

FILED

JUL 06 2010

TRACEY S. JENKINS
CLERK OF SUPREME COURT
BY _____
DEPT. OF CORRECTIONS

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 56351

District Court Case No. 08-CV-0363-D

J.W. BENTLEY and MARYANN
BENTLEY, Trustees of the Bentley Family
1995 Trust,

Petitioners.

v.

THE NINTH JUDICIAL DISTRICT
COURT of the State of Nevada, In and For
the County of Douglas, and THE
HONORABLE DAVID R. GAMBLE,
District Court Judge,

Respondents,

AND

DONALD S. FORRESTER; KRISTINA
M. FORRESTER; HALL RANCHES,
LLC, a Nevada limited liability company;
THOMAS J. SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; RONALD R. MITCHELL; and
GINGER G. MITCHELL as Intervenor
In the Matter of the Determination of the
Relative Rights in and to the Waters of
Mott Creek, Taylor Creek, Cary Creek
(aka Carey Creek), Monument Creek, and
Bull Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg Spring,
Sharp Spring, Wheeler Creek No. 1,

1 Wheeler Creek No. 2, Miller Creek, Beers)
2 Spring, Luther Creek, and Various)
3 Unnamed Sources in Carson Valley,)
4 Douglas Valley, Nevada,)
5 Real Parties in Interest.)
6

7 **VERIFIED PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

8 **PETITIONERS' APPENDIX**
9 **VOLUME 1**
10

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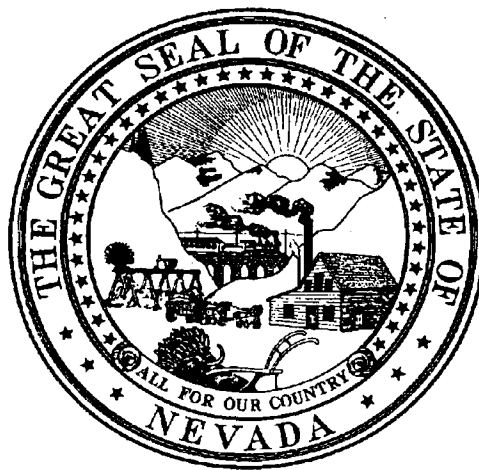
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IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

FINAL ORDER OF DETERMINATION

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT CREEK, TAYLOR CREEK, CARY CREEK (AKA CAREY CREEK), MONUMENT CREEK, BULLS CANYON, STUTLER CREEK (AKA STATTLER CREEK), SHERIDAN CREEK, GANSBERG SPRING, SHARPE SPRING, WHEELER CREEK NO. 1, WHEELER CREEK NO. 2, MILLER CREEK, BEERS SPRING, LUTHER CREEK AND VARIOUS UNNAMED SOURCES IN CARSON VALLEY, DOUGLAS COUNTY, NEVADA.

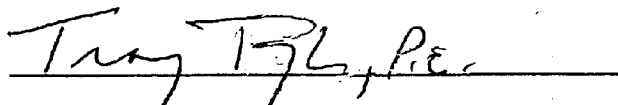


TRACY TAYLOR, P.E.
STATE ENGINEER
August 14, 2008

CERTIFICATION OF STATE ENGINEER

I, Tracy Taylor, State Engineer of the State of Nevada, duly appointed and qualified, having charge of the records and files of the office of the State Engineer, do hereby certify that the following is a full, complete and true copy of the Final Order of Determination in and to the waters of Mott Creek, Taylor Creek, Cary Creek (AKA Carey Creek), Monument Creek, Bulls Canyon, Stutler Canyon (AKA Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Beers Spring, Autumn Hills Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Luther Creek and various unnamed sources in Carson Valley, Douglas County, Nevada. This Final Order of Determination was prepared and filed in this office on the 14th day of August, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Carson City, Nevada this 14th day of August, 2008.



TRACY TAYLOR, P.E.
STATE ENGINEER

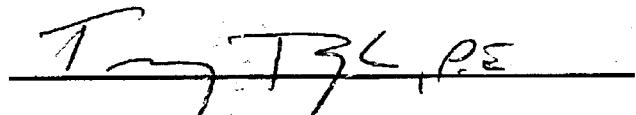
ADJUDICATION

CARSON VALLEY

DOUGLAS COUNTY, NEVADA

Presented herewith is the Final Order of Determination defining the rights in and to the waters of Mott Creek, Taylor Creek, Cary Creek (AKA Carey Creek), Monument Creek, Bulls Canyon, Stutler Creek (AKA Statler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Miller Creek, Beers Spring, Luther Creek and Various Unnamed Sources in Carson Valley, Douglas County, Nevada.

This Final Order is prepared under the provisions of chapter 533 of the Nevada Revised Statutes.

A handwritten signature in black ink, appearing to read 'Tracy Taylor, P.E.', is written over a horizontal line.

Tracy Taylor, P.E.

State Engineer

Made, filed and caused to be

Entered in this office of the

State Engineer this 14th day

of August, 2008.

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IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT CREEK, TAYLOR CREEK, CARY CREEK (AKA CAREY CREEK), MONUMENT CREEK, AND BULLS CANYON, STUTLER CREEK (AKA STATTLER CREEK), SHERIDAN CREEK, GANSBERG SPRING, SHARPE SPRING, WHEELER CREEK NO. 1, WHEELER CREEK NO. 2, MILLER CREEK, BEERS SPRING, LUTHER CREEK AND VARIOUS UNNAMED SOURCES IN CARSON VALLEY, DOUGLAS COUNTY, NEVADA.

I. GENERAL

On June 5, 1987, a petition was filed in the Office of the State Engineer requesting a determination of the relative rights of the claimants to the waters of Sheridan Creek, Douglas County, Nevada. This request was followed by an Order, dated, June 17, 1987, from the Ninth Judicial District Court in and for Douglas County, State of Nevada, requiring the State Engineer to proceed with the same.

The State Engineer considered the scope of other surface waters in Carson Valley and after close study of the evidence and locality determined the facts and conditions warranted the initiation of proceedings for determination of the relative rights of the claimants to the waters that drain into the Carson Valley from the Eastern slope of the Carson Range of mountains.

On October 22, 1990, the State Engineer entered Order No. 1031 initiating the proceedings to determine the relative rights of claimants of vested rights to waters located in T.12N., R.19E., M.D.B.&M. A copy of the Order was sent by certified mail to persons identified as owning land within the subject area that could be potential claimants. The notice was published on November 1, 8, 15, 22, and 29, 1990, in the Record-Courier located in Gardnerville, Nevada, a newspaper of general circulation within the boundaries of the subject adjudication area.

The State Engineer next prepared Order No. 1034 establishing January 11, 1991, as the date the State Engineer would commence taking proof of claims of the rights in and to the waters of the described sources, and establishing March 18, 1993, as the final date for filing said proofs in the Office of the State Engineer. The notice was published on January 17, 24, 31 and February 7 and 14, 1991, in the Record-Courier located in Gardnerville, Nevada, a newspaper of general circulation within the boundaries of the subject adjudication area.

On March 10, 1993, the State Engineer sent by certified mail to each potential claimant that could be reasonably ascertained a notice extending the

final date for filing said proofs in the Office of the State Engineer to March 18, 1994. Surveys and corresponding maps were caused to be executed and submitted by the claimants to the Office of the State Engineer. Nevada Revised Statute § 533.100 states that the map must depict the following:

- (a) The course of the stream.
- (b) The location of each ditch or canal diverting water therefrom, together with the point of diversion thereof.
- (c) The area and outline of each parcel of land upon which the water of the stream has been employed for the irrigation of crops or pasture.
- (d) The kind of culture upon each of the parcels of land.

On June 12, 2006, the State Engineer issued an Abstract of Claims, The Preliminary Order of Determination and Notice of Order Fixing and Setting Time and Place of Inspection in the Matter of the subject adjudication pursuant to NRS § 533.140. A copy of the aforementioned documents was sent to all claimants. The time for inspection was from August 15, 2006 to September 15, 2006, (Saturday, Sunday and legal holidays excluded) from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. of each day in the Office of the State Engineer in Carson City, Nevada. The letter further stated: "If no objections are received on or before September 15, 2006, the Order of Determination will be prepared and filed in accordance with the provisions of the NRS §§ 533.160 and 533.165."

Objections to the Preliminary Order of Determination are to be filed in the Office of the State Engineer on or before September 15, 2006, in accordance with NRS § 533.145.

A letter, dated September 15, 2006, from Paul G. Taggart was submitted to the State Engineer, Tracy Taylor, P.E., requesting "an extension of time of sixty (60) days for filing objections to the Preliminary Order of Determination".

An extension of time for the filing of objections to "the close of business on October 6, 2006" was granted as set forth in a letter, dated September 20, 2006, from Robert H. Zeisloft, P.E., Chief, Surface Water & Adjudication Sections.

Objections to the Preliminary Order of Determination were filed in accordance with provisions of Nevada Revised Statute § 533.145 by Elizabeth and Eric Park; by B.J.Vasey, P.E., PLS, on behalf of Edward Groenendyke; by Paul G. Taggart, Esq., on behalf of Jerald R. Jackson, Trustee of the Jerald R. Jackson 1975 Trust, as amended, and Irene M. Windholz, Trustee of the Irene M. Windholz Trust, dated 8/11/92; by B.J. Vasey, PE, PLS, on behalf Myles S. Douglas and Amy B. Douglas as Grantors and Trustees of the Bartholomew Family Trust; by John G. Stone on behalf of the current owners, Mr. and Mrs. McKay; by Ross E. de Lipkau, Attorney, on behalf of Gerald R. Novotny and Jeanne M. Moss-Novotny Trustees of the Novotny Family Trust Dated February 9, 1984; Donald E. Brooks, Co-Trustee, and Lynnette L. Brooks, Co-Trustee;

Bernard D. and Margaret W. Benz, as agents for the Mottsville Cemetery Association; by B.J. Vasey, PE, PLS, on behalf of Don F. & Carolyn L. Ahern; by B.J. Vasey, PE, PLS, on behalf Destination Sports Inc. Et Al; Donna Buddington; by B.J. Vasey, PE, PLS, on behalf of the Bartholomew Family Trust; by Jennifer Yturbide, Esq., on behalf of Thomas M. Yturbide and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust.

All parties of interest were properly noticed by letter, dated January 16, 2007, titled "**NOTICE OF HEARING**", stating: "the hearing to consider said objections will convene at **9:00 a.m., Monday, March 5, 2007, continuing through Friday, March 9, 2007, at the Division of Water Resources, Hearing Room, 901 South Stewart, Second Floor, Carson City, Nevada.**"

After all parties of interest were properly noticed, a public administrative hearing on the objections to the Preliminary Order of Determination was held before representatives of the State Engineer on March 5 and March 7, 2007.

II. OBJECTIONS TO THE PRELIMINARY ORDER OF DETERMINATION

Objections to the Preliminary Order of Determination were filed in accordance with NRS § 533.145 and are summarized below:

- i. Objection filed in regard to Proof of Appropriation V-06350 by Elizabeth and Eric Park submitted September 29, 2006:

"The existing proof submitted" by Tom Yturbide for the waters of Mott Creek "shows irrigation ditches using the property V-06351 as historical water usage for the entire 10 acre parcel not complete usage on the property V-06350. Object to the objection submitted September 15, 2006 by Jennifer Yturbide ESQ Minden NV 89423"

- ii. Objection filed in regard to Proof of Appropriation V-08850 on behalf of Edward Groenendyke, by B.J.Vasey, P.E., PLS:

"The purpose of this letter is to object to the subject Preliminary Order of Determination on behalf of the Owner of Record of Proof V-08850.

Unnamed Spring (A) described in V-08850 can irrigate the entire 37.97 acres by direct diversion as described in the Proof. The reduction in acreage from 37.97 acres to 26.69 acres (11.28 acres) described on Pages 47 and 131 is incorrect because the area north of the drainage ditch as depicted on the beneficial use map filed under Permits 24918-9 is irrigated out of a 6-inch pipe under Foothill Road on the north side of the Groenendyke property.

The point at which the water discharges onto said property is shown on the Schematic drawing on Page 195 of the Preliminary Order. The 6" pipeline was also described in a letter dated September 12, 1996 signed by R. Michael Turnipseed, State Engineer (copy enclosed). Turnipseed's letter also refers to a statement by Matt Benson and recorded Document 262415 on file in your office which describe historic irrigation practices of the Heritage Ranch.

The duty shown as being owned by Groenendyke under Permit 24919 – Certificate 7842 in Turnipseed's letter is 58.19 acre feet and we request that the duty shown on Page 130 under Proof V-08850 also be at least 58.19 acre feet and the acre feet per acre adjusted to reflect the 37.97 acres as the Place of Use.

On Page 131 we request that the Place of Use in the NW NE be changed to 13.41 acres and the SW NE to 14.0 acres as shown in the original Claim. We also request that the Total Acres Claimed be changed to 37.97 acres.

We also request that the note on Page 131 be revised regarding the reduction or acreage from 37.97 acres to 26.69 acres and under Remarks state that 12.43 acres (1.15 AC NE NW, 6.39 AC NW NE, 4.89 AC SW NE) is not supplemental to Proof V-02856."

See attached letter, dated September 12, 1996, from R. Michael Turnipseed, P.E., State Engineer to Jerald R. Jackson.

- iii. Objection filed in regard to Proofs of Appropriation V-09264, V-09265, V-09266, V-09267, V-09268, V-09269, V-09270, V-02856, V-06342, V-06343, V-06344, V-06345 and Permits Nos. 24918, C-7843, and 24919, C-7842, on behalf of Jerald R. Jackson, Trustee of the Jerald R. Jackson 1975 Trust, as amended, and Irene M. Windholz, Trustee of the Irene M. Windholz Trust, dated 8/11/92, by Paul G. Taggart, Esq.:

**"I. Drain and Waste Rights to Unnamed Jackson Spring
"A" and Any Unnamed Creek that Issues There From.**

Claimants seek clarification by the State Engineer that the Preliminary Order of Determination intended to create only drain and waste rights to Jackson Unnamed Spring "A" under the following claims: V-09264, V-09265, V-09266, V-09267, V-09268, V-09269 and V-09270.

In the event the State Engineer does not confirm that these vested claims are solely for drain and waste, claimants object to the

granting of prime supply water rights under these vested claims, for the following reasons:

A. These rights are properly considered drain and waste uses because they are served downstream from the uses that are adjudicated under Proofs Nos. V-06342, V-06343, V-06344, and V-06345.

B. No competent evidence exists regarding the proper priority date for these claims; therefore, they should be considered junior in priority to Proofs Nos. V-06342, V-06343, V-06344, and V-06345.

"II. Stock Watering Rights."

"Claimants object to the rejection of stock watering rights as it relates to Proofs V-02856 (if at all), V-06342, V-06343, V-06344, V-06345: and Permits Nos. 24918 C-7843 and 24919 C-7842." The waters of the referenced Unnamed Springs were first put to beneficial use in 1853. In his "Evaluation of Vested Water Right [sic] from an Unnamed Spring in Alpine County, California" (a copy of which is attached hereto as Exhibit A and incorporated herein by this reference), Milton L. Sharp, P.E., as a consultant to the Jackson/Windholz Trusts, began his report by making the following declaration:

This report and the accompanying map have been prepared for the purpose of supporting a claim of vested right by Jerald R. Jackson, Trustee, Jerald R. Jackson 1975 Trust, to the waters originating from an unnamed spring located in Alpine County, California, only about 200 feet west of the Nevada-California State Line. The spring is located on the easterly slope of the Carson Range, a portion of the Sierra Nevada Mountains, so that water originating from the spring flows naturally into the Carson Valley in Douglas County, Nevada, and all of the water has been and is now used beneficially on land located in Douglas County, Nevada for agricultural irrigation, **stock watering** and domestic purposes. The unnamed spring, other water sources referred to in this report and lands referred to are all located within Section 26, township 12 North, Range 19 East, Mount Diablo Meridian. The unnamed spring is located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 26, and is referred to in this report as the Unnamed Spring (SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sect. 26). Location of the Unnamed Spring, topographic features in the vicinity, property delineation and other significant features are indicated on the attached map. (Sharp, page 1, emphasis added.)

Therefore, stock watering has always been associated with the water from this spring.

Mr. Sharp next addressed the history of these uses.

Historically, the land owned by Jerald R. Jackson, Trustee, was a part of a ranch referred to as the Heritage Ranch or the old Berrum Ranch. The Heritage Ranch land has been under cultivation since the early days of white settlement in the Carson Valley, extending back to the 1850's [sic]. (See Section 5.) The old original ranch house is located adjacent to Foothill Road on the Jackson property as indicated on the attached map. The Jackson property is the most westerly part of the old Heritage Ranch or Berrum Ranch and is in close proximity to the Unnamed Spring (SW¼NW¼, Sect. 26). (Sharp, page 4.)

As the Berrum Ranch was divided over time, it continued to be farmed and it continued to have livestock that included horses and cattle. The area of the former Heritage Ranch that is still owned by the Claimants and subject to Proofs V-02856, 06342, 06343, 06344, and 06345 is entitled to water 25 head of cattle and four horses. (See Affidavit of Jerald R. Jackson, attached hereto as Exhibit B and incorporated herein by this reference.) The following elaboration from the Sharp report confirms the integrity of the claims of all such vested rights:

Historical documents and publications indicate that agricultural activity, including irrigation, began in the Carson Valley during the 1850's and 1860's. Mormon settlers began cultivation and irrigation of land along the foothills of the Carson Range as early as 1851. One historian, Grace Dangberg, states that the land in the vicinity of the town of Sheridan, a few miles north of the Jackson property, was cultivated in the early 1850's (ref. no. 9). Fred Settlemyer, a pioneer rancher, states in his "recollections" that 3,000 to 4,000 acres were irrigated in the Carson Valley in the early 1850's (ref. no. 8). The land which later become [sic] know [sic] as the Berrum Ranch and later the Heritage Ranch was part of the early agricultural development. (Sharp, pp. 6-7.)

The claim of vested right to the waters of the Unnamed Spring (SW¼NW¼, Sect. 26) for irrigation and domestic use on the land owned by Jerald R. Jackson is justified as follows:

1. The land which was formerly known as the Berrum Ranch or the Heritage Ranch, including the land owned by Jackson, was developed and irrigated during the early settlement and development of the Carson Valley.
2. The diversion from the spring to the Jackson land and to the old ranch house was established prior to 1890 during

the original development of the land. The historical record indicates that all of the water was diverted from the spring.

3. Physical conditions establish that the Unnamed Creek (NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sect. 26) exists as a source of water separate from the Unnamed Spring.
4. Nevada State Engineer appropriation of water from the Unnamed Spring in 1972 is superseded by the vested right claim, but the appropriation and supporting map verify continued existence of the pipeline diversion and use of the waters on land now owned by Jerald R. Jackson.

The Jackson vested right should provide for a date of priority of use coinciding with the earliest date of agricultural development in Carson Valley, established as 1852 in the Barber Creek Decree. The vested right should provide for domestic use, **stock watering** and irrigation of 22.26 acres with a duty of 4.0 acre feet per acre from all sources. (Sharp, pp. 11-12; emphasis added.)

“III. Rotation Schedule.”

“A. Claimants object to the requirement of a rotation schedule pertaining to any water rights claimed under V-06342, V-06343, V-06344 and V-06345, because these water rights are primary to all other water rights at the source.”

“B. Should the State Engineer determine that there is more than one priority user on Unnamed Spring “A” or on any unnamed creek flowing therefrom, then Claimants seek confirmation by the State Engineer that the Preliminary Order of Determination does not preclude establishing a rotation schedule for water use.”

Respectfully, Claimants also draw to the attention of the State Engineer the Affidavits and statements made by long-time ranchers and residents of the Carson Valley and of the vicinity of the subject properties, in related and unrelated Objections; the court records and testimony; and the maps submitted, as well as all applicable filings and archival data on file with the Office of the State Engineer, without limitation.

Dated this 16th day of October, 2006.

Also, included is the following exhibit to the Jackson objection to the Preliminary Order of Determination.

EXHIBIT B

AFFADAVIT OF JERALD R. JACKSON

STATE OF NEVADA)
) SS.
COUNTY OF DOUGLAS)

I, JERALD R. JACKSON, hereby swear (or affirm) under penalties of perjury, that the follow assertions are true of my personal knowledge:

1. I am the Trustee of the Jerald R. Jackson 1975 Trust, as amended 8/11/92, and I make this Affidavit as such Trustee and on behalf of such trust, as amended, as well as on behalf of Irene M. Windholz, Trustee of the Irene M. Windholz Trust dated 8/11/92, which two trusts are the owners of 100% of the water rights for which Proofs V-02856, V-06342, V-06343, V-06344, V-06345 are being submitted; that I have read the within Objection to Preliminary Order of Determination, and know the contents thereof; that it is true to the best of my own knowledge, except as to those matters stated therein on information and belief, and that as to such matters, I believe it to be true.

2. Since I, as Trustee of the above-referenced Jerald R. Jackson 1975 Trust, and Irene M. Windholz, as Trustee of the Irene M. Windholz Trust, acquired ownership of the real property to which the water rights which are the subject of the above-referenced Proofs are appurtenant, Ms. Windholz, as Trustee, and I, as Trustee, have run, continually, at least 25 head of cattle and between 2 and 4 horses for the past 16 years, prior to which the Heritage Ranch, operated by Matt and Ken Benson, and the Berrum Ranch, since 1853, ran as many and more cattle and horses on the subject real property.

3. I respectfully ask, through the within Objection, that the State Engineer and the Division of Water Resources revise the Preliminary Order of Determination to recognize the stock watering rights that have been enjoyed and used continually for more than 150 years on the areas of the said ranches that are still owned by Claimants and , subject to Proofs, that the Claimants should be entitled to continue to divert and use for the stock watering continually of including but not limited to 25 head of cattle, 2 to 4 head of horses, or the equivalent other, similar stock.

4. I have personal knowledge of the foregoing and could and would so testify if called as a witness.

Signature on Original

Jerald R. Jackson

SIGNED AND SWORN TO (or affirmed)

Before me on October 16, 2006,

by JERALD R. JACKSON.

Signature on Original

NOTARY PUBLIC

Notary Stamp on Original

- iv. Objection filed in regard to Proofs of Appropriation V-02856, V-06321 and V-06322 on behalf Myles S. Douglas and Amy B. Douglas as Grantors and Trustees of the Bartholomew Family Trust by B.J. Vasey, PE, PLS:

"Dear Mr. Walmsley:

As we discussed at our meeting September 5, 2007, we submitted request to the Division of Water Resources to assign a portion of Proof Nos. 02856, 06321 and 06322 from Nevada Mountain View, LLC, to Myles D. Douglas and Amy B. Douglas as Grantors and Trustees of the Bartholomew Family Trust on May 23, 2006.

On March 10, 2006, we submitted requests to the Division to assign all of Proof 06331 from Casteel and all of Proof 06335 from Clelland to Bartholomew Trust.

The Preliminary Order of Determination indicates that Nevada Mountain View, LLC owns a portion of Proof Nos. 02856, 06321 and 06322 and that Harold and Viola Casteel and Charles E. and Fay E. Clelland own Proof Nos. 06331 and 06335, respectively.

The purpose of this letter is to request that the final Order of Determination indicate the present ownership of Proof Nos. 02856, 06321, 06322, 06331 and 06335 as indicated in the aforementioned requests for assignment."

In response to this objection the State Engineer has reviewed the associated reports of conveyance, and changed the owner of record for Proof Nos. 02856, 06321, 06322, 06331, and 06335. This Final Order of Determination now currently reflects the ownership requested above.

- v. Untimely objection filed on December 5, 2006 regarding Proof of Appropriation No. V-06349, by John G. Stone on behalf of the current owners, Mr. and Mrs. McKay:

"On behalf of the current owners of the property in the NE¼ of the NW¼ Section 3, T12N,R19E, I would like to draw your attention to an apparent error in the distribution schedule on pp17 and Table 2 (p158) in the preliminary Order of Determination dated May 22, 2006

Irrespective of the actual acres irrigated, the purchase contract whereby we acquired the property in 1986 specifically indicated the purchase of "¼ of ¼ of the water rights from Mott Creek". Inasmuch as the original Mott/Allerman holding enjoys a full ¼ of the flow of Mott Creek, the rotation schedule should be adjusted to reflect our original purchase."

The State Engineer has taken administrative notice of this objection; however due to the untimely filing of this objection, it was not reviewed in the hearing of protests for the Preliminary Order of Determination.

- vi. Amended Objections, regarding Proof of Appropriation V-06350, filed on behalf of Gerald R. Novotny and Jeanne M. Moss-Novotny Trustees of the Novotny Family Trust Dated February 9. 1984, by Ross E. de Lipkau, Attorney:

"1. A portion of proof of appropriation, 06350, now owned by the Thomas M. and Paul J. Yturbide, Trustees of the Yturbide 1991 Family Trust has been diverted in a "triangular" fashion, as to ensure that the water continuously flows through the Yturbide property irrespective of whether or not it is allowed to receive water, under the rotation schedule. The Yturbide Trust is lawfully entitled to place his water to a beneficial use, but only pursuant to the rotation schedule established the State Engineer. The rotation schedule of this particular branch being 25 percent of the entire flow of Mott Creek is not objectionable. Rather, the entire flow is, as has occurred in recent times, been diverted by the Yturbide Trust to ensure that it flows through its property at all times. This is a waste of water, and allows the Yturbide Trust to gain an unfair advantage over the other water uses to this particular branch of Mott Creek. Water belonging to others is being consumed by the unlawful use of the Yturbide Trust.

The State Engineer should therefore order the Yturbide Trust to restore the flow of Mott Creek flow to its historic course.

The Novotny Trust has no further objections to the Preliminary Order of Determination."

- vii. Objection in regard to Proof of Appropriation V-06365 filed by Donald E. Brooks, Co-Trustee, and Lynnette L. Brooks, Co-Trustee:

"RE: Objections to Water Rights Proposals of the Relative Rights in and to the waters of Luther Creek in Carson Valley, Douglas County, Nevada. Proof No. V-06365."

"(1) In the Abstract of Claims, it is shown as 59.20 acres claimed, and in the Preliminary Order of Determination, it is shown as 43.61 total acres claimed, a Reduction of 17.59 acres. In discussing this matter with Mr. Walmsley of your office, he has determined that the 59.20 acres shown in the Abstract of Claims, is in fact the true acreage."

"(2) According to the plot map, (attached, please note the area marked in RED,) there are approximately 7 acres that were not included that are irrigated, and we would appreciate them being included in our acreage that should give us a total of approximately 66.20 acres."

After further review of the evidence submitted, the State Engineer has determined that due to an error comparing claimed acreage to the Douglas County Assessor's parcel maps, 59.20 acres is the correct acreage for this Proof of Appropriation. However, the State Engineer finds that due to the lack of submitted evidence and the submission of an amended supporting map drawn by a licensed State Water Rights Surveyor the State Engineer has determined that the additional 7 acres requested shall be denied in the Final Order of Determination.

- viii. Objection/Correction request filed in regard to Proof of Appropriation V-05819 by Bernard D. and Margaret W. Benz, as agents for the Mottsville Cemetery Association:

"Request for Correction, Proof V-05819 of MCA

re: 05/22/2006 Preliminary Order of Determination, Mott Creek"

"I wish to call to your attention an apparent error in the subject Proof, as to the diversion source from which the subject water is drawn.

Table 2, Mott Creek Diversions, pg. 158, showing subject Proof as drawing waters from the Third Diversion, is incorrect. In reality this usage draws water from the Southern Diversion (sic). The irrigation pipe for this Proof is tapped into the Southern Diversion's (sic) sand settling tank located immediately below the four way diversion box. Apparently, such has been the case for at least as long as the existing diversion and sand boxes have been in existence.

Your attention to this error correction will be greatly appreciated."

A hearing of objections to the Preliminary Order of Determination was held by staff¹ of the State Engineer's Office on March 5, 2007. The State Engineer finds that the location of the pipeline for the Mottsville Cemetery is as stated in your correction request. The table has been corrected for publication in the Final Order of Determination.

- ix. Objection filed in regard to Proof of Appropriation V-02858 on behalf of Don F. & Carolyn L. Ahern, by B.J. Vasey, PE, PLS:

"The subject proof claimed a vested right to stock water use in addition to irrigation, but did not indicate the number and type of stock watered.

The present owner of Parcel 1219-25-002-002 (portion) which is covered under the proof has requested that the Preliminary Order of Determination be changed to reflect the use of stock water for sixty (60) cattle and ten (10) horses under Proof V-02858 on Parcel 1219-25-002-002."

A hearing of objections to the Preliminary Order of Determination was held by staff of the State Engineer's Office on March 5, 2007. The State Engineer finds that the number and type of livestock claimed is consistent with historic stock watering use on the acreage irrigated under Proof of Appropriation No. V-02858, therefore, this claim is modified to include seventy (70) head of livestock.

- x. Objection filed in regard to Proof of Appropriation V-06316 on behalf of Destination Sports Inc. Et Al, by B.J. Vasey, PE, PLS:

"The subject proof claimed a vested right to stock water use in addition to irrigation, but did not indicate the number and type of stock watered.

The present owner of Parcel 1219-03-001-075, has requested that the Preliminary Order of Determination be changed to reflect the use of stock water for sixty (60) cattle under Proof V-06316 on Parcel 1219-03-001-075."

A hearing of objections to the Preliminary Order of Determination was held by staff¹ of the State Engineer's Office on March 5, 2007. The State Engineer finds that the number and type of livestock

¹ Kelvin Hickenbottom, P.E., Deputy State Engineer, Bob Zeisloft, P.E., Manager II, and Steve Walmsley, Staff Engineer III.

claimed is consistent with historic stock watering use on the acreage irrigated under Proof of Appropriation No. V-06316, therefore, this claim is modified to include sixty (60) head of livestock.

xi. Objection filed in regard to Proof of Appropriation V-06319 by Donna Buddington:

"I am filing an objection to the Preliminary Order of Determination of the relative water rights on and to Mott Creek. The report is dated 5/22/06 and states that objections should be received by 9/15/06. My concern is regarding proof V-06319 on page twenty-three. The proof was filed on 3/18/94 by Glen and Sue Ellen Wright claiming a vested interest in Mott Creek for irrigation of 10.0 acres of land. Domestic and stock water uses are also claimed. I am the current owner of record Donna Buddington. A vested right for 10.0 acres of irrigation and domestic uses from the above named source is established under this proof. However under section IX the portion for stock water use was denied. It is to this denial I object and I ask that stock watering be reinstated in this proof.

Kelvin Hickenbottom of your office explained to me that the denial was a result of an omission by the Wrights to state the type and number of stock and livestock which receive water on this property. He said I could correct that omission by sending this letter stating that ten horses always have been, and hopefully always will be watered off of the irrigation ditch.

I am particularly anxious that the stock water provision be established because the flowing, and therefore ice-free water, in the ditch is essential to the health of my stock in the winter months. As the demographics in these ranch lands have changed problems have arisen. Our new upstream neighbor, who does not keep stock, feels he has a right to use the water in the winter months to flush his recently constructed ornamental pond. This was a hardship for us last year because he refused to release the water to its customary termination. I realize that you all want nothing to do with neighborhood squabbles, but a denial of stock water lessens my position for the coming winter. My hope and desire is to use my allocated water for best use practices maintaining my pasture grass and health of my stock. Thank you for reinstating my right to stock water."

A hearing of objections to the Preliminary Order of Determination was held by staff¹ of the State Engineer's Office on March 5, 2007. The State Engineer finds that the number and type of livestock claimed is consistent with historic stock watering use on the acreage irrigated under Proof of Appropriation No. V-06319, therefore, this claim is modified to include ten (10) head of livestock.

- xii. Objection filed in regard to Proofs of Appropriation V-06331 and V-06335 on behalf of the Bartholomew Family Trust, by B.J. Vasey, PE, PLS: "The subject Proofs claimed a vested right to stock water use in addition to irrigation, but did not indicate the number and type of stock watered.

The present owner of these Proofs has requested that the Preliminary Order of Determination be changed to reflect the use of stock water for six (6) horses under Proof V-06331 and Proof V-06335."

A hearing of objections to the Preliminary Order of Determination was held by staff¹ of the State Engineer's Office on March 5, 2007. The State Engineer finds that the number and type of livestock claimed is consistent with historic stock watering use on the acreage irrigated under Proof of Appropriation Nos. V-06331 and V-06335, therefore, these claims are modified to include six (6) head of livestock.

- xiii. Objection filed in regard to Proofs of Appropriation V-06350 and V-06351 on behalf of Thomas M. Yturbide and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust, by Jennifer Yturbide, Esq.:

"1. Claimant is in agreement with the State Engineer's determination that the existing diversion box located on the Yturbide property be used for the continued distribution of the Mott Creek waters. (Preliminary Order of Determination, discussion under Proof V-05314 at pages 16-17.) The Objections to the Preliminary Order of Determination filed on behalf of the Novotny Trust on August 30, 2006, by Parsons Behle & Latimer should be disregarded and dismissed outright because the objection is not supported by factual allegations, evidence, and verified affidavit of the Objector, his agent or attorney as required by NRS 533.145(2).

2. **Stock Watering Rights:** Claimant objects to the rejection of stock watering rights as it relates to Proofs V-06350 and V-06351. The Mott Creek stream was first put to beneficial use by the Mott family in 1852. A few years after the Mott Family settled the land,

in 1855, George H. Goddard, the civil engineer employed by the State of California to survey the Carson Valley area, wrote that: "[t]he farming establishment of Mr. Mott and his sons surpassed all the rest (in the Carson Valley) not only in size, and the amount of land under cultivation, but in its valuable improvements and large amount of stock." (Goddard, George H., Report of a survey of a portion of the Old Carson and Johnson immigrant roads over the Sierra Nevada. Annual Report of the Surveyor General of California. Document No. 5, Senate Session of 1856, pp. 88-186.) By historical accounts, the Mott family livestock included a vast heard of cattle, oxen and horses. The livestock were fed hay and grain grown on the land, and watered from Mott Creek waters. As the Mott ranch was divided over time, it continued to be farmed and continued to have livestock that included horses and cattle. The area of the prior Mott Ranch owned by Claimant and subject to Proofs V-06350 and V-06351 is entitled to water 12 head of cattle and horses.

3. **Rotation Schedule:** Claimant seeks clarification of the Preliminary Order of Determination. According the Claimant's reading of the Order, on a seven-day rotation schedule, Claimant is entitled to distribution of water from Friday 6:00 a.m. until Friday at 6:00 p.m. pursuant to Proof V-06350. Additionally, pursuant to Proof V-06351, Claimant is entitled to share distribution of water from Friday at 6:00 p.m. until Saturday 6:00 a.m. with Neuffer. Claimant and Neuffer's predecessor in interest, Ladell Allerman, owned approximately 30 acres, more or less. She sold 20 acres to Yturbide and 10 acres to Neuffer during the pendency of the proceedings before the State Water Engineer. Allerman conveyed 2/3 of her interest in Mott Creek water to Claimant (Yturbide Family Trust) and 1/3 of her interest in Mott Creek water to Neuffer. (See Grant Deed attached as Exhibit A from Allerman to Neuffer, recorded in the Douglas County Official Book of Records at Book 0194, Page 3843 as Document 328017.) Therefore, if both of the subject Proofs are entitled to a full day of distribution of water (or 24 hours), 2/3 of the allotted should be given Claimant for a total of 16 of the 24 hours, from Friday at 6:00 a.m. until Friday at 10:00 p.m. Claimant seeks clarification because other parties to the seven-day rotation have taken the position that Neuffer's successor in interest, the Parks, are entitled to the water for 12 hours (from Friday at 6:00 p.m. until 6:00 a.m. on Saturday). Clarification would be

appreciated to avoid future misunderstandings. Claimant also requests clarification whether the 7-day rotation schedule could be modified by mutual agreement of all the parties as to the length of the rotation schedule, and time of commencement.

5. **Reconsideration of Determination in Light of the Weight of Evidence Submitted:** The Preliminary Order essentially establishes that the right to distribution and the rotation schedule for division of Mott Creek waters is based upon raw acreage that was put to beneficial use prior to 1905. While the task before the State Engineer was weighty, the ultimate finding and the division of the water did not give due consideration to the significant evidence submitted on the historical patterns and practices of irrigation, crops, the lay of the land, and the percentage of land found in wet areas that were unlikely to have been irrigated (except perhaps, for argument sake, on rare occasions). Please see September 1, 2006 letter from Bruce R. Scott, P.E. of Resource Concepts, Inc. attached hereto and incorporated herein as Exhibit B. Also, please give reconsideration to the historical summary provided by John Stone herein, the Affidavits submitted by long time ranchers in the vicinity of the subject properties, court records and testimony, and maps submitted."

FINDINGS OF FACT AND CONCLUSIONS

After review and consideration of evidence, testimony at the public administrative hearing held by staff¹ of the State Engineer's Office on March 5 & 7, 2007, to the objections to the Preliminary Order of Determination, and all relevant files in the State Engineer's office, the following is determined:

Objections regarding Unnamed Springs (A), (B), (C) and (D) located within the old Heritage Ranch and the Green Acres Subdivision:

In order to avoid further confusion regarding the names and locations of spring sources that provide water to the Heritage Ranch and the Green Acres Subdivision these sources are given the following standard descriptions which will apply to all claims submitted for these sources. These descriptions are utilized throughout the remainder of the Final Order of Determination (see Figure 1):

Spring (A): Is located in Alpine County, California, in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, T.12N., R.19E., M.D.B.&M. Spring "A" is further described as

the northern most and western most spring in the Unnamed(A), (B), (C) & (D) Spring complex.

Spring (B): Exists entirely in Douglas County, Nevada, located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, T.12N., R.19E., M.D.B.&M. and is the second most western spring in the Unnamed Spring complex, situated west of spring (D) and north of spring (C).

Spring (C): Exists entirely in Douglas County Nevada, with the greater portion located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, T.12N., R.19E., M.D.B.&M. and the lesser portion lying in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26, T.12N., R.19E. M.D.B.&M. Spring (C) is further described as the southernmost spring in the unnamed spring complex.

Spring (D): Exists entirely in Douglas County Nevada, with a greater portion lying in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, T.12N., R.19E., M.D.B.&M. and the lesser portion lying in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 26, T.12N., R.19E., M.D.B.&M. Spring (D) is further described as the largest (area) of the unnamed spring complex, and is situated east of spring (B) and north of spring (C).

A. Edward Groenendyke objection to the Preliminary Order of Determination:

An objection to the Preliminary Order of Determination regarding Proof V-08850 as filed by B.J. Vasey, P.E., PLS on behalf of Edward Groenendyke. The basis of the objection is acreage that can be irrigated from Unnamed Spring (A), the duty of water and irrigated acreage.

Mr. Vasey testified that the entire 37.97 acres claimed under Proof of Appropriation No. V-08850 is able to be irrigated from "Unnamed Spring (A)".² Cross-examination by Paul Taggart, Esq., did not produce any evidence to refute the 37.97 acres ability to be irrigated from Unnamed Spring (A).³ A formal field investigation of the water sources and irrigated acreage was conducted on July 26, 2007, as an extension of the March 5, 2007, hearing. The field investigation revealed that 12.43 acres of land lying to the north of the northeast trending drain ditch that bisects the Groenendyke under this claim is irrigated exclusively from "Unnamed Spring (A)". The remaining acreage located to the south and east of

² Transcript, pp. 8-12, public administrative hearing on objections to the Preliminary Order of Determination before the State Engineer, March 5, 2007. Hereafter Transcript 3/5/2007

³ Transcript 3/5/2007, pp. 12-15.

the described drain ditch consists of 25.54 acres irrigated by “Unnamed Spring (B)”.

Unnamed Spring (B), hereafter referred to as “Unnamed Spring (D)” (Refer to spring descriptions/locations on pages 16-17), is the water source for Proof V-06321, 40.36 acres; Proof V-06323, 40.35 acres; and Proof V-08850, 25.54 acres; for a total of 106.25 acres. Proof of Appropriation V-02856 claims a diversion rate of 3.5 cfs for the irrigation of 117.6 acres. Monthly flow measurements were conducted during the 1997⁴ and 1998⁵ irrigation seasons by staff of the Division of Water Resources. The measurements from this spring source ranged from a low of 1.45 cfs in July of 1998 to a high of 4.17 cfs in June of 1997. A flow rate from Unnamed Spring (D) of 1.20 cfs during the 198-day growing season will provide a duty of 4.0 acre-feet per acre on the original 117.6 acres. A flow rate of 1.45 cfs will provide 4.83 acre-feet per acre, 3.50 cfs will provide a duty of 11.67 acre-feet per acre and 4.17 cfs will provide a duty of 13.90 acre-feet per acre. The standard consumptive use figure for irrigated crops in northern Nevada is 4.0 acre-feet per acre. Pasture grass, native hay, and various grain types require substantially less water than alfalfa. The dominant crop type within the area of these water claims is pasture grass. The TR-21⁶ and FAO Blaney-Criddle⁷ methods were utilized to establish consumptive use values⁸ for “Pasture” based on climatic conditions in the Minden area of Nevada. The TR-21 method estimated a consumptive use value of 26.7 inches and the FAO method estimated 39.8 inches. These values convert to a seasonal irrigation requirement that ranges from 2.23 acre-feet per acre and 3.32 acre-feet per acre, respectively. Actual consumptive use is considered to be somewhere between these two numbers.

⁴ 1997 CARSON VALLEY STREAMFLOW MEASUREMENT REPORT, Mark Beutner, Andrea Squatrito, March 27, 2998.

⁵ 1998 CARSON VALLEY STREAMFLOW MEASUREMENT REPORT, Mark Beutner, Andrea Squatrito, April 21, 1999.

⁶ Irrigation Water Requirements, SCS Technical Release 21, Revised September 1970.

⁷ FAO Irrigation and Drainage paper No. 24, Crop Water Requirements, Revised 1977.

⁸ NEVADA IRRIGATION GUIDE, United States Department of Agriculture, Soil Conservation Service, Reno, Nevada, (NV210-VI-NVIG, Sept. 1981), § Part 683 – Water Requirements, NV683-50.

Aerial photography from 1938⁹, 1939-1940¹⁰, and 1954¹¹ illustrate equivalent vegetative and irrigation patterns within the confines of all irrigated acreage within the Heritage Ranch and Green Acres subdivision areas.

The State Engineer determines that it would not be suitable irrigation practice to apply more water than is necessary to irrigate pasture/harvest lands as listed under Proof V-06321, Proof V-06323, and Proof V-08850. The NEVADA LAW OF WATER RIGHTS¹² authored by Wells A. Hutchins states:

Needs of appropriator. – The appropriative right is restricted to the quantity of water actually needed for irrigation, watering of stock, domestic use, or other beneficial purpose for which the appropriation is made.(cite omitted) It is recognized that the quantity of water varies with the seasons, and that a decree that authorizes the diversion of specific quantity at all time regardless of necessity is erroneous.(cite omitted) The appropriator is entitled to enough water for his reasonable needs;(cite omitted) but any quantity of water diverted in excess of existing needs is not taken in exercise of a right, but is part of the water to which junior appropriators are entitled.(cite omitted)

The State Engineer further finds that the 3.5 cfs from Unnamed Spring (D) used for the irrigation of the above listed acreage yields 3 times the volume of water necessary for the irrigation of the existing and historic crops on this acreage.

The State Engineer determines that Unnamed Spring (A) is the primary source of water for the following claims: Proof V-06342, 7.20 acres; Proof V-08850, 12.43 acres; Proof V-06322, 2.47 acres; Proof V-06325, 2.54 acres; Proof V-06326, 2.50 acres; Proof V-06327, 4.90 acres; Proof V-06328, 5.55 acres; Proof V-06329, 5.22 acres; Proof V-06330, 5.08 acres; Proof V-06331, 4.88 acres; Proof V-06333, 4.98 acres; Proof V-06334, 2.55 acres; Proof V-07486,

⁹ CARSON VALLEY BOTTOM LANDS, NEVADA, BPB – 13 – 92, dated 10-20-38.

¹⁰ CARSON VALLEY DISTRICT, NEVADA, QUADRANGLE NUMBER 20 B, PHYSICAL SURVEYS 1939-1940.

¹¹ Unknown origin, possibly Carson Valley Conservation District or Soil Conservation Service, dated 9-5-54, flight line 3-16, GS-VEV.

¹² Hutchins, Wells A., L.L.B. THE NEVADA LAW OF WATER RIGHTS, Production Economics Research Branch, Agricultural Research Service, United States Department of Agriculture, 1955.

4.86 acres; Proof V-09264, 2.53 acres; Proof V-09265, 2.55 acres; Proof V-09266, 5.18 acres; Proof V-09270, 5.18 acres; for a total of 80.60 acres. The State Engineer finds that the duty of water for the described acreage is 2.43 acre-feet per acre from Unnamed Spring (A) with the understanding that the total duty of water shall be limited to 4.0 acre-feet per acre from any and/or all sources.

Paragraph No. 2 of the objection requests that the duty of water "under Permit 24919 – Certificate 7842 in Turnipseed's letter is 58.19 acre feet and we request that the duty shown on Page 130 under Proof V-08850 also be at least 58.19 acre feet and the acre feet per acre adjusted to reflect the 37.97 acres as the Place of Use." Proof of Appropriation V-08850 claims a vested water right from both Unnamed Spring (A) and Unnamed Spring (D). Permit 24919, Certificate 7842, is certificated for the waters of Unnamed Spring (A) for irrigation purposes within the same place of use as claimed under Proof V-08850. Both water sources, Unnamed Spring (A) and Unnamed Spring (D), are claimed by Proof of Appropriation Nos. V-06321, V-06323, V-06342, V-06345 (claimed as 'UNNAMED SPRING, DESIGNATED JACKSON SPRING "D" '), and V-08850. Permit 24918, Certificate 7843, and Proof of Appropriation No. V-02856 claim water from an Unnamed Spring, also known as "Unnamed Spring "B" or Jackson Spring "D", for irrigation purposes within the same or portions of the place of use as the aforementioned proofs in the preceding sentence.

The information contained in Permits 24918 and 24919 and Proof of Appropriation V-02856¹³ was reviewed and considered in determining the final disposition of Proof Nos. V-06321, V-06323, V-06342, V-06345 and V-08850. The State Engineer determines that it would not be prudent to attempt to administer the waters of the two spring sources under a minimum of three layers of permits and claims of vested rights. Therefore, the State Engineer determines that Permit 24918, Certificate 7843; Permit 24919, Certificate 7842; and Proof of Appropriation V-02856 are superseded by Proof of Appropriation Nos. V-06321, V-06323, V-06342, V-06345 and V-08850.

The State Engineer determines that the duty of water for Proof V-08850 shall be limited to 2.43 acre-feet per acre from Unnamed Spring (A) for the 12.43 acres lying north of the diagonal drainage ditch for a total of 30.20 acre-feet of water. The 25.54 acres of land lying to the south of said diagonal ditch are determined to have a duty of water of 4.00 acre-feet per acre from Unnamed Spring (D) for a total of 102.16 acre-feet of water. The State Engineer determines that Proof V-08850 shall be limited to a total duty of 132.36 acre-feet of water on the north and south sides of the dividing ditch.

¹³ Public record in the Office of the State Engineer.

Finally, the State Engineer determines that Unnamed Spring (A) is physically capable of being diverted to any area within the 37.97 acres claimed under Proof V-08850. The State Engineer determines that water from Unnamed Spring (A) is not necessary for the irrigation of the 25.54 acres lying south of the diagonal ditch under this claim and Proofs V-06321 and V-06323 based on prior findings within the scope of this objection to the Preliminary Order of Determination. The State Engineer further determines that the commingling of Unnamed Spring (A) with Unnamed Spring (D) directs excessive water onto lands irrigated by the claims referred to in this paragraph. These waters then become drain and waste that may or may not be able to be effectively utilized by claimants within the Green Acres Subdivision.

Mr. Brant Honkanen testified¹⁴ that the reason that his grandfather purchased Lot 4 within the Green Acres Subdivision “was because it had the best water rights.” Mr. Honkanen stated that the water from the “spring” {referring to Unnamed Spring (D)} flowed on a continuous basis over the “last 40 years”¹⁹ through the Groenendyke property to the point where it intersected the south ditch that supplies water from Unnamed Spring (A) and Miller Creek near the center of the south line of the Honkanen property (APN 1219-26-001-031). Mr. Honkanen said that the stream of water from Unnamed Spring (D) created “a natural pond”¹⁵ at the confluence of the south Green Acres ditch and the diagonal ditch that flows through the Groenendyke property (APN 1219-26-001-035). Mr. Honkanen’s description of the confluence of the Unnamed Spring (D) and the South Green Acres Ditch was confirmed during the July 26, 2007, field investigation.¹⁶

A field investigation¹⁷ of the irrigation system conducted on August 6, 1992, revealed that the spring source, “Unnamed Spring D”, aka Jackson Spring “D”, claimed under Proofs V-02856, V-08850, V-06321 and V-06323 was capable of being diverted approximately 150 feet north from the claimed point of diversion. The water was transmitted to the east through a culvert beneath Foothill Road and into the “bisecting ditch” that separates the north and south portions of Proof V-08850. Water was also transmitted through the Foothill Road culvert from a spring and swamp area that now comprises the “Jackson Pond”

¹⁴ Transcript, 3/5/2007, p. 124.

¹⁵ Transcript, 3/5/2007, p. 125.

¹⁶ Report of Field Investigation No. 1081, In the Matter of a Complaint Regarding Water Distribution from Unnamed Creek/Unnamed Spring to the Green Acres Subdivision, Carson Valley, Douglas County, Nevada, dated Aug. 24, 2007.

¹⁷ Field Investigation No. 916, dated Nov. 30, 1992, Public Record in the Office of the State Engineer.

that was the primary issue of the aforementioned field investigation. The existence and location of this diversion and associated culvert/headgate substantiates the Honkanen testimony referred to in the preceding paragraph.

Staff¹⁸ of the State Engineer's Office has observed that the construction of the pond near the southeast corner of the Jackson property precludes the ability to divert water through the headgate and existing culvert that routes water through the "bisecting ditch" through the Groenendyke property. The preceding findings are resolved in the subsequent State Engineer's Order:

The State Engineer therefore orders the reconstruction of the headgates and distribution system. The design and construction plans of the diversion/distribution structures are subject to the approval of the State Engineer prior to commencement of construction.

The State Engineer finds that the subdivision of the land that once comprised the two separate ranches that are the subject of this objection precludes the ability to irrigate the acreage in the manner that is completely consistent with the historic practices that were in effect prior to the 1960's.

Based on the preceding findings, the State Engineer finds that any flow from Unnamed Spring (D) in excess of 1.5 cfs¹⁹ shall be divided in a 60%/40% split with 40% of the water above 1.5 cfs diverted to the north through the diversion and culvert in the aforementioned paragraph, thence, flow to the east beneath Foothill Road and through the ditch that bisects the acreage listed under Proof V-08850. This water will intersect the ditch that flows from west to east along the south boundary of the Green Acres subdivision at a point near the middle of the south boundary of the irrigated acreage under Proof V-09264. The water from Unnamed Spring (D) shall have a direct diversion right, and will be available for use during the rotation schedule as set forth for Unnamed Spring (A) with the exception of Claims V-06321, V-06323, V-06334, V-06342, V-06345, and V-08850 that cannot physically receive water from this diversion. The remaining 60% of the flow in excess of 1.5 cfs will remain in the ditch that provides water to Heritage Ranch water users under Claims V-06321, V-06323 and V-08850.

The State Engineer determines that Hutchins definition of the "Needs of appropriator" as discussed on page 19 of this Final Order precludes the use of water from Unnamed Spring (A) to supplement flows from Unnamed Spring (D)

¹⁸ Steve Walmsley, Staff Engineer III and Reed Cozens, Engineering Technician III.

¹⁹ 1.5 cfs will yield a potential duty of water of 5.5 acre-feet per acre over a 198 day growing season for Claims V-06321, V-06323 and V-08850.

that are in excess of what is considered a reasonable duty of water to accomplish the needs of the irrigators under Claims V-06321, V-06323 and V-08850. Therefore, the State Engineer finds that Unnamed Spring (A) shall henceforth be appurtenant to lands described under Proof V-06342, 7.20 acres; Proof V-08850, 12.43 acres; Proof V-06322, 2.47 acres; Proof V-06325, 2.54 acres; Proof V-06326, 2.50 acres; Proof V-06327, 4.90 acres; Proof V-06328, 5.55 acres; Proof V-06329, 5.22 acres; Proof V-06330, 5.08 acres; Proof V-06331, 4.88 acres; Proof V-06333, 4.98 acres; Proof V-06334, 2.55 acres; Proof V-07486, 4.86 acres; Proof V-09264, 2.53 acres; Proof V-09265, 2.55 acres; Proof V-09266, 5.18 acres; Proof V-09270, 5.18 acres; for a total of 80.60 acres.

The State Engineer determines that water from Unnamed Spring (A) can be distributed over the entire 37.97 acres claimed under Proof V-08850. The State Engineer finds that the 12.43 acres lying north of the bisecting ditch receive water as a direct diversion from Unnamed Spring (A). The State Engineer determines that the primary source of water for the 25.54 acres lying south of said ditch is Unnamed Spring (D). The State Engineer finds that commingling the waters of Unnamed Spring (A) with the waters of Unnamed Spring (D) is not necessary for the irrigation of lands that are exclusively irrigated by said Spring (D). Further, the State Engineer determines that the commingling of Unnamed Spring (A) water with the waters of Unnamed Spring (D) allows the application of more water than is necessary to adequately irrigate land covered by said Unnamed Spring (D), therefore, the State Engineer concludes that the continued use of Unnamed Spring (A) water to supplement Unnamed Spring (D) constitutes a waste of water that is not allowed under Chapter 533 of the Nevada Water Law.^{20,21}

²⁰ **NRS 533.530 Unlawful diversion and waste of water; penalty.**

1. It is an unlawful use and waste of water for any person during the irrigating season:

(a) To divert and conduct the water, or portion thereof, of any river, creek, or stream into any slough, dam or pond and retain, or cause the water to be held or retained therein, without making any other use of the water; or

(b) To divert and conduct the water, or portion thereof, away from any river, creek or stream, and run or allow the water to run to waste on sagebrush or greasewood land.

□ The irrigation of unimproved pasture which has a surface water right shall not be deemed to be a waste of water.

2. Any person who wastes water in violation of any of the provisions of subsection 1 is guilty of a misdemeanor.

Further discussion regarding a rotation schedule for the waters of Unnamed Spring (A) and Unnamed Spring (D) will be covered under the Jackson objection: "Objection filed in regard to Proofs of Appropriation V-09264," et al.

B. Jerald R. Jackson objection to the Preliminary Order of Determination:

An objection to the Preliminary Order of Determination regarding Proofs of Appropriation V-09264, V-09265, V-09266, V-09267, V-09268, V-09269, V-09270, V-02856, V-06342, V-06343, V-06344, V-06345 and Permits Nos. 24918, C-7843, and 24919, C-7842, was filed by Paul G. Taggart, Esq. on behalf of Jerald R. Jackson, et al. The basis of the objection is clarification of "drain and waste rights, priority date, exclusion of stock watering rights and the inclusion of the claimant's proofs in the rotation schedule.

In response to objection section I. **Drain and Waste Rights to Unnamed Jackson Spring "A" and Any Unnamed Creek that Issues Therefrom.**

[1:48:1889; C § 430; RL § 4721; NCL § 8006] + [2:48:1889; C § 431; RL § 4722; NCL § 8007]—(NRS A 1967, 609; 1983, 352)

²¹ **NRS 533.070 Quantity of water appropriated limited to amount reasonably required for beneficial use; duties of State Engineer in connection with water diverted or stored for purpose of irrigation.**

1. The quantity of water from either a surface or underground source which may hereafter be appropriated in this state shall be limited to such water as shall reasonably be required for the beneficial use to be served.

2. Where the water is to be diverted for irrigation purposes, or where the water is to be stored for subsequent irrigation purposes, the State Engineer in determining the amount of water to be granted in a permit to appropriate water shall take into consideration the irrigation requirements in the section of the State in which the appropriation is to be made. The State Engineer shall consider the duty of water as theretofore established by court decree or by experimental work in such area or as near thereto as possible. He shall also consider the growing season, type of culture, and reasonable transportation losses of water up to where the main ditch or channel enters or becomes adjacent to the land to be irrigated, and may consider any other pertinent data deemed necessary to arrive at the reasonable duty of water. In addition, in the case of storage of water, reservoir evaporation losses should be taken into consideration in determining the acre-footage of storage to be granted in a permit.

[11:140:1913; A 1945, 87; 1943 NCL § 7899]

A hearing of objections to the Preliminary Order of Determination was held by the staff of the State Engineer's Office on March 5, 2007. A formal field investigation of the water sources and irrigated acreage was held on July 26, 2007, as an extension of the March 5, 2007, hearing. The field investigation revealed that Proofs of Appropriation V-09267, V-09268, and V-09269 do not receive water from Unnamed Spring (A)²²; therefore the State Engineer determines that Unnamed Spring (A) is not a valid source of water for said Proofs of Appropriation. However, the State Engineer has determined that Proofs of Appropriation V-09265, V-09266 and V-09270 can receive water from Unnamed Spring (A) as a direct diversion. It was the intent of the Preliminary Order of Determination to describe Unnamed Spring (A) as a primary source of water to V-09265, V-09266 and V-09270, and remains the intent of this Final Order of Determination to describe the same. Culture maps from the U.S. Geologic Survey show homogenous vegetation on the parcels of land that make up the Heritage Ranch and the Green Acres subdivision prior to 1905²³. In addition, aerial photography from 1938, 1939-1940, and 1954²⁴ illustrate equivalent vegetative and irrigation patterns within the confines of all irrigated acreage within the Heritage Ranch and Green Acres subdivision areas.

In response to objection section II. **Stock Watering Rights.**

The State Engineer determines that stockwatering shall be appurtenant to Proofs of Appropriation V-06342, V-06343, V-06344, and V-06345. The use of this stockwater shall be subject to the guidelines set forth in this Final Order of Determination (see Sec. XII, Stockwater and Domestic Use, pg. 93).

Under "Section II" of the objection it states that Proofs "V-06342, V-06343, V-06344, V-06345" are all appurtenant to the entire "22.26 acres" acres of land. Further investigation of these claims resulted in a reconfiguration of acreage based on ground able to be irrigated by the separate spring sources under the aforementioned claims. Proof V-06342 is appurtenant to 7.20 acres, Proof V-06343 is appurtenant to 9.73 acres of which 7.20 acres are supplemental to Proof V-06342, Proof V-06344 is appurtenant to 2.98 acres of stand-alone subirrigated land, and Proof V-06345 is appurtenant to 13.35 acres of subirrigated land. Therefore, the State Engineer finds that the total acreage irrigated under Proofs V-06342, V-06343, V-06344 and V-06345 shall be limited to 26.60 acres. The State Engineer determines that stand-alone acreage that is

²² Unnamed Spring (A) is the same source of Jackson Spring "A".

²³ U.S. Geologic Survey Hydrographic Branch, Map Dated July 27, 1904.

²⁴ Public record on file in the Office of the State Engineer.

irrigated by direct diversion under Proof V-06342 is 7.20 acres with a duty of 2.43 acre-feet per acre.

Research of the Humboldt River Adjudication indicated that lands that are subirrigated by springs or are classified as “swamp area” are subject to the following restriction: “Swamp area. No water to be diverted from the creek for this area until the same becomes dry or is drained.”²⁵ Under Claim No. 00502²⁶ of the aforementioned decree with regard to Deering Creek and Ackler Creek the court states that: “No water is to be diverted until swamp becomes dry or is drained.” While the court recognized that this ground is productive and is acknowledged under the Bartlett Decree for the waters of the Humboldt River and its tributaries, no duty of water is recognized until such time the necessity to divert water and irrigate this land arises due to the loss of subirrigation or the drying of swamp land.

Claim No. 574²⁷ of the Orr Ditch Decree states that a portion of the acreage “of these areas are swamp for which no water is to be diverted until same is drained or becomes dry.” This bracketed clause pertains to portions of the acreage that are decreed as “Wild Hay” under the decree.

The State Engineer finds that land is subirrigated under Proofs V-06343, V-06344 and V-06345 with stock watering allowed. A duty of 2.8 acre-feet per acre²⁸ will be allowed at any time the subirrigated (“swamp”) land under the aforementioned proofs becomes dry by any natural occurrence. The State Engineer finds that the artificial draining and drying of the subirrigated acreage would be injurious to all other water users that obtain their irrigation water from these spring areas, therefore; it is not allowed under the Final Order of Determination. The Nevada Irrigation Guide recommends that “A practical actual consumptive use value probably lies between the values obtained by the TR-21 and FAO Blaney-Criddle methods” of crop water consumptive use

²⁵ In the matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court of Nevada, In and for the County of Humboldt, 1923-1938. See Claim No. 00454, Bartlett Decree, p. 185, (Humboldt Decree).

²⁶ Humboldt Decree, Claim No. 00502, Bartlett Decree, p. 192.

²⁷ Final Decree, *United States of America vs. Orr Water Ditch Company, et al.*, Equity (D. Nev. 1944), Claim No. 574, p. 58, (Orr Ditch Decree).

²⁸ Nevada Irrigation Guide, United States Department of Agriculture, Soil Conservation Service, Reno, Nevada (NV210-VI-NVIG, Sept. 1981), Part 683 - Water Requirements, Subpart F – Tables NV683-51.(Nevada Irrigation Guide).

determination.²⁹ Refer to pages 70 and 71 of the Final Order of Determination for a more detailed description of land irrigated under these claims.

In response to objection section III. **Rotation Schedule.**

The State Engineer determines that a rotation schedule is needed for the fair and objective distribution of water in and around the Green Acres subdivision, including the Heritage or Berrum Ranch. This rotation schedule shall be based on historic evidence, field investigations made by staff from the Nevada Division of Water Resources, testimony from the hearing on the objections and soils data made available through the United States Department of Agriculture.

Historic evidence compiled by the Office of the State Engineer shows that the Heritage or Berrum Ranch was operated as a combined place of use that shared water from the several spring sources that support the irrigated acreage. Since this land has subsequently been parceled and divided into many different pieces, the only fair and equitable solution to distribute water is based on a rotation schedule. The rotation schedule devised for this area will start with the highest (elevation) user of the water system and move down stream until it reaches the end user. This rotation schedule will be based upon time, not water quantity. In this way all participants in the rotation schedule of this water will receive an equitable distribution of water based upon the water available at the time. In essence, during times of water shortage, all participants will share in the shortage; likewise, during times of ample supply, all participants will receive excess water.

Observations were made by Staff³⁰ of the Division of Water Resources during the field investigation July 26, 2007, that supported the need of a rotation schedule. During this investigation statements were made by those most familiar with the use of water, for particular parcels, in and around the Green Acres Subdivision. The statement of water usage for the Green Acres parcels is as follows:

“The next parcel visited is owned by Gena Guerriero, APN 1219-26-001-024. Mike Catherwood, acting as agent, stated that this parcel is irrigated by the northerly Miller Creek ditch that supplies water to the Green Acres Subdivision. He stated that it

²⁹ Nevada Irrigation Guide, Part 683-Water Requirements, NV683.2(b)(8), paragraph (8).

³⁰ Steve Walmsley, Staff Engineer III and Reed Cozens, Engineering Technician III.

took approximately ½ day to irrigate the 2.51 acre parcel based on a 10 to 14 day rotation period.³¹

"Continuing east, the next parcel visited is owned by Pedro and Margaret M. Villalobos, APN 1219-26-001-032. Mr. Villalobos stated that water is diverted at the southwest corner of his parcel from the south Green Acres irrigation ditch. The water then flows in a north to northeasterly direction to irrigate the 2.55 acre parcel. Mr. Villalobos said that it takes him approximately ½ day to 18 hours to adequately irrigate his parcel as stated under oath in the hearing on objections to the Preliminary Order of Determination.³²

"The next lot that was visited was the fourth parcel on the north side of the street, APN 1219-26-001-025, owned by the Libbon's. Mr. Libbon stated that his property currently receives an 11 hour rotation of Miller Creek water every two weeks and he is "a happy guy".³³

"Mr. Douglas called at an earlier date and said that he would not be able to attend the field investigation. In Lieu of a personal appearance he submitted an Email to the State Engineer's Office, dated Tuesday, July 24, 2007, 3:40 P.M. The Email stated:

"Dear Steve

This is in follow up to our telephone conversation yesterday concerning the water distribution within the Green Acres Subdivision. As we discussed, our trust, the Bartholomew Family Trust, and our LLC, Nevada Mountain View own three (3) properties in the area in question known as the Green Acres Subdivision.

Property #1, [Source Unnamed Spring B] 605 Skyhawk Ranch Rd, is the twenty plus acre parcel on which our home and ranch are located.

This parcel flood irrigates from a ditch on the southern border of the property known to you along side of Black Bear Rd. We irrigate from this source about 4 days every three (3) weeks, which has been the cycle here for the last seven years that we have owned the property and was the cycle of last owner as well. Russell Scossa has been managing this for us.

³¹ State Engineer Field Investigation No. 1081, p. 7.

³² State Engineer Field Investigation No. 1081, p. 7.

³³ State Engineer Field Investigation No. 1081, p. 10.

Property #2, [Source Unnamed Spring "A"] five acres, is the parcel immediately adjacent to parcel one and in front and to the west along Green Acres Rd. It irrigates from a ditch between these two properties and flood irrigates about every two to three weeks for two days.

Property #3, [Source Unnamed Spring "A"] 534 Green Acres, is 2.5 acres with a home and irrigates from a pump in the adjacent ditches when they are full.

This is as accurate a description of our flood irrigation practices as I can describe. If you have any further questions please do not hesitate to contact me. Thank you for your assistance with this matter.

Respectfully,

Myles & Amy Douglas for The Bartholomew Family Trust and Nevada Mountain View, LLC³⁴

"At approximately 1:35 P.M. staff and claimants arrived at APN 1219-23-002-013, also known as the Catherwood property... He said that he takes 24 hours to fully irrigate his land [approximately 5 acres] using this method of irrigation.³⁵

"After leaving the Catherwood property, the Water Resource's staff and the remaining claimants visited the eighth parcel on the south side of the street, APN 1219-23-002-014. This parcel is owned by Mr. Gary Casteel Jr. Mr. Casteel said that he uses water from Unnamed Creek and that with two head gates it takes approximately 24 hours to irrigate five acres.³⁶

"The ninth parcel on the south side of Green Acres Drive is owned by Myles S. and Amy B. Douglas, APN 1219-24-002-010. Mike Catherwood stated that this property, takes approximately 24 hours to irrigate [approximately 5 acres] from the South Green Acres Ditch. Mr. Casteel also supported this time period.³⁷

"At approximately 2:00 P.M. the staff from the Division of Water Resources and the remaining claimants visited APN 1219-24-002-005, also known as the Della Rosa property... Mr.

³⁴ State Engineer Field Investigation No. 1081, p. 11-12.

³⁵ State Engineer Field Investigation No. 1081, p. 14.

³⁶ State Engineer Field Investigation No. 1081, p. 14.

³⁷ State Engineer Field Investigation No. 1081, p. 15.

Villalobos said that this practice takes about 12 hours [to irrigate approximately 2.5 acres].³⁸

"The next to last parcel visited was the Currie property, also known as APN 1219-24-002-014. Mr. Currie stated that it takes approximately 12 hours to irrigate his parcel [approximately 5 acres].³⁹

"The last parcel visited during the field investigation was APN 1219-24-002-009, also known as the property of Stephen H. and Patricia Christian... He said that it takes approximately two (2), fifteen (15) hour days to completely irrigate his land [approximately 5 acres].⁴⁰

"Staff of the State Engineer's Office questioned Mr. Jackson regarding the amount of time necessary to irrigate the acreage around the Old Berrum Ranch House. Mr. Jackson stated that he would defer to evidence and testimony presented in the Hearing for Objections to the Preliminary Order of Determination. He said that he had carefully prepared for the hearing and wished to stand on the record created at that time.⁴¹

During the hearing held March 5, 2007, Jerry Jackson stated: "Two to three times is about what it takes to get an adequate watering, two to three two-day sessions with the gap in the middle of two to three days between each one."⁴²

The United States Department of Agriculture, Natural Resources Conservation Service, describes two soil types associated with lands irrigated from Unnamed Spring (A). These soils types are listed as Ophir, sandy gravelly loam, with 0 to 2 percent slope and Ophir, sandy gravelly loam, with 2 to 8 percent slope.⁴³ Consideration of the slope variances was made in the rotation schedule (see rotation schedule Table 8). Acreage with greater slopes are allotted additional hours due to decreased infiltration rates that coincide with increased potential runoff rates on similar soil types.

A rotation schedule was developed based on the preceding observations and testimony of the parties affected by the distribution of water under Proof V-06322, 2.47 acres; Proof V-06325, 2.54 acres; Proof V-06326, 2.50 acres; Proof

³⁸ State Engineer Field Investigation No. 1081, p. 15.

³⁹ State Engineer Field Investigation No. 1081, p. 15.

⁴⁰ State Engineer Field Investigation No. 1081, p. 16.

⁴¹ State Engineer Field Investigation No. 1081, p. 5.

⁴² Transcript 3/5/2007, p. 35.

⁴³ USDA/NRCS Soils Data Mart, NV773, Douglas County Area.

V-06327, 4.90 acres; Proof V-06328, 5.55 acres; Proof V-06329, 5.22 acres; Proof V-06330, 5.08 acres; Proof V-06331, 4.88 acres; Proof V-06333, 4.98 acres; Proof V-06334, 2.55 acres; Proof V-06342, 7.20 acres; Proof V-07486, 4.86 acres; Proof V-08850, 12.43 acres; Proof V-09264, 2.53 acres; Proof V-09265, 2.55 acres; Proof V-09266, 5.18 acres; and Proof V-09270, 5.18 acres.

Refer to Table 8 for a source by source breakdown of the water claims associated with springs associated with irrigated acreage within the Heritage Ranch and Green Acres Subdivision. Also, see Table 8 for the rotation schedule for Unnamed Spring (A).

Mott Creek Objections regarding Proofs V-05314, V-06313, V-06349, V-06350 and V-06351:

Park Objection:

An objection to the Preliminary Order of Determination was filed by Elizabeth and Eric Park regarding the shared rotation of Mott Creek water with the Yturbides.⁴⁴

Stone Objection on behalf of McKay:

An untimely objection was filed on December 5, 2006, regarding Proof of Appropriation No. V-06349, by John G. Stone on behalf of the current owners. Mr. Stone stated that there is an “apparent error in the distribution schedule” and that the distribution of water within the original Mott Creek Ranch should be controlled by “purchase contract”. Mr. Stone states that when he acquired the property in 1986 “the purchase contract” “specifically indicated the purchase of ¼ of ¼ of the water rights from Mott Creek.”⁴⁵

The State Engineer has taken administrative notice of this objection; however due to the untimely filing of this objection, it was not reviewed in the hearing of protests for the Preliminary Order of Determination.

Novotny Objection:

An objection to Proof of Appropriation V-06350 filed on behalf of Gerald R. Novotny and Jeanne M. Moss-Novotny Trustees of the Novotny Family Trust

⁴⁴ Refer to page 3 of this Final Order of Determination.

⁴⁵ Letter, dated Dec. 1, 2006, to Hugh Ricci, State Engineer, from John G. Stone. Refer to page 10 of this Final Order of Determination.

Dated February 9, 1984, by Ross E. de Lipkau, Attorney, requests the removal of the "loop ditch" or "triangular" ditch located within the Yturbide property. Mr. de Lipkau further requests that the Yturbides only receive stock water during their respective allotment of time within the "rotation schedule" and that "the Yturbide Trust to restore the flow of Mott Creek flow to its historic course", i.e., the ditch located within the Allerman Road and ditch easement.⁴⁶

Yturbide Objection:

An objection was filed in regard to Proofs of Appropriation V-06350 and V-06351 on behalf of Thomas M. Yturbide and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust, by Jennifer Yturbide, Esq.: The Yturbides support the location of the existing diversion box on the "loop ditch" located on their property. They request stock watering for 12 head of cattle and 12 head of horses within the place of use of Proof V-06350 and V-06351.⁴⁷

The Yturbides seek clarification of the rotation schedule regarding shared time with the Parks predecessors, the Neuffers. The Yturbides request a shared rotation with the Parks based on a joint filing of Proof V-06351 with the Yturbides. The Yturbides further seek a 2/3 (Yturbide), 1/3 (Park), division of water based on the Grant Deed from Allerman to Neuffer and a Court Order No. 28332, described below.

The Yturbides request that the length of the rotation schedule be lengthened to greater than 12 hours and greater than seven day rotation schedule.

The Yturbides request that historical irrigation practices be reviewed in light of historical evidence and soil/water characteristics within the confines of the original Mott Ranch.

A hearing of objections to the Preliminary Order of Determination regarding the second (going from north to south) ¼-split of Mott Creek was held

⁴⁶ Refer to page 10 of this Final Order of Determination.

⁴⁷ Refer to pages 14-16 of this Final Order of Determination.

by the staff⁴⁸ of the State Engineer's Office on March 7, 2007. The State Engineer has reviewed the historical record submitted in support of claims V-05314, V-06313, V-06349, V-06350 and V-06351 and finds that the existing evidence supports a priority date of 1852 for all of the aforementioned Proofs of Appropriation.

The State Engineer finds that Mott Creek is equally split into an equal four way division of the stream with $\frac{1}{4}$ of the flow going to four separate ranches as follows: 1. Northern Diversion - Proofs V-06369 and V-06370. 2. Second Diversion from North to South – V-05314, V-06313, V-06349, V-06350 and V-06351. 3. Third Diversion from North to South – V-05049, V-06315 and V-06316. 4. Southern Diversion - V-05070, V-05819 (Mottsville Cemetery), V-06226, V-06317, V-06318, V-06319, V-06831, V-09039 and V-09263. This decision is pursuant to the agreement between the four ranches as they existed in 1952 that allotted one-fourth ($\frac{1}{4}$) of the flow of Mott Creek to each ranch.⁴⁹

The original objection by the Parks (V-06351) was to the shared rotation of water with the Yturbides (V-06350). This controversy precipitated a deed⁵⁰, dated January 14, 1994, from LaDell (Philips) Allerman, a single woman, and Michael Philips, a single man, to Mark C. Neuffer and Susan L. Neuffer, husband and wife. The deed states: "TOGETHER WITH one-third ($\frac{1}{3}$) of the total water rights allotted to APN 19-060-52 from which the subject property has been partitioned, as such water rights may be further determined according to the final order of adjudication by the Nevada Department of Conservation and Natural Resources, State Engineer, and as currently set forth in the Stipulation of Counsel issued in the Ninth Judicial District Court of the State of Nevada in and for the County of Douglas, Case No. 25256..."

A copy of the case of *Ladell Philips, Plaintiff, v. Michael W. Philips, Order Partitioning Real Property, Case No. 28332, Ninth Judicial District Court of*

⁴⁸ Susan Joseph-Taylor, Hearing Officer; Kelvin Hickenbottom, P.E., Deputy State Engineer, Bob Zeisloft, P.E., Manager II, and Steve Walmsley, Staff Engineer III.

⁴⁹ Book G, p. 566, Doc. No. 8714, Ditch and Water Claims, Douglas Co. Recorder's Office.

⁵⁰ Exhibit No. 14, Item No. 18, Yturbide, Bk.0394, Pg.0654, Doc. No. 331491, also referred to as Bk.0194, Pg.3843, Doc. No. 328017, Douglas County Recorder's Office, submitted during the Public Hearing on Wednesday, March 7, 2007 Carson City, Nevada.

Nevada, June 30, 1993, is filed as a supporting document under Proof V-06351.⁵¹ Item No. 4 of the decree states: "The water rights appurtenant to the real property described in Paragraph 1" (refers to the original parcel of land prior to division and sale to the Yturbides and Neuffers) "hereinabove shall be prorated between the parcels as follows: (a) One-third (1/3) of the total appurtenant water rights shall be allotted to Parcel A" (currently, Parks) "described in Paragraph 2 hereinabove; and, (b) Two-thirds of the total appurtenant water rights shall be allotted to Parcel B" (currently, Yturbide) "described in Paragraph 3 hereinabove."

The deed⁵², dated September 28, 1993, from Ladell Allerman to Thomas M. Yturbide and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust, dated August 1, 1991, transferred the 19.91 acres, further described as Douglas County APN 19-060-52 (current APN's 1219-03-001-073, 057). The deed states: "TOGETHER WITH all water rights appurtenant to the land conveyed herein including but not limited to the rights of L.A. Philips, as successor in interest to Hiram Mott, the Mott heirs, et al. under Petition No. 94662 as filed with the State Engineer appurtenant to said land."

