

AFFIDAVIT OF ROBERT W. MARSHALL

STATE OF NEVADA)
) ss.
 COUNTY OF WASHOE)

I, Robert W. Marshall, hereby swear under the penalties of perjury of the laws of the State of Nevada that the following assertions are true:

1. That I am one of the Managers of Intermountain Pipeline Ltd., a Nevada limited liability company which is the Manager of Intermountain Water Supply, Ltd., a Nevada limited liability company ("Intermountain"). This affidavit is filed in support of application for extension of time for Permits 64977, 64978, 66400, 73428, 73429, 73430, and 74327 for an underground source in Dry Valley, Washoe County, Nevada, Basin No. 95.

2. Intermountain holds a number of Permits issued by the Nevada State Engineer for groundwater from three hydrographic basins, north of Reno. The permits, basins and amount of water in the three basins is as follows:

LOCATION	BASIN NUMBER	PERMITS	TOTAL ACRE FEET
Bedell Flat	94	66873, 73048	368.1
Lower Dry Valley	95	74327, 73428, 73429, 73430, 66400	2000
Upper Dry Valley	95	64977, 64978, 72700	996
Newcomb Lake	96	67037	200
		TOTAL	3564.1 Afa

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All of the above permits are for municipal use in Lemmon Valley, except 72700, the place of use of which is Upper Dry Valley and Warm Springs Valley.

3. Intermountain has spent nearly \$3,000,000.00 on this municipal water project having (a) obtained right-of-way grants from the BLM after having gone through an EIS process,

(b) obtained a right-of-way grant from the BLM for a power line after an Environmental Assessment, (c) spent in excess of \$300,000.00 on an archeological study and field work, (d) prepared and filed an application under UEPA with the Public Utility Commission of Nevada, (e) obtained a Washoe County Special Use Permit, (f) obtained, at great expense all of the above permits from the State Engineer, (g) drilled five test wells, (h) test pumped seven wells, including a ten (10) day continuous pump test on five (5) of the wells, (i) commissioned and received technical studies from DRI, Stantec, Interflow Hydrology, Cordrilleran Hydrology and an analysis from R. Michael Turnipseed, P.E., former Nevada State Engineer, (j) paid for and obtained easements over private land, (k) received an independent study of available water from Dry Valley prepared jointly by USGS, DRI and Boise State University, (l) obtained on December 14, 2015, an oral opinion from the Second Judicial District Court of Nevada for Washoe County affirming the State Engineer's determination in June of 2015 that Intermountain had proceeded with good faith and reasonable diligence to perfect its applications pursuant to the provisions of NRS 533.380 which requires the "steady application of effort to perfect the applications(s) in a reasonably expedient and efficient manner under all the facts and circumstances," (m) received a written opinion from the Court on January 12, 2016, consistent with the oral opinion, a copy of which is attached to this affidavit, and (n) the court decision is now final, the Protestant-Petitioner Sierra Pacific Industries, Inc. having failed to appeal from the court's decision within the time allowed by law.

4. Understandably, Intermountain had to devote substantial time and resources to the vexations litigation.

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5. During 2015, Intermountain entered into an Option Agreement with two world-wide engineering and construction firms, experienced in water systems development. One firm is located in Chicago, Illinois and the other is located in Tel Aviv Israel.

6. In addition to the agreement with the engineering and construction firms, Intermountain, during 2015 and early 2016 has had extensive negotiations with Utilities Inc., Nevada and Arizona, a PUCN certificated utility company to distribute Intermountain's water to its present and future customers in the Cold Springs area of Washoe County. An agreement has been reached and is in the process of being signed.

7. Intermountain has had numerous meetings with Developers whose plans involve construction of nearly 10,000 houses. The developments are in various stages of permitting, with all but one small one, in the City of Reno. Much work has been done by the developers to date. All of the developments are adjacent to or very near the existing developed areas. Intermountain expects to have Developer agreements in hand within three to four months.

