

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

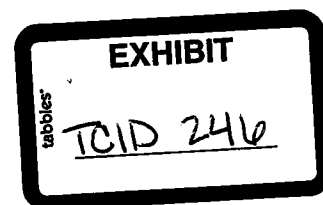
IN THE MATTER OF APPLICATIONS )  
74283, 74284, 74285, 74286, 74369, 74370, )  
74402, 74427, 74434, 74562, 74569, 74570, )  
74592, 74611, 74612, 74922, 74979, 75101, )  
75102, 75103, 75104, 75157, 75158, 75159, )  
75160, 75277, AND 75283 FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS OR CHANGE THE POINT OF )  
DIVERSION, PLACE AND/OR MANNER )  
OF USE OF THE UNDERGROUND )  
WATERS OF THE DAYTON VALLEY )  
HYDROGRAPHIC BASIN (103), LYON )  
COUNTY, NEVADA. )

**RULING**  
**# 5829**

**GENERAL**

**I.**

On May 9, 2006, Lyon County filed Application 74283 to change the point of diversion, place and manner of use of 0.0424 cubic feet per second (cfs), 10.0 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33, 34 and 35 of T.16N., R. 21 E., M.D.B.&M., within all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, 19 and 20, T.16N., R.22E., M.D.B.&M., within a portion of Section 36, T.17N., R.21E., M.D.B.&M., within all or portions of Sections 22, 27, 28, 29, 30, 31, 32, 33 and 34, T.17N., R.22E., M.D.B.&M., and within the water service area of Lyon County/Dayton Utilities. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.22E., and within portions of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N.,



R.22E., M.D.B.&M. Application 74283 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>1</sup>

**II.**

On May 9, 2006, Lyon County filed Application 74284 to change the point of diversion, place and manner of use of 0.093 cfs, 50.0 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 17 and the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N., R.22E., M.D.B.&M. Application 74284 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>2</sup>

**III.**

On May 9, 2006, Lyon County filed Application 74285 to change the point of diversion, place and manner of use of 0.01 cfs, 2.34 afa, a portion of the underground water previously appropriated under Permit 50697, Certificate 14177, in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.17N., R.23E., 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 23, T.16N., R.21E., M.D.B.&M. Application 74285 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>3</sup>

**IV.**

On May 9, 2006, Lyon County filed Application 74286 to change the point of diversion, place and manner of use of 0.004 cfs, 0.24 afa, a portion of the underground

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<sup>1</sup> File No. 74283, official records in the Office of the State Engineer.

<sup>2</sup> File No. 74284, official records in the Office of the State Engineer.

<sup>3</sup> File No. 74285, official records in the Office of the State Engineer.

water previously appropriated under Permit 25503, Certificate 8468, in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., 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 23, T.16N., R.21E., M.D.B.&M. Application 74286 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>4</sup>

V.

On June 8, 2006, Aspen Creek, LLC, filed Application 74369 to change the point of diversion, place and manner of use of 0.181 cfs, 68.4 afa, a portion of the underground water previously appropriated under Permit 13577, Certificate 3688, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  of Section 1, T.16N., R.22E., the NW $\frac{1}{4}$  of Section 6, T.16N., R.23E., portions of Sections 35 and 36, T.17N., R.22E., and portions of Section 31, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.17N., R.22E., 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 24, T.16N., R.21E., M.D.B.&M. Application 74369 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>5</sup>

VI.

On June 8, 2006, Aspen Creek, LLC, filed Application 74370 to change the point of diversion, place and manner of use of 0.8984 cfs, not to exceed 250 afa, a portion of the underground water previously appropriated under Permit 35971, Certificate 10426, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place

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<sup>4</sup> File No. 74286, official records in the Office of the State Engineer.