Proof of Appropriation V-06351 was submitted in the names of "Mark C. and Susan L. Neuffer, and Thomas M. and Paula J. Yturbide, Trustees of The Yturbide 1991 Family Trust Dated August 1, 1991". The land on which said proof was submitted was owned by the Neuffers at the time the claim was submitted. The Neuffers subsequently sold the land with appurtenances to the current owners of record, Eric Song J. Park and Elizabeth Park, Douglas County Assessor's Parcel No. 1219-03-001-060. By Nevada Revised Statute 111.167, water rights are presumed to transfer with the land to which appurtenant, unless the Grantor in conveyance documents specifically reserves the water rights.⁵³

⁵¹ Public Record in the Office of the State Engineer.

⁵² Exhibit No. 14, Item No. 17, Yturbide, Bk.0998, Pg.6499, Doc. No. 319101, Douglas County Recorder's Office, submitted during the Public Hearing on Wednesday, March 7, 2007 Carson City, Nevada.

⁵³ **NRS 111.167 Presumption of conveyance with land: Water rights, permits, certificates and applications appurtenant to land.** Unless the deed conveying land specifically provides otherwise, all:

1. Applications and permits to appropriate any of the public waters;
2. Certificates of appropriation;
3. Adjudicated or unadjudicated water rights; and

Document No. 0647194⁵⁴ is a Grant, Bargain and Sale Deed that transfers the above described property "with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining" to the Park parcel.

The State Engineer finds that Mott Creek water under Claim V-06351 is appurtenant to land owned by the Parks and shall be assigned a separate time allocation in the rotation schedule. The State Engineer does not make a determination regarding the removal of the Yturbide Trust from Proof V-06351. This is a separate matter to be resolved by the two parties or through the court system.

The State Engineer finds that the water appurtenant to the Yturbide parcels (APN 1219-03-001-057, Paul Joseph Yturbide; APN 1219-03-001-073, 1991 Yturbide Trust) and the Park parcel (APN 1219-03-001-060) shall be further allocated as set forth in the aforementioned Case No. 28332, Ninth Judicial District Court of Nevada. The decree allocates 1/3 of the water to parcel A (Parks) and 2/3 to parcel B (Yturbide). The final rotation schedule will be adjusted to be in compliance with the court decree.

An aerial photograph⁵⁵, dated 9-13-89, Frame No. 4-14, was flown for Douglas County by Cooper Aerial of Nevada, Las Vegas, Nevada. In this photograph the contested "loop ditch" on the Yturbide property; APN 1219-03-001-073, is clearly evident. A line that parallels the current Allerman Lane is also evidenced, but it is not supported by phreatophytic vegetation that is associated with a waterway. The aforementioned line is interpreted to be a fence that continues on the north side of the irrigation ditch that parallels Allerman Lane. A second aerial photograph⁵⁶, dated 6-1-77, clearly illustrates the "loop ditch" within

4. Applications or permits to change the place of diversion, manner of use or place of use of water, which are appurtenant to the land are presumed to be conveyed with the land.

(Added to NRS by 1995, 438)

⁵⁴ Official records of the Douglas County, Nevada, Recorder's Office, BK-605, PG-8040, 3 pgs.

⁵⁵ Public record in Proof V-06313, Aerial Photograph Section, vol. 5 of 5, dated 9-13-89, Douglas County, No. 4-14, Cooper Aerial of Nevada.

⁵⁶ CARSON VALLEY AERIAL MAPPING PROJECT, Carson Valley Conservation District, Douglas County, Nevada, Genge Aerial Surveys, 6220 24th Street,

the southwest corner of the Yturbide claim. A final photograph⁵⁷, dated 10-20-38, also illustrates the "loop ditch" with a continuation of the ditch to the north from the northernmost point of the "loop".

Based on the unbiased evidence of the preceding aerial photographs, the State Engineer determines that the "loop ditch" located within the southwest corner of Proof V-06350 existed prior to the eventual parceling of the Allerman (Mott) Ranch. Therefore, the State Engineer does not require the removal of the "loop ditch" and the requested relocation of the ditch into the Allerman Lane ditch right-of-way as set forth in the Novotny objection and the Davis objection⁵⁸ to the Preliminary Order of Determination. The State Engineer further finds that the watering of stock under Claim V-06350 is a *de minimus* use of water and will have no effect on the amount of irrigation water delivered to the other claimants within this ¼ split of Mott Creek. To put it into further perspective, the watering of livestock for the 12 head of horses at 20 gallons per day per head will utilize a maximum of 240 gallons per day. If the ¼ split of Mott Creek is receiving 1 cfs (cubic foot per second) that generates 645,000 gallons of water per day. 240 gallons/645,000 gallons equals 0.037% of the total flow in the stream. Finally, the State Engineer finds that when a large tract of land is parceled into smaller lots, each lot will have characteristics unique to each subdivision. The Yturbide parcel happened to have the "loop ditch" in place prior to said parceling. Therefore, the Yturbide's will have an advantage in stock water availability over other land owners of portions of the original Mott Ranch.

The State Engineer finds that it is not practical to keep all of the ditches charged in order to provide stock water to all of the downstream owners within the Mott Ranch. Water should be stored in ponds for stock watering purposes when a party is not in rotation. The State Engineer further determines that storage of water shall occur only when a claimant is in priority in the rotation schedule.

Sacramento, California, Sheet 4 of 51. Public record in the Office of the State Engineer,

⁵⁷ Public record in the Office of the State Engineer, aerial photograph obtained from the Carson Valley Conservation District office on an unknown date, Photo No. BPB-13-89, dated 10-20-38.

⁵⁸ Transcript, p. 30, public administrative hearing on objections to the Preliminary Order of Determination before the State Engineer, March 7, 2007. (Hereafter Transcript, 3/7/2007).

The final argument regards the rotation schedule and historically irrigated acreage for each of the claimants. Ms. Yturbide testified that "a twelve hour rotation does not work." When each party irrigated under the 25% ($\frac{1}{4}$) schedule, her client had the opportunity to saturate more ground even though the rotation didn't come back for three weeks.⁵⁹ Ms. Yturbide argues that the soil type on the Yturbide land is comprised of soil type no. 642⁶⁰, described as Ophir gravelly sandy loam, 2 to 8 percent slopes, that is granular and better drained with a much lower water holding capacity.⁶¹ Bruce Scott consultant for the Yturbides; further testifies under direct examination by Ms. Yturbide that this soil requires a greater head of water and a longer period of time for the water to be pushed over the "642" soil type.⁶² Review of the map which illustrates the location of the different soil types indicates that the 642 soil covers most of the Yturbide land, all of the Park land, the north and eastern half of the McKay parcel, the north part and eastern 2/3 of the Novotny parcel and the south central and northwest part of the Davis land.

Mr. Scott continued to be directly examined by Ms. Yturbide regarding soil types and their location on the five (5) parcels of land. Mr. Scott states that the northeast corner of the map, also known as the northeast corner of the Davis parcel is comprised of a 555⁶³ soil type, Kimmerling clay loam, clay substratum. The Natural Resource Conservation Service classifies this soil as poorly drained, moderately low to moderately high (0.06 to 0.20 in/hr) capacity to transmit water, a 12 to 24 inch depth to water and subject to occasional flooding.⁶⁴ Mr. Scott testifies that this land is subject to flooding.⁶⁵ Mr. Scott goes on to identify the 622 and 431 soil types on the Davis land as clayier soils with a higher water holding capacity and less permeability.⁶⁶ The 431 soil type is identified as Shalcar family peat.⁶⁷ This soil is very poorly drained with a depth to the water table at zero (0) inches.

⁵⁹ Transcript, 3/7/2007 p. 48.

⁶⁰ USDA/NRCS Soils Data Mart, NV773, Douglas County Area.

⁶¹ Transcript, 3/7/2007 p. 73.

⁶² Transcript, 3/7/2007 p. 76.

⁶³ Transcript, 3/7/2007 p. 76.

⁶⁴ USDA/NRCS Soils Data Mart, NV773, Douglas County Area.

⁶⁵ Transcript, 3/7/2007 p. 77.

⁶⁶ Transcript, 3/7/2007 p. 79.

⁶⁷ USDA/NRCS Soils Data Mart, NV773, Douglas County Area.

The State Engineer finds that the testimony and evidence regarding soil types and their associated characteristics are well supported by exhibits and verified by publications and electronic data available from the Natural Resource Conservation Service, formerly the Soil Conservation Service. NRS 533.035 states that "beneficial use shall be the basis, the measure and the limit of the right to the use of water." Evidence and testimony regarding water demand based on the physical characteristics of the land does not answer the question regarding "beneficial use". While scientific data is a useful tool in determining the potential land use, it is not necessarily what occurred on the acreage.

"Affidavits"⁶⁸ that were submitted by Harold Feil, dated October 1990; Helen C. Clark and Janice H. Hansen, dated November 24, 1990; Knox Johnson, dated November 8, 1990; Edwin C. Sarman, dated November 23, 1990; and Michael Philips⁶⁹, not dated, but notarized by Ann M. Wilson, Notary Public; all show similar patterns of irrigation based on their knowledge of the Mott Ranch while it was still a single entity being utilized solely for agricultural purposes. Mr. Davis objected to the aforementioned documents being referred to as "affidavits"⁷⁰ NRS 199.190 states: "The making of a deposition, certificate or affidavit shall be deemed to be complete when it is subscribed and sworn to or affirmed by the defendant with intent that it be uttered or published as true." Based on this definition the State Engineer is in agreement with Mr. Davis' objection that these documents do not meet the requirements to be qualified as "affidavits" under the definition of the law. The State Engineer also recognizes that these documents were solicited and written by individuals that are laymen and not trained as attorneys with an intimate knowledge of the statutes. Although none of these individuals were alive prior to 1905, they do provide insight into the operation and practices of the Mott Ranch prior to it being parceled and the use of the land changed to meet the needs and desires of the current owners of record.

⁶⁸ Public record in the Office of the State Engineer filed under Proof of Appropriation No. V-06349.

⁶⁹ Evidence submitted with the post hearing brief, Titled: SUPPLEMENTAL SUBMISSION IN SUPPORT OF OBJECTIONS TO THE PRELIMINARY ORDER, by Jennifer Yturbide, Attorney for Yturbide Trust, dated April 9, 2007. Also, Hearing Exhibit 16 from the public administrative hearing on objections to the Preliminary Order of Determination before the State Engineer, March 7, 2007.

⁷⁰ Transcript, 3/7/2007 p. 87.

A water claim⁷¹ was submitted by Cerrisa Fettic on behalf of the heirs of the Elizabeth Mott Ranch on August 31, 1889. Mrs. Fettic claimed "one fourth (1/4) of all the waters customarily flowing in" Mott Creek. Mrs. Fettic further states:

"Claimants own and are entitled to divert, have and use for stock, domestic and irrigating purposes as aforesaid, the amount, quantity and portion of and interest in all of the water of said stream hereinbefore mentioned that is to say one fourth of all said waters and Abt- one hundred acres (more or less) of land lie under said stream and ditches and flume and may be irrigated therefrom and Abt- 100 acres are irrigated by waters of said stream through said ditches and claimants have no other means of irrigating said land, than said waters aforesaid, and claimants require to irrigate said land and for domestic and stock purposes all the water and interest in water herein claimed."

Referring to the Motts, Wheeler⁷² testified: "In 1855 they must have had 60 acres of grain besides the hay lands that were irrigated. The north field only was irrigated." Review of the aerial photography from 1938⁷³ and associated mapping by staff⁷⁴ of the State Engineer's Office revealed that harvest acreage was 52 acres. This is indicated by well groomed fields with a grid system of ditches and lines of cultivation running in a north/northwest direction perpendicular to Allerman Lane. The dimensions of the acreage are approximately 2,400 feet running from the southwest corner of Claim V-06350 in an east/northeasterly direction along Allerman Lane to the south end of a north/northwest trending fence line located approximately 450 feet from the southwest corner of Claim V-05314. The roughly rectangular acreage has an approximate overall width of 1,050 feet running in a north/northwest direction perpendicular to Allerman Lane. This acreage can be coordinated with the "60 acres of grain" described by Wheeler.

⁷¹ Book B, Page 88, Ditch and Water Claims, Douglas County Recorder's Office, Douglas County, State of Nevada.

⁷² P. 14 of Wheeler testimony, Taylor et al. vs. Jones, June 1, 1871, and Taylor et al. vs. Alvey, June 2, 1871, Second Judicial District Court, Douglas County, Nevada.

⁷³ See Footnote No. 50 on page 32.

⁷⁴ Reed Cozens, Engineering Technician III.

A mapping project⁷⁵ conducted in 1904 by the U.S. Geological Survey, Hydrographic Branch, Reclamation Service, illustrates irrigated acreage within Carson Valley from the East and West Forks of the Carson River and stream and spring sources flowing from and arising along the eastern side of the Carson Range of mountains. Irrigated acreage is illustrated by north to south trending solid and dashed lines. Acreage that is comprised of non-irrigated ground, i.e., brush and forest land, swamp land, shallow water table, corrals, stack yards, etc. is illustrated by "blank" areas on the map. Based on this map the State Engineer finds that 102.83 acres were irrigated within the claimed place of use claimed under Proofs V-05314, V-06313, V-06349, V-06350 and V-06351. The State Engineer finds that this acreage is consistent with the Fetic water claim and Wheeler testimony in preceding paragraphs.

Mr. de Lipkau⁷⁶ argued that Permit 60682 is supplemental to Mott Creek water rights claimed under Proof V-06350. Mr. de Lipkau argues that Permit 60682 should be counted as water not needed from Mott Creek for the irrigation of the Yturbide property. Permit 60682 was issued for the irrigation of 6.0 acres of land located within the SE¼NW¼ Section 3, T.12N., R.19E., M.D.B.&M. Item No. 15 of the permit states: "The groundwater right to be granted under this Application is not to be supplemental to any surface water rights." The State Engineer finds that the final place of use of this right has not been determined by the filing of the Proof of Beneficial Use under said permit. The State Engineer also finds that the determination of the final disposition of pre-statutory water use from Mott Creek has nothing to do with underground water that may or may not be supplemental to this claim.

All of the parties to the protest stipulated to change the current 7-day rotation schedule to a 14-day schedule.⁷⁷ Staff of the State Engineer's office asked the question: "Based on the same proportions?" Ms. Yturbide responded: "No, not on the same proportions."⁷⁸ The State Engineer determines that although all parties stipulated to a 14-day rotation schedule, they are still not in total agreement with the proportional division of water based on the decisions set forth in the Preliminary Order of Determination. Therefore, the State Engineer

⁷⁵ Map No. 489, U. S. Geological Survey, Hydrographic Branch, Reclamation Service, Truckee-Carson Project Nev. received on July 27, 1904, L.H. Taylor, with letter July 18, 1904, Public record in the Office of the State Engineer.

⁷⁶ Transcript, 3/7/2007 pp. 93-94.

⁷⁷ Transcript, 3/7/2007 p.179.

⁷⁸ Transcript, 3/7/2007 p.180.

finds that an 18-day schedule will be a preferable compromise for all parties. Refer to the attachment to Table 2. Titled "1/4 FLOW OF MOTT CREEK ROTATION SCHEDULE, 2ND DIVERSION FROM NORTH TO SOUTH".

The State Engineer has reevaluated the findings set forth in the Preliminary Order of Determination based on the protests, testimony, evidence presented during the hearing, review of the claims and their supporting evidence, aerial photography and historic mapping of the Carson Valley's irrigated lands. Therefore, the State Engineer finds that Proof of Appropriation V-05314 is reduced to 7.61 acres of irrigated land with the balance of the land able to be irrigated by any drain and waste water that may occur from irrigation of land located up-gradient, V-06313 remains at 40.00 acres, V-05349 remains at 32.26 acres, V-05350 remains at 12.96 acres and V-05351 remains at 10.00 acres.

III. FIELD INVESTIGATIONS

Field investigations of the various springs and streams; the ditch systems diverting water, and the lands irrigated therefrom were conducted by staff of the Office of the State Engineer on various dates including April 5, 1996; May 3, 1996; May 10, 30 and 31, 1996; August 16, 1996; September 30, 1996; July 1 and 2, 1997; July 30, 1997; September 4 and 5, 1997; October 2 and 3, 1997; April 28, 1998; May 6 and 7, 1998; June 11, 12 and 16, 1998; July 16 and 17, 1998; August 11 and 12, 1998; September 8, 10, 11, 16, 18 and 24, 1998; October 14 and 15, 1998; November 2, 1998; August 26, 1999 and July 26, 2007.

The field investigators' observations and measurements were reduced to reports of field investigation and are on file in the Office of the State Engineer.

IV. WATER SOURCES AND FLOWS

The sources of water that are the subject of this adjudication are located within Douglas County, Nevada, and consist of the springs and streams in Carson Valley located within or adjacent to T.12N., R.19E., M.D.B.&M. The area of the drainage basins in this proceeding begins at the north boundary of T.12N., R.19E., M.D.B.&M. and runs south to the northern portions of Sections 9 and 10, T.11N., R.19E., M.D.B.&M., in California. The west boundary is the drainage divide between Carson Valley and the Lake Tahoe Basin, also described as the crest of the Carson Range of mountains. The east boundary is generally

described as adjacent and including a small portion of lands irrigated by the Carson River system under the Alpine Decree.⁷⁹

This adjudication proceeding includes the waters of Mott Creek, Taylor Creek, Cary Creek (Aka Carey Creek), Monument Creek (Aka Bulls Canyon Creek), Stutler Creek (Aka Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Miller Creek, Bently Spring, Luther Creek and various unnamed sources occurring along the eastern slope of the Carson Range.

The streams that are the subject of this adjudication are fed from springs and melting snow located in the upper elevations of the Carson Range. The streams generally flow in an easterly direction from the crest of the Carson Range into the Carson Valley. Typical of Nevada's mountain streams, the runoff peaks in the spring and then recedes during the summer months until there is minimal or zero flow.

Elevation and the size of the watershed are the two dominant factors affecting stream discharge and flow rates. The watershed yield will be heavily dependent on winter snowfall and varies accordingly from year to year. The watershed discharge is further dependent on the physical and geological differences that affect runoff within each watershed.

Individual springs and spring complexes are part of the hydrologic system and occur at the base of the Carson Range and along the Genoa fault zone. The fault trends from north to south along the base of the east side of the Carson Range.

A brief description of the major drainages listed from north to south is as follows: Taylor Creek, Mott Creek, Cary Creek, Wheeler Creek No. 1, Wheeler Creek No. 2, Stutler Creek, Sheridan Creek, Miller Creek (Spring), Bently Spring and Luther Creek. Barber Creek⁸⁰ (Jobs Canyon Creek) is located within the first described area under this adjudication; however, this stream system is not part of this proceeding, since it was previously adjudicated. The decreed waters of Barber Creek are intertwined and commingled with other sources of water in this proceeding and are described for continuity of the area being adjudicated.

⁷⁹ Final Decree, U.S. v. Alpine Land and Reservoir Co., Civil No. D-183 (D.Nev. 1980) ("Alpine Decree").

⁸⁰ Final Decree, In the Matter of the Determination of the Relative Rights to the Waters of Barber Creek and Its Tributaries in Douglas County, Nevada, Judicial District Court of the State of Nevada, in and for the County of Douglas, May 27, 1921. Docket No. 255. (Hereafter "Barber Creek Decree")

The Taylor Creek drainage basin begins at an elevation of approximately 8,240 feet above Mean Sea Level (MSL) and terminates at the diversion located at elevation 4,880 feet and east of Nevada State Highway Route 207. The drainage basin has an area of 0.70 square miles. The basin is bounded on the north by the Daggett and Corsser Creek drainages and to the south by the Mott Creek drainage. During field investigations personnel of the Office of the State Engineer obtained stream flow measurements that ranged from 0.23 cubic feet per second (cfs) to 0.41 cfs.

The Mott Creek drainage basin begins at an elevation of 10,067 feet above MSL on Monument Peak and terminates at the diversion located at elevation 4,920 feet and south and west of Nevada State Highway Route 207. The drainage basin has an area of 2.08 square miles. The basin is bounded on the north by the Daggett and Taylor Creek drainages and to the south by the Cary Creek drainage basin. Personnel of the Office of the State Engineer and the United States Geological Survey, hereafter U.S.G.S., obtained stream flow measurements that ranged from 0.33 cfs to 7.34 cfs.

The Cary Creek drainage basin begins at an elevation of 10,067 feet above MSL on Monument Peak and terminates at the diversion located at elevation 4,990 feet and one half mile west of Foothill Road. The drainage basin has an area of 2.34 square miles. The basin is bounded on the north by the Mott Creek drainage basin and to the south by the Wheeler Creek No. 1 drainage basin. Personnel of the Office of the State Engineer and the U.S.G.S. obtained stream flow measurements that ranged from 1.89 cfs to 2.35 cfs.

The Wheeler Creek No. 1 drainage basin begins at an elevation of 9,530 feet above MSL and terminates at the diversion located at elevation 5,600 feet and west of Foothill Road. The drainage basin has an area of 0.50 square miles. The basin is bounded on the north by the Cary Creek drainage basin and to the south by the Stutler Creek and Wheeler Creek No. 2 drainage basins. Personnel of the Office of the State Engineer and the U.S.G.S. obtained stream flow measurements that ranged from 0.84cfs to 1.44 cfs.

The Wheeler Creek No. 2 drainage basin begins at an elevation of 8,040 feet above MSL and terminates at the diversion located at elevation 5,000 feet and east of the southwest corner of Section 10, T.12N., R.19E., M.D.B.&M. The drainage basin has an area of 0.44 square miles. The basin is bounded on the north by the Wheeler Creek No. 1 drainage basin and to the south by the Stutler Creek drainage basin. Stream measurements included Wheeler Creek No. 1 flows that were diverted into the Wheeler Creek No. 2 channel. Therefore, there are no separate measurements of the discharge of Wheeler Creek No. 2.

The Stutler Creek drainage basin begins at an elevation of 10,080 feet above MSL and terminates at the diversion located at elevation 4,820 feet and

just west of Foothill Road. The drainage basin has an area of 1.89 square miles. The basin is bounded on the north by the Wheeler Creek No. 1 and Wheeler Creek No. 2 drainages and to the south by the Sheridan Creek and Barber Creek drainages. Personnel of the Office of the State Engineer and the U.S.G.S. obtained stream flow measurements that ranged from 0.18 cfs to 1.68 cfs.

The Sheridan Creek drainage basin begins at an elevation of 9,731 feet above MSL and terminates at the diversion located at an elevation of 4,810 feet and just west of Foothill Road. The drainage basin has an area of 1.01 square miles. The basin is bounded on the north by the Stutler Creek drainage and to the south by the Barber Creek drainage. Several springs located on what is known as the historic Jobs Peak Ranch make up a majority of the flow throughout the year. Personnel of the Office of the State Engineer and the U.S.G.S. obtained stream flow measurements that ranged from 0.36 cfs to 4.30 cfs.

Barber Creek drainage basin begins at an elevation of 10,823 feet above MSL on Jobs Sister Peak and terminates at the diversion located at elevation 4,810 feet and just west of Foothill Road. The drainage basin has an area of 3.14 square miles. The basin is bounded on the north by the Stutler Creek and Sheridan Creek drainages and to the south by the Luther Creek drainage.

Miller Creek begins as a spring at the base of the Carson Range. The primary source of the water is from the spring source and not derived from surface runoff. Personnel of the U.S.G.S. obtained gaging station and stream flow measurements that ranged from 0.24 cfs to 3.30 cfs.

Bently Spring begins as a meadow area where the spring discharges into a shallow canyon at the base of the Carson Range. The primary source of the water is from the spring source and not derived from surface runoff. Personnel of the Office of the State Engineer obtained stream flow measurements that ranged from 0.022 cfs to 0.106 cfs.

The Luther Creek drainage basin begins at an elevation of 10,633 feet above MSL on Jobs Sister Peak and terminates at the diversion located at elevation 5,100 feet and three-fourths of a mile southwest of Foothill Road. The drainage basin has an area of 4.39 square miles. The basin is bounded on the north by the Barber Creek and small-unnamed drainages and to the south by the Fredericksburg Canyon drainage. Personnel of the Office of the State Engineer and the U.S.G.S. obtained stream flow measurements that ranged from 0.77 cfs to 13.70 cfs.

The Office of the State Engineer measured the flows of other sources of water within the area encompassed by this adjudication. The records of the measurements of these additional springs and streams are included in this

proceeding and are available for review in the reports of field investigations and stream flow measurements on file in the Office of the State Engineer.

V. ANALYSIS OF THE CLAIMS AND THEIR RESPECTIVE SOURCES FOR DETERMINATION OF DIVERSION RATES AND DUTIES

The State Engineer determines that many of the sources of water are not always of sufficient flow during the irrigation season to fulfill the amounts claimed under the proofs claiming a vested water right and certificates of appropriation. The field investigations, stream-flow measurements, the records of the Office of the State Engineer and the supporting documents filed together with their respective proofs were all considered in determining the limit and extent of the vested water rights claimed in this proceeding. These records included the U.S.G.S. Hydrographic Branch Reclamation Service Truckee-Carson Project Nev., July 27, 1904, and the 1938 U.S. Department of Agriculture, Soil Conservation Service Aerial Photographs of Carson Valley. These records may be reviewed at the Office of the State Engineer. The "TABLE OF RELATIVE RIGHTS OF APPROPRIATORS" represents a compilation of the Proofs and Permits accepted by the State Engineer in the determination of the relative rights in this proceeding.

The State Engineer recognizes that prior to this proceeding, historic practices, existing agreements and other documents, including civil decrees, have allowed the users of the various stream systems within the subject adjudication to distribute and use the water accordingly.

There are three existing civil decrees within the area under this adjudication for the waters of Mott Creek and Luther Creek. The State Engineer recognizes that the existing civil decrees are controlling and any determinations made in this proceeding will be made accordingly.

On June 3, 1871, portions of the waters of Mott Creek were decreed pursuant to a civil action between A. M. Taylor, et al. v. David Jones in the Second Judicial District Court of the State of Nevada in and for Douglas County⁸¹. David Jones was awarded three-sixteenths of all the water flowing in Mott Creek for irrigation purposes. Also on June 3, 1871, a separate civil decree on Mott Creek between Alvin M. Taylor, et al. v. R. D. Alvey in the Second Judicial District Court of the State of Nevada in and for Douglas County, Nevada, awarded R. D. Alvey 3 miners inches of the flow.

⁸¹ Currently the Ninth Judicial District Court of the State of Nevada in and for Douglas County.

The State Engineer finds that the successors in interest to these two civil decrees on Mott Creek are the claimants receiving water from the southernmost diversion of the four-way split. The State Engineer determines that the vested water rights previously decreed under both judicial decrees equate to approximately one-quarter of the available flow of Mott Creek and are claimed under Proofs V-05070, V-06317, V-06318, and V-06319 in this proceeding.

The waters of Luther Creek were previously decreed on May 27, 1874, pursuant to a civil action between James Hannum and A. A. Hannum, his wife, plaintiffs v. William M. Cary and W. H. H. Cary in the Second Judicial District Court of the State of Nevada in and for Douglas County, Nevada. Wherein, the plaintiffs were awarded one-third of the natural flow of Luther Creek. The State Engineer finds that the successors in interest to this civil decree on Luther Creek are the claimants receiving water from the two-way split. The State Engineer determines that the claimants receiving their respective portion of the available flow of Luther Creek under Proofs V-02858, V-06363, V-06364, V-06365, and V-06366 represent the vested water rights previously decreed.

A review of the language of these three civil decrees on Mott and Luther Creeks indicates that the available waters are divided by parts; however, no description of specific points of diversion, the names and locations of the ditches or the places of use under each decree were provided. The State Engineer finds that many essential items necessary to define the decreed water rights are omitted from these decrees. The State Engineer determines that his analysis of the claims filed in this proceeding relative to those two sources of water for the points of diversion, places and manners of use further clarifies and defines the water rights previously decreed.

The claimants in this proceeding that filed claims for these waters have referred to these civil decrees, various agreements and historical practices, all of which have been considered in determining how the available waters are distributed and in some cases commingled with other sources of water, for distribution for the claimed beneficial uses. The State Engineer determines that the execution of agreements and the transfer of the title of ownership of claims of vested water rights between private parties bind only those parties named. The State Engineer further determines that a document conveying title to land that includes appurtenant water rights that are vested is for only that amount that can be established and determined through an adjudication process; however, the conveyance of title of the claimed vested water right does not define the limit and extent of said claim.

The State Engineer determines that a deed conveying a right to a percentage or part of the flow does not entitle the grantee to that amount of water under a claim of a vested water right until such claim is determined as to the limit and extent according to state law. The State Engineer also determines that the division of the available waters by parts and percentages is not the standard of measurement of a water right and is not a sufficient method to determine the limit and extent of a claim of vested water right. The standard in Nevada is in cubic feet per second as required under NRS § 533.065. *Ramelli v. Sorgi*, 38 Nev. 552, 149 Pac. 71, 154 Pac. 73 (1915).

The State Engineer has examined the conditions surrounding the claimed sources of water, points of diversion and places of use and determined that a number of claims of vested water rights are intertwined and in some cases are supplemental sources for other claims of vested water rights and/or certificated water rights in this proceeding. The analysis of those springs, streams and tributaries relative to the respective proofs can be found in Appendix A under Section XVII.

VI. IRRIGATION RETURN FLOW, DRAIN AND WASTE WATERS

Several claimants filed proofs for irrigation uses wherein the sources of water are a combination of direct diversions, return flows and waste waters. Waste water has been previously defined by the Nevada Supreme Court to consist of surplus water running off from irrigated ground, not consumed by the process of irrigation, or which the irrigated land would not take up⁸².

Waste waters are not subject to appropriation so as to establish a permanent right therein, as is the case of an appropriation of the waters of a natural stream. Water seeping from irrigated land onto the adjoining land of another person was held subsequently to be waste water as so defined⁸³.

Return flows are waters diverted for irrigation or other uses and applied to an area, which is not consumed by evaporation or transpiration, that return to the stream from which they were diverted, or to some other stream, or that would do so if not intercepted by some obstacle. Thus, return waters include both waste and seepage waters and may be collected in drainage ditches then reused for irrigation before reaching another source or point of collection without losing its character as return flow.

⁸² *Ryan v. Gallio*, 52 Nev. 330, 334, 286 Pac. 963 (1930).

⁸³ *In re Bassett Creek and Its Tributaries*, 62 Nev. 461, 465-466, 155 P.2d 324 (1945).

The user of the waste water that has escaped or drained from the lands of others, or is being conveyed therefrom in ditches, does not become vested with any control over the ditches of the upper owner or of the water flowing therein, nor can he require the owner to continue or to maintain conditions so as to supply the appropriation of waste water at any time or in any quantity, when acting in good faith^{84 85}.

The Nevada Supreme Court found that the right that a claimant acquires to waste water is a temporary right only to whatever water escapes from the ditches, diversions or lands of others, and which cannot find its way back to its natural stream channel or ditch. The use of this waste water does not carry with it the right to any specific quantity of water⁸⁶.

The ability to use the irrigation return flows after the initial beneficial use occurs is only available for use after the prior rights have been met and are outside of the place of use served by the primary diversion of water.

The State Engineer determines that no diversion rate is recognized for the irrigation proofs claiming natural overflow and subirrigation. The State Engineer further determines that no flow rate is recognized for irrigation return flows that may include waste or drain water. The duty for proofs claiming these as sources of water shall not exceed the acre-foot per acre duty established herein. In Section VII Proofs Determined To Be Valid lists the claims for irrigation return flow, i.e., drain and waste waters that the State Engineer has determined to be valid.

VII. AVAILABLE WATERS

The State Engineer determines that the streams and springs named herein are fully appropriated under the claims of vested rights and/or under existing certificates issued by the State Engineer and that in the average year, as shown by the flows in the described stream and spring systems there is no surplus water for irrigation or any additional consumptive uses.

⁸⁴ Ryan v. Gallio, 52 Nev. 330, 344-345, 286 Pac. 963 (1930)

⁸⁵ In re Bassett Creek and Its Tributaries, 62 Nev. 461, 466, 155 P. 2d 324 (1945).

⁸⁶ Ryan v. Gallio, 52 Nev. 330, 344, 286 Pac. 963 (1930).

VIII. PROOFS DETERMINED TO BE VALID

The field investigations conducted by personnel for the Office of the State Engineer disclosed that the waters of Mott Creek, Taylor Creek, Cary Creek (AKA Carey Creek), Monument Creek and Bulls Canyon, Stutler Creek (AKA Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No.1, Wheeler Creek No. 2, Miller Creek, Bently Spring, Luther Creek, and various unnamed sources located within the boundaries of the adjudication area were being placed to beneficial use for irrigation, stock watering, power, and domestic purposes.

The proofs of appropriation summarized below were determined to be valid or partially valid vested water rights established prior to March 1, 1905. The certificated water rights are listed for informational purposes and to assist in the interpretation of the proofs filed in this adjudication. The State Engineer determines that the limit and extent of the proofs filed in this proceeding and the existing certificated water rights perfected under the applicable statutes are described in detail in Section XVI, Table of Relative Rights of Appropriators.

For a complete listing of all of the claims of vested rights submitted in response to this proceeding, or any other filing in the Office of the State Engineer, such as permits and certificates, refer to the Abstract of Claims.

PROOFS OF APPROPRIATION.

Proof V-02430 was filed on February 21, 1958, by Frank J. Judd claiming a vested right from Palmer Swamp for irrigation of 20.70 acres of land. In this Final Order of Determination, a vested right for 20.70 acres of irrigation from the above-named source is established under this proof with the corresponding diversion rate reduced to 0.21 cfs

Proof V-02857 was filed on April 23, 1975, by The Heritage Ranch, E. J. McGah owner, claiming a vested right from an unnamed spring for irrigation of 163.00 acres of land. The current owners of record are Ted & Judy Gaines and Robert D. & Wanda D. Shockey, Hanson Trust, Dated April 2, 1980, and the Wild Goose Limited Partnership. In this Final Order of Determination, a vested right for 163.00 acres of irrigation from the above-named source is established under this proof. The proof is partially supplemental to Proof V-02858. See Table No. 8 for diversion rate and duty of water.

Proof V-02858 was filed on April 23, 1975, by The Heritage Ranch, E. J. McGah owner, claiming a vested right from Luther Creek for irrigation of 278.4 acres of land. Domestic and stock watering uses are also claimed. The current owners of record are Ted & Judy Gaines, Robert D. & Wanda D. Shockey, Hanson Trust, Dated April 2, 1980, Robert H. and Arlene M. Brown Family Trust as of April 19, 2000 and Wild Goose Limited Partnership. In this Final Order of Determination, a vested right for 278.4 acres of irrigation, stock water for sixty (60) cattle and ten (10) horses and domestic purposes from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is partially supplemental to Proof V-02857. See Table No. 9 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-04594 was filed on June 1, 1987, by Joseph S. Lodato claiming a vested right from Sheridan Creek (North & South Diversions) for irrigation of 16.0 acres of land. The current owners of record are Joseph S. Lodato, the Sapp 1993 Trust, Allan D. Sapp, Trustee, and Theodore & Katherine A. Weber. The State Engineer determines that the total acres of land owned by Joseph S. Lodato, the Sapp Trust, and Theodore & Katherine A. Weber is approximately 22.93 acres based on records that are on file in the office of the County Recorder, Douglas County, Nevada. The State Engineer further determines that after reviewing the historical records on file in the Office of the State Engineer and field investigations by personnel of the Office of the State Engineer that the entire 22.93 acres were irrigated prior to 1905.

Mr. Lodato received a certified letter, dated May 7, 1996, requesting a cultural map and an amended proof if necessary. The certified mail receipt was signed and dated May 8, 1996, by J. S. Lodato. A second letter, non-certified, dated May 8, 1997, requesting the same was sent to Joseph S. Lodato and R. O. Anderson Engineering, the last known agent for the claimant. Staff of this office made several phone calls and at least two (2) meetings were held at the Office of the State Engineer with the claimant regarding the filing of the map and amended proof. The State Engineer finds that neither the claimant nor his agent filed an amended proof and supporting map delineating the exact location and size of the claimed acreage.

The State Engineer determines that 22.93 acres are irrigated under Proof V-04594 and not 16.0 acres as originally claimed. The State Engineer further determines that under Proof V-04594 the current owners of record tied to the amount of historically irrigated land from Sheridan Creek are Joseph S. Lodato, five (5) acres, the Sapp 1993 Trust, five (5) acres, and Theodore & Katherine A. Weber, 12.93 acres.

Theodore & Katherine A. Weber filed Proof V-06306 for the waters of Sheridan Creek. The Webers and Lodato reconfigured the original Douglas County Assessor's Parcels subsequent to the filing of Proofs V-04594 and V-06306. The Webers submitted documentation to this office of a purchase of land and appurtenant water rights from Mr. Lodato in the amount of eleven (11) acres under Proof V-04594 that was confirmed by the Office of the State Engineer. The Webers filed Proof V-06306 (Sheridan Creek) that is for the same source and for a portion of the claimed place of use as determined under Proof V-04594. The State Engineer determines that Proof V-06306 filed by the Webers supersedes rights held in their name under Proof V-04594. Therefore, no rights are recognized under Proof V-04594 for irrigation of land claimed under Proof V-06306.

In this Final Order of Determination, a vested right for 10.0 acres of irrigation from the above-named sources for the Joseph S. Lodato portion on Douglas County Assessor Parcel (APN), 1219-14-002-006, and for the Sapp 1993 Trust Allan D. Sapp, Trustee on APN 1219-14-002-005 is established under this proof. This proof is partially supplemented by Proof V-06505 (Stutler Creek) and Permit 7595, Certificate 1760, on the portion of the claimed place of use lying within the S½ NW¼ Section 14, T.12N., R.19E., M.D.B.&M. See Table No. 6 for diversion rate and duty of water.

Proof V-05049 was filed on November 16, 1989, by John D. Turner and Bessie N. Turner claiming a vested right from Mott Creek and an Unnamed Stream for irrigation of 15.80 acres of land. Domestic and stock watering is also claimed. The current owner of record is the Benz Family Trust. In this Final Order of Determination, a vested right for 15.80 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-05070 was filed on December 5, 1989, by Lorilyn V. and Randall R. Chitwood claiming a vested right from Mott Creek for irrigation of 7.071 acres of land. Domestic and stock watering of 12 head of livestock is also claimed. In this Final Order of Determination, a vested right for 7.071 acres of irrigation, stock water for 12 head of livestock and domestic uses from the above-named source is established under this proof. This proof is partially supplemented by underground water under Permit 63414. See Table No. 2 for diversion rate and duty of water.

Proof V-05314 was filed May 23, 1991, by David B. Davis and Sharon L. Davis claiming a vested right from Mott Creek for irrigation of 56.39 acres of land. Domestic and stock watering is also claimed.

In this Final Order of Determination, a vested right for 7.61 acres of irrigation, stock water for 60 head of livestock and domestic uses from the above-named source is established under this proof. This proof is supplemented by underground water under Permit 56296, Certificate 14890, for 20 acre-feet of water within the entire claimed place of use. This proof is further limited to the waters of Mott Creek on an eighteen-day rotating schedule; see Table No. 2 and accompanying rotation schedule. See Section XII for the portion of the claim for stock water use. See Table No. 2 for schedule, diversion rate and duty of water.

Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 are the claims filed for the waters of Mott Creek consisting of the flow originating from the second diversion from the north to south as described in Table No. 2. A review⁸⁷ of the proofs and their testimony and supporting evidence from the Hearing on Objections to the Preliminary Order of Determination, further research and findings by the Office of the State Engineer and taking into consideration the Orders of the court, the State Engineer determines that Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 will be on a eighteen-day rotation schedule. The distribution of water will begin with Proof V-06350 (Yturbide) starting on the first day (April 1) of the irrigation season at 5:00 pm until the fourth day at 10:00 am, Proof V-06351 (Parks) from the fourth day at 10:00 am until the fifth day at 6:00 pm, Proof V-06349 (McKay) from the fifth day at 6:00 pm until the eleventh day at 12:00 pm, Proof V-06313 (Novotny) from the eleventh day at 12:00 pm until the eighteenth day at 8:00 am and Proof V-05314 (Davis) from the eighteenth day at 8:00 am until nineteenth/first day at 5:00 pm. This rotation schedule shall continue until the end of the irrigation season on October 15th of each year. No changes to the rotation schedule shall be allowed unless by mutual written, signed and recorded agreement by all parties subject to this distribution timetable.

Proof V-05819 was filed on October 26, 1992, by Mottsville Cemetery Association claiming a vested right from Mott Creek for irrigation of 3.16 acres of land. Domestic use is also claimed. In this Final Order of Determination, a vested right for 3.16 acres of irrigation and domestic uses from the above-named source is established under this proof. See Table No. 2 for diversion rate and duty of water. See section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

⁸⁷ Refer to pages 31-41 of this document.

Proof V-06226 was filed on December 28, 1993, by John W. and Erma Nawratil claiming a vested right from Mott Creek for irrigation of 8.29 acres of land. Domestic and stock watering uses are also claimed. Current owners of record are Edward J. Hayes and Constance G. Hayes. In this Final Order of Determination, a vested right for 8.29 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is supplemented by underground water under Permit 27331, Certificate 9514. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-06264 was filed on January 28, 1994, by The Rodgers Family Trust claiming a vested right from Sheridan Creek (South Diversion) for irrigation of 40.20 acres of land. Stock watering of 40 to 60 head of cattle is also claimed. In this Final Order of Determination, a vested right for 40.20 acres of irrigation uses from the above-named source is established under this proof. The stock watering right is established and determined under Proof V-06265. This proof is supplemental to water under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06265 was filed on January 28, 1994, by The Rodgers Family Trust claiming a vested right from Sheridan Creek (South Diversion) for stock watering of 40 to 60 head of cattle. In this Final Order of Determination, a vested right for stock watering of 60 head of cattle from the above-named source is established under this proof. This proof is supplemental to water under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06305 was filed on March 16, 1994, by Theadore Weber and Katherine A. Weber claiming a vested right from Stutler Creek for irrigation of 10.36 acres of land. Domestic and stock watering uses are also claimed. The State Engineer determines that a portion of the claimed acreage in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.12N., R.19E., M.D.B.&M. cannot be irrigated by Stutler Creek. This acreage is irrigated by the South diversion of Sheridan Creek and is under Proof V-06306. In this Final Order of Determination, a vested right for 9.61 acres of irrigation and domestic uses from the above-named source is established under this proof. The State Engineer determines that the portions of lands claimed under Proof V-04594 to which the Webers are owners of a portion, are the same claimed place of use under this proof; however, these lands will not receive any additional diversion or duty under Proof V-04594. This proof is totally supplemental to Proof V-06306 and is partially supplemented by Permit

7595, Certificate 1760, on the portion of the claim lying within the S½ NW¼ of Section 14, T.12N., R.19E., M.D.B.&M. The stock water right from this source is established and determined under Proof V-06308. See Table No. 5 for diversion rate and duty of water.

Proof V-06306 was filed on March 16, 1994, by Theadore Weber and Katherine A. Weber claiming a vested right from Sheridan Creek (North & South Diversions) for irrigation of 12.93 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 12.93 acres of irrigation and domestic uses from the above-named source is established under this proof. The stock water right from this source is established and determined under Proof V-06307. The State Engineer determines that the portions of lands claimed under Proof V-04594 to which the Webers are owners of a portion, are the same claimed place of use under this proof, however; these lands will not receive any additional diversion or duty under Proof V-04594. This proof is partially supplemental to Proof V-06305 and is partially supplemented by Permit 7595, Certificate 1760, on the portion of the claim lying within the S½ NW¼ of Section 14, T.12N., R.19E., M.D.B.&M. See Table No. 6 for diversion rate and duty of water.

Proof V-06307 was filed on March 16, 1994, by Theadore Weber and Katherine A. Weber claiming a vested right from Sheridan Creek (North & South Diversions) for stock watering of 4 head of cattle, 6 head of horses and 12 sheep. In this Final Order of Determination, a vested right for stock watering of 22 head of livestock from the above-named source is established under this proof. This proof is supplemental to Proof V-06308. See Table No. 6 for diversion rate and duty of water.

Proof V-06308 was filed on March 16, 1994, by Theadore Weber and Katherine A. Weber claiming a vested right from Stutler Creek for stock watering of 4 head of cattle, 6 head of horses and 12 sheep. In this Final Order of Determination, a vested right for stock watering of 22 head of livestock from the above-named source is established under this proof. This proof is supplemental to Proof V-06307. See Table No. 6 for diversion rate and duty of water.

Proof V-06309 was filed on March 16, 1994, by Donald S. Forrester and Kristina M. Forrester claiming a vested right from Sheridan Creek for irrigation of 60.87 acres (North Diversion) and 9.90 acres (South Diversion) of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 70.77 acres of irrigation and domestic uses from the above-

named source is established under this proof. This proof is partially supplemental to Proof V-06310 and supplemented by Permit 7595, Certificate 1760, on the 60.87 acre portion. See Section XII for the portion of the claim for stock water use. See Table No. 6 for diversion rate and duty of water.

Proof V-06310 was filed on March 16, 1994, by Donald S. Forrester and Kristina M. Forrester claiming a vested right from Stutler Creek for irrigation of 60.87 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 60.87 acres of irrigation and domestic uses from the above-named source is established under this proof.

This proof is supplemental to Proof V-06309 and supplemented by Permit 7595, Certificate 1760. See Section XII for the portion of the claim for stock water use. See Table No. 5 for diversion rate and duty of water.

Proof V-06311 was filed on March 16, 1994, by Robert S. and June E. Severson claiming a vested right from Stutler Creek for irrigation of 16.61 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 16.61 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is supplemental to Proof V-06312 and supplemented by Permit 7595, Certificate 1760. See Section XII for the portion of the claim for stock water use. See Table No. 5 for diversion rate and duty of water.

Proof V-06312 was filed on March 16, 1994, by Robert S. and June E. Severson claiming a vested right from Sheridan Creek for irrigation of 16.61 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 16.61 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is supplemental to Proof V-06311 and supplemented by Permit 7595, Certificate 1760. See Section XII for the portion of the claim for stock water use. See Table No. 6 for diversion rate and duty of water.

Proof V-06313 was filed on March 17, 1994, by Donald J. Dubin and Pamela J. Dubin and currently owned by Canyon Creek Equestrian Center claiming a vested right from Mott Creek for irrigation of 40.0 acres of land. Domestic and stock watering of an undisclosed number of livestock is also claimed. The current owner of record is Dubin Investment Group LLC.

In this Final Order of Determination, a vested right for 40.0 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is partially supplemented by an underground source under Permit 63382

for irrigation and Permit 59096 for stock watering purposes. This proof is further limited to the waters of Mott Creek on a eighteen-day rotating schedule; see Table No. 2 and accompanying rotation schedule. See Section XII for the portion of the claim for stock water use. See Table No. 2 for schedule, diversion rate and duty of water.

Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 are the claims filed for the waters of Mott Creek consisting of the flow originating from the second diversion from the north to south as described in Table No. 2. A review⁸⁸ of the proofs and their testimony and supporting evidence from the Hearing on Objections to the Preliminary Order of Determination, further research and findings by the Office of the State Engineer and taking into consideration the Orders of the court, the State Engineer determines that Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 will be on a eighteen-day rotation schedule. The distribution of water will begin with Proof V-06350 (Yturbide) starting on the first day (April 1) of the irrigation season at 5:00 pm until the fourth day at 10:00 am, Proof V-06351 (Parks) from the fourth day at 10:00 am until the fifth day at 6:00 pm, Proof V-06349 (McKay) from the fifth day at 6:00 pm until the eleventh day at 12:00 pm, Proof V-06313 (Novotny) from the eleventh day at 12:00 pm until the eighteenth day at 8:00 am and Proof V-05314 (Davis) from the eighteenth day at 8:00 am until nineteenth/first day at 5:00 pm. This rotation schedule shall continue until the end of the irrigation season on October 15th of each year. No changes to the rotation schedule shall be allowed unless by mutual written, signed and recorded agreement by all parties subject to this distribution timetable.

Proof V-06315 was filed on March 18, 1994, by Mottsville Limited Partnership II claiming a vested right from Mott Creek for irrigation of 60.0 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 60.0 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-06316 was filed on March 18, 1994, by Douglas and Amelia Hellman claiming a vested right from Mott Creek for irrigation of 40.0 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 40.0 acres of irrigation, stock water for sixty (60) cattle and domestic uses from the above-named source is established under this

⁸⁸ Refer to pages 31-41 of this document.

proof. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-06317 was filed on March 18, 1994, by Dan and Betty Mirtle and later assigned to William H. and Lois Catherine Gray claiming a vested right from Mott Creek for irrigation of 20.0 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 20.0 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is supplemented by underground water under Permit 27331, Certificate 9514. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-06318 was filed on March 18, 1994, by Norman and Shirley Melnikoff claiming a vested right from Mott Creek for irrigation of 20.0 acres of land. Domestic and stock watering of 20 head of cattle and 6 horses are also claimed. In this Final Order of Determination, a vested right for 20.0 acres of irrigation, domestic and stock watering of 26 head of livestock from the above-named source is established under this proof. This proof is supplemented by groundwater under Permit 61056. See Table No. 2 for diversion rate and duty of water.

Proof V-06319 was filed on March 18, 1994, by Glenn and Sue Ellen Wright claiming a vested right from Mott Creek for irrigation of 10.0 acres of land. Domestic and stock watering uses are also claimed. The current owner of record is Donna Buddington. In this Final Order of Determination, a vested right for 10.0 acres of irrigation, stock water for ten (10) head of livestock and domestic uses from the above-named source is established under this proof. This proof is supplemented by underground water under Permit 27331, Certificate 9514; however, the claimant is not an owner of record of said certificate in the Office of the State Engineer. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-06320 was filed on March 18, 1994, by William R. Tomerlin Trust dated August 11, 1976, claiming a vested right from Wheeler Creek No. 1 and Wheeler Creek No. 2 for irrigation of 94.11 acres of land. Domestic and stock watering of 32 head of cattle, 32 calves and 1 happy bull are also claimed. The State Engineer determines that irrigation of the entire 94.11 acres claimed is not established under this proof based on a 1904 map produced by the U.S.G.S. Hydrographic Branch Reclamation Service Truckee-Carson Project Nev., July 27, 1904, depicting areas under irrigation and aerial photos taken in 1938 by the

U.S.D.A. Soil Conservation Service for the areas of land encompassed by this proceeding. In this Final Order of Determination, a vested right for 49.10 acres of irrigation, domestic and stock watering of 65 head of livestock from the above-named sources is established under this proof. This proof is supplemented by Permit 24806, Certificate 7584; Permit 24807, Certificate 7583; Permit 25601, Certificate 7586; which are all surface water sources and by an underground source under Permit 25409, Certificate 7585. See Table No. 4 for diversion rate and duty of water.

Proof V-06321 was filed on March 18, 1994, by the Granat Revocable Trust of October 18, 1985, and portions were later assigned to Myles S. Douglas and Amy B. Douglas, as Grantors and Trustees of the Bartholomew Family Trust, dated November 21, 2001, and Henry Edward Warg and Geraldine Gardner Revocable Trust, dated October 27, 2003, claiming a vested right from Unnamed Spring A, Unnamed Spring B [hereafter Unnamed Spring (D)]; (see figure 1 for the naming convention of the Unnamed Springs) and Luther Creek (Return Flow) for irrigation of 40.36 acres of land. Domestic and stock watering of 116 head of cattle and 6 horses are also claimed. In this Final Order of Determination, a vested right for 40.36 acres of irrigation, domestic and stock water for 122 head of livestock from is established under this proof. The State Engineer determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. No water right from Unnamed Spring (A) is established under this proof. The State Engineer also determines that no water rights are recognized from Luther Creek (Return Flow). This water shall be treated as "drain and waste" water that can be utilized when water from said source is available. The State Engineer determines that this proof claims the same sources of water and a portion of the place of use described under Proof V-02856, Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842, therefore, this proof supersedes that portion of said proof and certificates. The portion of this proof claiming a right to Unnamed Spring (D) and Luther Creek (Return Flow) is clarified in Table Nos. 8 and 9. See Table Nos. 8 and 9

for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06322 was filed on March 18, 1994, by Granat Revocable Trust of October 18, 1985, and portions were later assigned to Myles S. Douglas and Amy B. Douglas, as Grantors and Trustees of the Bartholomew Family Trust, dated November 21, 2001, claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and Spring Area {Unnamed Spring (D)} for irrigation of 2.47 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.47 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the place of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer further determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days. The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06323 was filed on March 18, 1994, by Prather Family Trust of 10/31/1985, and was later assigned to The Abbott Family Trust of September 9, 2004, claiming a vested right from Unnamed Spring (A), Unnamed Spring (D) and Luther Creek (Return Flow) for irrigation of 40.35 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 40.35 acres of irrigation and domestic uses is established under this proof. The State Engineer determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. No water right from Unnamed Spring (A) is established under this proof. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Proof V-02856, Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842; therefore, this proof supersedes that portion of said proof and certificates. The State Engineer also determines that no water rights are recognized from Luther Creek (Return Flow). This water shall be treated as "drain and waste" water that can be utilized when water from said source is available. The portion of this proof claiming a right to the springs and Luther Creek return flow is clarified in Table Nos. 8 and 9, respectively. See Table Nos. 8 and 9 for diversion rate and duty of water.

Proof V-06324 was filed on March 18, 1994, by Theodore G. and Priscilla J. Pithoud claiming a vested right from Miller Creek for irrigation of 2.53 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.53 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer further determines that this proof claims the same source of water and a portion

of the place of use described under Permit 24525, Certificate 8136, therefore, this proof supersedes that portion of said certificate. The use and rotation of Miller Creek is clarified in Table No. 7. See Table No. 7 for diversion rate and duty of water.

Proof V-06325 was filed on March 18, 1994, by Robert M. and Sylvia L. Farkas claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and Spring Area {Unnamed Spring (D)} for irrigation of 2.54 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.54 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137, therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06326 was filed on March 18, 1994, by the Robert J. Church and Judith M. Church Family Trust dated April 2, 1991, currently owned by Jeanne C. Nelson Revocable Trust, claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.50 acres of land. Domestic and

stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.50 acres of irrigation and domestic uses from the above-named sources and Unnamed Spring (D) is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136, therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table Nos. 7 and 8 for diversion rate and duty of water. The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06327 was filed on March 18, 1994, by Thomas S. Kelly, currently owned by Blaise and Leslie Carrig claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and two spring areas {Unnamed Spring (D) & (B)} for irrigation of 4.90 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 4.90 acres of irrigation and domestic uses from Miller Creek, Unnamed Spring (A), and Unnamed Spring (D) is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137, therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a

rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06328 was filed on March 18, 1994, by Wayne A. and Sharon W. Currie, and later assigned to Paul D. and Ellen Marienthal claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and two spring areas {Unnamed Spring (D) & (B)} for irrigation of 5.55 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 5.55 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the

Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06329 was filed on March 18, 1994, by William M. Coffee, currently owned by David J. and Anne Dellarosa claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and two spring areas {Unnamed Spring (D) & (B)} for irrigation of 5.22 acres of land. Domestic and stock watering uses are also claimed. The current owner of record is the William M. Coffee, Trustee, Coffee Family Trust Dated August 3, 1973. In this Final Order of Determination, a vested right for 5.22 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this

proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06330 was filed on March 18, 1994, by Gary B. and Claudia A. Casteel claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and a spring area {Unnamed Spring (D)} for irrigation of 5.08 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 5.08 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06331 was filed on March 18, 1994, by Harold and Viola Casteel, c/o Gary Casteel and later assigned to the Bartholomew Family Trust claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and a spring area {Unnamed Spring (D)} for irrigation of 4.88 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a

vested right for 4.88 acres of irrigation, stock water for six (6) horses and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06332 was filed on March 18, 1994, by Jacqueline and Frederick R. Hill claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.54 acres of land. Domestic and stock watering uses are also claimed. The current owner of record is Judy Gaines. In this Final Order of Determination, a vested right for 2.54 acres of irrigation and domestic uses from Miller Creek is established under this proof. The State Engineer determines that this land cannot receive water from "Unnamed Creek", therefore, no water right is established from this source. The State Engineer determines that this proof claims the same sources of water and a portion of the place of use described under Permit 24525, Certificate 8136; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water

four (4) consecutive days out of every fourteen (14). See Table Nos. 7 and 8 for diversion rate and duty of water.

Proof V-06333 was filed on March 18, 1994, by Kevin J. and Linda M. O'Connell, current owners are Richard C. and Sandra J. Ferguson, claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)} and a spring area {Unnamed Spring (D)} for irrigation of 4.98 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 4.98 acres of irrigation and domestic uses from Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer further determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-06334 was filed on March 18, 1994, by Pedro and Margaret Villalobos claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.55 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.55 acres of irrigation and domestic uses from Miller Creek and Unnamed Spring (A) is

established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table Nos. 7 and 8 for diversion rate and duty of water.

Proof V-06335 was filed on March 18, 1994, by Charles E. and Fay E. Clelland and later assigned to the Bartholomew Family Trust claiming a vested right from Miller Creek and Spring Area for irrigation of 2.53 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 2.53 acres of irrigation, stock water for six (6) horses and domestic uses from Miller Creek is established under this proof. The "Spring Area" is further described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SEC. 26, T.12N., R.19E., M.D.B.&M. on Douglas County Assessor's Parcel No. 1219-26-001-014. The State Engineer determines that this land cannot receive water from the "Spring Area", therefore, no water right is established from this source. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136; therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table Nos. 7 and 8 for diversion rate and duty of water. See section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06336 was filed on March 18, 1994, by Ron Mitchell and Ginger Mitchell claiming a vested right from Sheridan Creek (North Diversion) for irrigation of 10.37 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 10.37 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06337. See Table No. 6 for diversion rate and duty of water.

Proof V-06337 was filed on March 18, 1994, by Ron Mitchell and Ginger Mitchell claiming a vested right from Stutler Creek for irrigation of 10.37 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 10.37 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06336. See Table No. 5 for diversion rate and duty of water.

Proof V-06338 was filed on March 18, 1994, by Ernest E. Pestana, Trustee of the Pestana 1986 Family Trust claiming a vested right from Stutler Creek for irrigation of 23.76 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 23.76 acres of irrigation and domestic uses from Stutler Creek (aka Stattler Creek) is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06339 and supplemented by Permit 7595, Certificate 1760. See Table No. 5 for diversion rate and duty of water.

Proof V-06339 was filed on March 18, 1994, by Ernest E. Pestana, Trustee of the Pestana 1986 Family Trust claiming a vested right from Sheridan Creek (North Diversion) for irrigation of 23.76 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 23.76 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06338 and supplemented by Permit 7595, Certificate 1760. See Table No. 6 for diversion rate and duty of water.

Proof V-06340 was filed on March 18, 1994, by Donald T. Hall and Peggy Hall claiming a vested right from Sheridan Creek (North Diversion) for irrigation of 22.03 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 22.03 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06341 and supplemented by Permit 7595, Certificate 1760. See Table No. 6 for diversion rate and duty of water.

Proof V-06341 was filed on March 18, 1994, by Donald T. Hall and Peggy Hall claiming a vested right from Stutler Creek for irrigation of 22.03 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of

Determination, a vested right for 22.03 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06340 and supplemented by Permit 7595, Certificate 1760. See Table No. 5 for diversion rate and duty of water.

Proof V-06342 was filed on March 18, 1994, by the Jerald R. Jackson 1975 Trust as amended on 8-11-1992 and the Irene M. Windholz Trust, dated 8-11-1992 claiming a vested right from an Unnamed Spring (A) (Designated Jackson Spring "A") for irrigation of 22.56 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, the State Engineer determines that a vested right for 7.20 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842; and Proof V-02856; therefore, this proof supersedes those portions of said certificates and said proof. This proof is supplemented by Proofs V-06343 on the accepted 7.20 acres. See Table No. 8 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06343 was filed on March 18, 1994, by the Jerald R. Jackson 1973 Trust as amended on 8-11-1992 and the Irene M. Windholz Trust, dated 8-11-1992 claiming a vested right from an Unnamed Spring (B) (Designated Jackson Spring "B") for irrigation of 22.56 acres of land. Domestic and stock watering uses are also claimed. The State Engineer determines that the claimed place of use is reduced to 2.53 acres of subirrigated land; therefore no duty or diversion rate is established under this proof from said source. In this Final Order of Determination, the State Engineer finds that a vested right is established for subirrigation of 2.53 acres within the confines of the spring area and provides up to 11.30 acre-feet of supplemental water for the irrigation of the 7.20 acres specified under Proof V-06342. The State Engineer determines that domestic use from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842; and Proof V-02856; therefore, this proof supersedes those portions of said certificates and said proof. See Table No. 8 for diversion rate

and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06344 was filed on March 18, 1994, by the Jerald R. Jackson 1973 Trust as amended on 8-11-1992 and the Irene M. Windholz Trust, dated 8-11-1992 claiming a vested right from an Unnamed Spring (C) (Designated Jackson Spring "C") for irrigation of 1.88 acres of land. Domestic and stock watering uses are also claimed. The State Engineer determines that the claimed place of use is subirrigated; therefore no duty or diversion rate is established under this proof from said source. [Subirrigation occurs where a spring or seep arises under and irrigates a meadow/pasture without the necessity for water to be physically diverted.] In this Final Order of Determination, the State Engineer determines that a vested right for 2.98 acres of subirrigation from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer further determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842; therefore, this proof supersedes that portion of said certificates. See Table No. 8 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06345 was filed on March 18, 1994, by the Jerald R. Jackson 1973 Trust as amended on 8-11-1992 and the Irene M. Windholz Trust, dated 8-11-1992 claiming a vested right from an Unnamed Spring (Designated Jackson Spring "D") for irrigation of 22.56 acres of land. Domestic and stock watering uses are also claimed. The State Engineer determines that the claimed place of use is subirrigated; therefore no duty or diversion rate is established under this proof from said source. Subirrigation occurs where a spring or seep arises under and irrigates a meadow/pasture without the necessity for water to be physically diverted. In this Final Order of Determination, the State Engineer determines that a vested right for 13.35 acres of subirrigation from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. The State Engineer further determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24918, Certificate 7843, and Permit 24919, Certificate 7842, therefore, this proof supersedes that portion of said certificates. See Table No. 8 for diversion rate and duty of water. See section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06346 was filed on March 18, 1994, by Joy Whipple (aka Joy S. Smith) claiming a vested right from Stutler Creek for irrigation of 24.94 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 24.94 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06347 and supplemented by Permit 7595, Certificate 1760. See Table No. 5 for diversion rate and duty of water.

Proof V-06347 was filed on March 18, 1994, by Joy Whipple (aka Joy S. Smith) claiming a vested right from Sheridan Creek (North Diversion) for irrigation of 24.94 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 24.94 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is supplemental to Proof V-06346 and supplemented by Permit 7595, Certificate 1760. See Table No. 6 for diversion rate and duty of water.

Proof V-06348 was filed on March 18, 1994, by Daniel R. and Laurel C. Hickey claiming a vested right from Unnamed Springs for irrigation of 5.83 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 5.83 acres of irrigation and domestic uses from the above-named source is established under this proof.⁸⁹ See Section XII for the portion of the claim for stock water use.

Proof V-06349 was filed on March 18, 1994, by John G. and Anne M. Stone, Trustees of "The Stone Family Trust 1982", and the land is currently owned by Maddi's Ranch, LLC a Nevada Limited Liability Company [50%] and Duane J. Bertuzzi and Katherine M. McKay [50%], claiming a vested right from Mott Creek for irrigation of 33.46 acres of land. Domestic and stock watering uses are also claimed.

In this Final Order of Determination, a vested right for 33.46 acres of irrigation, stock water for 38 head of cattle or horses⁹⁰ and domestic uses from

⁸⁹ The State Engineer recognizes that the point of diversion and place of use claimed under Proof V-06348 is in Section 33, T.13N., R.19E., M.D.B. & M. The State Engineer determines that there are no competing filings of record for the source of water claimed and that he may include Proof V-06348 in this adjudication proceeding without injury.

⁹⁰ Transcript 3/7/2007, p.215

the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is further limited to the waters of Mott Creek on an eighteen-day rotating schedule, see Table No. 2 for schedule, diversion rate and duty of water.

Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 are the claims filed for the waters of Mott Creek consisting of the flow originating from the second diversion from the north to south as described in Table No. 2. A review⁹¹ of the proofs and their testimony and supporting evidence from the Hearing on Objections to the Preliminary Order of Determination, further research and findings by the Office of the State Engineer and taking into consideration the Orders of the court, the State Engineer determines that Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 will be on a eighteen-day rotation schedule. The distribution of water will begin with Proof V-06350 (Yturbide) starting on the first day (April 1) of the irrigation season at 5:00 pm until the fourth day at 10:00 am , Proof V-06351 (Parks) from the fourth day at 10:00 am until the fifth day at 6:00 pm, Proof V-06349 (McKay) from the fifth day at 6:00 pm until the eleventh day at 12:00 pm, Proof V-06313 (Novotny) from the eleventh day at 12:00 pm until the eighteenth day at 8:00 am and Proof V-05314 (Davis) from the eighteenth day at 8:00 am until nineteenth/first day at 5:00 pm. This rotation schedule shall continue until the end of the irrigation season on October 15th of each year. No changes to the rotation schedule shall be allowed unless by mutual written, signed and recorded agreement by all parties subject to this distribution timetable.

Proof V-06350 was filed on March 18, 1994, by Thomas M. and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust dated August 1, 1991, claiming a vested right from Mott Creek for irrigation of 12.96 acres of land. Domestic and stock watering uses are also claimed.

In this Final Order of Determination, a vested right for 12.96 acres of irrigation, stock water for 12 head of cattle or horses or equivalent consumption by sheep and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is further limited to the waters of Mott Creek on an eighteen-day rotating schedule, see Table No. 2 for schedule, diversion rate and duty of water.

Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 are the claims filed for the waters of Mott Creek consisting of the flow originating from the second diversion from the north to south as described in Table No. 2. A review⁹²

⁹¹ Refer to pages 31-41 of this document.

⁹² Refer to pages 31-41 of this document.

of the proofs and their testimony and supporting evidence from the Hearing on Objections to the Preliminary Order of Determination, further research and findings by the Office of the State Engineer and taking into consideration the Orders of the court, the State Engineer determines that Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 will be on a eighteen-day rotation schedule. The distribution of water will begin with Proof V-06350 (Yturbide) starting on the first day (April 1) of the irrigation season at 5:00 pm until the fourth day at 10:00 am , Proof V-06351 (Parks) from the fourth day at 10:00 am until the fifth day at 6:00 pm, Proof V-06349 (McKay) from the fifth day at 6:00 pm until the eleventh day at 12:00 pm, Proof V-06313 (Novotny) from the eleventh day at 12:00 pm until the eighteenth day at 8:00 am and Proof V-05314 (Davis) from the eighteenth day at 8:00 am until nineteenth/first day at 5:00 pm. This rotation schedule shall continue until the end of the irrigation season on October 15th of each year. No changes to the rotation schedule shall be allowed unless by mutual written, signed and recorded agreement by all parties subject to this distribution timetable.

Proof V-06351 was filed on March 18, 1994, by Mark C. and Susan L. Neuffer, and Thomas M. and Paula J. Yturbide, Trustees of the Yturbide 1991 Family Trust dated August 1, 1991, and the land is currently owned by Eric Song J. Park and Elizabeth Park, claiming a vested right from Mott Creek for irrigation of 10.0 acres of land. Domestic and stock watering uses are also claimed.

In this Final Order of Determination, a vested right for 10.0 acres of irrigation, stock watering for 10 head of cattle, 2 horses and 15 sheep⁹³ and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is further limited to the waters of Mott Creek on an eighteen-day rotating schedule, see Table No. 2 for schedule, diversion rate and duty of water.

Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 are the claims filed for the waters of Mott Creek consisting of the flow originating from the second diversion from the north to south as described in Table No. 2. A review⁹⁴ of the proofs and their testimony and supporting evidence from the Hearing on Objections to the Preliminary Order of Determination, further research and

⁹³ Evidence submitted with the post hearing brief, Titled: SUPPLEMENTAL SUBMISSION IN SUPPORT OF OBJECTIONS TO THE PRELIMINARY ORDER, by Jennifer Yturbide, Attorney for Yturbide Trust, dated April 9, 2007.

⁹⁴ Refer to pages 31-41 of this document.

findings by the Office of the State Engineer and taking into consideration the Orders of the court, the State Engineer determines that Proofs V-05314, V-06313, V-06349, V-06350, and V-06351 will be on a eighteen-day rotation schedule. The distribution of water will begin with Proof V-06350 (Yturbide) starting on the first day (April 1) of the irrigation season at 5:00 pm until the fourth day at 10:00 am , Proof V-06351 (Parks) from the fourth day at 10:00 am until the fifth day at 6:00 pm, Proof V-06349 (McKay) from the fifth day at 6:00 pm until the eleventh day at 12:00 pm, Proof V-06313 (Novotny) from the eleventh day at 12:00 pm until the eighteenth day at 8:00 am and Proof V-05314 (Davis) from the eighteenth day at 8:00 am until nineteenth/first day at 5:00 pm. This rotation schedule shall continue until the end of the irrigation season on October 15th of each year. No changes to the rotation schedule shall be allowed unless by mutual written, signed and recorded agreement by all parties subject to this distribution timetable.

Proof V-06352 was filed on March 18, 1994, by Donald A. Toussau claiming a vested right from Taylor Creek for irrigation of 5.79 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 5.79 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is totally supplemental to Proof V-06353. See Table No. 1 for diversion rate and duty of water.

Proof V-06353 was filed on March 18, 1994, by Donald A. Toussau claiming a vested right from Unnamed Springs for irrigation of 7.32 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 7.32 acres of irrigation and domestic uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. This proof is partially supplemental to Proof V-06352. The total combined duty of water under this proof and Proof V-06352 shall not exceed 4.0 acre-feet per acre on the 5.79 acres described under Proof V-06352. See Table No. 1 for diversion rate and duty of water.

Proof V-06354 was filed on March 18, 1994, by The Schwake Family Trust claiming a vested right from Cary Creek for irrigation of 226.08 acres of land. Domestic, power generation, storage and stock watering of 140 head of livestock including cattle, horses and hogs are also claimed. The State Engineer determines that the claimed storage is in a reservoir that was constructed under Dam Permit J-50, dated October 22, 1959. Therefore, the portion of the claim for storage use is not recognized as a vested claim by the State Engineer. Proofs V-

06354 and V-06355 are subject to an agreement dated July 1, 1918, in Book E., Page 337, Agr., Douglas County Recorder's Office. The State Engineer determines that the agreement divided the flow of Cary Creek between the parties and that 0.37 cfs known as the Glover Right was once part of V-06355 has since been abrogated by Permit 10983, Certificate 2937. In this Final Order of Determination, a vested right for 226.08 acres of irrigation, domestic, power generation, and stock watering of 140 head of livestock from the above-named source is established under this proof. This proof is supplemental to Permit 10983, Certificate 2937, Permit 12532, Certificate 3293 (groundwater), and supplemental to a portion of Carson River Claims 627 and 628 under the Alpine Decree. See Table No. 3 for diversion rate and duty of water.

Proof V-06355 was filed on March 18, 1994, by Roland and Joan P. Dreyer claiming a vested right from Cary Creek for irrigation of 266.24 acres of land. Domestic, storage and stock watering of 300 head of livestock are also claimed. The State Engineer determines that no priority date or amount of water stored for irrigation has been specified; therefore, no vested right is recognized for storage. In this Final Order of Determination, a vested right for 266.24 acres of irrigation, domestic, and stock watering of 300 head of livestock from the above-named source is established under this proof. A portion of this claim in the amount of 0.37 cfs has been abrogated by Permit 10983, Certificate 2937, known as the Glover water right. This proof is supplemented by ground water under Permit 19039, Certificate 5982, Permit 19170, Certificate 5981 and Permit 20765, Certificate 6512 and supplemental to a portion of Carson River Claims 625 and 626 under the Alpine Decree. See Table No. 3 for diversion rate and duty of water.

Proof V-06356 was filed on March 18, 1994, by Archibald Hart III & Kathy Duvall Hart claiming a vested right from Sheridan Creek (North Diversion) and tributaries for irrigation of 5.10 acres of land. Domestic uses associated with the Sheridan House Hotel and Saloon and stockwatering uses are also claimed. The current owners of record are Allan D. Sapp & Patricia J. Sapp. In this Final Order of Determination, a vested right for 5.10 acres of irrigation and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water use. See Table No. 6 for diversion rate and duty of water.

Proof V-06357 was filed on March 18, 1994, by Donald L. and Toni M. Rooker claiming a vested right from Sheridan Creek (South Diversion) for irrigation of 34.70 acres of land. Domestic and stock watering of 35 to 50 head of livestock is

also claimed. In this Final Order of Determination, a vested right for 34.70 acres of irrigation and domestic from the above-named source is established under this proof. The stock water right is established and determined under Proof V-06358. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06358 was filed on March 18, 1994, by Donald L. and Toni M. Rooker claiming a vested right from Sheridan Creek (South Diversion) for stock watering of 35 to 50 head of livestock. In this Final Order of Determination, a vested right for stock watering of 50 head of livestock from the above-named source is established under this proof. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06359 was filed on March 18, 1994, by Dennis R. and Therese S. Buckley claiming a vested right from Sheridan Creek (South Diversion) for stock watering of 20 to 30 head of livestock. In this Final Order of Determination, a vested right for stock watering of 30 head of livestock from the above-named source is established under this proof. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06360 was filed on March 18, 1994, by Dennis R. and Therese S. Buckley claiming a vested right from Sheridan Creek (South Diversion) for irrigation of 18.0 acres and stock watering of 20 to 30 head of livestock. In this Final Order of Determination, a vested right for irrigation of 18.0 acres from the above-named source is established under this proof. The stock water right is established and determined under V-06359. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06361 was filed on March 18, 1994, by Stephen Ray & Lucette Simon and Paul P. & Morene L. Simon claiming a vested right from Sheridan Creek (South Diversion) for stock watering of 30 to 40 head of livestock. In this Final Order of Determination, a vested right for stock watering of 40 head of livestock from the above-named source is established under this proof. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06362 was filed on March 18, 1994, by Stephen Ray & Lucette Simon and Paul P. & Morene L. Simon claiming a vested right from Sheridan Creek

(South Diversion) for irrigation of 32.60 acres and stock watering of 30 to 40 head of livestock. In this Final Order of Determination, a vested right for irrigation of 32.60 acres from the above-named source is established under this proof. The stock water right is established and determined under Proof V-06361. This proof is supplemental to waters under the Barber Creek Decree. See Table No. 6 for diversion rate and duty of water.

Proof V-06363 was filed March 18, 1994, by Sue A. Gardner claiming a vested right from Luther Creek for irrigation of 87.50 acres. Domestic and stock watering uses are also claimed. The current owners of record are Robert D. and Wanda D. Shockey. The State Engineer determines that the physical acreage of land within the claimed place of use is 7.53 acres less than that claimed based on records of surveys filed in the office of the Douglas County Recorder's Office and confirmed by staff of the Office of the State Engineer. In this Final Order of Determination, a vested right for irrigation of 79.97 acres and domestic purposes from the above-named source is established under this proof. The stock watering right is established and determined under Proof V-06364. See Table No. 9 for diversion rate and duty of water.

Proof V-06364 was filed March 18, 1994, by Sue A. Gardner claiming a vested right from Luther Creek for stock watering of 80 to 100 head of livestock. The current owners of record are Robert D. and Wanda D. Shockey. In this Final Order of Determination, a vested right for stock watering of 100 head of livestock from the above-named source is established under this proof. See Table No. 9 for diversion rate and duty of water. See Section XII for stockwatering.

Proof V-06365 was filed March 18, 1994, by Ted and Judy Gaines claiming a vested right from Luther Creek for irrigation of 59.20 acres. Domestic and stock watering uses are also claimed. The current owners of record are Brooks Family Trust Agreement dated, February 18, 1992. After review of Douglas County Assessor's parcels and the map filed in support of this claim the State Engineer determines that the 15.59 acres that was not allowed in the Final Order is hereby reinstated and the objection to the order is affirmed. In this Final Order of Determination, a vested right for irrigation of 59.20 acres and domestic purposes is established under this proof from the above-named source. The stock water right is established and determined under Proof V-06366. See Table No. 9 for diversion rate and duty of water. See section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-06366 was filed March 18, 1994, by Ted and Judy Gaines claiming a vested right from Luther Creek for stock watering of 100 to 120 head of livestock. The current owners of record are Brooks Family Trust Agreement, dated February 18, 1992. In this Final Order of Determination, a vested right for stock watering of 120 head of livestock from the above-named source is established under this proof. See Table No. 9 for diversion rate and duty of water. See Section XII for stockwatering.

