

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

IN THE MATTER OF APPLICATIONS )  
74279, 74349, 74451, 74498, 74518, 74759, )  
74760, 74762, 74866, 74938, 74977, 74987, )  
75046, 75183, 75191, 75242, 75243, 75248, )  
AND 75304 FILED TO CHANGE THE )  
POINT OF DIVERSION AND/OR PLACE )  
OF USE AND/OR MANNER OF USE OF )  
THE UNDERGROUND WATERS OF )  
CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, )  
NEVADA. )

**RULING**

**#5791**

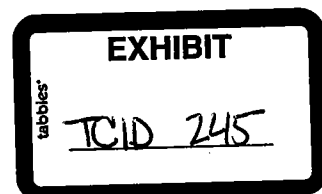
**GENERAL**

**I.**

On May 8, 2006, W.R. Technology Park, LLC filed Application 74279 to change the point of diversion of 0.223 cubic feet per second (cfs), not to exceed 3.26 million gallons annually (mga), a portion of the underground water previously appropriated under Permit 63131 in the Carson Valley Hydrographic Basin. The manner of use is for industrial purposes. The place of use is within all that portion of the described land lying east of the Allerman Canal as existing in 1978 described as the S $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  and S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  (APN 23-300-18), E $\frac{1}{2}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  (APN 23-480-16 and 97), SE $\frac{1}{4}$  SE $\frac{1}{4}$  (APN 23-480-24) of Section 2, T.12N., R.20E., M.D.B.&M., and NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 11, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 11, T.12N., R.20E., M.D.B.&M. The existing point of diversion is located within NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T.12N., R.20E., M.D.B.&M. Application 74279 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>1</sup>

By letter dated June 12, 2007, the agent for the W.R. Technology Park, LLC indicated that the application only moves the point of diversion from the permitted well on land within the technology park to an existing certificated well (Permit 63132, Certificate 16585), which is located approximately 2,350 feet due south of the well under

<sup>1</sup> File No. 74279, official records in the Office of the State Engineer.



Permit 63131 and is the well actually being used to furnish water to the existing buildings, landscaping and fire protection in the park. Both wells are within the Pine Nut Subarea of the Carson Valley. The Applicant argues that the State Engineer determined there was unappropriated water in the source and that the use did not impair the value of existing rights or threaten to prove detrimental to the public interest at the time the original permits were issued and that the water right is still in good standing. The Applicant alleges that the Tribe has not provided any credible evidence for denying the application and that the most recent USGS Water Budget Report – SIR 2006-5305 contains information which contradicts the reasons for denial in the report submitted by Stetson and Maddox. The Applicant requests the State Engineer review the application and render a decision without holding an administrative hearing.

## II.

On June 5, 2006, Douglas County filed Application 74349 to change the point of diversion and place of use of 0.028 cfs, 4.48 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 60612 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within all or portions of Sections 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.14N., R.20E., M.D.B.&M., within all or portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, and 18, T.13N., R. 20E., M.D.B.&M. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 25, 26, 27, 34, 35; and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.12N., R.20E., M.D.B.&M. The remarks in the application indicate that the purpose of the application is to account for the water rights transferred to

Douglas County in support of the final parcel map for Jeff Kirby Homes, Inc. Application 74349 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>2</sup>

### III.

On June 30, 2006, Douglas County filed Application 74451 to change the point of diversion and manner of use of 0.4443 cfs, 47.404 afa (15.447 mga), a portion of the underground water previously appropriated under Permit 66912 in the Carson Valley Hydrographic Basin. The proposed manner of use is for irrigation and domestic purposes. The existing manner of use is for irrigation purposes. The existing place of use is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 17, NE $\frac{1}{4}$  NE $\frac{1}{4}$ , a portion of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.11N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, T.11N., R.21E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.11N., R.21E., M.D.B.&M. The section 13 of the application indicates the water will be moved into a well that is completed and drilled to a depth of 1,580 feet with a sanitary seal that extends from ground surface to a depth of 192 feet. Application 74451 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>3</sup>

### IV.

On July 12, 2006, Schwartz Living Trust dated March 10, 1988, filed Application 74498 to change the point of diversion and place of use of 0.016 cfs, 4.04 afa, a portion of the underground water previously appropriated under Permit 58531 in the Carson Valley Hydrographic Basin. The proposed manner of use is for irrigation purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14N., R.20E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14N., R.20E., M.D.B.&M. The existing point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. Application 74498 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>4</sup>

<sup>2</sup> File No. 74349, official records in the Office of the State Engineer.

