livestock, which was the owners of the Winnemucca Ranch.
16 They owned a lot of land in Lower Dry Valley. And there was
17 a fellow by the name of Glasser, G-l-a-s-s-e-r, and he owned
18 a 40-acre parcel. And part of our pipeline went across his
19 land. So we got those private easements from those three
20 companies.

21 In addition to that, we had to get right-of-way
22 grants from the federal government for our well sites, three
23 of our well sites. I think I'm right on that. And the
24 pipeline and the access road for our wells in Lower Dry
25 Valley and then over a little pass in to Bedell Flat. And

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1 application?

2 A. Didn't I answer that a minute ago?

3 Q. What's that?

4 A. I believe I answered that a minute ago. You
5 asked me if I had informed the State Engineer. I said, no, I
6 didn't put it in here because it was not something that we
7 were -- money we were spending to advance the project. We
8 had already obtained a special -- a UEPA permit from the
9 Public Utilities Commission. And that was one of the steps
10 we had taken.

11 Q. I was referring to the special use permit.

12 A. Oh, I'm sorry. Maybe it's late in the day. I
13 don't know. No, I didn't tell them that it had been
14 canceled. Because I testified earlier that I didn't know
15 that the two years had run out on the special use permit
16 until I saw your submittal here I think it was last night.

17 Q. But you knew that you would need to submit a new
18 application to modify it?

19 A. Oh, I knew we would have to modify it when we
20 figured out where we were going. So I really didn't have an
21 awful lot to tell the State Engineer at this point, did I?

22 Q. Moving on to paragraph five. So it's the next
23 page, ROA 614.

24 A. Okay.

25 Q. I believe you testified earlier that the document
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1 you were describing in paragraph five is what's been marked
2 as Exhibit 16. That's the agreement with Galileo and Baran?

3 A. Yes, yes.

4 Q. So -- And I think you testified also at the time
5 that you submitted this affidavit that agreement had already
6 expired; right?

7 A. Either expired or it was in the -- We were
8 negotiating as to whether it was going to be extended. But
9 there was a problem with it, yes.

10 Q. You didn't tell the State Engineer that?

11 A. No, I didn't. Because this is a -- My statement
12 is here what we did during 2015 and we entered in to that
13 contract, which was kind of a milestone, given the fact that
14 we had been in a recession for so long. We were pretty
15 excited about it. We did get some good negotiations with
16 Utilities Inc., and then these people kind of went backwards
17 on us.

18 Q. If you could turn to Exhibit 42. So I will come
19 back to ROA 614, so don't let it disappear.

20 A. Okay.

21 Q. I'm looking at SPI 1115.

22 MR. ELMORE: What exhibit?

23 HEARING OFFICER GEDDES: 42.

24 MS. LEONARD: 42.

25 Q. (By Ms. Leonard) Well, first of all, do you
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1 recognize this document?

2 A. Yes, I do. Yes.

3 Q. What is this document?

4 A. I'm sorry. What?

5 Q. What is this document?

6 A. It's a letter from Jason King.

7 Q. Was this the -- a letter dated June 1st, 2016,
8 granting the last set of extension requests?

9 A. Well, I think it's a letter indicating they were
10 going to. The formal granting came in a separate document.

11 Q. Okay. If you look at the second full paragraph
12 down on page 1115, the last sentence says, as well,
13 Intermountain asserts that during the last year it negotiated
14 security agreements with engineering and construction firms
15 experienced in water for the development Utilities Inc. and
16 with developers?

17 A. That's right.

18 Q. So as of June 1st 2016, was it accurate that you
19 had secured agreements with engineering and construction
20 firms?

21 A. Well, I think you need to look at the sentence in
22 its entirety. During the last year, we negotiated and
23 secured agreements with engineering construction firms.
24 That's a true statement. During 2015 we did in fact
25 negotiate and secure an agreement with those two firms we

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1 talked about earlier, Baran Global Engineering and Galileo
2 Inc.

3 Q. And you testified that as of the date of your
4 affidavit, that agreement no longer existed, so it wasn't
5 secure?

6 A. That isn't what I said here. I'm sorry. I don't
7 want to argue with you. But I said during the last year.
8 That was in 2015 we negotiated and secured the agreements.
9 And that is exactly what we did. The agreement was dated
10 November 3rd, 2015.

11 Q. Turn to page 1117.

12 A. Okay.

13 Q. In the middle of the first full paragraph starts,
14 in the extension request now pending, Intermountain affirms
15 that it has secured agreements with engineering and
16 construction firms. So this sentence doesn't reference 2015.
17 It just says generally it has secured. Did you correct the
18 State Engineer to inform the State Engineer that they weren't
19 in fact secured?

20 A. I don't see where you're referencing on page
21 1117. I'm sorry.

22 Q. So I'm looking at the middle of the first full
23 paragraph.

24 A. Okay.

25 Q. Right after NRS 533.370. It starts near the end
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1 of that line. In the extension request now pending,
2 Intermountain affirms that it has secured agreements with
3 engineering and construction firms. No reference to 2015.
4 Did you correct the State Engineer?