Proof V-06367 was filed on March 18, 1994, by the Scossa Brothers claiming a vested right from Miller Creek, Bently Spring and Other Unnamed Springs for irrigation of 213.30 acres. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for irrigation of 213.30 acres and domestic uses from the above-named sources is established under this proof. The stock water right is established and determined under Proof V-06368. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule with the understanding that land irrigated under this proof is to receive water ten (10) consecutive days out of every fourteen (14). This proof is supplemental to water under the Barber Creek Decree and Proof V-06371 and supplemented by Permit 24557, Certificate 8079, and a portion of Permit 24201, Certificate 6813, an underground water right. See Table No. 7 for diversion rate and duty of water.

Proof V-06368 was filed on March 18, 1994, by Scossa Brothers claiming a vested right from Miller Creek, Bently Spring and Other Unnamed Springs for stock watering of 400-500 head of cattle, 25 bulls, and 20 horses. In this Final Order of Determination, a vested right for stock watering of 545 head of livestock from the above-named sources is established under this proof. This proof is supplemental to Proof V-06372. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is to receive water ten (10) days out of every fourteen (14). See Table No. 7 for diversion rate and duty of water. See Section XII for stockwatering.

Proof V-06369 was filed on March 18, 1994 by Helen M. Clark Trust claiming a vested right from Mott Creek for stock watering of 80 to 120 head of livestock. The current owners of record are Michael Steven Bellik, Terry A. Gallagher, Janice G. Hansen, Bettie Kennard Kanelos Trust, and Erik & Myrna J. Vindum. In this Final Order of Determination, a vested right for stock watering of 120 head of livestock from the above-named source is established under this proof. See

Table No. 2 for diversion rate and duty of water. See Section XII for stockwatering.

Proof V-06370 was filed on March 18, 1994, by Helen M. Clark Trust claiming a vested right from Mott Creek for irrigation of 126.9 acres. Domestic and stock watering uses are also claimed. The current owners of record are Michael Steven Bellik, Terry A. Gallagher, Janice G. Hansen, Bettie Kennard Kanelos Trust, and Erik & Myrna J. Vindum. In this Final Order of Determination, a vested right for irrigation of 126.9 acres and domestic uses from the above-named source is established under this proof. The stock water right is established and determined under Proof V-06369. See Table No. 2 for diversion rate and duty of water.

Proof V-06371 was filed on March 18, 1994, by Scossa Brothers claiming a vested right to waste and drain waters from Luther Creek, Miller Creek, the Fredericksburg Ditch and various unnamed springs for irrigation of 292.10 acres. Stock watering is also claimed. The State Engineer determines that a vested right for the above-named sources is established with the understanding that this water may be utilized when available and that no duty or diversion rate is established under this proof. In this Final Order of Determination, a vested right for irrigation of 292.10 acres from the above-named sources is established under this proof. The stock water right is established and determined under Proof V-06372. This proof is supplemental to water under the Barber Creek Decree and Proof V-06367 and supplemented by Permit 24557, Certificate 6813, and a portion of Permit 24201, Certificate 6813, an underground water right. See Table Nos. 7 and 9 for diversion rate and duty of water.

Proof V-06372 was filed on March 18, 1994, by Scossa Brothers claiming a vested right to waste and drain waters from Luther Creek, Miller Creek, the Fredericksburg ditch and various unnamed springs for stock watering of 400 to 500 head of cattle, 25 bulls, and 20 horses. In this Final Order of Determination, a vested right for stock watering of 545 head of livestock from the above-named sources is established under this proof. This proof is supplemental to Proof V-06368. See Table Nos. 7 and 9 for diversion rate and duty of water.

Proof V-06831 was filed on March 18, 1994, by the Honkanen Family Trust, Norman E. and Maria A. Honkanen, Trustees, claiming a vested right from Mott Creek for irrigation of 6.92 acres. Domestic and stock watering uses are also claimed. The current owner of record is the Rock Island Corporation. In this Final Order of Determination, a vested right for irrigation of 6.92 acres and domestic

uses from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

Proof V-07486 was filed on January 25, 1996, by Michael Catherwood and Robin L. Catherwood claiming a vested right from Miller Creek, Unnamed Creek {Unnamed Spring (A)}, and Spring Areas {Unnamed Spring (D)} for irrigation of 4.86 acres. Domestic and stock watering is also claimed. In this Final Order of Determination, a vested right for irrigation of 4.86 acres and domestic uses from the above-named sources is established under this proof. See Section XII for the portion of the claim for stock water. The State Engineer determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer further determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136 and Permit 24526, Certificate 8137, therefore, this proof supersedes that portion of said certificates. The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules.

Proof V-08850 was filed on August 30, 1996, by the Groenendyke Family Trust dated March 2, 1978, claiming a vested right from Unnamed Spring (A) and Unnamed Spring (D), and Luther Creek return flow for irrigation of 37.97 acres. Domestic use and stock watering of 15 horses and 15 cattle is also claimed.

The State Engineer determines that the duty of water for Proof V-08850

shall be limited to 2.43 acre-feet per acre from Unnamed Spring (A) for the 12.43 acres lying north of the diagonal drainage ditch for a total of 30.20 acre-feet of water per 198 day irrigation season. The 25.54 acres of land lying to the south of said diagonal ditch are determined to have a duty of water of 4.00 acre-feet per acre from Unnamed Spring (D) for a total of 102.16 acre-feet of water. The State Engineer determines that Proof V-08850 shall be limited to a total duty of 132.36 acre-feet of water on the north and south sides of the dividing ditch.

The State Engineer determines that Unnamed Spring (A) is physically capable of being diverted to any area within the 37.97 acres claimed under Proof V-08850. The State Engineer determines that water from Unnamed Spring (A) is not necessary for the irrigation of the 25.54 acres lying south of the diagonal ditch under this claim and Proofs V-06321 and V-06323 based on findings within Section II of the Preliminary Order of Determination. The State Engineer further determines that the commingling of Unnamed Spring (A) with Unnamed Spring (D) directs excessive water onto lands irrigated exclusively by Unnamed Spring (D).⁹⁵

The State Engineer determines that water From Unnamed Spring (A) shall be the primary source of water to the 12.43 acres located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, all located within Sec. 26, T.12N., R.19E. M.D.B.&M. This acreage is further described as the acreage located north and west of the northeasterly flowing ditch (located on Douglas county APN 1219-26-001-035), that originates in the southwest corner of APN 1219-26-001-035. The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. The applicant shall be able to utilize Luther Creek "drain and waste" water when it is available, but no direct diversion right is established from said Luther Creek. The State Engineer further determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24918, Certificate 7843; Permit 24919, Certificate 7842; and Proof V-02856, therefore,

⁹⁵ Pages 17-23, Final Order of Determination.

this proof supersedes that portion of said certificates and Proof V-02856. See Table Nos. 8 and 9 for diversion rate and duty of water.

An objection was filed on September 15, 2006, regarding the irrigated acreage accepted under this claim. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09039 was filed on November 19, 1998, by Tom E. Mason and Sharon J. Mason claiming a vested right from Mott Creek for irrigation of 0.22 acres. Domestic and stock water are also claimed. In this Final Order of Determination, a vested right for irrigation of 0.22 acres and domestic purposes from the above-named source is established under this proof. See Section XII for the portion of the claim for stock water use. See Table No. 2 for diversion rate and duty of water.

PROOFS ENTERED PURSUANT TO NRS § 533.125

Nevada Revised Statutes § 533.125 (2) provides that "upon neglect or refusal of any person to make proof of his claim or rights in or to the waters of said stream system, as required by this chapter, prior to the expiration of the period fixed by the State Engineer during which proofs may be filed, the State Engineer shall determine the right of such person from said evidence as he may obtain or may have on file in his office in the way of maps, plats, surveys and transcripts, and exceptions to such determinations may filed in court, as provided in this chapter."

The State Engineer determines that based on information available there are lands within the area encompassed by this adjudication in which claims of vested water rights for irrigation uses could have been filed. The State Engineer further determines that there are a number of parcels adjacent to the south right of way of Mottsville Lane and others in an area known as the Green Acres Subdivision that did not file claims for the waters of Mott Creek and the combined flows of Miller Creek and Unnamed Spring (A), respectively. No permitted rights from Mott Creek exist on the parcels adjacent to Mottsville Lane. The State Engineer determines that the lot owners that did not file a proof claiming a vested water right within the Green Acres Subdivision currently have water rights appurtenant to their respective parcels under Permit 24525, Certificate 8136 (Miller Creek), and Permit 24526, Certificate 8137 (Unnamed Creek). The State Engineer finds that in instances where an existing water right was acquired through the appropriative process and a proof of appropriation is determined to be valid for the same source(s) of water, manner and place of use, that a proof of

appropriation would supersede the right acquired through the statutory permitting process.⁹⁶ Therefore, pursuant to NRS § 533.125 the State Engineer has submitted a proof of appropriation on behalf of the current owners of record in the Douglas County Assessor's office for the following parcels:

Proof V-09263 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Mott Creek for irrigation of 8.73 acres within Douglas County APN'S 1219-03-002-082, 1219-03-002-083 and 1219-03-002-084 in the names of Brett A. & Karen A. Kimball; Robert Chudnow and Linda Sawyer-Chudnow (Parcels 1219-03-002-083 and 1219-03-002-084), respectively. Records on file in the Douglas County Assessor's Office indicate that Thomas C. & Anna L. Pasinger are current owners of record of Douglas County APN 1219-03-002-084. In this Final Order of Determination, a vested right for irrigation of 8.73 acres from the above-named source is established under this proof. See Table No.2 for diversion rate and duty of water.

Proof V-09264 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.53 acres within Douglas County APN 1219-26-001-031 in the name of Tyne Honkanen & Marshall Kyle. In this Final Order of Determination, a vested right for irrigation of 2.53 acres from the above-named source is established under this proof. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136 and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres

⁹⁶ NRS § 533.430 Every permit and certificate of appropriation granted by the State Engineer under any permit upon any stream system which shall have been adjudicated under the provisions of NRS § 533.090 to NRS 533.325, inclusive, is subject to existing rights and the decree.

Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09265 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.55 acres within a portion of Douglas County APN 1219-24-002-009 in the name of Stephen H. & Patricia Christian. In this Final Order of Determination, a vested right for irrigation of 2.55 acres from the above-named source is established under this proof. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate,

duty of water and rotation schedules. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09266 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 5.18 acres within Douglas County APN 1219-24-002-007 in the name of John Minasian. In this Final Order of Determination, a vested right for irrigation of 5.18 acres from the above-named source is established under this proof. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table Nos. 7 and 8 for diversion rate, duty of water and rotation schedules. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09267 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.78 acres within Douglas County APN 1219-26-001-026 in the name of Andrew & Linda Hackler. In this Final Order of Determination, a vested right for irrigation of 2.78 acres from Miller Creek is established under this proof. The State Engineer determines that this land cannot receive water from

"Unnamed Creek", therefore, no water right is established from this source. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136; therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table No. 7 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09268 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed {Unnamed Spring (A)} Creek for irrigation of 2.66 acres within Douglas County APN 1219-26-001-025 in the name of Terry & Cindy Libbon. In this Final Order of Determination, a vested right for irrigation of 2.66 acres from Miller Creek is established under this proof. The State Engineer determines that this land cannot receive water from "Unnamed Creek", therefore, no water right is established from this source. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136; therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table No. 7 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09269 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 2.51 acres within Douglas County APN 1219-26-001-024 in the name of Richard E. & Dorothy J. Muriset. In this Final Order of Determination, a vested right for irrigation of 2.51 acres from Miller Creek is established under this proof. The State Engineer determines that this land cannot receive water from "Unnamed Creek", therefore, no water right is established from this source. The State Engineer determines that this proof claims the same source of water and a portion of the place of use described under Permit 24525, Certificate 8136; therefore, this proof supersedes that portion of said certificate. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a

place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). See Table Nos. 7 and 8 for diversion rate and duty of water. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

Proof V-09270 was filed on June 23, 2000, by the State Engineer's office claiming a vested right from Miller Creek and Unnamed Creek {Unnamed Spring (A)} for irrigation of 5.18 acres within Douglas County APN'S 1219-24-002-008 and 1219-24-002-009 (portion) in the name of Stephen H. & Patricia Christian. In this Final Order of Determination, a vested right for irrigation of 5.18 acres from the above-named source is established under this proof. The State Engineer determines that this proof claims the same sources of water and a portion of the places of use described under Permit 24525, Certificate 8136, and Permit 24526, Certificate 8137; therefore, this proof supersedes that portion of said certificates. The State Engineer further determines that the users of Miller Creek are subject to a rotation schedule and that this proof claims a place of use that is part of the Green Acres Subdivision, which is to receive water four (4) consecutive days out of every fourteen (14). The State Engineer also determines that water rights are recognized as a direct diversion from Unnamed Spring (D) described as follows: The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850 entering the Green Acres subdivision via the south Green Acres Ditch located on APN 1219-26-001-031. The 40% portion will be used to supplement Unnamed Spring (A) flow within the same rotation schedule for said Unnamed Spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the rotation schedule for Unnamed Spring (A) and the 60%/40% division of the irrigation water from Unnamed Spring (D). The portion of this proof claiming a right to Miller Creek, Unnamed Spring (A) and Unnamed Spring (D) is clarified in Table Nos. 7 and 8. See Table No. 7 for diversion rate, duty of water and rotation schedules. See Section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

IX. CERTIFICATED WATER RIGHTS

The following list of certificated water rights is for surface water sources within the area encompassed in this adjudication proceeding. These

appropriations were acquired and perfected pursuant to Chapter 533 of the Nevada Revised Statutes.

Permit 7595, Certificate 1760, is for the water of Gansberg Spring to irrigate 157 acres. The current owners of record are James Rolph III & June Irene Rolph, Robert D. Dunn & Evelyn W. Dunn, James D. Doornink & Edna Doornink, Lois S. Jones, James O. Tomerlin, William R. Tomerlin, L. J. Hanavan, Emile P. Hastert, and Roderick J. and Patricia L. Smith. This certificated water right is supplemental to Proofs V-04594, V-06305, V-06306, V-06309, V-06310, V-06311, V-06312, V-06338, V-06339, V-06340, V-06341, V-06346, and V-06347.

Permit 10033, Certificate 3417, is for the waters of Sharpe Spring for domestic use and to irrigate the landscaping associated with a single-family residence. The current owners of record are David and Evelyn Harvey.

Permit 10983, Certificate 2937, is for the waters of Carey Creek (Cary Creek) to irrigate 161.6 acres and includes stock watering and domestic uses. The owner of record is Melvin Schwake. This water right abrogated a portion of Proof V-06355 and is known as the Glover Right. The storage of the waters is in a reservoir under Dam Permit J-50. This certificated water right is supplemental to V-06354 and supplemented by an underground source under Permit 12532, Certificate 3293. See Table No. 3 for diversion rate and duty of water.

Permit 18720, Certificate 5961, is for the waters of an Unnamed Spring to irrigate 5.71 acres and domestic use. The owners of record are the Bently Family Limited Partnership; Darwin K. Ellis and Elizabeth D. Ellis; Darwin V. Ellis and Linda T. Ellis.

Permit 21569, Certificate 6910, is for the waters of Bently Springs to irrigate 0.76 acres and domestic use. The current owner of record is the Bently Family Limited Partnership.

Permit 24525, Certificate 8136, is for the waters of Miller Creek to irrigate 76.63 acres. The current owners of record are, Bartholomew Family Trust, dated November 21, 2001, Richard E. Burns and Sharon A. Brown, Casteel Corporation, Michael Catherwood and Robin L. Catherwood, Wayne A. Currie and Sharon W. Currie, David J. Della Rosa and Anne Della Rosa, John and Helen Dinel, Judy Gaines, Edward Groenendyke, Eric G. and Tyne Honkanen, Waldermar B. Hylander and Meribeth D. Hylander, Thomas S. Kelly, Paul D. and Ellen Marienthal, Luther J. and Hugh L. Martin, John Minasian, Kevin J.

O'Connell and Linda M. O'Connell, Virginia Owen, The Revocable Trust of Jeanne C. Nelson, dated June 2, 2000, Peter Villalobos. Proofs V-06322, V-06324, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06332, V-06333, V-06334, V-06335, V-07486, V-09264, V-09265, V-09266, V-09267, V-09268, V-09269, and V-09270 totally supersede this certificate. See Table No. 7 for diversion rates and duty of water.

Permit 24526, Certificate 8137, is for the waters of an Unnamed Creek to irrigate 53.50 acres. The current owners of record are the Bartholomew Family Trust, dated November 21, 2001, Richard E. Brown and Sharon A. Burns, Casteel Corporation, Michael and Robin L. Catherwood, Wayne A. and Sharon W. Currie, David J. and Anna Della Rosa, Thomas S. Kelly, Paul D. and Ellen Marienthal, Luther J. and Hugh L. Martin, John Minasian, Kevin J. and Linda M. O'Connell and Virginia Owen. Proofs V-06322, V-06325, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-07486, V-09264, V-09265, V-09266, V-09267, V-09268, V-09269, and V-09270 totally supersede this certificate. See Table No. 8 for diversion rates and duty of water.

Permit 24557, Certificate 8079, is issued for the waters of Miller Creek to irrigate 171.20 acres. The current owners of record are Eugene and Alex Scossa. This permit is supplemental to Proofs V-06367 and V-06371. Therefore, the State Engineer determines that Permit 24557, Certificate 8079, is superseded by Proof of Appropriation Nos. V-06367 and V-06371. See Table No. 7 for diversion rates and duty of water.

Permit 24566, Certificate 8740, is for the waters of Autumn Hills Spring for domestic use for one dwelling and a guesthouse. The current owner of record is Bently Family Limited Partnership.

Permit 24806, Certificate 7584, is for the waters of Wheeler Creek No. 1 to irrigate 94.11 acres. The current owner of record is the William R. Tomerlin Trust dated August 11, 1976. This certificate is supplemental to Proof V-06320 and is supplemented by Permit 24807, Certificate 7583, Permit 25409, Certificate 7585 (underground source), and Permit 25601, Certificate 7586. See Table No. 4 for diversion rates and duty of water.

Permit 24807, Certificate 7583, is for the waters of Wheeler Creek No. 2 to irrigate 94.11 acres. The current owner of record is the William R. Tomerlin Trust Dated August 11, 1976. This certificate is supplemental to Proof V-06320 and is

supplemented by Permit 24806, Certificate 7584, underground Permit 25409, Certificate 7585 and Permit 25601, Certificate 7586. See Table No. 4 for diversion rates and duty of water.

Permit 24918, Certificate 7843, is for the waters of an Unnamed Spring to irrigate 141.68 acres. The current owners of record are Jerald R. Jackson 1975 Trust as amended August 11, 1992, and the Irene M. Windholz Trust, dated August 11, 1992, Nevada Mountain View LLC, Groenendyke Family Trust dated March 2, 1978, The Prather Family Trust of 10/31/1985, JSD Trust dated 2-11-1992, Jill S. Deeter, Trustee. Proofs V-06321, V-06323, V-06342, V-06343, V-06344 (portion), V-06345, and V-08850 totally supersede this certificate. See Table Nos. 8 for diversion rates and duty of water.

Permit 24919, Certificate 7842, is for the waters of an Unnamed Spring to irrigate 141.68 acres. The current owners of record are the Jerald R. Jackson 1975 Trust as amended August 11, 1992, and the Irene M. Windholz Trust, dated August 11, 1992, Nevada Mountain View LLC, Groenendyke Family Trust Dated March 2, 1978, The Prather Family Trust of 10/31/1985, JSD Trust Dated 2-11-1992, Jill S. Deeter, Trustee. This permit is superseded by Proofs V-06321, V-06323, V-06342, V-06343, V-06344 (portion), V-06345, and V-08850. See Table No. 8 for diversion rates and duty of water.

Permit 25409, Certificate 7585, is for the waters of an underground source to irrigate 54.34 acres. The current owner of record is the William R. Tomerlin Trust, dated August 11, 1976. This certificate is supplemental to Proof V-06320 and is supplemented by Wheeler Creek Nos. 1 and 2 filed under Permit 24806, Certificate 7584, Permit 24807, Certificate 7583, and Permit 25601, Certificate 7586.

Permit 25601, Certificate 7586, is for the waters of Wheeler Creek No. 1 to irrigate 94.11 acres. The current owner of record is the William R. Tomerlin Trust, dated August 11, 1976. This certificate is supplemental to Proof V-06320 and is supplemented by Permit 24806, Certificate 7584, Permit 24807, Certificate 7583, and underground Permit 25409, Certificate 7585.

Permit 28884, Certificate 9281, is for the waters of an Unnamed Spring for the irrigation of 5.46 acres and domestic purposes. The current owners of record are Alan K. and Patricia M. Harris.

Permit 35626, Certificate 9549, is for the waters of Castle Garden Spring for domestic use, fire protection and to irrigate 8.20 acres. The current owners of record are Frederic J. Nimis and Concha P. Nimis.

Permit 36087, Certificate 9885, is for the waters of Ellis Spring for domestic use and to irrigate 0.49 acres. The current owners of record are Frederic J. Nimis and Concha P. Nimis.

X. SUPERCEDED PROOF

Proof V-02856 was filed on April 23, 1975, by The Heritage Ranch, E. J. McGah owner, claiming a vested right from an unnamed spring for irrigation of 117.90 acres of land. The current owners of record are the Jerald R. Jackson 1975 Trust, as amended August 11, 1992, and the Irene M. Windholz Trust, dated August 11, 1992; Nevada Mountain View LLC, Prather Family Trust of 10/31/1985, Groenendyke Family Trust, Dated March 2, 1978, and JSD Trust, Dated 2/11/92, Jill S. Deeter, Trustee. In this Final Order of Determination, Proof V-02856 is entirely superseded by Proofs V-06321, V-06323, V-06344, and V-08850. See section II for the State Engineer's response to any objection pertaining to this Proof of Appropriation.

XI. REJECTED PROOF

Proof V-09253 was filed April 19, 2000, by Rodney Jones claiming a vested right from Castle Garden Spring for irrigation of 2.0 acres. Other claimed uses are storage for fire control, incidental irrigation of surrounding property and wildlife purposes. The proof indicates the source of water claimed is the same source of water as that under Permit 35626, Certificate 9549. The proof further details that the claimant has historically received up to 5 gallons per minute as overflow from the water source under said certificate. The proof gives a date of construction of works of approximately July 1, 1980.

A review of the records in the Office of the State Engineer for the claimed source of water revealed that Permit 19756 was originally filed in 1961 and subsequently cancelled in 1967. Work to develop Castle Spring began prior to June 24, 1964, the filing date of Proof of Completion of Work under Permit 19756. Permit 35626, Certificate 9549, filed in 1978, described the works of diversion to be already completed. The State Engineer determines that under

Proof V-09253 the claimed source of water is the overflow water from a spring developed in the 1960's that has an existing certificated water right with a priority date of July 14, 1978. The State Engineer further determines that the works of diversion as claimed under Proof V-09253 was not constructed prior to March 1, 1905, and no corroborating documentation accompanied the claim establishing beneficial use of the water prior to said date. Therefore, the State Engineer finds that this proof of appropriation does not establish a claim of vested water right and must be rejected. Since, Proof V-09253 is rejected it is not reflected in Section XVI Table of Relative Rights of Appropriators.

XII. STOCK WATERING AND DOMESTIC USES

The limit and extent of the rights claimed for watering livestock and domestic purposes are the limits that are claimed individually or claimed as additional uses in claims for irrigation purposes and shall be continued by the claimants named herein, or their successors in interest at any time during the year, and such diversions shall be according to the dates of priorities of such users and limited to the quantity of water reasonably necessary for such use. If a claimant is not in priority for irrigation water, that claimant is not in priority for stock and/or domestic water. The amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock watering and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season shall include water for stock watering and domestic purposes. The number and type of livestock shall be a sufficient measure for determination of the quantity of water under each claim for stock watering purposes. The period of use for stock watering and domestic purposes shall be from January 1st to December 31st of each year as further described below.

The State Engineer determines that the right to the diversion and use of water for stock watering and domestic purposes shall be appurtenant to all claimants of irrigation rights mentioned herein, or their successors in interest at any time during the year. The number and type of livestock watered shall be governed by the traditional carrying capacity of the land and subject to any applicable permits or regulation by State, Federal and local agencies.

XIII. PERIOD OF USE

The period of use was determined from the Nevada Irrigation Guide (1981) developed by the U.S.D.A. Soil Conservation Service (currently known as the Natural Resources and Conservation Service), Reno, Nevada.

The period of use for irrigation is from April 1st to October 15th of each year, unless otherwise noted. The period use for any other manner of use is from January 1st to December 31st of each year unless otherwise specified.

XIV. DUTY OF WATER

The quantity of water actually needed for irrigation, stock watering, domestic use, or other beneficial purposes is restricted to the duty necessary throughout the period of use that varies with the seasons and beneficial use shall be the basis, measurement and the limit of the right to the use of water.⁹⁷ With respect to irrigation, water duty was determined by utilizing data collected within the adjudication area by the Office of the State Engineer from recent flow measurements on various streams and springs, U.S. Geological Survey Gaging Stations located on Miller Spring, Jobs Canyon Creek (Barber Creek), and consumptive use estimates for alfalfa, grain and pasture crops published in the Nevada Irrigation Guide (1981) by the U.S.D.A. Soil Conservation Service (currently known as the Natural Resources and Conservation Service), Reno, Nevada.

The comparison between water availability and potential demand indicates that during many years there is probably not enough water available during the irrigation season to satisfy full irrigation duty for all of the lands which have a claim to water in this proceeding. Water duty is based on years with average precipitation, stream flow and seasonal crop water demand for alfalfa for all water sources in this proceeding.

The duty of water for all lands irrigated under the proofs in this Final Order of Determination, from springs and streams located within the area under adjudication in Carson Valley, Douglas County, Nevada, is herein fixed and shall not exceed:

ALL CLASSES 4.0 ACRE-FEET PER ACRE PER SEASON
UNLESS OTHERWISE SPECIFIED.

1. Diversion Rates

Historically, diversions of water in Carson Valley have been accomplished via pipelines and concrete, earthen, rock, canvas, gabion and board dams located in the stream channel where the diversion ditch or pipeline begins. The diversion rates are to be measured in cubic feet per second for each claim or certificated water right pursuant to NRS § 533.065 and shall not exceed that specified herein or previously under the appropriative process.

⁹⁷ NRS § 533.035.

2. Supplemental Definition

The relationship of water rights characterized by the State Engineer in this Final Order of Determination, as supplemental to other claims of vested water rights and supplemented by existing appropriative rights, and other existing decreed water rights, that are appurtenant to the same property are not cumulative and do not add additional duty. The supplemental rights may augment, or take the place of other water rights when those water rights are unavailable or not in sufficient quantity to meet the needs of the water right holder. The water rights characterized as supplemental in this proceeding are not intended to expand upon the maximum allowable duty of water on any place of use of any vested water rights or appropriative water right.

3. Rotation and Use of Water

Claimants of vested water rights and those owners of water rights acquired through the appropriative process from a common supply may rotate the use of water to which they are collectively entitled based on an agreement, so as to not injure nonparticipants or infringe upon their water rights, which is subject to approval by the State Engineer. The purpose is to enable irrigators to exercise their water rights more efficiently, and thus to bring about a more economical use of available water supplies in accordance with their dates of priority. NRS § 533.075.

XV. MEASUREMENT OF WATER

All measurements of water diverted are to be made at a point where the main ditch or stream enters or becomes adjacent to the land to be irrigated or as near thereto as practicable. The location, if not selected by the State Engineer, is to be approved by him. Measuring devices are not required at this time. The State Engineer reserves the right to require the installation of measuring devices in order to accomplish proper distribution in the event it becomes necessary.

XVI. CHANGE IN POINT OF DIVERSION, MANNER AND PLACE OF USE

All water allotted under this Final Order of Determination shall be appurtenant to the place of use designated herein, NRS § 533.040. Any water user desiring to change the point of diversion, manner of use or place of use of the waters allotted herein must make application to the State Engineer for permission to make a change pursuant to NRS § 533.325 and 533.345. Furthermore any change in Manner of Use will be limited to the consumptive use of the water right.

The amount of water under a proposed change application shall not exceed the amount of water available for beneficial use during a year of average runoff. For streams, which do not have sufficient data to accurately represent actual runoff characteristics and volumes, the State Engineer prior to the approval or denial of any application to change, may deem additional studies necessary.

The volume of water allowed to be changed shall not exceed the duty of water as decreed under the terms and conditions of this adjudication proceeding.

XVII. ENTRY TO INVESTIGATE

The State Engineer or authorized personnel shall have the right to enter the premises of any owner or proprietor where any stream, spring or well mentioned in this Final Order of Determination is situated at any reasonable hour of the day for the purposes of investigating and carrying out the duties required for administration as provided for under Nevada Water Law.

XIX. TABLE OF RELATIVE RIGHTS TO APPROPRIATOR.

The certificated water rights existing within the area under this adjudication proceeding are listed in the following tabulation; however, they are not decreed water rights and are provided for informational purposes to link their relationship to other water rights determined as a result of this proceeding. The proofs establishing a vested claim and appropriative water rights described in the following tables are determined by the State Engineer to be valid in this Final Order of Determination.

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-02430	FRANK J. JUDD	PALMER SWAMP	SW¼SE¼ SEC. 14, T.12N., R.19E., M.D.B.&M.	APR.1 TO OCT. 15	IRRIGATION	0.210	4.00	82.8												
					1897															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N., R. 19 E.															15.30	5.40	20.70		
TOTAL ACRES ALLOTTED:																		20.70		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-02857	TED GAINES AND JUDY GAINES ROBERT D. AND WANDA D. SHOCKEY HANSON TRUST, DATED APRIL 2, 1980 WILD GOOSE LIMITED PARTNERSHIP	UNNAMED SPRING "C"	SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508.0 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	3.000	4.00	652.00
					1853			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-02857 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION		REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII PROOF V02858 SUPPLEMENTS THIS PROOF WITH THE EXCEPTION OF 1.40 ACRES IN THE SE¼NE¼ AND 15.40 ACRES IN THE SW¼NE¼ SECTION 26, T.12N., R.19E., M.D.B.&M. DOUGLAS COUNTY APN'S 1219-25-001-006, 007; AND 1219-26-001-037, 038 (PORTIONS).
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
25	T. 12 N., R. 19 E.		29.00	3.50		26.40	11.60	30.50	16.90									117.90		
26	T. 12 N., R. 19 E.		0.70		15.40	29.00												45.10		
TOTAL ACRES ALLOTTED																	163.00			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-02858	TED GAINES AND JUDY GAINES ROBERT D. AND WANDA D. SHOCKEY HANSON TRUST DATED APRIL 2, 1980 WILD GOOSE LIMITED PARTNERSHIP ROBERT H. AND ARLENE M. BROWN FAMILY TRUST	LUTHER CREEK	PRIMARY (WEST) DIVERSION: NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3072.0 FT. FROM NE COR. OF SAID SECTION 35, IN ALPINE COUNTY, CALIFORNIA. SECONDARY (EAST) DIVERSION: SW¼NW¼ SEC. 36, T.12N., R.19E., M.D.B.&M., S.07°05'10"E. 2163.0 FT. FROM NW COR. OF SAID SECTION 36, IN ALPINE COUNTY, CALIFORNIA.	APR. 1 TO OCT. 15	IRRIGATION	* 1.670	4.00	597.60
				JAN. 1 TO DEC. 31	DOMESTIC	** 5.000	4.00	516.00
					1853			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-02858 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS			
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED FOR 70 HEAD OF LIVESTOCK, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
25	T. 12 N., R. 19 E.			29.00	3.50		26.40	11.60	30.50	16.90	20.60			18.90	1.60	33.40	36.50	18.00	246.90	NORTH DIVERSION: * 1/6 OF 10 C.F.S. IS APPURTENANT TO 149.4 ACRES LOCATED WITHIN THE S½NE¼ AND NW¼ SECTION 25 AND E½NE¼ AND NE¼SE¼ SECTION 26, T.12N., R.19E., M.D.B.&M. PROOF V02857 SUPPLEMENTS THIS PORTION OF THIS PROOF WITH THE EXCEPTION OF 1.40 ACRES IN THE SE½NE¼ AND 0.40 ACRE IN THE NE¼SE¼ SECTION 26, T.12N., R.19E., M.D.B.&M.
26	T. 12 N., R. 19 E.		0.70			30.40									0.40				31.50	SOUTH DIVERSION: ** 1/2 OF 10 C.F.S. IS APPURTENANT TO 129 ACRES LOCATED WITHIN THE E½SW¼ AND SE¼ SECTION 25, T.12N., R.19E., M.D.B.&M. NORTH DIVERSION: DOUGLAS COUNTY APN'S 1219-25-002-001 AND 1219-26-001-037& 038 (PORTIONS). SOUTH DIVERSION: DOUGLAS COUNTY APN 1219-25-002-002 (PORTION). 1219-25-002-001 AND 1219-26-001-037& 038 (PORTIONS).
																			278.40	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-04594	JOSEPH S. LODATO SAPP 1993 TRUST, ALAN D. SAPP TRUSTEE	SHERIDAN CREEK (NORTH AND SOUTH DIVERSIONS) AND STUTLER CREEK	SHERIDAN CREEK NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47. FROM SW COR. OF SAID SECTION 15. STUTLER CREEK SE¼NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., N.42°56'27"W. 1,573.88 FT. FROM SE COR. OF SAID SECTION 16.	APR.1 TO OCT. 15	IRRIGATION 1852 FOR SHERIDAN CR. 1905 FOR STUTLER CR.	* 0.013 ** 0.086 *** 0.010	†4.00 ‡0.25	40.00 2.50

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-04594 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.	R. 19 E.							0.25	0.88	3.12	5.75							10.00	STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII ACREAGE IS DETERMINED BY THE STATE ENGINEER'S OFFICE FROM THE BOUNDARY LINE ADJUSTMENT MAP FOR DOUGLAS COUNTY ASSESSOR'S PARCELS 1219-14-001-0013 AND 1219-14-002-005, 006. THE MAP WAS FILED ON JAN. 4, 1996, IN THE COUNTY RECORDER'S OFFICE IN BOOK 196, PAGE 787, DOCUMENT NO. 378278. PROOFS V06305 AND V06306 WERE FILED BY THEODORE AND KATHERINE A. WEBER FOR THE WATERS OF STUTLER AND SHERIDAN CREEKS, RESPECTIVELY. THEREFORE, PROOFS V06305-6 SUPERCEDE PROOF V04594 ON ACREAGE OWNED BY THE WEBERS. 0.25 ACRES IN THE SW¼NW¼ AND 0.88 ACRES IN THE SE¼NW¼ SECTION 14, T.12N., R.19E., M.D.B.&M. ARE IRRIGATED WITH COMMINGLED WATER FROM STUTLER CREEK UNDER THIS PROOF AND GANSBERG SPRING UNDER PERMIT 7595, CERTIFICATE 1760. THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.00 ACRE-FEET PER ACRE OF WATER FROM ALL WATER SOURCES. DOUGLAS COUNTY APN'S 1219-14-002-005, 006.
TOTAL ACRES ALLOTTED															10.00					
* 0.013 C.F.S. IRRIGATES 0.25 ACRES IN THE SW¼NW¼ AND 0.88 ACRES IN THE SE¼NW¼ FROM THE NORTH SPLIT OF SHERIDAN CREEK. ** 0.097 C.F.S. IRRIGATES 3.12 ACRES IN THE NE¼SW¼ AND 5.75 ACRES IN THE NW¼SW¼ FROM THE SOUTH SPLIT OF SHERIDAN CREEK. *** 0.010 C.F.S. FROM STUTLER CREEK IS APPURTENANT TO THE ACREAGE DESCRIBED UNDER "REMARKS". † DUTY OF WATER FROM SHERIDAN CREEK. ‡ DUTY OF WATER FROM STUTLER CREEK.																				

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-05049	BENZ FAMILY TRUST	MOTT CREEK & UNNAMED STREAM	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.04°30'W. 3,400.00 FT. FROM NE COR. OF SAID SECTION 04.	APR.1 TO OCT. 15	IRRIGATION	0.166	4.00	63.20
				JAN. 1 TO DEC.31	DOMESTIC			
					1852			
			NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.11°E. 3,450.00FT. FROM NW COR. OF SAID SECTION 03.					

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-05049 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOUGLAS COUNTY APN 1219-03-002-067.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3	T. 12 N.,	R. 19 E.									10.56					5.24			15.80
TOTAL ACRES ALLOTTED																		15.80	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-05070	LORILYN V. AND RANDALL R. CHITWOOD	MOTT CREEK	NE½SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.	APR. 1 TO OCT. 15	IRRIGATION	0.105	4.00	28.28												
				JAN. 1 TO DEC.31	DOMESTIC															
				JAN. 1 TO DEC.31	STOCK WATER															
					1853															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					DOMESTIC AND STOCK WATER SUFFICIENT TO WATER 12 HEAD OF LIVESTOCK IS INCLUDED. THIS PROOF IF PARTIALLY SUPPLEMENTED BY PERMIT 63414, UNDERGROUND WATER. DOUGLAS COUNTY APN 1219-03-002-064.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.													2.071			5.00		
TOTAL ACRES ALLOTTED															7.071					

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-05314	DAVID B. DAVIS AND SHARON L. DAVIS	MOTT CREEK	FOUR WAY SPLIT OF STREAM: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.03°30'20"W. 3,386.85 FT. FROM NE COR. OF SAID SECTION 04. TWO WAY SPLIT OF PRECEEDING SPLIT: NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.10°52'41"E. 3,426.70 FT. FROM NW COR. OF SAID SECTION 03. SPLIT TO ALLERMAN SUCCESSORS: SE¼NW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.35°58'55"E. 2,901.46 FT. FROM NW COR. OF SAID SECTION 03.	APR.1 TO OCT. 15	IRRIGATION	0.091	4.00	30.44
				JAN. 1 TO DEC.31	DOMESTIC			
					1852			

PLACE OF USE						ACRES PER SECTION	REMARKS
40 ACRE DESCRIPTIONS							

SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII THIS PROOF IS SUPPLEMENTED BY PERMIT 56296, CERTIFICATE 14890, UNDERGROUND WATER.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T.	12 N.	R.	19 E.		3.61	4.00											7.61	DOUGLAS COUNTY APN 1219-03-001-062.	
TOTAL ACRES ALLOTTED																			7.610	THIS PROOF IS FURTHER LIMITED TO THE WATERS OF MOTT CREEK ON A ROTATION SCHEDULE SEE TABLE 2

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-05819	MOTTSVILLE CEMETERY ASSOCIATION	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.12°45'30"W. 763 FT. FROM E¼ COR. OF SAID SECTION 04.																	
				APR.1 TO OCT. 15	IRRIGATION	0.047	4.00	12.64												
				JAN. 1 TO DEC.31	DOMESTIC															
					1859															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				3.16	STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOMESTIC USE IS FOR DRINKING WATER FOR VISITORS TO THE CEMETERY.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N., R. 19 E.									0.59	2.44	0.13								
TOTAL ACRES ALLOTTED																			3.16	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06226	EDWARD J. HAYES AND CONSTANCE G. HAYES	MOTT CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.12°45'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. SECONDARY DIVERSION: SE¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.51°49'E. 2,906 FT. FROM W¼ COR. OF SAID SECTION 03.					
				APR.1 TO OCT. 15	IRRIGATION	0.123	4.00	33.16
				JAN. 1 TO DEC.31	DOMESTIC			
					1853			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06226 (cont.)															PLACE OF USE 40 ACRE DESCRIPTIONS				ACRES PER SECTION	REMARKS
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.												1.25			7.04		8.29	THIS PROOF IS SUPPLEMENTED BY PERMIT 27331, CERTIFICATE 9514, UNDERGROUND.
															TOTAL ACRES ALLOTTED				8.29	DOUGLAS COUNTY APN 1219-03-002-065.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06264	THE RODGERS FAMILY TRUST	SHERIDAN CREEK SOUTH DIVERSION	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.					
				APR. 1 TO OCT. 15	IRRIGATION	0.390	4.00	160.80
					1871			

PLACE OF USE						ACRES PER SECTION	REMARKS
40 ACRE DESCRIPTIONS							

SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII A PORTION OF THIS PROOF IS SUPPLEMENTAL TO BARBER CREEK DECREED RIGHTS. DOUGLAS COUNTY APN 1219-14-002-021.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.														29.10	2.50	40.20		
TOTAL ACRES ALLOTTED																		40.20		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06265	THE RODGERS FAMILY TRUST	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.	JAN. 1 TO DEC. 31	STOCK WATER 1871		SEE SECTION XII OF THE FINAL ORDER OF DETERMINATION.												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT WATER FOR 60 HEAD OF LIVESTOCK, SEE SECTION XII. A PORTION OF THIS PROOF IS SUPPLEMENTAL TO BARBER CREEK DECREED RIGHTS. DOUGLAS COUNTY APN 1219-14-002-021.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14	T. 12 N.,	R. 19 E.												X			X		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06305	THEADORE AND KATHERINE A. WEBER, HUSBAND AND WIFE AS JOINT TENANTS	STUTLER CREEK	SE¼NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM SE COR. OF SAID SECTION 16.	APR.1 TO OCT. 15 JAN 1. TO DEC. 31	IRRIGATION DOMESTIC 1905	0.040	* 1.49	** 15.44

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06305 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS			
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.							7.67	1.94									9.61	STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
																			9.61	* THE TOTAL COMBINED DUTY UNDER THIS PROOF, PROOF V06306 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
																			9.61	**DUTY OF WATER IS BASED ON THE DIVERSION RATE EXPANDED OVER A 198 DAY GROWING SEASON.
																			9.61	LAND WITHIN THE N½ SECTION 14 IS SUPPLEMENTAL TO PROOF V06306 AND SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760.
																			9.61	A BOUNDARY LINE ADJUSTMENT MAP FOR DOUGLAS COUNTY ASSESSOR'S PARCELS 19-200-09, 10 AND 11 WAS FILED ON JAN. 4, 1996, IN THE COUNTY RECORDER'S OFFICE IN BOOK 196, PAGE 787, DOCUMENT NO. 378278. ACREAGE PRIOR TO THE LOT BOUNDARY LINE ADJUSTMENT WAS AS FOLLOWS: 7.60 ACRES IN THE SW¼NW¼ SEC. 14 2.76 ACRES IN THE SE¼NW¼ SEC. 14 2.57 ACRES IN THE NW¼SW¼ SEC. 14
																			9.61	DOUGLAS COUNTY APN 1219-14-001-013.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06306	THEADORE AND KATHERINE A. WEBER, HUSBAND AND WIFE AS JOINT TENANTS	SHERIDAN CREEK (NORTH DIVERSION)	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	* 0.153	† 4.00	51.72

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06306 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII ↑ THE TOTAL COMBINED DUTY UNDER THIS PROOF, PROOF V06305 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.							7.67	1.94			3.32					12.93	1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE.	
TOTAL ACRES ALLOTTED																		12.93		
* Current irrigation practices indicate that all of the water utilized under this claim from Sheridan Creek originate from the north division of said stream . Therefore, all water delivery to this parcel shall henceforth be from the north split of Sheridan Creek.																				
LAND WITHIN THE N½ SECTION 14 IS SUPPLEMENTAL TO PROOF V06305 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760.																				
ACREAGE IS DETERMINED BY THE STATE ENGINEER'S OFFICE FROM THE BOUNDARY LINE ADJUSTMENT MAP FOR DOUGLAS COUNTY ASSESSOR'S PARCELS 19-200-09, 10 AND 11. THE MAP WAS FILED ON JAN. 4, 1996, IN THE COUNTY RECORDER'S OFFICE AS BOOK 196, PAGE 787, DOCUMENT NO. 378278.																				
ACREAGE PRIOR TO THE LOT BOUNDARY LINE ADJUSTMENT WAS AS FOLLOWS: 7.60 ACRES IN THE SW¼NW¼ SEC. 14 2.76 ACRES IN THE SE¼NW¼ SEC. 14 2.57 ACRES IN THE NW¼SW¼ SEC. 14																				
DOUGLAS COUNTY APN 1219-14-001-013.																				

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06307	THEADORE AND KATHERINE A. WEBER, HUSBAND AND WIFE AS JOINT TENANTS	SHERIDAN CREEK NORTH DIVERSION AND SOUTH DIVERSION	NE½SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M.	JAN. 1 TO DEC. 31	STOCK WATER 1905		SEE SECTION XII OF THE FINAL ORDER OF DETERMINATION.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06307 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS											
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E											
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
14	T. 12 N.,	R. 19 E.								X										SUFFICIENT WATER FOR 22 HEAD OF LIVESTOCK.						
15	T. 12 N.,	R. 19 E.														X				SUPPLEMENTAL TO PROOF V06308.						
																							DOUGLAS COUNTY APN 1219-14-001-013.			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.										
V-06308	THEADORE AND KATHERINE A. WFBER, HUSBAND AND WIFE AS JOINT TENANTS	STUTLER CREEK	SE¼NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M.	JAN. 1 TO DEC. 31	STOCK WATER 1905		SEE SECTION XII OF THE FINAL ORDER OF DETERMINATION.											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS											
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
14	T. 12 N., R. 19 E.								X									
15	T. 12 N., R. 19 E.													X				
							SUFFICIENT WATER FOR 22 HEAD OF LIVESTOCK.											
							SUPPLEMENTAL TO PROOF V06307.											
							DOUGLAS COUNTY APN 1219-14-001-013.											

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06309	DONALD S. FORRESTER AND KRISTINA M. FORRESTER, HUSBAND AND WIFE AS JOINT TENANTS.	SHERIDAN CREEK *NORTH DIVERSION **SOUTH DIVERSION	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	*0.719 **0.096	4.00 4.00	243.48 39.60

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06309 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS																ACRES PER SECTION	REMARKS	
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII THE TOTAL COMBINED DUTY UNDER THIS PROOF. PROOF V06310 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE THIS PROOF IS PARTIALLY SUPPLEMENTAL TO PROOF V06310 AND SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN 1219-14-001-012 AND A PORTION OF 1219-14-001-008.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
ACREAGE IRRIGATED FROM THE NORTH DIVERSION																				
14	T. 12 N., R. 19 E.		2.42	8.89		3.73		10.58	35.25								60.87			
ACREAGE IRRIGATED FROM THE SOUTH DIVERSION																				
14	T. 12 N., R. 19 E.								4.53						5.37		9.90			
TOTAL ACRES ALLOTTED																70.77				

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06310	DONALD S. FORRESTER AND KRISTINA M. FORRESTER, HUSBAND AND WIFE AS JOINT TENANTS.	STUTLER CREEK	SE¼NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM THE SE COR. OF SAID SECTION 16. THE WATERS OF STUTLER CREEK ARE THEN CONVEYED THROUGH A PIPELINE TO A POINT IN THE SE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., WHERE THE WATERS OF STUTLER CREEK ARE COMMINGLED WITH THE WATERS OF SHERIDAN CREEK IN THE NORTH SHERIDAN CREEK CHANNEL. THE COMMINGLED WATERS ARE DIVERTED FROM THE SHERIDAN CREEK CHANNEL AT A POINT IN THE NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM THE SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1905	0.250	* 1.49	90.70

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06310 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS			
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY UNDER THIS PROOF, PROOF V06309 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE. THIS PROOF IS SUPPLEMENTAL TO PROOF V06309 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN 1219-14-001-012 AND A PORTION OF 1219-14-001-008.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.		2.42	8.89		3.73		10.58	35.25								60.87		
TOTAL ACRES ALLOTTED																			60.87	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06311	ROBERT S. AND JUNE E. SEVERSON, HUSBAND AND WIFE AS JOINT TENANTS THOMAS J. SCYPHERS AND KATHLEEN M. SCYPHERS	STUTLER CREEK	SE 1/4 NE 1/4 SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM THE SE COR. OF SAID SECTION 16. THE WATERS OF STUTLER CREEK ARE THEN CONVEYED THROUGH A PIPELINE TO A POINT IN THE SE 1/4 SE 1/4 SEC. 15, T.12N., R.19E., M.D.B.&M., WHERE THE WATERS OF STUTLER CREEK ARE COMMINGLED WITH THE WATERS OF SHERIDAN CREEK IN THE NORTH SHERIDAN CREEK CHANNEL. THE COMMINGLED WATERS ARE DIVERTED FROM THE SHERIDAN CREEK CHANNEL AT A POINT IN THE NE 1/4 SE 1/4 SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM THE SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1905	0.070	* 1.49	24.75

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06311 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY UNDER THIS PROOF, PROOF V06312 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE THIS PROOF IS SUPPLEMENTAL TO PROOF V06312 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN'S 1219-14-001-004, SCYPERS; 1219-14-001-005, SEVERSON.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.	R. 19 E.		0.03	0.02		15.69			0.87								16.61		
TOTAL ACRES ALLOTTED																		16.61		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06312	ROBERT S. AND JUNE E. SEVERSON HUSBAND AND WIFE, AS JOINT TENANTS; THOMAS J. SCYPHERS AND KATHLEEN M. SCYPHERS	SHERIDAN CREEK (NORTH DIVERSION)	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM THE SW COR. OF SAID SECTION 15.	APR. 1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.196	* 4.00	66.44											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY UNDER THIS PROOF, PROOF V06311 AND PERMIT 7595, CERTIFICATE 1760 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE. THIS PROOF IS SUPPLEMENTAL TO PROOF V06311 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN'S 1219-14-001-004, SCYPHERS; 1219-14-001-005, SEVERSON.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14	T. 12 N., R. 19 E.			0.03	0.02		15.69			0.87								16.61	
TOTAL ACRES ALLOTTED																		16.61	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06313	DUBIN INVESTMENT GROUP, LLC PROPERTY OWNED BY: CANYON CREEK EQUESTRIAN CENTER	MOTT CREEK	FOUR WAY SPLIT OF STREAM: NE½SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.03°03'20"W. 3,386.85 FT. FROM NE COR. OF SAID SECTION 04. TWO WAY SPLIT OF STREAM: NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.10°52'41"E. 3,246.70 FT. FROM NW COR. OF SAID SECTION 03. SPLIT TO ALLERMAN SUCCESSORS: SE¼NW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.35°58'55"E. 2,901.46 FT. FROM NW COR. OF SAID SECTION 03.					
				APR. 1 TO OCT. 15	IRRIGATION	0.481	4.00	160.00
				JAN. 1 TO DEC.31	DOMESTIC			
				JAN. 1 TO DEC.31	STOCK WATER			
					1852			

PLACE OF USE 40 ACRE DESCRIPTIONS															ACRES PER SECTION	REMARKS				
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				40.00	STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII THIS PROOF IS FURTHER LIMITED TO THE WATERS OF MOTT CREEK ON A ROTATION SCHEDULE SEE TABLE 2
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.	R. 19 E.		27.00	13.00													40.00	THIS PROOF IS SUPPLEMENTED BY PERMIT 59096, UNDERGROUND, STOCK WATER, AND PARTIALLY SUPPLEMENTED BY PERMIT 63382, UNDERGROUND, IRRIGATION ON 3.75 ACRES. DOUGLAS COUNTY APN 1219-03-001-061.	
TOTAL ACRES ALLOTTED																		40.00		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT/J ACRE	TOTAL AC.-FT.											
V-06315	MOTTSVILLE LIMITED PARTNERSHIP II	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.58°14'04"W. 6,420.37 FT. FROM NE COR. OF SECTION 03, T.12N., R.19E., M.D.B.&M.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.630	4.00	240.00											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOUGLAS COUNTY APN'S 1219-03-001-063, 064; 1219-03-002-085.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3	T. 12 N., R. 19 E.		0.30		21.80	16.30				2.90	1.60				0.10	17.00		60.00	
TOTAL ACRES ALLOTTED																			60.00

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT/J ACRE	TOTAL AC.-FT.											
V-06316	DOUGLAS AND AMELIA HELLMAN	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.58°14'04"W. 6,420.37 FT. FROM NE COR. OF SECTION 03, T.12N., R.19E., M.D.B.&M.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.420	4.00	160.00											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED FOR 60 HEAD OF LIVESTOCK, SEE SEC. XII DOUGLAS COUNTY APN 1219-03-001-065.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2	T. 12 N., R. 19 E.								8.10			0.40						8.50	
3	T. 12 N., R. 19 E.					19.20									10.30	2.00		31.50	
TOTAL ACRES ALLOTTED																			40.00

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06317	WILLIAM H. GRAY AND LOIS CATHERINE GRAY	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.																	
				APR. 1 TO OCT. 15	IRRIGATION	0.296	4.00	80.00												
				JAN. 1 TO DEC.31	DOMESTIC															
	1852																			
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.													17.30			2.70	20.00	THIS PROOF IS SUPPLEMENTED BY PERMIT 27331, CERTIFICATE 9514, UNDERGROUND.
TOTAL ACRES ALLOTTED																			20.00	THE CLAIMANT IS NOT THE OWNER OF RECORD OF SAID CERTIFICATE. DOUGLAS COUNTY APN 1219-03-002-087.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06318	NORMAN AND SHIRLEY MELNIKOFF, HUSBAND AND WIFE AS JOINT TENANTS	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.					
				APR. 1 TO OCT. 15	IRRIGATION	0.296	4.00	80.00
				JAN. 1 TO DEC.31	DOMESTIC			
				JAN. 1 TO DEC.31	STOCK WATER			
					1852			

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06318 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.													4.20	7.90	4.40	3.50	20.00	DOMESTIC AND STOCK WATERING OF OF 26 HEAD OF LIVESTOCK.
															TOTAL ACRES ALLOTTED				20.00	THIS PROOF IS SUPPLEMENTED BY PERMIT 61056, UNDERGROUND.
																				DOUGLAS COUNTY APN 1219-03-002-086.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06319	DONNA BUDDINGTON	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W, 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.148	4.00	40.00												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED FOR 10 HEAD OF LIVESTOCK, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
2	T. 12 N.,	R. 19 E.										3.90						3.90	THIS PROOF IS SUPPLEMENTED BY PERMIT 27331, CERTIFICATE 9514, UNDERGROUND.	
3	T. 12 N.,	R. 19 E.														6.10	6.10			
TOTAL ACRES ALLOTTED																		10.00	DOUGLAS COUNTY APN 1219-03-002-088.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06320	WILLIAM R. TOMERLIN TRUST DATED AUG. 11, 1976	WHEELER CREEK NO. 1 AND WHEELER CREEK NO. 2	* WHEELER CREEK NO. 1 NW¼SW¼ SEC. 10, T.12N., R.19E., M.D.B.&M., S.00°45'E. 1,000 FT. FROM W¼ COR. OF SAID SECTION 10. ** WHEELER CREEK NO. 2 SW¼SW¼ SEC. 10, T.12N., R.19E., M.D.B.&M., S.03°40'E. 2,640 FT. FROM W¼ COR. OF SAID SECTION 10.																	
				APR.1 TO OCT. 15	IRRIGATION	* 0.652	4.00	196.40												
				JAN. 1 TO DEC.31	DOMESTIC	** 1.174														
				JAN. 1 TO DEC.31	STOCK WATER															
					1852															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
9	T. 12 N., R. 19 E.														0.50				0.50	DOMESTIC AND STOCK WATERING FOR 32 HEAD OF CATTLE, 32 CALVES AND 1 HAPPY BULL. THE STATE ENGINEER DETERMINES THAT ACREAGE AND DUTY BE REDUCED AS REFLECTED IN THE "PLACE OF USE" DESCRIPTION BASED ON MAP NO. 4891, "U.S. GEOLOGICAL SURVEY, HYDROGRAPHIC BRANCH, RECLAMATION SERVICE, FOR THE TRUCKEE-CARSON PROJECT NEV.", DATED JULY 27, 1904, AND AERIAL PHOTOS OF CARSON VALLEY BOTTOM LANDS, DATED OCT. 20, 1938.
10	T. 12 N., R. 19 E.										5.80	28.50	13.70	0.60					48.60	
TOTAL ACRES ALLOTTED																			49.10	
THIS PROOF IS SUPPLEMENTED BY PERMIT 24806, CERTIFICATE 7584; PERMIT 24807, CERTIFICATE 7583; PERMIT 25601, CERTIFICATE 7586 AND AN UNDERGROUND SOURCE UNDER PERMIT 25409, CERTIFICATE 7585. THE STATE ENGINEER DETERMINES THAT NO ADDITIONAL DUTY OR DIVERSION RATE ARE ALLOWED ON LANDS IRRIGATED FROM THE SAME WATER SOURCE UNDER A PROOF OF APPROPRIATION AND PERMITTED RIGHTS. THEREFORE, THE TOTAL DUTY OF WATER SHALL NOT EXCEED 4.00 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES																				

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06320 (cont.)	DOUGLAS COUNTY APN'S 1219-10-002-011, 012, 013, 018 AND THE EAST PART OF PARCEL 1219-09-002-004.
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PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06321	MYLES S. DOUGLAS AND AMY B. DOUGLAS, AS GRANTORS AND TRUSTEES OF THE BARTHOLOMEW FAMILY TRUST, DATED NOVEMBER 21, 2001 HENRY EDWARD WARG AND GERALDINE GARDNER REVOCABLE TRUST, DATED OCT. 27, 2005	UNNAMED SPRING (D)-DIRECT DIVERSION, LUTHER CREEK - RETURN FLOW	**UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.53°15'E., 3,300 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	11.50	4.00	96.24												
				JAN. 1 TO DEC.31	DOMESTIC	1853														
				LUTHER CREEK - RETURN FLOW NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3,072 FT. FROM NE COR. OF SAID SECTION 35.	The State Engineer determines that no vested right is established from Luther Creek for "drain and waste" water only. No diversion rate or duty is allowed under this proof. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
24	T. 12 N.,	R. 19 E.											4.00	12.30					16.30	DOMESTIC AND STOCK WATERING FOR 122 HEAD OF LIVESTOCK.
25	T. 12 N.,	R. 19 E.					13.60	10.46											24.06	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
TOTAL ACRES ALLOTTED																			40.36	
* 1.50 CFS IS THE IS THE MINIMUM FLOW RATE FROM UNNAMED SPRING (D) AND IS TO BE USED IN A ROTATION SCHEME OF IRRIGATING LAND UNDER PROOFS V-06321, V-06323 AND V-08850. FLOW IN EXCESS OF 1.5 CFS SHALL BE DIVIDED IN A 60%/40% SPLIT WITH 40% OF THE WATER ABOVE 1.5 CFS DIVERTED THROUGH THE DIVERSION TO THE NORTH THAT FLOWS BENEATH FOOTHILL ROAD TO THE EAST AND DIRECTS WATER THROUGH THE "BISECTING DITCH" UNDER CLAIM NO. V-08850. 60% OF THE FLOW IN EXCESS OF 1.5 CFS WILL REMAIN IN THE DITCH THAT PROVIDES WATER TO HERITAGE RANCH WATER USERS UNDER CLAIMS V-06321, V-06323 AND V-08850. REFER TO TABLE 8 FOR THE DISTRIBUTION TABLE AS IT PERTAINS TO THE 60%/40% DIVISION OF THE IRRIGATION WATER FROM UNNAMED SPRING (D).																				
THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24918, CERTIFICATE 7843, "UNNAMED SPRING", AND PERMIT 24919, CERTIFICATE 7842, "UNNAMED SPRING", AND PROOF V02856 ON THE CLAIMED 40.36 ACRES.																				
DOUGLAS COUNTY APN'S 1219-25-001-001, 002.																				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06322	GRANAT REVOCABLE TRUST OF 10-18-85 MYLES S. DOUGLAS AND AMY B. DOUGLAS GRANTORS AND TRUSTEES OF THE BARTHOLOMEW FAMILY TRUST, DATED NOVEMBER 21, 2001	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.065	* 2.71	6.69											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.006	** 2.43	6.00											
				1853	***	***	***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Creek is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 12 N., R. 19 E.													2.47				2.47	
TOTAL ACRES ALLOTTED 2.47																			
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			
THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 2.47 ACRES.																			
THE WEST PORTION OF LOT 10 ON THE SUPPORTING MAP. PORTION OF DOUGLAS COUNTY APN 1219-25-001-001 LOCATED WITHIN THE GREEN ACRES SUBDIVISION.																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06323	THE ABBOTT FAMILY TRUST OF SEPTEMBER 9, 2004	UNNAMED SPRING (D)-DIRECT DIVERSION, LUTHER CREEK - RETURN FLOW	**UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.53°15'E., 3,300 FT. FROM NW COR. OF SAID SECTION 26.																	
				APR. 1 TO OCT. 15	IRRIGATION	*	*	*												
				JAN. 1 TO DEC.31	DOMESTIC	**1.50	4.00	161.40												
				1853																
			*LUTHER CREEK - RETURN FLOW NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3,072 FT. FROM NE COR. OF SAID SECTION 35.	The State Engineer determines that a vested right is established from Luther Creek for "drain and waste" water only. No diversion rate or duty is allowed under this proof. See Section V.																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES THAT PORTION OF PERMIT 24918, CERTIFICATE 7843 "UNNAMED SPRING", AND PERMIT 24919, CERTIFICATE 7842, "UNNAMED SPRING", AND PROOF V02856 ON THE CLAIMED 40.35 ACRES. DOUGLAS COUNTY APN 1219-26-001-036.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
25	T. 12 N.,	R. 19 E.						17.44												17.44
26	T. 12 N.,	R. 19 E.	22.61			0.30														22.91
TOTAL ACRES ALLOTTED																			40.35	
* 1.50 CFS IS THE IS THE MINIMUM FLOW RATE FROM UNNAMED SPRING (D) AND IS TO BE USED IN A ROTATION SCHEME OF IRRIGATING LAND UNDER PROOFS V-06321, V-06323 AND V-08850. FLOW IN EXCESS OF 1.5 CFS SHALL BE DIVIDED IN A 60%/40% SPLIT WITH 40% OF THE WATER ABOVE 1.5 CFS DIVERTED THROUGH THE DIVERSION TO THE NORTH THAT FLOWS BENEATH FOOTHILL ROAD TO THE EAST AND DIRECTS WATER THROUGH THE "BISECTING DITCH" UNDER CLAIM NO. V-08850. 60% OF THE FLOW IN EXCESS OF 1.5 CFS WILL REMAIN IN THE DITCH THAT PROVIDES WATER TO HERITAGE RANCH WATER USERS UNDER CLAIMS V-06321, V-06323 AND V-08850. REFER TO TABLE 8 FOR THE DISTRIBUTION TABLE AS IT PERTAINS TO THE 60%/40% DIVISION OF THE IRRIGATION WATER FROM UNNAMED SPRING (D).																				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06324	EDWARD GROENENDYKE	MILLER CREEK	NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	0.066	2.71	6.86											
				JAN. 1 TO DEC.31	DOMESTIC														
				1853															
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", ON THE CLAIMED 2.52 ACRES. X - LOT 1 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-26-001-034.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N.,	R. 19 E.					2.53												
TOTAL ACRES ALLOTTED																2.53			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06325	RICHARD E. BROWN & SHARON E. BURNS	MILLER CREEK, UNNAMED SPRING (A) AND UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.066	* 2.71	6.89											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.006	** 2.43	6.17											
				1853	***	***	***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 12 N.,	R. 19 E.	X	X															
																	2.54	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
																	TOTAL ACRES ALLOTTED		2.54
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 2.54 ACRES.		
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			
																	X - LOT 6 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-029.		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT/J ACRE	TOTAL AC.-FT.											
V-06326	JEANNE C. NELSON REVOCABLE TRUST	MILLER CREEK UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.065	* 2.71	6.78											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.006	** 2.43	6.08											
			1853		***		***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-Feet PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 2.54 ACRES. X - LOT 5 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-26-001-030.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 12 N.	R. 19 E.	X	X															
TOTAL ACRES ALLOTTED																		2.50	
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06327	BLAISE & LESLIE CARRIG	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.128	* 2.71	13.28											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.012	** 2.43	11.91											
			1853		***	***	***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 4.90 ACRES. X - LOT 16 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-23-002-012.
23	T. 12 N., R. 19 E.		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N., R. 19 E.		X															X	
						TOTAL ACRES ALLOTTED				4.90									
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06328	WAYNE A. & SHARRON W. CURRIE	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.145	* 2.71	15.04											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.013	** 2.43	13.49											
					1853	***	***	***											
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-Feet PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 5.55 ACRES. X - LOT 13 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-24-002-006.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 12 N., R. 19 E.												X	X					
TOTAL ACRES ALLOTTED																5.55			
***REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A). ***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.													
V-06329	DAVID J. & ANNE DELLA ROSA	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E, 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.136	* 2.71	14.15													
			JAN. 1 TO DEC.31	DOMESTIC	** 0.012	** 2.43	12.68														
			1853	***	***	***															
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																		
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E, 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																	
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E, 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.																	
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				5.22	STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
24	T. 12 N.,	R. 19 E.											X						5.22	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
TOTAL ACRES ALLOTTED																				5.22	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 5.22 ACRES. X - LOT 14 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-24-002-005.
The 5.22 acres listed as the place of use of this proof includes a sixty (60) foot easement located on the west boundary of Douglas County APN 19-290-15.																					
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																					
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																					

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06330	GARY B. AND CLAUDIA A. CASTEEL	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E, 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.133	* 2.71	13.77											
			JAN. 1 TO DEC.31	DOMESTIC	** 0.012	** 2.43	12.34												
			1853		***	***	***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E, 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.															
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E, 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 5.08 ACRES. X - LOT 8 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-23-002-014.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
23	T. 12 N.,	R. 19 E.															X		
24	T. 12 N.,	R. 19 E.											X						
25	T. 12 N.,	R. 19 E.						X											
26	T. 12 N.,	R. 19 E.	X																
TOTAL ACRES ALLOTTED																		5.08	
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06331	BARTHOLOMEW FAMILY TRUST	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR. 1 TO OCT. 15	IRRIGATION	* 0.128	* 2.71	13.22											
				JAN. 1 TO DEC. 31	DOMESTIC	** 0.011	** 2.43	11.86											
				1853		***	***	***											
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.			Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.													
***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.			The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED FOR 6 HEAD OF LIVESTOCK, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 12 N.,	R. 19 E.											X					THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
25	T. 12 N.,	R. 19 E.						X											
TOTAL ACRES ALLOTTED															4.88				
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).								THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 4.88 ACRES.											
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).												X - LOT 9 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-24-002-010.							

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT/J ACRE	TOTAL AC.-FT.												
V-06332	JUDY GAINES	MILLER CREEK	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1853	* 0.066	* 2.71	6.88												
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
26	T. 12 N.,	R. 19 E.		X			X												2.54	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
TOTAL ACRES ALLOTTED																			2.54	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", ON THE CLAIMED 2.54 ACRES.
																				X - LOT 2 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-26-001-033.

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06333	RICHARD C. & SANDRA J. FERGUSON	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE½NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.130	* 2.71	13.50											
				JAN. 1 TO DEC.31	DOMESTIC	** 0.012	** 2.43	12.10											
				1853	***	***	***												
			The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			** UNNAMED SPRING (A) NE½NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.85°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.																
Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																			
			***UNNAMED SPRING (D) SE½NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that a vested right is established from Unnamed Spring (D) for 40% of the balance of the flow after the first 1.5 cfs is delivered to Claims V-06321, V-06323 and V-08850. See Section V.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED; SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 4.98 ACRES. X - LOT 7 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-028.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
23	T. 12 N.,	R. 19 E.																X	
26	T. 12 N.,	R. 19 E.	X																
						TOTAL ACRES ALLOTTED				4.98									
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.																													
V-06334	PEDRO AND MARGARET VILLALOBOS	MILLER CREEK & UNNAMED SPRING (A)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E, 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.																																		
				APR.1 TO OCT. 15	IRRIGATION	* 0.067	* 2.71	6.91																													
				JAN. 1 TO DEC.31	DOMESTIC	** 0.006	** 2.43	6.20																													
			1853 The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																																		
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E, 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																																	
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS																														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E																						
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																			
26	T. 12 N.,	R. 19 E.		2.55														2.55	STOCKWATER IS ALSO RECOGNIZED FOR 6 HEAD OF LIVESTOCK, SEE SEC. XII																		
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			TOTAL ACRES ALLOTTED				2.55	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES.													
																			THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 4.98 ACRES.																		
																			X - LOT 3 ON THE SUPPORTING MAP, DOUGLAS COUNTY APN 1219-26-001-032.																		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06335	BARTHOLOMEW FAMILY TRUST	MILLER CREEK	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1853	* 0.066	* 2.71	6.86											
					The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.														
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
23	T. 12 N.	R. 19 E.														X	X		
26	T. 12 N.	R. 19 E.	X	X															
TOTAL ACRES ALLOTTED																		2.53	
																		STOCKWATER IS ALSO RECOGNIZED FOR 6 HEAD OF LIVESTOCK, SEE SEC. XII	
																		THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
																		THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", ON THE CLAIMED 2.53 ACRES.	
																		X - LOT 17 ON THE SUPPORTING MAP.	
																		DOUGLAS COUNTY APN 1219-26-001-027.	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06336	RON MITCHELL AND GINGER MITCHELL, HUSBAND AND WIFE AS JOINT TENANTS	SHERIDAN CREEK NORTH DIVERSION	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.123	4.00	41.48

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06336 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.			10.26										0.11			10.37	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
TOTAL ACRES ALLOTTED																		10.37	THIS PROOF IS SUPPLEMENTAL TO PROOF V06337. DOUGLAS COUNTY APN 1219-14-001-011.	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06337	RON MITCHELL AND GINGER MITCHELL, HUSBAND AND WIFE AS JOINT TENANTS	STUTLER CREEK	SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM SE COR. OF SAID SECTION 16, THE WATERS OF STUTLER CREEK ARE THEN CONVEYED THROUGH A PIPELINE TO A POINT IN THE SE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 15, T.12N., R.19E., M.D.B.&M., WHERE THE WATERS OF STUTLER CREEK ARE COMMINGLED WITH THE WATERS OF SHERIDAN CREEK IN THE SHERIDAN CREEK CHANNEL. THE COMMINGLED WATERS ARE DIVERTED FROM THE SHERIDAN CREEK CHANNEL AT A POINT IN THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR. 1 TO OCT. 15	IRRIGATION	0.043	* 1.49	15.45
				JAN. 1 TO DEC. 31	DOMESTIC			
					1905			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06337 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.			10.26										0.11			10.37	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
TOTAL ACRES ALLOTTED															10.37	THIS PROOF IS SUPPLEMENTAL TO PROOF V06336. DOUGLAS COUNTY APN 1219-14-001-011.				

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06338	ERNEST E. PESTANA, TRUSTEE OF THE PESTANA 1986 FAMILY TRUST	STUTLER CREEK	SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM SE COR. OF SAID SECTION 16, THE WATERS OF STUTLER CREEK ARE THEN CONVEYED THROUGH A PIPELINE TO A POINT IN THE SE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 15, T.12N., R.19E., M.D.B.&M., WHERE THE WATERS OF STUTLER CREEK ARE COMMINGLED WITH THE WATERS OF SHERIDAN CREEK IN THE SHERIDAN CREEK CHANNEL. THE COMMINGLED WATERS ARE DIVERTED FROM THE SHERIDAN CREEK CHANNEL AT A POINT IN THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1905	0.100	* 1.49	35.40

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06338 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.						7.42	15.62									23.04	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
15	T. 12 N.,	R. 19 E.				0.72											0.72			
															TOTAL ACRES ALLOTTED		23.76	THIS PROOF IS SUPPLEMENTAL TO PROOF V06339 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN 1219-14-001-014.		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06339	ERNEST E. PESTANA, TRUSTEE OF THE PESTANA 1986 FAMILY TRUST	SHERIDAN CREEK (NORTH DIVERSION)	NE½SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E, 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.281	* 4.00	95.04												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.						7.42	15.62									23.04	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
15	T. 12 N.,	R. 19 E.				0.72											0.72			
TOTAL ACRES ALLOTTED																		23.76	THIS PROOF IS SUPPLEMENTAL TO PROOF V06338 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760.	
																			DOUGLAS COUNTY APN 1219-14-001-014.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06340	DONALD T. HALL AND PEGGY HALL, HUSBAND AND WIFE AS JOINT TENANTS.	SHERIDAN CREEK (NORTH DIVERSION)	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15	IRRIGATION	0.260	* 4.00	88.12												
				JAN. 1 TO DEC.31	DOMESTIC															
					1852															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N., R. 19 E.						8.88	11.88	1.17	0.10									22.03	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
TOTAL ACRES ALLOTTED																			22.03	THIS PROOF IS SUPPLEMENTAL TO PROOF V06341 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760.
																				DOUGLAS COUNTY APN 1219-14-001-003.

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06341	DONALD T. HALL AND PEGGY HALL, HUSBAND AND WIFE AS JOINT TENANTS.	STUTLER CREEK	SE¼NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., N.07°10'24"W. 2,892.59 FT. FROM SE COR. OF SAID SECTION 16. THE WATERS OF STUTLER CREEK ARE THEN CONVEYED THROUGH A PIPELINE TO A POINT IN THE SE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., WHERE THE WATERS OF STUTLER CREEK ARE COMMINGLED WITH THE WATERS OF SHERIDAN CREEK IN THE SHERIDAN CREEK CHANNEL. THE COMMINGLED WATERS ARE DIVERTED FROM THE SHERIDAN CREEK CHANNEL AT A POINT IN THE NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.																
				APR.1 TO OCT. 15	IRRIGATION	0.090	* 1.49	32.82											
				JAN. 1 TO DEC.31	DOMESTIC														
					1905														
PLACE OF USE 40 ACRE DESCRIPTIONS					ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THIS PROOF IS SUPPLEMENTAL TO PROOF V06340 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN 1219-14-001-003.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14	I.	12 N.	R.	19 E.				8.88	11.88	1.17	0.10								22.03
TOTAL ACRES ALLOTTED																			22.03

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06342	JERALD R. JACKSON 1975 TRUST AS AMENDED AUGUST 11, 1992, AND IRENE M. WINDHOLZ TRUST DATED AUGUST 11, 1992	UNNAMED SPRING (A), DESIGNATED JACKSON SPRING "A"	SW¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.25°57'43"E. 1,548.41 FT. FROM NW COR. OF SAID SECTION 26.																
				APR. 1 TO OCT. 15	IRRIGATION	0.053	* 2.43	17.50											
				JAN. 1 TO DEC.31	STOCK WATER														
					1853														
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY OF WATER UNDER THIS PROOF AND PROOFS V06343 AND A PORTION OF V02856 SHALL NOT EXCEED A DUTY OF 4.00 ACRE-FEET PER ACRE. THIS PROOF WILL SUPERCEDE A PORTION OF V02856 ON 0.40 ACRES LOCATED WITHIN THE NE¼NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M. AND 5.50 ACRES LOCATED WITHIN THE SE¼NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M. THIS PROOF SUPERCEDES PERMIT 24918, CERTIFICATE 7843 AND PERMIT 24919, CERTIFICATE 7842, & PROOF V-02856 DOUGLAS COUNTY APN'S 1219-26-001-044,043 39,019,018.00
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N., R. 19 E.						1.25			5.95								7.20	
TOTAL ACRES ALLOTTED																		7.20	
After further investigation of the irrigation system, it was determined that only 7.20 acres can be irrigated by Unnamed Spring (A). This is further described as 7.20 acres west of Foothill Road going west to the ditch that runs in a south/southeasterly direction to the western extreme of the pond constructed in 1992. The land under the footprint of the pond was sub-irrigated marsh-land prior to the construction of said pond. Therefore, the water source that offsets evaporative loss from the pond is made up from the spring area that was excavated during construction. This area corresponds with the acreage claimed under Proof of Appropriation V-02856, filed on April 23, 1975.																			
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.													
V-06343	JERALD R. JACKSON 1975 TRUST AS AMENDED AUGUST 11, 1992, AND IRENE M. WINDHOLZ TRUST DATED AUGUST 11, 1992	UNNAMED SPRING (B), DESIGNATED JACKSON SPRING "B"	SE½NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.44°31'52"E. 2,414.38 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	0.100	*1.57	**11.30													
				JAN. 1 TO DEC.31	STOCK WATER	**	**	**													
					1853																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED FOR 29 HEAD OF LIVESTOCK, SEE SEC. XII.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
26	T. 12 N.,	R. 19 E.					1.25				8.48								9.73	**THE STATE ENGINEER DETERMINED THAT THE ACREAGE UNDER THIS CLAIM IS SUBIRRIGATED. NO WATER IS DIVERTED FROM THE SOURCE TO IRRIGATE THIS ACREAGE. THEREFORE, THIS LAND IS GRANTED A VESTED RIGHT FOR 2.53 ACRES OF SUBIRRIGATION AND NO DIVERSION RATE OR DUTY IS ESTABLISHED UNDER THIS CLAIM.	
TOTAL ACRES ALLOTTED																			9.73	THIS PROOF SUPERCEDES A PORTION OF V02856 ON 0.40 ACRES LOCATED WITHIN THE NE½NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M. AND 5.50 ACRES LOCATED WITHIN THE SE½NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M.	
																					THIS PROOF SUPERCEDES PERMIT 24918, CERTIFICATE 7843 AND PERMIT 24919, CERTIFICATE 7842.
																					DOUGLAS COUNTY APN'S 1219-26-001-010-014, 018, 019, 022, 039, 040.
The collection ditch from this spring on the supporting map is shown to flow in a southerly direction. It actually runs to the north.																					
* THIS PROOF PROVIDES SUPPLEMENTAL WATER TO THE 7.20 ACRES IRRIGATED UNDER PROOF V06342 WITH THE UNDERSTANDING THAT THE TOTAL COMBINED DUTY OF WATER ON SAID 7.20 ACRES SHALL NOT EXCEED **11.30 ACRE-Feet FROM ANY AND/OR ALL SOURCES																					

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.													
V-06344	JERALD R. JACKSON 1975 TRUST AS AMENDED AUGUST 11, 1992, AND IRENE M. WINDHOLZ TRUST DATED AUGUST 11, 1992	UNNAMED SPRING (C). DESIGNATED JACKSON SPRING "C"	SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.39°47'45"E. 3,097.65 FT. FROM NW COR. OF SAID SECTION 26.																		
				APR.1 TO OCT. 15	IRRIGATION	*	*	*													
					STOCK WATER																
					1853																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE STATE ENGINEER DETERMINES THAT THE ACREAGE UNDER THIS CLAIM IS SUBIRRIGATED. NO WATER IS DIVERTED FROM THE SOURCE TO IRRIGATE THIS ACREAGE. THEREFORE, THIS LAND IS GRANTED A VESTED RIGHT FOR 2.98 ACRES OF SUB-IRRIGATION AND NO DIVERSION RATE OR DUTY OF WATER IS ESTABLISHED UNDER THIS CLAIM. THIS PROOF SUPERCEDES A PORTION OF PERMIT 24918, CERTIFICATE 7843 AND A PORTION OF PERMIT 24919, CERTIFICATE 7842. DOUGLAS COUNTY APN'S 1219-26-001-010-001, 012, 013, 014(PART).	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
26	T. 12 N., R. 19 E.									2.98									2.98		TOTAL ACRES ALLOTTED

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06345	JERALD R. JACKSON 1975 TRUST AS AMENDED AUGUST 11, 1992, AND IRENE M. WINDHOLZ TRUST DATED AUGUST 11, 1992	UNNAMED SPRING (D), DESIGNATED JACKSON SPRING "D"	SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.42°16'44"E. 3,023.20 FT. FROM NW COR. OF SAID SECTION 26.	APR. 1 TO OCT. 15	IRRIGATION	*	*	*
				JAN. 1 TO DEC.31	STOCK WATER			
					1853			

PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N.,	R. 19 E.			1.04					12.31									13.35
TOTAL ACRES ALLOTTED																			13.35

STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII
* THE STATE ENGINEER DETERMINES THAT THE ACREAGE UNDER THIS CLAIM IS SUBIRRIGATED.
NO WATER IS DIVERTED FROM THE SOURCE TO IRRIGATE THIS ACREAGE. THEREFORE, THIS LAND IS GRANTED A VESTED RIGHT FOR 13.35 ACRES OF SUBIRRIGATION AND NO DIVERSION RATE OR DUTY OF WATER IS ESTABLISHED UNDER THIS CLAIM.