<sup>3</sup> File No. 74451, official records in the Office of the State Engineer.

<sup>4</sup> File No. 74498, official records in the Office of the State Engineer.

V.

On July 18, 2006, the Indian Hills General Improvement District filed Application 74518 to change the point of diversion and place of use of 0.5 cfs, 109.5 mgs of the underground water previously appropriated under Permit 42795 in the Carson Valley Hydrographic Basin. The manner of use remains quasi-municipal. The proposed place of use is described as the East Valley Water Service Area (North County) as adopted by the Douglas County Board of Commissioners on December 21, 2000, under Resolution 2000R-003, and described in more detail on the application. The existing place of use is described as being located within portions of Section 12, T.14N., R.19E., M.D.B.&M., and portions of Sections 6, 7, 8, 17, 18, and 19, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.14N., R.19E., M.D.B.&M. The existing point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.14N., R.20E., M.D.B.&M. Application 74518 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>5</sup>

VI.

On September 15, 2006, Douglas County filed Application 74759 to change the point of diversion of 0.0093 cfs, 6.72 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the Kynett Family Trust Parcel Map in Genoa (Douglas County LDAs No. 05-104 and 05-105) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74759 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>6</sup>

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<sup>5</sup> File No. 74518, official records in the Office of the State Engineer.

<sup>6</sup> File No. 74759, official records in the Office of the State Engineer.

## VII.

On September 15, 2006, Douglas County filed Application 74760 to change the point of diversion of 0.0015 cfs, 1.12 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the John and Pamela Jackson Parcel Map in Minden (Douglas County LDAs No. 05-091) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74760 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>7</sup>

## VIII.

On September 18, 2006, the Gardnerville Ranchos General Improvement District filed Application 74762 to change the place of use of 1.3316 cfs, 313.12 mga, of the underground water previously appropriated under Permit 55382 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 27, 28, and 29, T.12N., R.20E., M.D.B.&M. The existing place of use is described as all or portions of Sections 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 27, and 28, T.12N., R.20E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed to change the existing place of use to provide service to the Cedar Creek subdivision in the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 9. Application 74762 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>8</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating the application is merely to better match the place of use to the District's service boundary. The District asserted there will no impact to the use of water in the basin as the Applicant

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<sup>7</sup> File No. 74760, official records in the Office of the State Engineer.

<sup>8</sup> File No. 74762, official records in the Office of the State Engineer.

is not requesting to change the point of diversion or diversion rate and that if there were any impacts upon the Carson River, if any at all, it is not from the filing of the change application.

#### IX.

On October 4, 2006, Douglas County filed Application 74866 to change the point of diversion of 0.0015 cfs, 1.12 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the Michael E. & Karen L. McGriff Parcel Map in Minden, Nevada (Douglas County LDA No. 04-028) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74866 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>9</sup>

#### X.

On October 23, 2006, the Gardnerville Ranchos General Improvement District filed Application 74938 to change point of diversion and place of use of 0.00025 cfs, 0.18 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 27, and 28, T.12N., R.20E., M.D.B.&M. The existing place of use is described as all or portions of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., all or portions of Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T. 13N., R.19E., M.D.B.&M., all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., Sections 1-36, T.12N., R.20E., M.D.B.&M., Sections 1-36, T.13N., R.20E., M.D.B.&M., all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., Sections 18, 19, 30,

<sup>9</sup> File No. 74866, official records in the Office of the State Engineer.

and 31, T.14N., R.21E., M.D.B.&M., Sections 6, 7, 18, 19, 30 and 31, T.13N., R.21E., M.D.B.&M., Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 8, T.12N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed to correct a clerical error, to complete the transfer of water to support the balance of Rainshadow Ranch – Phase I (formerly known as Aloha Ranch, Phase I) Subdivision Map in Douglas County (PD No. 04-002) The application, together with Application 73888 will transfer a total of 20.16 afa of water from the Town of Minden to the District to allow for future service to 18 new parcels. Application 74938 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>10</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating the application is for a very small amount, 160 gallons per day, that the protest amounts to harassment and intimidation, that there is no way that the claims of the Tribe can be measured or justified and that the protest should be overruled and the application granted without a hearing.