5 A. Did I correct him?

6 Q. Yes.

7 A. Of course not. Why would I correct him?

8 Q. If you turn to the next page, SPI 1119.

9 MR. ELMORE: Can you tell me which page of the
10 document or the --

11 MS. LEONARD: It's page seven of the June 1st,
12 2016, decision.

13 MR. ELMORE: Thank you.

14 Q. (By Ms. Leonard) In the conclusion there's some
15 bolded and underlined language. Do you see that?

16 A. Yes.

17 Q. Do you see that it says, provided, however, that
18 future extension requests must be accompanied by copies of
19 the agreements you indicated in paragraphs five, six, and
20 seven of your affidavit that Intermountain has reached with
21 engineering and construction firm, Utilities Inc. and
22 developers.

23 Now, with your latest extension requests that are
24 currently before the State Engineer, you did not provide
25 those agreements; correct?

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1 A. Well, I provided the agreements that were in
2 effect. I did not have an agreement in effect when I had the
3 deadline to file for Permit 72700. I did have the contract
4 with Genoa Ridge and I did provide that for all the other
5 permits that were filed January, February, March, whenever.
6 Was it March 16th? I forgot the date. I did supply that
7 contract. I had not yet secured a written agreement from
8 Utilities Inc. We had the verbal ones that I've already
9 testified to.

10 And the Genoa Ridge contract was with not only a
11 developer, a large developer, but a company that will build a
12 pipeline. So, in effect, that was with the construction firm
13 that could build a pipeline as well as the developer that
14 would take the water.

15 But I did not have the Utilities Inc. contract
16 signed as of that date. And that's why I did not submit
17 that. I think I testified to that earlier.

18 Q. You did. So you had no executed agreement with
19 any construction or engineering company as of December 18th,
20 2016; right?

21 A. That's when the 72700 application was filed,
22 extension?

23 Q. I'm just asking you for the date.

24 A. Yeah, I think that's right. It was not in
25 place -- It was not in place at that time. That's why I

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1 didn't submit any.

2 Q. And you had no executed agreement with any
3 construction or engineering company as of February 11th,
4 2017?

5 A. Our Genoa Ridge agreement was later. I don't
6 remember the date. But I think it was March 16th. I don't
7 remember the date of that.

8 MS. LEONARD: All right. Can I move to have
9 Exhibit 42 admitted?

10 HEARING OFFICER GEDDES: 42 is in. That was a
11 stipulated one at the beginning.

12 MS. LEONARD: Oh, sorry.

13 HEARING OFFICER GEDDES: That's fine.

14 MS. LEONARD: Okay. My apologies.

15 Q. (By Ms. Leonard) All right. Please look at
16 Exhibit 43.

17 A. I've got it. What page?

18 Q. 114 -- Hold on. 1138.

19 A. Okay.

20 Q. Actually, sorry. 1143. I apologize.

21 MR. ELMORE: Can you just tell me which page?

22 MS. LEONARD: Oh, 18.

23 MR. ELMORE: Thank you.

24 Q. (By Ms. Leonard) Now, is this the answering
25 brief that was filed on your behalf in Case Number
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1 CV-16-1378?

2 A. Are you asking me a question?

3 Q. Uh-huh.

4 A. Oh, I thought you were talking to counsel. I'm
5 sorry. Would you repeat that, please.

6 Q. Is this the answering brief that was filed by
7 Intermountain in Case Number CV-16-01378?

8 A. I believe so.

9 Q. And if you look at -- So it's page 18, line 20.

10 A. Uh-huh.

11 Q. You're describing the efforts in 2015 and early
12 2016. And you say, those efforts included agreements with
13 engineering and construction firms. But in fact, as you've
14 already recognized, that you -- at the time that you filed
15 this brief that the agreement -- you had no agreement with an
16 engineering construction firm?

17 A. Well, no. And that's not what it says. It says
18 efforts in 2015 and '16 included agreements with engineering
19 construction firms, negotiations with utility company to
20 distribute water, and meetings with developers. And that's
21 exactly a true statement. That's what we did in 2015 and
22 '16.

23 Q. And you don't believe it's misleading to suggest
24 that those agreements are still in place?

25 A. No. Because that's what we did.
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1 Q. And then if you look at Exhibit 44, which is the
2 State Engineer's answering brief, this is page 14, line 18.
3 It's SPI 1183. It says, based on the Marshall affidavit,
4 Intermountain has secured agreements with engineering and
5 construction firms, Utilities Inc. and developers. Did I
6 read that correctly?

7 A. It's page 1182?

8 Q. 1183, page 14.

9 A. Oh, 1183. I'm sorry. What line?

10 Q. 18.

11 A. Well, it's a correct statement, except as to the
12 developers. In the affidavit I said I had negotiated with
13 developers and expected to have contracts with them in, I
14 don't know, three or four months. So there was -- there was
15 no -- no representation about any contracts with developers
16 if you look at the affidavit.

17 Q. But you never corrected the State Engineer;
18 right?

19 A. In this -- in this brief here?

20 Q. In anywhere.

21 A. No. I don't know why I would do that. The State
22 Engineer, he had the same documents. There was no reason for
23 me to double-check and second guess the State Engineer. But
24 the statement that we had secured agreement with engineering
25 construction firm was a true statement and that we had an
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1 agreement with Utilities Inc., which is not signed. And I
2 indicated that. And in the affidavit I did not make a
3 representation that we had an agreement with developers.

4 MS. LEONARD: I'd like to move to have Exhibit 43
5 and 44 admitted.

6 HEARING OFFICER GEDDES: Any objection?

7 MR. ELMORE: Exhibit 43, there's no objection.
8 That can be admitted. I don't understand the relevance of
9 Exhibit 44. It's a brief filed by another party.