THIS PROOF SUPERCEDES A PORTION OF V02856 ON 0.40 ACRES LOCATED WITHIN THE NE¼NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M. AND 5.50 ACRES LOCATED WITHIN THE SE¼NW¼ SECTION 26, T.12N., R.19E.,M.D.B.&M.

THIS PROOF ALSO SUPERCEDES PERMIT 24918, CERTIFICATE 7843 AND PERMIT 24919, CERTIFICATE 7842.

DOUGLAS COUNTY APN'S 1219-26-001-014, 018-019.

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.													
V-06346	JOY WHIPPLE (AKA JOY S. SMITH)	STUTLER CREEK	SE½NE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., S.07°10'24"E. 2,892.59 FT. FROM SE COR. OF SAID SECTION 16.																		
				APR.1 TO OCT. 15	IRRIGATION	0.100	* 1.49	37.16													
				JAN. 1 TO DEC.31	DOMESTIC	1905															
PLACE OF USE 40 ACRE DESCRIPTIONS					ACRES PER SECTION		REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
14	T. 12 N., R. 19 E.							18.73											18.73	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
15	T. 12 N., R. 19 E.		6.21																6.21		
TOTAL ACRES ALLOTTED																			24.94	THIS PROOF IS SUPPLEMENTAL TO PROOF V-06347 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760.	
																			DOUGLAS COUNTY APN'S 1219-14-001-001-002, 1219-15-001-022.		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06347	JOY WHIPPLE (AKA JOY S. SMITH)	SHERIDAN CREEK NORTH DIVERSION	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.					
				APR.1 TO OCT. 15	IRRIGATION	0.295	* 4.00	99.76
				JAN. 1 TO DEC.31	DOMESTIC	1852		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06347	JOY WHIPPLE (AKA JOY S. SMITH)	SHERIDAN CREEK NORTH DIVERSION	NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.72°20'31"E. 5,412.47 FT. FROM SW COR. OF SAID SECTION 15.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC	0.295	* 4.00	99.76
					1852			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06347 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.						18.73										18.73	* THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
15	T. 12 N.,	R. 19 E.	6.21														6.21			
															TOTAL ACRES ALLOTTED				24.94	THIS PROOF IS SUPPLEMENTAL TO PROOF V-06346 AND IS SUPPLEMENTED BY PERMIT 7595, CERTIFICATE 1760. DOUGLAS COUNTY APN'S 1219-14-001-001-002, 1219-15-001-022.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06348	DANIEL R. AND LAUREL C. HICKEY	UNNAMED SPRING	N½SE¼ SEC. 33, T.13N., R.19E., M.D.B.&M., N.32°26'33"W. 1,660.28 FT. FROM SE COR. OF SAID SECTION 33.																	
				APR.1 TO OCT. 15	IRRIGATION	0.200	4.00	23.32												
				JAN. 1 TO DEC.31	DOMESTIC															
					1889															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOUGLAS COUNTY APN'S 1319-33-002-020 , 1319-34-002-010.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
33	T. 13 N.,	R. 19 E.													4.42				4.42	
34	T. 13 N.,	R. 19 E.										1.41							1.41	
TOTAL ACRES ALLOTTED																		5.83		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06349	MADDI'S RANCH LLC	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.13°00'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.41°15'E. 961 FT. FROM W¼ COR. OF SAID SECTION 03.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.402	4.00	133.84											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII THIS PROOF IS FURTHER LIMITED TO THE WATERS OF MOTT CREEK ON A ROTATION SCHEDULE REFER TO TABLE NO. 2 DOUGLAS COUNTY APN 1219-03-001-058-059.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3	T. 12 N.	R. 19 E.		33.46														33.46	
TOTAL ACRES ALLOTTED																		33.46	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06350	THOMAS M. AND PAULA J. YTURBIDE. TRUSTEES OF THE YTURBIDE 1991 FAMILY TRUST DATED AUGUST 1, 1991	MOTT CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.13°00'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. SECONDARY DIVERSION: NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.41°15'E. 961 FT. FROM W¼ COR. OF SAID SECTION 03.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.184	4.00	51.84

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06350 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS	
SECTION	TOWN- SHIP	RANGE	N E				N W				S W					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THIS PROOF IS FURTHER LIMITED TO THE WATERS OF MOTT CREEK ON A ROTATION SCHEDULE SEE TABLE 2 DOUGLAS COUNTY APN 1219-03-001-073.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T.	12 N., R. 19 E.								12.96					12.96	
TOTAL ACRES ALLOTTED														12.96		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06351	ERIC SONG J. & ELIZABETH PARK	MOTT CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.13°00'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. SECONDARY DIVERSION: NW¼SW¼ SEC. 03, T.12N., R.19E., M.D.B.&M., S.41°15'E. 961 FT. FROM W¼ COR. OF SAID SECTION 03.	APR.1 TO OCT. 15	IRRIGATION	0.088	4.00	40.00												
				JAN. 1 TO DEC.31	DOMESTIC															
					1852															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THIS PROOF IS FURTHER LIMITED TO THE WATERS OF MOTT CREEK ON A ROTATION SCHEDULE SEE TABLE 2 DOUGLAS COUNTY APN 1219-03-001-060.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T.	12 N., R. 19 E.								10.00							10.00			
TOTAL ACRES ALLOTTED																		10.00		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06352	DONALD A. TOUSSAU	TAYLOR CREEK	NE¼NE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.49°20'W. 999 FT. FROM NE COR. OF SAID SECTION 04.	APR.1 TO OCT. 15	IRRIGATION	0.100	4.00	23.16												
				JAN. 1 TO DEC.31	DOMESTIC															
					PRIOR TO 1905															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY UNDER THIS PROOF AND PROOF V06353 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES ON THE 5.79 ACRE PORTION UNDER THIS PROOF. THIS PROOF MAY INCLUDE PORTIONS OF DOUGLAS COUNTY APN'S 1219-04-001-011-013, 016-019, 021-022, 026, 033-035 AND A PORTION OF THE TAYLOR CREEK ROAD RIGHT OF WAY.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
4	T. 12 N., R. 19 E.		5.47			0.32											5.79			
TOTAL ACRES ALLOTTED																		5.79		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06353	DONALD A. TOUSSAU	UNNAMED SPRINGS	NE¼NE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.40°13'W. 1,157 FT. FROM NE COR. OF SAID SECTION 04. SE¼NE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.31°06'W. 1,845 FT. FROM NE COR. OF SAID SECTION 04. SE¼NE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.29°19'W. 1,552 FT. FROM NE COR. OF SAID SECTION 04. SE¼NE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.27°37'W. 2,013 FT. FROM NE COR. OF SAID SECTION 04.	APR. 1 TO OCT. 15	IRRIGATION	0.060	*3.22	23.57
				JAN. 1 TO DEC.31	DOMESTIC			
					PRIOR TO 1905			

PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS					
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII * THE TOTAL COMBINED DUTY UNDER THIS PROOF AND PROOF V06352 SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES ON THE 5.79 ACRE PORTION UNDER, PROOF V06352. THIS PROOF MAY INCLUDE PORTIONS OF DOUGLAS COUNTY APN'S 1219-04-001-011-013, 016-019, 021-022, 026, 033-035 AND A PORTION OF THE TAYLOR CREEK ROAD RIGHT OF WAY.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
4	T. 12 N., R. 19 E.		5.47			1.85												7.32		
TOTAL ACRES ALLOTTED																		7.32		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06354	THE SCHWAKE FAMILY TRUST	CARY CREEK	ORIFICE NE¼SE¼ SEC. 09, T.12N., R.19E.. M.D.B.&M., S.87°06'W. 602 FT. FROM E¼ COR. OF SAID SECTION 9. DIVIDE BOX NE¼SE¼ SEC. 09, T.12N., R.19E.. M.D.B.&M., S.86°57'19"W. 565 FT. FROM E¼ COR. OF SAID SECTION 09.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31 JAN. 1 TO DEC.31 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC STOCK WATER 1852 POWER PRODUCTION PRIOR TO 1900	* 2.000	** 3.47	784.50												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT WATER FOR 140 HEAD OF LIVESTOCK. * THIS PROOF IS SUBJECT TO THE JULY 1, 1918, AGREEMENT, "GLOVER AGREEMENT", IN BOOK E, PAGE 337, AGR., DOUGLAS COUNTY RECORDER'S OFFICE, LANGUAGE IN THIS PROOF AND PROOF V06355 STIPULATES THAT SCHWAKE WILL RECEIVE 0.37 C.F.S. PLUS 1/3 OF THE REMAINING FLOW AND DREYER WILL RECEIVE 2/3 OF THE FLOW UNDER THIS PROOF OF CARY CREEK LESS 0.37 C.F.S. ON LANDS DESCRIBED UNDER PROOF V06355. THIS PROOF IS SUPPLEMENTAL TO PORTIONS OF ALPINE DECREE CLAIM NOS. 627 AND 628 AND IS SUPPLEMENTED BY PERMIT 10983, CERTIFICATE 2937, CARY CREEK; AND PERMIT 12532, CERTIFICATE 3293, UNDERGROUND. ** THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. DOUGLAS COUNTY APN'S: 1219-02-000-016-018, 1219-03-002-089-094, 1219-10-001-036-045, 1219-11-001-001-004.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
2	T. 12 N., R. 19 E.											2.54	31.29							33.83
3	T. 12 N., R. 19 E.															19.62	34.23			53.85
10	T. 12 N., R. 19 E.		40.90	34.25	15.85	9.49														100.49
11	T. 12 N., R. 19 E.						1.83	35.82	0.26										37.91	
TOTAL ACRES ALLOTTED																			226.08	
The State Engineer determines that the storage claimed under this proof is from a facility constructed under Permit J-50, APPLICATION FOR APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF A DAM, dated October 22, 1959. The dam site is described as an existing borrow pit with no indication of prior use for water storage is indicated; therefore, no vested right is recognized for storage.																				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06355	ROLAND AND JOAN P. DREYER	CARY CREEK	DIVIDE BOX: NE¼SE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., S.86°57'19"W. 565 FT. FROM E¼ COR. OF SAID SECTION 09.	APR.1 TO OCT. 15	IRRIGATION	* 3.630	** 4.00	1064.96												
				JAN. 1 TO DEC.31	DOMESTIC															
				JAN. 1 TO DEC.31	STOCK WATER															
					1852															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10	T. 12 N.,	R. 19 E.			9.10	29.24									40.00	9.53	11.33	32.10	131.30	
11	T. 12 N.,	R. 19 E.					17.31	4.26	40.00	34.96	0.20	32.71	5.50						134.94	
TOTAL ACRES ALLOTTED																			266.24	
<p>The State Engineer determines that no priority date or amount of water stored for irrigation has been specified; therefore, no vested right is recognized for storage.</p>																				<p>SUFFICIENT WATER FOR 300 HEAD OF LIVESTOCK.</p> <p>A PORTION OF THIS CLAIM HAS BEEN ABROGATED BY PERMIT 10983, CERTIFICATE 2937.</p> <p>* THIS PROOF IS SUBJECT TO THE JULY 1, 1918, AGREEMENT, "GLOVER AGREEMENT". IN BOOK E, PAGE 337, AGR., DOUGLAS COUNTY RECORDER'S OFFICE AND LANGUAGE IN THIS PROOF AND PROOF V06354 STIPULATES THAT SCHWAKE WILL RECEIVE 0.37 C.F.S. PLUS 1/3 OF THE REMAINING FLOW UNDER PROOF V06354 AND DREYER WILL RECEIVE 2/3 OF THE FLOW OF CARY CREEK LESS 0.37 C.F.S. UNDER THIS PROOF.</p> <p>THIS PERMIT IS SUPPLEMENTAL TO PORTIONS OF ALPINE DECREE CLAIM NOS. 625 AND 626 AND IS SUPPLEMENTED BY PERMIT 19039, CERTIFICATE 5982; PERMIT 19170, CERTIFICATE 5981; PERMIT 20765, CERTIFICATE 6512.</p> <p>** THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.</p> <p>DOUGLAS COUNTY APN'S: 1219-10-002-056, 1219-10-001-046, 1219-11-001-005, 1219-10-002-058, 1219-09-002-003.</p>

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06356	ALLEN D. SAPP AND PATRICIA J. SAPP	SHERIDAN CREEK (NORTH DIVERSION) AND TRIBUTARIES	SW¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.65°09'23"W. 2,070.25 FT. FROM SE COR. OF SAID SECTION 15. NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.12°50'48"E. 2,380.20 FT. FROM SE COR. OF SECTION 15, T.12N., R.19E., M.D.B.&M.																
				APR.1 TO OCT. 15	IRRIGATION	0.060	4.00	20.40											
				JAN. 1 TO DEC.31	DOMESTIC														
					1860														
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOMESTIC AND CULINARY USES ASSOCIATED WITH THE SHERIDAN HOUSE HOTEL AND SALOON. DOUGLAS COUNTY APN: 1219-14-002-003 & 005.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14	T. 12 N.,	R. 19 E.										5.10							
TOTAL ACRES ALLOTTED																5.10			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06357	DONALD L. AND TONI M. ROOKER	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.					
				APR.1 TO OCT. 15	IRRIGATION	0.337	4.00	138.80
				JAN. 1 TO DEC.31	DOMESTIC			
					1871			

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06357 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION		REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					SEE PROOF V06358 FOR STOCK WATER. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APNS: 1219-14-002-061, 016.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.									15.80	2.60	0.50	0.70		14.50	0.60		34.70	
TOTAL ACRES ALLOTTED															34.70					

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06358	DONALD L. AND TONI M. ROOKER	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.	JAN. 1 TO DEC.31	STOCK WATER 1871		SEE SECTION XII.													
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					SUFFICIENT WATER FOR 50 HEAD OF LIVESTOCK. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APN'S: 1219-14-002-061, 016.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.	R. 19 E.									X	X	X	X		X	X			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.									
V-06359	DENNIS R. AND THERESE S. BUCKLEY	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.	JAN. 1 TO DEC.31	STOCK WATER 1871		SEE SECTION XII.										
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS										
SECTION	TOWN-SHIP	RANGE	N E		N W		S W		S E		SUFFICIENT WATER FOR 30 HEAD OF LIVESTOCK. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APN: 1219-14-002-020.						
			NE	NW	SW	SE	NE	NW	SW	SE		NE	NW	SW	SE		
14	T. 12 N.,	R. 19 E.										X			X		X

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06360	DENNIS R. AND THERESE S. BUCKLEY	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.	APR.1 TO OCT. 15	IRRIGATION 1871	0.175	4.00	72.00

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06360 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION		REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					SEE PROOF V-06359 FOR STOCK WATER. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APN: 1219-14-002-020.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
14	T. 12 N., R. 19 E.										1.80				7.90		2.10	6.20			18.00
																TOTAL ACRES ALLOTTED			18.00		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06361	STEPHEN RAY AND LUCETTE SIMON PAUL P. AND MORENE L. SIMON	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W, 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E, 1,716 FT. FROM SW COR. OF SAID SECTION 14.	JAN. 1 TO DEC. 31	STOCK WATER 1871		SEE SECTION XII.												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14	T. 12 N.,	R. 19 E.										X		X		X	X		
																		SUFFICIENT WATER FOR 40 HEAD OF LIVESTOCK. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APN: 1219-14-002-007.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06362	STEPHEN RAY AND LUCETTE SIMON PAUL P. AND MORENE L. SIMON	SHERIDAN CREEK (SOUTH DIVERSION)	PRIMARY DIVERSION: NE¼SE¼ SEC. 15, T.12N., R.19E., M.D.B.&M., N.03°08'W. 1,647 FT. FROM SE COR. OF SAID SECTION 15. SECONDARY DIVERSION: NW¼SW¼ SEC. 14, T.12N., R.19E., M.D.B.&M., N.13°37'E. 1,716 FT. FROM SW COR. OF SAID SECTION 14.	APR.1 TO OCT. 15	IRRIGATION 1871	0.316	4.00	130.40												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				SEE PROOF V-06361 FOR STOCK WATER. SUPPLEMENTAL TO WATER RIGHTS UNDER THE BARBER CREEK DECREE. DOUGLAS COUNTY APN: 1219-14-002-007.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T. 12 N.	R. 19 E.									14.20	5.00				13.20	0.20			32.60
TOTAL ACRES ALLOTTED																			32.60	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06363	ROBERT D. AND WANDA D. SHOCKEY	LUTHER CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3072.0 FT. FROM NE COR. OF SAID SECTION 35, IN ALPINE COUNTY, CALIFORNIA. SECONDARY DIVERSION: NE¼SE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., N.07°07'W. 1,471 FT. FROM SE COR. OF SAID SECTION 26.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1865	* 2.160	4.00	319.88

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06363 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS							
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E							
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
25	T. 12 N., R. 19 E.				23.00				4.88	23.36	18.82	5.08					4.83			79.97	SEE PROOF V-06364 FOR STOCK WATER.	
															TOTAL ACRES ALLOTTED				79.97	* 1/3 OF 10 C.F.S. APPURTENANT TO 79.97 OF 123.58 ACRES LOCATED WITHIN THE SW¼NE¼, S¼NW¼, NW¼SE¼ AND W¼SW¼ SECTION 25, SE¼NW¼ AND NE¼SE¼ SECTION 26, T.12N., R.19E., M.D.B.&M.		
Acreage is illustrated on the Douglas County Assessor's Parcel plat as 40.00 acres for parcel * 1219-25-002-001 and 40.00 acres for parcel * 1219-25-001-008. The sum of acreage for this area under this claim is 87.5 acres. The 87.5 acres exceeds the 80.00 acres within APN's * 1219-25-002-001 and * 1219-25-001-008. Therefore, acreage was recalculated by the State Engineer's office as reflected in the "PLACE OF USE - 40 ACRE DESCRIPTIONS".																					DOUGLAS COUNTY APN'S 1219-25-002-001 and 1219-25-001-008.	
* Note: Douglas County APN 19-300-19 and the west forty (40) acres of APN 19-300-37 have been reconfigured into two (2) forty (40) acre parcels numbered 1219-25-002-001 and 1219-25-001-008.																						

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06364	ROBERT D. AND WANDA D. SHOCKEY	LUTHER CREEK	<p>PRIMARY DIVERSION:</p> <p>NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3072.0 FT. FROM NE COR. OF SAID SECTION 35, IN ALPINE COUNTY, CALIFORNIA.</p> <p>SECONDARY DIVERSION:</p> <p>NE¼SE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., N.07°07'W. 1,471 FT. FROM SE COR. OF SAID SECTION 26.</p>	JAN. 1 TO DEC. 1	STOCK WATER 1865		SEE SECTION XII.												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT WATER FOR 100 HEAD OF LIVESTOCK. DOUGLAS COUNTY APN'S 1219-25-002-001, 008.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
25	T. 12 N., R. 19 E.				X				X	X	X	X				X			

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06365	BROOKS FAMILY TRUST AGREEMENT DATED FEBRUARY 18, 1992	LUTHER CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W, 3072.0 FT. FROM NE COR. OF SAID SECTION 35, IN ALPINE COUNTY, CALIFORNIA. SECONDARY DIVERSION: NE¼SE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., N.07°07'W, 1,471 FT. FROM SE OF COR. SAID SECTION 26.																	
				APR. 1 TO OCT. 15	IRRIGATION	* 1.18	4.00	236.80												
				JAN. 1 TO DEC.31	DOMESTIC															
					1865															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					SEE PROOF V-06366 FOR STOCK WATER.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
25	T. 12 N.,	R. 19 E.							4.60			35.50	3.90						44.00	* 1/3 OF 10 C.F.S. APPURTENANT TO 43.61 OF 123.58 ACRES LOCATED WITHIN THE SW¼NE¼, S½NW¼, NW¼SE¼ AND W½SW¼ SECTION 25, SE½NW¼ AND NE¼SE¼ SECTION 26, T.12N., R.19E., M.D.B.&M. PORTION OF DOUGLAS COUNTY APN 1219-26-002-013.
26	T. 12 N.,	R. 19 E.													15.20				15.20	
TOTAL ACRES ALLOTTED																			59.20	

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TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06366	BROOKS FAMILY TRUST AGREEMENT DATED FEBRUARY 18, 1992	LUTHER CREEK	PRIMARY DIVERSION: NE½SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W, 3072.0 FT. FROM NE COR. OF SAID SECTION 35, IN ALPINE COUNTY, CALIFORNIA. SECONDARY DIVERSION: NE½SE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., N.07°07'W, 1,471 FT. FROM SE COR. OF SAID SECTION 26.	JAN. 1 TO DEC. 31	STOCK WATERING 1865		SEE SEC. XII												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT WATER FOR 120 HEAD OF LIVESTOCK. PORTION OF DOUGLAS COUNTY APN 1219-26-002-013.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
25	T. 12 N.,	R. 19 E.							X			X	X						
26	T. 12 N.,	R. 19 E.													X				

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06367	SCOSSA BROTHERS	MILLER CREEK, BEERS SPRING AND OTHER UNNAMED SPRINGS	* MILLER CREEK NW¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°10'E, 1,069.01 FT. FROM NW COR. OF SAID SECTION 26. ** BEERS SPRING NW¼SE¼ SEC. 22, T.12N., R.19E., M.D.B.&M., S.84°02'W 2,184.0 FT. FROM THE E¼ COR. OF SAID SEC. 22.	APR. 1 TO OCT. 15 JAN. 1 TO DEC. 31	IRRIGATION DOMESTIC 1852	* 2.000 ** 0.150	* 2.71 ** 0.27	578.04 57.591
The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.								

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06367 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E						
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
23	T. 12 N.,	R. 19 E.			1.00	10.20					14.20				20.80	40.00	35.00	37.00	26.40	184.60	SEE PROOF V-06368 FOR STOCK WATER.
24	T. 12 N.,	R. 19 E.										5.00	9.20							14.20	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
26	T. 12 N.,	R. 19 E.		2.50			12.00													14.50	THIS PROOF SUPERCEDES PERMIT 24557,
																TOTAL ACRES ALLOTTED				213.30	CERTIFICATE 8079, MILLER CREEK AND IS SUPPLEMENTAL TO PROOF V06371.
																					SUPPLEMENTS WATER UNDER THE BARBER CREEK DECREE, SUPPLEMENTED BY PERMIT 24557, CERT. 6815, AND PERMIT 24201, CERT. 6813
																					DOUGLAS COUNTY APN 1219-23-002-010, 011.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06368	SCOSSA BROTHERS	MILLER CREEK, BEERS SPRING AND OTHER UNNAMED SPRINGS	* MILLER CREEK NW¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°10'E. 1,069.01 FT. FROM NW COR. OF SAID SECTION 26. BEERS SPRING NW¼SE¼ SEC. 22, T.12N., R.19E., M.D.B.&M., S.84°02'W 2,184.0 FT. FROM THE E¼ COR. OF SAID SEC. 22.	JAN. 1 TO DEC. 1	STOCK WATER 1852 The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every two (2) weeks.		SEE SECTION XII.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06368 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS					
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					SUFFICIENT WATER FOR 545 HEAD OF LIVESTOCK. THIS PROOF SUPERCEDES PERMIT 24557, CERTIFICATE 8079, MILLER CREEK THIS PROOF IS SUPPLEMENTAL TO PROOF V06372. DOUGLAS COUNTY APN'S 1219-23-002-010, 011; 1219-22-002-001.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
PORTIONS OF THIS SECTION																				
22	T. 12 N.,	R. 19 E.																		
23	T. 12 N.,	R. 19 E.			X	X					X			X	X	X	X			
24	T. 12 N.,	R. 19 E.									X	X								
26	T. 12 N.,	R. 19 E.		X				X												

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-06369	MICHAEL STEVEN BELLIK TERRY A. GALLAGHER JANICE G. HANSEN BETTIE KENNARD KANELOS TRUST ERIK AND MYRNA J. VINDUM	MOTT CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.12°45'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. SECONDARY DIVERSION: SW¼SW¼ SEC. 34, T.13N., R.19E., M.D.B.&M., N.89°56'E. 779 FT. FROM SW COR. OF SAID SECTION 34.	JAN. 1 TO DEC. 1	STOCK WATER 1853		SEE SECTION XII.												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT WATER FOR 120 HEAD OF LIVESTOCK. DOUGLAS COUNTY APN'S 1319-34-002-023 THROUGH 028.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
34	T. 13 N.,	R. 19 E.										X	X	X	X	X	X	X	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.	
V-06370	MICHAEL STEVEN BELLIK TERRY A. GALLAGHER JANICE G. HANSEN BETTIE KENNARD KANELOS TRUST ERIK AND MYRNA J. VINDUM	MOTT CREEK	PRIMARY DIVERSION: NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.12°45'W. 763 FT. FROM E¼ COR. OF SAID SECTION 04. SECONDARY DIVERSION: SW¼SW¼ SEC. 34, T.13N., R.19E., M.D.B.&M., N.89°56'E, 779 FT. FROM SW COR. OF SAID SECTION 34.						
				APR.1 TO OCT. 15	IRRIGATION	1.100	3.40	431.46	
				JAN. 1 TO DEC.31	DOMESTIC	1853			

PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS
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SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					SEE PROOF V-06369 FOR STOCK WATERING. DOUGLAS COUNTY APN'S 1319-34-002-023 THROUGH 028.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
34	T. 13 N.,	R. 19 E.											25.00	40.20			40.00	21.70	126.90	
TOTAL ACRES ALLOTTED																			126.90	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.													
V-06371	SCOSSA BROTHERS	LUTHER CREEK, MILLER CREEK, FREDERICKSBURG DITCH, AND VARIOUS UNNAMED SPRINGS, WASTE AND DRAIN WATER FROM THESE SOURCES.	<p>DIVERSION NO. 1 NW¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.54°04'21"E. 3,968 FT. FROM SW COR. OF SAID SECTION 23.</p> <p>DIVERSION NO. 2 SW¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.73°40'15"E. 3,241 FT. FROM SW COR. OF SAID SECTION 23.</p> <p>DIVERSION NO. 3 NE¼SW¼ SEC. 24, T.12N., R.19E., M.D.B.&M., N.79°43'00"E. 7,400 FT. FROM SW COR. OF SAID SECTION 23.</p> <p>DIVERSION NO. 4 SE¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.86°42'17"E. 4,129 FT. FROM SW COR. OF SAID SECTION 23.</p> <p>DIVERSION NO. 5 NW¼NE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.88°03'16"E. 3,123 FT. FROM SW COR. OF SAID SECTION 23.</p>	APR.1 TO OCT. 15	IRRIGATION 1852																
The State Engineer determines that a vested right is established from these sources for "drain and waste" water only. No diversion rate or duty is allowed. See Section V.																					
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					SEE PROOF V-06372 FOR STOCK WATERING.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
23	T. 12 N.,	R. 19 E.			1.00	10.20										40.00	21.80	24.40	27.60	125.00	THIS PROOF SUPERCEDES PERMIT 24557, CERTIFICATE 8079, MILLER CREEK.
24	T. 12 N.,	R. 19 E.			34.30	2.70			21.30	32.50	20.00	40.20	13.90	1.80						166.70	THIS PROOF IS SUPPLEMENTAL TO PROOF V06372.
26	T. 12 N.,	R. 19 E.		0.40																0.40	DOUGLAS COUNTY APN'S 1219-23-002-010-011.
TOTAL ACRES ALLOTTED																			292.10	SUPPLEMENTS WATER UNDER THE BARBER CREEK DECREE. SUPPLEMENTED BY PERMIT 24557, CERT. 6815, AND PERMIT 24201, CERT. 6813	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-06372	SCOSSA BROTHERS	LUTHER CREEK, MILLER CREEK, FREDERICKSBURG DITCH, AND VARIOUS UNNAMED SPRINGS. WASTE AND DRAIN WATER FROM THESE SOURCES.	DIVERSION NO. 1 NW¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.54°04'21"E. 3,968 FT. FROM SW COR. OF SAID SECTION 23.	JAN. 1 TO DEC. 31	STOCK WATER 1852			
			DIVERSION NO. 2 SW¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.73°40'15"E. 3,241 FT. FROM SW COR. OF SAID SECTION 23.			SEE SEC. XII		
			DIVERSION NO. 3 NE¼SW¼ SEC. 24, T.12N., R.19E., M.D.B.&M., N.79°43'00"E. 7,400 FT. FROM SW COR. OF SAID SECTION 23.			The State Engineer determines that a vested right is established from these sources for "drain and waste" water only. No diversion rate or duty is allowed. See Section V.		
			DIVERSION NO. 4 SE¼SE¼ SEC. 23, T.12N., R.19E., M.D.B.&M., N.86°42'17"E. 4,129 FT. FROM SW COR. OF SAID SECTION 23.					
			DIVERSION NO. 5 NW¼NE¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.88°03'16"E. 3,123 FT. FROM SW COR. OF SAID SECTION 23.					

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-06372 (cont.)		PLACE OF USE 40 ACRE DESCRIPTION												ACRES PER SECTION	REMARKS	
																SUFFICIENT TO WATER 545 HEAD OF LIVESTOCK, SEE SECTION XII.
																THIS PROOF SUPERCEDES PERMIT 24557, CERTIFICATE 8079, MILLER CREEK
																DOUGLAS COUNTY APN'S 1219-23-002-010, 011; 1219-22-002-001.
																SUPPLEMENTS WATER UNDER THE BARBER CREEK DECREE. SUPPLEMENTED BY PERMIT 24557, CERT. 6815, AND PERMIT 24201, CERT. 6813

SUFFICIENT TO WATER 545 HEAD OF LIVESTOCK,
SEE SECTION XII.

THIS PROOF SUPERCEDES PERMIT 24557,
CERTIFICATE 8079, MILLER CREEK

DOUGLAS COUNTY APN'S 1219-23-002-010, 011;
1219-22-002-001.

SUPPLEMENTS WATER UNDER THE BARBER
CREEK DECREE. SUPPLEMENTED BY PERMIT
24557, CERT. 6815, AND PERMIT 24201, CERT. 6813

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-06831	LARRY & JOYCE H. LACKEY	MOTT CREEK	NE½SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.	APR.1 TO OCT. 15 JAN. 1 TO DEC.31	IRRIGATION DOMESTIC 1852	0.107	4.00	27.68												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOUGLAS COUNTY APN 1219-03-002-099.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.												2.36		1.33	3.23		6.92	
															TOTAL ACRES ALLOTTED				6.92	

STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII

DOUGLAS COUNTY APN 1219-03-002-099.

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-07486	MICHAEL CATHERWOOD AND ROBIN L. CATHERWOOD	MILLER CREEK, UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26. ** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26. ***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.					
				APR.1 TO OCT. 15	IRRIGATION	* 0.127	* 2.71	5.10
				JAN. 1 TO DEC.31	DOMESTIC	** 0.011	** 2.43	11.81
				1853		***	***	***
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.				
Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.								
The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right, subject to the delivery rates described in the Final Order of Determination								

PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS				
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII. THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK". X - LOT 15 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-23-002-013.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
23	T. 12 N., R. 19 E.																	X	
24	T. 12 N., R. 19 E.												X						
TOTAL ACRES ALLOTTED															4.86				

**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).

***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the samerotatation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
V-08850	GROENENDYKE FAMILY TRUST DATED MARCH 2, 1978	UNNAMED SPRING (A) - DIRECT DIVERSION, UNNAMED SPRING (D) & LUTHER CREEK - RETURN FLOW	<p>* UNNAMED SPRING (A) SW¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.24°E. 1,550 FT. FROM NW COR. OF SAID SECTION 26.</p> <p>**UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.</p> <p>LUTHER CREEK RETURN FLOW NE¼SE¼ SEC. 35, T.12N., R.19E., M.D.B.&M., S.13°21'16"W. 3,072 FT. FROM NE COR. OF SAID SECTION 35.</p>	APR. 1 TO OCT. 15	IRRIGATION	*0.089	* 2.43	30.20
				JAN. 1 TO DEC.31	DOMESTIC	**1.50	4.00	102.16
				JAN. 1 TO DEC.31	STOCK WATER	STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII		
					1853			
				<p>Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342. This spring is the soul source of water for land lying north of the northeasterly flowing drain that bisects this parcel. The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right from the ditch from said spring area for use only on lands located on the south side of the northeasterly trending drain ditch that bisects this parcel of land. Unnamed Spring "A" water cannot be commingled with this source.</p> <p>The State Engineer determines that a vested right is established from Luther Creek for "drain and waste" water only. No diversion rate or duty is allowed. See Section V.</p>				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

V-08850 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS			
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				SUFFICIENT TO WATER 30 HEAD OF LIVESTOCK, SEE SECTION XII.	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
LAND IRRIGATED FROM UNNAMED SPRING (A)																			12.43	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-Feet PER ACRE FROM ANY AND/OR ALL SOURCES.
26	T. 12 N.,	R. 19 E.		6.39	4.89		1.15													
LAND IRRIGATED FROM UNNAMED SPRING (D)																			25.54	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24918, CERTIFICATE 7843, "UNNAMED SPRING", AND PERMIT 24919, CERTIFICATE 7842, "UNNAMED SPRING", AND PROOF V-02856.
26	T. 12 N.,	R. 19 E.	6.77	7.02	9.11	2.64														
LUTHER CREEK RETURN FLOW																			9.41	DOUGLAS COUNTY APN 1219-26-001-035.
26	T. 12 N.,	R. 19 E.	6.77			2.64														
														TOTAL ACRES ALLOTTED		37.97				
*REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																				
UNNAMED SPRING (A), (D) AND LUTHER CREEK RETURN FLOWS:																				
UNNAMED SPRING (A) is the exclusive source of water for 6.39 acres located within the NW¼NE¼, 4.89 acres within the SW¼NE¼ and 1.15 acres within the NE¼NW¼ Sec. 26, T.12N., R.19E., M.D.B.&M. lying north of the drainage ditch shown running in a northeasterly direction through the acreage listed in this claim.																				
*UNNAMED SPRING "D" is appurtenant to 6.77 acres located within the NE¼NE¼, 7.02 acres within the NW¼NE¼, 9.11 acres within the SW¼NE¼ and 2.64 acres within the SE¼NE¼Sec. 26, T.12N., R.19E M.D.B.&M. lying south of the drainage ditch shown running in a northeasterly direction through the acreage listed in this claim.																				
LUTHER CREEK RETURN FLOW is listed as being appurtenant to 6.77 acres located within the NE¼NE¼ and 2.64 acres within the SE¼NE¼ Sec. 26, T.12N., R.19E., M.D.B.&M. Return flow is not restricted to this acreage, but may only be used downgradient from the point at which it enters the claimed acreage. Collection and pumping upgradient is not consistent with historic or current use of this water.																				
* 1.50 CFS IS THE MINIMUM FLOW RATE FROM UNNAMED SPRING (D) AND IS TO BE USED IN A ROTATION SCHEME OF IRRIGATING LAND UNDER PROOFS V-06321, V-06323 AND V-08850. FLOW IN EXCESS OF 1.5 CFS SHALL BE DIVIDED IN A 60%/40% SPLIT WITH 40% OF THE WATER ABOVE 1.5 CFS DIVERTED THROUGH THE DIVERSION TO THE NORTH THAT FLOWS BENEATH FOOTHILL ROAD TO THE EAST AND DIRECTS WATER THROUGH THE "BISECTING DITCH" UNDER CLAIM NO. V-08850. 60% OF THE FLOW IN EXCESS OF 1.5 CFS WILL REMAIN IN THE DITCH THAT PROVIDES WATER TO HERITAGE RANCH WATER USERS UNDER CLAIMS V-06321, V-06323 AND V-08850. REFER TO TABLE 8 FOR THE DISTRIBUTION TABLE AS IT PERTAINS TO THE 60%/40% DIVISION OF THE IRRIGATION WATER FROM UNNAMED SPRING (D).																				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-09039	TOM E. MASON AND SHARON J. MASON	MOTT CREEK	NE¼SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.	JAN. 1 TO DEC. 31	DOMESTIC. GARDEN AND LAWN 1852	0.002	3.59	0.79											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII DOUGLAS COUNTY APN 1219-03-002-060.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3	T. 12 N.,	R. 19 E.																0.22	
TOTAL ACRES ALLOTTED																		0.22	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-09263	BRETT A. & KAREN A. KIMBALL ROBERT CHUDNOW AND LINDA SAWYER-CHUDNOW	MOTT CREEK	NE½SE¼ SEC. 04, T.12N., R.19E., M.D.B.&M., S.14°15'43"W. 767.47 FT. FROM E¼ COR. OF SAID SECTION 04.	APR.1 TO OCT. 15	IRRIGATION	0.135	4.00	34.91												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N..	R. 19 E.									1.80			1.72		5.01	0.20	8.73	NO PROOF OF APPROPRIATION IS FILED ON THIS ACREAGE LOCATED AS DESCRIBED IN THE SHADED INSERT AND IN THE PLACE OF USE DESCRIPTION. THEREFORE, THE STATE ENGINEER DETERMINES THAT IN ORDER TO ISSUE A COMPLETE AND ACCURATE SUMMARY OF THE HISTORIC USE OF THE WATERS OF MOTT CREEK, A CLAIM IS SUBMITTED ON BEHALF OF THE CURRENT OWNER(S) OF RECORD BY THE OFFICE OF THE STATE ENGINEER.	
TOTAL ACRES ALLOTTED * 8.73																				
This land is described as Douglas County Assessor's Parcels 1219-03-002-082, 084, being 8.728 acres located within portions of the NE¼SW¼, SE¼SW¼, NW¼SE¼ and SW¼SE¼, Section 3, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Mott Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938. This proof is filed pursuant to NRS § 533.125.																				* THE SUM OF THE IRRIGATED ACREAGE CANNOT EXCEED THE 8.728 ACRES AS DESCRIBED BY THE DOUGLAS COUNTY ASSESSOR'S OFFICE UNDER DOUGLAS COUNTY APN'S 1219-03-002-082, 084.
Acreage within each forty (40) acre parcel was calculated with an electronic planimeter to within 0.072 acres. The acreage was then proportionally reduced within each forty (40) acre subdivision to equal 8.728 acres.																				

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-09264	TYNE HONKANEN & MARSHALL KYLE	MILLER CREEK UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26. ** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26. ***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.																
				APR.1 TO OCT. 15	IRRIGATION	* 0.066	* 2.71	6.86											
					1853	** 0.006	** 2.43	6.15											
						***	***	***											
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.															
Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																			
The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right, subject to the delivery rates described in the Final Order of Determination																			
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N., R. 19 E.			2.53													2.53	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE- FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK", ON THE CLAIMED 4.98 ACRES. LOT 4 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-031.	
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																TOTAL ACRES ALLOTTED	2.53		
This land is described as Douglas County Assessor's Parcel 1219-26-001-031, being 2.53 acres located within a portion of the NW¼NE¼ Section 26, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and Unnamed Spring (A) and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.". Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125. ***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-09265	STEPHEN H. & PATRICIA CHRISTIAN	MILLER CREEK UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26. ** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26. ***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.067 ** 0.006 ***	* 2.71 ** 2.43 ***	6.91 6.20 ***												
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
				Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																
				The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right, subject to the delivery rates described in the Final Order of Determination																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED. SEE SEC. XII	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
24	T. 12 N.,	R. 19 E.												X	X					THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.
TOTAL ACRES ALLOTTED																			2.55	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK".
**REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			LOT 10 ON THE SUPPORTING MAP.	
This land is described as Douglas County Assessor's Parcel 1219-24-002-009 (PORTION), being 2.55 acres located within a portion of the SE¼SW¼ Section 24, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and Unnamed Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.																				
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the samerotatation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			DOUGLAS COUNTY APN 1219-24-002-009 (PORTION). LOTS HAVE BEEN RECONFIGURED TO SHOW THAT CHRISTIAN ALSO OWNS 2.57 ACRES UNDER PROOF V-09270.	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT/ ACRE	TOTAL AC.-FT.													
V-09266	JOHN MINASIAN	MILLER CREEK UNNAMED SPRING (A) & UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26. ** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26. ***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.																		
				APR.1 TO OCT. 15	IRRIGATION	* 0.135	* 2.71	14.04													
					1853	** 0.012	** 2.43	12.59													
						***	***	***													
					The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
					Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																
					The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right, subject to the delivery rates described in the Final Order of Determination																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS														
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
26	T. 12 N., R. 19 E.																		5.18	THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES.	
** REFER TO THE ROTATION SCHEDULE UNDER TABLE B FOR UNNAMED SPRING (A).																			TOTAL ACRES ALLOTTED	5.18	THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK". LOT 12 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-24-002-007.
This land is described as Douglas County Assessor's Parcel 1219-24-002-007, being 5.18 acres located within a portion of the SE¼SW¼ Section 24, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and Unnamed Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.																					
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the same rotation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table B for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																					

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-09267	ANDREW & LINDA HACKLER	MILLER CREEK	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.073	* 2.71	7.53											
				1853															
				The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK". X - LOT 18 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-026.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
23	T. 12 N., R. 19 E.																X		
26	T. 12 N., R. 19 E.			X															
TOTAL ACRES ALLOTTED																		2.78	
This land is described as Douglas County Assessor's Parcel 1219-26-001-026, being 2.78 acres located within portions of the SW¼SE¼ Section 24, and NW¼NE¼ Section 26, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
V-09268	TERRY & CINDY LIBBON	MILLER CREEK	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.070	* 2.71	7.21											
				1853 The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.															
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK" LOT 19 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-025.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N., R. 19 E.			2.66															
TOTAL ACRES ALLOTTED																			2.66
This land is described as Douglas County Assessor's Parcel 1219-26-001-025, being 2.66 acres located within a portion of the NW¼NE¼ Section 26, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.							
V-09269	RICHARD E. & DOROTHY J. MURISSET	MILLER CREEK	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.												
				APR.1 TO OCT. 15	IRRIGATION	* 0.066	* 2.71	6.80							
				1853 The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS								
SECTION	TOWN-SHIP	RANGE	N E		N W		S W		S E		STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII THE TOTAL COMBINED DUTY OF WATER SHALL NOT EXCEED 4.0 ACRE-FEET PER ACRE FROM ANY AND/OR ALL SOURCES. THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK". LOT 20 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-26-001-024.				
			NE	NW	SW	SE	NE	NW	SW	SE		NE	NW	SW	SE
26	T. 12 N., R. 19 E.			2.51											
TOTAL ACRES ALLOTTED											2.51				
This land is described as Douglas County Assessor's Parcel 1219-26-001-024, being 2.51 acres located within a portion of the NW¼NE¼ Section 26, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Unnamed Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.															

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
V-09270	STEPHEN H. & PATRICIA CHRISTIAN	MILLER CREEK AND UNNAMED SPRING (A)& UNNAMED SPRING (D)	* MILLER CREEK NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.82°27'34"E. 1,982.63 FT. FROM NW COR. OF SAID SECTION 26.	APR.1 TO OCT. 15	IRRIGATION	* 0.135	* 2.71	14.04												
			** UNNAMED SPRING (A) NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.65°20'28"E. 2,614.06 FT. FROM NW COR. OF SAID SECTION 26.	1853	** 0.012 ***	** 2.43 ***	12.59 ***													
			***UNNAMED SPRING (D) SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.47°37'14"E. 3,508 FT. FROM NW COR. OF SAID SECTION 26.	The State Engineer determines that Miller Creek is subject to a 4 day rotation for Green Acres water users and a 10 day rotation for the Scossa Ranch every 14 days.																
			Unnamed Spring (A) is the same water source as Jackson Spring "A" under Proof V06342.																	
				The State Engineer determines that a vested right is established from Unnamed Spring (D) for a direct diversion right, subject to the delivery rates described in the Final Order of Determination																
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E				STOCKWATER IS ALSO RECOGNIZED, SEE SEC. XII	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
24	T. 12 N., R. 19 E.														5.18					5.18
** REFER TO THE ROTATION SCHEDULE UNDER TABLE 8 FOR UNNAMED SPRING (A).																			TOTAL ACRES ALLOTTED	5.18
This land is described as Douglas County Assessor's Parcels 1219-24-002-008, 009 (PORTIONS), being 5.18 acres located within a portion of the SE¼SW¼ Section 24, T.12N., R.19E., M.D.B.&M. The State Engineer determines that water has been diverted from Miller Creek and Unnamed Creek and placed to beneficial use on this acreage based on Map No. 4891, "U.S. Geological Survey, Hydrographic Branch, Reclamation Service, for the Truckee-Carson Project, Nev.", Dated July 27, 1904 and 1938 Aerial photos of Carson Valley Bottom Land, dated Oct. 20, 1938 and the fact that all of the acreage in the Green Acres subdivision was formerly the same ranch. This proof is filed pursuant to NRS § 533.125.																			THE STATE ENGINEER DETERMINES THAT THIS PROOF SUPERCEDES PERMIT 24525, CERTIFICATE 8136, "MILLER CREEK", AND PERMIT 24526, CERTIFICATE 8137, "UNNAMED CREEK".	
***The first 1.50 cfs from Unnamed Spring (D) is allocated to Proofs V-06321, V-06323 and V-08850. Flow in Excess of 1.50 cfs shall be divided in a 60%/40% split, with 40% being routed through the diversion to the north, that flows beneath Foothill Road to the east and directs water through the "Bisecting Ditch" under claim V-08850. The 40% portion will be used to supplement Spring (A) flow within the samerotatation schedule for said spring (A) as applied to Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09266 and V-09270. Refer to Table 8 for the distribution table as it pertains to the 60%/40% division of the irrigation water from Unnamed Spring (D).																			LOT 11 ON THE SUPPORTING MAP. DOUGLAS COUNTY APN 1219-24-002-008, 009 (PORTIONS).	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
7595 CERT.: 1760	JAMES ROLPH III & JUNE IRENE ROLPH; ROBERT D. DUNN & EVELYN W. DUNN; JAMES D. DOORNINK & EDNA DOORNINK; LOIS S. JONES; JAMES O. TOMERLIN AND WILLIAM R. TOMERLIN; L. J. HANAVAN; EMILE P. HASTERT; RODERICK J. SMITH & PATRICIA L. SMITH; THOMAS J. SCYPHERS AND KATHLEEN M. SCYPHERS.	GANSBERG SPRING	SE¼SE¼ SEC. 16, T.12N., R.19E., M.D.B.&M.	APR. 15 TO OCT. 15	IRRIGATION & DOMESTIC DEC. 7, 1925	1.570		571.98												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN-SHIP	RANGE	N E				N W				S W				S E					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
14	T.	12 N., R. 19 E.					40.00	40.00	37.00	40.00									157.00	GANSBERG SPRING WATER IS COMMINGLED IN THE SAME PIPELINE AS STUTLER CREEK PRIOR TO BEING COMMINGLED WITH THE NORTH SPLIT OF SHERIDAN CREEK. JAMES & JUNE IRENE ROLPH AND ROBERT & EVELYN DUNN HAVE BEEN ASSIGNED 1.56 CFS AND 568.34 AFA TO IRRIGATE 156 ACRES. JAMES AND EDNA DOORNINK HAVE BEEN ASSIGNED 0.01 CFS WITH 3.64 AFA TO IRRIGATE 1.0 ACRE. THIS PERMIT IS SUPPLEMENTAL TO PROOFS V04594, V06305, V06306, V06309, V06310, V06311, V06312, V06338, V06339, V06340, V06341, V06346 AND V06347. DOUGLAS COUNTY APN'S AS FOLLOWS: JONES: 1219-15-002-049, 1219-14-001-001, 002; ROLPH & DUNN: 1219-14-001-003, 005, 012, 013, 014, 015; 1219-14-001-002, 004, 005, 006; DOORNINK: 1219-15-002-038 TOMERLINS: 1219-15-001-026, 027, 028; HANAVAN: BOLEN CIRCLE RIGHT OF WAY; HASTERT: 1219-15-001-025; SMITH: 1219-15-001-040.
TOTAL ACRES ALLOTTED																			157.00	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
10033 CERT.: 3417	DAVID AND EVELYNE HARVEY	SHARPE SPRING	SW¼SE¼ SEC. 16, T.12N., R.19E., M.D.B.&M., S.39°50'W. 2,870 FT. FROM E¼ COR. OF SAID SECTION 16.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC OCT. 7, 1936	0.050													
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				WATER UNDER THIS PERMIT SERVES A RESIDENCE AND THE ASSOCIATED LANDSCAPING.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16	T. 12 N.,	R. 19 E.														X	X		

WATER UNDER THIS PERMIT SERVES A RESIDENCE
AND THE ASSOCIATED LANDSCAPING.

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.												
10983 CERT.: 2937	MELVIN SCHWAKE	CARY CREEK	NE¼SE¼ SEC. 9, T.12N., R.19E., M.D.B.&M., S.87°06'W. 602 FT. FROM E¼ COR. OF SAID SECTION 9.	JAN. 1 TO DEC. 31	IRRIGATION STOCK WATERING & DOMESTIC 1873	0.370	0.90	145.44												
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS													
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					THIS APPLICATION WAS MADE TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF THE WATERS OF CARY CREEK CLAIMED UNDER PROOF OF APPROPRIATION V06355 PRIOR TO THE FILING OF SAID PROOF. CARY CREEK IRRIGATION WATER IS STORED IN A RESERVOIR UNDER DAM PERMIT J-50. THIS PERMIT IS SUPPLEMENTAL TO PROOF V06354 AND IS SUPPLEMENTED BY PERMIT 12532, CERTIFICATE 3293, UNDERGROUND.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 12 N.,	R. 19 E.														19.6	33.6	53.20		
10	T. 12 N.,	R. 19 E.	40.00	39.60	18.80	10.00												108.40		
TOTAL ACRES ALLOTTED																		161.60		

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
18720 CERT.: 5961	BENTLY FAMILY LIMITED PARTNERSHIP; DARWIN K. ELLIS AND ELIZABETH D. ELLIS; DARWIN V. ELLIS AND LINDA T. ELLIS	UNNAMED SPRING	NE¼NE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., S.37°40'28"W. 1,649.45 FT. FROM NE COR. OF SAID SECTION 09.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC APR. 13, 1960	0.050	4.00	22.84											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9	T. 12 N.,	R. 19 E.	4.00			1.71													5.71
TOTAL ACRES ALLOTTED																			5.71

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
21569 CERT.: 6910	BENTLY FAMILY LIMITED PARTNERSHIP	BENTLY SPRINGS	SE¼NE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., N.49°53'30"W. 1,072.47 FT. FROM E¼ COR. OF SAID SECTION 09.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC OCT. 7, 1963	0.010	4.00	3.04											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9	T. 12 N.,	R. 19 E.				0.76													0.76
TOTAL ACRES ALLOTTED																			0.76

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
24566 CERT.: 8740	BENTLY FAMILY LIMITED PARTNERSHIP	AUTUMN HILLS SPRING	SW¼NE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., N.66°11'14"W. 1,844.08 FT. FROM E¼ COR. OF SAID SECTION 09.	JAN. 1 TO DEC. 31	DOMESTIC JUL. 3, 1968	0.016		365,000 GALLONS ANNUALLY											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				USE IS FOR 1 SINGLE FAMILY DWELLING.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9	T. 12 N.,	R. 19 E.			X														

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
24806 CERT.: 7584	WILLIAM R. TOMERLIN TRUST DATED AUG. 11, 1976	WHEELER CREEK NO. 1	NW¼SW¼ SEC. 10, T.12N., R.19E., M.D.B.&M., S.00°45'E. 1,000 FT. FROM W¼ COR. OF SAID SECTION 10.	JAN. 1 TO DEC. 31	IRRIGATION DEC. 10, 1968	1.250	4.00	376.44

PLACE OF USE 40 ACRE DESCRIPTIONS															ACRES PER SECTION	REMARKS							
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E								
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
10	T. 12 N.,	R. 19 E.												38.31	31.20	14.90	9.70					94.11	A PORTION WAS ABROGATED BY PERMIT 25601. THIS PERMIT IS SUPPLEMENTAL TO PORTIONS OF OF THE LAND IRRIGATED BY WHEELER CREEK NOS. 1 & 2 FILED UNDER PERMIT 24807, CERTIFICATE 7583; PERMIT 25601, CERTIFICATE 7586; PERMIT 25409, CERTIFICATE 7585, UNDERGROUND; AND PROOF NO. V-06320.
TOTAL ACRES ALLOTTED																			94.11				

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
24807 CERT.: 7583	WILLIAM R. TOMERLIN TRUST DATED AUG. 11, 1976	WHEELER CREEK NO. 2	SW¼SW¼ SEC. 10, T.12N., R.19E., M.D.B.&M., S.03°40'E. 2,640 FT. FROM W¼ COR. OF SAID SECTION 10.	JAN. 1 TO DEC. 31	IRRIGATION DEC. 10, 1968	2.250	4.00	376.44

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

24807 CERT.: 7583 (cont.)	PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					THIS PERMIT IS SUPPLEMENTAL TO PORTIONS OF OF THE LAND IRRIGATED BY WHEELER CREEK NOS. 1 & 2 FILED UNDER PERMIT 24806, CERTIFICATE 7584; PERMIT 25601, CERTIFICATE 7586; PERMIT 25409, CERTIFICATE 7585, UNDERGROUND; AND PROOF NO. V-06320.
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10	T. 12	N., R. 19 E.									38.31	31.20	14.90	9.70					94.11	
															TOTAL ACRES ALLOTTED				94.11	

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
25409 CERT.: 7586	WILLIAM R. TOMERLIN TRUST DATED AUG. 11, 1976	UNDERGROUND	SW¼SE¼ SEC. 10, T.12N., R.19E., M.D.B.&M., N.00°31'46"E. 1,733.4 FT. FROM S¼ COR. OF SAID SECTION 10.	JAN. 1 TO DEC. 31	IRRIGATION DEC. 10, 1968	1.670	4.00	217.36

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

25409 CERT.: 7586 (cont.)	PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECTION	REMARKS				
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E					THIS PERMIT IS SUPPLEMENTAL TO PORTIONS OF THE LAND IRRIGATED BY WHEELER CREEK NO'S. 1 & 2 FILED UNDER PERMIT 24806, CERTIFICATE 7584; PERMIT 24807, CERTIFICATE 7583; PERMIT 25601. CERTIFICATE 7586, AND PROOF V-06320 .
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10	T. 12 N.	R. 19 E.									38.31	4.68	1.65	9.70					54.34	
TOTAL ACRES ALLOTTED																			54.34	

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION				YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.								
25601 CLRT.: 7585	WILLIAM R. TOMERLIN TRUST DATED AUG. 11, 1976	WHEELER CREEK NO. 1	SW¼SE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., N.75°56'W. 2,280 FT. FROM SE COR. OF SAID SECTION 9.				JAN. 1 TO DEC. 31	IRRIGATION DEC. 10, 1968	1.250	4.00	376.44								
PLACE OF USE 40 ACRE DESCRIPTIONS								ACRES PER SECTION	REMARKS										
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10	T. 12 N.,	R. 19 E.									38.31	31.20	14.90	9.70					94.11
TOTAL ACRES ALLOTTED																			94.11
THIS PERMIT IS SUPPLEMENTAL TO PORTIONS OF THE LAND IRRIGATED BY WHEELER CREEK NO'S. 1 & 2 FILED UNDER PERMIT 24806, CERTIFICATE 7584; PERMIT 24807, CERTIFICATE 7583; PERMIT 25409, CERTIFICATE 7586, UNDERGROUND, AND PROOF V-06320 .																			

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
28884 CERT.: 9281	ALAN K. & PATRICIA M. HARRIS	UNNAMED SPRING	NE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M., S.73°47'40"E. 2,356.24 FT. FROM NW COR. OF SAID SECTION 26.	JAN. 1 TO DEC. 31	IRRIGATION NOV. 6, 1974	0.090	4.00	21.80											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26	T. 12 N.,	R. 19 E.		1.58			3.88											5.46	
TOTAL ACRES ALLOTTED																		5.46	

35626 CERT.: 9549	FREDERIC J. NIMIS AND CONCHA P. NIMIS	CASTLE GARDEN SPRING	SE¼NE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., S.26°36'01"W. 2,090.08 FT. FROM NE COR. OF SAID SECTION 09.	JAN. 1 TO DEC. 31	IRRIGATION DOMESTIC & FIRE PROTECTION JUL. 14, 1978	0.060	4.00	32.80											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECTION	REMARKS												
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9	T. 12 N.,	R. 19 E.				8.20												8.20	
TOTAL ACRES ALLOTTED																		8.20	

TABLE OF RELATIVE RIGHTS TO APPROPRIATORS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
36087 CERT.: 9885	FREDERIC J. NIMIS AND CONCHA P. NIMIS	ELLIS SPRING	SE¼NE¼ SEC. 09, T.12N., R.19E., M.D.B.&M., N.46°45'W. 1,583 FT. FROM E¼ COR. OF SAID SECTION 09.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC OCT. 23, 1978	0.011	4.00	1.96											
PLACE OF USE 40 ACRE DESCRIPTIONS					ACRES PER SECTION	REMARKS													
SECTION	TOWN- SHIP	RANGE	N E				N W				S W				S E				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9	T. 12 N.,	R. 19 E.				0.49												0.49	
TOTAL ACRES ALLOTTED																		0.49	

XIX. STATE ENGINEER'S FINAL DETERMINATION.

It is the determination of the State Engineer that the waters from all sources in this Final Order of Determination are declared fully appropriated with no water for future appropriations .

XX. STREAM AND SPRING SYSTEM TABLES.

1. TAYLOR CREEK AND UNNAMED SPRING DIVERSION
2. MOTT CREEK
3. CARY (AKA CAREY, MONUMENT AND BULL) CREEK
DIVERSIONS
4. WHEELER CREEK NO. 1 & 2 DIVERSIONS
5. STUTLER CREEK- COMMINGLED WITH THE NORTH
DIVERSION OF SHERIDAN CREEK
6. SHERIDAN CREEK, NORTH AND SOUTH DIVERSIONS
7. MILLER SPRING AND CREEK
8. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL
ROAD ON THE HERITAGE RANCH WITHIN SECTION 26,
T.12N., R.19E., M.D.B.&M.
9. LUTHER CREEK

TABLE 1. TAYLOR CREEK AND UNNAMED SPRING DIVERSIONS.

PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE* IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-06352 - TAYLOR CR.	5.79	0.100	4.00	23.16
V-06353 - UNNAMED SP.	7.32	0.060	3.22	23.57
TOTALS:	7.32			23.57
Total acreage irrigated under Proofs V-06352 and V-06353 is 7.32 acres. Taylor Creek (V-06352) totally supplements the Unnamed Springs (V-06353) on 5.79 acres out of 7.32 acres. No distinct division of the supplemental versus the non-supplemental land is illustrated on the supporting map.				
*Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.				

**TABLE 2. MOTT CREEK DIVERSIONS FOR INDIVIDUAL CLAIMANTS
AND EACH 25% HISTORICAL FLOW SPLIT.**

PROOF AND PERMIT NUMBERS	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
1. NORTHERN DIVERSION				
V-06369	N/A	N/A	N/A	N/A
V-06370	126.900	1.100	3.40	431.46
TOTALS:	126.900	1.100		431.46
2. SECOND DIVERSION FROM NORTH TO SOUTH.				
V-05314	7.610	0.091	4.00	30.44
V-06313	40.000	0.481	4.00	160.00

**TABLE 2. cont. MOTT CREEK DIVERSIONS FOR INDIVIDUAL CLAIMANTS
AND EACH 25% HISTORICAL FLOW SPLIT.**

PROOF AND PERMIT NUMBERS	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-06349	33.460	0.402	4.00	133.84
V-06350	**12.96	**0.184	4.00	51.84
V-06351	**10.00	**0.092	4.00	40.00
TOTALS:	104.030	1.250		416.12
3. THIRD DIVERSION FROM NORTH TO SOUTH.				
V-05049	15.800	0.171	4.00	63.20
V-06315	60.000	0.648	4.00	240.00
V-06316	40.000	0.432	4.00	160.00
TOTALS:	115.800	1.250		463.20
4. SOUTHERN DIVERSION.				
V-05070	7.071	0.105	4.00	28.28
V-05819	3.160	0.047	4.00	12.64
V-06226	8.290	0.123	4.00	33.16
V-06317	20.000	0.296	4.00	80.00
V-06318	20.000	0.296	4.00	80.00
V-06319	10.000	0.148	4.00	40.00
V-06831	6.920	0.102	4.00	27.68
V-09039	0.220	0.003	N/A	1.45
V-09263	8.730	0.129	4.00	34.92
TOTALS:	84.391	1.250		338.13
GRAND TOTALS:	431.121	4.850		1648.91
1. The diversion rates for each ¼ split of Mott Canyon Creek are based on a spring and early summer average stream flow of 5.000 c.f.s. and not acreage within the ¼ split. Flow and diversion rates during periods of drought and middle to late irrigation season will generally be less than the rates determined in the Final Order of Determination. Therefore; all parties will have to share the water shortage during periods of low flow. The total combined diversion for any of the four splits can be used in its' entirety in a rotation system of irrigation. These diversion rates do not exempt any of the parties from the 1952 agreement that				

**TABLE 2. cont. MOTT CREEK DIVERSIONS FOR INDIVIDUAL CLAIMANTS
AND EACH 25% HISTORICAL FLOW SPLIT.**

specifies ¼ of the flow of Mott Canyon Creek be diverted to each of the four ranches that are subject to said agreement.

2. Second Diversion from North to South: In order to insure an equitable division of water under Proofs V-05314, V-06313 V-06349, V-06350 and V-06351 said proofs will be subject to the rotation schedule included in Table 2.

*Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.

**Note: Proofs of Appropriation V-06350 and V-06351 subject to Ninth Judicial District Court of Nevada, Case No. 25256, Ladell Philips, Plaintiff, v. Michael Philips, Partitioning Real Property.

Table 2. cont. Mott Creek Second Diversion From North to South Rotation Schedule

Day 1 V-06350 Starts 5 PM	Day 2 V-06350	Day 3 V-06350	Day 4 V-06350 Ends 10 AM V-06351 Starts 10 AM	Day 5 V-06351 Ends 6 PM V-06349 Starts 6 PM
Day 6 V-06349	Day 7 V-06349	Day 8 V-06349	Day 9 V-06349	Day 10 V-06349
Day 11 V-06349 Ends 12 PM V-06313 Starts 12 PM	Day 12 V-06313	Day 13 V-06313	Day 14 V-06313	Day 15 V-06313
Day 16 V-06313	Day 17 V-06313	Day 18 V-06313 Ends 8 AM V-05314 Starts 8 AM	Day 19 (1) V-05314 Ends 5 PM	

Proof No.	APN	% of Total Hours	Duty	Total # of hours
V-06350	1219-03-001-073	**15%	51.84	65.00
V-06351	1219-03-001-060	**7%	40.00	30.00
V-06349	1219-03-001-059, 058	32%	133.84	138.00
V-06313	1219-03-001-061	38%	160.00	164.00
V-05314	1219-03-001-062	7%	30.44	33.00

** Based on one-third, two-third agreement, Case No. 28332, Ninth Judicial District Court of Nevada.

TABLE 3. CARY (AKA CAREY, MONUMENT OR BULL) CREEK DIVERSIONS.

PROOF AND PERMIT NUMBERS	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE* IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-06354	226.08	2.00	3.47	784.50
V-06355	266.24	3.63	4.00	1064.96
PERMIT 10983	**161.6	0.37	0.90	145.44
TOTALS:	492.32	6.00		1969.28

**Total acreage irrigated under Proofs V-06354, V-06355 and Permit 10983, Certificate 2937 is 492.32 acres. Permit 10983 Certificate 2937 is totally supplemental to Proof V-06354. Therefore, the duty of water shall not exceed 4.0 acre-feet per acre per season or 904.32 acre-feet per season from any and/or all sources. These proofs are subject to the July 1, 1918 agreement between B.L. Park, Wm. Glover, Agnes Glover and John Christiansen, in Book E., Page 337 Agr., Douglas County Records Office. Based on the agreement and Proofs V-06354 and V-06355, Schwake will receive 0.37 c.f.s. plus 1/3 of the remaining flow and Dreyer will receive 2/3 of the flow less than the 0.37 c.f.s.

*Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on high flow measurements during the early part of the irrigation season of slightly greater than 6.0 c.f.s. Actual flow rates will diminish throughout the irrigation season to a fraction of this rate.

TABLE 4. WHEELER CREEK NO. 1 & 2 DIVERSIONS.

PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE* IN C.F.S.	*DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-06320 - WHEELER CR. #1	49.10	0.652	4.00	196.40
V-06320 - WHEELER CR. #2	-	1.174	4.00	
TOTALS:	49.10			196.40

TABLE 4. cont. WHEELER CREEK NO. 1 & 2 DIVERSIONS.

PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE* IN C.F.S.	*DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
PER. 24806, CERT. 7584	-	1.25	4.00	376.44
PER. 24807, CERT. 7583	-	2.25	4.00	376.44
PER. 25601, CERT. 7586	-	1.25	4.00	376.44
In order to be consistent with existing Permits 24806, 24807 and 25601 Proof of Appropriation V-06320 is issued with the diversion rates proportional to the certificated permits. There is only one claimant for all of the water from Wheeler Creek #1 and #2.				
Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.				

**TABLE 5. STUTLER CREEK - COMMINGLED WITH
THE NORTH DIVERSION OF SHERIDAN CREEK.**

PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-04594	10.00	0.010	0.25	2.50
V-06305	10.36	0.040	1.49	15.44
V-06310	60.87	0.250	1.49	90.70
V-06311	16.61	0.070	1.49	24.74
V-06337	10.37	0.043	1.49	15.45
V-06338	23.76	0.100	1.49	35.40
V-06341	22.03	0.090	1.49	32.82
V-06346	24.94	0.100	1.49	37.16
TOTALS:	178.94	0.703		254.21

**TABLE 5. cont. STUTLER CREEK - COMMINGLED WITH
THE NORTH DIVERSION OF SHERIDAN CREEK.**

None of the flow measurements conducted on Stutler Creek supported the rates estimated by the Milton Sharp P.E. Report of March, 1993. The channel configuration does not show any evidence of sustained flows in excess of those measured in 1997 and 1998 by staff of the Office of the State Engineer. Also, the four(4) inch diameter pipeline is not capable of carrying the proposed diversion plus the diversion from Gansberg Spring. Therefore, the diversion rate is reduced to the maximum flow measurement conducted on October 3, 1997.

Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.

TABLE 6. SHERIDAN CREEK - NORTH AND SOUTH DIVERSIONS.

PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
1. NORTH DIVERSION.				
V-04594	1.13	0.013	4.00	4.52
V-06306	12.93	0.153	4.00	51.72
V-06307	NA	NA	NA	NA
V-06309	60.87	0.719	4.00	243.48
V-06312	16.61	0.196	4.00	66.44
V-06336	10.37	0.123	4.00	41.48
V-06339	23.76	0.281	4.00	95.04
V-06340	22.03	0.260	4.00	88.12
V-06347	24.94	0.295	4.00	99.76
V-06356	5.10	0.060	4.00	20.40
TOTALS:	177.74	2.100		710.96

TABLE 6. cont. SHERIDAN CREEK - NORTH AND SOUTH DIVERSIONS.				
PROOF NUMBER	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
2. SOUTH DIVERSION.				
V-04594	8.87	0.086	4.00	35.48
V-06307	NA	NA	NA	NA
V-06309	9.90	0.096		
V-06357	34.70	0.337	4.00	138.80
V-06358	NA	NA	NA	NA
V-06359	NA	NA	NA	NA
V-06360	18.00	0.175	4.00	72.00
V-06361	NA	NA	NA	NA
V-06362	32.60	0.316	4.00	130.40
V-06264	40.20	0.390	4.00	160.80
V-06265	NA	NA	NA	NA
TOTALS:	144.270	1.400		537.48
GRAND TOTALS:	322.01			1248.440
The diversion rates for the north and south split of Sheridan Creek are based on a spring and early summer average stream flow of 3.5 c.f.s. Flow and diversion rates during periods of drought and middle to late irrigation season will generally be less than the rates determined in the Preliminary Order of Determination. Therefore, all parties will have to share the water shortage during periods of low flow. The total diversion from either the north or south split can be used in its entirety in a rotation system of irrigation.				
A deed described as Book Q, Page 44, of the records of the Douglas County Recorder's Office states that ½ interest in Sheridan Creek was deeded with the land described as being the S½ Section 14, T.12N., R.19E., M.D.B.&M. located west of the Park and Bull Ditch. This deed is applied to the proofs filed for water from the south split of Sheridan Creek. The State Engineer determines that further documentation in the form of an agreement or court decree will be necessary to justify an equal split of Sheridan Creek.				
Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.				

**TABLE 7. MILLER SPRING AND CREEK CLAIMS FOR THE SCOSSA RANCH
AND THE GREEN ACRES SUBDIVISION.**

PROOF AND PERMIT NO.'S	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET	BIWEEKLY SCHEDULE
V-06322	2.47	0.065	2.71	6.69	**4 DAYS
V-06324	2.53	0.066	2.71	6.86	**4 DAYS
V-06325	2.54	0.066	2.71	6.89	**4 DAYS
V-06326	2.50	0.065	2.71	6.78	**4 DAYS
V-06327	4.90	0.128	2.71	13.28	**4 DAYS
V-06328	5.55	0.145	2.71	15.04	**4 DAYS
V-06329	5.22	0.136	2.71	14.15	**4 DAYS
V-06330	5.08	0.133	2.71	13.77	**4 DAYS
V-06331	4.88	0.128	2.71	13.22	**4 DAYS
V-06332	2.54	0.066	2.71	6.88	**4 DAYS
V-06333	4.98	0.130	2.71	13.50	**4 DAYS
V-06334	2.55	0.067	2.71	6.91	**4 DAYS
V-06335	2.53	0.066	2.71	6.86	**4 DAYS
* V-06367	213.30	2.000	2.71	578.04	10 DAYS
V-07486	4.86	0.127	2.71	5.10	**4 DAYS
V-09264	2.53	0.066	2.71	6.86	**4 DAYS
V-09265	2.55	0.067	2.71	6.91	**4 DAYS
V-09266	5.18	0.135	2.71	14.04	**4 DAYS
V-09267	2.78	0.073	2.71	7.53	**4 DAYS
V-09268	2.66	0.070	2.71	7.21	**4 DAYS
V-09269	2.51	0.066	2.71	6.80	**4 DAYS
V-09270	5.18	0.135	2.71	14.04	**4 DAYS
TOTALS:	289.82	2.000		777.36	14 DAYS
SUB-TOTAL OF GREEN ACRES CLAIMS:					
	76.52	2.000		199.32	**4 DAYS

**TABLE 7. cont. MILLER SPRING AND CREEK CLAIMS FOR THE SCOSSA RANCH
AND THE GREEN ACRES SUBDIVISION.**

PROOF AND PERMIT NO.'S	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET	BIWEEKLY SCHEDULE
* V-06368 (STOCK)	N/A	N/A	N/A	N/A	N/A
* V-06371	292.10	N/A	N/A	N/A	N/A
* V-06372 (STOCK)	N/A	N/A	N/A	N/A	N/A
* Scossa Ranch claims.					
**4 consecutive days of diversion from Miller Spring are to be shared amongst all owners listed under "Biweekly schedule.					
The diversion rate for Miller Spring is based on U.S.G.S. gaging station records from 1989 through 1997. Average flow for the period of record is 0.87 c.f.s. During non-drought flows in excess of 2.0 c.f.s. occurred 10% or less of the water year. Flows ranged from 0.24 c.f.s. on September 16, 1991, to a high of 3.3 c.f.s. on September 26, 1995. The period of record is heavily influenced by more drought years than wet years. Therefore; in order to allow full use of a highly variable water source the State Engineer determines that the total diversion be limited to 2.0 c.f.s. Flow rates during periods of drought and middle to late irrigation season will be generally less than the rates determined in the Final Order of Determination. Therefore; all parties will have to share the water shortage during periods of low flow.					
76.52 acres of irrigation are claimed under Proofs V-06322, V-06324, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331 V-06332, V-06333, V-06334, V-06335 and V-07486 and Douglas County APN's 1219-26-001-031; 1219-26-002-009 (PORTION); 1219-26-002-008 (PORTION), 009 (ALL); 1219-24-002-007, 1219-26-001-026, 1219-26-001-025 and 1219-26-001-024 if all land owners within Green Acres filed Proofs of Appropriation . Several owners within the Green Acres Subdivision failed to file a Proof of Appropriation. Per NRS § 533.125 (2) the State Engineer filed Proofs of Appropriation as follows APN 1219-26-001-031, V-09264; APN 1219-24-002-009 (portion), V-09265; 1219-24-002-008, 009 (portions), V-09270; 1219-24-002-007, V-09266; 1219-26-001-025 (portion), V-09267; 1219-26-001-025, V-09268; and 1219-26-001-024, V-09269.					
In conclusion the State Engineer determines that Proof V-06367 shall be allotted the entire flow of Miller Creek for 10 days out of each bi-weekly (14 day) rotation schedule. The State Engineer determines that Proofs V-06322, V-06324, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06332, V-06333, V-06334, V-06335, V-07486, V-09264, V-09265, V-09266, V-09267, V-09268, V-09269 and V-09270 shall be allotted the entire flow of Miller Creek for 4 days out of each bi-weekly (14 day) rotation schedule. Rights under Permit 24525, Certificate 8136, for the waters of Miller Creek will subject to the same rotation schedule as the proofs.					
Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.					
** Deed recorded June 1, 1916 in Book P of Deeds page 260 in the Douglas County Recorder's Office.					