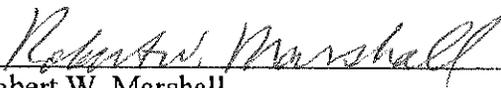
8. Negotiating and entering into the agreements referenced in paragraphs 5, 6, and 7 above would normally entail significant and substantial attorney fees. Because one of the principals in Intermountain is an attorney, experienced in water law and in contract preparation, Intermountain has been spared such expense. However, that fortunate occurrence does not minimize the countless hours and extensive effort that has been put forth on behalf of Intermountain to perfect its permits in a "reasonably expedient and efficient manner."

9. A list of allowable expenses incurred by Intermountain during 2015 to move the project along is attached with supporting documentation verifying the expenditures. These expenditures total \$23,300.39 for 2015. In addition to the listed expenses, all of which Intermountain believes are allowable by the State Engineer in moving the project forward,

Intermountain spent the additional sum of \$1,054.10 for Secretary of State (\$325.00); bank fees (\$35.00), accountant fees (\$501.90), and entertainment of construction firm representative and developers (\$192.20).

10. Intermountain's Statement in opposition to the pre-filed "speculative" objection to Intermountain's anticipated applications for extension of time for some of its permits filed by the lawyer for Sierra Pacific Industries on or about December 2, 2015 is submitted with this affidavit.

FURTHER AFFIANT SAYETH NAUGHT.


Robert W. Marshall

SUBSCRIBED and SWORN to before me
this 4 day of March, 2016 by Robert W. Marshall.


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INTERMOUNTAIN WATER SUPPLY, LTD.

2015 EXPENDITURES

1.	Extensions of Time Check 1502, 2/2//15, \$960.00 (73428, 73429, 73430, 74327, 67037, 64977, 64978, 66400) Check 5006, 12/21/15, \$240.00 (66873, 73048)	\$1,200.00
2.	BLM – rent on four (4) well sites Check 5003, 11/20/15	\$500.00
3.	Interflow Hydrology – monitoring continuous recording meters Check 11444, 04/07/15 Check 11673, 11/13/15	\$755.72 \$594.75
4.	Western Nevada Supply Co. – well repair part Check 1507, 4/13/15	\$8.74
5.	Enviroscientists – PUC, UEPA Application Check 3, 9/10/15	\$114.75
6.	Parsons Behle & Latimer – legal work Sierra Pacific Industries Petition for Judicial Review Check 2, 8/25/15 Check 4, 9/25/15 Check 5002, 11/13/15 Check 5008, 12/29/15	\$16,567.90
7.	Parsons Behle & Latimer – legal work, archeological contract Check 5004, 12/12/15	\$1,731.10
8.	Reimbursed Expenses – maps and postage Check 1504, 2/28/15 Check 5005, 12/16/15	\$32.21
9.	Reimbursed Expenses – trip to Pahrump – Utilities Inc. Check 1, 08/01/15	\$114.29
10.	Copies of documents to project construction Firms (Sierra Legal Duplicating) Check 5007, 12/28/15	<u>\$1,680.93</u>
	Total	\$23,300.39

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**STATEMENT OF INTERMOUNTAIN WATER SUPPLY IN OPPOSITION TO SIERRA
PACIFIC INDUSTRIES' PRE-MATURE FILED OBJECTIONS TO APPLICATIONS FOR
EXTENSIONS OF TIME FOR INTERMOUNTAIN'S DRY VALLEY PERMITS**

Sierra Pacific Industries, a California corporation ("Protestant") filed objections to anticipated extensions of time to be filed in the future by Intermountain Water Supply, Ltd., a Nevada limited liability company ("Intermountain") for its permits in Dry Valley (Basin 95). The objections were filed on December 2, 2015, and supplemented on January 6, 2016. The objections raise the same issues which Protestant raised with respect to Intermountain's filings in 2015 for its Dry Valley permits. All of Protestants' objections were rejected by the Washoe County District Court in its Order Denying Petition for Judicial Review dated January 12, 2014, in case CV15-01257. The objections are repetitive to those filed last year. The Court's Order became final on February 11, 2016, the last day for Protestant to file its appeal to the Nevada Supreme Court. No appeal was taken.