10 HEARING OFFICER GEDDES: I'm going to admit both
11 of those, 43 and 44. I think the relevancy is generally the
12 same as regarding the affidavit.

13 MS. LEONARD: Okay. Let's go back to ROA 614.

14 THE WITNESS: I'm sorry.

15 MS. LEONARD: I just -- Can we just talk briefly
16 about scheduling because I have Trevor Lloyd lined up to call
17 him at 4:00 o'clock. Obviously we're not done with
18 Mr. Elmore's case in chief. So do you have any suggestions
19 as to how we can handle this?

20 HEARING OFFICER GEDDES: Let's go off the record.

21 (Discussion was held off the record)

22 HEARING OFFICER GEDDES: So, again, we are
23 taking -- we've paused Mr. Marshall's testimony and we're
24 going to take another witness out of order. This is
25 Ms. Leonard's witness, Trevor Lloyd. Ms. Leonard did make a
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1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3

4 I, CHRISTY Y. JOYCE, Official Certified Court
5 Reporter for the State of Nevada, Department of Conservation
6 and Natural Resources, Division of Water Resources, do hereby
7 certify:

8 That on Wednesday, the 7th day of June, 2017,
9 I was present at the Division of Water Resources, Carson
10 City, Nevada, for the purpose of reporting in verbatim
11 stenotype notes the within-entitled hearing;

12 That the foregoing transcript, consisting of
13 pages 1 through 202, inclusive, includes a full, true and
14 correct transcription of my stenotype notes of said hearing.
15

16 Dated at Reno, Nevada, this 21st day of June,
17 2017.
18

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21 CHRISTY Y. JOYCE, CCR #625
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EXHIBIT 3

EXHIBIT 3

COPY

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIERRA PACIFIC INDUSTRIES,

Appellant,

v.

Transcript of Proceeding

Supreme Court No: 73933

District Court No: CV16-01378

JASON KING, P.E. IN HIS CAPACITY
AS NEVADA STATE ENGINEER;
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.

HEARING

November 7, 2018

SUNSHINE LITIGATION SERVICES

TRANSCRIBED FROM JAVS CD

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Proceedings recorded by digital sound recording, transcript produced by
certified transcriptionist.

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1 most important of those is that water belongs to the public.

2 So when the State Engineer issues a permit, it's a use right that
3 must be used according to the permit terms, and that the permit is
4 conditional. That means that the permit holder must perfect the water right
5 by putting it to beneficial use.

6 Beneficial use is defined by the statute as the basis, measure
7 and limit of the right. So how is that limit delineated? It's delineated in the
8 permit terms. The permit indicates how and where the water needs to be
9 diverted, where it can be used, the manner of use, the amount and the flow.
10 And the permit provides deadlines by which the permit holder has to perfect
11 the application.

12 So a permit holder cannot use the water in any way other than
13 the approved use. And the permit holder cannot hold the water hostage
14 without putting the water to beneficial use.

15 So in this case, Intermountain Water Supply filed applications
16 starting in 1999 to use water in the Lemmon Valley Hydrographic Basin.
17 The place of use in the applications was Lemmon Valley. The manner of
18 use was municipal use in those designated sections of Lemmon Valley, and
19 the stated goal was to address overdraft in the Lemmon Valley Hydrographic
20 Basin.

21 The applications filed by Intermountain in Dry Valley
22 constituted the entire perennial yield of the Dry Valley Hydrographic Basin
23 and sought to move the water to Lemmon Valley.

24 Starting in ... excuse me, in 2002, the State Engineer started
25 approving the permits and again, the permits specified exactly what was in

1 the applications, that the place of use was these certain sections in Lemmon
2 Valley. That is the limit of the right that was permitted. And the permits
3 gave Intermountain deadlines by which to perfect the applications, meaning
4 put the water to beneficial use in the place of use designated in the permits.

5 So between 2002 and 2016, it became clear that Intermountain
6 had no intent to use the water itself. It had not found a developer who
7 wanted to use the water. It had not contracted with a water purveyor who
8 could serve the permitted place of use. It couldn't finance any of the
9 devotion works. And it was marketing the water for sale.

10 Nevertheless, the State Engineer, year after year, kept granting
11 extensions of time by which Intermountain could perfect the applications.

12 So we're here to look at the 2016 extensions that were granted
13 by the State Engineer, and the standard by which the State Engineer can
14 grant applications ... excuse me, can grant extensions is found in NRS
15 533.380. The applicant must submit "proof and evidence of good faith and
16 reasonable diligence to perfect the application. If the applicant is not
17 proceeding in good faith and with reasonable diligence, the State Engineer
18 must cancel the permits."

19 Now, in addition to those basic requirements, there's also
20 additional requirements for municipal uses and those are found in
21 Subsection 4 of the statute.

22 Importantly, here, the State Engineer must consider the
23 specific parcels or units, in "the land being developed" or "the area being
24 served."

25 So what did Intermountain's 2016 extension applications look

1 like? They were supported by an affidavit from Intermountain's principal,
2 Mr. Marshall, and they contained no contracts at all.

3 Nevertheless, the State Engineer found that Intermountain had
4 "secured agreements with engineering and construction firms, Utilities, Inc.,
5 and developers. And when you compare and look at the affidavit, clearly,
6 that finding was erroneous because that's not what the affidavit said.