**TABLE 8. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL ROAD
ON THE HERITAGE RANCH WITHIN SECTION 26, T.12N., R.19E., M.D.B.&M.**

PROOF AND PERMIT NUMBERS	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	**DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
1. UNNAMED SPRING "A" (aka "UNNAMED STREAM") -SW¼ NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M				
V-06322	2.47	0.006	2.43	6.00
V-06325	2.54	0.006	2.43	6.17
V-06326	2.50	0.006	2.43	6.08
V-06327	4.90	0.012	2.43	11.91
V-06328	5.55	0.013	2.43	13.49
V-06329	5.22	0.012	2.43	12.68
V-06330	5.08	0.012	2.43	12.34
V-06331	4.88	0.011	2.43	11.86
V-06333	4.98	0.012	2.43	12.10
V-06334	2.55	0.006	2.43	6.20
V-06342	7.20	0.017	2.43	17.50
V-07486	4.86	0.011	2.43	11.81
V-08850	12.43	0.089	2.43	30.20
V-09264	2.53	0.006	2.43	6.15
V-09265	2.55	0.006	2.43	6.20
V-09266	5.18	0.012	2.43	12.59
V-09270	5.18	0.012	2.43	12.59
TOTALS:	80.60	0.250		195.86

**TABLE 8 cont. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL ROAD
ON THE HERITAGE RANCH WITHIN SECTION 26, T.12N., R.19E., M.D.B.&M.**

PROOF AND PERMIT NUMBERS	ACREAGE ALLOTTED	FINAL ORDER DIVERSION RATE IN C.F.S.	**DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
2. UNNAMED SPRING "B" - SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M.				
V-06343	2.53	SUB-IRRIGATED	NO DUTY	NONE
V-06343‡	7.20	SUPPLEMENTAL	NO DUTY	NONE
V-08850	{25.54}	DRAIN & WASTE	NO DUTY	NONE
TOTALS:	9.73		NO DUTY	
‡ Water from Unnamed Spring "B" may be utilized to supplement the flow rate from Unnamed Spring "A" when irrigating the 7.20 acres described under Proof V-06342 due to the fact that they commingle in the same collection box. The waters of Unnamed Spring "B" shall be allowed to flow to the south and commingle with the waters of Unnamed Spring "D" when Proof V-06342 is not in rotation priority.				
{ } Acreage that does not have a direct diversion right and is subject to "drain and waste" water use from this source.				
3. UNNAMED SPRING "C" - SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M.				
V-02857	163.00	3.000	4.00	652.00
This portion of the spring complex is diverted into a southeasterly flowing ditch where it becomes supplemental to a portion of Proof V-02858.				
V-06321	{40.36}	DRAIN & WASTE	NO DUTY	NONE
V-06323	{40.35}	DRAIN & WASTE	NO DUTY	NONE
V-06344	2.98	SUB-IRRIGATED	NO DUTY	NONE
V-08550	{9.41}	DRAIN & WASTE	NO DUTY	NONE
TOTALS:	165.98	3.000	4.00	652.00
Acreage denoted within brackets "{ }" is not considered as part of the acreage irrigated by direct diversion from the listed source, therefore, no duty or diversion rate is associated with these claims.				

**TABLE 8 cont. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL ROAD
ON THE HERITAGE RANCH WITHIN SECTION 26, T.12N., R.19E., M.D.B.&M.**

PROOF AND PERMIT NUMBERS	ACREAGE ALLOTTED	FINAL ORDER DIVERSION RATE IN C.F.S.	**DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
4. UNNAMED SPRING "D" - SE¼NW¼ SEC. 26, T.12N., R.19E., M.D.B.&M.				
V-06321	40.36		4.00	161.44
V-06323	40.35		4.00	161.40
V-08550	25.54		4.00	102.16
V-06322		*VARIABLE	SEE #4	*VARIABLE
V-06325		*VARIABLE	SEE #4	*VARIABLE
V-06327		*VARIABLE	SEE #4	*VARIABLE
V-06328		*VARIABLE	SEE #4	*VARIABLE
V-06329		*VARIABLE	SEE #4	*VARIABLE
V-06330		*VARIABLE	SEE #4	*VARIABLE
V-06331		*VARIABLE	SEE #4	*VARIABLE
V-06333		*VARIABLE	SEE #4	*VARIABLE
V-06335		*VARIABLE	SEE #4	*VARIABLE
V-06345	13.35	SUB-IRRIGATED	NO DUTY	NONE
TOTALS:	119.60			425.00
The diversion rate for each spring is based on flow measurements conducted by personnel of the Office of the State Engineer. Flow and diversion rates during periods of drought and middle to late irrigation season will generally be less than the rates determined in the Final Order of Determination. Therefore, all parties will have to share the water shortage during periods of low flow.				
Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.				

**TABLE 8 cont. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL ROAD
ON THE HERITAGE RANCH WITHIN SECTION 26, T.12N., R.19E., M.D.B.&M.**

** The maximum duty of water is 4.00 acre-feet per acre from any and/or all sources. The duty from Unnamed Spring "A" for the total irrigated acreage is 2.43 acre-feet per acre on land that is not irrigated by Unnamed Spring (D) during the 198 day irrigation season.

1. The total practicable discharge from Unnamed Spring "A" under the listed proofs is 0.50 c.f.s.

Review of a 1938 aerial photographs indicates that the acreage claimed and supported by the map filed under Permit 24918 is the correct representation of the irrigated acreage with the exception of acreage adjustments under Proofs V06342, V-06343 V-06344 and V-06345. This also complies with Map No. 4891 drawn by the "U.S. Geological Survey, Hydrographic Branch Reclamation Service, for the Truckee-Carson Project Nev.", dated July 27, 1904.

2. Spring Area "B" is collected in a ditch at the base of the spring area and flows to the north to the structure designated as "CONTROL BOX AND VALVE" located on the south line of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.12N., R.19E., M.D.B.&M. Water from this ditch can be diverted directly from the collection ditch or placed into the ditch that runs from the valve box in a south/southeasterly direction toward the channel running from 'Unnamed Spring Area "D" to the pond. The supporting map for Proof V-06343 shows water flowing in a southerly direction adjacent to the east side of Unnamed Spring Area (B). The correct direction of flow is to the north. Proof V-06343 claims water from the portion of the spring source located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec.26 T.12N., R.19E., M.D.B.&M. that flows in a northerly direction to the "CONTROL VALVE AND BOX" as depicted on said supporting map. Water from this source then flows in a south/southeasterly direction where it commingles with water from' Unnamed Spring Area (D). Unnamed Spring (B) may be used to supplement the flow rate for land irrigated under Proof V-06342 during the prescribed rotation schedule.

3. Spring Area "C" is a sub-irrigated meadow overlying a spring source. This water right shall be limited to 2.98 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 26, T.12N., R.19E., M.D.B.&M. Water from this source flows southeast to east into the Heidtman Ditch and is claimed under Proof V-02857 for irrigation of 163.00 acres located within the W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 25; and NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 26, T.12N., R.19E., M.D.B.&M. This source is diverted via the Heidtman Ditch and is not a direct diversion source for Proof V-06321, Proof V-06323 and Proof V-08850. Any water from this source is considered as "drain and waste" water under the preceding proofs and does not receive a diversion rate or duty. The spring as claimed under Proof V-06344 sub irrigates 2.53 acres of pasture. The acreage can be used to graze livestock or be harvested. No physical diversion of water is necessary to irrigate this acreage. Therefore, no diversion rate or duty shall be assigned to Proof V-06344 even though this land retains the right to be sub irrigated.

**TABLE 8 cont. SPRINGS ARISING ON THE WEST SIDE OF FOOTHILL ROAD
ON THE HERITAGE RANCH WITHIN SECTION 26, T.12N., R.19E., M.D.B.&M.**

4. Spring Area "D" discharges through multiple channels and eventually into a collection ditch that provides irrigation water for Proofs V-06321, V-06323 and V-08850. A portion of this water is routed through the pond located on APN's 1219-26-001-18 and 1219-26-001-19. Pond overflow is returned to the collection ditch just to the west of Foothill Road and upstream of a wooden headgate that was used to back water through a second headgate and into a culvert that directs water to the north and beneath Foothill Road through a large culvert located to the east of the east end of the aforementioned pond. The water flows through ditch that bisects Proof V-08850 and into the irrigation ditch that flows along the south boundary of the Green Acres Subdivision at a point near the center of the south property boundary of APN 1219-26-001-031. A measuring device shall be installed downstream of the lower headgate in the main channel of the collection ditch. The headgate shall be regulated to allow a minimum flow of 1.5 c.f.s. into the southerly irrigation ditch that provides water for Proofs V-06321, V-06323 and V-08850. Any flow above this rate shall be diverted through the headgate that controls the lateral ditch (culvert) to the north. This water shall be available as "excess flow" for irrigation under Proofs V-06322, V-06325, V-06326, V-06327, V-06328, V-06329, V-06330, V-06331, V-06333, V-06334, V-07486, V-09264, V-09265, V-09270. No separate rotation schedule shall be applied to the water from Unnamed Spring (D) classified as "excess flow". This water shall be utilized as set forth in the rotation schedule for Unnamed Spring (A) as it applies to the aforementioned proofs. Any water not utilized for irrigation shall continue to the next water user to make up water for their direct diversion claims.

Table 8. cont.

UNNAMED SPRING "A" ROTATION SCHEDULE

Day 1	Day 2	Day 3	Day 4	Day 5
V-06342 Starts 6:00 AM	V-06342	V-06342 Ends 6 PM V-08850 Starts 6 PM	V-08850	V-08850
Day 6	Day 7	Day 8	Day 9	Day 10
V-08850	V-08850	V-08850 Ends 6 PM V-06334 Starts 6:00 PM	V-06334 Ends 6:00 AM V-09264 Starts 6:00 AM V-09264 Ends 6:00 PM V-06326 Starts 6:00 PM	V-06326 Ends 6:00 AM V-06325 Starts 6 AM V-06325 Stops 6 PM V-06333 Starts 6:00 PM
Day 11	Day 12	Day 13	Day 14	Day 15
V-06333 Ends 6:00 PM V-06330 Starts 6:00 PM	V-06330 Ends 6:00 PM V-06331 Starts (APN 1219-24-002-010) 6:00 PM	V-06331 Ends 6:00 PM V-06322 Starts (APN 1219-25-001-001) 6:00 PM	V-06322 Ends 6:00 AM V-09265 Starts 6:00 AM	V-09265 Ends 6:00 AM V-09270 Starts 6:00 AM V-09270 Ends 6:00 PM V-06327 Starts 6:00 PM
Day 16	Day 17	Day 18	Day 19	Day 20
V-06327 Ends 6:00 PM V-07486 Starts 6:00 PM	V-07486 Ends 6:00 PM V-06329 Starts 6:00 PM	V-06329 Ends 6:00 PM V-06328 Starts 6:00 PM	V-06328 Ends 6:00 PM V-09266 Starts 6:00 PM	V-09266 Ends 6:00 PM

Table 8. cont.

Proof No.	APN	Soil Type*	~Acreage	Total # of hours
V-06342	1219-26-001-044	642	7	60
V-08850	1219-26-001-035	642	12.5	120
V-06334	1219-26-001-032	641	2.5	12
V-09264	1219-26-001-031	641	2.5	12
V-06326	1219-26-001-030	641	2.5	12
V-06325	1219-26-001-029	641	2.5	12
V-06333	1219-26-001-028	641	5	24
V-06330	1219-23-002-014	641	5	24
V-06331	1219-24-002-010	641	5	24
V-06322	1219-25-001-001	641	2.5	12
V-09265	1219-24-002-009	641	5	24
V-09270	1219-24-002-008	641	2.5	12
V-06327	1219-23-002-012	641	5	24
V-07486	1219-23-002-013	641	5	24
V-06329	1219-24-002-005	641	5	24
V-06328	1219-24-002-014	641	5	24
V-09266	1219-24-002-007	641	5	24

*The United States Department of Agriculture, Natural Resources Conservation Service, describes two soil types associated with lands irrigated from Unnamed Spring (A). These soils types are listed as ophir, sandy, gravelly, loam with 0 to 2 percent slope (641) and ophir, sandy, gravelly, loam with 2 to 8 percent slope (642) (USDA/NRCS Soils Data Mart, NV773, Douglas County Area).

UNNAMED SPRING "D" DELIVERY RATES

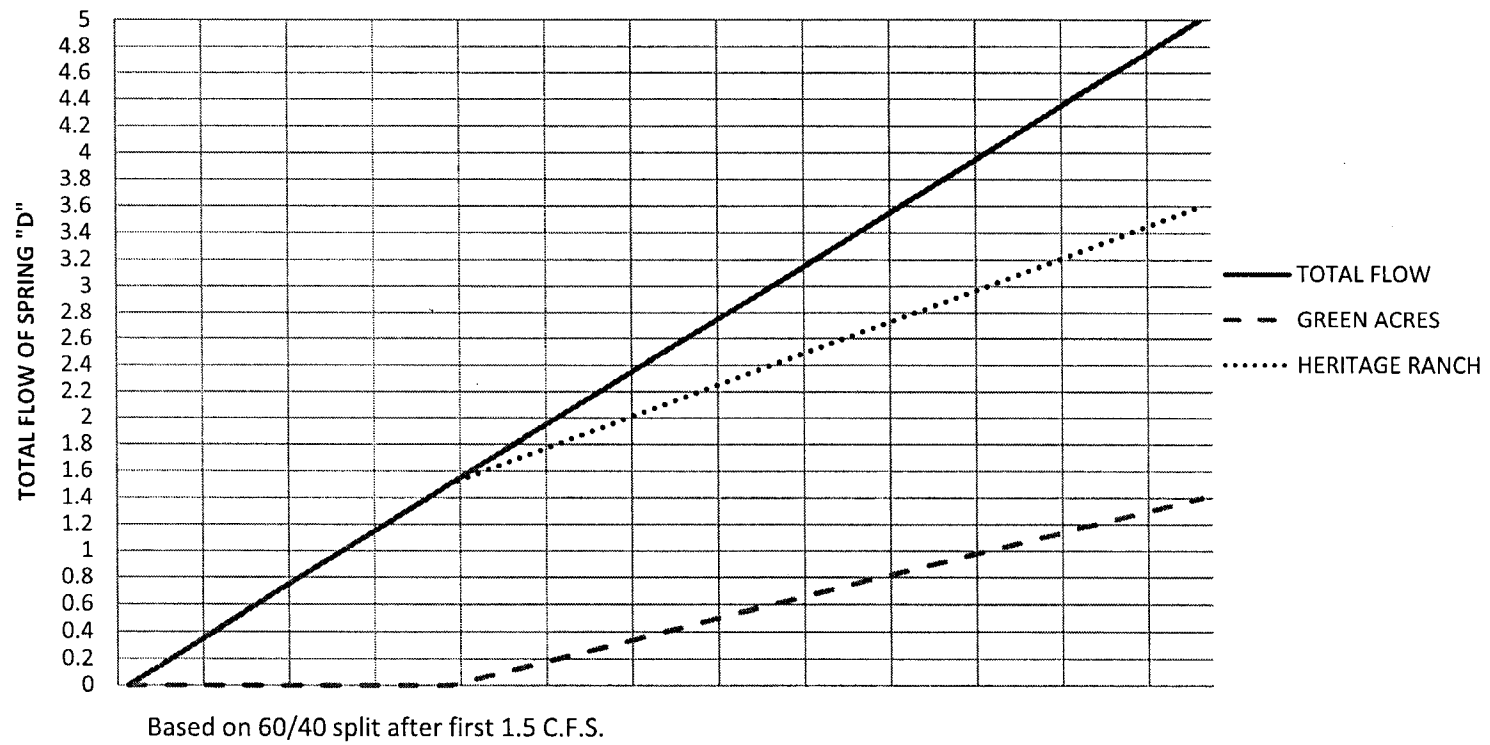


Table 8. Cont.

UNNAMED SPRING "D" DISTRIBUTION RATES

TOTAL FLOW	GREEN ACRES	HERITAGE RANCH	REMARKS
0	0.0	0.0	Water from Unnamed Spring "D" is to be proportionally distributed to the Green Acres subdivision when the total flow from Unnamed Spring "D" is greater then 1.5 CFS. Proportional rates based on a 60/40 split of irrigatable land.
0.2	0.0	0.2	
0.4	0.0	0.4	
0.6	0.0	0.6	
0.8	0.0	0.8	
1	0.0	1.0	
1.2	0.0	1.2	Water from Unnamed Spring "D" is to be directly diverted to the Green Acres Subdivision, via the diagonal, northeast trending ditch that confluences with the south Green Acres ditch located on APN 1219-26-001-031.
1.4	0.0	1.4	
1.6	0.0	1.6	
1.8	0.1	1.7	
2	0.2	1.8	
2.2	0.3	1.9	
2.4	0.4	2.0	Where applicable the rotation schedule of Unnamed Spring "D" water shall be subject to the same rotation schedule as Unnamed Spring "A".
2.6	0.4	2.2	
2.8	0.5	2.3	
3	0.6	2.4	
3.2	0.7	2.5	
3.4	0.8	2.6	
3.6	0.8	2.8	
3.8	0.9	2.9	
4	1.0	3.0	
4.2	1.1	3.1	
4.4	1.2	3.2	
4.6	1.2	3.4	
4.8	1.3	3.5	
5	1.4	3.6	

TABLE 9. LUTHER CREEK CLAIMS.

PROOF AND PERMIT NUMBERS	ACREAGE ACCEPTED	FINAL ORDER DIVERSION RATE IN C.F.S.	DUTY: ACRE-FEET PER ACRE	DUTY: TOTAL ACRE-FEET
V-02858-west	149.40	5.00	4.00	597.60
V-02858-east	129.00	1.67	4.00	516.00
V-06363	79.97	2.16	4.00	319.88
V-06364 (SHOCKEY)	NA	NA	NA	NA
V-06365	59.20	1.18	4.00	263.80
V-06365 (BROOKS)	NA	NA	NA	NA
V-06371	NA	DRAIN & WASTE	NA	NA
V-06372 (SCOSSA)	NA	DRAIN & WASTE	NA	NA
V-06321	NA	DRAIN & WASTE	NA	NA
V-06323	NA	DRAIN & WASTE	NA	NA
V-08850	NA	DRAIN & WASTE	NA	NA
TOTALS:	417.57	10.007	4.00	1697.28
Miscellaneous flow measurements by U.S. Geological Survey and the Office of the State Engineer beginning on September 27, 1976 and ending on June 16, 1998, ranged from a low of 0.77 c.f.s. on July 6, 1992, to a high of 13.7 c.f.s. on July 12, 1983. Therefore, total available flow in Luther Creek is based on a high flow of 10.0 c.f.s. Available flow in average runoff years and from middle to late in the irrigation season will be substantially less than the amount issued in the Final Order of Determination. Water distribution will continue to be controlled by the LUTHER CREEK DECREE, 2nd Judicial District, State of Nevada, Douglas County:Hannum v. Cary-May 27th, 1874.				
Claim V-02858: 1/2 of the flow of Luther Creek is appurtenant to 129.0 acres located within the NE¼SE¼, NW¼SE¼, NE¼SW¼, SE¼SW¼, SW¼SE¼ and SE¼SE¼, Section 25, T.12N., R.19E., M.D.B.&M. 1/6 of the flow of Luther Creek is appurtenant to 149.4 acres located within the NE¼NE¼, SE¼NE¼ and NE¼SE¼, Section 25; NW¼NE¼, SW¼NE¼, NE¼NW¼, NW¼NW¼, SW¼NW¼ and SE¼NW¼, Section 26, T.12N., R.19E., M.D.B.&M.				
Claims V-06363 and V-06365: 1/3 of the flow of Luther Creek is appurtenant to 139.17 acres located within the SW¼NE¼, SW¼NW¼ and SE¼NW¼, NE¼SW¼, NW¼SW¼, SW¼SW¼ and NW¼SE¼ Section 25; SE¼NW¼ and NE¼SE¼ Section 26, T.12N., R.19E., M.D.B.&M. Acreage is reduced for these claims due to discrepancies on the supporting map found when compared to Douglas County Assessor's parcel maps and redrafting in the State Engineer's Office.				
Note: These diversion rates and duties are based on a 198 day irrigation season beginning April 1 and ending October 15 of each year. Duties are also based on crop water requirements for alfalfa, pasture grass and spring grain.				

XXI. FIGURES.

1. UNNAMED SPRING REFERENCE GUIDE
2. HERITAGE RANCH SPRING AREA SCHEMATIC
3. MOTT CREEK DIVERSION SCHEMATIC
4. HERITAGE RANCH PLACE OF USE

Figure 1

Unnamed Springs Reference Guide T.12N., R.19E., Sec. 26, M.D.B.&M.

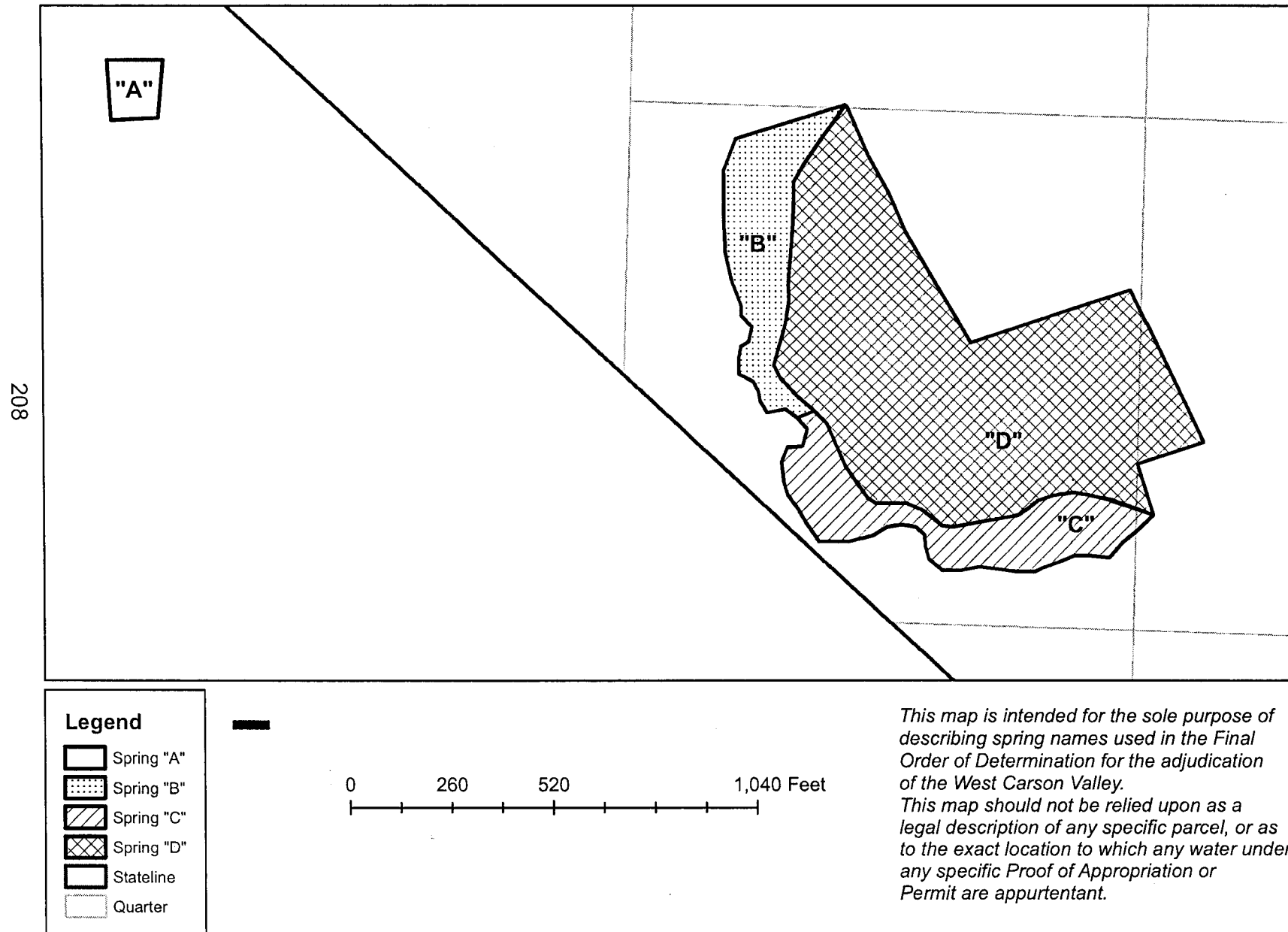


Figure 2

HERITAGE RANCH SPRING AREA SCHEMATIC

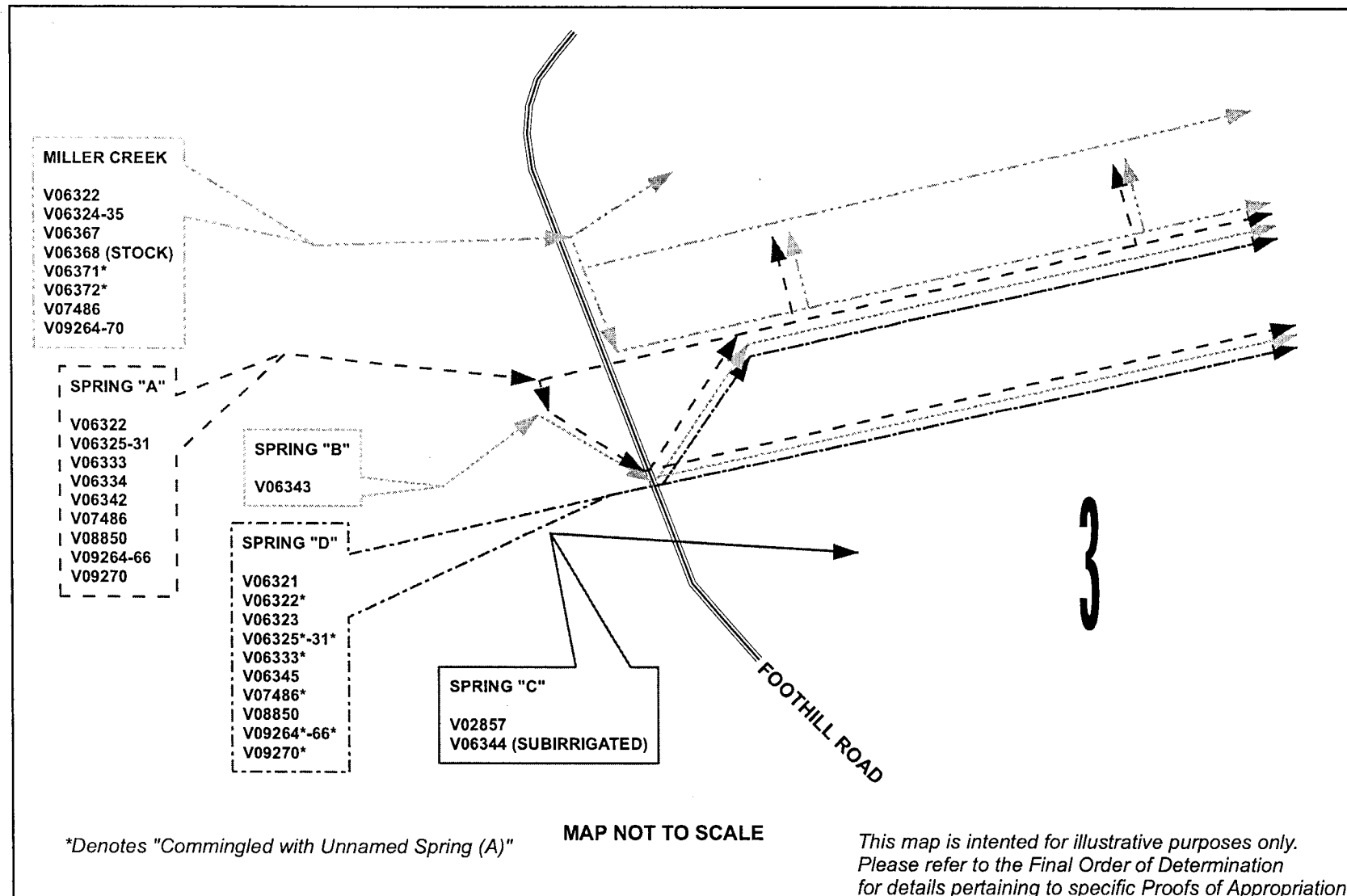


Figure 3

MOTT CREEK DIVERSION SCHEMATIC

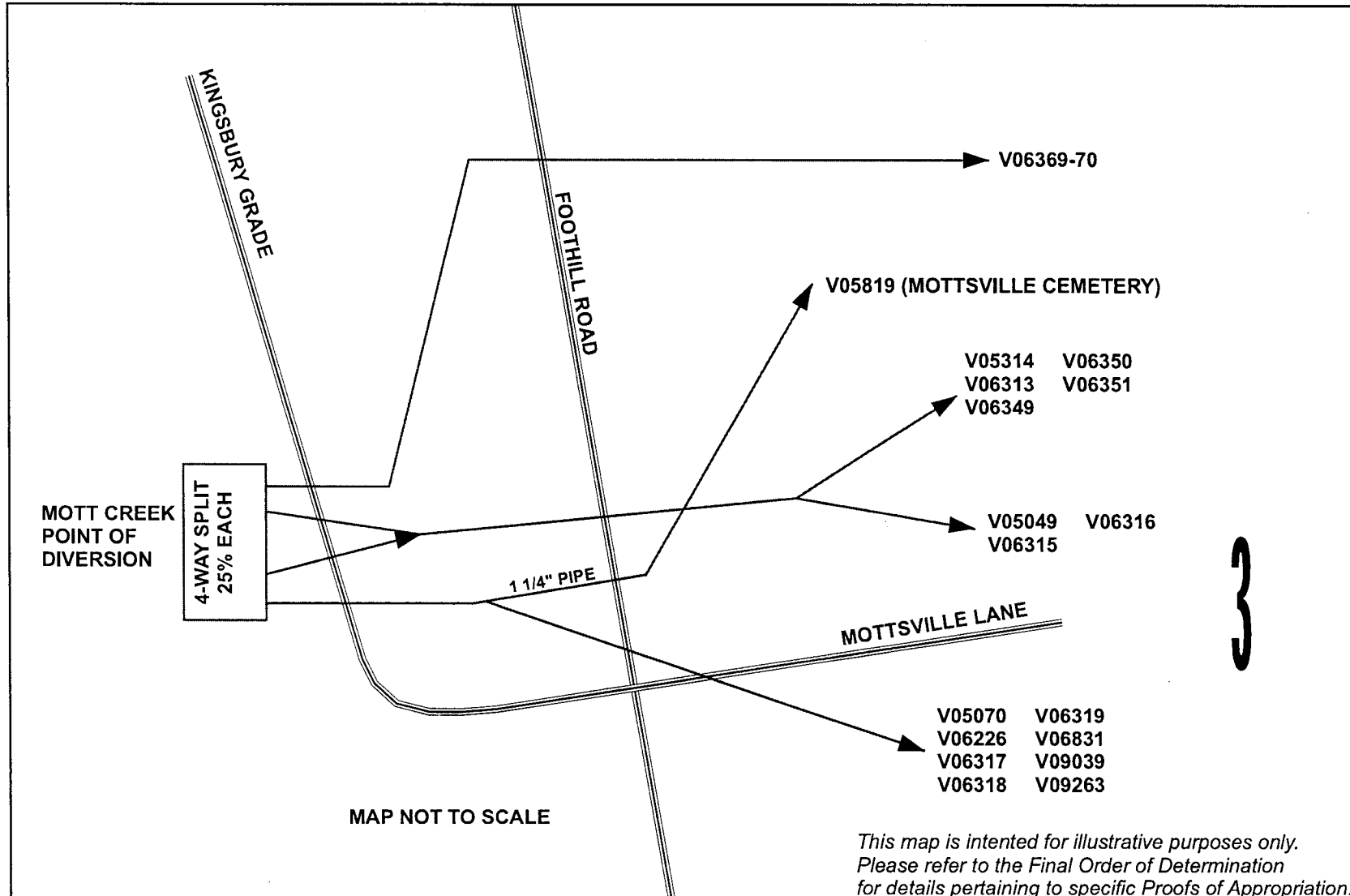
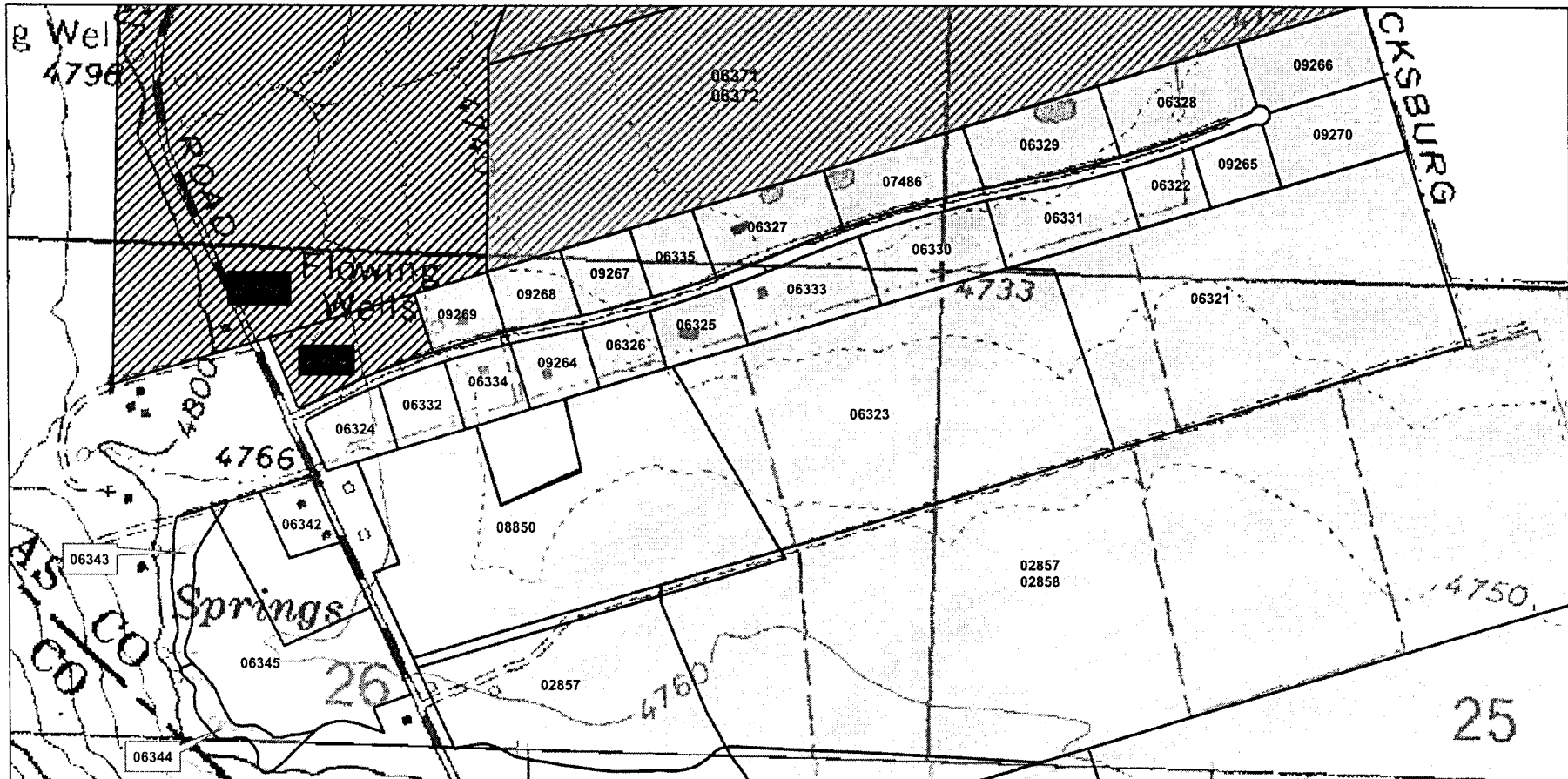


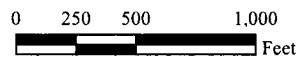
FIGURE 4

HERITAGE RANCH PLACE OF USE





State of Nevada
Division of Water Resources
901 S. Stewart St.
Carson City, Nevada 89701

Map Compiled by: R.A. Cozens
April 2, 2008



Legend

-  Proofs of Appropriation
-  Permits

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This map is intended solely for the purpose of illustrating acreage to which water rights were allocated by the Final Order of Determination for the Mott Creek Et Al. Adjudication, Douglas County, Nevada and for no other purpose. This map should not be relied upon as a legal description for any specific Proof of Appropriation or Permit.

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XXII. INDICES.

- 1. PROOF/PERMIT NUMBER INDEX**
- 2. SOURCE INDEX**
- 3. OWNER INDEX**

1. PROOF/PERMIT NUMBER INDEX

PROOF/PERMIT NO.	OWNER OF RECORD	SOURCE	PAGE NOS.
V-02430	JUDD, FRANK J.	PALMER SWAMP	49, 98
V-02856	GROENENDYKE FAMILY TRUST	UNNAMED SPRINGS	92
V-02856	WINDHOLZ, IRENE M., TRUST	UNNAMED SPRINGS	92
V-02856	NEVADA MOUNTIAN VIEW LLC	UNNAMED SPRINGS	92
V-02856	PRATHER FAMILY TRUST	UNNAMED SPRINGS	92
V-02856	JSD TRUST	UNNAMED SPRINGS	92
V-02856	DEETER, JILL S.	UNNAMED SPRINGS	92
V-02857	GAINES, TED AND JUDY	UNNAMED SPRING	49, 98
V-02857	HANSON TRUST	UNNAMED SPRING	49, 98
V-02857	SHOCKEY, ROBERT D. AND WANDA D.	UNNAMED SPRING	49, 98
V-02857	WILD GOOSE LIMITED PARTNERSHIP	UNNAMED SPRING	49, 98
V-02858	BROWN, ROBERT H. AND ARLENE M. BROWN FAMILY TRUST	LUTHER CREEK	50, 99
V-02858	GAINES, TED AND JUDY	LUTHER CREEK	50, 99
V-02858	HANSON TRUST	LUTHER CREEK	50, 99
V-02858	SHOCKEY, ROBERT D. AND WANDA D.	LUTHER CREEK	50, 99
V-02858	WILD GOOSE LIMITED PARTNERSHIP	LUTHER CREEK	50, 99
V-04594	LODATO, JOSEPH S.	SHERIDAN CREEK	50, 100
V-04594	SAPP 1993 TRUST, ALAN D. SAPP, TRUSTEE	SHERIDAN CREEK	50, 100
V-05049	BENZ FAMILY TRUST	MOTT CREEK & UNNAMED STREAM	51, 101
V-05070	CHITWOOD, LORILYN V. AND RANDALL R.	MOTT CREEK	51, 102
V-05314	DAVIS, DAVID B. AND SHARON L.	MOTT CREEK	52, 103
V-05819	MOTTSTVILLE CEMETERY ASSOCIATION	MOTT CREEK	52, 104
V-06226	HAYES, EDWARD J. AND CONSTANCE G.	MOTT CREEK	53, 104
V-06264	RODGERS FAMILY TRUST	SHERIDAN CREEK	53, 105
V-06265	RODGERS FAMILY TRUST	SHERIDAN CREEK	53, 106
V-06305	WEBER, THEADORE AND KATHERINE A., HUSBAND AND WIFE	STUTLER CREEK	53, 106
V-06306	WEBER, THEADORE AND KATHERINE A., HUSBAND AND WIFE	SHERIDAN CREEK	54, 107
V-06307	WEBER, THEADORE AND KATHERINE A., HUSBAND AND WIFE AS JOINT TENANTS	SHERIDAN CREEK	54, 108
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FILED

JUL 28 2010

CLERK OF SUPREME COURT

BY DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 56351

District Court Case No. 08-CV-0363-D

J.W. BENTLEY and MARYANN
BENTLEY, Trustees of the Bentley Family
1995 Trust,

Petitioners.

v.

THE NINTH JUDICIAL DISTRICT
COURT of the State of Nevada, In and For
the County of Douglas, and THE
HONORABLE DAVID R. GAMBLE,
District Court Judge,

Respondents,

AND

DONALD S. FORRESTER; KRISTINA
M. FORRESTER; HALL RANCHES,
LLC, a Nevada limited liability company;
THOMAS J. SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; RONALD R. MITCHELL; and
GINGER G. MITCHELL as Intervenors
In the Matter of the Determination of the
Relative Rights in and to the Waters of
Mott Creek, Taylor Creek, Cary Creek
(aka Carey Creek), Monument Creek, and
Bulls Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg Spring,
Sharpe Spring, and Miller Creek No. 1,

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

K. HOFFMAN
DEPUTY CLERK

1 Wheeler Creek No. 2, Miller Creek, Beers)
2 Spring, Luther Creek, and Various)
3 Unnamed Sources in Carson Valley,)
4 Douglas Valley, Nevada,)
5 Real Parties in Interest.)
6

7 **VERIFIED PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

8 **PETITIONERS' APPENDIX**
9 **VOLUME 2**
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23 BROOKE · SHAW · ZUMPFT
24 MICHAEL L. MATUSKA, SBN 5711
25 1590 Fourth Street, Suite 100
26 P.O. Box 2860
27 Minden, Nevada 89423
28 (775) 782-7171 – Phone
(775) 782-3081 – Fax
Attorneys for Petitioners

THOMAS J. HALL, ESQ.
State Bar No. 675
305 South Arlington Avenue
Reno NV 89509
(775) 348-7011 – Phone
(775) 348-7211 - Fax
**Attorney for Real Parties in
Interest**

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JIM GIBBONS
Governor

STATE OF NEVADA



ALLEN BIAGGI
Director

TRACY TAYLOR, P.E.
State Engineer

**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

(800) 992-0900

(In Nevada Only)

<http://water.nv.gov>

NOVEMBER 19, 2008

TO WHOM IT MAY CONCERN:

THE "ORDER SETTING TIME AND HEARING OF EXCEPTIONS" IN THE MATTER OF DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS OF MOTT CREEK, ET. AL., IN DOUGLAS COUNTY, NEVADA HAS BEEN SET.

PLEASE OBSERVE THAT THE HEARING HAS BEEN SET FOR APRIL 1, 2009, AT 9:00 A.M., AT THE DOUGLAS COUNTY COURTHOUSE DEPT. NO. 1, IN MINDEN NEVADA, BEFORE THE HONORABLE DAVID R. GAMBLE IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS, CASE NO 08CV0363.

PLEASE ALSO OBSERVE FROM SAID ORDER THAT ANY EXCEPTIONS TO THE ORDER OF DETERMINATION MUST BE FILED WITH THE COURT BY 5:00 P.M., MARCH 26, 2006.

RECEIVED

FILED

OCT 28 2008

2008 OCT 30 PM 1:11

Case No.: 08 CV0363

Department No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK

TED THUAN
CLERK

BY: ~~P. GREEN~~ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (AKA Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (AKA Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

**ORDER SETTING HEARING
OF EXCEPTIONS**

To: Claimants of water rights of Mott Creek, Taylor Creek, Cary Creek (AKA Carey Creek), Monument Creek, and Bulls Canyon, Stutler Creek (AKA Stattler Creek), Sheridan Creek, Gansberg Spring, Sharpe Spring, Wheeler Creek No. 1, Wheeler Creek No. 2, Miller Creek, Beers Spring, Luther Creek and Various Unnamed Sources in Carson Valley, Douglas County, Nevada.

Notice is hereby given that the Ninth Judicial District Court has received the certified Order of Determination from the Nevada State Engineer. NRS §533.170(1) requires that Notices of Exceptions to the Order of Determination be filed with the court and served on the State Engineer at least five (5) days prior to the hearing. If no exceptions are filed, the court may enter its findings of fact, judgment and decree on the day of the hearing pursuant to NRS §533.170(3).

Nevada Revised Statutes (NRS) §533.165(6) requires a hearing to be held after notice to each party in interest and Publication of Notice for four (4) consecutive weeks.

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Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

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Therefore, Exceptions will be heard on April 1, 2009.


IT IS SO ORDERED.

Date: 10/30/2008


DISTRICT COURT JUDGE

Submitted by:

CATHERIN COREZ MASTO
Attorney General


BRYAN L. STOCKTON
Deputy Attorney General
Nevada Bar No. 4764
100 N. Carson Street
Carson City, Nevada 89701
775-684-1228

Case No.: 08-CV-0363

Dept. No.: I

DEC 10 2008

2008 DEC 10 PM 2:44

M. DIACGINI

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative Rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (aka Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

**NOTICE OF EXCEPTIONS AND
EXCEPTIONS TO FINAL ORDER OF
DETERMINATION**

**(Re: Proofs V-06305, V-06306, V-06307
and V-06308)**

**Hearing Date: April 1, 2009
Time: 9:00 a.m.**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley
Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska,
Brooke · Shaw · Zumpft, and for exceptions to the *Final Order of Determination*, do hereby state
as follows:

I.

BACKGROUND

On 5 May 2006, Bentley purchased a parcel of land located in Douglas County, Nevada,
from Theodore Weber and Katherine Weber. A copy of the deed is provided herewith as
Exhibit 1. Said parcel contains 12.93 +/- acres of land and is identified alternatively as
APN 1219-14-001-013 and Adjusted Parcel 1 as shown on the Record of Survey to Accompany a
Boundary Line Adjustment that was filed in the Official Records of Douglas County, Nevada on
4 January 1986. at Book 196, Page 787, Document No. 378278. A copy of the Record of Survey

///

///

1 is provided herewith as *Exhibit 2*. As demonstrated by the Record of Survey, the Bentley parcel
2 straddles the quarter section line between the NW ¼ of Sec. 14 and SW ¼ of Sec. 14 in T. 12 N.,
3 R. 19 E.

4 On 16 March 1994, prior to Bentley's purchase of the above-identified parcel, the Webers
5 filed the following Proof(s) of Appropriation:

6 Proof of Appropriation of Water for Irrigation V-06305 to irrigate 10.36 acres of land in
7 the NW ¼ of Sec. 14, T. 12N, R. 19 E from Stutler Creek.

8 Proof of Appropriation of Water for Irrigation V-06306 to irrigate 12.93 acres of land from
9 Sheridan Creek. This included the same 10.83 acres in the NW ¼ of Sec. 14 T. 12N, R. 19 E
10 identified in Proof V-06305 in the NW ¼ of Sec. 14, as well as the remaining 2.57 acres located in
11 the SW ¼ of Sec. 14, T. 12 N, R. 19 E.

12 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06307. This
13 Proof explains that the purpose is to divert stockwater from Sheridan Creek through ponds located
14 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
15 the Proof.

16 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06308. This
17 Proof explains that the purpose is to divert stockwater from Stutler Creek through ponds located
18 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
19 the Proof.

20 The records on file the Office of the Nevada State Engineer have all been updated to show
21 the Bentleys as the owners of the above-identified Proofs. The Bentley parcel also benefits from
22 additional water rights to Gansberg Springs according to Permit No. 7595/Cert. No. C-1760.
23 Records of ownership will be updated to reflect Bentley's ownership in these water rights.

24 II.

25 EXCEPTION NO. 1 – DIVERSION SCHEDULE (PROOFS V-06307 and V-06308)

26 Bentley is informed and believes that the Office of the State Engineer has created a
27 diversion schedule for the waters from Sheridan Creek, Stutler Creek and Gansberg Springs that is
28 not contained in the *Final Order of Determination*. The diversion schedule would presumably

1 affect the Proofs and acreages identified in Tables 5 and 6 at pages 192 and 193. In fact, Bentley's
2 diversion rights under Proofs V-06307 and V-06308 for Appropriation of Water for Stock or
3 Wildlife Purposes should not be subject to a diversion schedule. Rather, Bentley's diversion
4 rights are set forth in a series of diversion agreements between Bentley's predecessor(s)-in-interest
5 and the predecessor(s)-in-interest to the owners of the other properties identified in Tables 5 and 6.
6 Those diversion agreements are specifically identified in Proofs V-06307 and V-06308. The most
7 recent and presumably final diversion agreement is also provided herewith as *Exhibit 3*.

8 Accordingly, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid" should be
9 amended to note that all diversion rights from Stutler Creek and the North Branch of Sheridan
10 Creek are subject to this diversion agreement and the Bentley property should be exempt from the
11 diversion schedule to the extent of diverting water through the ponds for stock watering and/or
12 wildlife purposes, all of which is described as a non-consumptive use.

13 III.

14 EXCEPTION NO. 2 – Add all Proofs to Adjudication Map

15 The Adjudication Map to support the *Final Order of Determination* only identifies Proofs
16 V-06305 and V-06306 appurtenant to the Bentley parcel. The map should further identify Proofs
17 V-06307 and V-06308, especially in light of the fact that those Proofs provide rights to a
18 continuous flow for Bentley's stock/wildlife ponds under diversion agreements that are exempt
19 from the forthcoming diversion schedule.

20 IV.

21 EXCEPTION NO. 3 – Correct Typographical Error.

22 P. 51, pertaining to Proof V-04594 (which has been superseded in part by the Proofs
23 discussed herein) contains a reference to Proof V-06065. In fact, Proof V-063065 pertains to

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1 diversions from the Humboldt River Basin and should likely be viewed as a typographical error.
2 The correct reference should presumably be Proof V-06305 (Stutler Creek).

3 Respectfully submitted,

4 DATED this 10th day of December 2008.

5 BROOKE · SHAW · ZUMPFT

6
7 By: 

8 Michael L. Matuska
9 State Bar No. 5711
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
3 and that on the 10th day of December 2008, I served a true and correct copy of the preceding
4 document entitled **NOTICE OF EXCEPTIONS AND EXCEPTIONS TO FINAL ORDER OF**
5 **DETERMINATION** addressed to:

6 STATE OF NEVADA
7 Department of Conservation and Natural Resources
8 Division of Water Resources
9 Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

10 ☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
11 postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
12 in the ordinary course of business.

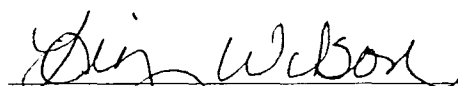
13 ☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to
14 Reno-Carson Messenger Service for delivery to the offices of the addressee.

15 ☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
16 · Zumpft the above-identified document in the ordinary course of business to the individual and
17 facsimile numbers indicated.

18 ☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft
19 the above-identified document in the ordinary course of business to the individuals and email
20 addresses indicated.

21 ☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-
22 identified document to the addressee stated above, in the ordinary course of business.

23 ☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**

24
25 
26 LIZ WILSON, ALS

DOC # 0674437
05/08/2006 03:26 PM Deputy: KLJ

OFFICIAL RECORD

Requested By:
MARQUIS TITLE & ESCROW

Recording Requested By
Marquis Title & Escrow Inc.
A.P. NO. 1219-14-001-013
Escrow No. 260163-VM
R.P.T.T. \$5,070.00

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 2 Fee: 15.00
BK-0506 PG- 3496 RPTT: 5070.00

WHEN RECORDED MAIL TO:
Mr. & Mrs. J.W. Bentley
26482 Valpariso
Mission Viejo, CA 92691

MAIL TAX STATEMENT TO:
Same as Above



GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THEADORE WEBER and KATHERINE A. WEBER, husband and wife as joint tenants

do(es) hereby GRANT, BARGAIN and SELL to

J.W. BENTLEY AND MARYANN BENTLEY, Trustees of the BENTLEY FAMILY TRUST 1995 TRUST,

the real property situate in the County of Douglas, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR LEGAL
DESCRIPTION AND WATER RIGHTS DESCRIPTION

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 05/05/06

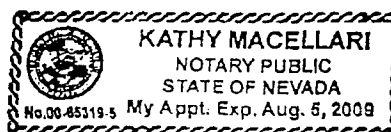
Theadore Weber
THEADORE WEBER

Katherine A. Weber
KATHERINE A. WEBER

STATE OF Nevada
COUNTY OF Douglas

This instrument was acknowledged before me on May 5, 2006, by THEADORE WEBER and KATHERINE A. WEBER.

Kathy Macellari
Notary Public



35

EXHIBIT "A"

All that certain lot, piece, parcel or portion of land situate, lying and being within the West ½ of Section 14, Township 12 North, Range 19 East, M.D.M., Douglas County, Nevada, more particularly described as follows:

All that portion of Parcels 1, 2 and 3, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada, described as follows:

COMMENCING at the Southwest corner of Parcel 3, as shown on the aforesaid map;
Thence along the Southwesterly line of Parcels 2 and 3 of said map, North 24°47'53" West, a distance of 335.33 feet to the Southwest corner of aforesaid Parcel 1, which point is the TRUE POINT OF BEGINNING;
Thence continuing along the Southwesterly line of said parcel North 25°53'28" West, a distance of 495.70 feet to the Northwestern corner of said parcel;
Thence along the Northwestern line of said parcel North 64°05'08" East, a distance of 1,120.70 feet to the Northeasterly corner of said parcel;
Thence along the Northeasterly line of said Parcels 1 and 3 South 25°05'38" East, a distance of 519.63 feet;
Thence leaving said line South 78°28'21" West, a distance of 424.88 feet;
Thence South 00°00'00" West, a distance of 167.20 feet;
Thence South 70°19'13" West, a distance of 632.57 feet to the TRUE POINT OF BEGINNING.

The Basis of Bearing of this description is the Southeasterly line of Parcel 3, which bears North 70°37'51" East, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada.

APN: 1219-14-001-013

Per NRS 111.312, this legal description was previously recorded January 4, 1996, in Book 196, Page 793, as Document No. 378281, Official Records.

WATER RIGHTS

Being old assessor's parcel number 19-200-09 specifically described as 12.96 acres of land T 12N R19E 514 PCL1. Along with property goes the following water rights.

9 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R 19E
2 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R. 19E
as shown on the attached map and filed for under proof of Vested Right #04594.



SURVEYOR'S CERTIFICATE

I, Paul "Don" Applegate, a Professional Land Surveyor registered in the State of Nevada, hereby state that:

1. A field survey conducted to locate and identify properly the proposed boundary line adjustment has been performed by me or under my direct supervision at the instance of Joseph S. Lodato.
2. This plot is a true and accurate representation of the lands surveyed.
3. All corners and angle points of the adjusted boundary line have been defined by monuments or all by otherwise defined on a document of record as required by NRS 238.040, and the monuments are at the character shown and occupy the positions indicated and are of sufficient number, all necessary to enable the survey to be retraced.
4. The lands surveyed lie within the west 1/2 of Section 14, Township 12 North, Range 19 East, N.E.R., and the survey was completed on July 11, 1986.
5. This plot is not in conflict with the provisions of NRS 238.040 through NRS 238.045 and complies with all applicable state statutes and any local ordinances.

Paul "Don" Applegate
Paul "Don" Applegate
P. E. & S. 0208

BASE OF RECORD
The basis of starting of this map is the northerly line of Parcel 2 which bears N 70°27'32" E, as shown on the Parcel Map Lodato Parcel, filed for record on map doc. 157286, Official Records of Douglas County, Nevada.

LEGEND

- Found point as noted
- Set 5/8" rebar with plastic cap P.L.S. 0208

REFERENCE MAPS

(N-1) Parcel Map Lodato Parcel, Book 857, page 3406, recorded number 157286, Official Records of Douglas County, Nevada.

LINE BEARING DISTANCE

1. N 87°17'37" E 80.00'
2. S 87°17'37" E 50.00'

1-1 N 37°42'42" E 200.00'
1-2 S 70°17'17" E 120.00'

NOTE:
That property corners from the original Parcel Map (N-1) were found to be from 2 feet to 8 feet out of record position. It was determined that these corners had been moved from their original locations and were therefore not accepted.

N.E. 1/4-2345, NC
Professional Land Surveyors
P. O. Box 1125
Carlsbad, NM 88418
(703) 762-7444

COUNTY ENGINEER'S CERTIFICATE

I, Dyle Ischert, Douglas County Engineer, do hereby state that I have reviewed and approved this map.

Dyle Ischert
Dyle Ischert, P.E.
Douglas County Engineer

COUNTY CLERK'S CERTIFICATE

I, Barbara J. Reed, Douglas County Clerk-Treasurer and Co-Officer Tax Collector, do hereby certify that all property taxes on this land for the past year have been paid. A.P.N.s. 19-300-01, 19-300-02, 19-300-03, 19-300-04, 19-300-05, 19-300-06, 19-300-07, 19-300-08, 19-300-09, 19-300-10, 19-300-11, 19-300-12, 19-300-13, 19-300-14, 19-300-15, 19-300-16, 19-300-17, 19-300-18, 19-300-19, 19-300-20, 19-300-21, 19-300-22, 19-300-23, 19-300-24, 19-300-25, 19-300-26, 19-300-27, 19-300-28, 19-300-29, 19-300-30, 19-300-31, 19-300-32, 19-300-33, 19-300-34, 19-300-35, 19-300-36, 19-300-37, 19-300-38, 19-300-39, 19-300-40, 19-300-41, 19-300-42, 19-300-43, 19-300-44, 19-300-45, 19-300-46, 19-300-47, 19-300-48, 19-300-49, 19-300-50, 19-300-51, 19-300-52, 19-300-53, 19-300-54, 19-300-55, 19-300-56, 19-300-57, 19-300-58, 19-300-59, 19-300-60, 19-300-61, 19-300-62, 19-300-63, 19-300-64, 19-300-65, 19-300-66, 19-300-67, 19-300-68, 19-300-69, 19-300-70, 19-300-71, 19-300-72, 19-300-73, 19-300-74, 19-300-75, 19-300-76, 19-300-77, 19-300-78, 19-300-79, 19-300-80, 19-300-81, 19-300-82, 19-300-83, 19-300-84, 19-300-85, 19-300-86, 19-300-87, 19-300-88, 19-300-89, 19-300-90, 19-300-91, 19-300-92, 19-300-93, 19-300-94, 19-300-95, 19-300-96, 19-300-97, 19-300-98, 19-300-99, 19-300-100.

Barbara J. Reed
Barbara J. Reed
Douglas County Clerk-Treasurer
By: J. Whelan, Sr. Deputy

OWNER'S CERTIFICATE

I, the undersigned owner of the adjusted parcels as shown on this map do hereby state (1) I have read and understand the contents of this map and the survey thereon and I agree to execute the required documents creating my adjusted claim to these parcels.

1. We have executed this plot and approve and authorize its recording.
2. We agree to execute the required documents creating my adjusted claim to these parcels.
3. We agree to execute the required documents creating my adjusted claim to these parcels.
4. All property taxes on the land for the past year have been paid.
5. Any holder with an interest claimed for the purpose of taxes has been notified of the adjustment of the boundary line by the transfer of the land.

Joseph S. Lodato
Joseph S. Lodato
A.P.N. 19-300-01
A.P.N. 19-300-02

Barbara J. Reed
Barbara J. Reed
A.P.N. 19-300-03
A.P.N. 19-300-04

State of Nevada 1
County of Douglas 1
On the 11th day of July 1986, personally appeared before me, *William A. Reed*, a Notary Public, Joseph S. Lodato, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

William A. Reed
Notary Public
My commission expires 10-14-91

State of Nevada 1
County of Douglas 1
On the 11th day of July 1986, personally appeared before me, *William A. Reed*, a Notary Public, Barbara J. Reed, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that she executed it.

William A. Reed
Notary Public
My commission expires 10-14-91

COUNTY RECORDER'S CERTIFICATE

Filed for record this 4th day of January 1986 at 2:45 minutes past 3 o'clock P.M. in Book 196 of Official Records at page 787.
Document Number 378278 Recorded at the request of *Sal Applegate*
Sal Applegate
Douglas County Recorder

Record of Survey to Accompany a Boundary Line Adjustment for Joseph S. Lodato portions of the W 1/2 of Section 14, Township 12 North, Range 19 East Mount Diablo Meridian Douglas County, Nevada

Sheet 1 of 1 sheet

14-12-19

378278

12- F.C. Box 1511
Nevada 89423

WATER DIVERSION AND USE AGREEMENT .

THIS AGREEMENT is entered into by and between JUNE IRENE BARTLETT, who took title as June Irene Rolph, NANCY ROLPH WELCH, GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife as joint tenants, hereafter referred to as "Grantors" and JOSEPH S. LODATO, hereafter referred to as "Grantee", based upon the following facts:

1. Grantors are the owners of real property located in Douglas County, Nevada, as well as the owners of water rights which are appurtenant to, certificated or adjudicated to the benefit of the property owned by them in Douglas County, Nevada.

2. Grantee is the owner of real property located in Douglas County, Nevada, which was purchased heretofore from Grantors.

3. Grantors own and enjoy the right to use waters from Sheridan Creek.

4. There are no downstream users of water from these creeks, after this water is used by Grantors.

5. Grantee desires to divert some or all of the water from Sheridan Creek, onto his property, to be used in a non-consumptive manner to maintain water levels in ponds on Grantee's property, and thereafter to cause the water to be diverted back to the property of Grantors for irrigation purposes.

6. Grantors have agreed to such an arrangement, on the terms and conditions which follow.

THEREFORE, based upon the recital of facts set forth above, which are incorporated in the body of this agreement by reference, and the covenants and conditions which follow hereinafter, the parties do agree as follows:

A. For valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors do hereby give and grant to Grantee, as a covenant running to the benefit of the land described in Exhibit "A" attached hereto, the right to divert one hundred percent (100%) of the water from Sheridan Creek, onto the Exhibit "A" property, in perpetuity.

B. This grant is specifically made on the condition that the water will be used by Grantee in a non-consumptive fashion, to maintain water levels in a series of streams and ponds on the Exhibit "A" property, after which time it will be re-diverted to the irrigation ditches of Grantors.

C. Grantors are granted the right, upon reasonable notice, to have access to the Exhibit "A" property to ensure that the limitations set forth herein regarding use are being adhered to by Grantee.

D. Grantee is hereby given the right of access to other property of Grantors, in order to ensure that the water may be diverted to Grantee's property.

E. This grant of right to divert and use water includes the right of Grantee to divert the Sheridan Creek water from the natural creekbed or water course on the west side of Foothill Road and in an easement granted pursuant to Exhibit "B" which is attached hereto, and to return to the natural water course on property owned by Grantee just east of that 50-foot roadway and utility easement shown on Exhibit "C" which is attached hereto and incorporated herein by reference.

F. This promise to permit the use and diversion of water is intended to be and is made by Grantors to be a covenant running with the land, and the benefits thereof may be enjoyed by the heirs and assigns of Grantee, and subsequent owners of the Exhibit "A" property.

G. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

H. This agreement may be terminated by Grantors in the event a Court of competent jurisdiction determines that the Grantee has been violating the terms hereof, to the detriment of Grantors.

I. The interpretation and enforceability of this agreement shall be determined by the laws of the State of Nevada, and in the event a law suit is brought to enforce or

interpret this agreement, the prevailing party shall be awarded reasonable attorney's fees against the party not prevailing.

IN WITNESS WHEREOF, the parties have set their hands the day and year set forth below.

Date: _____

JUNE IRENE BARTLETT, who took
title as June Irene Rolph

Date: _____

NANCY ROLPH WELCH

Date: 6/9/86

Gerald F. Whitmire
GERALD F. WHITMIRE

Date: 6-9-86

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

Date: _____

Joseph S. Lodato
JOSEPH S. LODATO

STATE OF _____)
COUNTY OF _____) ss.

On _____, 1986, personally appeared before me, a notary public, JUNE IRENE BARTLETT, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

Notary Public

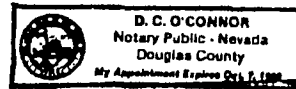
152147

BOOK 387 PAGE 2729

STATE OF Nevada)
COUNTY OF Douglas) ss.

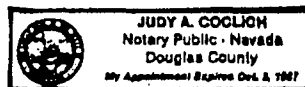
On June 9, 1986, personally appeared before me, a notary public, PAMELA F. J. WHITMIRE, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

D.C. O'Connor
Notary Public



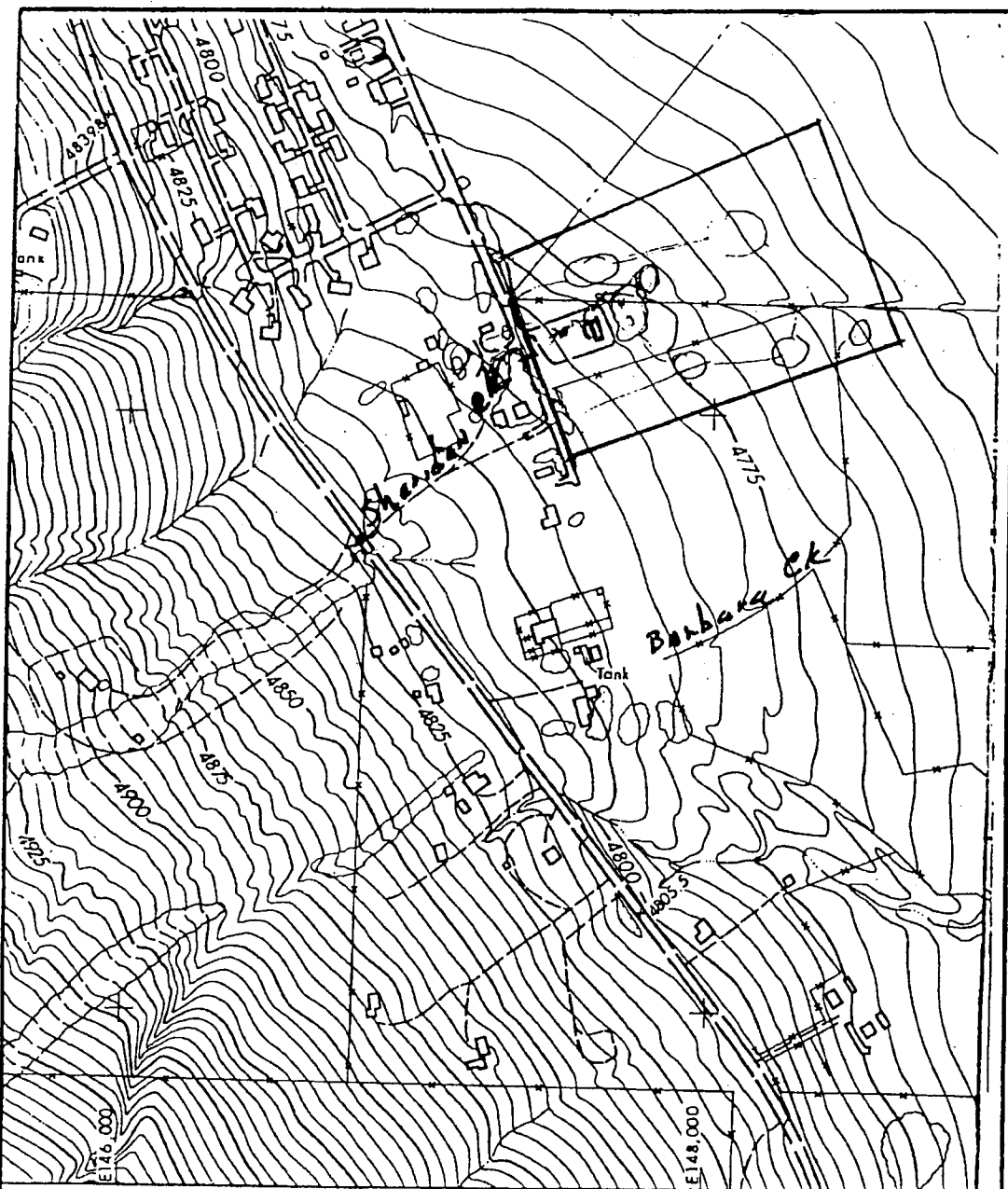
STATE OF Nevada)
COUNTY OF Douglas) ss.

On June 9th, 1986, personally appeared before me, a notary public, JOSEPH S. LODATO, personally known to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for the purposes therein stated.



Judy A. Cogliion
Notary Public

DOUGLAS COUNTY



PROJECT

Scale: 1" = 400' 152147
Contour Interval: 5'
Date of Photography: 6-1-77
387 PAGE 2731

EXHIBIT "A"

4 A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B. & M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

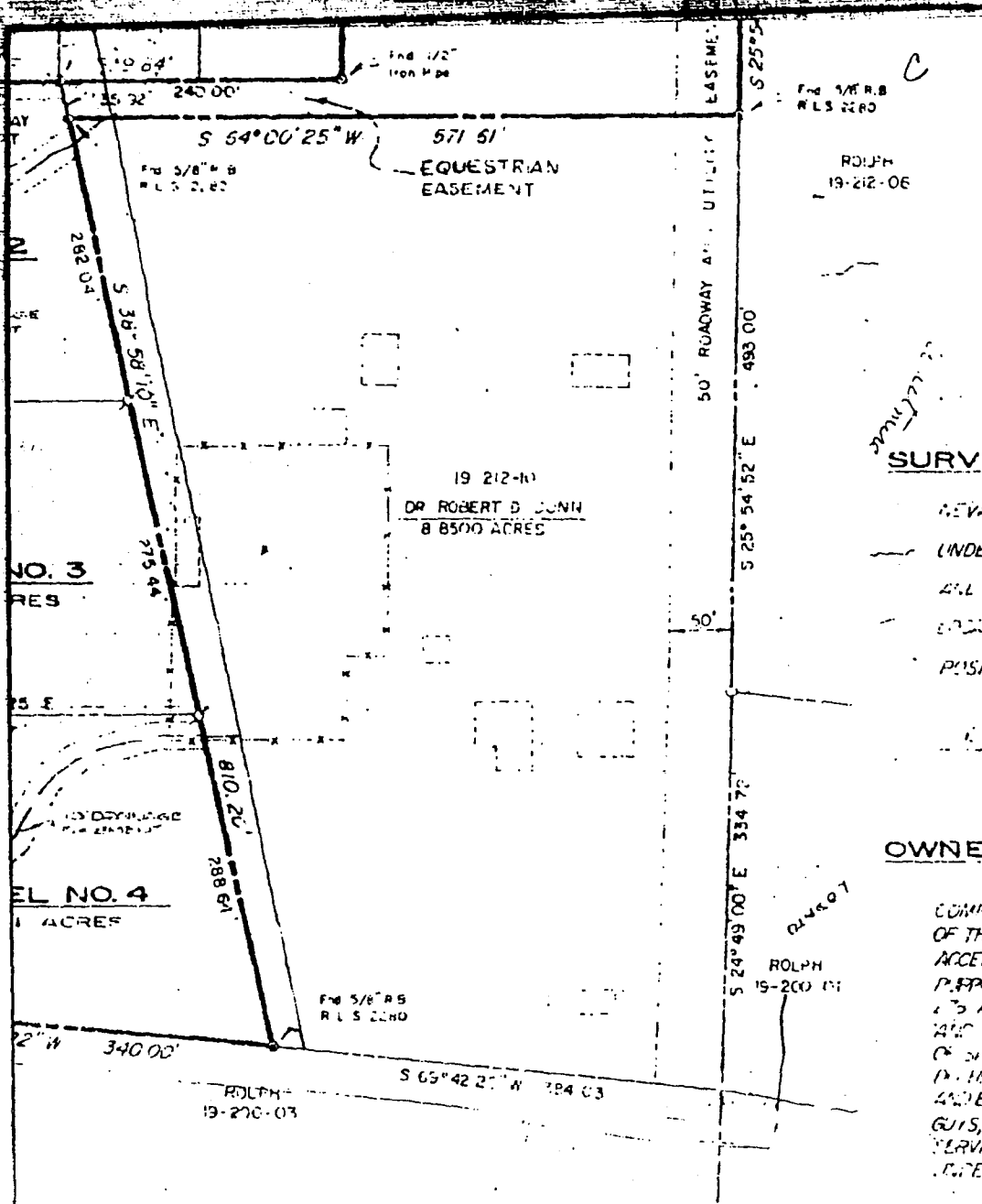
EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B. & M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

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BOOK 387 PAGE 2732



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REQUESTED BY
[Signature]
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

87 MAR 27 1952

SUZANNE BEAUDREAU
RECORDER

PAID *[Signature]* DEPUTY

152147

BOOK 387 PAGE 2733

FILED

RECEIVED
MAR 25 2009
DOUGLAS COUNTY
DISTRICT COURT CLERK

Case No.: 08-CV-0363

2009 MAR 25 PM 4:28

Dept. No.: I

TED THUAN
CLERK
D GREGORY
DEPUTY

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative Rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (aka Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

AMENDED NOTICE OF EXCEPTIONS
AND EXCEPTIONS TO FINAL ORDER
OF DETERMINATION

(Re: Proofs V-06305, V-06306, V-06307
and V-06308)

Hearing Date: April 1, 2009
Time: 9:00 a.m.

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley
Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska,
Brooke · Shaw · Zumpf, and for exceptions to the *Final Order of Determination*, do hereby state
as follows:

I.

BACKGROUND

On 5 May 2006, Bentley purchased a parcel of land located in Douglas County, Nevada,
from Theodore Weber and Katherine Weber. A copy of the deed is provided herewith as
Exhibit 1. Said parcel contains 12.93 +/- acres of land and is identified alternatively as
APN 1219-14-001-013 and Adjusted Parcel 1 as shown on the Record of Survey to Accompany a
Boundary Line Adjustment that was filed in the Official Records of Douglas County, Nevada, on
4 January 1986, at Book 196, Page 787, Document No. 378278. A copy of the Record of Survey

///

///

1 is provided herewith as *Exhibit 2*. As demonstrated by the Record of Survey, the Bentley parcel
2 straddles the quarter section line between the NW ¼ of Sec. 14 and SW ¼ of Sec. 14 in T. 12 N.,
3 R. 19 E.

4 On 16 March 1994, prior to Bentley's purchase of the above-identified parcel, the Webers
5 filed the following Proof(s) of Appropriation:

6 Proof of Appropriation of Water for Irrigation V-06305 to irrigate 10.36 acres of land in
7 the NW ¼ of Sec. 14, T. 12N, R. 19 E from Stutler Creek (*Exhibit 3*).

8 Proof of Appropriation of Water for Irrigation V-06306 to irrigate 12.93 acres of land from
9 Sheridan Creek. This included the same 10.83 acres in the NW ¼ of Sec. 14 T. 12N, R. 19 E
10 identified in Proof V-06305 in the NW ¼ of Sec. 14, as well as the remaining 2.57 acres located in
11 the SW ¼ of Sec. 14, T. 12 N, R. 19 E (*Exhibit 4*).

12 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06307. This
13 Proof explains that the purpose is to divert stockwater from Sheridan Creek through ponds located
14 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
15 the Proof (*Exhibit 5*).

16 Proof of Appropriation of Water for Stock Watering or Wildlife Purposes V-06308. This
17 Proof explains that the purpose is to divert stockwater from Stutler Creek through ponds located
18 on the property for stockwater purposes as agreed in a series of diversion agreements referenced in
19 the Proof (*Exhibit 6*).

20 The records on file the Office of the Nevada State Engineer have all been updated to show
21 the Bentleys as the owners of the above-identified Proofs. The Bentley parcel also benefits from
22 additional water rights to Gansberg Springs according to Permit No. 7595/Cert. No. C-1760.
23 Records of ownership will be updated to reflect Bentley's ownership in these water rights.

24 II.

25 EXCEPTION NO. 1 – DIVERSION SCHEDULE (PROOFS V-06307 and V-06308)

26 Bentley is informed and believes that the Office of the State Engineer is likely to impose a
27 diversion schedule/rotation for the waters from Sheridan Creek, Stutler Creek and Gansberg
28 Springs that is not contained in the *Final Order of Determination*. The rotation would presumably

1 relate to the Proofs and acreages identified in Tables 5 and 6 at pages 192 and 193. In fact,
2 Bentley's diversion rights under Proofs V-06307 and V-06308 for Appropriation of Water for
3 Stock or Wildlife Purposes should not be subject to a rotation. Rather, Bentley's diversion rights
4 are set forth in a series of diversion agreements between Bentley's predecessor(s)-in-interest and
5 the predecessor(s)-in-interest to the owners of other properties identified in Tables 5 and 6. Those
6 diversion agreements are specifically identified in Proofs V-06307 and V-06308. The most recent
7 and presumably final diversion agreement is also provided herewith as *Exhibit 7*.

8 Accordingly, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid" should be
9 amended to note that all diversion rights from the North Branch of Sheridan Creek (as well as
10 Stutler Creek and Gansberg Springs (to the extent those sources are also diverted through the
11 North Branch of Sheridan Creek) are subject to this diversion agreement and the Bentley property
12 should be exempt from the rotation to the extent of diverting water through the ponds for stock
13 watering and/or wildlife purposes, all of which is described as a non-consumptive use and returned
14 to the irrigation ditches.