<sup>5</sup> File No. 74369, official records in the Office of the State Engineer.

of use is the same as that identified under Application 74283. The existing place of use is within portions of Sections 34, 35, and 36, T.17N., R.22E., and portions of Section 31, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW¼ NE¼ of Section 34, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 24, T.16N., R.21E., M.D.B.&M. Application 74370 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>6</sup>

#### VII.

On June 19, 2006, The Connection Assembly of God filed Application 74402 to appropriate 0.025 cfs, 2.02 afa, of the underground water in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes. The proposed place of use is described as being located within a portion of the SW¼ SW¼ of Section 28, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 28, T.17N., R.22E., M.D.B.&M. Application 74402 was timely protested by the Pyramid Lake Paiute Tribe of Indians<sup>7</sup>

#### VIII.

On June 29, 2006, Lyon County filed Application 74427 to change the point of diversion, place and manner of use of 0.0029 cfs, 0.5475 million gallons annually, a portion of the underground water previously appropriated under Permit 22516, Certificate 8121, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is commercial. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the E½ NE¼ of Section 23, T.16N., R.21E., M.D.B.&M. The existing point of diversion is located within the NE¼ NE¼ of Section 23, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 23, T.16N., R.21E., M.D.B.&M. Application 74427 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>8</sup>

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<sup>6</sup> File No. 74370, official records in the Office of the State Engineer.

<sup>7</sup> File No. 74402, official records in the Office of the State Engineer.

<sup>8</sup> File No. 74427, official records in the Office of the State Engineer.

IX.

On June 30, 2006, Dennis W. Smith & Marcia Bennett Smith, David D. Winchell & Sandra L. Winchell filed Application 74434 to change the point of diversion, place and manner of use of 0.673 cfs, 101 afa, a portion of the underground water previously appropriated under Permit 20928, Certificate 7257, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., 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 24, T.16N., R.21E., M.D.B.&M. Application 74434 was timely protested by the Pyramid Lake Paiute Tribe of Indians, Churchill County and Lynne Arndell for the Stagecoach General Improvement District, which subsequently withdrew its protest.<sup>9</sup>

X.

On July 25, 2006, Lyon County filed Application 74562 to change the point of diversion, place and manner of use of 0.0458 cfs, 10 afa, a portion of the underground water previously appropriated under Permit 21475, Certificate 6878, in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within portions of the S $\frac{1}{2}$  of Section 4 and N $\frac{1}{2}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., 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 32, T.17N., R.22E., M.D.B.&M. Application 74562 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>10</sup>

<sup>9</sup> File No. 74434, official records in the Office of the State Engineer.

<sup>10</sup> File No. 74562, official records in the Office of the State Engineer.

**XI.**

On July 28, 2006, Lyon County filed Application 74569 to change the point of diversion, place and manner of use of 0.0423 cfs, 10 afa, a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. and within portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., 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 14, T.16N., R.21E., M.D.B.&M. Application 74569 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>11</sup>

**XII.**

On July 28, 2006, Lyon County filed Application 74570 to change the point of diversion, place and manner of use of 0.014 cfs, 9.98 afa, a portion of the underground water previously appropriated under Permit 28586, Certificate 8873, in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within portions of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., 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 14, T.16N., R.21E., M.D.B.&M. Application 74570 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>12</sup>

**XIII.**

On August 3, 2006, Dennis W. Smith & Marcia Bennett Smith filed Application 74592 to change the point of diversion and place of use of 0.009 cfs, 1.36 afa, a portion of the underground water previously appropriated under Permit 20928, Certificate 7257,

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<sup>11</sup> File No. 74569, official records in the Office of the State Engineer.

<sup>12</sup> File No. 74570, official records in the Office of the State Engineer.

in the Dayton Valley Hydrographic Basin. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.16N., R.22E., M.D.B.&M. The existing place of use is within of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., 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 5, T.16N., R.22E., M.D.B.&M. Application 74592 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>13</sup>

#### XIV.

On August 9, 2006, James E. Morehouse filed Application 74611 to appropriate 0.02 cfs, 0.54 afa of the underground water in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes. The proposed place of use is described as being located within a portion of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T.17N., R.22E., M.D.B.&M. Application 74611 was timely protested by the Pyramid Lake Paiute Tribe of Indians<sup>14</sup>

#### XV.

On August 9, 2006, Lyon County filed Application 74612 to change the point of diversion, place and manner of use of 0.186 cfs, 100 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 17, and portions of the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E. M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N., R.22E. M.D.B.&M. Application

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<sup>13</sup> File No. 74592, official records in the Office of the State Engineer.

<sup>14</sup> File No. 74611, official records in the Office of the State Engineer.