7 THE COURT: Well, but it does say that Intermountain entered
8 into an Option Agreement with two (inaudible) engineering and construction
9 firms. I mean, it references. I get that you're sort of making a best evidence
10 kind of objection here. But isn't it up to the State Engineer whether to
11 accept this affidavit as sufficient proof? You're saying it's wholly
12 inadequate?

13 MS. LEONARD: I'm saying that this affidavit, in looking at that
14 particular paragraph that Your Honor just cited, that is enough to meet the
15 statutory standard.

16 Let's give Intermountain the benefit of the doubt that it had
17 entered into that agreement. An Option Agreement alone with an
18 engineering and construction firm doesn't demonstrate that it has a
19 relationship with an end user for the water.

20 THE COURT: Okay. I take your point on that. But it does
21 contain a fair amount of detail that they're making, you know, they're
22 steadily applying themselves to moving this forward and that economic
23 times were cited as delaying it, and this persuaded the State Engineer. I
24 don't know that it would have persuaded me, but I'm not ... it seems to me I
25 owe the State Engineer deference in this arena.

1 MS. LEONARD: Your Honor, I would disagree in that regard
2 because you have to look at what did the ... excuse me, what did the affidavit
3 say it was moving forward? And what it said it was moving forward with is
4 an effort to use the water in Cold Springs, and to contract with Utilities, Inc.
5 It's undisputed that Cold Springs is not within the place of use of these
6 permits and that Utilities, Inc.'s service territory does not include the place
7 of use of these permits.

8 So the issue is that Intermountain was not moving forward to
9 perfect the application which is the language in the statute requires that what
10 the permit holder perfects is exactly what is indicated in the permits itself.

11 THE COURT: Well, to that point, what I was partially
12 concerned about, paragraph 5 of the affidavit makes reference to an Option
13 Agreement with two undisclosed firms; one in Chicago and one in Tel Aviv,
14 experienced in water systems development.

15 But that paragraph doesn't describe the beneficial use location
16 or whether the water is going to be ... I don't even know where it's going to
17 be served or what the agreements apply to. I don't know how the State
18 Engineer knew that.

19 And then in the next paragraph, it says, "In addition to those
20 agreements, the ones referenced in Paragraph 5," it refers to negotiations,
21 but not agreements with Utilities, Inc., to distribute Intermountain's water in
22 Cold Springs.

23 Neither one of these paragraphs indicate that the water is
24 going to be used in Lemmon Valley.

25 MS. LEONARD: Your Honor, I completely agree with you.

1 That's precisely my point.

2 Paragraph 5 frankly doesn't say anything about anything
3 because it ... first of all, Intermountain had said that it could not finance the
4 diversion works, and none of the ... the engineering and consulting firm, we
5 don't know what that Option Agreement says. We don't know what's being
6 optioned. And even if it dealt with this subject matter, it doesn't have
7 anything to do with delivery of water to Lemmon Valley, and that there's an
8 "and user", either a water purveyor or a developer who wants this water.

9 Paragraph 6 is basically Intermountain saying, "I don't plan to
10 use the water in Lemmon Valley any more. That didn't work out. I'm
11 trying something else." But the statute doesn't allow the State Engineer to
12 grant an extension premised on the intent to use the water any where other
13 than the authorized place of use.

14 And the Court's not treading new ground with this. There's
15 already a decision in which the Court has held, and this is the *Desert*
16 *Irrigation* case, that a permit holder cannot get an extension premised on the
17 intent to use the water outside the permitted place of use.

18 THE COURT: Wasn't that a case where the State Engineer
19 denied the extension and this Court affirmed that denial on a differential
20 review?

21 MS. LEONARD: It is true that, yes, the State Engineer denied the
22 extension, canceled a portion of their permit, and this Court affirmed.

23 I don't know if I would call it on a differential standard of
24 review because it was an issue of law by which the Court would have de
25 novo review, similar to here. There are issues of law that are presented,

1 mainly, the *Desert Irrigation* issue, whether Intermountain is speculating in
2 water, and whether, as a matter of law, there's substantial evidence to
3 support this decision. Because yes, there is deference with regard to the
4 State Engineer's findings, but here I've pointed out that the finding is clearly
5 erroneous and that on the legal issues, there should be no deference to the
6 State Engineer.

7 THE COURT: That's a murky issue in Nevada and in the water
8 arena. I tend to agree with you that I don't understand why would we defer
9 on a legal interpretation, but some of our case law seems to say that we do,
10 especially with the State Engineer.

11 MS. LEONARD: I don't disagree with that, Your Honor. But I
12 would submit that your more recent cases definitely look at the legal issues
13 de novo.

14 THE COURT: Well, but on that point, some of this goes to the
15 remedy. Here, as I understand it, Appellant seeks to have the Extension
16 Request ... have this Court reverse the District Court and the State
17 Engineer's determination on the Extension Request.

18 But wouldn't the more appropriate remedy be to, if we agreed
19 with you, remand this for the State Engineer to evaluate this evidence and
20 allow the State Engineer to assess this in the context of what might be an
21 erroneous application of the factors in 533.380, Subsection 4?

22 MS. LEONARD: Your Honor, I'm glad you raised the remedy
23 issue because in the brief, we did ask for reversal, and for cancellation of the
24 permits.