15 III.

16 EXCEPTION NO. 2 – Add all Proofs to Adjudication Map

17 The Adjudication Map to support the *Final Order of Determination* only identifies Proofs
18 V-06305 and V-06306 appurtenant to the Bentley parcel. The map should further identify Proofs
19 V-06307 and V-06308, especially in light of the fact that those Proofs provide rights to a
20 continuous flow for Bentley's stock/wildlife ponds under diversion agreements that are exempt
21 from the forthcoming diversion schedule.

22 IV.

23 EXCEPTION NO. 3 – Correct Typographical Error

24 P. 51, pertaining to Proof V-04594 (which has been superseded in part by the Proofs
25 discussed herein) contains a reference to Proof V-06505. In fact, Proof V-06505 pertains to
26 diversions from the Humboldt River Basin and should likely be viewed as a typographical error.
27 The correct reference should presumably be Proof V-06305 (Stutler Creek) (*Exhibit 3*).
28

///

///

V.

EXCEPTION NO. 4 – Correct Acreage

P. 53 pertaining to Proof V-06305 (Stutler Creek) was submitted for 10.36 acres of land, but approved for only 9.61 acres. This is also reflected in the Table of Relative Rights to Appropriators, p. 107. However, this conflicts with Part XX, Table 5 (Stutler Creek – Commingled with the North Diversion of Sheridan Creek) which shows 10.36 approved acres. In fact, because the waters of Stutler Creek are diverted through the North Branch of Sheridan Creek, and there is no discernible way to distinguish the Stutler Creek waters from the Sheridan Creek waters, the acreage approved under Proof V-06305 (Stutler Creek) should be the same as the acreage approved under Proof V-06306 (Sheridan Creek) – 12.93.

VI.

EXCEPTION NO. 5 – Install Diversion Device

The waters of Stutler Creek and Gansberg Springs are channeled into Sheridan Creek, which in turn splits into two (2) branches. Bentley's diversion rights are obtained from the North Branch of Sheridan Creek, which also delivers the commingled waters of Stutler Creek and Gansberg Springs. At this time, only crude, natural devices (i.e., rocks) are employed to direct the waters to the North and South Branches of Sheridan Creek. Bentley requests that the Office of the State Engineer commission the installation of a device sufficient to measure and deliver accurate diversions between the North and South Branches of Sheridan Creek, and to ensure that waters of Gansberg Springs and Stutler Creek are not diverted down the South Branch of Sheridan Creek.

Respectfully submitted.

DATED this 25th day of March 2009.

BROOKE · SHAW · ZUMPFT

By: 

Michael L. Matuska
State Bar No. 5711
BROOKE · SHAW · ZUMPFT
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

261

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 25th day of March 2009, I served a true and correct copy of the preceding
document entitled **AMENDED NOTICE OF EXCEPTIONS AND EXCEPTIONS TO FINAL**
ORDER OF DETERMINATION addressed to:

STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

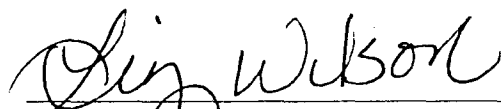
☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to
Reno-Carson Messenger Service for delivery to the offices of the addressee.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.

☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft
the above-identified document in the ordinary course of business to the individuals and email
addresses indicated.

☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-
identified document to the addressee stated above, in the ordinary course of business.

☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**


LIZ WILSON, ALS

DOC # 0674437
05/08/2006 03:26 PM Deputy: KLJ

OFFICIAL RECORD

Requested By:

MARQUIS TITLE & ESCROW

Recording Requested By
Marquis Title & Escrow Inc.
A.P. NO. 1219-14-001-013
Escrow No. 260163-VM
R.P.T.T. \$5,070.00

Douglas County - NV
Werner Christen - Recorder
Page: 1 Of 2 Fee: 15.00
BK-0506 PG- 3496 RPTT: 5070.00



WHEN RECORDED MAIL TO:
Mr. & Mrs. J.W. Bentley
26482 Valpariso
Mission Viejo, CA 92691

MAIL TAX STATEMENT TO:
Same as Above

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THEADORE WEBER and KATHERINE A. WEBER, husband and wife as joint tenants

do(es) hereby GRANT, BARGAIN and SELL to

J.W. BENTLEY AND MARYANN BENTLEY, Trustees of the BENTLEY FAMILY TRUST 1995 TRUST,

the real property situate in the County of Douglas, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR LEGAL
DESCRIPTION AND WATER RIGHTS DESCRIPTION

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water
rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or
profits thereof.

Dated: 05/05/06

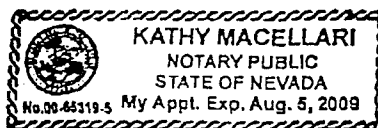
Theadore Weber
THEADORE WEBER

Katherine A. Weber
KATHERINE A. WEBER

STATE OF Nevada
COUNTY OF Douglas

This instrument was acknowledged before me on May 5, 2006, by THEADORE
WEBER and KATHERINE A. WEBER.

Kathy Macellari
Notary Public



35

EXHIBIT "A"

All that certain lot, piece, parcel or portion of land situate, lying and being within the West ½ of Section 14, Township 12 North, Range 19 East, M.D.M., Douglas County, Nevada, more particularly described as follows:

All that portion of Parcels 1, 2 and 3, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada, described as follows:

COMMENCING at the Southwest corner of Parcel 3, as shown on the aforesaid map;

Thence along the Southwesterly line of Parcels 2 and 3 of said map, North 24°47'53" West, a distance of 335.33 feet to the Southwest corner of aforesaid Parcel 1, which point is the TRUE POINT OF BEGINNING;

Thence continuing along the Southwesterly line of said parcel North 25°53'28" West, a distance

of 495.70 feet to the Northwestern corner of said parcel;

Thence along the Northwestern line of said parcel North 64°05'08" East, a distance of 1,120.70

feet to the Northeasterly corner of said parcel;

Thence along the Northeasterly line of said Parcels 1 and 3 South 25°05'38" East, a distance of

519.63 feet;

Thence leaving said line South 78°28'21" West, a distance of 424.88 feet;

Thence South 00°00'00" West, a distance of 167.20 feet;

Thence South 70°19'13" West, a distance of 632.57 feet to the TRUE POINT OF BEGINNING.

The Basis of Bearing of this description is the Southeasterly line of Parcel 3, which bears North 70°37'51" East, as shown on the Parcel Map filed for record in Book 687, at Page 3496, as Document No. 157268, Official Records of Douglas County, Nevada.

APN: 1219-14-001-013

Per NRS 111.312, this legal description was previously recorded January 4, 1996, in Book 196, Page 793, as Document No. 378281, Official Records.

WATER RIGHTS

Being old assessor's parcel number 19-200-09 specifically described as 12.96 acres of land T 12N R19E S14 PCL1. Along with property goes the following water rights.

9 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R. 19E

2 acres in the SW 1/4 of NW 1/4 of Sec. 14, T. 12, R. 19E

as shown on the attached map and filed for under proof of Vested Right #04594.



SURVEYOR'S CERTIFICATE

I, Paul "Tom" Maguire, a Professional Land Surveyor registered in the State of Nevada, hereby state that:

1. A field survey performed to locate and identify property lines pursuant to the provisions of the Nevada Revised Statutes, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209.
2. This plan is a true and accurate representation of the land surveyed.
3. All corners and angle points of the adjusted boundary line have been determined by measurements or all by other methods defined as a boundary of record as required by NRS 209.040, and the measurements are of the appropriate class and accuracy to ensure the survey to be returned.
4. The lands surveyed do not include the west 1/2 of Section 14, Township 12 North, Range 19 East, R.1.E., and the survey was completed on July 1, 1988.
5. This plan is not in conflict with the provisions of NRS 209.040 through NRS 209.045 and complies with all applicable state statutes and any local ordinances.

Paul "Tom" Maguire
Paul "Tom" Maguire
A.L.S. 000

STATE OF NEVADA
The State of Nevada is the jurisdiction of the State of Nevada, and the survey was performed on July 1, 1988, at the County of Douglas, Nevada.

- LEGEND**
- Found point to record
 - Set 1/4" corner with plastic cap P.L.S. 000

NOTICE MAPS
(b-1) Parcel Map Ladder Parcel, Book 007, page 3408, recorded number 157264, Official Records of Douglas County, Nevada.

L.A.C.	BEARING	DISTANCE
1	N 15°17'00" E	10.00'
2	S 24°17'15" E	10.00'

NOTE:
The property owners from the original Parcel Map (b-1) were found to be true. The land is a lot out of record position. It was assumed that these owners had been advised that their original boundaries and were therefore not accepted.

W.L.S. 000, INC.
Professional Land Surveyors
P.O. Box 125
Gardnerville, NV 89410
(702) 782-1144

COUNTY ENGINEER'S CERTIFICATE

I, Dave Jackson, Douglas County Engineer, do hereby state that I have reviewed and approved this map.

Dave Jackson
Dave Jackson, P.E.
Douglas County Engineer

COUNTY CLERK'S CERTIFICATE

I, Barbara J. Bond, Douglas County Clerk-Treasurer and Ex-Officio, do hereby certify that all property taxes on this land for the fiscal year have been paid. A.P.N. 19-200-09, 10-200-09, 10-200-10.

Barbara J. Bond
Barbara J. Bond
Douglas County Clerk-Treasurer
By: J. Wheat, Sr. Deputy

OWNER'S CERTIFICATE

By the undersigned owner of the adjusted parcel as shown on this map, do hereby state that:

1. I have examined this plan and approve and authorize the recording of the same.
2. I agree to execute the required documents including any existing documents pertaining to the provisions of NRS 209.040 through NRS 209.045, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209.
3. I agree to execute the required documents including any existing documents pertaining to the provisions of NRS 209.040 through NRS 209.045, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209.
4. I agree to execute the required documents including any existing documents pertaining to the provisions of NRS 209.040 through NRS 209.045, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209, and the Nevada Rules of Professional Conduct, Chapter 209.

Joseph S. Ledate
Joseph S. Ledate
A.P.N. 19-200-09
A.P.N. 10-200-10

Barbara J. Bond
Barbara J. Bond
A.P.N. 19-200-09
A.P.N. 10-200-10

State of Nevada
County of Douglas

On the 14th day of December, 1988, personally appeared before me, a Notary Public, Joseph S. Ledate, personally appeared before me, a Notary Public, and Barbara J. Bond, personally appeared before me, a Notary Public, and they acknowledged to me the contents of the foregoing instrument to be the true and correct contents of the same, and acknowledged that they executed the same.

Barbara J. Bond
Barbara J. Bond
Notary Public
My commission expires 10-01-91

State of Nevada
County of Douglas

On the 14th day of December, 1988, personally appeared before me, a Notary Public, Barbara J. Bond, personally appeared before me, a Notary Public, and Joseph S. Ledate, personally appeared before me, a Notary Public, and they acknowledged to me the contents of the foregoing instrument to be the true and correct contents of the same, and acknowledged that they executed the same.

Barbara J. Bond
Barbara J. Bond
Notary Public
My commission expires 10-01-91

RECORD OF SURVEY TO ACCOMPANY A

Boundary Line Adjustment for Joseph S. Ledate, portions of the W 1/2 of Section 14, Township 12 North, Range 19 East, Mount Diablo Meridian, Douglas County, Nevada.

Sheet 1 of 1 sheet

14-12-19

378278

AMENDED

Filing Serial No. 06305

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Stutler Canyon Creek
Name of natural water source (use separate proofs for each major source)
The water is diverted from its source via a diversion structure, pipeline & unnamed
Name of ditch, flume or pipe line ditches.
at the following point(s) within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T. 12 N., R. 19 E.,
List all points of diversion from this source, appending a sheet if necessary
M.D.M. See attachment.
Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated

(1) Name of claimant Theodore Weber & Katherine A. Weber, husband & wife as
joint tenants.
Address Box 601, Minden, County of Douglas
State of Nevada 89423 Telephone No. (702) 265-5021

(2) The means of diversion employed diversion structure, pipeline, ditches. (See
Dam and ditch, pipe line, flume, etc. attachment.)

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See Attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905
and completed prior to March 1, 1905

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom.....feet, width
4" dia. pipeline. (See attachment.)
on top.....feet, depth.....feet, on a grade of.....feet per thousand feet.

(6) The conduit ~~has~~ (has not) been enlarged. See attachment.
NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun.....and
See attachment for information regarding
completed.....relocation of pipeline.

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom.....feet, width on top
.....feet, depth.....feet, on a grade of.....feet per thousand feet.

(9) The claimant is (~~is not~~) an owner in the above-described conduit.
6.10 percent. (See attachment.)

If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is fee title

(11) Crops of alfalfa, native hay, diversified pasture
have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(12) The water has been used for irrigation from May 1 to October 15
Day of month Day of month
of each year.

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

1905, 7.60 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 14, T 12N, R 19 E.
Year

1905, 2.76 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec 14, T 12N, R 19 E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

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....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

(14) The maximum acreage irrigated in any year was 10.36 acres.

(15) The water claimed has (has not) been used for irrigation each and every year since the right was initiated.

0695

- (16) The years during which no water was used for irrigation or during which the full water right was not used

were See attachment

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary

- (17) The claimant's water right was (was not) recorded in the office of the County Recorder of

Douglas County, said record being at page.....of Book.....of

....., and being a claim for all appurtenant rights

.....of water for the irrigation of 10.36

acres of land in the following legal subdivisions:

.....

.....

.....

.....

.....

.....

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

- (18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Stock watering and domestic, January 1 through December 31 of each
year.

- (19) The character of the soil is gravelly sandy loam A continuous flow of 1.244 cubic
(Sandy, gravelly, loam)

feet of water per second has been used to irrigate 10.36 acres of land and 4.0
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Theodore and Katherine A. Weber claim vested right to 6.10
percent of the waters of Stutler Canyon Creek for irrigation during
the period May 1 to October 15 annually to irrigate 10.36 acres.
See attachment for complete description of claim of water right.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water
by _____ are full and correct to the best of his knowledge
and belief.

If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

Theodore Weber
Theodore Weber
Katherine A. Weber
Katherine A. Weber
Telephone No. (702) 265-5021

Subscribed and sworn to before me this 28th day of September, 19 96



Diane Gordon (Diane Gordon)
Notary Public in and for the County of Nevada
My commission expires June 22, 2000

STATE ENGINEERS OFFICE
96 SEP 30 PM 3:15

RECEIVED
\$100 FILING FEE MUST ACCOMPANY PROOF

ORIGINAL

Filing Serial No. 06305

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Stutler Canyon Creek

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a diversion structure, pipeline & unnamed
Name of ditch, flume or pipe line ditches
at the following point(s) within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T.12n., R.19E., M.D.M.
List all points of diversion from this source, appending a sheet if necessary

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated

(1) Name of claimant Theodore Weber & Katherine A. Weber, husband & wife
as joint tenants.

Address Box 601, County of Douglas

State of Nevada Minden, 89423 Telephone No. (702) 265-5021

(2) The means of diversion employed diversion structure, pipeline, ditches. (See
Dam and ditch, pipe line, flume, etc. attachment.)

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905

and completed prior to March 1, 1905. (See attachment.)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom.....feet, width
4" dia. pipeline. (See attachment.)
on top.....feet, depth.....feet, on a grade of.....feet per thousand feet.

(6) The conduit ~~has~~ (has not) been enlarged. See attachment.
NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun.....and
See attachment for information regarding
completed.....relocation of pipeline.

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom.....feet, width on top
.....feet, depth.....feet, on a grade of.....feet per thousand feet.

105
Do (9) The claimant is (is not) an owner in the above-described conduit.
6.10 percent. (See attachment.)

If claimant is an owner in the conduit, state interest held on this line

(10) The nature of the title to the land for which the water right is claimed is fee title

(11) Crops of alfalfa; native hay; diversified pasture
have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(12) The water has been used for irrigation from May 1 to October 15
of each year. Day of month Day of month

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

1905, 10.36 acres in the NW $\frac{1}{4}$ of Sec. 14, T. 12, R. 19 E.
Year

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

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....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

(14) The maximum acreage irrigated in any year was 10.36 acres.

(15) The water claimed has (has not) been used for irrigation each and every year since the right was initiated.

(16) The years during which no water was used for irrigation or during which the full water right was not used

were See attachment

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of

Douglas County, said record being at page.....of Book.....of

....., and being a claim for all appurtenant rights

.....of water for the irrigation of 10.36

acres of land in the following legal subdivisions:

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Stock watering and domestic, January 1 through December 31 of each

year.

(19) The character of the soil is gravelly sandy loam A continuous flow of 1244 cubic
(Sandy, gravelly, loam)

feet of water per second has been used to irrigate 10.36 acres of land and 4.0
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Theadore and Katherine A. Weber claim vested right to 6.10
percent of the waters of Stutler Canyon Creek for irrigation during
the period May 1 to October 15 annually to irrigate 10.36 acres.

See attachment for complete description of claim of water right.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water
by.....are full and correct to the best of his knowledge
and belief.

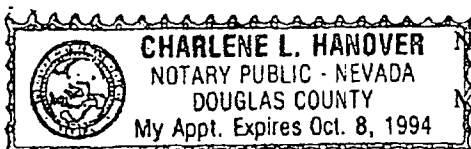
94 MAR 16 AIO 05
RECEIVED
STATE ENGINEERS OF
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

Theodore Weber
THEODORE WEBER

Katherine A. Weber
KATHERINE A. WEBER

Telephone No. (702) 265-5021

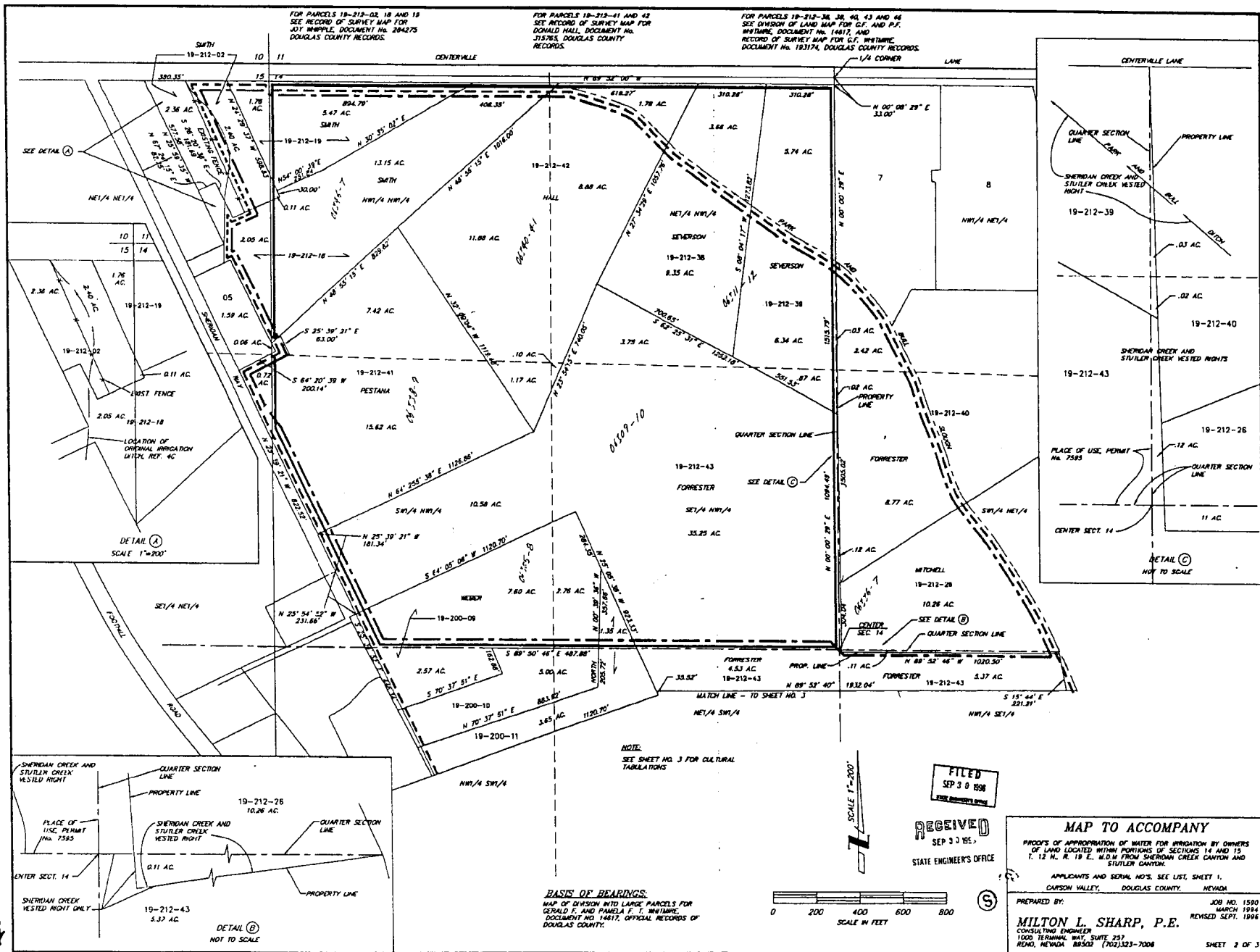
Subscribed and sworn to before me this 16th day of March, 19 94



Charlene L. Hanover
Notary Public in and for the County of Douglas

My commission expires.....

\$100 FILING FEE MUST ACCOMPANY PROOF



06347

06346 06341 06340 06339 06338 06337 06336 06312 06311 06310 06309 06308 06307 06306 06305

AMENDED

Filing Serial No. 06306

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Sheridan Creek

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a concrete diversion structure and unnamed
Name of ditch, flume or pipe line
ditches
 at the following point(s) within the NESE¹/₄ of Section 15, T.12N., R.19E., M.D.M.
List all points of diversion from this source, appending a sheet if necessary
from which the southwest corner of said Section 15 bears S72° 20' 31" W
 Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated
a distance of 5,412.47 feet.

(1) Name of claimant Theodore Weber and Katherine A. Weber, husband & wife,
as joint tenants.
 Address Box 601, Minden, County of Douglas

State of Nevada 89423 Telephone No. (702) 265-5021

(2) The means of diversion employed diversion structure, ditches (See attachment.)
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905
 and completed prior to March 1, 1905 (See attachment.)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom 4 ± feet, width
 on top 6 ± feet, depth 1.5 ± feet, on a grade of 33 ± feet per thousand feet.

(6) The conduit ~~has~~ (has not) been enlarged.
 NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun _____ and
 completed _____

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom _____ feet, width on top
 _____ feet, depth _____ feet, on a grade of _____ feet per thousand feet.

(9) The claimant is ~~(is not)~~ an owner in the above-described conduit.

7.5 percent, North Diversion (See attachment.) 281
If claimant is an owner in the conduit, state interest held on this line

(16) The years during which no water was used for irrigation or during which the full water right was not used

were..... See attachment

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of

.....County, said record being at page.....of Book.....of

....., and being a claim for all appurtenant rights

of water for the irrigation of 12.93

acres of land in the following legal subdivisions:

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Stock watering and domestic, January 1 through December 31 of each
year.

(19) The character of the soil is gravelly sandy loam A continuous flow of 1553 cubic
(Sandy, gravelly, loam)

(Sandy, gravelly, loam)

feet of water per second has been used to irrigate.....12.93.....acres of land and.....4.0.....
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Theodore and Katherine A. Weber claim vested right to 7.50 percent ^{of} 65.43 percent of the waters of Sheridan Creek (North Diversion) for irrigation during the period of May 1 to October 15 annually to irrigate 12.93 acres.

See attachment for more complete description of claim of vested right.

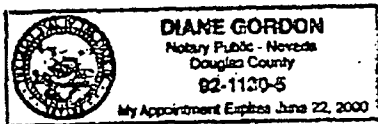
The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by _____ are full and correct to the best of his knowledge and belief.

If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

Theodore Weber
Theodore Weber
Katherine A. Weber
Katherine A. Weber
Telephone No. (702) 265-5021

Subscribed and sworn to before me this 28th day of September, 1996

Diane Gordon (Diane Gordon)



Notary Public in and for the County of *Nevada*

My commission expires *June 22, 2000*

STATE ENGINEERS OFFICE
96 SEP 30 PM 3:15

\$100 FILING FEE MUST ACCOMPANY PROOF

RECEIVED

ORIGINAL

Filing Serial No. 06306

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source. Sheridan Creek

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a concrete diversion structure and unnamed
Name of ditch, flume or pipe line ditches.
at the following point(s) within the NE 1/4 of Section 15, T. 12N., R. 19E., M.D.M.
List all points of diversion from this source, appending a sheet if necessary

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated

(1) Name of claimant Theodore Weber and Katherine A. Weber, husband & wife
as joint tenants.

Address Box 601, County of Douglas
Minden,
State of Nevada 89423 Telephone No. (702) 265-5021

(2) The means of diversion employed Diversion structure, ditches (See attachment.)
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905
and completed prior to March 1, 1905 (See attachment)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom 4 +/- feet, width
on top 6 +/- feet, depth 1.5 +/- feet, on a grade of 33 +/- feet per thousand feet.

(6) The conduit ~~has~~ (has not) been enlarged.

NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun.....and
completed.....

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom.....feet, width on top
.....feet, depth.....feet, on a grade of.....feet per thousand feet.

(9) The claimant is ~~(is not)~~ an owner in the above-described conduit.

7.50 percent, North Diversion (See attachment.)
If claimant is an owner in the conduit, state interest held on this file

(10) The nature of the title to the land for which the water right is claimed is fee title

(11) Crops of alfalfa, native hay, diversified pasture
have been grown upon the land irrigated. (e.g. alfalfa, native hay, grain, orchard, meadow or diversified pasture)

(12) The water has been used for irrigation from May 1 to October 15
of each year. Day of month Day of month

(13) List the year of priority for acreages irrigated prior to March 1, 1905, from all points of diversion previously described, with corresponding subdivisions, appending extra sheets if necessary.

1852, 10.36 acres in the NE $\frac{1}{4}$ of Sec. 14, T. 12, R. 19 E.

1852 2.57 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 14, T. 12, R. 19 E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

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....., acres in the of Sec., T., R. E.

....., acres in the of Sec., T., R. E.

(14) The maximum acreage irrigated in any year was 12.93 acres.

(15) The water claimed has (has not) been used for irrigation each and every year since the right was initiated.

(16) The years during which no water was used for irrigation or during which the full water right was not used

were See attachment

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given, appending a sheet if necessary

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of

County, said record being at page of Book of

, and being a claim for all appurtenant rights

of water for the irrigation of 12.93

acres of land in the following legal subdivisions:

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Stock watering and domestic, January 1 through December 31 of each
year.

(19) The character of the soil is gravelly sandy loam. A continuous flow of 1553 cubic

(Sandy, gravelly, loam)

feet of water per second has been used to irrigate 12.93 acres of land and 4.0
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Theadore and Katherine A. Weber claim vested right to 7.50
percent of 65.43 percent of the waters of Sheridan Creek (North
Diversion) for irrigation during the period May 1 to October 15
annually to irrigate 12.93 acres.

See attachment for more complete description of claim of vested
right.

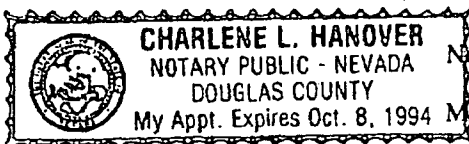
The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water
by _____ are full and correct to the best of his knowledge
and believe _____

_____ proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

Theodore Weber
THEADORE WEBER
Katherine A. Weber
KATHERINE A. WEBER

Telephone No. (702) 265-5021

Subscribed and sworn to before me this 16th day of March, 19 94



Notary Public in and for the County of Douglas
My commission expires _____

\$100 FILING FEE MUST ACCOMPANY PROOF

06307

Serial No.

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING
OR WILDLIFE PURPOSES

- (1) Name of claimant
- Theadore & Katherine A. Weber husband & wife as joint tenants

P.O. Box 601of Minden

Street and No. or P.O. Box No.

City or town

Nevada, 89423

State and Zip Code No.

- (2) Source of water
- Sheridan Creek

Name of natural water source.

- (3) The water is diverted by
- via a concrete diversion structure & unnamed ditches -

Dam, ditch, pipe line, natural channel, spring area, etc.

See Attachment

AA

- (4) The water is diverted at the following point(s)
- within the NE1/4 SE1/4 of section 15, T.12N

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land it should be stated.

R. 19 E., M.D.M.

Diversion over a channel reach must be described by course and distance to a section corner for both the beginning and end of such reach.

- (5) The water is impounded in
- Pond and Natural channel

Troughs, tanks, pools, reservoir, natural channel, etc.

- (6) The construction of the ditch or other works was begun
- Natural channel prior to 1905

Natural channel prior to 1905

Date

and completed Pond prior to 1970

See Attachment

Date

- (7) The nature of the claimant's title to the land upon which the source of water and place of use are located is
- Fee Title

Patented, deeded, public domain with grazing permit, etc.

- (8) The claimant's water right was
- ~~(was not)~~
- recorded in the office of the County Recorder of

Douglas

County, at Page

640

of Book

886

of

138680

&

NOTE—Failure to record in the county in no way invalidates a water right, but if water right was so recorded, supply full information under (8).

2726-2733

387

152147

See Attachment B & C

290

105

00

(9) The approximate number of animals watered by the claimant during the first year 1987,
Date & fish
was 4 cattle 6 horses 12 sheep or wildlife (describe) large #s of ducks, geese
Other
Jan. 1 thru Dec. 31
The watering was conducted during each of the following months.

(10) The approximate number of animals watered by the claimant in subsequent years was as follows:

Same as above

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given.

(11) The amount of water which has been necessary to be diverted for this purpose has been

60 % of flow in the summer months and 95 % in the winter months.
cubic feet per second.
448.83 gallons per minute equals 1 cubic foot per second.

(12) The works are located at within the NE1/4SE1/4 of Section 15, T.12N., R.19E., M.D.M.

Describe as being within a 40-acre subdivision, section, township and range of public survey. If on unsurveyed
POND LOCATION + DIVERSION IS SW1/4 & NW1/4 OF SEC 14
land, it should be stated.

T.12, R.19E M.D.M. Weber Ranch

Remarks We are asking for the diversion based on the following: Attachment A-

Purchase agreement -where seller June Rolph gave the right to a non-consumptive

diversion of surface water rights for a pond located on Parcel B of property.

Attachment B-Water diversion and use agreement filing #138680 Book 886 Page 640,
641 whereas June Rolph gives her permission to Gerald Whitmire to run his 1/2

interest in Sheridan Creek thru the Old Crowell Ranch and Mr. Whitmire gives his
permission to Mr. Lodato to divert his 1/2 interest in Sheridan Creek through the

the pond located on Parcel B. Attachment C-Water diversion and use agreement
Filing #152147 Book 387, Pages 2726 to 2733. In this agreement Mr. Whitmire gives

04301

Remarks his permission to divert all of his share of Sheridan Creek water thru pond on Parcel B for non-consumptive use and back to his land for irrigation. This agreement was for perpetuity, for which a fee was paid.

also showed up in an title search attached

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by are full and correct to the best of his knowledge and belief.

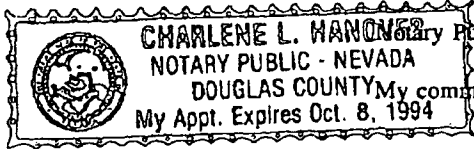
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.

Claimant
Telephone No. (702) 265-5021

By Theodore Weber KATHERINE A. WEBER
P.O. Box 681
Street and No., or P.O. Box No.
Minden NV 89423
City, State, Zip Code No.
Telephone No. (702) 265-5021

Subscribed and sworn to before me this 16TH day of MARCH, 19 94.

Charlene L. Manon



Notary Public in and for the County of Douglas
My commission expires
My Appt. Expires Oct. 8, 1994

\$50 FILING FEE MUST ACCOMPANY PROOF

Serial No. **06308**

STATE OF NEVADA
**PROOF OF APPROPRIATION OF WATER FOR STOCK WATERING
OR WILDLIFE PURPOSES**

- (1) Name of claimant Theadore and Katherine A. Weber husband & wife as joint tenant:

P.O. Box 601 of Minden
Street and No. or P.O. Box No. City or town
Nevada 89423
State and Zip Code No.

- (2) Source of water Stutler Canyon Creek
Name of natural water source.
(3) The water is diverted by diversion structure, pipeline & unnamed ditches-See
Attachment AA Dam, ditch, pipe line, natural channel, spring area, etc.

- (4) The water is diverted at the following point(s) within the SE1/4 NE1/4 of Section 16,
Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land it should be stated.
T.12 N., R.19E., M.D.M.
Diversion over a channel reach must be described by course and distance to a section corner for both the beginning and end of such reach.

- (5) The water is impounded in Pond and natural channel
Troughs, tanks, pools, reservoir, natural channel, etc.
(6) The construction of the ditch or other works was begun Natural channel prior to 1905
Natural channel prior to 1905 Date
and completed pond prior to 1970
Date

- (7) The nature of the claimant's title to the land upon which the source of water and place of use
are located is Fee Title
Patented, deeded, public domain with grazing permit, etc.

- (8) The claimant's water right was ~~(was not)~~ recorded in the office of the County Recorder of
Douglas County, at Page 640 of Book 886 of 138680 &
NOTE—Failure to record in the county in no way invalidates a water right, but if water right was so recorded, supply full information under (8).

(9) The approximate number of animals watered by the claimant during the first year 1987,
was 4 cattle 6 horses 12 sheep or wildlife (describe) large #'s of ducks, geese & fish
Other

The watering was conducted during each of the following months Jan. 1 thru Dec. 31

(10) The approximate number of animals watered by the claimant in subsequent years was as follows:

Same as above

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be given.

(11) The amount of water which has been necessary to be diverted for this purpose has been
60% of flow in the summer months and 95 % in the winter months.

cubic feet per second.
448.83 gallons per minute equals 1 cubic foot per second.

(12) The works are located at within the NE1/4SE1/4 of section 15, T.12N., R.19E., M.D.M.

Describe as being within a 40-acre subdivision, section, township and range of public survey. If on unsurveyed

POND LOCATION + DIVERSION IS SW 1/4 OF NW 1/4 OF SEC. 14

land, it should be stated.

T.12, R.19E. Twp K. W. M.D.M.

Remarks We are asking for the diversion based on the following: Attachment A-

Purchase agreement-where seller June Rolph gave the right to non-consumptive
diversion of surface water rights for a pond located on Parcel B of property.

Attachment B- Water diversion and use agreement filing #138680 Book 886 Page 640
641 whereas June Rolph gives her permission to Gerald Whitmire to run his 1/2
interest in Sheridan Creek thru the Old Crowell Ranch and Mr. Whitmire gives his
permission to Mr. Lodato to divert his 1/2 interest in Sheridan Creek through the
pond located on Parcel B. Attachment C- Water diversion and use agreement

filing #152147 Book 387, Pages 2726 to 2733. In this agreement Mr. Whitmire gives

06300

Remarks.....his permission to divert all of his share of Sheridan Creel water
thru pond on Parcel B for non-consumptive use and back to his land for
irrigation. This agreement was for pepetuity, for which a fee was paid.

Also showed up in our title search^{file} (attached)

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation
of water by.....
are full and correct to the best of his knowledge and belief.

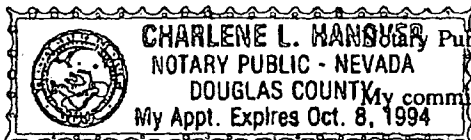
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant.

Claimant
Telephone No. (702) 265-5021

By Theodore Weber Katherine A. Weber
THEODORE WEBER KATHERINE A. WEBER
P.O. Box 601
Street and No., or P.O. Box No.
Minden, NV 89423
City, State, Zip Code No.
Telephone No. (702) 265-5021

Subscribed and sworn to before me this 16TH day of MARCH, 1994.

Charlene L. Mansueti L. Mansueti



Notary Public in and for the County of Douglas
My commission expires.....

\$50 FILING FEE MUST ACCOMPANY PROOF

12- F.O. Box 1511
Nevada 89423

WATER DIVERSION AND USE AGREEMENT

THIS AGREEMENT is entered into by and between JUNE IRENE BARTLETT, who took title as June Irene Rolph, NANCY ROLPH WELCH, GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife as joint tenants, hereafter referred to as "Grantors" and JOSEPH S. LODATO, hereafter referred to as "Grantee", based upon the following facts:

1. Grantors are the owners of real property located in Douglas County, Nevada, as well as the owners of water rights which are appurtenant to, certificated or adjudicated to the benefit of the property owned by them in Douglas County, Nevada.
2. Grantee is the owner of real property located in Douglas County, Nevada, which was purchased heretofore from Grantors.
3. Grantors own and enjoy the right to use waters from Sheridan Creek.
4. There are no downstream users of water from these creeks, after this water is used by Grantors.
5. Grantee desires to divert some or all of the water from Sheridan Creek, onto his property, to be used in a non-consumptive manner to maintain water levels in ponds on Grantee's property, and thereafter to cause the water to be diverted back to the property of Grantors for irrigation purposes.

6. Grantors have agreed to such an arrangement, on the terms and conditions which follow.

THEREFORE, based upon the recital of facts set forth above, which are incorporated in the body of this agreement by reference, and the covenants and conditions which follow hereinafter, the parties do agree as follows:

A. For valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors do hereby give and grant to Grantee, as a covenant running to the benefit of the land described in Exhibit "A" attached hereto, the right to divert one hundred percent (100%) of the water from Sheridan Creek, onto the Exhibit "A" property, in perpetuity.

B. This grant is specifically made on the condition that the water will be used by Grantee in a non-consumptive fashion, to maintain water levels in a series of streams and ponds on the Exhibit "A" property, after which time it will be re-diverted to the irrigation ditches of Grantors.

C. Grantors are granted the right, upon reasonable notice, to have access to the Exhibit "A" property to ensure that the limitations set forth herein regarding use are being adhered to by Grantee.

D. Grantee is hereby given the right of access to other property of Grantors, in order to ensure that the water may be diverted to Grantee's property.

E. This grant of right to divert and use water includes the right of Grantee to divert the Sheridan Creek water from the natural creekbed or water course on the west side of Foothill Road and in an easement granted pursuant to Exhibit "B" which is attached hereto, and to return to the natural water course on property owned by Grantee just east of that 50-foot roadway and utility easement shown on Exhibit "C" which is attached hereto and incorporated herein by reference.

F. This promise to permit the use and diversion of water is intended to be and is made by Grantors to be a covenant running with the land, and the benefits thereof may be enjoyed by the heirs and assigns of Grantee, and subsequent owners of the Exhibit "A" property.

G. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

H. This agreement may be terminated by Grantors in the event a Court of competent jurisdiction determines that the Grantee has been violating the terms hereof, to the detriment of Grantors.

I. The interpretation and enforceability of this agreement shall be determined by the laws of the State of Nevada, and in the event a law suit is brought to enforce or

interpret this agreement, the prevailing party shall be awarded reasonable attorney's fees against the party not prevailing.

IN WITNESS WHEREOF, the parties have set their hands the day and year set forth below.

Date: _____

JUNE IRENE BARTLETT, who took
title as June Irene Rolph

Date: _____

NANCY ROLPH WELCH

Date: 6/9/86

Gerald F. Whitmire
GERALD F. WHITMIRE

Date: 6-9-86

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

Date: _____

Joseph S. Lodato
JOSEPH S. LODATO

STATE OF _____)
COUNTY OF _____) ss.

On _____, 1986, personally appeared before me, a notary public, JUNE IRENE BARTLETT, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

Notary Public

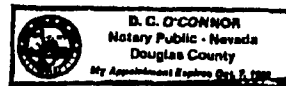
152147

BOOK 387 PAGE 2729

STATE OF Nevada)
COUNTY OF Douglas) ss.

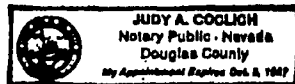
On June 9, 1986, personally appeared before
me, a notary public, PAMELA F. J. WHITMIRE, personally known to
me to be the person who executed the above instrument, and
acknowledged to me that she executed the same for the purposes
therein stated.

P.F.J. Whitmire
Notary Public

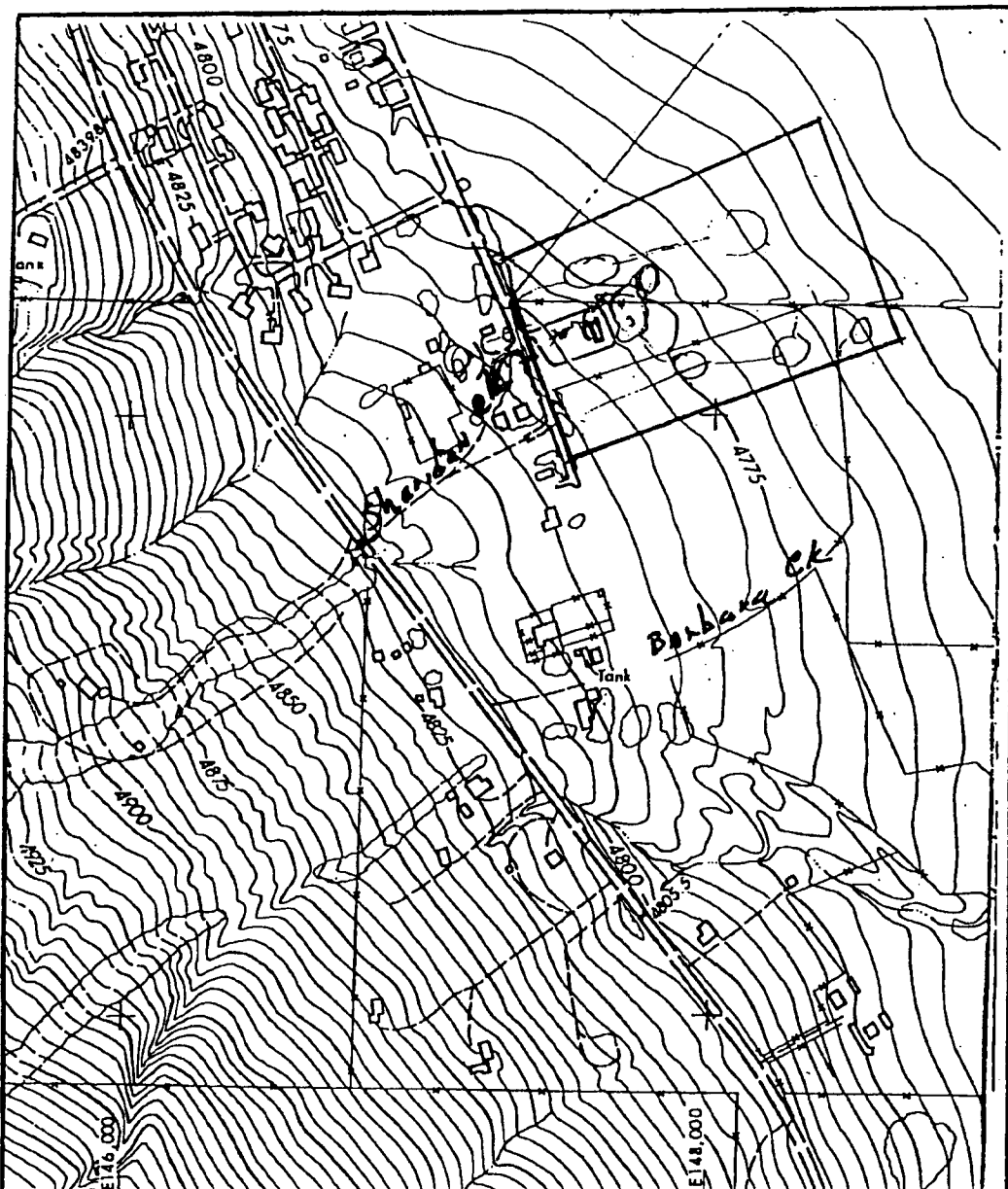


STATE OF Nevada)
COUNTY OF Douglas) ss.

On June 9th, 1986, personally appeared before
me, a notary public, JOSEPH S. LODATO, personally known to me to
be the person who executed the above instrument, and
acknowledged to me that he executed the same for the purposes
therein stated.



Judy A. Coolidge
Notary Public



PROJECT

Scale: 1" = 400' 152147
 Contour Interval: 5'
 Date of Photography: 6-1-77
 5094 387 PAGE 2731

EXHIBIT "A"

4 A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

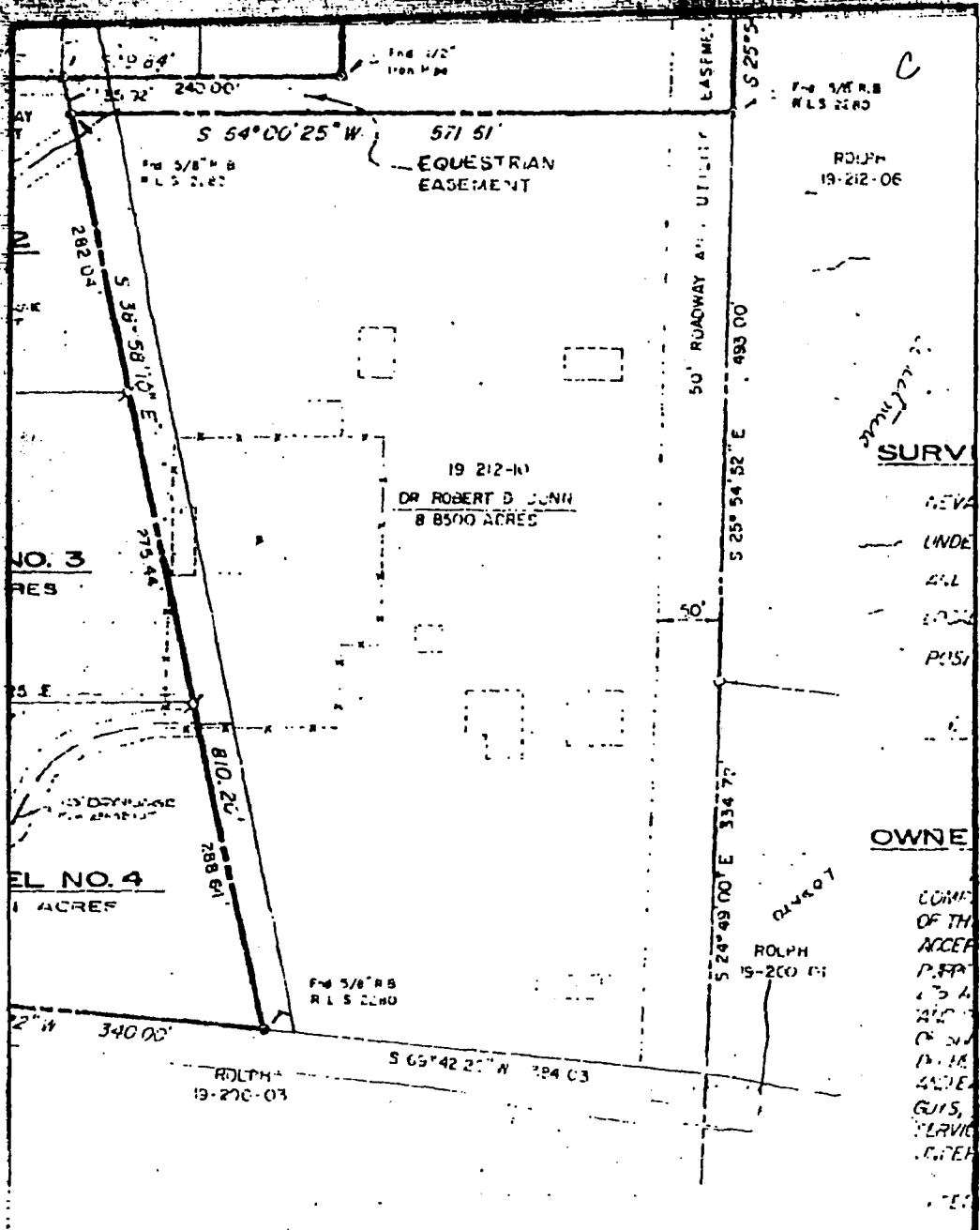
EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.&M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 81°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

152147

BOOK 387 PAGE 2732



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C. JENN
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SERVIC
G. JENN
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REQUESTED BY
Jeanne Beaudreau
OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

87 MAR 27 19 32

SUZANNE BEAUDREAU
RECORDER
PAID *for* DEPUTY

152147

BOOK 387 PAGE 2733

1 Case No.: 08-CV-0363

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211
10

11
12
13 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR DOUGLAS COUNTY

15 In the Matter of the Determination of
16 the Relative Rights in and to the
17 Waters of Mott Creek, Taylor Creek,
18 Cary Creek (aka Carey Creek), Monument
19 Creek, and Bulls Canyon, Stutler Creek
20 (aka Stattler Creek), Sheridan Creek,
21 Gansberg Spring, Sharpe Spring,
22 Wheeler Creek No., 1 Wheeler Creek
23 No. 2, Miller Creek, Beers Spring,
24 Luther Creek and Various Unnamed
25 Sources in Carson Valley, Douglas
26 Valley, Nevada.
27
28

29
30 REPLY TO EXCEPTIONS BY BENTLEY TO

31 FINAL ORDER OF DETERMINATION

32 Comes now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
33 husband and wife ("Forresters"), and HALL RANCHES, LLC, a Nevada
34 Limited Liability Company, by and through their counsel, THOMAS
35 J. HALL, ESQ., and hereby submit their Reply to Exceptions to
36 Final Order of Determination filed herein by J.W. Bentley and
37
38

1 Maryann Bentley, Trustees of the Bentley Family Trust 1995 Trust
2 ("Bentley"), and do hereby state as follows:

3 **I. BACKGROUND.**

4 The Forresters own 59.62 acres of land in Douglas County,
5 Nevada, identified as APN 1219-14-001-012. The Forresters are
6 also owners of Claim V-06309 from Sheridan Creek and Claim V-
7 06310 from Stutler Creek, as set forth in pages 54, 55, 109 and
8 110 of the Final Order of Determination dated August 14, 2008,
9 in the above referenced matter, ("Final Order"), to wit:

10
11 **Proof V-06309** was filed on March 16, 1994, by Donald
12 S. Forrester and Kristina M. Forrester claiming a
13 vested right from Sheridan Creek for irrigation of
14 60.87 acres (North Diversion) and 9.90 acres (South
15 Diversion) of land. Domestic and stock watering uses
16 are also claimed. In this Final Order of
17 Determination, a vested right for 70.77 acres of
18 irrigation and domestic uses from the above-named
19 source is established under this proof. This proof is
20 partially supplemental to proof V-06310 and
21 supplemented by Permit 7595, Certificate 1760, on the
22 60.87 acre portion. See Section XII for the portion of
23 the claim for stock water use. See Table No. 6 for
24 diversion rate and duty of water.

25
26 **Proof V-06310** was filed on March 16, 1994, by Donald
27 S. Forrester and Kristina M. Forrester claiming a
28 vested right from Stutler Creek for irrigation of
60.87 acres of land. Domestic and stock watering uses
are also claimed. In this Final Order of
Determination, a vested right for 60.87 acres of
irrigation and domestic uses from the above-named
source is established under this proof. This proof is
supplemental to Proof V-06309 and supplemented by
Permit 7595, Certificate 1760. See Section XII for
the portion of the claim for stock water use. See
Table No. 5 for diversion rate and duty of water.

29 Hall Ranches, LLC, owns 23.80 acres of land in Douglas
30 County, Nevada, identified as APN 1219-14-001-003. Hall

1 Ranches, LLC, is the successor in interest to Donald T. Hall and
2 Peggy Hall under Claim V-06340 for Sheridan Creek and Claim V-
3 06341 for Stutler Creek, as set forth on page 69, 136 and 137 of
4 the Final Order in the above referenced matter, to wit:

5 **Proof V-06340** was filed on March 18, 1994, by Donald
6 T. Hall and Peggy Hall claiming a vested right from
7 Sheridan Creek (North Diversion) for irrigation of
8 22.03 acres of land. Domestic and stock watering uses
9 are also claimed. In this Final Order of
10 Determination, a vested right for 22.03 acres of
11 irrigation and domestic uses from the above-named
12 source is established under this proof. See Section
13 XII for the portion of the claim for stock water use.
14 This proof is supplemental to Proof V-06341 and
15 supplemented by Permit 7595, Certificate 1760. See
16 Table No. 6 for diversion rate and duty of water.

17 **Proof V-06341** was filed on March 18, 1994, by Donald
18 T. Hall and Peggy Hall claiming a vested right from
19 Stutler Creek for irrigation of 22.03 acres of land.
20 Domestic and stock watering uses are also claimed. In
21 this Final Order of Determination, a vested right for
22 22.03 acres of irrigation and domestic uses from the
23 above-named source is established under this proof.
24 See Section XII for the portion of the claim for stock
25 water use. This proof is supplemental to Proof V-
26 06340 and supplemented by Permit 7595, Certificate
27 1760. See Table No. 5 for diversion rate and duty of
28 water.

29 See correspondence dated August 29, 2007, from Nevada
30 Division of Water Resources attached hereto as Exhibit A.

31 The lands of the Forresters and Hall Ranches lie downstream
32 from the lands of Bentley. See Map attached as Exhibit B. The
33 uses and proposed uses by Bentley as described in their
34 Exceptions conflict with the rights of the Forresters and Hall
35 Ranches identified above.

36 \\\

1 II. RESPONSE TO EXCEPTION NO. 1, DIVERSION SCHEDULE.

2 A. The Water Diversion and Use Agreement is Unenforceable.

3 Bentley contends that its diversion rights are set forth in
4 a series of diversion agreements between Bentley's predecessors
5 in interest and the predecessors in interest of owners of other
6 properties identified in the Final Order Tables 5 and 6.
7 Specifically, Bentley attaches to the Notice of Exceptions, an
8 Exhibit 3, which purports to be a Water Diversion and Use
9 Agreement recorded on March 27, 1987, in Book 387, at Page 2726,
10 as Document 152147, Douglas County Records. First, examination
11 of the Water Diversion and Use Agreement shows that it was not
12 signed either by June Irene Bartlett, who took title as June
13 Irene Rolph, or by Nancy Rolph Welch. In recital number 3 of
14 the Agreement, at page 2726, it is stated:
15

16 3. Grantors own and enjoy the right to use waters from
17 Sheridan Creek.

18 Because the Water Diversion and Use Agreement was not
19 signed by the holders of the water right, it is unenforceable
20 under the Nevada statute of frauds.

21 "It is well settled that a water right is realty." Netzel
22 v. Rochester Silver Corporation, 50 Nev. 352, 357, 259 Pac. 232
23 (1927); Carson City v. Estate of Lompa, 88 Nev. 541, 542, 501
24 P.2d 662 (1972).
25

26 \\\

1 Inasmuch as water rights are treated as realty in Nevada,
2 all agreements involving water rights are subject to the Nevada
3 Statute of Frauds. See NRS 111.205 (1), which provides:

4 111.205. No estate created in land unless by operation
5 of law or written conveyance; leases for terms not
6 exceeding 1 year.

7 1. No estate or interest in lands, other than for
8 leases for a term not exceeding 1 year, nor any trust
9 or power over or concerning lands, or in any manner
10 relating thereto, shall be created, granted, assigned,
11 surrendered or declared after December 2, 1861, unless
12 by act or operation of law, or by deed or conveyance,
13 in writing, subscribed by the party creating,
14 granting, assigning, surrendering or declaring the
15 same, or by his lawful agent thereunto authorized in
16 writing.

17 For example, the recordation of a parcel map does not
18 satisfy the statute of frauds where the map is not subscribed by
19 both parties. Jim Marsh America v. Century Construction, 106
20 Nev. 727, 728, 802 P.2d 1 (1990). ("The creation of an easement
21 is subject to the statute of frauds. NRS 111.205(1). The
22 existence of an easement may not be established through parol
23 evidence. [I]n the absence of any writing subscribed to by the
24 servient estate owner, the alleged easement was never
25 created.").

26 So too here, the right to divert water under the 1987 Water
27 Diversion and Use Agreement was never created. See Exhibit D.

28 B. The Grantors Reserved All Water Rights.

Second, reference to a Joint Tenancy Deed recorded on
January 6, 1986, in Book 186, at Page 214, as Document 129025,

1 demonstrates that the transfer from Nancy Rolph Welch, as to her
2 one-half interest, to Gerald F. Whitmire and Pamela F.J.
3 Whitmire, husband and wife, predecessors to Bentley, was made
4 with the reservation to Grantor of all water rights, in the
5 following fashion (see Exhibit C):

6 RESERVING UNTO the Grantor herein all water rights
7 appurtenant to the herein described real property.

8 A second Joint Tenancy Deed recorded on January 6, 1986, in
9 Book 186, at Page 217, as Document 129026, from June Irene Rolph
10 as to her one-half interest, to Gerald F. Whitmire and Pamela
11 F.J. Whitmire, husband and wife, predecessors to Bentley, was
12 also made with the reservation to Grantor of all water rights,
13 as follows:

14 RESERVING UNTO the Grantor herein all water rights
15 appurtenant to the herein described real property.

16 It is clear that the Grantors reserved all water rights in
17 their Deeds and therefore the presumption that all water rights
18 were transferred is destroyed. See NRS 111.167.
19

20 C. The Use To Fill A New Pond Violates The Agreement.

21 The right to divert water to fill ponds under the 1987
22 Water Diversion and Use Agreement (Exhibit D) must be restricted
23 to the ponds existing on the date of the Agreement, i.e. June 9,
24 1986. The Water Diversion and Use Agreement specifically states
25 in recital 5:

26 5. Grantee desires to divert some or all of the water
27 from Sheridan Creek, onto his property, to be used in
28 a non-consumptive manner to maintain water levels in

1 ponds on Grantee's property, and thereafter to cause
2 the water to be diverted back to the property of
Grantors for irrigation purposes. [Emphasis added.]

3 Further, in the Agreement, paragraph B states:

4 B. This grant is specifically made on the condition
5 that the water will be used by Grantee in a non-
6 consumptive fashion, to maintain water levels in a
7 series of streams and ponds on the Exhibit "A"
property, after which time it will be re-diverted to
the irrigation ditches of Grantors. [Emphasis added.]

8 In 2008, Bentley created a new and additional large pond of
9 approximately one acre in size into which water has been
10 diverted from Sheridan Creek. The right for water diversion and
11 use under the 1987 Agreement is restricted in two forms. First
12 it is restricted to the ponds existing as of the date of the
13 Agreement, i.e., to ponds existing on June 9, 1986. Secondly,
14 it is restricted to a non-consumptive use.

15 It is widely understood that once a right is created, it
16 may not be enlarged to the detriment of other parties without
17 prior permission or consent.

18 For example, it is the right of both parties to insist that
19 the easement for a ditch shall remain substantially as it was at
20 the time of its execution. The authorities that define what
21 constitutes the bank of a river have no application to the banks
22 of a ditch, and along the banks, to secure the owner in the
23 reasonable and proper enjoyment of his easement, is a question
24 for the trial court to decide, on the evidence. Thomas v.
25 Blaisdell, 23 Nev. 223, 228, 58 Pac. 903 (1899); Ennor v. Raine,
26
27
28

1 27 Nev. 178, 213 74 Pac. 1 (1903); Malstrom v. People's Drain
2 Ditch Co., 32 Nev. 246, 253, 255 107 Pac. 98 (1910).

3 Neither can Bentley argue for an enlarged prescriptive
4 right. In Boynton v. Longley, 19 Nev. 69, at 76 (1885), the
5 Nevada Supreme Court stated:

6 The right acquired by prescription is only
7 commensurate with the right enjoyed. The extent of
8 the enjoyment measures the extent of the right. The
9 right gained by prescription is always confined to the
10 right as exercised for the full period of time
11 required by the statute, which is, in this state, five
12 years. A party claiming a prescriptive right for five
13 years, who, within that time, enlarges the use, cannot
14 at the end of that time claim the use as enlarged
15 within that period.

16 The pond recently created by Bentley was completed in 2008
17 and there has not been five years adverse or continuous use.

18 "It is a general rule of law that, in the absence of
19 statute to the contrary, the location of an easement once
20 selected cannot be changed by either the landowner or the
21 easement owner without the other's consent." Swenson v. Strout
22 Realty, Inc., 85 Nev. 231, 239, 452 P.2d 972 (1969). See also 93
23 C.J.S., Waters, Section 192(b)(2) (1956) ("in the absence of
24 statute, the owner of a servient estate has no right to change
25 the place or location of an appropriator's ditch."); Archibeck
26 v. Mongiello, 58 N.M. 749, 276 P.2d 736, 739 (1954) (applying
27 general prohibition on moving ditch easements): Lunn v. Schmidt,
28 No. 49537, 1985 WL 8129, at 4, 1985 Ohio App. LEXIS 8840, at 12
(Ohio App. 1985) ("The plaintiffs correctly state the general

1 rule that neither the dominant landowner nor the servient
2 landowner may materially alter the easement without the consent
3 of both parties. The placing of closed pipe in a drainage ditch,
4 constitutes a material alteration.").

5 **D. Bentley Holds No Permit For The New Larger Pond.**

6 It is stated in J. Davenport, Nevada Water Law, at pages
7 138-139 (2003):

8
9 **E. Storage of Water in Reservoirs**

10 Storage of water is a beneficial use. Applications
11 for permits to store water proceed under the same
12 application requirements as to other appropriative
13 uses. However, the applicant is not required to prove
14 application of water to a beneficial use. Rather,
15 applicants must apply for a "secondary" permit in
16 order to withdraw stored water from the reservoir.
17 The notice requirements of initial permit applications
18 are waived. The secondary permit application must
19 refer to the reservoir as the water supply and
20 demonstrate a contractual arrangement with the
21 reservoir's owner committing his permanent and
22 sufficient interest in the reservoir to impound enough
water to support the beneficial use set forth in the
application. Certificates of appropriation issued on
secondary permits must refer to both the ultimate use
of the water, and its attendant works, as well as the
reservoir described in the primary permit. The
primary/secondary permit provision is often used in
the case of waste water generation, where the primary
permit holder is the effluent generator and the
secondary permit is in the ultimate user of effluent.

23 Water stored for irrigation or other beneficial
24 purposes may be turned into the channel of any natural
25 stream or watercourse, and mingled with its waters,
26 and then be reclaimed, but, in reclaiming it, water
already appropriated by others shall not be diminished
in quantity. [Emphasis added.]

27 Bentley does not hold a storage permit issued under NRS
28 533.440.

1 Further, the use Bentley proposes does diminish the
2 quantity of water flowing to the Forresters and Hall Ranches in
3 violation of NRS 533.525. Said section provides:

4 533.525 Stored water may be conveyed through streams
5 and reclaimed; conditions.

6 Any water stored for irrigation or other beneficial
7 purposes may be turned into the channel of any natural
8 stream or watercourse, and mingled with its waters,
9 and then be reclaimed, but, in reclaiming it, water
already appropriated by others shall not be diminished
in quantity. [Emphasis added.]

10 The State Engineer is also required to take reservoir
11 evaporation losses into account and consideration pursuant to
12 NRS 533.070(2) which provides as follows:

13 533.070 Quantity of water appropriated limited to
14 amount reasonably required for beneficial use; duties
15 of State Engineer in connection with water diverted or
stored for purpose of irrigation.

16 2. . . . In addition, in the case of storage of
17 water, reservoir evaporation losses should be taken
18 into consideration in determining the acre-footage of
storage to be granted in a permit.

19 III. CONCLUSION.

20 The proposed Exceptions by Bentley to the Final Order and
21 any uses described therein interfere with the rights of the
22 Forresters and Hall Ranches and therefore must not be
23 considered, accepted or allowed.

24 \\\

25 \\\

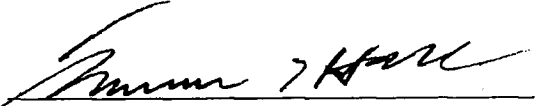
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28 \\\

1 DATED this 26th day of March, 2009.

2 LAW OFFICES OF THOMAS J. HALL

3 
4 Thomas J. Hall, Esq.
5 Nevada State Bar No. 675
6 305 South Arlington Avenue
7 Post Office Box 3948
8 Reno, Nevada 89505
9 Telephone: 775-348-7011
10 Facsimile: 775-348-7211

11
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16
17 **AFFIRMATION**

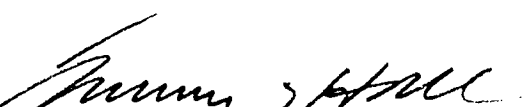
18 (Pursuant to NRS 239B.030)

19 Case No. 08-CV-0363

20 The undersigned does hereby affirm that the preceding
21 document, **Reply to Exceptions by Bentley to Final Order of**
22 **Determination**, does not contain the social security number of
23 any person.

24 DATED this 26th day of March, 2009.

25 LAW OFFICES OF THOMAS J. HALL

26 
27 THOMAS J. HALL, ESQ.
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Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

State of Nevada
Department of Conservation and Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

DATED this 26th day of March, 2009.

Misti Hale

LIST OF EXHIBITS

- 1
- 2 Exhibit A: Correspondence from Nevada Division of Water
- 3 Resources dated August 29, 2007.
- 4 Exhibit B: Assessor's Parcel Map depicting properties of
- 5 Bentley, Forrester and Hall Ranches.
- 6 Exhibit C: Joint Tenancy Deed recorded January 6, 1986.
- 7 Exhibit D: Water Diversion and Use Agreement.
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EXHIBIT A

EXHIBIT A

JIM GIBBONS
Governor

STATE OF NEVADA

ALLEN BIAGGI
Director

TRACY TAYLOR, P.E.
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

August 29, 2007

RE: Permit 7595 Certificate 1760;
Proof V06340 and V06341; and
Carson River Claim DCR-623

Thomas J. Hall
Hall Ranches, LLC
P.O. Box 2086
Stateline, NV 89449

Dear Mr. Hall:

Please be advised that your *Reports of Conveyance* received on March 4, 2005 are hereby confirmed to update ownership of all or a portion of the Permits, Claims, and Proofs (water rights) in the name of **Hall Ranches, LLC** as listed in the table below. Details of these water rights, including current ownership, can be viewed on our website at water.nv.gov. Click on "Water Rights Database," then "Permit Search."

Permit/Certificate	Diversion Rate (cfs)	Duty (AFA/AFS)	Acres	Remarks
7595 / 1760	0.2381	86.74 AFS	23.81 ac	APN: 1219-14-001-003
Proof V06340	0.2644	88.12 AFA	22.03 ac	Source: Sheridan Creek
Proof V06341	0.2644	88.12 AFA	22.03 ac	Source: Stutler Canyon Creek
DCR-623	Decreed	Decreed	1.05 ac	via Park & Bull slough

Also be advised that according to NRS 533.386 (2.), this confirmation of your Report of Conveyance does not guarantee that a) the water right is in good standing with the office of the State Engineer; or b) the amount of water referenced in the notice or in the report of conveyance is the actual amount of water that a person is entitled to use.

This confirmation reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation. The owner is responsible for notifying the State Engineer's office of any change of address in writing. If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary E. Taitano".

Mary E. Taitano
Engineering Technician III

ME1/b

cc: Thomas J. Hall, Esq., Law Offices of Thomas J. Hall
Garry Stone, Federal Water Master
Marty Kaiser, Bureau of Reclamation, US Department of the Interior
Carson Water Subconservancy District

<div style="display: flex; justify-content: space-between;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">T E M</div> <div> <p style="margin: 0;">State of Nevada</p> <h2 style="margin: 0;">REPORT OF CONVEYANCE</h2> <p style="margin: 0;">of a water right to</p> <p style="margin: 0;">Department of Conservation and Natural Resources, Division of Water Resources, Office of the State Engineer</p> </div> <div style="text-align: right;">Sep-02</div> </div>																							
1	APPLICATION/ PERMIT No. _____ PROOF, or CLAIM No.: <u>W06340</u> STATUS: <u>Proof</u> USE: <u>Irr.</u>																						
2	CURRENT HOLDER(S) SHOWN BY THE STATE ENGINEER: <u>Donald T. Hall and Peggy T. Hall, husband and wife as Joint Tenants</u> <small>If any item requires additional space, please use Item 13 Remarks, or attach 8 1/2" X 11" sheets referencing appropriate item number.</small>																						
3	NEW HOLDER(S) or BENEFICIARY(S): <u>Hall Ranches, LLC</u> ADDRESS: <u>Post Office Box 2086</u> CITY: <u>Reno Stateline</u> STATE: <u>Nevada</u> ZIP CODE: <u>89449</u> PHONE: <u>775-588-3690</u>																						
4	<table border="0" style="width: 100%;"> <tr> <td colspan="2">INVENTORY DOCUMENTS BY CATEGORY AND NUMBER OF EACH IN CHAIN OF TITLE. See Guidelines Page 2</td> </tr> <tr> <td>DEED(S)..... <u>12</u></td> <td>CORRECTION DEED(S)..... <u>1</u></td> </tr> <tr> <td>DEED(S) OF TRUST..... <u> </u></td> <td>RECONVEYANCE..... <u> </u></td> </tr> <tr> <td>NOTICE(S) OF PLEDGE..... <u> </u></td> <td>MAP(S) at no charge..... <u> </u></td> </tr> <tr> <td>DEATH CERTIFICATES..... <u> </u></td> <td>AFF OF ID at no charge..... <u> </u></td> </tr> <tr> <td>DECREE(S) OF DISTR..... <u> </u></td> <td>OTHER: <u>Boundary Line Adjustment</u></td> </tr> </table> <table border="0" style="width: 100%; margin-top: 5px;"> <tr> <td colspan="2">OTHER: _____</td> </tr> <tr> <td>TOTAL NUMBER OF SS DOCUMENTS = ></td> <td><u>13</u></td> </tr> <tr> <td>TOTAL # X \$10 each =</td> <td><u>\$ 130 .00</u></td> </tr> <tr> <td>Report filing fee = \$25.00</td> <td><u>\$ 25 .00</u></td> </tr> <tr> <td>TOTAL FEES SUBMITTED*</td> <td><u>\$ 155 .00</u></td> </tr> </table>	INVENTORY DOCUMENTS BY CATEGORY AND NUMBER OF EACH IN CHAIN OF TITLE. See Guidelines Page 2		DEED(S)..... <u>12</u>	CORRECTION DEED(S)..... <u>1</u>	DEED(S) OF TRUST..... <u> </u>	RECONVEYANCE..... <u> </u>	NOTICE(S) OF PLEDGE..... <u> </u>	MAP(S) at no charge..... <u> </u>	DEATH CERTIFICATES..... <u> </u>	AFF OF ID at no charge..... <u> </u>	DECREE(S) OF DISTR..... <u> </u>	OTHER: <u>Boundary Line Adjustment</u>	OTHER: _____		TOTAL NUMBER OF SS DOCUMENTS = >	<u>13</u>	TOTAL # X \$10 each =	<u>\$ 130 .00</u>	Report filing fee = \$25.00	<u>\$ 25 .00</u>	TOTAL FEES SUBMITTED*	<u>\$ 155 .00</u>
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5	*ONE, ONE-TIME \$25 FILING FEE MUST ACCOMPANY THESE REPORT(S) +\$10 PER CONVEYANCE DOCUMENT LISTED ABOVE.																						
6	<p>This REPORT requires an ABSTRACT OF TITLE listing the above documents in chronological order, from the current holder(s) of record (ITEM 2) with the Division of Water Resources, Office of the State Engineer, to the proposed, new holder(s) of record (ITEM 3). Document(s) must be recorded in the Office(s) of the respective County Recorder(s).</p> <p>If the legal description on any deed(s) refer(s) to a subdivision lot or parcel or assessor's parcel number, or lists any deviation(s) different than the place of use in a Quarter/Quarter/Section/Township/Range format, a copy of the map referred to in said deed(s) is required. Copies of maps should be 8 1/2" x 11" or 11" x 17". Please refer to Guidelines sheet for details.</p>																						
7	LIST SUPPLEMENTAL RIGHTS: _____																						
8	COUNTY: POINT OF DIVERSION: <u>Douglas</u> COUNTY: PLACE(S) OF USE: <u>Douglas</u>																						
9	PLACE(S) OF USE: Qtr. _____ Qtr. _____ Sec. _____ TWSHP _____ RANGE _____ APN: <u>19-212-42</u>																						
10	AMOUNT (DUTIES) TO BE ASSIGNED: _____ CFS _____ ACRE-FEET or MGA <u>88.12</u> ACRES or UNITS																						
11	DOES THE CURRENT HOLDER INTEND TO RETAIN ANY PORTION OF THE WATER RIGHT? YES _____ NO <u>X</u>																						
12	IS AN APPLICATION TO CHANGE THE P.O.D, P.O.U., OR M.O.U. OF THIS RIGHT TO BE FILED? YES _____ NO <u>X</u>																						
13	IF AN APPLICATION TO CHANGE THE P.O.D, P.O.U., OR M.O.U. IS ALREADY FILED, INDICATE THE NUMBER: _____																						
14	List any other water rights relating to this Report of Conveyance that has been filed using this same abstract and chain of title. <u>Permit 7595 filed with the Division on March 4, 2005</u>																						
15	Additional Space/Remarks: <u>This vested right has been granted, through the supporting chain of title, to Hall Ranches, LLC</u>																						
16	<p>"I swear, under penalty of perjury, that this represents a complete and thorough search of the records of the county recorder of each county in which the water is placed to beneficial use or diverted from its natural source and the records on file in the office of the state engineer."</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>SUBSCRIBED AND SWORN TO</p> <p>BEFORE ME THIS <u>18th</u> DAY OF</p> <p><u>Mo. September</u> Yr. <u>2006</u></p> <p><i>Sharon M. Knudson</i> Notary Signature Required</p> <p>NOTARY PUBLIC IN AND FOR THE</p> <p>COUNTY OF <u>Washoe</u></p> <p>STATE OF <u>Nevada</u></p> <p>MY COMMISSION EXPIRE <u>November 22, 2006</u></p> </div> <div style="width: 50%;"> <p>SIGNATURE: <i>Thomas J. Hall</i></p> <p>PRINT NAME: <u>Thomas J. Hall, Esq.</u></p> <p>MAILING ADDRESS: <u>Post Office Box 3948</u></p> <p>FIRM NAME: <u>Law Offices of Thomas J. Hall</u></p> <p>CITY: <u>Reno</u> STATE: <u>Nevada</u> ZIP CODE: <u>89505</u></p> <p>PHONE: <u>775-348-7011</u></p> <div style="display: flex; align-items: center;"> <div style="margin-left: 10px;"> <p>SHARON M. KNUDSON</p> <p>Notary Public - State of Nevada</p> <p>Appointment Recorded in Washoe County</p> <p>No: 03-79349-2 - Expires November 22, 2006</p> </div> </div> <p>OWNER?: _____</p> <p>AGENT?: <u>X</u></p> </div> </div>																						

FOR OFFICE USE ONLY

ITEM		REVIEW BY / DATE	FEE RECORDS
1	Previous reports/submittals pending	-	Receipt No.(s) _____
2	Current holder(s) verified	-	Date of Receipt _____
3	New holder(s) information complete	-	
4	Inventory verified. Fees correct.	-	Receipt No.(s) _____
5	Technical review	-	Date of Receipt _____
6	Abstract / Chain of Title	-	
7	Supplemental rights recognized	-	\$\$ This R.O.C. _____
8	Counties compared POD/POU	-	
9	Place of Use determinable	-	Original Receipt(s) Located
10	Duties determined.	-	In File No. _____
11	Appurtenancy / portions / percentages	-	
12	Related rights by deeds and abstract	-	Deeds/Docs Filed in
13	Remarks reviewed	-	File No. _____
14	Notary/SS legible and logical	-	_____

[illegible]

**RETURNED for
CORRECTION to:**

DATE: BY:

Remarks: _____ DUE DATE: _____

**CORRECTION
RECEIVED:**

DATE: BY:

**CONFIRMED
REPORT:**

DATE: BY:

Remarks:

STATE ENGINEERS OFFICE

2006 SEP 22 PM 1:35

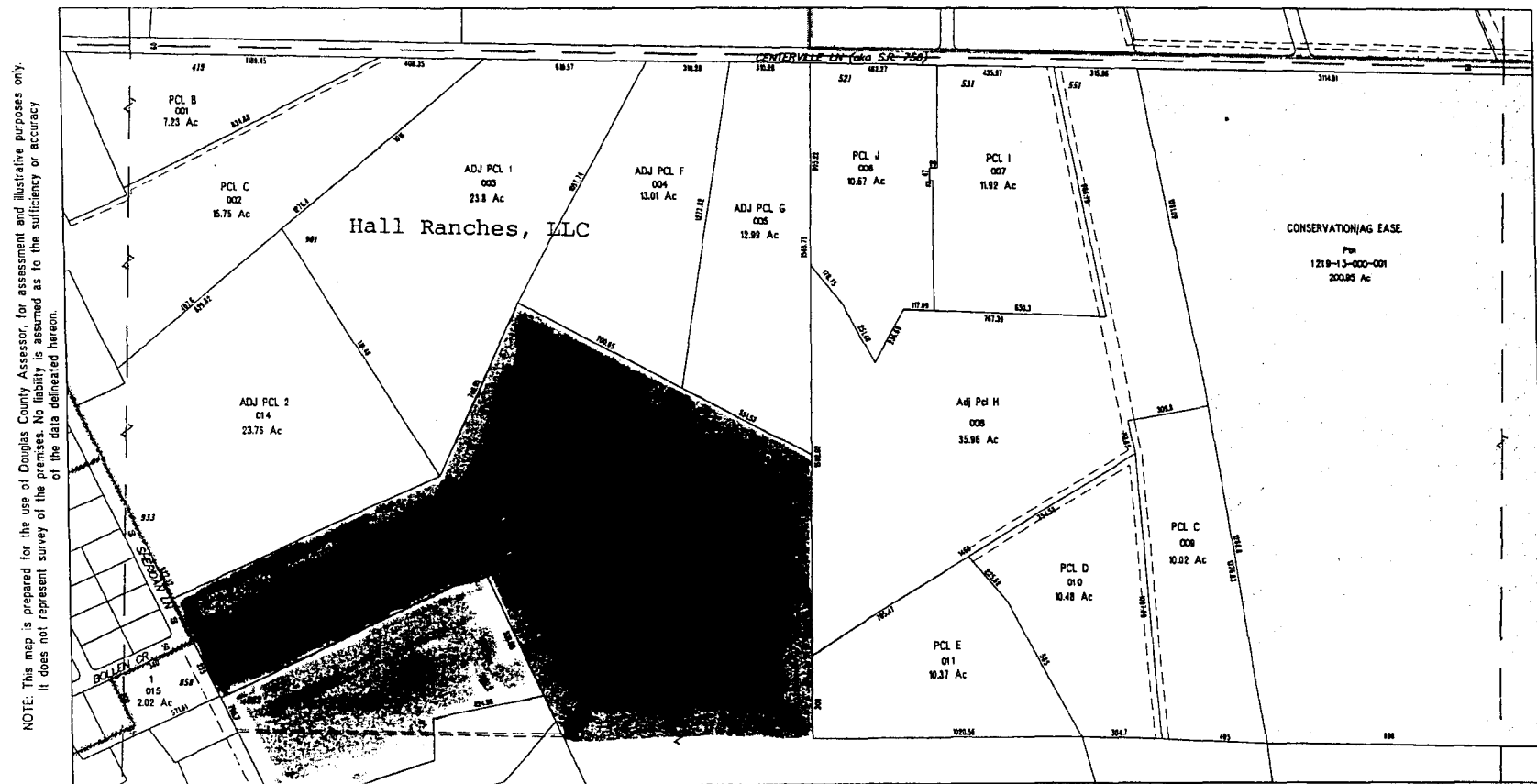
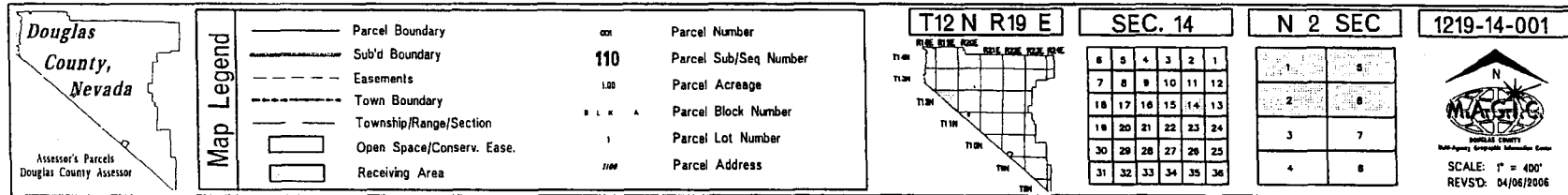
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EXHIBIT B

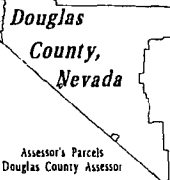
EXHIBIT B

Yellow = Hall Ranches, LLC's property

Green = Bentley property



Green = Bentley property



Douglas County, Nevada
Assessor's Parcels
Douglas County Assessor

Map Legend

- Parcel Boundary
- Sub'd Boundary
- Easements - See Recorded Documents
- Town Boundary
- Township/Range/Section
- Open Space/Conserv. Ease.
- Receiving Area


110

BLK A

1

1100

T12 N R19 E




SEC. 14

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

S 2 SEC

1	5
2	6
3	7
4	8

1219-14-002



SCALE: 1" = 400'
REV'D: 10/09/2008

NOTE: This map is prepared for the use of Douglas County Assessor, for assessment and illustrative purposes only. It does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.