1. **Objections constitute a fugitive document.** Protestant's entire filing should be ignored by the State Engineer as a fugitive document. The filing did not address any matter pending before the State Engineer. There is nothing in the water law which authorizes filing objections to anticipated but non-existent pending matters. Indeed, there is no procedure in the water law which authorizes objections to extension of time applications already on file, let alone "speculative" objections to anticipated extension of time applications which might be filed in the future.

2. **The State Engineer Rulings cited in the objections are not applicable to the issues raised by Protestant's objections.** The objections filed by Protestant consist primarily of the TMWA 2010-2030 Water Resource Plan dated 2009, the 2011-2030 Comprehensive Regional Water Management Plan dated January 14, 2011, numerous State Engineer rulings denying Applications (#4192 – EcoVision, #4548 – Amargosa Resources, #5612 – Lifestyle Houses, #6063 – Aqua Trac), and legislative histories.

All of the cited State Engineer rulings denied applications for permits (*see* NRS 533.370) and did not involve extensions of time pursuant to the provisions of 533.380. They are not controlling with respect to applications for extensions of time (*see* pages 6 and 7 of Court decision on Case CV 15-01257, *Sierra Pacific Industries v. Jason King, P.E., and the Division of Water Resources Department of Conservation*, before the Second Judicial District Court of Nevada, in and for Washoe County) (“Appeal”).

3. **The submitted Water Resource Plans reaffirm Intermountain’s Project.** The cited 2010-2030 Water Resource Plan dated December 2009 of the Truckee Meadows Water Authority (“TMWA Plan”) does not cancel or make obsolete the approval of the Intermountain Water Supply Project by the Regional Water Planning Commission in its 1995-2015 Regional Water Management Plan. In fact, the TMWA Plan states on page 114 that TMWA’s policy is as follows:

“There are a number of water importation projects being pursued by private developers who are willing to bring these water supplies to the region.---However, to the extent these private developers find their projects to be economically permittable, cost effective and worth the financial risk they may take, TMWA would integrate these projects into its water resource supply mix and would accept will serve commitments against these supplies before other supplies are fully allocated.”

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The underscored portion of the quote demonstrates the falsity of Protestants’ claim that the Intermountain Project water cannot be used until after exhaustion of the Vidler Project Water.

Table 20 of the TMWA Plan (p. 115) highlights the Intermountain project and Table 21 (p. 116) identifies Dry Valley as a source of 3,000 acre feet of municipal water to “Lemmon Valley and possibly Cold Springs.” Page 117 of the TMWA Plan is a map (Figure 30) which shows the Intermountain pipeline from lower Dry Valley and Bedell Flat to Lemmon Valley and page 120 of the TMWA Plan shows, on Table 22, the Intermountain Project and the Vidler Project (North Valley Importation) as the only two approved projects. Page 119 of the TMWA Plan contains a narrative of the intermountain Project.

The TMWA Plan specifically includes the Intermountain Project and does not in any way render obsolete the 1995-2015 Regional Water Management Plans which originally encouraged the Intermountain Project for development.

The Western Regional Water Commissions' 2011-2030 Comprehensive Regional Water Management Plan, dated January 14, 2011, submitted by Protestant, although more general than the TMWA Plan, and not confined to only the TMWA service territory, states on p. 3 of the Executive Summary that "New water resources, including imported water, may be developed provided they further the goals of the Regional Plan and Regional Water Plan." Specifically p. 16 of the Executive Summary of the 2011-2030 Comprehensive Regional Water Management Plan dated January 14, 2011, states:

"The demand for potable water supplies in Cold Springs will 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.*" (emphasis added).