25 And since that time, in 2018, the State Engineer has actually

1 canceled these permits. And you might wonder, well why are we still here?
2 And each extension application needs to be reviewed independently. And
3 right now, the permits have been canceled, but the petition ... Intermountain
4 has petitioned for review of that cancellation.

5 And the State Engineer has indicated he's not going to move
6 forward with any other applications in Dry Valley, meaning that there's
7 3,000 acre feet of perennial yield that will go unused until there's a final
8 decision on whether, as a matter of law, the extension applications have been
9 sufficient for each year.

10 So we're still here right now because we want a Court ruling
11 that as a matter of law what was submitted in 2016 is not sufficient.

12 Remand to the State Engineer. I would say that the ... if it's
13 already been canceled, that there's nothing to do there. But also, that the
14 State Engineer, by statute, can't accept belatedly filed evidence. So he could
15 only look at the evidence that was submitted with the 2016 Extension
16 Request and nothing else. And the statute is very particular about the
17 deadlines and what could be submitted when.

18 So I would submit ... and this is similar to what happened, I
19 think, in the *Eureka County* case recently that if the record wasn't supported
20 by substantial evidence, then in that case, the applications had to be denied.
21 In this case, the assumption had to be denied.

22 So that would be my response with regard to the remedy. And
23 I'd like to reserve the remaining time if there are no other questions.

24 THE COURT: You have 2 minutes and 7 seconds.

25 MS. LEONARD: Thank you, Your Honors.

1 THE COURT: Thank you.

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3 **ARGUMENT PRESENTED BY MS. SUNDHEIM**

4 MS. SUNDHEIM: May it please the Court. My name is Tori
5 Sundheim representing the Nevada State Engineer in this matter.

6 Water projects are not completed overnight, and a 22 mile pipe
7 line was slated to deliver water to the North Valleys area of Reno and
8 Sparks. That is a fact that was conceded by Sierra Pacific in its Petition for
9 Judicial Review, at Joint Appendix 6.

10 THE COURT: Excuse me. North Valleys covers a lot of area. I
11 understood the permits to focus on Lemmon Valley, not Cold Springs. Is
12 that right?

13 MS. SUNDHEIM: That's not correct, Your Honor.

14 This particular permit is in a response to a regional
15 management ... regional water management plan to provide a need to the
16 North Valleys area. That was with comprehensive management plans and
17 also with the Truckee Meadows Water Authority Plans.

18 And so, the original permit, the purpose of it was to serve that
19 general area and not necessarily confined to Lemmon Valley.

20 THE COURT: Is that the language in the permit? Or is the
21 reference that you're making to the water plan, rather, a part of the TMWA
22 description?

23 MS. SUNDHEIM: It's the two together, Your Honor. Because the
24 TMWA plan and the other plans precipitated the need for the application.

25 THE COURT: So you're saying that in the permit, and I've got

1 all the numbers here, but I have to pull up the permit out of the record,
2 you're saying that in the permit, it makes reference to the use of the water
3 similar to the way TMWA describes the Water Resource Plan?

4 MS. SUNDHEIM: That's the position of the State Engineer is that
5 those projects reference it. I'm not sure exactly as to the specific language
6 in the permit. But that was the purpose for which it was appropriated.

7 THE COURT: Well, I'm looking at the language from the
8 TMWA Water Project Plan, and it refers to inter-basin transfers and then the
9 use of ... and the sources of this water. But I don't see it as broad as you've
10 suggested. Is there something I'm missing in this?

11 MS. SUNDHEIM: I think the answer is that in the totality of the
12 purpose of the permit, and in the record, it shows that that is what this
13 project was for. That it doesn't necessarily matter that it's specifically for
14 Lemmon Valley, but that it was part of this North Valley's area.

15 And I think Intermountain can speak ...

16 THE COURT: (Inaudible) of beneficial use doesn't matter?

17 MS. SUNDHEIM: Well, so *Desert Irrigation*, for example, is
18 factually distinguishable, and this goes to your point, in both the timing and
19 the type of the project.

20 So, for example, in *Desert Irrigation*, Sierra Pacific is arguing
21 that it is specific to that place of use. But in *Desert Irrigation*, the permitted
22 right was for a development. And once that development was completed,
23 the project proponent didn't need all of the water.

24 And so what was impermissible was that the project proponent
25 wanted to bifurcate the right and create something new that was never

1 before permitted.

2 And then an *Adaven/Mountain Falls* was able to ... well, this
3 Court found that Mountain Falls Water Right was severed from the land that
4 Adaven owned. So there was an expectation there as well to put the water to
5 beneficial use in a place other than what it was permitted.

6 And I should also add that at the time that this permit was
7 approved, the law was followed at the time. And again, this application, as
8 it was initially approved, that's not at issue today.

9 At issue today is simply whether an extension of time is
10 warranted in furtherance of the purpose for the project. And the State
11 Engineer's position in all of the briefing, and below, and in the record,
12 shows that this was a response to an area wide need for the North Valley's
13 area.

14 And on that point, too, the Anti-Speculation Doctrine doesn't
15 limit the free (inaudible) of water rights. Components of a water right can
16 change.

17 So even if this Court found that the permit is constricted to
18 Lemmon Valley, the purpose is still a pipe line. It doesn't matter whether
19 the pipe line ends up serving Lemmon Valley, or whether the end of the pipe
20 line moves a little bit and goes to Cold Springs.