## XI.

On October 30, 2006, the Gardnerville Ranchos General Improvement District filed Application 74977 to change point of diversion and place of use of 0.0041 cfs, 3.0 afa, a portion of the underground water previously appropriated under Permit 71302 in the Carson Valley Hydrographic Basin. While the application does not indicate it is a change in manner of use, the existing manner of use is municipal and the proposed manner of use is indicated as quasi-municipal. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28, and 29, T.12N., R.20E., M.D.B.&M. The existing place of use is described as 0.75 acres within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The existing point of diversion is described as being

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<sup>10</sup> File No. 74938, official records in the Office of the State Engineer.

located within the NE¼ SW¼ of Section 9, T.12N., R.20E., M.D.B.&M. Application 74977 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>11</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating that the day care facility provides water by means of an underground well source at the existing point of diversion; however, due to maintenance obligations and liability associated with a private water system being used for public use, water service was requested to be provided by the District. The District required the dedication of water rights and the change application was filed to transfer those rights to the District's Well #6. It is the District's understanding that the day care center would have to abandon their existing well under requirement from the Bureau of State Health Protection Services. The proposed transfer would move the point of diversion approximately 500 feet from its existing location, the new point of diversion is not closer to the Carson River and there will be no impacts on the Carson River by the granting of the change application.

## XII.

On October 31, 2006, Douglas County filed Application 74987 to change the point of diversion and place of use of 0.0031 cfs, 2.24 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The proposed place of use is described as being located within portions of Sections 9, 10, 14, 15, 16, 21, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E. M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M.; within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 15, T.12N., R.19E., M.D.B.&M. (Sheridan Acres Fire Station Well). The existing point of diversion is located within the SE¼ NW¼ of Section 30, T.13N., R.20E., M.D.B.&M. (Minden

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<sup>11</sup> File No. 74977, official records in the Office of the State Engineer.



Well No. 4) The remarks section of the application indicates that the application is filed in support of the David V. & Diana Lynn Troutner Parcel Map in Minden (Douglas County LDAs No. 05-081) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74987 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>12</sup>

### XIII.

On November 9, 2006, Douglas County filed Application 75046 to change the point of diversion of 0.236 cfs, 42.566 afa, a portion of the underground water previously appropriated under Permit 65311 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The existing place of use is within all or portions of the Sections 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.14N., R.20E., M.D.B.&M., within all or portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, and 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. (Heybourne Well). Application 75046 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>13</sup>

### XIV.

On December 14, 2006, Steven and Barbara Sikora filed Application 75183 to change the point of diversion, place of use and manner of use of 11.20 afa, a portion of the underground water previously appropriated under Permit 23614, Certificate 7334 in the Carson Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is described as the Gardnerville Ranchos General Improvement District, more specifically as portions of Sections 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 27, and 28, T. 12N., R.20E., M.D.B.&M. The existing place of use is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. (Well #6). The existing point of diversion is located

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<sup>12</sup> File No. 74987, official records in the Office of the State Engineer.

<sup>13</sup> File No. 75046, official records in the Office of the State Engineer.

within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.12N., R.20E., M.D.B.&M. Application 75183 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>14</sup>

**XV.**

On December 15, 2006, Doug H. Lippincott filed Application 75191 to change the point of diversion and place of use of 0.0848 cfs, 25.96 afa, a portion of the underground water previously appropriated under Permit 62690 in the Carson Valley Hydrographic Basin. The manner of use is described as being for irrigation and stock water purposes within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.19E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.19E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.20E., M.D.B.&M. Application 75191 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>15</sup>

**XVI.**

On January 9, 2007, Bently Family Limited Partnership filed Application 75242 to change the point of diversion of 0.383 cfs, 186.07 acre-feet seasonally, of the underground water previously appropriated under Permit 43782, Certificate 12476 in the Carson Valley Hydrographic Basin. The manner of use is irrigation within portions of the NE $\frac{1}{4}$  of Section 19, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, and NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13N., R.20E., M.D.B.&M.<sup>16</sup> The remarks section of the application indicates that the purpose of the application is to move the point of diversion of a certificated supplemental ground-water right into an existing irrigation well on the Bently property. Application 75242 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

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<sup>14</sup> File No. 75183, official records in the Office of the State Engineer.