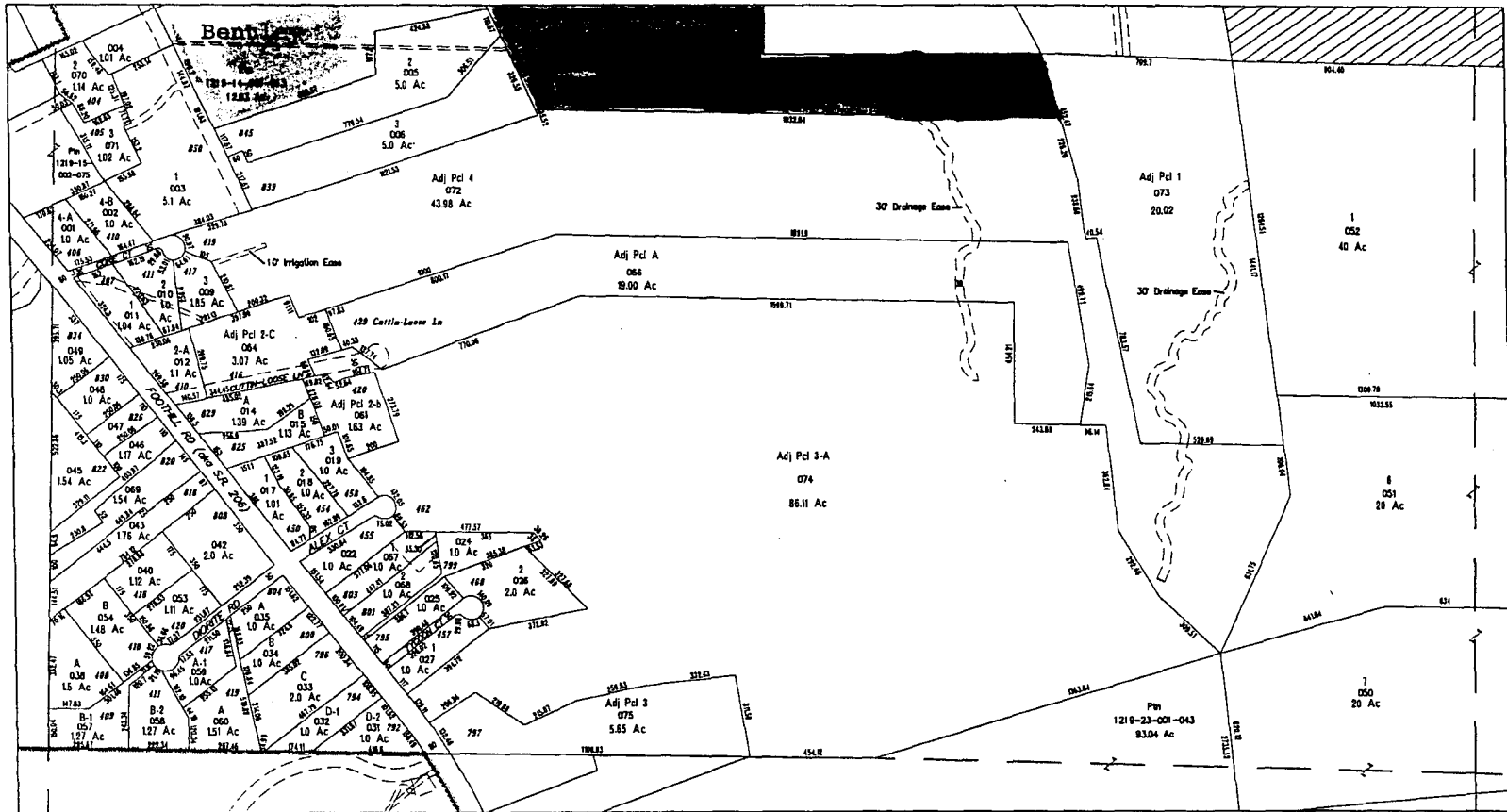


EXHIBIT C

JOINT TENANCY DEED

ORDER NO.: 103935

THIS INDENTURE WITNESSETH: That NANCY ROLPH WELCH, a married woman as her
sole and separate property dealing with her undivided 1/2 interest

in consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
 Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife

as joint tenants with right of survivorship, and not as tenants in common, and to the heirs and assigns of such Grantee forever, all that
 real property situated in the unincorporated area County of Douglas

State of Nevada, bounded and described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED "EXHIBIT A" CONSISTING OF
 SEE ATTACHED EXHIBIT "B" FOR RECITAL.

RESERVING UNTO THE GRANTOR herein all water rights appurtenant to the
 herein described real property.

This Deed creates a boundaryline adjustment between the property described
 herein and adjacent property to the south of this parcel, and does not
 create any new parcel.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof, excepting all water rights

Witness _____ hand _____ this _____ day of _____, 19 _____.

STATE OF NEVADA

COUNTY OF Washoe

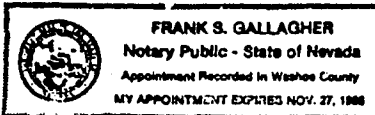
SS

Nancy Rolph Welch
 NANCY ROLPH WELCH

On November 20, 1985
 personally appeared before me, a Notary Public,
Nancy Rolph Welch

who acknowledged that she executed
 the above instrument.

Frank S. Gallagher
 Notary Public



The grantor(s) declare(s):
 Documentary transfer tax is \$ 258.75
 () computed on full value of property conveyed, or
 () computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

GRANTEE
P.O. Box 6808
Minden, NV 89423

WHEN RECORDED MAIL TO:

FOR RECORDER'S USE

SHERRILL
 ATTORNEY AT LAW
 1000 W. WYOMING
 SPARKS, NV 89411
 (702) 735-1111

129025
 BOOK 186 PAGE 214

LEGAL DESCRIPTION

PARCEL ONE:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56 feet; thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

EXHIBIT "B"

RECITAL


GRANTOR makes no warranty, expressed or implied, as to the following:

1. The legal existence of any or all of those certain parcels as shown on that certain Record of Survey for Run Around Ranch, recorded March 7, 1973, of Official Records of Douglas County, Nevada, as Document No. 64581.
2. The conformity to any zoning and/or land division ordinances of said parcels of the aforementioned Record of Survey.
3. The marketability of said parcels of the aforementioned Record of Survey.
4. The ability to pass the appropriate percolation tests for the purpose of installation of a sewer system on any or all of said parcels of the aforementioned Record of Survey.

GRANTEES join in the execution of this instrument to acknowledge their approval and consent of the above recital.

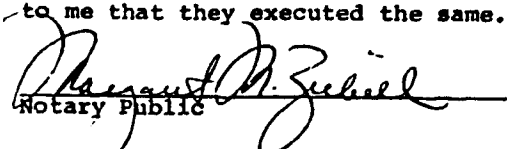
GRANTEES:

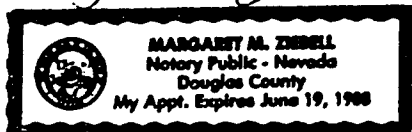

GERALD F. WHITMIRE


PAMELA F. J. WHITMIRE

State of Nevada
County of Douglas

On January 3, 1986, before me, a Notary Public, in and for the County of Douglas, State of Nevada, personally appeared GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, known to me to be persons whose names are subscribed above and acknowledged to me that they executed the same.


Notary Public



REQUESTED BY
DOUGLAS COUNTY TITLE
IN OFFICE RECORDS OF
DOUGLAS COUNTY, NEVADA

'86 JAN -6 A9:59

SUZANNE L. BUREAU
RECORDED

3700 PAID 74 DEPUTY

129025

BOOK 186 PAGE 216

JOINT TENANCY DEED

ORDER NO.: 103235

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, an unmarried woman dealing
with her undivided 1/2 interest

In consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
 Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife

as joint tenants with right of survivorship, and not as tenants in common, and to the heirs and assigns of such Grantee forever, all that
 real property situated in the unincorporated County of Douglas

State of Nevada, bounded and described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED "EXHIBIT A" CONSISTING OF

SEE ATTACHED EXHIBIT "B" FOR RECITAL.

RESERVING UNTO the Grantor herein all water rights appurtenant to
 the herein described real property.
 This Deed creates a boundaryline adjustment between the property described
 herein and adjacent property to the south of this parcel, and does not
 create any new parcel.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof, excepting all water rights.

Witness my hand this 15th day of November, 19 85.

STATE OF NEVADA

COUNTY OF Washoe

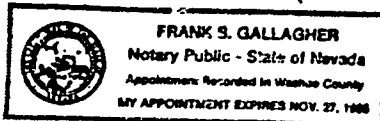
SS

June Irene Rolph
 JUNE IRENE ROLPH

On November 12, 1985
 personally appeared before me, a Notary Public,

who acknowledged that he executed
 the above instrument.

Notary Public



The grantor(s) declare(s):

Documentary transfer tax is \$ 288.75
 (☒) computed on full value of property conveyed, or
 () computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

Grantor
P.O. Box 2808
Winlock, NV 89423

WHEN RECORDED MAIL TO:

FOR RECORDER'S USE

SHERRILL & SUTELLE
 ATTORNEYS AT LAW
 LAS VEGAS, NEVADA
 702/253-1111

129026
 BOOK 186 PAGE 217

PARCEL ONE:

LEGAL DESCRIPTION

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South $00^{\circ}08'39''$ West, 33.00 feet, to the POINT OF BEGINNING, thence South $00^{\circ}00'34''$ West, 805.22 feet; thence South $42^{\circ}31'00''$ East, 178.75 feet; thence South $27^{\circ}26'00''$ East, 251.48 feet; thence North $28^{\circ}02'20''$ East, 236.69 feet; thence South $88^{\circ}40'00''$ East, 767.39 feet; thence North $11^{\circ}30'00''$ West, 986.79 feet; thence South $89^{\circ}52'00''$ East, 315.96 feet; thence South $11^{\circ}37'30''$ East, 1281.09 feet; thence South $09^{\circ}55'53''$ West, 1376.87 feet; thence North $89^{\circ}52'46''$ West, 1730.26 feet; thence North $00^{\circ}00'34''$ East, 543.00 feet; thence North $72^{\circ}07'14''$ West, 1481.17 feet; thence South $64^{\circ}25'38''$ West, 1126.86 feet; thence North $25^{\circ}39'21''$ West, 826.95 feet; thence North $64^{\circ}20'39''$ East, 200.06 feet; thence North $25^{\circ}30'21''$ West, 63.00 feet; thence North $48^{\circ}55'15''$ East, 1846.02 feet; thence South $89^{\circ}52'00''$ East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South $00^{\circ}08'39''$ West, 33.00 feet, thence South $00^{\circ}00'34''$ West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South $00^{\circ}00'34''$ West, 543.00 feet; thence South $89^{\circ}52'46''$ East, 1020.56 feet; thence South $15^{\circ}47'16''$ East, 226.21 feet; thence North $89^{\circ}52'46''$ West, 1932.04 feet; thence North $24^{\circ}45'26''$ West, 923.33 feet; thence South $64^{\circ}25'28''$ West, 1120.70 feet; thence North $25^{\circ}34'38''$ West, 231.66 feet; thence North $25^{\circ}39'21''$ West, 181.34 feet; thence North $64^{\circ}25'38''$ East, 1126.86 feet; thence South $72^{\circ}07'14''$ East, 1481.17 feet to the POINT OF BEGINNING.

129026

Exhibit "B"

RECITAL

GRANTOR makes no warranty, expressed or implied, as to the following:

1. The legal existence of any or all of those certain parcels as shown on that certain Record of Survey for Run Around Ranch, recorded March 7, 1973, of Official Records of Douglas County, Nevada, as Document No. 64581.
2. The conformity to any zoning and/or land division ordinances of said parcels of the aforementioned Record of Survey.
3. The marketability of said parcels of the aforementioned Record of Survey.
4. The ability to pass the appropriate percolation tests for the purpose of installation of a sewer system on any or all of said parcels of the aforementioned Record of Survey.

GRANTEES join in the execution of this instrument to acknowledge their approval and consent of the above recital.

GRANTEES:

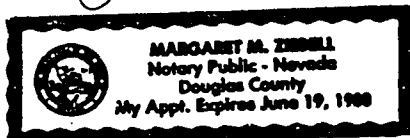
Gerald F. Whitmire
GERALD F. WHITMIRE

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

State of Nevada
County of Douglas

On January 3, 1986, before me, a Notary Public, in and for the County of Douglas, State of Nevada, personally appeared GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, known to me to be persons whose names are subscribed above and acknowledged to me that they executed the same.

Margaret M. Zebell
Notary Public



REQUESTED BY
DOUGLAS COUNTY TITLE
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

'86 JAN -6 10:00

SUZANNE E. AUDREAU
RECORDER

\$ 7.00 PAID *JL* DEPUTY

129026
BOOK 186 PAGE 219

EXHIBIT D

12-

P.O. Box 1511
Sheridan, Wyo.
89423

WATER DIVERSION AND USE AGREEMENT .

THIS AGREEMENT is entered into by and between JUNE IRENE BARTLETT, who took title as June Irene Rolph, NANCY ROLPH WELCH, GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife as joint tenants, hereafter referred to as "Grantors" and JOSEPH S. LODATO, hereafter referred to as "Grantee", based upon the following facts:

1. Grantors are the owners of real property located in Douglas County, Nevada, as well as the owners of water rights which are appurtenant to, certificated or adjudicated to the benefit of the property owned by them in Douglas County, Nevada.
2. Grantee is the owner of real property located in Douglas County, Nevada, which was purchased heretofore from Grantors.
3. Grantors own and enjoy the right to use waters from Sheridan Creek.
4. There are no downstream users of water from these creeks, after this water is used by Grantors.
5. Grantee desires to divert some or all of the water from Sheridan Creek, onto his property, to be used in a non-consumptive manner to maintain water levels in ponds on Grantee's property, and thereafter to cause the water to be diverted back to the property of Grantors for irrigation purposes.

6. Grantors have agreed to such an arrangement, on the terms and conditions which follow.

THEREFORE, based upon the recital of facts set forth above, which are incorporated in the body of this agreement by reference, and the covenants and conditions which follow hereinafter, the parties do agree as follows:

A. For valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors do hereby give and grant to Grantee, as a covenant running to the benefit of the land described in Exhibit "A" attached hereto, the right to divert one hundred percent (100%) of the water from Sheridan Creek, onto the Exhibit "A" property, in perpetuity.

B. This grant is specifically made on the condition that the water will be used by Grantee in a non-consumptive fashion, to maintain water levels in a series of streams and ponds on the Exhibit "A" property, after which time it will be re-diverted to the irrigation ditches of Grantors.

C. Grantors are granted the right, upon reasonable notice, to have access to the Exhibit "A" property to ensure that the limitations set forth herein regarding use are being adhered to by Grantee.

D. Grantee is hereby given the right of access to other property of Grantors, in order to ensure that the water may be diverted to Grantee's property.

E. This grant of right to divert and use water includes the right of Grantee to divert the Sheridan Creek water from the natural creekbed or water course on the west side of Foothill Road and in an easement granted pursuant to Exhibit "B" which is attached hereto, and to return to the natural water course on property owned by Grantee just east of that 50-foot roadway and utility easement shown on Exhibit "C" which is attached hereto and incorporated herein by reference.

F. This promise to permit the use and diversion of water is intended to be and is made by Grantors to be a covenant running with the land, and the benefits thereof may be enjoyed by the heirs and assigns of Grantee, and subsequent owners of the Exhibit "A" property.

G. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

H. This agreement may be terminated by Grantors in the event a Court of competent jurisdiction determines that the Grantee has been violating the terms hereof, to the detriment of Grantors.

I. The interpretation and enforceability of this agreement shall be determined by the laws of the State of Nevada, and in the event a law suit is brought to enforce or

interpret this agreement, the prevailing party shall be awarded reasonable attorney's fees against the party not prevailing.

IN WITNESS WHEREOF, the parties have set their hands the day and year set forth below.

Date: _____

JUNE IRENE BARTLETT, who took
title as June Irene Rolph

Date: _____

NANCY ROLPH WELCH

Date: 6/9/86

Gerald F. Whitmire
GERALD F. WHITMIRE

Date: 6-9-86

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

Date: _____

Joseph S. Lodato
JOSEPH S. LODATO

STATE OF _____)
COUNTY OF _____) ss.

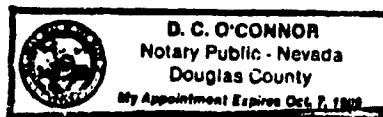
On _____, 1986, personally appeared before me, a notary public, JUNE IRENE BARTLETT, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

Notary Public

STATE OF Nevada)
COUNTY OF Douglas) ss.

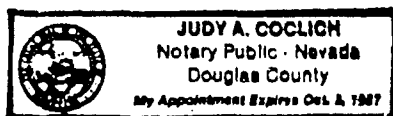
On June 9, 1986, personally appeared before me, a notary public, PAMELA F. J. WHITMIRE, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

D.C. O'Connor
Notary Public

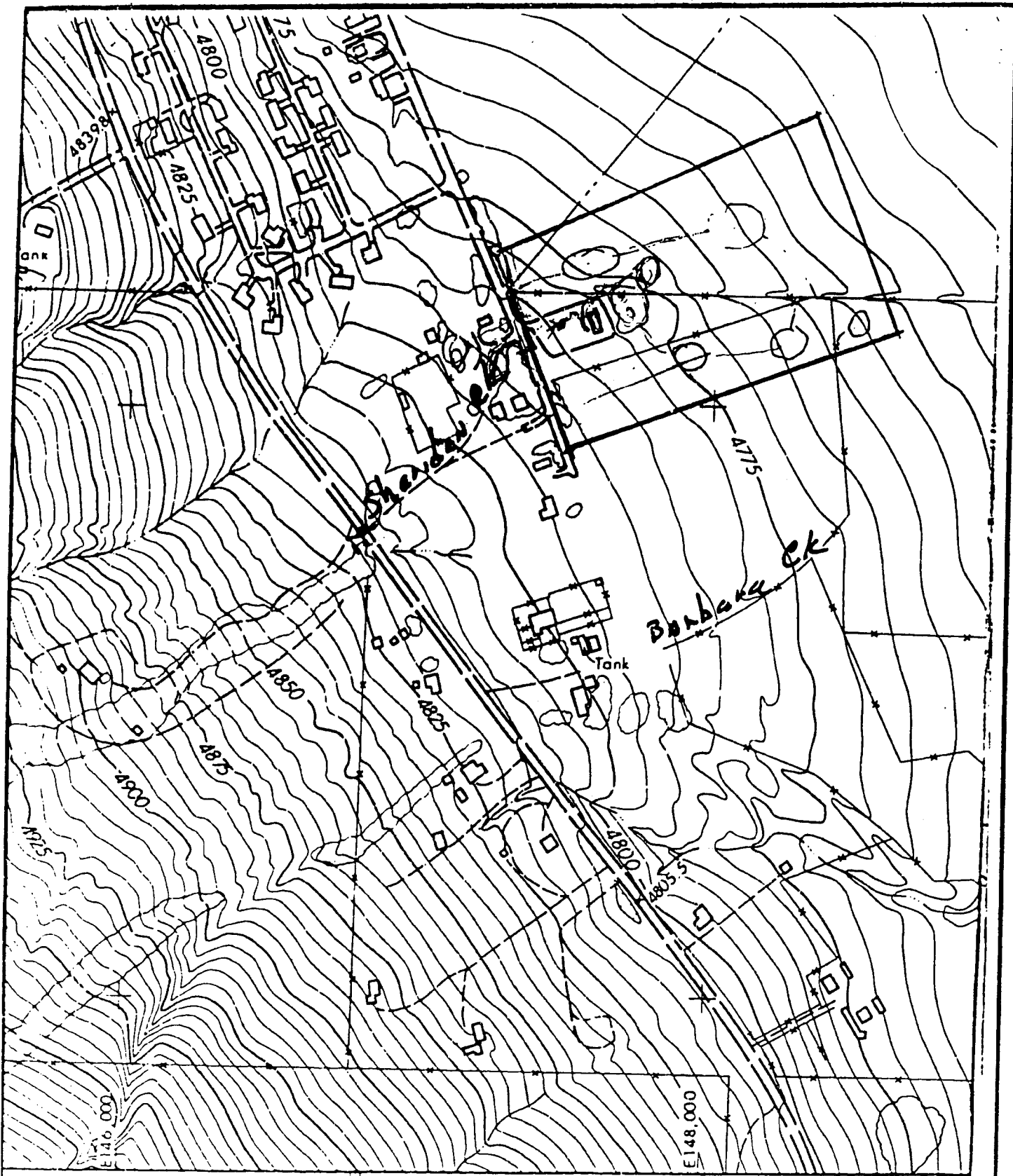


STATE OF Nevada)
COUNTY OF Douglas) ss.

On June 9th, 1986, personally appeared before me, a notary public, JOSEPH S. LODATO, personally known to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for the purposes therein stated.



Judy A. Coclich
Notary Public



PROJECT

Scale: 1" = 400'
 Contour Interval: 5'
 Date of Photography: 6-1-77

152147

3871452731

EXHIBIT "A"

4
A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

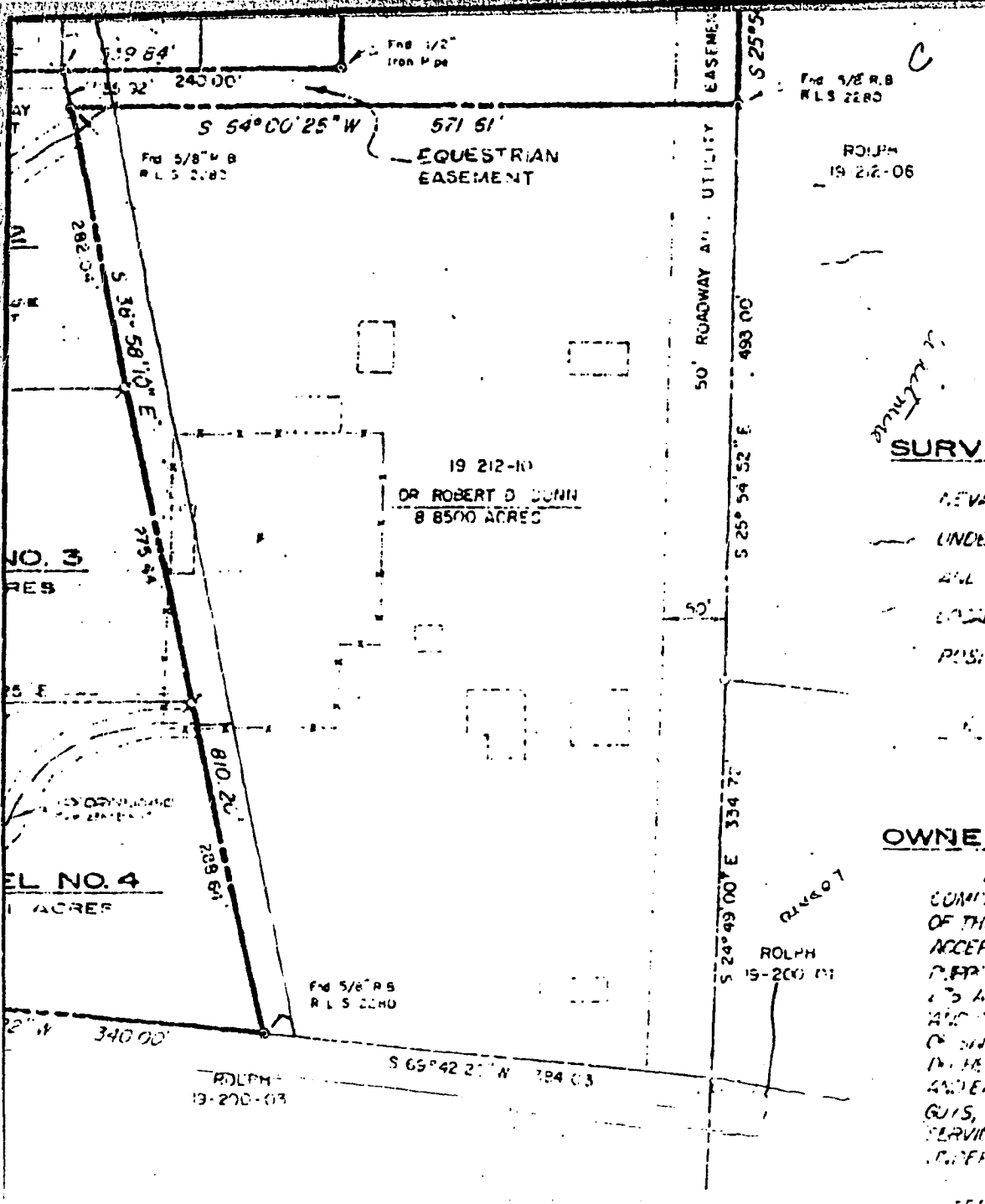
EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.&M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or shortened to meet the called beginning.

152147

BOOK 387 PAGE 2732



SURV

OWNE

COMMISSIONER OF THE REVENUE
ACCEPTED FOR RECORD
1920-03
AND
1920-03
AND
GUIS,
SERVING
OFFICE

STATE OF NEVADA

POWER OF ATTORNEY
TO ME

REQUESTED BY
Joseph J. Smith
AN OFFICIAL RECORDS OF
DOING AND CO. NEVADA

87 MAR 27 A9 52

SUZANNE BLANCHARD
RECORDER
\$12.00 PAID *SP* DEPUTY

152147

BOOK 387 PAGE 2733

RECEIVED

MAR 31 2009

FILED

Case No.: 08-CV-0363

DOUGLAS COUNTY
DISTRICT COURT CLERK

2009 MAR 31 PM 12:10

Dept. No.: I

TED THРАН
CLERK

This document does not contain personal information of any person.

~~BA. WILFERT~~ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative Rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (aka Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

**RESPONSE TO REPLY TO EXCEPTIONS
BY BENTLEY TO FINAL ORDER OF
DETERMINATION**

(Re: Proofs V-06305, V-06306, V-06307
and V-06308)

**Hearing Date: April 1, 2009
Time: 9:00 a.m.**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby respond to the *Reply to Exceptions* ("Reply") filed by DONALD S. FORRESTER and KRISTINA M. FORRESTER ("Forrester") and HALL RANCHES, LLC ("Hall") as follows.

I.

INTRODUCTION

Bentley filed its *Notice of Exceptions and Exceptions to Final Order of Determination* on 10 December 2008 ("Notice of Exceptions") and its *Amended Notice of Exceptions and Exceptions to Final Order of Determination* on 25 March 2009 ("Amended Notice of Exceptions"). Bentley's Notice of Exceptions and Amended Notice of Exceptions raise a number of issues, only one of which involves the 9 June 1986 Water Diversion and Use Agreement provided as Exhibit "7" to Bentley's Amended Notice of Exceptions ("Diversion Agreement") whereby Bentley claims the right to divert the waters of Sheridan Creek through a series of

1 streams and ponds to maintain the levels of Stock and Wildlife Ponds, and then back to the ditches
2 for consumption by downstream users.

3 The *Reply* filed by Forrester and Hall only addresses the Diversion Agreement.
4 Presumably, they have acquiesced to the other points raised in Bentley's Notice of Exceptions and
5 Amended Notice of Exceptions, some of which would benefit all users of the waters from the
6 North Branch of Sheridan Creek, Forrester and Hall included.

7 Forrester and Hall's argument on the Diversion Agreement fails of its own weight. Hall
8 and Forrester admit that they are downstream of Bentley's ponds and that the water returns to the
9 ditch from Bentley's ponds pursuant to the Diversion Agreement. They claim that Bentley's
10 predecessors-in-interest, Gerald F. Whitmire and Pamela F.J. Whitmire (collectively "Whitmire")
11 and Joseph Lodato never acquired water rights from June Irene Rolph and Nancy Rolph Welch
12 (collectively, "Rolph"); and therefore, the Diversion Agreement that is signed by Whitmire is
13 ineffective without Rolph's signature. But Hall and Forrester have the chain of title wrong –
14 Bentley traces its title from Theadore Weber and Katherine Weber (collectively, the "Webers"), to
15 Lodato, and then directly to Rolph. The title to the Bentley parcel does not go through Whitmire.

16 In contrast, Forrester and Hall trace their title through Whitmire. Consequently, if
17 Whitmire did not acquire water rights, then Hall and Forrester have no claim to water rights. In
18 fact, Hall and Forrester simply failed to provide a copy of the subsequent water rights deed from
19 Rolph to Whitmire with their *Reply*. In other words, Rolph was or would soon be out of the chain
20 of title when the Diversion Agreement was executed. Consequently, there was no need for Rolph
21 to sign. A copy of the 9 November 1987 water rights deed from Rolph to Whitmire is provided
22 herewith as *Exhibit 14*.

23 There is no justifiable reason for Hall and Forrester to try and overturn the Diversion
24 Agreement that has been in effect since 1986. The Diversion Agreement was in place before Hall
25 and Forrester acquired their properties in 1987, and they acquired their properties subject thereto.
26 If Hall and Forrester had any reason to think the document was ineffective, they should have tried
27 to quiet title back then. Hall and Forrester's objection has not only grown stale with the passage
28 of time, but Bentley's rights have been adjudicated. The Diversion Agreement is referenced in the

1 Proofs of Appropriation that Bentley's predecessor in interest, Weber, filed in 1994 as part of this
2 adjudication. Those proofs specifically reference the Diversion Agreement and have been upheld
3 and affirmed in the *Preliminary Order of Determination* and the *Final Order of Determination*
4 with only minor discrepancies as to acreage as identified in Bentley's Amended Notice of
5 Exceptions. The diversions were in place when Bentley purchased its property in 2006, and it
6 purchased the property in reliance on its right to continue the diversions.

7 Certainly, Hall and Forrester should bear the burden of proof in a quiet title action if they
8 expect to overturn the established status quo. Bentley could then assert numerous affirmative
9 defenses, including waiver, estoppel and laches stemming from the twenty-three (23) year delay in
10 bringing such contest, and the absence or death of essential witnesses, such as Lodato, Whitmire
11 and Rolph. Bentley would also assert any applicable counterclaims pertaining to adverse or
12 prescriptive rights.

13 It should also be noted that Hall and Forrester provided their Reply to Bentley's counsel on
14 the afternoon of Friday, 27 March 2009, notwithstanding that Bentley's Notice of Exceptions was
15 filed last December. Hall and Forrester essentially provided less than three (3) days to respond to
16 their efforts to overturn the established status quo and complete three (3) chains of title.

17 The following dates and documents are relevant to this Court's inquiry, and provide
18 sufficient information for this Court to deny Hall and Forrester's *Reply* outright.

19 1. 18 December 1984 – Grant, Bargain, Sale Deed from June Irene Rolph to
20 Joseph S. Lodato (See *Exhibit 8* attached hereto);¹

21 2. 18 December 1984 – Grant Deed to Adjust Boundary Line – June Irene Rolph and
22 Nancy Rolph Welch to Joseph S. Lodato (See *Exhibit 9* attached hereto);

23 3. 6 January 1986 – Joint Tenancy Deeds (Water Rights Reserved) from
24 Nancy Rolph Welch and June Irene Rolph to Gerald F. Whitmire and Pamela F. J. Whitmire (See
25 *Reply Exhibit "C"*)²;

26
27 ¹ June Irene Rolph did not reserve any water rights in this grant.

28 ² The Joint Tenancy Deeds describe two (2) parcels. Parcel 1 presumably includes the Forrester and Hall
Ranches. The Rolphs reserved water rights from this deed.

1 4. 9 June 1986 – Water Diversion Agreement (Gerald and Pamela Whitmire to
2 Joseph S. Lodato) (see Amended Notice of Exceptions, Exhibit “7”);

3 5. 6 August 1986 – Water Diversion Agreement (June Rolph Bartlett to
4 Gerald Whitmire; Gerald Whitmire to Joseph S. Lodato (See *Exhibit 10* attached hereto);

5 6. 4 December 1986 – Whitmire Parcel Map (See *Exhibit 11* attached hereto);

6 7. 6 June 1987 – Map of Lodato Parcels (See *Exhibit 12* attached hereto);³

7 8. 30 September 1987 – Joint Tenancy Deed – Gerald F. Whitmire and
8 Pamela F.J. Whitmire to Forrester (See *Exhibit 13* attached hereto);

9 9. 9 November 1987 – Grant, Bargain, Sale Deed (Water Rights) June Irene Rolph
10 and Nancy Rolph Welch to Gerald F. Whitmire and Pamela F.J. Whitmire (See *Exhibit 14*
11 attached hereto);

12 10. 9 November 1987 – Grant, Bargain, Sale Deed Gerald F. Whitmire and
13 Pamela F.J. Whitmire to Donald T. Hall and Peggy Hall (See *Exhibit 15*) attached hereto;

14 11. 26 August 1992 - Joint Tenancy Deed, Joseph S. Lodato to Theodore and
15 Katherine Weber (See *Exhibit 16* attached hereto);

16 12. 16 March 1994 – Weber files Proofs of Appropriation, including:

17 a. Proof of Appropriation of Water for Stock Watering or
18 Wildlife Purposes V-06307. This Proof explains that the purpose is to
19 divert stockwater from Sheridan Creek through ponds located on the
20 property for stockwater purposes as agreed in a series of diversion
21 agreements referenced in the Proof (See Exhibit “5” to Amended Notice
22 of Exceptions).

23 b. Proof of Appropriation of Water for Stock Watering or
24 Wildlife Purposes V-06308. This Proof explains that the purpose is to
25 divert stockwater from Stutler Creek through ponds located on the
26 property for stockwater purposes as agreed in a series of diversion

27 _____
28 ³ This map depicts the Bentley parcel.

1 agreements referenced in the Proof (See Exhibit "6" to Amended Notice
2 of Exceptions).

3 13. 5 May 2006 – Grant, Bargain and Sale Deed, Theodore and Katherine Weber to
4 Bentley (See Exhibit "1" to Amended Notice of Exceptions);

5 14. State of Nevada confirms Bentley's ownership of water rights (See *Exhibit 17*).

6 II. ARGUMENT

7 A. BENTLEY OWNS WATER RIGHTS

8 As demonstrated by the above cited chronology, Bentley's predecessor in interest, Joseph
9 S. Lodato, acquired the real property directly from June Irene Rolph in 1984. There can be no
10 doubt that the water rights were appurtenant to the property and transferred with the grant.
11 See, e.g., NRS 533.040; *Zolezzi v. Jackson*, 72 Nev. 150, 153 (1956) (quoting *Prosole v.*
12 *Steamboat Canal Col*, 37 Nev. 154, 164 (1914)). Also, there can be no doubt about Bentley's
13 right to divert these appurtenant waters.

14 In 1986, Lodato acquired the right to divert Whitmire's water through a series of streams
15 and ponds, and then back to the main ditch as set forth in the Diversion Agreement. Whitmire is
16 the predecessor-in-interest to Hall and Forrester.

17 Hall and Forrester's main objection to the Diversion Agreement seems to be that it was
18 executed on 9 June 1986, before Whitmire acquired the appurtenant water rights and therefore,
19 Whitmire's signature on the Diversion Agreement is insufficient. Whitmire acquired property
20 from Rolph on 6 January 1986; however, Rolph reserved the appurtenant water rights and did not
21 sign the Diversion Agreement⁴. Rolph subsequently conveyed the water rights to Whitmire on
22 9 November 1987. It is noteworthy that this conveyance was made after Whitmire conveyed
23 property to Forrester on 30 September 1987. Therefore, Bentley and Forrester are in the same
24 position – if the Whitmires did not own the water rights when they executed the Diversion
25 Agreement in favor of Lodato, then they had no water rights to convey to Forrester.

26 ///

27
28 ⁴ The reservation was not enforceable, as there is no indication that Rolph ever filed an application to change
the place of use as required by NRS 533.040. The waters therefore remained appurtenant to the Whitmire property,
despite the reservation.

1 In fact, the doctrine of after-acquired title, also known as estoppel by deed, applies to both
2 of Whitmire's grants. See *Lanigir v. Arden*, 82 Nev. 28 (1966). Accordingly, Whitmire's
3 grantees, including Lodato and Forrester, presumably obtained the rights intended by the grants.
4 As the name of the doctrine suggests, the Whitmires, and Forrester and Hall as their privies and
5 successors, are estopped from asserting otherwise.⁵ Certainly, the State of Nevada has confirmed
6 the water rights in favor of Bentley (*Exhibit 17*)⁶.

7 Hall and Forrester's argument also ignores the less formal letter agreement(s) of
8 6 August 1986 (*Exhibit 10*), in which Rolph confirmed Whitmire's right to divert their interest in
9 the water.

10 With this chain of title in mind, it appears that the question Forrester and Hall presented
11 regarding the signatures on the Diversion Agreement should not be seen as a defect, but rather, as
12 part of the complicated history of transfers, parcel maps and water rights. Lodato and Whitmire
13 were obviously satisfied that Whitmire had the rights identified in the Diversion Agreement and
14 they presumably had sound reasons for not obtaining signatures from Rolph. If and to the extent
15 there was any defect in the chain of title when the Diversion Agreement was executed, the chain of
16 title was eventually completed, and Bentley should not have to defend this arrangement
17 twenty-three (23) years after the fact. This is especially true in light of the fact that Mr. Lodato is
18 dead and Bentley purchased its property in 2006, believing that it had the right to continue the
19 existing diversions.

20 B. REBUTTAL TO OTHER ARGUMENTS

21 Hall and Forrester's argument about a new pond is confusing, contradicts the express terms
22 of the Diversion Agreement as set forth in their *Reply*, and rests on conclusory and inflammatory
23 remarks that have no basis in law, fact or the record.

24
25 ⁵ If the doctrine of estoppel by deed/after-acquired title does not apply, then Hall's rights to Sheridan Creek are
26 superior to those of Forrester. In that event, Tom Hall will have to resolve the conflict issue with his client before
proceeding.

27 ⁶ Forrester, Hall and Weber have not even submitted a joint map in support of their Proofs (See Weber's
28 Proofs, attached as exhibits to Bentley's Amended Notice of Exceptions and Forrester's Proof attached hereto as
Exhibit 18). Again, Forrester and Hall cannot deny either Bentley's ownership of Sheridan Creek water rights or the
Weber Proofs which incorporate the Diversion Agreement.

1 Hall and Forrester argue at pages 5-6 of their *Reply* that Bentley's new pond violates the
2 Diversion Agreement. However, Hall and Forrester actually quote the portion of the Diversion
3 Agreement that grants Bentley the right to "divert some or all of the water from Sheridan
4 Creek . . . to maintain water levels in ponds on Grantee's property" Hall and Forrester further
5 quote the portion of the Diversion Agreement that grants Bentley the right to divert the water "in a
6 non-consumptive fashion, to maintain water levels in a series of streams and ponds" A close
7 inspection of the map submitted with the Diversion Agreement reveals that the Lodato property
8 was serviced by six (6) ponds. In fact, there are currently only two (2) ponds on Bentley's
9 property; therefore, it is difficult to see how either of Bentley's ponds can be in violation of the
10 Diversion Agreement.

11 Likewise, Bentley is not consuming the water, as the water is not being used for irrigation
12 or domestic purposes. It is simply being used for Stock Watering or Wildlife Purposes as set forth
13 in the Proofs of Appropriation that have already been accepted in this adjudication. Again, those
14 Proofs of Appropriation specifically refer to the subject Diversion Agreement and indicate that
15 Weber, like Lodato before them and Bentley after them, diverted water through the series of
16 streams and ponds for Stock Watering and Wildlife Purposes.

17 Neither is Bentley storing water. The water simply circulates through the ponds and
18 returns to the ditches. Hall and Forrester's argument that Bentley's pond(s) violate any statute
19 governing water storage is made without an adequate legal and factual basis and should be
20 stricken in its entirety. Certainly, neither the Office of the State Engineer nor any other regulatory
21 agency has noted any licensing violation.

22 Moreover, because all water is returned to the ditches, and Hall and Forrester admit that
23 they are downstream users, they cannot demonstrate that the Diversion Agreement has any
24 negative impact on them.

25 Hall and Forrester's conclusory comments regarding Bentleys' new pond reveals another
26 basis for laches. Hall and Forrester have known about Bentleys' new pond, and the attendant
27 landscaping and construction projects, for months if not longer. Yet, they never sought an
28 injunction, they waited until all construction activities were completed, and then they filed a

1 conclusory *Reply* less than three (3) court days before the hearing.

2 Hall will be a witness to any evidentiary proceedings on the issue of laches, alleged
3 statutory violation and adverse impact and therefore, cannot serve as an advocate on this case
4 pursuant to RPC 3.7.

5 **C. HALL AND FORRESTER'S "REPLY" MUST BE REJECTED AS A**
6 **NON-CONFORMING EXCEPTION**

7 The effect of Hall and Forrester's argument is that this Court should deny Bentley's
8 exception on a finding that Bentley (and its predecessors) never owned water rights from Sheridan
9 Creek. This finding would disregard the confirmation of Bentley's water rights from the State of
10 Nevada (*Exhibit 17*), the Proofs that were submitted by Bentley's predecessors on 16 March 1994
11 as part of this adjudication, and the *Preliminary Order of Determination* and the *Final Order of*
12 *Determination* which affirm the Weber/Bentley proofs for the acreages identified therein, with
13 only the minor discrepancies as noted in Bentley's *Amended Notice of Exceptions*. In other words,
14 the Office of the State Engineer has already determined the ownership of water rights from
15 Sheridan Creek and its tributaries. If and to the extent Forrester and Hall disagree with those
16 findings, they had the affirmative obligation to file an exception. They failed to so within the
17 deadline. They cannot file a brief at the last minute, entitled a *Reply*, when the result they are
18 advocating would essentially reject the Weber/Bentley proofs that have already been determined
19 and accepted and leave Bentley without water rights.

20 **III. CONCLUSION**

21 Hall and Forrester are essentially shortcutting the civil notice processes, and asking this
22 Court to rule that a Diversion Agreement from 1986 is defective because June Irene Rolph and
23 Nancy Rolph Welch did not sign. They make this argument without regard to the status quo over
24 the past twenty-three (23) years, or the fact that Whitmire owned, or shortly thereafter acquired, all
25 of the water rights subject to the Diversion Agreement. If there was ever a need for Rolph to sign,
26 that need was obviated when Rolph executed the water rights deed. A more detailed recitation of
27 the intent of the signatories in 1986 is likely unavailable due to the passage of time and the death
28 of some of the witnesses.

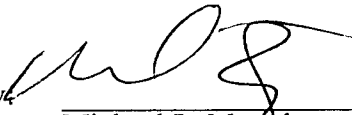
BROOKE · SHAW · ZUMPFT
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

1 If Hall and Forrester still think there is an issue for a civil proceeding, then they should
2 initiate such and offer Bentley the chance to respond and assert affirmative defenses and
3 counterclaims. The trial will involve the chains of title for all three (3) parcels and a history of the
4 actual diversions pursuant to the Diversion Agreement. Bentley will also demand that Hall and
5 Forrester present evidence to support their conclusion that Bentleys' ponds have any adverse
6 impact on the downstream users. Hall and Forrester will presumably have to join all parties who
7 are affected by the Diversion Agreement. Hall will be a primary witness and should not serve as
8 the advocate.

9 Respectfully submitted.

10 DATED this 31st day of March 2009.

11 BROOKE · SHAW · ZUMPFT

12
13 By 
14 Michael L. Matuska
15 State Bar No. 5711
16 BROOKE · SHAW · ZUMPFT
17 1590 4th Street/P.O. Box 2860
18 Minden NV 89423
19 (775) 782-7171
20 (775) 782-3081 (Fax)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT and that on the 31st day of March 2009, I served a true and correct copy of the preceding document entitled **RESPONSE TO REPLY TO EXCEPTIONS BY BENTLEY TO FINAL ORDER OF DETERMINATION** addressed to:

STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada, in the ordinary course of business.

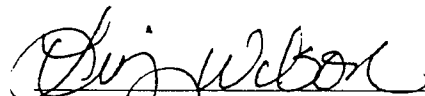
☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to Reno-Carson Messenger Service for delivery to the offices of the addressee.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individual and facsimile numbers indicated.

☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individuals and email addresses indicated.

☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-identified document to the addressee stated above, in the ordinary course of business.

☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**


LIZ WILSON, ALS

DOUGLAS COUNTY

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, a widow

in consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to JOSEPH S. LODATO, an unmarried man

and to the heirs and assigns of such Grantee forever, all that real property situated in the unincorporated County of Douglas, State of Nevada, bounded and described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED "EXHIBIT A" CONSISTING OF ONE PAGE

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

Witness our hand, s this 26th day of October, 19 84.

STATE OF NEVADA

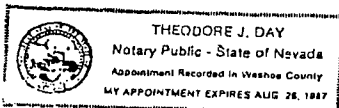
COUNTY OF WASATCH

SS

On OCTOBER 26, 1984 personally appeared before me, a Notary Public, JUNE IRENE ROLPH

who acknowledged that he executed the above instrument.

Theodore J. Day
Notary Public



The grantor(s) declare(s):
Documentary transfer tax is \$ 346.50
xxx computed on full value of property conveyed, or
[] computed on full value less value of liens and encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

Sheerin & O'Reilly
Attorneys at Law
P. O. Box 506
Carson City, Nevada 89701
P. O. Box 1327
Gardnerville, Nevada 89410

ORDER NO. _____
ESCROW NO. 103494

WHEN RECORDED MAIL TO:

Mr. Joseph S. Lodato
P.O. Box 1511
Minden, Nevada 89423

FOR RECORDER'S USE

111381

BOOK 1284 PAGE 1635

DOUGLAS COUNTY

"EXHIBIT A"

That real property located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B. & M., described as follows:

BEGINNING at a property corner from which the one quarter corner on the north boundary of said Section 14 bears North 34°22'20" East, 3571.03 feet; thence North 75°37'51" East, 209.75 feet; thence North 19°22'09" West, 243.75 feet; thence South 70°37'51" West, 236.71 feet; thence South 25°54'52" East, 245.34 feet to the point of beginning.

TOGETHER WITH an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East 728.00 feet, situate in the County of Douglas, State of Nevada.

A.P. 19-212-21

REQUESTED BY
DOUGLAS COUNTY TITLE
IN THE COUNTY OF DOUGLAS

74 DEC 18 P1:54

Subscribed and sworn to before me this 18th day of December 1974

111381

BOOK 1284 PAGE 1636

When recorded mail to:

Mr. Joseph S. Lodato

P.O. Box 1511

Hinden, Nevada

89423

D.T.T.

80.30

GRANT DEED TO ADJUST BOUNDARY LINE

WHEREAS, JOSEPH S. LODATO, an unmarried man is the owner of the following real estate, located in Douglas County, Nevada, described as follows:

That real property located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., described as follows:

BEGINNING at a property corner from which the one quarter corner on the north boundary of said Section 14 bears North 34°22'30" East, 3571.08 feet; thence North 70°37'51" East, 208.75 feet; thence North 19°22'09" West, 243.75 feet; thence South 70°37'51" West, 236.71 feet; thence South 25°54'52" East, 245.34 feet to the point of beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

A.P. 19-212-21

WHEREAS, JUNE IRENE ROLPH, a widow and NANCY ROLPH WELCH, a married woman as her sole and separate property own the following real estate located in Douglas County, Nevada described as follows:

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

PARCEL ONE:

BEGINNING at a point on the southerly line of Centerville Lane, South 0°19'01" East, 20.00 feet from the North one quarter corner of Section 14, T. 12 N., R. 19 E.; thence along the North-South centerline of said Section 14 South 00°19'00" East, a distance of 2615.17 feet to a point; thence South 89°59'19" West, a distance of 1143.15 feet to a point; thence South 70°37'50" West, a distance of 940.94 feet to a point; thence North 25°54'52" West, a distance of 728.00 feet to a point; thence North 25°59'35" West, a distance of 1008.54 feet to a point; thence North 64°00'25" East, a distance of 200.00 feet to a point; thence North 25°59'35" West, a distance of 63.00 feet to a point; thence North 48°38'21" East, a distance of 1844.64 feet to a point; thence North 89°52'00" East, a distance of 1239.85 feet to the point of beginning.

EXCEPTING THEREFROM that certain real property located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., described as follows:

BEGINNING at a property corner from which the one quarter corner on the north boundary of said Section 14 bears North 34°22'30" East, 3571.08 feet; thence North 70°37'51" East, 208.75 feet; thence North 19°22'09" West, 243.75 feet; thence South 70°37'51" West, 236.71 feet; thence South 25°54'52" East, 245.34 feet to the point of beginning.

TOGETHER WITH an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

PARCEL TWO:

Being all that certain piece or parcel of land lying in the South half of Section 14, T. 12 N., R. 19 E., M.D.B.&M., as shown on the official map in Douglas County, Nevada and more particularly described by metes and bounds as follows, to wit:

BEGINNING at a point at the Southwest corner of the parcel, on the South line of said Section 14, said point being further described as bearing East a distance of 2594.80 feet from the Section corner common to Section 14, 15, 22 and 23, T. 12 N., R. 19 E.; thence North 10°17' West, a distance of 526.70 feet to a point; thence North 76°56' West, a distance of 516.00 feet to a point; thence North 45°17' West, a distance of 280 feet to a point; thence West a distance of

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477.00 feet to a point; thence South 51°21' West, a distance of 377.30 feet to a point at the Northwest corner of the John McCormick property, and on the Easterly right of way line of the State Highway; thence North 38°29' West, along the Easterly right of way line of said highway a distance of 1522.00 feet to a point at the Northwest corner of the parcel, which is the Southwest corner of the Wilford Jones property as described in the Deed to said Wilfred D. Jones, et ux, recorded November 26, 1965 in Book 36, Page 164, Official Records; thence North 69°47'40" East 723.95 feet; thence North 24°49' West, 334.72 feet; thence North 70°37'51" East 940.13 feet to the East west centerline of said Section 14; thence North 89°59'19" East along the aforesaid line 2151.00 feet to a point on the Westerly side of the Park Bull Ditch, said point being the Northeast corner of the parcel described in deed to Royal D. Crowell, et ux, recorded December 14, 1961, in Book 9, Page 674, Official Records; thence following along the Westerly side of the ditch, South 15°44' East, a distance of 460.50 feet to a point; thence South 4°32' East, a distance of 745.00 feet to a point; thence South 11°59' 30" East, a distance of 588.00 feet to a point; thence South 31°57'30" East a distance of 292.00 feet to a point; thence South 43°59'30" East, a distance of 309.9 feet to a point at the Southeast corner of the parcel; thence leaving the Westerly side of the ditch and going South 72°37' West, along a fence line a distance of 1360.00 feet to a point on the South line of said Section 14; thence West along the fence and Section line, a distance of 457.20 feet to the point of beginning.

EXCEPTING, HOWEVER, a parcel of land located in the West 1/2 of the Southwest 1/4 of Section 14, T. 12 N., R. 19 E., M.D.B. & M., in Douglas County, Nevada, described as follows:

BEGINNING at a point on the Easterly side of the State Highway (Foothill Road), from which the South west corner of said Section 14, bears S. 32°37'12" W., 1309.04 feet; thence along the Easterly right of way line of said highway

N. 38°39'00" W., 243.30 feet; thence

N. 77°16'40" E., 485.00 feet; thence

S. 20°40'20" E., 173.23 feet; thence

S. 70°35'03" W., 405.33 feet; to the point of beginning.

EXCEPTING ALSO, all that portion lying West of the Easterly line of Old Foothill Road as shown on the Douglas County Assessors Map.

Said excepted portion is referred to as A.P. No. 19-200-03 on said Douglas County Assessors Map.

Portion of A.P. 19-200-01

WHEREAS, JUNE IRENE ROLPH, a widow and NANCY ROLPH WELCH, a married woman as her sole and separate property desire to grant, bargain and sell the following described real property to JOSEPH S. LODATO, which parcel is a part of their real estate described above:

A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B. & M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right of way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West, 958.85 feet; thence South 64°05'08" West, 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 251.00 feet; thence North 70°37'51" East, 236.71 feet; thence South 19°22'09" East, 243.75 feet; thence South 70°37'51" West, 208.75 feet to the Point of Beginning.

RESERVING THEREFROM unto the Grantors an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B. & M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet;

thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.
The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

AND WHEREAS, after the above parcel is deeded so as to adjust the boundaries the parcel then owned by JOSEPH S. LODATO, an unmarried man will be described as follows:

A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.&M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

NOW THEREFORE, in consideration of their mutual agreement for boundary line adjustment, and in consideration of \$10.00, the receipt of which is hereby acknowledged, JUNE IRENE ROLPH, a widow and NANCY ROLPH WELCH, a married woman as her sole and separate property do hereby grant, bargain and convey to JOSEPH S. LODATO, an unmarried man, and to his heirs and assigns forever all that certain real property situate in Douglas County, State of Nevada more particularly described as:

A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right of way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence

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South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

RESERVING THEREFROM unto the Grantors herein an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.48 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining and all reversions, remainders, rents and issues or profits thereof.

WITNESS my hands this 17th day of November, 1984.

June Irene Rolph
JUNE IRENE ROLPH

Nancy Rolph Welch
NANCY ROLPH WELCH

STATE OF NEVADA)

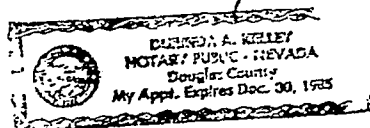
COUNTY OF Douglas) ss.

On December 7, 1984
personally appeared before me, a Notary Public,
Joseph S. Lodato

Joseph S. Lodato
JOSEPH S. LODATO

who acknowledged that he executed the
above instrument:

June Irene Rolph



111382

BOOK 1284 PAGE 1640

STATE OF NEVADA

COUNTY OF

WITSON

On

12/17/84

before me, the undersigned, a Notary Public in and for
said State, personally appeared

Therese J. Day, wife of Preston O. Day

Known to me to be the person 5 whose name 5

subscribed to the within instrument and acknowledged to me

that

they

executed the same.

WITNESS my hand and official seal.

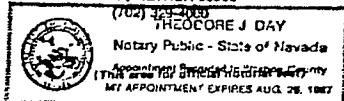
Signature

Therese J. Day

THEODORE J. DAY

Name (Typed or Printed)

FOR YOUR INFORMATION
THEODORE J. DAY
PRESTON O. DAY COMPANY
COMMERCIAL REAL ESTATE SERVICES
1825 SOUTH ARLINGTON, #205
RENO, NEVADA 89502



REQUESTED BY
DOUGLAS COUNTY TITLE
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY

74 DEC 18 P1:55

SUZANNE
590 2-12 CK

111382

BOOK 1284 PAGE 1641

Agreement

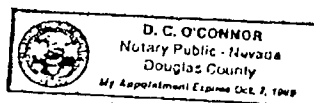
August 5, 1986

Joseph S. LODATO
Gardnerville, Nevada

Joseph S. LODATO has my immediate permission to divert my one half interest in "Sheridan Creek" onto and thru the "Old Crowell Ranch" by means of the easement granted him by June Ralph BARTLETT. Please note attached documents. Joseph S. LODATO is required to maintain the ditches, pipes, and or culverts in an orderly manner so as not to impede the flow of water onto my property. Mr. LODATO also agrees to grant Gerald F. WHITMIRE access to inspect said ditches, pipes, and or culverts and to maintain them if it becomes necessary.

Sincerely,

Gerald F. Whitmire
Gerald F. WHITMIRE
WHITMIRE CATTLE COMPANY
P.O. Box 1308
Minden, Nevada
89423



REFER TO Doc. 138679
for Property Description.

138680
BOOK 886 PAGE 640

DOUGLAS COUNTY

June Ralph Bartlett
1200 Riverside Dr. #1283
Reno, Nevada 89410

Mr. Gerald Whitmire
Hendersonville Nevada

Dear Mr. Whitmire:

This letter is to
give you immediate permission
to divert your one half interest
in the water from "Shesidan
Creek" onto and through our
property. This property is
commonly known as the
old "Crawell Ranch".

Sincerely,

June Ralph Bartlett
JUNE RALPH BARTLETT

State of Washington
County of Kitsap **SEAL**
July 30, 1986 personally
appeared June Ralph Bartlett
who acknowledged that she
executed above instrument

Kathy Henry, Notary Public Residing at Rainier Bridge
Wash.

RECORDED BY

SHARON J. LANGE
NOTARY PUBLIC

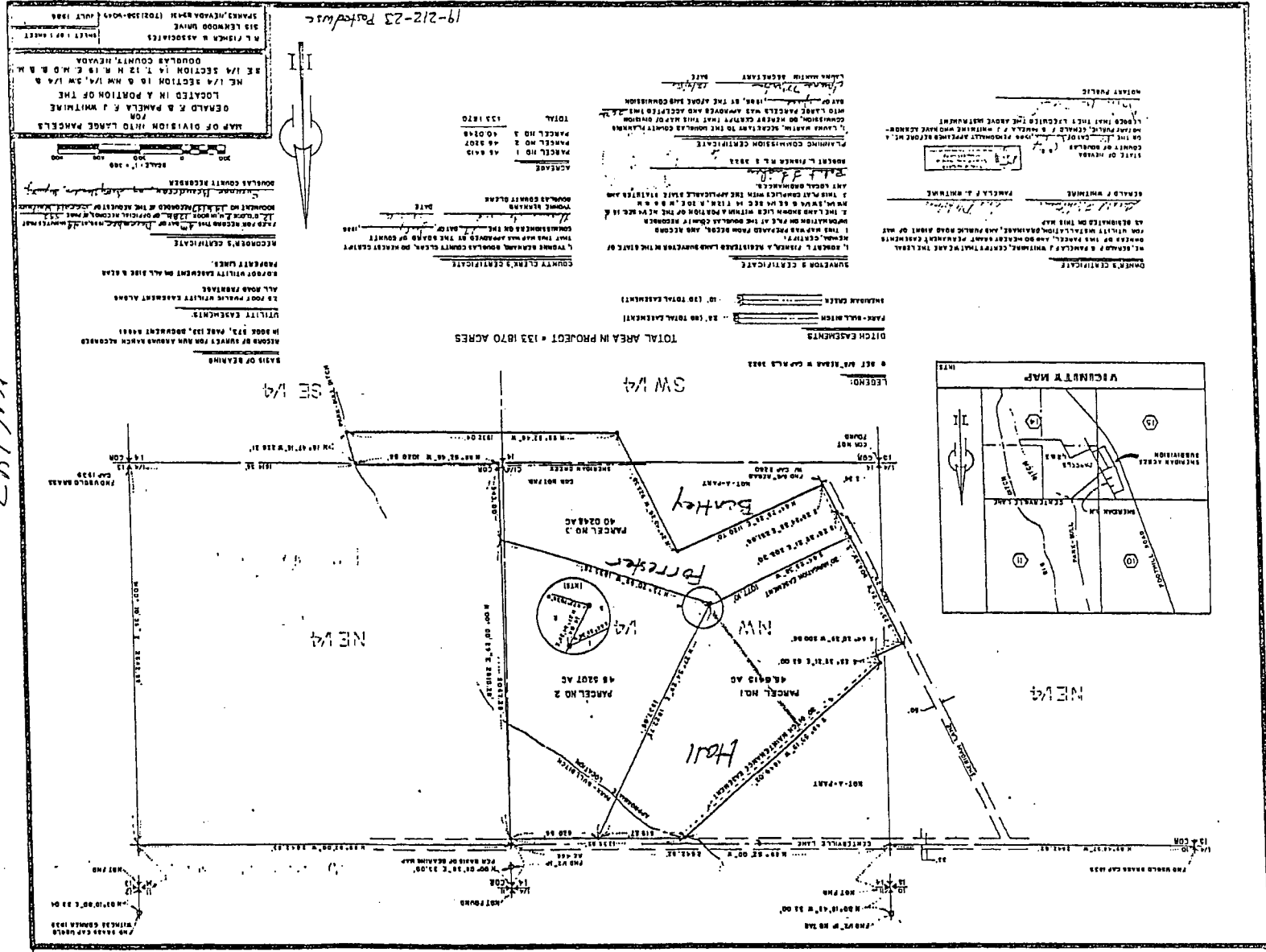
16 AUG -6 P4:28

138680

BOOK 886 PAGE 641

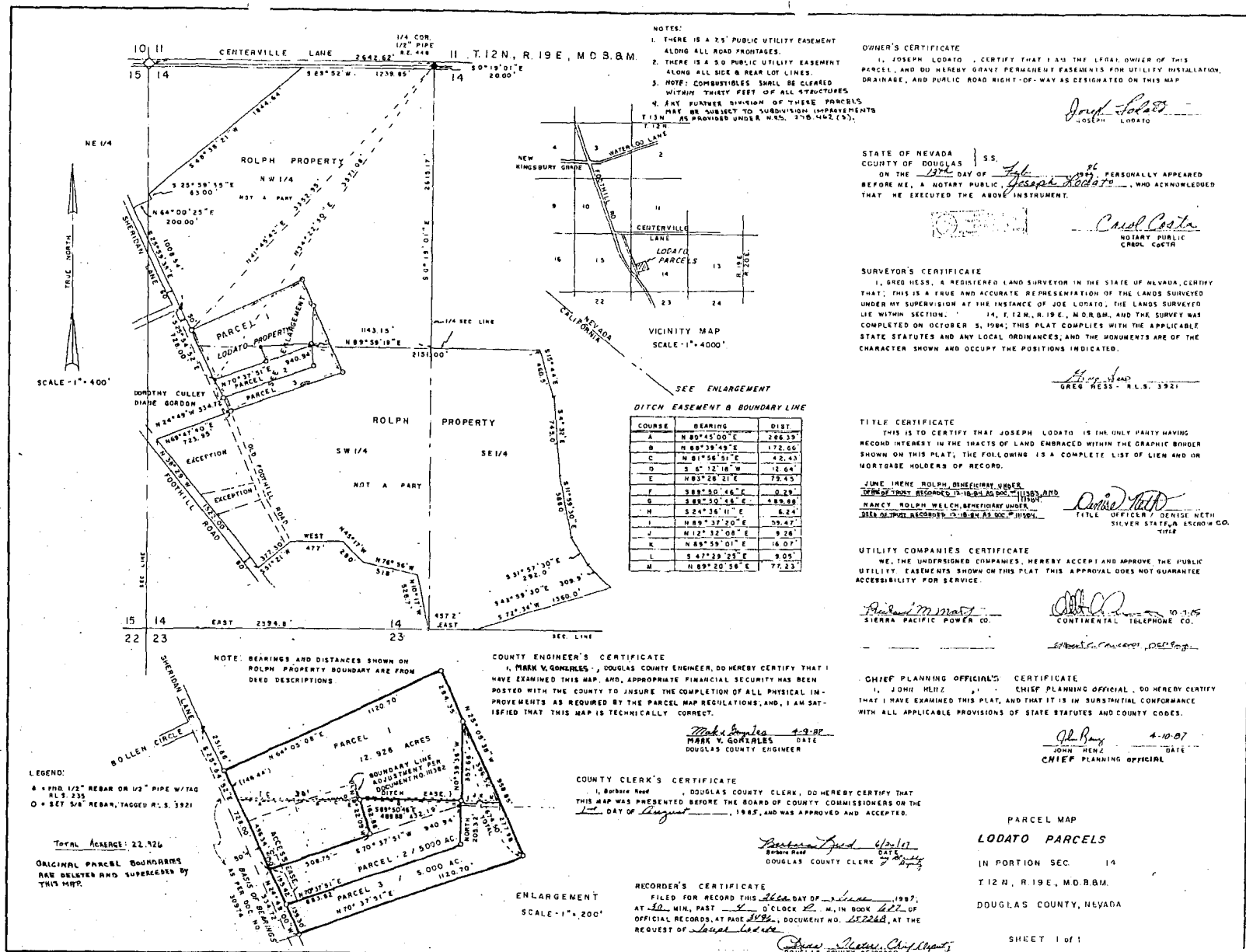
364

246



14, 15-12-19

19-212-23 Posted/wsc



JOINT TENANCY DEED

THIS INDENTURE WITNESSETH That GERALD F. WHITMIRE and PAMELA F.J. WHITMIRE
husband and wife as Joint Tenants

in consideration of \$ 10.00 (TEN), the receipt of which is hereby acknowledged, do hereby Grant Bargain Sell and
 Convey to DONALD S. FORRESTER and KRISTINA M. FORRESTER, husband and wife
as Joint Tenants

as joint tenants with right of survivorship, and not as tenants in common, all that real property situated in the _____
 County of DOUGLAS State of Nevada, bounded and described as follows

SEE "EXHIBIT A" LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART
 HEREOF BY REFERENCE.

ASSESSOR'S PARCEL NO. 19-212-32.

TOGETHER WITH AND INCLUDING ANY AND ALL WATER RIGHTS APPURTENANT HERETO.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof To have and to hold the said premises unto the Grantees, and to the
 survivor of them, and to the heirs and assigns of such survivor forever

Witness OUR hand S ON this 11th day of September, 19 87.

STATE OF NEVADA

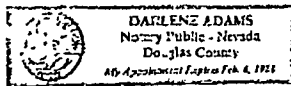
COUNTY OF Douglas } ss

On August 11, 1987

personally appeared before me, a Notary Public,
Gerald F. Whitmire and
Pamela F.J. Whitmire

who acknowledged that they executed
 the above instrument.

Darlene Adams
 Notary Public



The grantor(s) declare(s).

Documentary transfer tax is \$ 162.80

☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO

same as above

Sheerin & O'Reilly
 Attorneys at Law
 P. O. Box 606
 Carson City, Nevada 89701
 P. O. Box 1327
 Gardnerville, Nevada 89410

Gerald F. Whitmire
 Gerald F. Whitmire
Pamela F.J. Whitmire
 Pamela F.J. Whitmire

ORDER NO.

ESCROW NO.

WHEN RECORDED MAIL TO

Mr. & Mrs. Donald S. Forrester
5745 Avenida Estorio
Long Beach, CA 90814

FOR RECORDER'S USE

163488

BOOK 987 PAGE 4989

"EXHIBIT A"

LEGAL DESCRIPTION

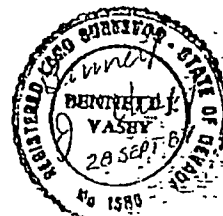
A parcel of land located within a portion of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel No. 2 as shown on the Land Division Map for Gerald F. and Pamela F. J. Whitmire as recorded in Book 1266 on Page 352 as Document No. 146147 and also shown as the Northwest corner of Parcel J as shown on the Record of Survey for "Run Around Ranch" as recorded in Book 373 on Page 133 as Document No. 64581, Douglas County, Nevada, Recorder's Office; thence along the boundary of the said two recorded maps South 00 00' 34" West, 2067.28 feet to THE POINT OF BEGINNING; thence continuing along said boundary South 00 00' 34" West, 543.00 feet; thence South 89 52' 46" East, 1020.56 feet; thence South 15 47' 16" East, 226.21 feet; thence North 89 52' 46" West, 1932.04; thence North 24 45' 26" West, 923.33 feet; thence South 64 25' 28" West, 1120.70 feet; thence North 25 34' 38" West, 231.66 feet; thence North 25 39' 21" West, 181.34 feet; thence North 64 25' 38" East, 1126.86 feet; thence South 72 07' 14" East, 1481.17 feet to THE POINT OF BEGINNING, the common boundary of said two recorded maps,

REQUESTED BY
STEWART TITLE OF DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

87 SEP 30 P3:13

SUZANNE BEAUDREAU
RECORDER
S. PAUL P. DEPUTY



August 14, 1987

163488

BOOK 987 PAGE 4990

1.



Recorder's Index

Douglas County



New Parcel
Maps
Available

297 Records Found Page 3 of 15

Page#: [1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#)

Name	1st Name of Other Party (Choose the Document for Complete List of Names)			
	Date	Doc#	Book#	Page#
1 <u>FORRESTER, DONALD</u> RECORD OF SURVEY MAP	08/23/1993	315765	893	4445
1 <u>FORRESTER, DONALD L</u> DEED	11/14/1991	264981	1191	2158
2 <u>FORRESTER, DONALD L</u> DEED	09/29/1992	289398	992	5030
1 <u>FORRESTER, DONALD L</u> DEED OF TRUST	09/29/1992	289399	992	5032
1 <u>FORRESTER, DONALD L</u> DEED	10/02/1992	289880	1092	323
2 <u>FORRESTER, DONALD L</u> FULL RECONVEYANCE	12/26/1995	377449	1295	3690
2 <u>FORRESTER, DONALD L TRUSTEE</u> DEED	11/14/1991	264981	1191	2158
1 <u>FORRESTER, DONALD L TRUSTEE</u> DEED	09/29/1992	289398	992	5030
2 <u>FORRESTER, DONALD L TRUSTEE</u> DEED	10/02/1992	289880	1092	323
1 <u>FORRESTER, DONALD L TRUSTEE</u> DEED OF TRUST	10/10/1995	372288	1095	1484
1 <u>FORRESTER, DONALD L TRUSTEE</u> DECEASED	04/09/1998	436863	498	1405
1 <u>FORRESTER, DONALD LLOYD TRUSTEE</u> DECD	04/09/1998	436863	498	1405
2 <u>FORRESTER, DONALD S</u> DEED	09/30/1987	163488	987	4989
1 <u>FORRESTER, DONALD S</u> APPLICATION FOR AGRICULTURAL USE	01/22/1988	171242	188	2678
1 <u>FORRESTER, DONALD S</u> NOTICE/AGRICULTURAL LIEN	No Other Party 02/18/1988	172694	288	2331
2 <u>FORRESTER, DONALD S</u>	02/18/1988	172694	288	2331

GRANT, BARGAIN, SALE DEED

ORDER NO.:

(5)

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, an unmarried woman dealing with
her undivided 1/2 interest; and NANCY ROLPH WELCH, a married woman as her sole
and separate property dealing with her undivided 1/2 interest
in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____

County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 217,
DOCUMENT NO. 129026.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.

Witness my hand _____ this 29th day of October, 19 87.

STATE OF NEVADA

COUNTY OF Douglas

SS

June Irene Rolph
June Irene Rolph

On October 29, 1987

personally appeared before me, a Notary Public,
June Irene Rolph

who acknowledged that she executed
the above instrument.

Donna J. Foster
Notary Public



The grantor(s) declare(s):
Documentary transfer tax is \$ -0- #3
() computed on full value of property conveyed, or
() computed on full value less value of liens and
encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. Whitmire
P.O. Box 2808
Minden, Nevada 89423

FOR RECORDER'S USE

166045

BOOK 1187 PAGE 1129

374 J

GRANT, BARGAIN, SALE DEED

ORDER NO. _____

THIS INDENTURE WITNESSETH: That NANCY ROLPH WELCH, a married woman as her
sole and separate property dealing with her undivided 1/2 interest
in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____
County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 214,
DOCUMENT NO. 129025.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.

Witness my hand this 16 day of Oct, 19 87.

STATE OF NEVADA CALIFORNIA

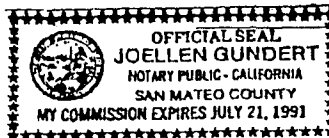
COUNTY OF SAN MATEO

SS

Nancy Rolph Welch
Nancy Rolph Welch

On OCTOBER 26, 1987
personally appeared before me, a Notary Public,
Nancy Rolph Welch

who acknowledged that she executed
the above instrument.

Joellen Gundert
Notary Public

WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. WhitmireP.O. Box 2808Minden, Nevada 89423

FOR RECORDER'S USE

The grantor(s) declare(s):
Documentary transfer tax is \$ -0-
() computed on full value of property conveyed, or
() computed on full value less value of liens and
encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

SEE THE MAILING LABEL
ATTACHED TO THE
FRONT OF THE
DOCUMENT FOR MAILING
INSTRUCTIONS
CALIFORNIA, NEVADA, IDAHO

166045

BOOK 1187 PAGE 1130

LEGAL DESCRIPTION

PARCEL ONE:

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56 feet; thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

REQUESTED BY
STEWART TITLE OF DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

87 NOV -9 P4:53

SUZANNE BEAUDREAU
RECORDER

PAID 74 DEPUTY

166045

BOOK 1187 PAGE 1131

JOINT TENANCY DEED

THIS INDENTURE WITNESSETH: That GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE,
husband and wife as joint tenants
 in consideration of \$ 10.00 (TEN)-----, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
 Convey to DONALD T. HALL and PEGGY HALL, husband and wife

as joint tenants with right of survivorship, and not as tenants in common, all that real property situated in the _____
 County of Douglas, State of Nevada, bounded and described as follows:
 SEE "EXHIBIT A" ATTACHED HERETO AND MADE A PART HEREOF.