74612 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>15</sup>

#### XVI.

On October 18, 2006, Lyon County filed Application 74922 to change the point of diversion, place and manner of use of 0.0084 cfs, 2.02 afa, of the underground water previously appropriated under Permit 70116 in the Dayton 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 the same as that identified under Application 74283. The existing place of use is within a portion of the NW¼ NE¼ of Section 4, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW¼ NE¼ of Section 4, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 32, T.17N., R.22E., M.D.B.&M. Application 74922 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>16</sup>

#### XVII.

On October 30, 2006, Daniel Hague filed Application 74979 to change the point of diversion, place and manner of use of 0.013 cfs, 0.70 afa, a portion of the underground water previously appropriated under Permit 25503, Certificate 8468, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes and the existing manner of use is irrigation and domestic. The proposed place of use is described as being located within a portion of the NE¼ SE¼ of Section 29, T.16N., R.21E., M.D.B.&M. The existing place of use is within a portion of the SW¼ SW¼ of Section 4, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW¼ SW¼ of Section 4, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 29, T.16N., R.21E., M.D.B.&M. Application 74979 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>17</sup>

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<sup>15</sup> File No. 74612, official records in the Office of the State Engineer.

<sup>16</sup> File No. 74922, official records in the Office of the State Engineer.

<sup>17</sup> File No. 74979, official records in the Office of the State Engineer.



### XVIII.

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75101 to change the point of diversion, place and manner of use of 3.092 cfs, 484.16 afa, of the underground water previously appropriated under Permit 64782 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The existing point of diversion is located within the SE¼ SE¼ of Section 18, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 19, T.16N., R.22E., M.D.B.&M. The remarks sections of Applications 75101 through 75104 indicate that the intent of the applications is to unstack the non-supplemental portions of Permits 64782 through 64785. Additionally, the remarks indicate that both the existing and proposed manner of use is for municipal and domestic purposes; however, a change in manner of use was listed to reflect the fact that the non-supplemental and supplemental portions of the water rights are being changed. Application 75101 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>18</sup>

### XIX.

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75102 to change the place and manner of use of 2.1761 cfs, 396.96 afa, of the underground water previously appropriated under Permit 64783 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions

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<sup>18</sup> File No. 75101, official records in the Office of the State Engineer.

of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the NW¼ NW¼ of Section 19, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75102 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>19</sup>

**XX.**

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75103 to change the place and manner of use of 2.3959 cfs, 874.14 afa, of the underground water previously appropriated under Permit 64784 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SE¼ SE¼ of Section 18, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75103 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>20</sup>

**XXI.**

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75104 to change the place and manner of use of 0.762 cfs, 139.06 afa, a portion of the underground water previously appropriated under Permit 64785 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections

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<sup>19</sup> File No. 75102, official records in the Office of the State Engineer.

<sup>20</sup> File No. 75103, official records in the Office of the State Engineer.

1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75104 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>21</sup>

#### XXII.

On December 4, 2006, Lyon County filed Application 75157 to change the point of diversion, place and manner of use of 0.0414 cfs, 9.8 afa, a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M., and portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., 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 24, T.16N., R.21E., M.D.B.&M. Application 75157 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>22</sup>

#### XXIII.

On December 4, 2006, Lyon County filed Application 75158 to change the point of diversion, place and manner of use of 0.121 cfs, 56 afa, a portion of the underground water previously appropriated under Permit 27817, Certificate 9178, in the Dayton Valley Hydrographic Basin. Application 75158 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>23</sup> By letter dated February 14, 2008, Application 75158 was withdrawn.

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<sup>21</sup> File No. 75104, official records in the Office of the State Engineer.

<sup>22</sup> File No. 75157, official records in the Office of the State Engineer.

<sup>23</sup> File No. 75158, official records in the Office of the State Engineer.