<sup>15</sup> File No. 75191, official records in the Office of the State Engineer.

<sup>16</sup> File No. 75242, official records in the Office of the State Engineer.

**XVII.**

On January 9, 2007, Bently Family Limited Partnership filed Application 75243 to change the point of diversion of 0.383 cfs, 186.07 acre-feet seasonally, of the underground water previously appropriated under Permit 43783, Certificate 12477 in the Carson Valley Hydrographic Basin. The manner of use is irrigation within portions of the NE $\frac{1}{4}$  of Section 19, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, and NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13N., R.20E., M.D.B.&M.<sup>17</sup> The remarks section of the application indicates that the purpose of the application is to move the point of diversion of a certificated supplemental ground-water right into an existing irrigation well on the Bently property. Application 75243 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

**XVIII.**

On January 10, 2007, Duncan M. Getty filed Application 75248 to change the point of diversion, place of use and manner of use of 0.0345 cfs, not to exceed 25.0 afa, of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The proposed manner of use is commercial and the existing manner of use is municipal. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T.13N., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The existing point of diversion is

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<sup>17</sup> File No. 75243, official records in the Office of the State Engineer.

located within the SE¼ NW¼ of Section 30, T.13N., R.20E., M.D.B.&M.<sup>18</sup> The remarks section of the application indicates the water will be used for an existing commercial nursery. Application 75248 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

### XIX.

On February 2, 2007, Douglas County filed Application 75304 to change the point of diversion of 0.0207 cfs, not to exceed 15.0 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T.13N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12E., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 12, T.12N., R.20E., M.D.B.&M. (Douglas County Sunrise Estates Well #2). The existing point of diversion is located within the SE¼ NW¼ of Section 30, T.13N., R.20E., M.D.B.&M. (Minden Well #4).<sup>19</sup> The remarks section of the application indicates that the application was filed to support the Old Saw Mill Industrial Park, LLC Subdivision Map (LDA 06-016) with water rights being transferred from the Town of Minden to Douglas County to allow for future service to the new parcels. Application 75304 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

### XX.

Applications 74279, 74349, 74451, 74498, 74518, 74759, 74760, 74762, 74866, 74938, 74977, 74987, 75046, 75183, 75191, 75242, 75243, 75248, and 75304 were

<sup>18</sup> File No. 75248, official records in the Office of the State Engineer.

<sup>19</sup> File No. 75304, official records in the Office of the State Engineer.

protested by the Pyramid Lake Paiute Tribe (Tribe) on the following grounds as summarized below. All protest claims do not apply to all applications, but in the interest of brevity the protest grounds are summarized:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the ground water available in the basin resulting in the inability of the perennial yield to serve existing permits and commitments with ground water, and in light of the obligations of the State Engineer pursuant to NRS chapters 533, 534 and 278 to require that there be adequate plans to protect existing uses and commitments of ground water and to exercise all appropriate authority and discretion to control over-demand on the source and to protect both the public and other right holders of surface-water and ground-water rights. (All applications)
2. Granting the application and subsequent development of ground water for industrial, quasi-municipal, or municipal purposes would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest by depleting flow in the Carson River to the Newlands Project thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which would impact Pyramid Lake and its fishery. (All applications)
3. Granting the application would threaten to prove detrimental to the public interest in that it requests to move water rights that have not been put to beneficial use, and therefore amounts to a request for a new and additional appropriation of ground water in a designated, over-appropriated basin. (Application 74349)
4. The application requests water for irrigation as the primary use and domestic as the secondary use. The application is defective and should be denied or returned for correction as it does not indicate the number of persons to be served and the future requirement of the domestic use is not provided as required by NRS § 533.340. (Application 74451)
5. Granting the application would threaten to prove detrimental to the public interest in that it requests to move water rights to a point of diversion that is nearer to an