21 And Pyramid Lake is the case that shows this point. And that
22 point is that in Pyramid Lake, it was another project for mining and milling.
23 That project took about 20 years until it ultimately failed. At that point, the
24 project proponent changed the place of use and tried to go for a power
25 project. That project also failed.

1 And then finally, when the City of Fernley purchased the water
2 rights, that was appealed through the Courts, and the Court upheld the State
3 Engineer's decision to grant that change.

4 So this strict application of place of use and it has to be really
5 specific, that's just not something that the law in Nevada supports.

6 The NRS 533.380 extension inquiry is explicit and it
7 sufficiently protects against water speculation. And what the State Engineer
8 did to look to see whether Intermountain had met ...

9 THE COURT: I'm glad you brought up this question about
10 Anti-Speculation Doctrine because I'm a little bit unclear about the State
11 Engineer's decision here.

12 On page 5, he says that the Anti-Speculation Doctrine was
13 interpreted as applying to extensions of time to prevent a forfeiture. And he
14 then concludes, "Therefore, I find that it would be inconsistent to apply the
15 doctrine in appropriate cases to forfeiture, but not to extensions concerning
16 cancellation."

17 So I take him at his word that the State Engineer believes that
18 the Anti-Speculation Doctrine as enunciated in *Bacher* should apply to
19 Extension Requests. Except in the next paragraph, he seems to say, "But not
20 in this case," because *Bacher* came along after the permits in this case were
21 issued, and therefore, he's not going to apply the Anti-Speculation Doctrine
22 to this Extension Request even though it's in 2016 because the permits were
23 issued in 1999.

24 Is that the legal position of your client?

25 MS. SUNDHEIM: That goes to the initial application.

1 THE COURT: Is my understanding, my articulation of what I
2 read from the State Engineer, is that his position that an Extension Request
3 should be subject to the Anti-Speculation Doctrine, but not in cases in which
4 the permits pre-date the *Bacher* decision?

5 Is that the position of the State Engineer? That seems to be
6 what he's saying in this Decision?

7 MS. SUNDHEIM: I don't believe that's the position of the State
8 Engineer.

9 *Bacher* explicitly adopts the Anti-Speculation Doctrine for no
10 appropriations. And irrespective of *Bacher*, the State Engineer looked to the
11 steady application of effort.

12 So I see what you're saying. You're asking about that initial
13 application and it coming after *Bacher*.

14 THE COURT: Well, the reason I'm posing the question ... I
15 apologize for interrupting you. I didn't want to interrupt your thought.

16 MS. SUNDHEIM: That's okay.

17 THE COURT: But my question is this:

18 That would appear to raise a question of law about the
19 application of the Anti-Speculation Doctrine to this Extension Request. If
20 the Court were to say ... if the Court properly understood that to be the State
21 Engineer's assessment of the application of the doctrine in this case, and the
22 Court said, as a matter of law, "No, it applies even to cases in which the
23 permits pre-date the *Bacher* decision, and Extension Requests that post-date
24 the *Bacher* decision, we want you to revisit this."

25 Wouldn't that be an appropriate issue of law?

1 MS. SUNDHEIM: Yes, it is an issue of law. However, I don't
2 believe that's the State Engineer's position. I don't believe the State
3 Engineer has a position one way or the other on the application of the Anti-
4 Speculation Doctrine.

5 THE COURT: (Inaudible) in this context given the
6 supplemental authorities, and I don't know if you had a chance, because they
7 just came in, to look at that question. But paragraph 5 of the Affidavit that
8 was submitted in support of the Extension Request makes, as you know,
9 specifically quotes that the agreements with the Chicago and Tel Aviv firm
10 are Option Agreements.

11 And in the supplemental authorities that were submitted by the
12 Appellant, it makes reference to the Colorado case of *Front Range*
13 *Resources* which holds that Option Agreements are encompassed within the
14 Anti-Speculation Doctrine and under that Doctrine, it would be applied there
15 and would defeat the use of those agreements in support of an Extension
16 Request.

17 I appreciate this just came to your attention perhaps yesterday.
18 Is that something you'd want to submit a supplemental brief on?

19 MS. SUNDHEIM: Your Honor, that case is not on point. The case
20 ... well, I do need to give over my time to Mr. Elmore in a moment.

21 THE COURT: Justice Pickering is very charitable. She'll make
22 sure that he gets his time.

23 MS. SUNDHEIM: Thank you, Your Honor.

24 THE COURT: Are you going to answer his question?

25 MS. SUNDHEIM: The applicable case in this matter is *Chevron*

1 *Shell Oil. Front Range* is not on point and does not change that decision in
2 any way.

3 In *Chevron Shell Oil*, the Colorado Court ... the reasonable
4 diligence standard in NRS 533.380 was adopted from Colorado. And it says
5 the same thing in Colorado as it does here, that work on one feature of the
6 project or system may be considered in finding that reasonable diligence has
7 been shown.

8 It's not this contract language. In *Chevron Shell Oil*, the same
9 arguments were presented in front of the Colorado Court as they are here
10 today, and Petitioners there said very similar things; that it's taking too long,
11 that there are no contracts (inaudible), you know, this balancing.

12 And so, in *Chevron Shell Oil*, what that case said was it
13 interpreted what types of activities constitute work on one feature of the
14 project. And those activities included federal permits, costs, contracts,
15 studies, design and construction, and economic considerations. Not just a
16 contract and not just an option contract.