**XXIV.**

On December 4, 2006, Lyon County filed Application 75159 to change the point of diversion, place and manner of use of 0.0789 cfs, 17.24 afa, a portion of the underground water previously appropriated under Permit 21475, Certificate 6878, in the Dayton 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 within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within the SE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 4, NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., 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 32, T.17N., R.22E., M.D.B.&M. Application 75159 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>24</sup>

**XXV.**

On December 4, 2006, Lyon County filed Application 75160 to change the point of diversion and place of use of 0.0012 cfs, 0.84 afa, of the underground water previously appropriated under Permit 73524 in the Dayton Valley Hydrographic Basin. The manner of use is for commercial purposes. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., 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 32, T.17N., R.22E., M.D.B.&M. Application 75160 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>25</sup>

**XXVI.**

On January 23, 2007, Lyon County filed Application 75277 to change the point of diversion, place and manner of use of 0.457 cfs, 245.5 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing

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<sup>24</sup> File No. 75159, official records in the Office of the State Engineer.

<sup>25</sup> File No. 75160, official records in the Office of the State Engineer.

manner of use is irrigation and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 17, and the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., 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.16N., R.21E., M.D.B.&M. Application 75277 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>26</sup>

#### XXVII.

On January 25, 2007, Lyon County filed Application 75283 to change the point of diversion and place of use of 0.033 cfs, 2.02 afa, of the underground water previously appropriated under Permit 72801 in the Dayton Valley Hydrographic Basin. The manner of use is quasi-municipal purposes. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within a portion of the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., 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 32, T.17N., R.22E., M.D.B.&M. Application 75283 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>27</sup>

#### XXVIII.

Applications 74283, 74284, 74285, 74286, 74369, 74370, 74402, 74427, 74434, 74562, 74569, 74570, 74592, 74611, 74612, 74922, 74979, 75101, 75102, 75103, 75104, 75157, 75159, 75160, 75277, and 75283 were protested by the Pyramid Lake Paiute Tribe (Tribe) on the following grounds as summarized below.

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the ground water available in the basin resulting in the inability to serve existing permits. Granting the application would threaten to prove detrimental to the public interest without first implementing measures to prevent the depletion of the ground water of the Dayton Valley

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<sup>26</sup> File No. 75277, official records in the Office of the State Engineer.

<sup>27</sup> File No. 75283, official records in the Office of the State Engineer.

Hydrographic Basin and to restrict withdrawals of ground water to no more than the average annual replenishment to the ground-water supply. Granting the applications would threaten to prove detrimental to the public interest without first considering and fulfilling the State Engineer's responsibility to insure the availability of water for subdivisions under NRS § 278.377(1)(b). (All applications.)

2. The proposed transfer threatens to prove detrimental to the public interest because it extends water deliveries outside the irrigation season. (Applications 74283, 74284, 74285, 72486, 74369, 74370, 74434, 74569, 74570, 74922, 74979, 75101, 75102, 75103, 75104, 75157, 75159.)
3. The water rights have been forfeited and/or abandoned. (Applications 74283, 74284, 74285, 74286, 75101, 75102, 75103, 75104.)
4. The terms and conditions associated with the base water right permits have not been satisfied and precludes granting the application. (Applications 75101, 75102, 75103, 75104.)
5. The duty should be limited to the historical consumptive use amount of 2.5 afa, otherwise the application amounts to a request for a new and additional appropriation in an over-appropriated ground-water basin. (All applications.)
6. The application is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. (Applications 74283, 74284, 74285.)
7. Use of water under the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Paiute Indian Reservation was created and the public interest by depleting flows in the Carson River and 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.)
8. If the water sought to be changed is supplemental to a surface-water right, granting the application would in effect amount to granting a new water right in an over-appropriated basin thereby conflicting with existing rights. (Applications 74283, 74284, 74285, 74286.)

9. 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.)
10. Granting the application would threaten to prove detrimental to the public interest. (All applications.)

**XXIX.**

Applications 74283, 74284, 74285, 74286, 74434, 74569, 74570, 74592, 74612, 74922, 75277 were protested by Churchill County on the following grounds as summarized below.

