

RECEIVED

2021 JUL 29 AM 11:44

STATE ENGINEERS OFFICE

1 Debbie Leonard (Nevada Bar No. 8260)
Leonard Law, PC
2 955 S. Virginia Street, Ste. 220
Reno, NV 89502
3 Phone: (775) 964-4656
debbie@leonardlawpc.com

4 *Attorney for Sierra Pacific Industries*

5
6 **IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

7 * * * * *

8 IN THE MATTER OF CANCELLED PERMITS
64977, 64978, 66400, 72700, 73428, 73429, 73430,
9 and 74327

**SIERRA PACIFIC INDUSTRIES'
WRITTEN COMMENTS FOR
HEARING ON PETITIONS TO
REVIEW CANCELLED PERMITS**

10
11
12
13
14 Sierra Pacific Industries ("SPI"), through its attorney Debbie Leonard of Leonard Law, PC,
15 submits the following comments for the hearing on IWS Basin, LLC's Petitions to Review
16 Cancelled Permits 64977, 64978, 66400, 72700, 73428, 73429, 73430, and 74327 ("the Permits").

- 17 1. SPI lodges a continuing objection to the State Engineer's denial of SPI's motion to
18 participate as a party in these proceedings. SPI incorporates herein the arguments made
19 in its motion to participate filed on November 30, 2020 and notes that IWS Basin did
20 not oppose that motion.
- 21 2. The State Engineer correctly determined in Ruling 6487 that the testimony and
22 evidence presented at the January 2020 hearing confirmed that Intermountain Water
23 Supply, Ltd. ("Intermountain") had no contract in place to satisfy the anti-speculation
24 doctrine when it filed its 2016 extension requests.
- 25 a. The Baran/Galileo agreement had expired on its own terms before
26 Intermountain filed its 2016 extension requests. That agreement also did not
27 bind the option holders to exercise the option, and the option holders were not
28 end users of the water.

1 b. Intermountain did not have an enforceable contract with Utilities Inc./Great
2 Basin Water Company at the time it filed its 2016 extension requests because a
3 material term – the existence and identity of a developer who would be the end
4 user of the water rights – was not determined until 2017 and that end user could
5 not use the water in the permitted place of use.

6 3. The State Engineer correctly determined in Ruling 6487 that Intermountain did not
7 proceed in good faith and with reasonable diligence to perfect the appropriations in the
8 permitted place of use.

9 4. IWS Basin’s petitions do not identify any grounds to modify, rescind or revoke the
10 State Engineer’s cancellation of the Permits.

11 5. IWS Basin’s request that the State Engineer take into account “equitable
12 considerations” (Pet. at 12:15) is improper because: (a) the State Engineer does not
13 have equitable authority, a power that is within the exclusive province of a court; (b)
14 the prohibition against water speculation is a fundamental requirement of Nevada water
15 law and existed at the time Intermountain filed its 2016 extension requests; and (c) the
16 State Engineer cannot deviate from the Supreme Court’s mandates in *Sierra Pacific*
17 *Industries v. Wilson*, 135 Nev. 105, 440 P.3d 37 (2019), which required the State
18 Engineer, on remand, to apply the rule set forth in the Court’s decision.

19 6. IWS Basin’s attempt to distinguish the *Desert Irrigation* decision is misplaced because
20 the Supreme Court’s holding in that case is clear-cut: An extension cannot be premised
21 on an intent to use water outside its permitted place of use. 113 Nev. 1049, 1053, 1056,
22 944 P.2d 835, 838, 840 (1997). The legal description in the Permits, and nothing else,
23 defines the Permits’ geographical limits. The fact that *Desert Irrigation* involved a
24 single permit while Intermountain held multiple permits, or that Intermountain’s
25 permits encompassed a large geographic area as opposed to a single subdivision are
26 distinctions without a difference. In fact, Intermountain’s conduct presents an even
27 more compelling case for cancellation because its Permits consisted of nearly 3,000
28 acre feet of water, comprising the entire perennial yield of Dry Valley, as opposed to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the 366.85 acre feet at issue in *Desert Irrigation*. 113 Nev. at 1053, 944 P.2d at 838.

Moreover, there is no exception to the *Desert Irrigation* rule for “contiguous” land; any proposed area outside the permitted place of use cannot be the basis for an extension.

7. Vague statements in past water planning documents regarding potential uses of water in the “North Valleys” do not substitute for the place of use specified in the Permits.

8. TMWA’s 2020-2040 Water Resource Plan refers to the Intermountain project as “conceptual” and states:

The following descriptions are of privately prepared water supply projects that are conceptual in nature and are promoted by project proponents as possible regional water resources. These projects have not been vetted for feasibility by TMWA, permitted, or constructed. Identification of a conceptual project shall not be construed as an indication of TMWA support or opposition of any project nor an indication of project viability. The list is not exhaustive and is intended to merely identify some potential projects for informational purposes. TMWA will continue to monitor project progress....

IWS BASIN, LLC (FORMERLY INTERMOUNTAIN WATER SUPPLY, LTD.), DRY VALLEY, BEDELL FLAT, NEWCOMB LAKE VALLEY

This project seeks to import approximately 3,500 AFA of groundwater to Lemmon Valley from three relatively undeveloped hydrographic basins approximately 20–30 miles north of Reno. In 2018, the State Engineer canceled IWS’s water right permits because it failed to show reasonable diligence in placing the water to beneficial use....

<https://tmwa.com/wp-content/uploads/2020/11/TMWA-WRP-2020-Final.pdf> p.69

9. Because Intermountain violated the anti-speculation doctrine and failed to show good faith and reasonable diligence to perfect the Permits in the authorized place of use, as a matter of law, the State Engineer had to cancel the Permits. That decision should be affirmed.

10. SPI incorporates, as if fully set forth herein, all of its arguments from earlier administrative proceedings related to the Permits and the ensuing litigation.

///
///
///
///

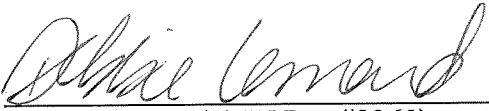
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

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

DATED this 29th day of July, 2021

LEONARD LAW, PC

By: 
Debbie Leonard (NV Bar #8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: (775) 964-4656
debbie@leonardlawpc.com

Attorney for Sierra Pacific Industries