17 So on *Front Range*, that case ... first of all, Sierra Pacific knew
18 about this case as early at August 17th because we had another hearing with
19 the same parties in front of the District Court, and this same Notice of
20 Supplemental Authority was filed the working day before the hearing.

21 And I did, you know, read that and it's simply not on point. It
22 discusses a new appropriation or a Change of Use Application disguised as a
23 mitigation plan. And it doesn't support that option contract language
24 because it says that it just doesn't apply in every ...

25 THE COURT: Rather than derail your argument here, I would

1 invite you to submit a response to that that says what you're saying.

2 MS. SUNDHEIM: Sure. I'm happy to do that, Your Honor.

3 THE COURT: And you may have 10 days from the date of this
4 argument to submit something in writing on that. The supplemental
5 authorities were late. They just came in.

6 MS. SUNDHEIM: Yes, Your Honor.

7 And our position, just to conclude, is that *Chevron Shell Oil*
8 remains controlling. The *Front Range* didn't change anything. And the
9 legal question was the State Engineer looked to that, and that NRS 533.380
10 to go to that speculation question is ... it already addresses speculation
11 because of all of those factors to make sure that measurable progress had
12 been made.

13 And given that evidence, not just the contracts, there was a lot
14 of different evidence. And I think Mr. Elmore will speak more to what that
15 evidence was. And, of course, you have that Affidavit in front of you, as
16 well.

17 If you have no further questions, then I will go ahead and ...

18 THE COURT: Thank you.

19 MS. SUNDHEIM: Thank you.

20 THE COURT: Mr. Elmore, I'm going to give you the full 5
21 minutes, and I'll add 4 minutes to Ms. Leonard's time as well to match it up.

22 -o0o-

23 **ARGUMENT PRESENTED BY MR. ELMORE**

24 MR. ELMORE: Thank you very much. Rick Elmore on behalf of
25 Intermountain Water Supply.

1 Preliminarily, I heard Ms. Leonard make reference to a
2 cancellation. I don't know that she told you the date of that cancellation, but
3 it was in 2018. There is absolutely no reference to that cancellation in the
4 record of this proceeding.

5 And so, on behalf of my client, I respectfully object to any
6 reference. I can't imagine why she would talk about it knowing that it's not
7 a part of the record. But it doesn't have anything to do with this case.

8 Second point is, is Ms. Sundheim has noted this *Front Range*
9 case was identified by the Appellant in a proceeding in August of 2018. It
10 was cited to the District Court. I don't know why it took until the day before
11 this proceeding to make reference to it here or to include it.

12 But while I'm talking about the *Front Range* case, I want to
13 point out to the Court that as a part of the decision in the *Front Range*
14 decision, it's found under head notes 32 and 33, there's a specific statement
15 by the Court in that case that it doesn't ... the Anti-Speculation Doctrine
16 doesn't necessarily apply to limit any option contract. That's a specific
17 finding by the Court in that case.

18 The Appellant has made frequent reference to the fact that the
19 *Front Range* case applies to all option contracts and would, therefore,
20 invalidate any kind of an option contract that was contained in any ... or
21 referenced in any of Intermountain's request for extensions of time. And
22 that's simply not what the Colorado case said, and the case specifically says
23 that. And the take away from that is, is that it's up to the State Engineer to
24 evaluate the circumstances of those contracts, determine whether or not
25 there might be, with any particular contractual relationship, a circumstance

1 that would trigger concerns about that Anti-Speculation.

2 But all of that in the context of this case has to be remembered
3 in the context of the Court, as Justice noted, said specifically that *Bacher* or
4 *Bacher*, however you pronounce it, would not apply in the circumstances of
5 this case because the *Bacher* case was decided after the permits were
6 granted, starting in 2002 to ...

7 THE COURT: What say you to Ms. Leonard's point that as a
8 matter of law this permit was for Lemmon Valley? Do you have anything to
9 add to your colleague's remarks in response to Justice Hardesty's questions
10 on that?

11 MR. ELMORE: I do. It's the last part of what I wanted to say
12 here this afternoon.

13 You have to understand that this determination as to where the
14 water is going to be used is a part of the permit granted by the State
15 Engineer, okay.

16 After that determination is made and the permit is issued, and
17 in this case, in the context of the applications for several extensions, the
18 issue about where the water was going to be put to beneficial use came up.

19 There is a specific finding in the June 1st, 2016, letter where
20 the State Engineer says that the water can be used in Cold Springs, and it
21 makes reference to the Regional Water Management Plan that was effective
22 starting in 1995 and going through 2015. I believe he also made reference to
23 the TMWA plant.

24 So the same entity that granted the permit in the first place was
25 saying this particular project was always contemplated to be something that

1 would be for the benefit of the North Valleys. And in the ...

2 THE COURT: But does he have legal authority to do that? Ms.
3 Leonard's point is he does not.

4 MR. ELMORE: I think the party who granted the permit
5 ultimately has the decision to describe what the boundaries for that permit
6 are going to be, and that's what happened in this case.

7 Very clearly, without objection from Sierra Pacific, the State
8 Engineer said the application of the water in Cold Springs would be
9 appropriate.