The TMWA Plan and the Comprehensive Regional Water Management Plan both support and recognize the development of Intermountain's Project as a supplier of municipal water to the North Valleys, contrary to the inaccurate assertions of the Protestant.

The Supplement filed by Protestant constitutes a "draft plan," not yet in effect, and should be considered in that light. However, the TMWA Draft plan for 2016-2035 re-states its policy on page 131 as follows:

There are a number of water importation projects being pursued by private developers who may be willing to bring these water supplies into the region. ----to the extent these private developers find their projects to be environmentally permissible, cost effective and worth the financial risk they may take, TMWA would integrate these projects into its water resource supply mix and would accept will-serve commitments against these supplies before other supplies are fully allocated. (emphasis added).

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The TMWA draft plan continues on page 132 to describe the Intermountain Project as follows:

"Intermountain Water Project:

Sponsored by Intermountain Water Supply, Ltd., the Intermountain Water Project ("IWP") is permitted for 3,564.1 AF/yr for municipal water from three close-in basins to supply water to the North Valleys. Interbasin transfers have been approved as follows: Bedell Flat 368.1 AF/yr, Lower Dry Valley ("LDV"), 2,000 AF/yr, Upper Dry Valley ("UDV"), 996 AF/yr, and Newcomb Lake, 200 AF/yr. The project received a record of decision ("ROD") from BLM for a pipeline and related infrastructure from the LDV and Bedell Flat well sites to Lemmon Valley as well as an Environmental Assessment for a power line from NV Energy's transmission line on Red Rock Road to the Bedell Flat well site and

pump station. Right-of-way grants and easements over private land have been secured for the LDV and Bedell Flat well sites. Private easements have also been secured for the Newcomb Lake well site and a portion of the UDV well sites.

Test wells have been drilled and pumped in LDV which indicates a sustainable yield of 25 percent more water than is currently permitted. The project can be developed in increments as demand requires, starting with Bedell Flat and moving through the five LDV wells sites and thereafter to Newcomb Lake and UDV. Washoe County has issued the IWP a Special Use Permit.”

4. **The TMWA plan is limited in area and does not cover areas outside of TMWA’s service territory.** The TMWA Plan covers only TMWA’s service territory as of 2009 and does not include any of the Washoe County service territory nor Cold Springs, both of which areas can easily be served by the Intermountain Project. Neither does the TMWA Plan include area of Lemmon Valley that are not within TMWA’s or Washoe County’s service areas.

5. **Bacher case requirements not applicable to Extensions of Time.** Protestant once again tries to apply the Bacher requirements to applications for extensions of Time in Protestants’ “speculative” objection (*Bacher v. State Engineer*, 122 Nev. 1110, 146 P3rd 793 (2006)). Protestants’ objection was filed prior to the court’s decision in the appeal, which was entered on January 12, 2016. The Court found that the requirements for Bacher, which was decided in 2006, apply to

“new or changes to existing, interbasin water rights. As such, the applications at issue in those prior decisions triggered NRS 533.370(3) and the anti-speculation requirements adopted in Bacher. This case involves applications for extensions of time to put water appropriated under existing water rights to beneficial use. Accordingly, the State Engineer’s decision in this case is not contrary to those prior decisions.”

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The court decision in the Appeal is controlling with respect to the issues raised in Protestant’s Objection and is binding on Protestant. To assert the same objections that have already been decided between the parties constitutes vexatious litigation involving a multiplicity of suits.

6. **Available Truckee River Water is not applicable to future needs of the North Valleys.** Protestant quotes from the Comprehensive Regional Water Management Plan of 2011-2030 to the effect that 50,000 acre feet of Truckee River mainstream water is potentially available to meet TMWA’s future water right requirements through the planning horizon. This statement is for areas served by the Truckee River (which is 85% of TMWA’s service obligation), and does not include the North Valleys. Protestants’ obvious purpose in including this statement is to show no potential demand

for the Intermountain water. If that were true, the TMWA plan and the other plans would not refer specifically to both the Intermountain as well as the Vidler importation projects with respect to the North Valleys.