- area previously flagged by the State Engineer in Order #904 as an area requiring curtailment of water appropriation. (Application 74349)
6. The water rights have been forfeited and/or abandoned. (Applications 74451, 74498)
  7. The application is deficient in that it does not sufficiently identify the location of the existing place of use. (Application 74498)
  8. The transfer threatens to prove detrimental to the public interest by extending and/or expanding the water deliveries to outside the irrigation season. (Application 75183)
  9. The request is for a full duty transfer, rather than the consumptive use amount, which in this basin is established as 2.5 afa, and thus, amounts to a request for a new appropriation in a basin that is designated and over-appropriated. (Application 75183)
  10. The application is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. (74498)
  11. Granting the applications would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise before the applications are actually considered by the State Engineer. (All applications)
  12. Granting the application would threaten to prove detrimental to the public interest. (All applications)

**XXI.**

By letter dated April 13, 2007, the Tribe indicated that the main reasons it filed protests against these applications is that the Tribe is concerned that: (1) the committed ground-water resources of the Carson Valley Hydrographic Basin greatly exceed the annual recharge; (2) under existing circumstances, the State Engineer is not able to certify the availability of ground water in the basin to serve subdivisions or other municipal, industrial or commercial uses; and (3) the use of ground water in the hydrographic basin by junior appropriators conflicts with and interferes with the senior surface-water storage and diversion rights of downstream water users.<sup>20</sup>

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<sup>20</sup> File No. 74349, official records in the Office of the State Engineer.

## **FINDINGS OF FACT**

### **I.**

On April 17, 2007, the State Engineer held a pre-hearing meeting in order to bring the parties together to discuss an approach to resolution of the applications and related protests. Nevada Revised Statute § 533.365(3) provides that the State Engineer shall consider the protests, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved. Nevada Revised Statute § 533.375 provides that before either approving or rejecting an application, the State Engineer may require the filing of information as will enable him to guard the public interest properly. By notice dated April 24, 2007, the State Engineer ordered the Protestants to serve on all parties and the State Engineer by June 25, 2007, evidence in support of their protest claims. The Applicants were then provided until July 25, 2007, the opportunity to serve any evidence they wished to provide in answer or rebuttal to the protests and in support of their applications.

The State Engineer reviewed all of the information filed by the parties and the State Engineer determined that an evidentiary hearing was not warranted and he could act on the applications with the information that had been filed. The State Engineer originally indicated that he was providing the parties the opportunity to present final oral argument; however, the Tribe later had a conflict with the agreed upon dates for hearing and requested the date of the oral argument be moved. The State Engineer, noting the difficulty of scheduling the many parties to this action, cancelled the oral argument, instead providing the parties the opportunity to file a written closing argument.

### **II.**

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the Tribe is not an interested person under NRS § 533.265 and not entitled to file a protest, not having any water right affected by Application 74279 nor having any legally cognizable right or interest in the subject matter of the application.

The State Engineer has addressed this standing argument in prior rulings.<sup>21</sup> In State Engineer's Interim Ruling No. 3825, the State Engineer addressed an argument presented by an applicant in which it asserted that many of the protestants lacked

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<sup>21</sup> See, State Engineer's Interim Ruling In the Matter of Protested Applications 74283, et al., dated July 2, 2007, official records in the Office of the State Engineer.

standing to participate in the administrative process unless they held an existing water right in the proposed source of supply, or the application would conflict with an existing water right, or they had the legal capacity to sue to vindicate the public interest. In its argument, the applicant relied on the doctrine of legal standing in the judicial context. The applicant argued that "person interested" within the meaning of NRS § 533.365(1) is one having the requisites of standing as the term is used in the law of parties. The State Engineer found that:

[a]lthough analogies exist between the concepts of judicial standing and administrative standing, the State Engineer refuses to adopt the applicant's narrow construction of 'person interested' to determine who may participate in the upcoming hearings. Standing before the courts involves both constitutional limitations on courts' jurisdiction and judge-made prudential limitations on the exercise of that jurisdiction. The State Engineer, on the other hand, is not bound by these limitations.

Standing requirements for administrative agencies are less restrictive than the law of judicial standing.<sup>22</sup> Administrative standing analysis begins with the scheme intended and devised by the legislature.

The Nevada Legislature enacted NRS 533.365(1) which provides that "[a]ny person interested" may protest an application for the appropriation of water within 30 days of the last publication of the notice advertising the application. The Legislature also established criteria for the State Engineer's approval or rejection of an application, providing as follows:

Where there is no unappropriated water in the proposed source of supply, or where the proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the permit asked for.<sup>23</sup>

Thus, these criteria furnish the bases upon which any person interested may protest.