10 THE COURT: Okay.

11 MR. ELMORE: There was never an objection made, and
12 certainly, no litigation in the judicial review proceeding.

13 THE COURT: Thank you.

14 MR. ELMORE: Thank you.

15 THE COURT: Ms. Sundheim?

16 MS. SUNDHEIM: I just first want to address, for the record, the
17 belated filing of the Supplemental Authorities. It was an oversight. I did
18 know about the case earlier, thought I had filed it with the Court. My
19 apologies.

20 But I do want to speak briefly about the Anti-Speculation
21 Doctrine because I would submit that the prohibition against speculation is
22 incorporated into the statutory requirements.

23 Moreover, Legislature has said that the permit holder has to
24 have reasonable diligence to perfect the application. It means that the only
25 thing that it can be working on is what is specified in the permits.

1 And to the extent that the permit holder doesn't have the
2 ability to use the water, meaning that it doesn't own the land or it is not the
3 developer or a water purveyor, it is axiomatic that it has to have a
4 contractual relationship with somebody who does. Otherwise, how can a
5 permit holder be putting the water, or be engaging in reasonable diligence, to
6 perfect an application and put the water to beneficial use if it has no ability
7 to do so.

8 So with regard to Justice Hardesty's question as to the timing
9 of *Bacher*, I would submit that it doesn't matter because the statute
10 incorporates the prohibition against speculation, and the rule in *Bacher* that
11 there has to be a contractual or agency relationship with the end user is
12 already required just by the nature of what the statute says.

13 THE COURT: But this is in the pre ... the Engineer applied the
14 Anti-Speculation Doctrine, and his view of it, which is in the permit stage,
15 you can be working on two fronts, as I understand it. You could be working
16 on selling it. You could be working on developing it yourself. And it's the
17 steady application of effort that is being judged there.

18 And so, I don't know the fact that they're looking as an
19 alternative at selling the water is necessarily violating the Anti-Speculation
20 Doctrine when the Engineer says he considered it and it didn't.

21 Do you follow what I'm saying'?

22 MS. SUNDHEIM: I think I do. And I agree that just merely ... I
23 mean, *Adaven* is very clear that alienation, or the ability to alienate water
24 rights, doesn't violate the Anti-Speculation Doctrine.

25 The problem here is there's not an end user. *Adaven*, those

1 were certificated water rights. They'd been put to beneficial use for
2 irrigation. They had all ... so the beneficial use was already established.

3 Here, there's no beneficial use, no ability to put the water to
4 beneficial use, as they are permitted. There's nothing that would prevent ...
5 if Intermountain had been keeping the water rights in good standing, could
6 file a Change Application. But that hasn't happened because Intermountain
7 couldn't satisfy the requirements for a Change Application because there's
8 no need for the water in Lemmon Valley because of the Vidler project,
9 which is in the record.

10 So there's a reason that we're sitting here in this procedural
11 posture, and it's because that Intermountain hasn't wanted to do a Change
12 Application because it couldn't satisfy that requirement. But the procedural
13 posture, or the factual circumstances here, are quite different from *Adaven*.

14 I want to go to the point with regard to the *Desert Irrigation*
15 case, and I've heard my colleagues that it doesn't ... essentially, it doesn't
16 matter what the permit says about place of use. Even though it has to be
17 described by legal section, you know, township range section, it's in the
18 permits. Basically, it can be anything.

19 And I would submit that if the permit isn't what defines the
20 limit of the water right, then what does? And looking to this TMWA
21 planning document, the State Engineer doesn't have authority to get to look
22 at a water purveyor to figure out how it's supposed to interpret what the
23 legislative directives are.

24 The Legislature here said that the applicant, permit holder, has
25 to engage in reasonable diligence to perfect the application. And the

1 Legislature has defined beneficial use as the limit of the water right.

2 So the State Engineer can't look anywhere else but what the
3 statute says, or anywhere else than what the permit terms say, to define what
4 the place of use is.

5 And just so the record is clear, I believe on page 15 of my
6 Reply Brief, I have specified all the places in the record in which
7 Intermountain said specifically that these are for Lemmon Valley. This is all
8 ... you know, this whole looking at the TMWA planning document, is all
9 *post hoc* rationalization for this ... the approval of the extension that was
10 premised on a use of water outside the place of use. It's an effort to get
11 around the *Desert Irrigation* case.

12 And as a matter of law, it is not appropriate. And I believe the
13 State Engineer is not authorized, hasn't been authorized by the Legislature,
14 to approve an Extension Request under these circumstances.

15 So unless the Court has any additional questions, I have
16 nothing further.

17 THE COURT: Thank you. This matter will stand submitted.

18
19 **(Whereupon Court adjourned at 2:46:46 p.m.)**
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1 STATE OF NEVADA }
2 COUNTY OF WASHOE } SS:

3 I, PAMELA D. SIMON, a notary public in and for the County of
4 Washoe, State of Nevada, do hereby certify:

5 That I was provided a JAVS CD of the hearing above-referenced, and
6 that said transcript, which appears hereinbefore was transcribed verbatim
7 into typewriting as herein appears to the best of my knowledge, skill, and
8 ability and is a true and correct record thereof.

9 I further certify that I am not an attorney or counsel for any of the
10 parties, nor a relative or employee of any attorney or counsel connected with
11 the action, nor financially interested in the action.

12 DATED this 8th day of May, 2019.

13
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15 
16 _____
17 PAMELA D. SIMON
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