1. The application and its accompanying maps are deficient in that they do not adequately identify the exact location of the 2.5 acres to be stripped. (Application 72483.)
2. The water right may be subject to a declaration of forfeiture and/or abandonment. (Applications 74283, 74284, 74285, 74286, 74434, 74569, 74570, 74592, 74612.)
3. The water right may be supplemental to Carson River rights and should not be allowed to be stripped and become stand alone right. (Application 74283.)
4. The application should be limited to the consumptive use of 2.5 afa. (Applications 74283, 74284, 74285, 74286, 74434, 74569, 74612.)
5. The Applicant is seeking to move the point of diversion closer to the Carson River, which will have the effect of depleting ground water that is base flow to the river or inducing recharge from the river thereby affecting senior downstream surface-water right holders. (Applications 74283, 74284 (3 miles to 1,700 feet Stagecoach subarea), 74285 (3.3 miles to 300 feet Stagecoach subarea), 74286 (0.4 miles to 300 feet), 74434 (5 miles to 1.25 miles Stagecoach subarea), 74569 (2,200 feet to 600 feet Carson Plains subarea), 74570 (1 mile to 600-800 feet Carson Plains subarea), 74592 (5 miles to 100 feet Carson Plains subarea), 74612 (3 miles to 0.3 miles Carson Plains subarea), 74922 (6 miles to 0.75 – 1 mile Stagecoach subarea), 75277 (3.25 miles to 0.75 – 1.0 miles Stagecoach subarea).

6. The proposed points of diversion under Applications 74283, 74284, 74285, 74286 are within the Carson Plains subbasin of Dayton Valley, which is over-appropriated, experiencing water-level declines, has return flow issues and is adverse to and will impact existing surface-water and ground-water right holders.
7. Due to the severe over-appropriation of the ground-water basin the State Engineer should either deny the applications or withhold action until remediation actions are implemented to control the over-appropriation in the basin. (All applications.)
8. Action should be withheld on these applications until studies are completed to determine if ground-water pumping is intercepting base flow of the Carson River and inducing inflow from the river. (All applications.)
9. Use of water under the applications threatens to prove detrimental to the public interest because it will cause less water to reach Lahontan Reservoir, thereby increasing diversions from the Truckee River causing alleged harm to the Tribe and the United States Fish and Wildlife Service and Pyramid Lake and its fishery. (All applications.)
10. Use of water under the application will conflict with existing rights. (All applications.)

**XXX.**

On April 17, 2007, the State Engineer held a pre-hearing meeting in order to bring the parties together to discuss an approach to a resolution of the applications and related protests. By notice dated April 24, 2007, the State Engineer provided the Applicants until May 24, 2007, the opportunity to file a requested motion and ordered the Protestants to serve on all parties by June 25, 2007, evidence in support of their protest claims. By July 25, 2007, the Applicants were provided the opportunity to file an answer and/or provide evidence in rebuttal to the protests and/or in support of their applications. 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 achieve a full understanding of the rights involved. The State Engineer finds he has sufficient information to review and decide upon these applications and protests.



**FINDINGS OF FACT**

**I.**

On May 24, 2007, Lyon County filed a Motion to Dismiss Individual Protest Claims. On June 7, 2007, a Response in Opposition to Dismiss Individual Protest Claims was filed by Churchill County, and an Opposition of Pyramid Lake Paiute Tribe to Motion of Applicants to Dismiss Protests was also filed. On July 2, 2007, the State Engineer issued an Interim Ruling addressing the Motion to Dismiss and dismissed the following protest claims.

As to the Tribe's protest claims, the State Engineer dismissed the protest claim identified above as number 2 in General Section XXVIII that the proposed transfer threatens to prove detrimental to the public interest because it extends water deliveries outside the irrigation season as to Applications 74283, 74284, 72485, 74286, 74370, 74434, 74570, 74922, 75101, 75102, 75103, 73104 and 75159. As to the protest claim identified as number 3 in General Section XXVIII, that the water rights have been forfeited and/or abandoned, the Tribe in its evidentiary filing of June 22, 2007, indicated that it would be formally withdrawing its claims as to Applications 74283 and 74284. Therefore, the State Engineer dismisses the claim of forfeiture and/or abandonment as to Applications 74283 and 74284. As to the protest claims identified as numbers 4, 6, 9 and 10 in General Section XXVIII, the State Engineer dismissed the claims in their entirety.

As to Churchill County's protest claims, the State Engineer dismissed the protest claim identified above as number 1 in General Section XXIX that as to Application 72483 the application and map are deficient.

**II.**

During the course of the oral arguments, Protestant Churchill County objected that it did not have the opportunity to respond with rebuttal to the Applicants' evidence because of the process established by the State Engineer for the exchange of evidence. The State Engineer allowed Protestants Churchill County and the Tribe to provide rebuttal evidence limited to review of the evidence provided by TEC and Mr. Turnipseed.