The applicant suggests that protestants under NRS 533.365(1) are similar to objectors under NRS 533.145. NRS 533.145 requires that, in order to object to a preliminary order of determination in an adjudication, a person must claim a interest in the stream system "under vested right or permit from the state engineer." In contrast to the statute dealing with

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<sup>22</sup> *ECEE, Inc. v. Fed. Energy Regulatory Comm'n*, 645 F.2d 339, 349-350 (5th Cir. 1981); *Koniag, Inc. Village of Uyak v. Andrus*, 580 F.2d 601, 606 (D.C.Cir.), *cert.denied*, 439 U.S. 1052 (1978).

<sup>23</sup> NRS § 533.370(3).



objectors, the Legislature did not restrict protestants to persons holding title to water rights. If the Legislature had intended to impose limitations analogous to those in NRS 533.145, it would have prescribed such limitations in the statutory provision governing protests, NRS 533.365(1).

As previously indicated, Nevada water law requires that the State Engineer consider public interest in deciding whether to approve an application to appropriate water.<sup>24</sup> Contrary to the applicant's position, the statutory scheme in no way limits those who have standing to assert the public interest to the Attorney General and certain other public agencies. If the Legislature intended that only certain public officials or public agencies could raise public interest considerations in protests, it would have enacted language to this effect.

The State Engineer has consistently interpreted NRS 533.365(1) to allow virtually any existing water right holder, member of the public, or governmental entity who has timely protested an application to be heard on its concerns.<sup>25</sup>

The State Engineer finds Nevada's statutory scheme does not limit protestants to only those who hold similar types of water rights in the basin of interest. The State Engineer finds if the Legislature had intended that protestants be limited as argued by W.R. Technology Park, LLC it would have enacted language to this effect and it has not; therefore, the request to dismiss on these grounds is overruled.

### III.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the Tribe is not properly appearing before the State Engineer since Robert C. Maddox and Associates is not authorized or competent to act as either agents or attorneys in the matter affecting the water rights in the Carson Valley or on the Carson River, or in any proceeding adversely affecting W.R. Technology Park, LLC. The State Engineer finds the Applicant provides no reasoning or authority for this claim, or analysis in support of the claim, and the allegation appears frivolous; therefore, the request to dismiss on these grounds is overruled.

### IV.

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<sup>24</sup> NRS § 533.370(3) (The State Engineer notes this section of the statute has changed since the time of this ruling and others have been enacted.)

<sup>25</sup> State Engineer's Interim Ruling No. 3825, dated August 26, 1991, official records in the Office of the State Engineer.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the subject waters have been duly appropriated under Nevada water law and the State Engineer has already made the determination that there is no detriment to the public or any adverse impacts on existing rights, and therefore, the protests should be dismissed. The Town of Minden argues that the issue of availability of water in the source was thoroughly reviewed when the underlying permits were granted and it was at that time that it would have been appropriate to have protested the availability of water.

The State Engineer agrees with the Applicants that if the Protestant had any issue with the initial granting of these ground-water rights, they should have protested the applications when the notice of original application was made. However, this does not prevent a protestant from alleging there is no unappropriated water available at the specific point of diversion of a proposed change or that the use of water under a proposed change may conflict with existing rights or threaten to prove detrimental to the public interest; therefore, the request to dismiss on these grounds is overruled.

#### V.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that there is no legal connection between the water rights claimed by the Tribe in the Truckee River and any ground-water rights in the Carson Valley, and accordingly, the Tribe's protest is without legal justification and must be disregarded and dismissed. The Applicant also alleges that the protest is not based on any demonstrable or existing right, or on any showing of harm or detriment, and has no cognizable grounds of support, and must be disregarded and dismissed. The Tribe's protests allege that granting these applications and subsequent development of ground water for industrial, quasi-municipal, or municipal purposes would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest. Further, it would impact Pyramid Lake and its fishery by depleting flow in the Carson River, thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows.

The Tribe has been decreed the two most senior water rights on the Truckee River, those being Claims 1 and 2. The State Engineer is not aware of any time water has not been available under those rights nor does OCAP trump those claims. The Tribe was