7. **Bad local economy 2007-2013.** One final note should be added with respect to the 2010-2030 TMWA Water Resource Plan dated December 2009, and the Draft TMWA Water Resource Plan, 2016-2035. Both of these plans highlight the severity of the “Great Recession” in the Northern Nevada region and demonstrate the wisdom of the legislature in requiring the State Engineer to consider “any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use.” (NRS533.380 4(c)).

Examples:

- a. Draft 2016-2035 Water Resource Plan:
 - i. By 2011, median house prices had plummeted 57% from \$345,000 to \$149,000, a level below that of 2001. (p. 21)
 - ii. In 2006, approximately 223,000 people were employed in the Reno Metropolitan Statistical Area; by 2011, employment had decreased to 189,000 people. (p. 22)
 - iii. Unemployment jumped over 200% from 2006 through 2011. (p. 22).
 - iv. From 2006 to 2010 “will serve” commitments dropped from a high of 2,800 acre feet per year to a low of 117 acre feet per year, a level not seen since 1958, a trend which continued until 2013 where a very modest upturn began to occur (pp. 23 and 24).
- b. TMWA 2010-2030 Water Resource Plan dated December 2009.
 - i. The region experienced a “precipitous drop in development activity beginning in late 2006, continuing through 2009 (the date of the Plan). (pp. 21 and 22).
 - ii. “when the economy began to falter in Nevada beginning in late 2006, development of any significance declined substantially” (p. 23).
 - iii. As of August 2009, “Nevada is in the midst of the longest, deepest, recession since World War II, and the recent labor market trends show no sign of improvement.” (p. 24).
 - iv. “the economic factors described above have had a direct impact on the water rights market---” (p. 25)

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8. **Summary.**

- a. The objection of Protestant to Intermountain's anticipated filings for extension of time in 2016 should be ignored as a fugitive document not responsive to any pending matter before the State Engineer at the time of filing.
- b. The cited State Engineer rulings denying applications for interbasin transfers are not applicable to Intermountain's application for extension of time, based on the Judge's decision in the Appeal.
- c. The various water resource plans filed by Protestant recognize the Intermountain project as one of only two projects which are permitted and approved to supply water to the North Valleys, including Cold Springs. There is nothing obsolete in the original approval of the Intermountain project in the 1995-2015 Regional Water Management Plan.
- d. The TMWA 2010-2030 plan does not cover all of the area which can be served by the Intermountain project. Specifically, it does not cover much of Lemmon Valley, it does not cover Cold Springs and it does not cover areas of Lemmon Valley outside of TMWA's service territory. Not only do the submitted plans not show there is no need for Intermountain's municipal water, they specifically include the Intermountain project in their plans.
- e. The Bacher requirements for new applications for interbasin transfers under NRS 533.370 are not applicable to applications for extensions of time under NRS 533.380, according to the Judge's decision in the Appeal.
- f. Protestant's quote regarding 50,000 acre feet of water from the mainstream of the Truckee River as being sufficient for all of TMWA's water requirements through 2030 refers to the areas served by Truckee River water and not the North Valleys or Cold Springs.
- g. The severity of the "Great Recession" is highlighted in the 2010-2030 TMWA Water Resource Plan dated December 2009 and in the Draft TMWA Water Resource Plan 2016-2035. The information presented shows the wisdom of requiring the State Engineer to consider economic conditions when determining whether or not to grant an extension of time. (*see* NRS 533.380 4(c)).

9. **Conclusion.** The objections of Protestant should be rejected by the State Engineer when considering further applications for extension of time by Intermountain with respect to its Dry Valley permits.

Respectfully submitted
Intermountain Water Supply, LTD

By Robert W. Marshall