

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

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

RULING
#6421

GENERAL

I.

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

FINDINGS OF FACT

I.

Project Water Rights and Background

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

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

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

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

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

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

² Transcript, pp. 19-20.

³ Transcript, pp. 20-21.

⁴ *See generally*, Exhibit 37.

TABLE 1

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

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

II.

SPI's Objections to Applications for Extensions of Time

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

⁵ Exhibit 37, pp. SPI 0002-0004.

⁶ Exhibit 37, pp. SPI 0005-0009.

⁷ Exhibit 37, pp. SPI 0010-0016.

⁸ Exhibit 37, pp. SPI 0025-0028.

⁹ Exhibit 37, pp. SPI 0029-0032.

¹⁰ Exhibit 37, pp. SPI 0033-0036.

¹¹ Exhibit 37, pp. SPI 0017-0024.

¹² Exhibit 37, pp. SPI 0037-0044.

¹³ See generally, Exhibit 38.

¹⁴ Exhibit 47.

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

III.

Timeliness of the 2017 Agreements

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

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

¹⁶ Exhibit 41.

¹⁷ Exhibit 42.

¹⁸ Exhibit 42 at SPI 1119.

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

²⁰ Exhibit 16.

²¹ Transcript, pp. 40-45.

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

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

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

²³ Exhibits 17 and 19.

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

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

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

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

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

²⁶ Exhibit 11 at SE ROA 671-677.

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

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

²⁹ Transcript, pp. 22-24.

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

IV.

The Loss of Some Approvals

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

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

³⁰ Transcript, pp. 27, 29.

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

³² Transcript, pp. 32-35, 55.

³³ Transcript, pp. 36-38.

³⁴ Transcript, p. 36.

³⁵ Exhibit 49 at SPI 01257.

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

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

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

V.

SPI's Speculation Objection

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

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

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

³⁷ Transcript, p. 110.

³⁸ Exhibit 17 at IWS 00342-00344.

³⁹ Exhibit 19 at IWS 00366.

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

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

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

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

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

⁴¹ Exhibit 39 at SPI 601.

⁴² Exhibit 38 at SPI 315.

⁴³ Exhibit 12-5 at SE ROA 1767-1769.

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

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

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

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

⁴⁴ Exhibit 39 at SPI 599-600.

⁴⁵ Exhibit 39 at SPI 574.

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

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

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

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

VI.

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

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

⁵⁰ See Exhibit 45.

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

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

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

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

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

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

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

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

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

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

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

VII.

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

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

CONCLUSIONS OF LAW

I.

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

⁵⁷ Exhibit 19-7 at IWS 00363.

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

⁵⁹ NRS Chapters 533 and 534.

II.

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

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

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

III.

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

⁶⁰ NRS § 533.380(3).

⁶¹ NRS § 533.380(6).

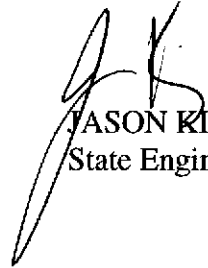
- (a) Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;
- (b) The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the county, city, town,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

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

RULING

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

Respectfully submitted,

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

Dated this 9th day of
January, 2018.