In the rebuttal evidence provided by Churchill County and the Tribe is a letter from a person with the United States Geological Survey (USGS) addressed to a person at the United States Fish and Wildlife Service, which specifically reviews the evidence of

TEC and Mr. Turnipseed. This evidence prompted Applicants Aspen Creek, LLC and Dayton Valley Investors, LLC to file a Motion to Strike and Seal USGS Administrative Letter Report Dated October 10, 2007, arguing that the letter is "inappropriately and illegally submitted" and that it "constitutes new evidence, which violates various aspects of Nevada Administrative Code ("NAC") and case law." Applicants argue that the information should not be allowed as it does not comply with multiple provisions of guidelines for the dissemination of USGS information. Applicants additionally argue that the information should be stricken because it is "new evidence" and they have not been afforded the opportunity to address the information.

Persons from the USGS have often provided testimony in hearings before the State Engineer and that testimony is not required to go through the USGS guidelines for dissemination of information. The State Engineer finds there is nothing inappropriate or illegal about it. The letter is exactly the type of information the State Engineer was expecting to be filed and the type of information found useful. The State Engineer finds that administrative hearings before him are not district court trials, that by statute the technical rules of evidence are not applicable to hearings before the State Engineer (NRS § 533.365(4)) and finds he will use the best information available to him to make the best and most informed decision for the resource and all the citizens of Nevada.

Besides the rule of law found in NRS § 533.365, which makes the decision to hold a hearing completely within the State Engineer's discretion, NRS § 533.375 provides that the State Engineer may require the filing of information he deems necessary to consider applications. The first provision of the Nevada Administrative Code cited by Applicants in their argument provides that the State Engineer may construe the rules liberally to secure the just, speedy and economical determination of the issues presented and in special cases where strict compliance to the rules is unnecessary that the State Engineer can deviate from the rules. In this case, many different applicants were put together in the same proceeding, some of the applicants have substantial resources and some of the applicants do not have the resources to participate in a large sophisticated trial-type proceeding. In order to accommodate all the interests, the State Engineer used a shortened and expedited process. As to the issue of the Applicants' complaint that they have not had the opportunity to respond to the letter, the volley of information could go

on indefinitely in a never ending battle of experts and the State Engineer finds there is no reason to allow that to continue. The process must be cut off somewhere. The State Engineer denies the motion to strike and seal.

### III.

Prior to the oral argument, Churchill County filed a Motion to Exclude Evidence and to Deny Applications 74283, 74285, 74286, 74592, 74922 and 75158 pursuant to which Churchill County objects to parties incorporating the evidence filed by other parties into their cases. The specific evidence Churchill County objects to is already a public record in the Office of the State Engineer from the Dayton Valley Basin Designation hearing. The State Engineer does not ignore the records and information within his office and his scope of knowledge just because someone was not a participant when that information was obtained. Additionally, the reason the parties were incorporating each other's evidence into their cases was solely a matter of conservation, i.e., saving paper, a process which the State Engineer completely supports. There is absolutely no reason to have the same six volumes of information copied multiple times wasting resources, storage space and time. Requiring each applicant to supply the identical documentation over and over in the same proceeding is unduly burdensome, expensive and not in the interest of economy. Just because Churchill County did not participate in the public hearing on the basin designation does not mean the State Engineer cannot consider the information. The State Engineer is always building upon the knowledge he already possesses. Additionally, the rebuttal allowed for at the oral argument provided Churchill County the opportunity to respond to that information; therefore, the State Engineer finds that portion of the motion moot.

Churchill County's motion also requested that the State Engineer summarily deny Applications 74283, 74285, 74286, 74592, 74922 and 75158 on the grounds that those Applicants did not provide any information in support of their applications. The Tribe also filed a Motion to Deny Certain Applications arguing that 13 Applicants did not provide any information; therefore, Applications 74283, 74285, 74286, 74402, 74427, 74592, 74611, 74922, 74979, 75157, 75158, 75160 and 75283 should be denied. The Tribe argues that in a hearing on another application filed by a Mr. Schumacher, the State Engineer denied the application because the applicant failed to respond to notices or