INCLUDING ANY AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED
 PROPERTY.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof. To have and to hold the said premises unto the Grantees, and to the
 survivor of them, and to the heirs and assigns of such survivor forever.

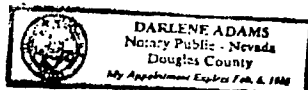
Witness _____ hand _____ this 3rd day of September, 19 87.

STATE OF NEVADA

COUNTY OF Douglas } SS

On November 3, 1987
 personally appeared before me, a Notary Public,
Gerald F. Whitmire and
Pamela F. J. Whitmire
 who acknowledged that they executed
 the above instrument.

Darlene Adams
 Notary Public



The grantor(s) declare(s):
 Documentary transfer tax is \$ 277.75
☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

Sheerin & O'Reilly
 Attorneys at Law
 P. O. Box 606
 Carson City, Nevada 89701
 P. O. Box 1327
 Gardnerville, Nevada 89410

Gerald F. Whitmire
 Gerald F. Whitmire
Pamela F. J. Whitmire
 Pamela F. J. Whitmire

ORDER NO. _____
 ESCROW NO. _____

WHEN RECORDED MAIL TO:

Mr. & Mrs. Donald T. Hall
P.O. Box 892
Borrego Springs, CA 92004

FOR RECORDER'S USE

166046
 500 1187 PAGE 1132

"EXHIBIT A"

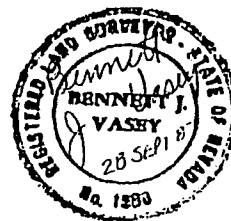
Parcel No. 1

A parcel of land located within a portion of the Northwest one-quarter (NW 1/4) of Section 14 and a portion of the Northeast one-quarter (NE 1/4) of Section 15, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel No. 2 as shown on the Land Division Map for Gerald F. and Pamela F. J. Whitmire as recorded in Book 1286 on Page 552 as Document No. 146147 and also shown as the Northwest corner of Parcel J as shown on the Record of Survey for "Run Around Ranch" as recorded in Book 373 on Page 133 as Document No. 64581, Douglas County, Nevada, Recorder's Office; thence North 89° 52' 00" West, 620.56 feet to THE POINT OF BEGINNING, said point also being the Northwest corner of the above described Parcel No. 2; thence South 27° 34' 29" West, 1057.54 feet; thence South 23° 54' 16" West, 740.05 feet; thence South 64° 25' 38" West, 1126.86 feet; thence North 25° 39' 21" West, 826.95 feet; thence North 64° 20' 39" East, 200.06 feet; thence North 25° 39' 21" West, 63.00 feet; thence North 48° 55' 15" East, 1846.02 feet; thence South 89° 52' 00" East, 619.27 feet to THE POINT OF BEGINNING,

REQUESTED BY
STEWART TITLE OF DOUGLAS COUNTY

IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA



August 14, 1987

87 NOV -9 P4:53

SUZANNE BEAUCREAU
RECORDER

PAID *[Signature]* DEPUTY

166046

BOOK 1187 PAGE 1133

DOUGLAS COUNTY

JOINT TENANCY DEED

THIS INDENTURE WITNESSETH: That Joseph S. Lodato an unmarried man

In consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to Theodore & Katherine Weber husband and wife

as joint tenants with right of survivorship, and not as tenants in common, all that real property situated in the County of Douglas, State of Nevada, bounded and described as follows:

Being assessor's parcel number 19-200-09 specifically described as 12.96 acres of land T 12N R19E 514 PCL1. Along with the property goes the following water rights:

9 acres in the SW 1/4 of NW 1/4 of Sec 14, T.12, R.19E
2 acres in the SW 1/4 of NW 1/4 of Sec 14, T.12, R.19E
as shown on the attached map and filed for under proof of Vested Right #04594

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof. To have and to hold the said premises unto the Grantees, and to the survivor of them, and to the heirs and assigns of such survivor forever.

Witness my hand on this 25th day of August, 19 92.

STATE OF NEVADA

COUNTY OF DOUGLAS

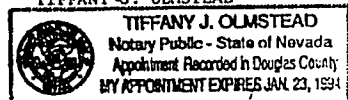
} SS

Joseph S. Lodato
JOSEPH S. LODATO

On AUGUST 25, 1992
personally appeared before me, a Notary Public,

JOSEPH S. LODATO
who acknowledged that he executed the above instrument.

Tiffany J. Olmstead
Notary Public
TIFFANY J. OLMSTEAD



The grantor(s) declare(s):
Documentary transfer tax is \$ 1595.32
() computed on full value of property conveyed, or
() computed on full value less value of liens and encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

NOT APPLICABLE

ORDER NO.
ESCROW NO.

WHEN RECORDED MAIL TO:
MR. AND MRS. THEODORE WEBER

P.O. BOX 601

MINDEN, NV. 89423

FOR RECORDER'S USE

286852
BOOK 892 PAGE 4350

29
381

DOUGLAS COUNTY

PTN. SEC

21

Pcl

(9)

12.926A

Pc 2

(10)

5.0 Act

10

14

5.0Ac3

112070(R)PR

- 419

417

1124

A hand-drawn diagram of a neuron. It shows a central cell body with several branching structures labeled 'Dendrites'. The cell body is labeled 'Cell Body'. A long, thin structure extending from the cell body is labeled 'Axon'. This axon is covered by a series of small circles labeled 'Myelin Sheath'. The axon ends in several small circles labeled 'Axon Terminals'.

22

22 2

1.0000

678	221
-----	-----

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

286852

BOOK 892, PAGE 4351

DOUGLAS COUNTY

REQUESTED BY
Theresa M. Weber
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

'92 AUG 26 P1:29

SUZANNE H. AUDREAU
MICROFILM

57⁰⁰ *LA* DEPUTY BOOK 892 PAGE 4352

286852

DOUGLAS COUNTY

CORRECTION
JOINT TENANCY DEED

ORDER NO.: _____

THIS INDENTURE WITNESSETH: That Joseph S. Lodato an unmarried manIn consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
Convey to Theodore & Katherine A. Weber husband and wifeas joint tenants with right of survivorship, and not as tenants in common, and to the heirs and assigns of such Grantee forever, all that real
property situated in the _____ County of Douglas

State of Nevada, bounded and described as follows:

Being assessor's parcel number 19-200-09 specifically described as 12.96 acres of land T 12N
R19E S14 PCL1. Along with property goes the following water rights:

9 acres in the SW 1/4 of NW 1/4 of Sec. 14, T.12, R.19E

2 acres in the SE 1/4 of NW 1/4 of Sec. 14, T.12, R.19E

as shown on the attached map and filed for under proof of Vested Right #04594
This filing is to correct filing #286857, Book 892 Page 4350 recorded on 8/26/92 which had
a typographical error on the 2 acre transfer. The original filing was 2 acres in the SW 1/4
of the NW 1/4 of Sec. 14, T.12, R.19E. It should have read 2 acres in the SE 1/4 as above.Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.Witness _____ hand _____ this 4th day of MARCH, 1993.

STATE OF NEVADA

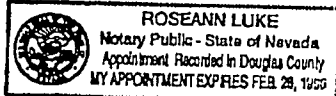
COUNTY OF DOUGLAS } SSOn MARCH 4, 1993

personally appeared before me, a Notary Public,

JOSEPH S. LODATOwho acknowledged that he executed
the above instrument.Roseann Luke
Notary Public

ROSEANN LUKE

1996



The grantor(s) declare (s):

Documentary transfer tax is \$ 6.40

- () computed on the full value of property conveyed, or
 () computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

NOT APPLICABLEState of Nevada

WHEN RECORDED MAIL TO:

Mr. & Mrs. Theodore WeberP.O. Box 601Minden, Nev. 89423

FOR RECORDER'S USE

REQUESTED BY
Theodore Weber
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

93 MAR -8 10:00

SUZANNE BLANKENAU
RECORDER 301401
DEPUTY
BOOK 393 PAGE 159

JIM GIBBONS
Governor

STATE OF NEVADA

ALLEN BIAGGI
Director

TRACY TAYLOR, P.E.
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

May 28, 2008

Bentley Family Trust 1995 Trust
853 Sheridan Lane
Gardnerville, NV 89460

RE: Proofs V06305, V06306, V06307 and V06308

To Whom It May Concern:

Please be advised that your *Reports of Conveyance* received on September 12th, 2006 are hereby confirmed to update ownership of all or a portion of the water rights in the name of **J.W. Bentley and Maryann Bentley, Trustees of the Bentley Family Trust 1995 Trust** as listed in the table below. Details of the above proofs, including the current ownership are viewable online. First, click on "Water Rights Database"; then "Permit Search".

Proof	Acres/Units
V06305	10.36 Acres
V06306	12.93 Acres
V06307	22 units
V06308	22 units

Also be advised that according to NRS 533.386 (2.), this confirmation of your *Reports of Conveyance* does not guarantee that a) the water right is in good standing with the office of the State Engineer; or b) the amount of water referenced in the notice or in the report of conveyance is the actual amount of water that a person is entitled to use; and c) this is not a determination of ownership and that only a court of competent jurisdiction may adjudicate conflicting claims to ownership of a water right.

This confirmation reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation. The owner is responsible for notifying the State Engineer's office of any change of address in writing.

If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

A handwritten signature in cursive script that reads "Tanya Soleta".

Tanya Soleta
Engineering Technician III

ORIGINAL

Filing Serial No. 06309

STATE OF NEVADA

PROOF OF APPROPRIATION OF WATER FOR IRRIGATION

Source Sheridan Creek

Name of natural water source (use separate proofs for each major source)

The water is diverted from its source via a concrete diversion structure and unnamed

Name of ditch, flume or pipe line

at the following point(s) within the NE 1/4 Sec. of Section 15, T.12N., R.19E., M.D.M. ditches.

List all points of diversion from this source, appending a sheet if necessary

Describe as being within a 40-acre subdivision of public survey, and by course and distance to a section corner. If on unsurveyed land, it should be stated

(1) Name of claimant Donald S. Forrester & Kristina M. Forrester, husband & wife
as joint tenants.

Address 913 Sheridan Way, County of Douglas
Gardnerville

State of Nevada 89410 Telephone No. (702) 265-5509

(2) The means of diversion employed Diversion structure, ditches (See attachment.)
Dam and ditch, pipe line, flume, etc.

(3) The date of the survey of ditch, canal, or pipe line was April 7, 1928 (See attachment.)

(4) The construction of the ditch or other works was begun prior to March 1, 1905
and completed prior to March 1, 1905. (See attachment.)

(5) The dimensions of the ditch or canal as originally constructed were: Width on bottom 4 +/- feet, width
on top 6 +/- feet, depth 1.5 +/- feet, on a grade of 3.3 +/- feet per thousand feet. (See attachment.)

(6) The conduit ~~has~~ (has not) been enlarged.
NOTE—If enlargement or extension of ditch was made, supply information under (7) and (8)

(7) The work of enlargement of the ditch or canal was begun _____ and
completed _____

(8) The dimensions of the ditch or canal as enlarged are: Width on bottom _____ feet, width on top
_____ feet, depth _____ feet, on a grade of _____ feet per thousand feet.

(9) The claimant is ~~(is not)~~ an owner in the above-described conduit.

35.31 percent, North Diversion; 10.87 percent, South Diversion (See

If claimant is an owner in the conduit, state interest held on this line

attachment

(16) The years during which no water was used for irrigation or during which the full water right was not used

were.....See attachment.....

If water was not used, or used in reduced quantity at any time, full information as to causes and duration of non-use should be

given, appending a sheet if necessary

(17) The claimant's water right was (was not) recorded in the office of the County Recorder of

.....Douglas.....County, said record being at page.....of Book.....of

....., and being a claim for 283.08 acre feet annually

.....of water for the irrigation of 77.07

acres of land in the following legal subdivisions:

Division of Land Map, Gerald F. and Pamela F. Whitmire, Douglas

County Records, Book 1286, Page 552. Boundary Line Adjustment,

Douglas County Records, Book 1088, Page 377.

Boundary Line Adjustment, Douglas County Records, Book 1187, Pages

1114, 1126 and 1128.

NOTE—Failure to record in the county in no way invalidates a water right, but if ditch or right was so recorded, supply full information under (17)

(18) Water from the source given and through the works described is also used for the following purposes other than irrigation:

Stock watering and domestic, January 1 through December 31 of each
year.

(19) The character of the soil is gravelly sandy loam A continuous flow of 8492 cubic
(Sandy, gravelly, loam)

feet of water per second has been used to irrigate 70.77 acres of land and 4.0
acre-feet per acre per annum have been used to irrigate the crops.

(20) Remarks Donald S. and Kristina M. Forrester claim vested rights to 35.31 percent of 65.43 percent of the waters of Sheridan Creek (North Diversion) for irrigation during the period May 1 to October 15 annually to irrigate 60.87 acres and 10.87 percent of 34.57 percent of the waters of Sheridan Creek (South Diversion) for irrigation during the period May 1 to October 15 annually to irrigate 9.90 acres.

See attachment for complete description of claim of vested rights.

The undersigned, being first duly sworn, deposes and says that the facts relative to the appropriation of water by Donald S. and Kristina M. Forrester are full and correct to the best of his knowledge and belief.

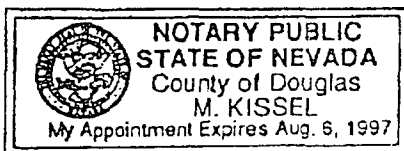
If proof is not made by claimant, deponent should state on this line by virtue of what authority he represents the claimant

Send copies of notices to:
Milton L. Sharp, P.E.
1005 Terminal Way, #257
Reno, NV. 89502

Donald S. Forrester
Kristina M. Forrester

Telephone No. (702) 265-5509

Subscribed and sworn to before me this 16th day of March, 1994

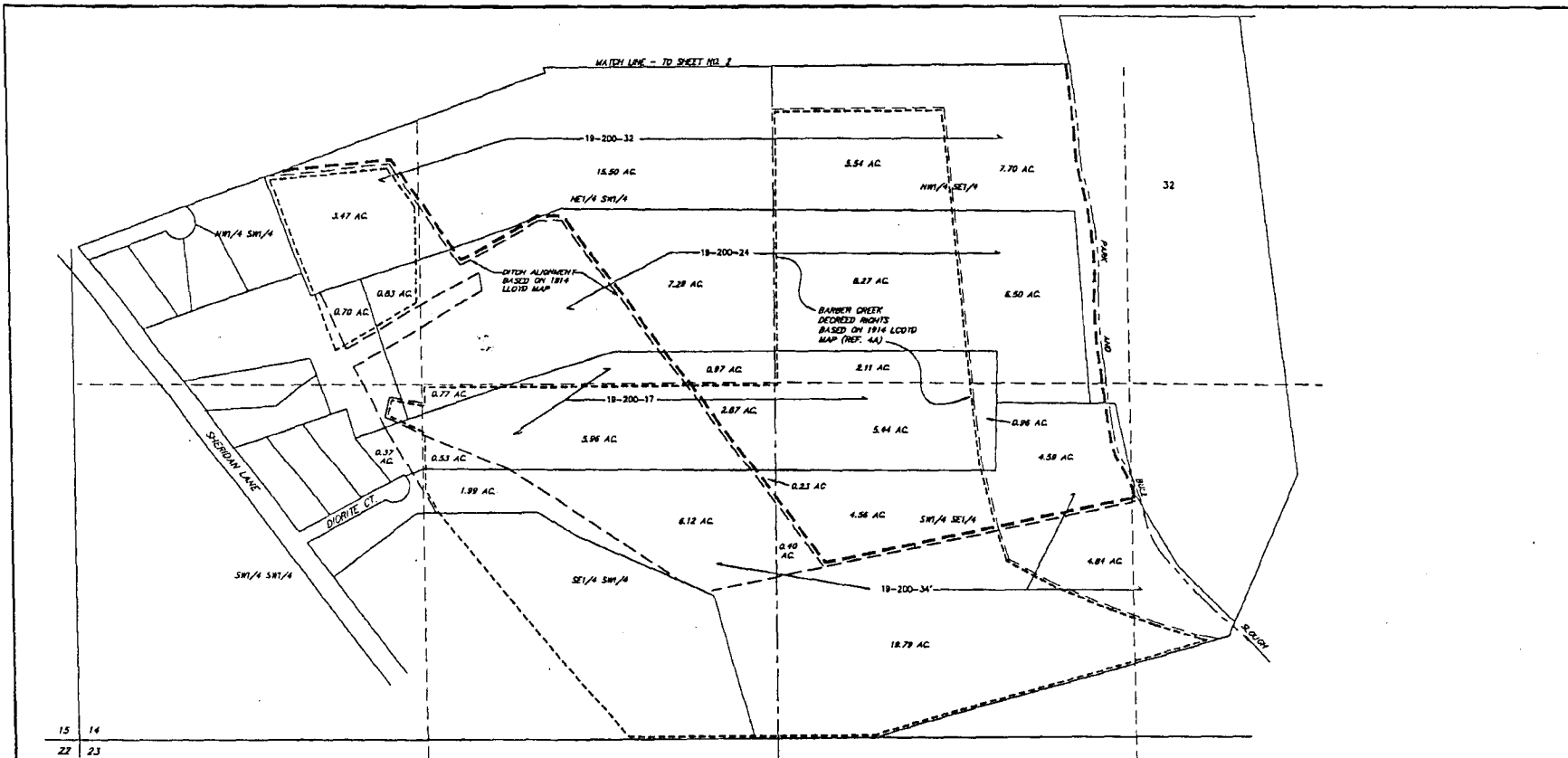


Donald & Kristina Forrester
Notary Public in and for the County of Douglas
My commission expires 8-6-97

Chadwick

20:18 91 MAR 16 P1:02

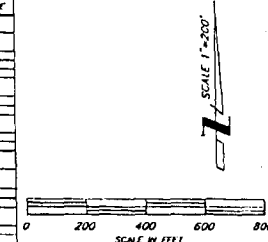
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SECTION	SUB-DIVISION	TOWN	RANGE	CULTIVATED ACREAGE	DESCRIPTION OF CULTURE	DATE OF FIRST CULTURE
PARCELS 18-212-41 (PESTANA)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
CAWSON SPRING						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
PARCELS 18-212-42 (HALL)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
CAWSON SPRING						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	

SECTION	SUB-DIVISION	TOWN	RANGE	CULTIVATED ACREAGE	DESCRIPTION OF CULTURE	DATE OF FIRST CULTURE
PARCELS 18-212-38 AND 39 (NEVADA)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
CAWSON SPRING						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
PARCELS 18-212-43 AND 40 (FORRESTER)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
CAWSON SPRING						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	

SECTION	SUB-DIVISION	TOWN	RANGE	CULTIVATED ACREAGE	DESCRIPTION OF CULTURE	DATE OF FIRST CULTURE
PARCELS 18-200-38 (WEBER)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
CAWSON SPRING						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
PARCELS 18-212-28 (MITCHELL)						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
STUTLER CREEK						
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	NE 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	
15	SW 1/4 NW 1/4	18	12	1.47	HAY & ALFALFA	



FILED
SEP 30 1996
REGISTERED
SEP 30 1996

STATE ENGINEER'S OFFICE

MAP TO ACCOMPANY

PROOFS OF APPROPRIATION OF WATER FOR IRRIGATION BY OWNERS OF LAND LOCATED WITHIN PORTIONS OF SECTIONS 14 AND 15 T. 12 N. R. 18 E. N.D.M. FROM SHERIDAN CREEK CANYON AND STUTLER CANYON.

APPLICANTS AND SERIAL NOS. SET LIST, SHEET 1, CARSON VALLEY, CLACK COUNTY, NEVADA

PREPARED BY: JOD NO. 1590

MILTON L. SHARP, P.E. MARCH 1994

CONSULTING ENGINEER REVISED SEPT. 1996

1005 TERMINAL WAY, SUITE 251

RENO, NEVADA 89502 (702) 782-7008

SHEET 3 OF 3

06341 06340 06339 06338 06337 06336 06312 06311 06310 06309 06308 06307 06306, 06305

1 Case No.: 08-CV-0363-D
2 Dept. No.: I
3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211
10

11
12
13 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR DOUGLAS COUNTY
16

17 In the Matter of the Determination of
18 the Relative Rights in and to the
19 Waters of Mott Creek, Taylor Creek,
20 Cary Creek (aka Carey Creek), Monument
21 Creek, and Bulls Canyon, Stutler Creek
22 (aka Stattler Creek), Sheridan Creek,
23 Gansberg Spring, Sharpe Spring,
24 Wheeler Creek No., 1 Wheeler Creek
25 No. 2, Miller Creek, Beers Spring,
26 Luther Creek and Various Unnamed
27 Sources in Carson Valley, Douglas
28 Valley, Nevada.

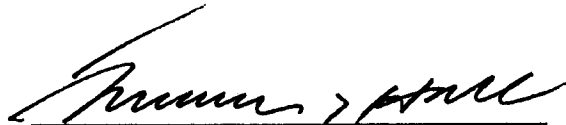
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MOTION TO INTERVENE

Comes now, HALL RANCHES, LLC, a Nevada Limited Liability
Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, DONALD S. FORRESTER and KRISTINA M.
FORRESTER, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), by and through their counsel, THOMAS J. HALL,
ESQ., and pursuant NRS 533.170 and NRCP Rule 24, hereby move

1 the Court for leave to intervene in this action, in order to
2 assert the claims and defenses to be set forth in a proposed
3 answer, in substance similar to the Reply to Exceptions by
4 Bentley to Final Order of Determination filed herein on March
5 27, 2009.

6 DATED this 10th day of April, 2009.

7
8 LAW OFFICES OF THOMAS J. HALL

9
10 

11 Thomas J. Hall, Esq.
12 Nevada State Bar No. 675
13 305 South Arlington Avenue
14 Post Office Box 3948
15 Reno, Nevada 89505
16 Telephone: 775-348-7011
17 Facsimile: 775-348-7211

18 **AFFIRMATION**

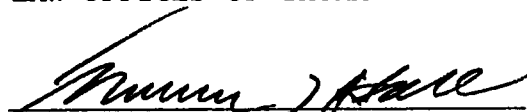
19 (Pursuant to NRS 239B.030)

20 Case No. 08-CV-0363-D

21 The undersigned does hereby affirm that the preceding
22 document, **Motion to Intervene**, does not contain the social
security number of any person.

23 DATED this 10th day of April, 2009.

24 LAW OFFICES OF THOMAS J. HALL

25
26 
27 THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq.,
and that on this date, pursuant to NRCP 5(b), I placed in the
U.S. Mail, postage prepaid, a true and correct copy of the
Motion to Intervene, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

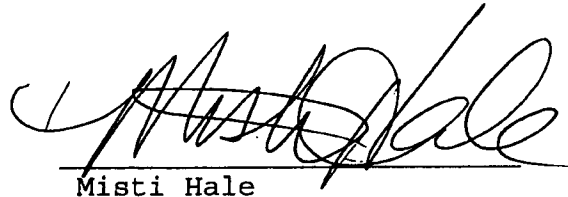
Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 10th day of April, 2009.



Misti Hale

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

FILED

Case No.: 08-CV-0363-D

RECEIVED

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Dept. No.: I

APR 20 2009

TED THIRAN
CLERK

DOUGLAS COUNTY
DISTRICT COURT CLERK

BY M. BIAGGINI DEPUTY

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**OPPOSITION TO
MOTION TO INTERVENE**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby file this Opposition to the *Motion to Intervene* filed by HALL RANCHES, LLC ("Hall"), THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER ("Forrester") (collectively, "Intervenors") as follows.

1. Intervention is Not Appropriate.

The Office of the State Engineer prepared, filed and served the *Final Order of Determination*. Bentley filed its *Notice of Exceptions* on 10 December 2008. The *Notice of Exceptions* raised three (3) issues:

1. The anticipated diversion schedule for the waters of the North Branch of Sheridan Creek should conform with the 9 June 1986 Water Use and Diversion Agreement that is recorded in the chains of title for the water users;

1 2. Add all of the Bentley's proofs to the Adjudication Map; and

2 3. Correct a typographical error.

3 Bentley filed an *Amended Notice of Exceptions* on 25 March 2009. The *Amended Notice of*
4 *Exceptions* repeated the initial three (3) exceptions, with some minor clarifications, and added two
5 (2) additional issues:

6 4. Correct the approved acreage; and

7 5. Install a device to accurately separate the waters to be diverted down the South
8 Branch of Sheridan Creek from the waters diverted down the North Branch of Sheridan Creek.¹

9 All of the above identified issues fall squarely within the ambit of these adjudication
10 proceedings, with the possible exception of the first issue pertaining to the rotation schedule.
11 The anticipated rotation schedule has not been imposed as of this date and is not part of the *Final*
12 *Order of Determination*. The *Final Order of Determination* and all exceptions shall constitute the
13 pleadings. This should include the initial Notice of Exceptions with the three (3) issues, filed on
14 10 December 2008, as well as the Amended Notice of Exceptions with the two (2) additional
15 issues added on 25 March 2009.

16 None of the Intervenors have challenged Bentley's exceptions on issues 2 – 5.
17 On 26 March 2009, Hall and Forrester filed their *Reply to Exceptions By Bentley to Final Order of*
18 *Determination*. Hall and Forrester argued in that brief that the Diversion Agreement, that has been
19 recorded and observed since 9 June 1986, is no longer enforceable. That argument presumably
20 relates to Bentley's first exception concerning the rotation schedule and Diversion Agreement.
21 However, Hall and Forrester went further, and raised issues that were not raised in the *Final Order*
22 *of Determination* or Bentley's *Notice of Exceptions*. Hall and Forrester added entirely new
23 arguments about how filling the new pond violates the Diversion Agreement (raising the question

24 ///

25 ///

26 _____
27 ¹ Bentley recognizes, however, that the Court struck the Amended Notice of Exceptions by way of a verbal
28 order at the hearing on 1 April 2009, and that it may need to move for clarification, reconsideration, or leave as
appropriate. Such motion will hopefully be granted, as the amended exceptions were timely and directly relate to the
Final Order of Determination and not to the disputed issue concerning the rotation schedule and Diversion
Agreement. 399

1 of whether Hall and Forrester are trying to enforce the Diversion Agreement) and how the pond
2 violates Nevada statutes. Intervenor now seek intervention to address the issues presented in the
3 Hall/Forrester *Reply to Exceptions*.

4 This Court will be called upon to decide whether Bentley's first issue is beyond the scope
5 of this adjudication. What is certain at this point is that Intervenor seek intervention only on
6 Bentley's first issue regarding the rotation schedule and Diversion Agreement, and not on issues
7 2 - 5. Likewise, Intervenor's additional points regarding the new pond raise issues outside of the
8 pleadings.

9 Intervenor did not explain whether they seek to intervene as a matter of right under
10 NRCP 24(a) or permissive intervention under NRCP 24(b). Likewise, they offer no insight on
11 why they think this adjudication is the appropriate forum in which to quiet title to a document that
12 has been recorded and observed since 9 June 1986, rather than initiate a separate, quiet title action.
13 It is not sufficient for Intervenor to simply argue that they are entitled to intervention of right
14 under NRCP 24(a) because they claim "an interest relating to the property . . . which is the subject
15 of the action." They certainly do not claim an interest in Bentley's property or diversion rights,
16 and they are not trying to clarify their diversion rights vis-à-vis the other diverters, but rather, to
17 annul a document that was recorded over twenty (20) years ago.

18 A careful review of the Diversion Agreement reveals additional reasons for Intervenor to
19 proceed by way of a separate action. The Diversion Agreement also addresses easements and
20 points of diversion. It is unclear whether Intervenor are trying to annul those easements and
21 change the points of diversion. Regardless, those matters are clearly outside of this ambit of this
22 adjudication.

23 **2. The Motion to Intervene Does Not Comply with Applicable Rules of Court.**

24 Intervenor's *Motion to Intervene* does not comply with applicable court rules, and is
25 defective on its face.

26 A party filing a motion shall also serve and file with it a memorandum of
27 points and authorities in support of each ground thereof. The absence of
28 such memorandum may be construed as an admission that the motion is
not meritorious and cause for its denial or as a waiver of all grounds not so
supported. (DCR 13(1)).

1 A motion or response accompanied by a memorandum that consists of
2 bare citations to statutes, rules or cases, does not comply with DCR 13,
3 and the court may decline to consider the motion or response. (NJDCR 8).

4 The *Motion to Intervene* violates both of the aforementioned rules. Intervenor did not
5 provide a memorandum of points and authorities, and offered no explanation or argument to
6 support their position that intervention is appropriate in this case. Intervenor provided no
7 authority for their position on intervention, other than the bare citations to NRS 533.170 and
8 NRCP 24.

9 Intervenor cannot cure these defects by cross-referencing their 26 March 2009 *Reply to*
10 *Exceptions by Bentley to Final Order of Determination*. That was rogue document, that was
11 stricken at the hearing on 1 April 2009. Moreover, that document only provided argument and a
12 misleading, incomplete chain of title regarding the 9 June 1986 Diversion Agreement. That earlier
13 brief did not address intervention at all, or NRS 533.170 and NRCP 24.

14 Moreover, NRCP 24(c) requires that movant attach a pleading that sets forth the claim or
15 defenses. In fact, the *Motion to Intervene* is not clear on whether Intervenor are asserting claims
16 or defenses. Regardless of how they try and characterize their position, Intervenor are trying to
17 annul a document that has been recorded and enforced for over twenty (20) years. That is an
18 affirmative claim that should best be asserted in a separate action. At the very least, Bentley would
19 need to assert affirmative defenses including laches, waiver and estoppel. Bentley would also need
20 to assert a counterclaim for adverse and/or prescriptive rights, and would need the right to conduct
21 discovery. Certainly, Bentley interpreted the *Reply to Exceptions By Bentley to Final Order of*
22 *Determination* as a series of affirmative claims, if not an actual complaint, and responded with a
23 series of defenses and affirmative defenses by way of its *Response to Reply to Exceptions By*
24 *Bentley to Final Order of Determination*. Intervenor's *Reply* and Bentley's *Response* have both
25 been stricken.

26 **3. Intervenor Lack Standing to Intervene.**

27 Many of the Intervenor do not appear to be the record holder of any water rights, let alone
28 water rights from Sheridan Creek. Hall Ranches, LLC is the only Intervenor who is properly
identified in the *Motion to Intervene*, and Hall Ranches, LLC provided the letter confirming the

1 Report of Conveyance as Exhibit "A" to its *Reply*. In turn, Bentley provided its confirmation letter
2 as Exhibit "17." No such letters have been provided for the other Intervenor, and it does not
3 appear that Frank Scharo or Sheridan Creek Equestrian Center, LLC own any water rights. As for
4 the Scyphers and Mitchells, it appears that the water rights are registered to Kathleen Scyphers and
5 Ginger Mitchell, respectively. Thomas J. Schyphers and Ronald R. Mitchell do not appear to own
6 any water rights.

7 **4. Conclusion.**

8 Bentley raised five (5) issues in its exceptions. Intervenor only seek intervention on the
9 first issue seeking confirmation that the anticipated rotation schedule is subject to the recorded
10 Diversion Agreement.

11 Intervenor's *Motion to Intervene* should be denied outright for failure to conform to the
12 applicable court rules, including the need to specify whether Intervenor are asserting claims or
13 defenses. Because Intervenor seek intervention on matters outside of the ambit of this
14 adjudication, specifically, to nullify a twenty-three (23) year old recorded documents, Intervenor
15 should be seen as attempting to assert an affirmative claim for relief to which Bentley should be
16 allowed to plead affirmative defenses. This is especially true as many of the issues they are trying
17 to assert concern matters that are even beyond the scope of Bentley's exceptions.

18 In addition, many of the Intervenor are not the record owners of water rights from
19 Sheridan Creek and have no standing to intervene.

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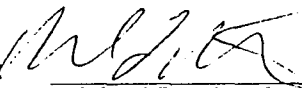
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POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

1 Any diversions from Sheridan Creek should be subject to the recorded Diversion
2 Agreement. Intervenors should file a separate quiet title action if they want to have that agreement
3 annulled.

4 Respectfully submitted.

5 DATED this 20th day of April 2009.

6 BROOKE · SHAW · ZUMPFT

7
8 By: 
9 Michael L. Matuska
10 State Bar No. 5711
11 BROOKE · SHAW · ZUMPFT
12 1590 4th Street/P.O. Box 2860
13 Minden NV 89423
14 (775) 782-7171
15 (775) 782-3081 (Fax)

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT
3 and that on the 20th day of April 2009, I served a true and correct copy of the preceding
4 document entitled **OPPOSITION TO MOTION TO INTERVENE** addressed to:

5 STATE OF NEVADA
6 Department of Conservation and Natural
Resources
7 Division of Water Resources
Office of the State Engineer
8 901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

9 ☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
10 postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
11 in the ordinary course of business.

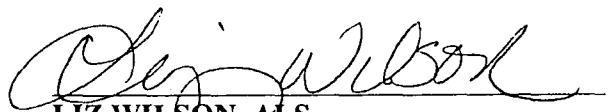
12 ☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to
13 Reno-Carson Messenger Service for delivery to the offices of the addressee.

14 ☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
15 · Zumpft the above-identified document in the ordinary course of business to the individual and
16 facsimile numbers indicated.

17 ☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft
18 the above-identified document in the ordinary course of business to the individuals and email
19 addresses indicated.

20 ☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-
21 identified document to the addressee stated above, in the ordinary course of business.

22 ☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**

23
24 
25 LIZ WILSON, ALS
26
27
28

BROOKE · SHAW · ZUMPFT
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

1 Thomas J. Hall, Esq.
2 Nevada State Bar No. 675
3 305 South Arlington Avenue
4 Post Office Box 3948
5 Reno, Nevada 89505
6 Telephone: 775-348-7011
7 Facsimile: 775-348-7211

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument Case No.: 08-CV-0363-D
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek, Dept. No.: I
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

REPLY IN SUPPORT OF MOTION TO INTERVENE

Comes now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., in their
support of their Motion to Intervene, filed herein on April 10,
2009, reply as follows:

1 A. The Court Has Already Indicated A Preference For
2 Intervention.

3 At the hearing held April 1, 2009, this Court noted that
4 all interested parties who sought to participate in the
5 adjudication procedure must file a Motion to Intervene, and
6 further, that the Court would liberally grant such Motions. For
7 that reason, the Intervenors filed an abbreviated Motion to
8 Intervene pursuant to NRS 533.170 and NRCP Rule 24. In addition,
9 they incorporated in their Motion the Reply to Exceptions by
10 Bentley to Final Order of Determinations filed herein on March
11 27, 2009. To the extent that Bentley now claims that Reply to be
12 a "rogue" document, a copy is attached hereto as Exhibit 1 and
13 incorporated herein by this reference.
14

15 In an attempt to conserve judicial resources, given this
16 Court's previous review and comments, a full brief was not
17 submitted and is not deemed essential to the Motion to
18 Intervene.
19

20 B. The Proposed Intervenors Are Landowners And
21 Water Right Holders.

22 The proposed Intervenors are landowners and water right
23 holders that own land downstream from the Bentley Property. They
24 also hold water rights in Sheridan Creek historically used to
25 irrigate their lands. They are obviously and necessarily
26 interested in the diversions made upstream by Bentley in
27
28

violation of custom, practice and decrees. A tabulation of
Intervenors' land holdings are set forth next, to wit:

<u>Intervenor</u>	<u>APN</u>	<u>Acreage</u>
Hall Ranches, LLC	1219-14-001-003	23.800
Thomas J. Scyphers and Kathleen M. Scyphers	1219-14-001-004	13.010
Frank Scharo	1219-14-001-005	12.990
Sheridan Creek Equestrian Center Glenn Roberson	1219-14-001-008	35.960
Donald S. and Kristina Forrester	1219-14-001-012	59.620
Ronald R. and Ginger G. Mitchell	1219-14-001-009	10.020
	1219-14-001-010	10.480
	1219-14-001-011	<u>10.370</u>
Total Acreage of Intervenors		176.43

C. Legal Authorities Support Intervention.

The Nevada Civil Practice Manual discusses intervention
under Section 5.23 and includes the following:

Intervention of right has been allowed where the
applicant claimed ownership in land involved in the
action. *Bartlett v. Bishop of Nev.*, 59 Nev. 283, 91
P.2d 828 (1939). It has been denied where the claimant
would not gain or lose in a pecuniary sense. See,
Stephens v. First Nat'l Bank of Nev., 64 Nev. 292, 182
P.2d 146 (1947) (holding that the United States has no
right to intervene in action between private parties
to determine ownership of savings bonds). By contrast,
permissive intervention has been allowed, absent a
pecuniary interest, when the public interest can be
benefited. *Azbill v. Fisher*, 84 Nev. 414, 442 P.2d 916
(1968) (allowing newspaper reporter to intervene in
mandamus proceeding to determine the constitutionality
of a statute permitting exclusion of general public,

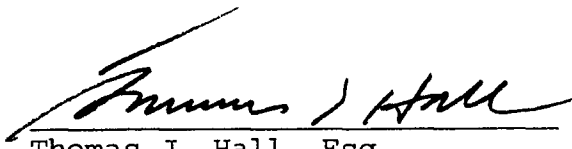
1 including reporters, from the courtroom, because the
2 "principle involved is in the public interest").

3 Because Bentley is over-using the limited water resources
4 to the detriment of proposed Intervenor, it is clear they have
5 standing to petition this Court for intervention. Furthermore,
6 proposed Intervenor have not waived any objections to Bentley's
7 objections at all.

8 WHEREFORE, Intervenor request the Court grant their Motion
9 to Intervene and set the matter for a pre-trial conference as
10 indicated on April 1, 2009.

11 Respectfully submitted this 23rd day of April, 2009.
12

13
14 LAW OFFICES OF THOMAS J. HALL

15
16 
17 Thomas J. Hall, Esq.
18 Nevada State Bar No. 675
19 305 South Arlington Avenue
20 Post Office Box 3948
21 Reno, Nevada 89505
22 Telephone: 775-348-7011
23 Facsimile: 775-348-7211
24
25
26
27
28

Sharon/HallRanches/C'ville/SheridanCr/SupportMotionIntervene.reply

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AFFIRMATION

(Pursuant to NRS 239B.030)

Case No. 08-CV-0363-D

The undersigned does hereby affirm that the preceding document, **Reply in Support of Motion to Intervene**, does not contain the social security number of any person.

DATED this 23rd day of April, 2009.

LAW OFFICES OF THOMAS J. HALL



THOMAS J. HALL, ESQ.

EXHIBIT 1

EXHIBIT 1

RECEIVED FILED

Case No.: 08-CV-0363

Dept. No.: I

Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

MAR 27 2009

2009 MAR 27 PM 1:53

DOUGLAS COUNTY
DISTRICT COURT CLERK TED THUAN
CLERK

B. SINGER
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

REPLY TO EXCEPTIONS BY BENTLEY TO

FINAL ORDER OF DETERMINATION

Comes now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
husband and wife ("Forresters"), and HALL RANCHES, LLC, a Nevada
Limited Liability Company, by and through their counsel, THOMAS
J. HALL, ESQ., and hereby submit their Reply to Exceptions to
Final Order of Determination filed herein by J.W. Bentley and

Maryann Bentley, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), and do hereby state as follows:

I. BACKGROUND.

The Forresters own 59.62 acres of land in Douglas County, Nevada, identified as APN 1219-14-001-012. The Forresters are also owners of Claim V-06309 from Sheridan Creek and Claim V-06310 from Stutler Creek, as set forth in pages 54, 55, 109 and 110 of the Final Order of Determination dated August 14, 2008, in the above referenced matter, ("Final Order"), to wit:

Proof V-06309 was filed on March 16, 1994, by Donald S. Forrester and Kristina M. Forrester claiming a vested right from Sheridan Creek for irrigation of 60.87 acres (North Diversion) and 9.90 acres (South Diversion) of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 70.77 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is partially supplemental to proof V-06310 and supplemented by Permit 7595, Certificate 1760, on the 60.87 acre portion. See Section XII for the portion of the claim for stock water use. See Table No. 6 for diversion rate and duty of water.

Proof V-06310 was filed on March 16, 1994, by Donald S. Forrester and Kristina M. Forrester claiming a vested right from Stutler Creek for irrigation of 60.87 acres of land. Domestic and stock watering uses are also claimed. In this Final Order of Determination, a vested right for 60.87 acres of irrigation and domestic uses from the above-named source is established under this proof. This proof is supplemental to Proof V-06309 and supplemented by Permit 7595, Certificate 1760. See Section XII for the portion of the claim for stock water use. See Table No. 5 for diversion rate and duty of water.

Hall Ranches, LLC, owns 23.80 acres of land in Douglas County, Nevada, identified as APN 1219-14-001-003. Hall

1 Ranches, LLC, is the successor in interest to Donald T. Hall and
2 Peggy Hall under Claim V-06340 for Sheridan Creek and Claim V-
3 06341 for Stutler Creek, as set forth on page 69, 136 and 137 of
4 the Final Order in the above referenced matter, to wit:

5 **Proof V-06340** was filed on March 18, 1994, by Donald
6 T. Hall and Peggy Hall claiming a vested right from
7 Sheridan Creek (North Diversion) for irrigation of
8 22.03 acres of land. Domestic and stock watering uses
9 are also claimed. In this Final Order of
10 Determination, a vested right for 22.03 acres of
11 irrigation and domestic uses from the above-named
12 source is established under this proof. See Section
13 XII for the portion of the claim for stock water use.
14 This proof is supplemental to Proof V-06341 and
15 supplemented by Permit 7595, Certificate 1760. See
16 Table No. 6 for diversion rate and duty of water.

17 **Proof V-06341** was filed on March 18, 1994, by Donald
18 T. Hall and Peggy Hall claiming a vested right from
19 Stutler Creek for irrigation of 22.03 acres of land.
20 Domestic and stock watering uses are also claimed. In
21 this Final Order of Determination, a vested right for
22 22.03 acres of irrigation and domestic uses from the
23 above-named source is established under this proof.
24 See Section XII for the portion of the claim for stock
25 water use. This proof is supplemental to Proof V-
26 06340 and supplemented by Permit 7595, Certificate
27 1760. See Table No. 5 for diversion rate and duty of
28 water.

See correspondence dated August 29, 2007, from Nevada
Division of Water Resources attached hereto as Exhibit A.

The lands of the Forresters and Hall Ranches lie downstream
from the lands of Bentley. See Map attached as Exhibit B. The
uses and proposed uses by Bentley as described in their
Exceptions conflict with the rights of the Forresters and Hall
Ranches identified above.

\\\\\\\\

1 II. RESPONSE TO EXCEPTION NO. 1, DIVERSION SCHEDULE.

2 A. The Water Diversion and Use Agreement is Unenforceable.

3 Bentley contends that its diversion rights are set forth in
4 a series of diversion agreements between Bentley's predecessors
5 in interest and the predecessors in interest of owners of other
6 properties identified in the Final Order Tables 5 and 6.
7 Specifically, Bentley attaches to the Notice of Exceptions, an
8 Exhibit 3, which purports to be a Water Diversion and Use
9 Agreement recorded on March 27, 1987, in Book 387, at Page 2726,
10 as Document 152147, Douglas County Records. First, examination
11 of the Water Diversion and Use Agreement shows that it was not
12 signed either by June Irene Bartlett, who took title as June
13 Irene Rolph, or by Nancy Rolph Welch. In recital number 3 of
14 the Agreement, at page 2726, it is stated:
15

16 3. Grantors own and enjoy the right to use waters from
17 Sheridan Creek.

18 Because the Water Diversion and Use Agreement was not
19 signed by the holders of the water right, it is unenforceable
20 under the Nevada statute of frauds.

21 "It is well settled that a water right is realty." Netzel
22 v. Rochester Silver Corporation, 50 Nev. 352, 357, 259 Pac. 232
23 (1927); Carson City v. Estate of Lompa, 88 Nev. 541, 542, 501
24 P.2d 662 (1972).
25

26 \\\

1 Inasmuch as water rights are treated as realty in Nevada,
2 all agreements involving water rights are subject to the Nevada
3 Statute of Frauds. See NRS 111.205 (1), which provides:

4 **111.205. No estate created in land unless by operation**
5 **of law or written conveyance; leases for terms not**
6 **exceeding 1 year.**

7 1. No estate or interest in lands, other than for
8 leases for a term not exceeding 1 year, nor any trust
9 or power over or concerning lands, or in any manner
10 relating thereto, shall be created, granted, assigned,
11 surrendered or declared after December 2, 1861, unless
12 by act or operation of law, or by deed or conveyance,
13 in writing, subscribed by the party creating,
14 granting, assigning, surrendering or declaring the
15 same, or by his lawful agent thereunto authorized in
16 writing.

17 For example, the recordation of a parcel map does not
18 satisfy the statute of frauds where the map is not subscribed by
19 both parties. Jim Marsh America v. Century Construction, 106
20 Nev. 727, 728, 802 P.2d 1 (1990). ("The creation of an easement
21 is subject to the statute of frauds. NRS 111.205(1). The
22 existence of an easement may not be established through parol
23 evidence. [I]n the absence of any writing subscribed to by the
24 servient estate owner, the alleged easement was never
25 created.").

26 So too here, the right to divert water under the 1987 Water
27 Diversion and Use Agreement was never created. See Exhibit D.

28 **B. The Grantors Reserved All Water Rights.**

Second, reference to a Joint Tenancy Deed recorded on
January 6, 1986, in Book 186, at Page 214, as Document 129025,

1 demonstrates that the transfer from Nancy Rolph Welch, as to her
2 one-half interest, to Gerald F. Whitmire and Pamela F.J.
3 Whitmire, husband and wife, predecessors to Bentley, was made
4 with the reservation to Grantor of all water rights, in the
5 following fashion (see Exhibit C):

6 RESERVING UNTO the Grantor herein all water rights
7 appurtenant to the herein described real property.

8 A second Joint Tenancy Deed recorded on January 6, 1986, in
9 Book 186, at Page 217, as Document 129026, from June Irene Rolph
10 as to her one-half interest, to Gerald F. Whitmire and Pamela
11 F.J. Whitmire, husband and wife, predecessors to Bentley, was
12 also made with the reservation to Grantor of all water rights,
13 as follows:

14 RESERVING UNTO the Grantor herein all water rights
15 appurtenant to the herein described real property.

16 It is clear that the Grantors reserved all water rights in
17 their Deeds and therefore the presumption that all water rights
18 were transferred is destroyed. See NRS 111.167.

19
20 C. The Use To Fill A New Pond Violates The Agreement.

21 The right to divert water to fill ponds under the 1987
22 Water Diversion and Use Agreement (Exhibit D) must be restricted
23 to the ponds existing on the date of the Agreement, i.e. June 9,
24 1986. The Water Diversion and Use Agreement specifically states
25 in recital 5:

26
27 5. Grantee desires to divert some or all of the water
28 from Sheridan Creek, onto his property, to be used in
29 a non-consumptive manner to maintain water levels in

1 ponds on Grantee's property, and thereafter to cause
2 the water to be diverted back to the property of
3 Grantors for irrigation purposes. [Emphasis added.]

4 Further, in the Agreement, paragraph B states:

5 B. This grant is specifically made on the condition
6 that the water will be used by Grantee in a non-
7 consumptive fashion, to maintain water levels in a
8 series of streams and ponds on the Exhibit "A"
9 property, after which time it will be re-diverted to
10 the irrigation ditches of Grantors. [Emphasis added.]

11 In 2008, Bentley created a new and additional large pond of
12 approximately one acre in size into which water has been
13 diverted from Sheridan Creek. The right for water diversion and
14 use under the 1987 Agreement is restricted in two forms. First
15 it is restricted to the ponds existing as of the date of the
16 Agreement, i.e., to ponds existing on June 9, 1986. Secondly,
17 it is restricted to a non-consumptive use.

18 It is widely understood that once a right is created, it
19 may not be enlarged to the detriment of other parties without
20 prior permission or consent.

21 For example, it is the right of both parties to insist that
22 the easement for a ditch shall remain substantially as it was at
23 the time of its execution. The authorities that define what
24 constitutes the bank of a river have no application to the banks
25 of a ditch, and along the banks, to secure the owner in the
26 reasonable and proper enjoyment of his easement, is a question
27 for the trial court to decide, on the evidence. Thomas v.
28 Blaisdell, 23 Nev. 223, 228, 58 Pac. 903 (1899); Ennor v. Raine,

1 27 Nev. 178, 213 74 Pac. 1 (1903); Malstrom v. People's Drain
2 Ditch Co., 32 Nev. 246, 253, 255 107 Pac. 98 (1910).

3 Neither can Bentley argue for an enlarged prescriptive
4 right. In Boynton v. Longley, 19 Nev. 69, at 76 (1885), the
5 Nevada Supreme Court stated:

6 The right acquired by prescription is only
7 commensurate with the right enjoyed. The extent of
8 the enjoyment measures the extent of the right. The
9 right gained by prescription is always confined to the
10 right as exercised for the full period of time
11 required by the statute, which is, in this state, five
12 years. A party claiming a prescriptive right for five
13 years, who, within that time, enlarges the use, cannot
14 at the end of that time claim the use as enlarged
15 within that period.

16 The pond recently created by Bentley was completed in 2008
17 and there has not been five years adverse or continuous use.

18 "It is a general rule of law that, in the absence of
19 statute to the contrary, the location of an easement once
20 selected cannot be changed by either the landowner or the
21 easement owner without the other's consent." Swenson v. Strout
22 Realty, Inc., 85 Nev. 231, 239, 452 P.2d 972 (1969). See also 93
23 C.J.S., Waters, Section 192(b)(2) (1956) ("in the absence of
24 statute, the owner of a servient estate has no right to change
25 the place or location of an appropriator's ditch."); Archibeck
26 v. Mongiello, 58 N.M. 749, 276 P.2d 736, 739 (1954) (applying
27 general prohibition on moving ditch easements): Lunn v. Schmidt,
28 No. 49537, 1985 WL 8129, at 4, 1985 Ohio App. LEXIS 8840, at 12
(Ohio App. 1985) ("The plaintiffs correctly state the general

1 rule that neither the dominant landowner nor the servient
2 landowner may materially alter the easement without the consent
3 of both parties. The placing of closed pipe in a drainage ditch,
4 constitutes a material alteration.").

5 **D. Bentley Holds No Permit For The New Larger Pond.**

6 It is stated in J. Davenport, Nevada Water Law, at pages
7 138-139 (2003):

8
9 **E. Storage of Water in Reservoirs**

10 Storage of water is a beneficial use. Applications
11 for permits to store water proceed under the same
12 application requirements as to other appropriative
13 uses. However, the applicant is not required to prove
14 application of water to a beneficial use. Rather,
15 applicants must apply for a "secondary" permit in
16 order to withdraw stored water from the reservoir.
17 The notice requirements of initial permit applications
18 are waived. The secondary permit application must
19 refer to the reservoir as the water supply and
20 demonstrate a contractual arrangement with the
21 reservoir's owner committing his permanent and
22 sufficient interest in the reservoir to impound enough
23 water to support the beneficial use set forth in the
24 application. Certificates of appropriation issued on
25 secondary permits must refer to both the ultimate use
26 of the water, and its attendant works, as well as the
27 reservoir described in the primary permit. The
28 primary/secondary permit provision is often used in
the case of waste water generation, where the primary
permit holder is the effluent generator and the
secondary permit is in the ultimate user of effluent.

Water stored for irrigation or other beneficial
purposes may be turned into the channel of any natural
stream or watercourse, and mingled with its waters,
and then be reclaimed, but, in reclaiming it, water
already appropriated by others shall not be diminished
in quantity. [Emphasis added.]

Bentley does not hold a storage permit issued under NRS

533.440.

1 Further, the use Bentley proposes does diminish the
2 quantity of water flowing to the Forresters and Hall Ranches in
3 violation of NRS 533.525. Said section provides:

4 533.525 Stored water may be conveyed through streams
5 and reclaimed; conditions.

6 Any water stored for irrigation or other beneficial
7 purposes may be turned into the channel of any natural
8 stream or watercourse, and mingled with its waters,
9 and then be reclaimed, but, in reclaiming it, water
already appropriated by others shall not be diminished
in quantity. [Emphasis added.]

10 The State Engineer is also required to take reservoir
11 evaporation losses into account and consideration pursuant to
12 NRS 533.070(2) which provides as follows:

13 533.070 Quantity of water appropriated limited to
14 amount reasonably required for beneficial use; duties
15 of State Engineer in connection with water diverted or
stored for purpose of irrigation.

16 2. . . . In addition, in the case of storage of
17 water, reservoir evaporation losses should be taken
18 into consideration in determining the acre-footage of
storage to be granted in a permit.

19 III. CONCLUSION.

20 The proposed Exceptions by Bentley to the Final Order and
21 any uses described therein interfere with the rights of the
22 Forresters and Hall Ranches and therefore must not be
23 considered, accepted or allowed.

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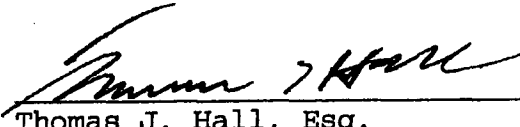
26 \\\

27 \\\

28 \\\

1 DATED this 26th day of March, 2009.

2 LAW OFFICES OF THOMAS J. HALL

3 

4 Thomas J. Hall, Esq.
5 Nevada State Bar No. 675
6 305 South Arlington Avenue
7 Post Office Box 3948
8 Reno, Nevada 89505
9 Telephone: 775-348-7011
10 Facsimile: 775-348-7211

11 **AFFIRMATION**

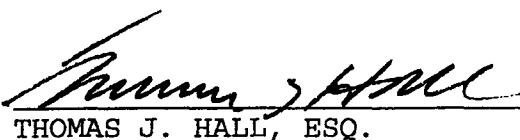
12 (Pursuant to NRS 239B.030)

13 Case No. 08-CV-0363

14
15
16
17 The undersigned does hereby affirm that the preceding
18 document, **Reply to Exceptions by Bentley to Final Order of**
19 **Determination**, does not contain the social security number of
20 any person.

21 DATED this 26th day of March, 2009.

22 LAW OFFICES OF THOMAS J. HALL

23 
24 THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

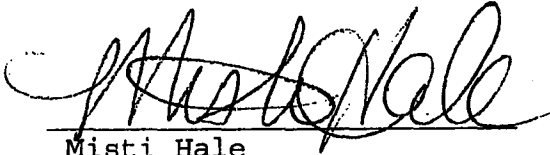
I certify that I am an employee of Thomas J. Hall, Esq.,
and that on this date, pursuant to NRCP 5(b), I placed in the
U.S. Mail, postage prepaid, a true and correct copy of the Reply
to Exceptions by Bentley to Final Order of Determination,
addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

State of Nevada
Department of Conservation and Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

DATED this 26th day of March, 2009.


Misti Hale

LIST OF EXHIBITS

1

2

Exhibit A: Correspondence from Nevada Division of Water
Resources dated August 29, 2007.

3

4

Exhibit B: Assessor's Parcel Map depicting properties of
Bentley, Forrester and Hall Ranches.

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Exhibit C: Joint Tenancy Deed recorded January 6, 1986.

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Exhibit D: Water Diversion and Use Agreement.

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EXHIBIT A

EXHIBIT A

JIM GIBBONS
Governor

STATE OF NEVADA

ALLEN BIAGGI
Director

TRACY TAYLOR, P.E.
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>

August 29, 2007

RE: Permit 7595 Certificate 1760;
Proofs V06340 and V06341; and
Carson River Claim DCR-623

Thomas J. Hall
Hall Ranches, LLC
P.O. Box 2086
Stateline, NV 89449

Dear Mr. Hall:

Please be advised that your *Reports of Conveyance* received on March 4, 2005 are hereby confirmed to update ownership of all or a portion of the Permits, Claims, and Proofs (water rights) in the name of **Hall Ranches, LLC** as listed in the table below. Details of these water rights, including current ownership, can be viewed on our website at water.nv.gov. Click on "Water Rights Database," then "Permit Search."

Permit/Certificate	Diversion Rate (cfs)	Duty (AFA/AFS)	Acres	Remarks
7595 / 1760	0.2381	86.74 AFS	23.81 ac	APN: 1219-14-001-003
Proof V06340	0.2644	88.12 AFA	22.03 ac	Source: Sheridan Creek
Proof V06341	0.2644	88.12 AFA	22.03 ac	Source: Stutler Canyon Creek
DCR-623	Decreed	Decreed	1.05 ac	via Park & Bull slough

Also be advised that according to NRS 533.386 (2.), this confirmation of your Report of Conveyance does not guarantee that a) the water right is in good standing with the office of the State Engineer; or b) the amount of water referenced in the notice or in the report of conveyance is the actual amount of water that a person is entitled to use.

This confirmation reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation. The owner is responsible for notifying the State Engineer's office of any change of address in writing. If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary E. Taitano".

Mary E. Taitano
Engineering Technician III

MET/lb

cc: Thomas J. Hall, Esq., Law Offices of Thomas J. Hall
Garry Stone, Federal Water Master
Marty Kaiser, Bureau of Reclamation, US Department of the Interior
Carson Water Subconservancy District

1
T
E
M

State of Nevada

Sep-02

REPORT OF CONVEYANCE

of a water right to

Department of Conservation and Natural Resources, Division of Water Resources, Office of the State Engineer

1 APPLICATION/ PERMIT No. _____ PROOF, or CLAIM No.: V06340 STATUS: Proof USE: Irr.

2 CURRENT HOLDER(S) SHOWN BY THE STATE ENGINEER: Donald T. Hall and Peggy T. Hall, husband and wife as Joint Tenants

If any item requires additional space, please use Item 15 Remarks; or attach 8 1/2" X 11" sheets referencing appropriate item number.

3 NEW HOLDER(S) or BENEFICIARY(S): Hall Ranches, LLC

ADDRESS: Post Office Box 2086
CITY: Pero Stateline STATE: Nevada ZIP CODE: 89449 PHONE: 775-588-3690

4 INVENTORY DOCUMENTS BY CATEGORY AND NUMBER OF EACH IN CHAIN OF TITLE. See Guidelines Page 2

DEED(S).....	<u>12</u>	CORRECTION DEED(S).....		OTHER:	
DEED(S) OF TRUST.....		RECONVEYANCE...at no charge		TOTAL NUMBER OF SS DOCUMENTS =>	
NOTICE(S) OF PLEDGE.....		MAP(S) at no charge.....		TOTAL # X \$10 each =	<u>13</u> \$ <u>130</u> .00
DEATH CERTIFICATES.....		AFF OF ID at no charge.....		Report filing fee = \$25.00	\$ <u>25</u> .00
DECREE(S) OF DISTR.....		OTHER: <u>Boundary Line Adjustment</u>	<u>1</u>	TOTAL FEES SUBMITTED*	\$ <u>155</u> .00

5 *ONE, ONE-TIME \$25 FILING FEE MUST ACCOMPANY THESE REPORT(S) +\$10 PER CONVEYANCE DOCUMENT LISTED ABOVE.

6 This REPORT requires an ABSTRACT OF TITLE listing the above documents in chronological order, from the current holder(s) of record (ITEM 2) with the Division of Water Resources, Office of the State Engineer, to the proposed, new holder(s) of record (ITEM 3). Document(s) must be recorded in the Office(s) of the respective County Recorder(s).
If the legal description on any deed(s) refer(s) to a subdivision lot or parcel or assessor's parcel number, or lists any deviation(s) different than the place of use in a Quarter/Quarter/Section/Township/Range format, a copy of the map referred to in said deed(s) is required. Copies of maps should be 8 1/2" x 11" or 11" x 17". Please refer to Guidelines sheet for details.

7 LIST SUPPLEMENTAL RIGHTS: _____

8 COUNTY: POINT OF DIVERSION: Douglas COUNTY: PLACE(S) OF USE: Douglas

9 PLACE(S) OF USE: Qtr. _____ Qtr. _____ Sec. _____ TWSHP _____ RANGE _____ APN: 19-212-42

10 AMOUNT (DUTIES) TO BE ASSIGNED: _____ CFS _____ ACRE-FEET or MGA 88.12 ACRES or UNITS

11 DOES THE CURRENT HOLDER INTEND TO RETAIN ANY PORTION OF THE WATER RIGHT? YES _____ NO X

12 IS AN APPLICATION TO CHANGE THE P.O.D, P.O.U., OR M.O.U. OF THIS RIGHT TO BE FILED? YES _____ NO X

13 IF AN APPLICATION TO CHANGE THE P.O.D, P.O.U., OR M.O.U. IS ALREADY FILED, INDICATE THE NUMBER: _____

14 List any other water rights relating to this Report of Conveyance that has been filed using this same abstract and chain of title.
Permit 7595 filed with the Division on March 4, 2005

15 Additional Space/Remarks: This vested right has been granted, through the supporting chain of title, to Hall Ranches, LLC

16 "I swear, under penalty of perjury, that this represents a complete and thorough search of the records of the county recorder of each county in which the water is placed to beneficial use or diverted from its natural source and the records on file in the office of the state engineer."

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 18th DAY OF

Mo. September Yr. 2006

Sharon M. Knudson
Notary Signature Required

NOTARY PUBLIC IN AND FOR THE
COUNTY OF Washoe
STATE OF Nevada

MY COMMISSION EXPIRE November 22, 2006

SIGNATURE: Thomas J. Hall

PRINT NAME: Thomas J. Hall, Esq.

MAILING ADDRESS: Post Office Box 3948

FIRM NAME: Law Offices of Thomas J. Hall

CITY: Pero STATE: Nevada ZIP CODE: 89505

PHONE: 775-348-7011



OWNER?: _____

AGENT?: X

NOTARY STAMP

FOR OFFICE USE ONLY

ITEM	REVIEW BY / DATE	FEE RECORDS
1	Previous reports/submittals pending	Receipt No.(s) _____
2	Current holder(s) verified	Date of Receipt _____
3	New holder(s) information complete	
4	Inventory verified. Fees correct	Receipt No.(s) _____
5	Technical review	Date of Receipt _____
6	Abstract / Chain of Title	
7	Supplemental rights recognized	\$\$ This R.O.C. _____
8	Counties compared POD/POU	
9	Place of Use determinable	Original Receipt(s) Located
10	Duties determined	In File No. _____
11	Appurtenancy / portions / percentages	
12	Related rights by deeds and abstract	Deeds/Docs Filed in
13	Remarks reviewed	File No. _____
14	Notary/SS legible and logical	_____

* * * DEFICIENCIES REQUIRING RETURN * * *

[illegible]

**RETURNED for
CORRECTION to:**

DATE: _____ BY: _____

Remarks:

DUE DATE: _____

**CORRECTION
RECEIVED:**

DATE: _____ BY: _____

**CONFIRMED
REPORT:**

DATE: _____ BY: _____

Remarks:

STATE ENGINEERS OFFICE

2006 SEP 22 PM 1:35

RECEIVED

EXHIBIT B

EXHIBIT B

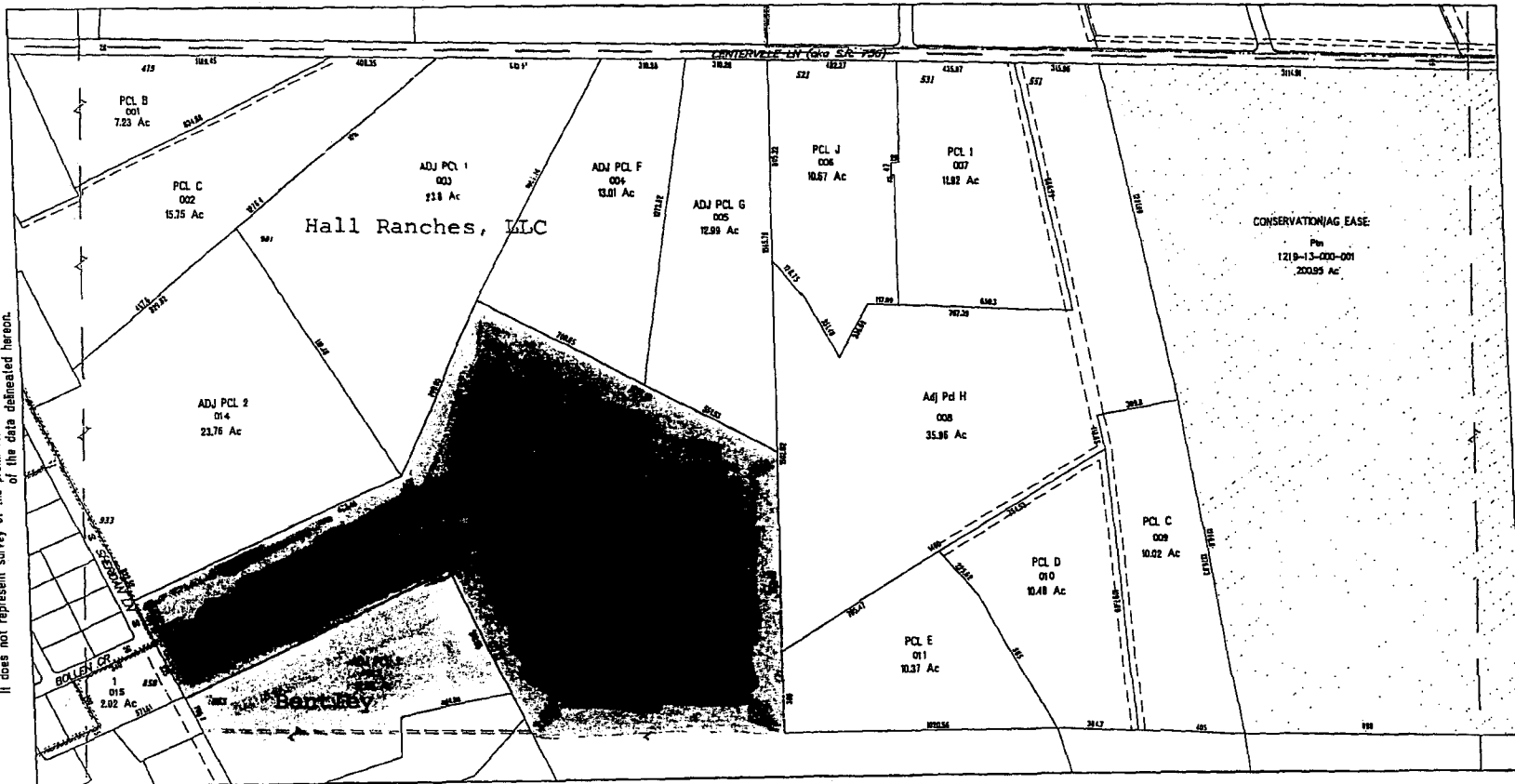
Yellow = Hall Ranches, LLC's property

Pink = ~~Hall Ranches~~ property

Green = Bentley property

Douglas County, Nevada Assessor's Parcels Douglas County Assessor	Map Legend — Parcel Boundary - - Sub'd Boundary - - Easements - - Town Boundary - - Township/Range/Section [] Open Space/Conserv. Ease. [] Receiving Area	001 Parcel Number 110 Parcel Sub/Seq Number L80 Parcel Acreage B L K A Parcel Block Number 1 Parcel Lot Number 1100 Parcel Address	T12 N R19 E 	SEC. 14 <table border="1"> <tr><td>6</td><td>5</td><td>4</td><td>3</td><td>2</td><td>1</td></tr> <tr><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td></tr> <tr><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>18</td></tr> <tr><td>19</td><td>20</td><td>21</td><td>22</td><td>23</td><td>24</td></tr> <tr><td>25</td><td>26</td><td>27</td><td>28</td><td>29</td><td>30</td></tr> <tr><td>31</td><td>32</td><td>33</td><td>34</td><td>35</td><td>36</td></tr> </table>	6	5	4	3	2	1	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	N 2 SEC <table border="1"> <tr><td>1</td><td>2</td></tr> <tr><td>3</td><td>4</td></tr> <tr><td>5</td><td>6</td></tr> <tr><td>7</td><td>8</td></tr> </table>	1	2	3	4	5	6	7	8	1219-14-001 SCALE: 1" = 400' REVSD: 04/06/2008
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NOTE: This map is prepared for the use of Douglas County Assessor, for assessment and illustrative purposes only. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.



Pink = Forrester property

Green = Bentley property

Douglas County, Nevada

Assessor's Parcels
Douglas County Assessor

Map Legend

- Parcel Boundary
- Sub'd Boundary
- Easements - See Recorded Documents
- Town Boundary
- Township/Range/Section
- Open Space/Conserv. Ease.
- Receiving Area

T12 N R19 E

SEC. 14

S 2 SEC

1219-14-002

Parcel Number

Parcel Sub/Seq Number

Parcel Acreage

Parcel Block Number

Parcel Lot Number

Parcel Address

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120

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200

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002

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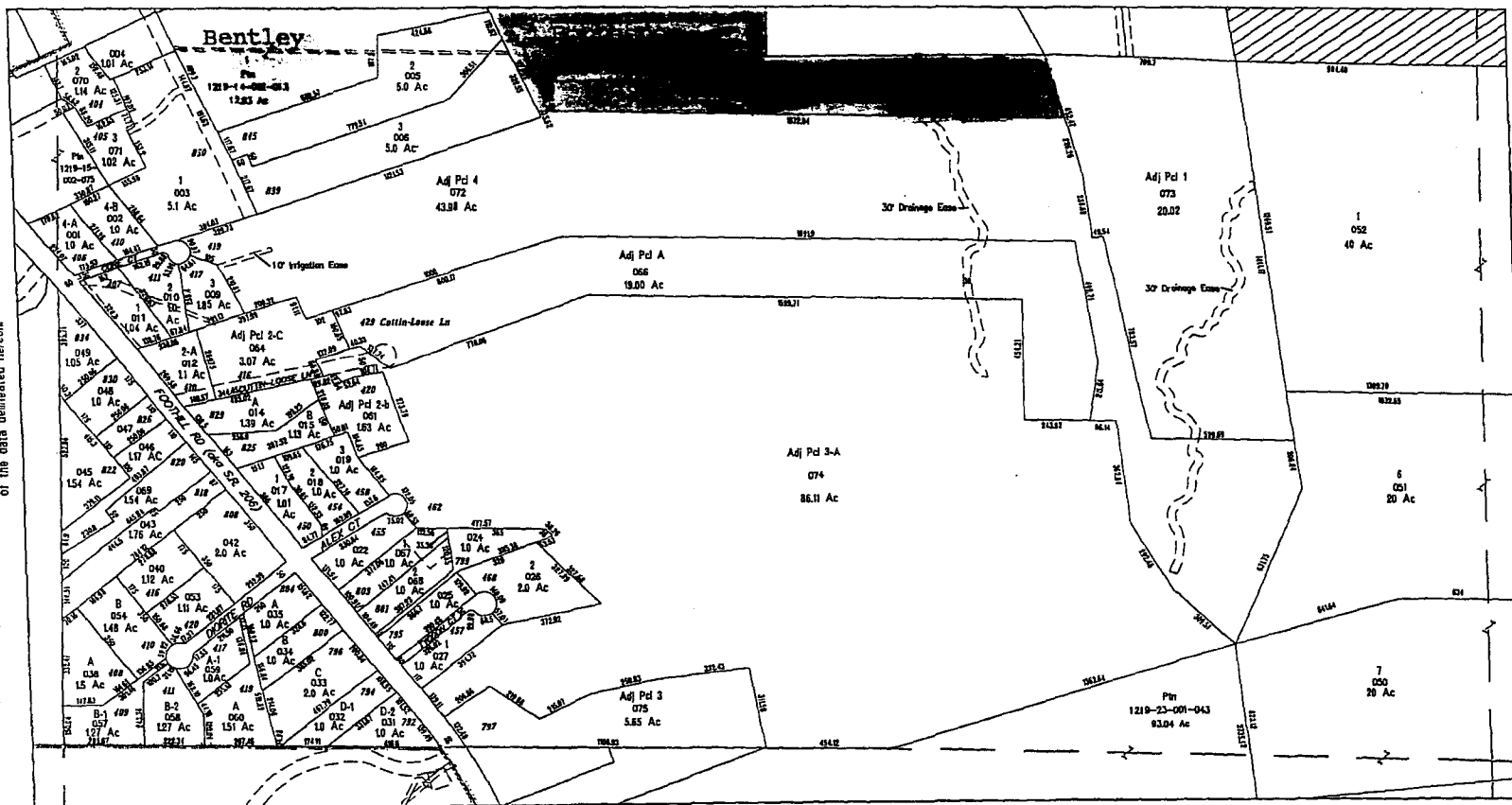
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NOTE: This map is prepared for the use of Douglas County Assessor, for assessment and illustrative purposes only. It does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.



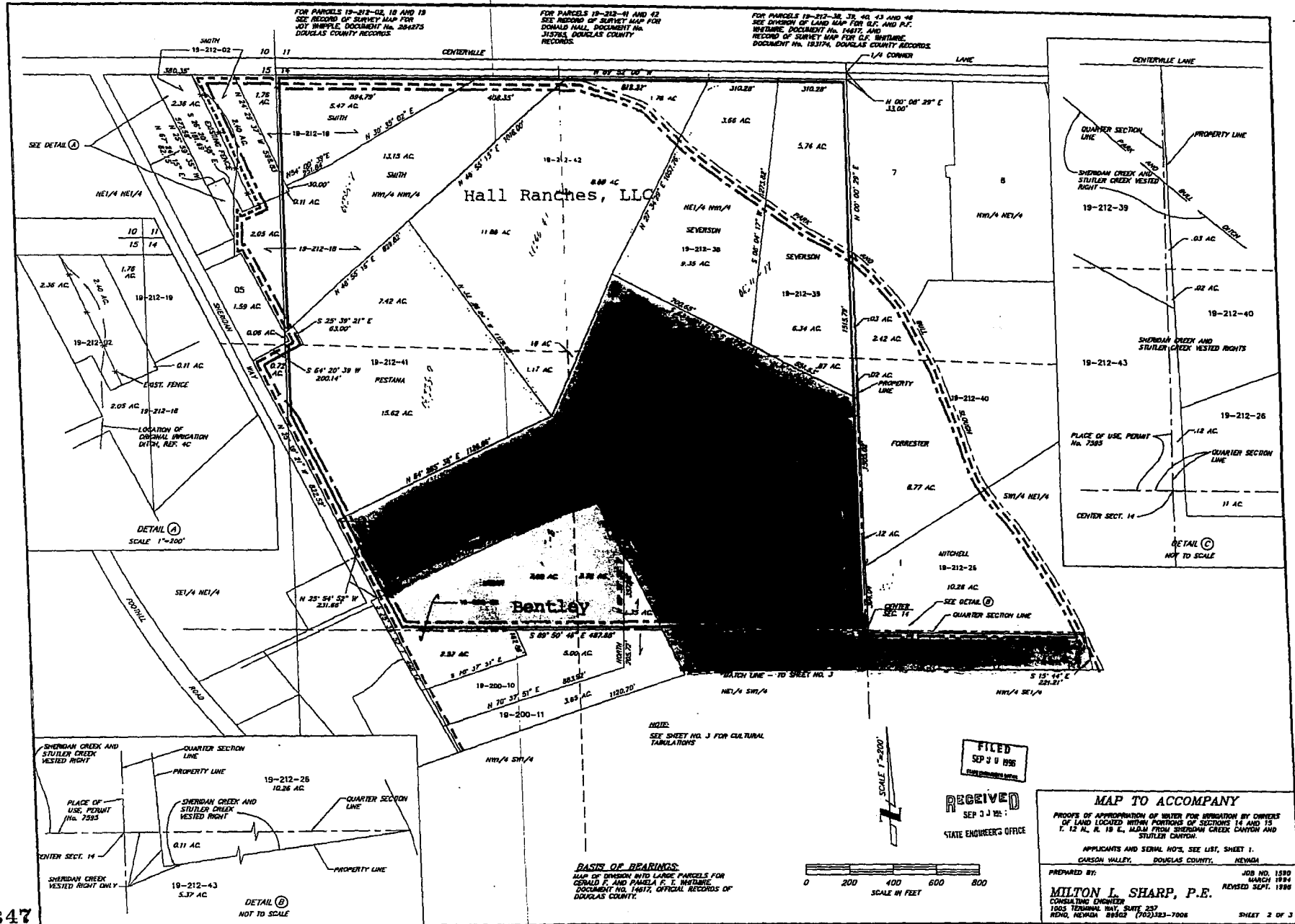


EXHIBIT C

EXHIBIT C

ORDER NO.: 103935

433

LEGAL DESCRIPTION

PARCEL ONE:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56 feet; thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

EXHIBIT "B"

RECITAL

GRANTOR makes no warranty, expressed or implied, as to the following:

1. The legal existence of any or all of those certain parcels as shown on that certain Record of Survey for Run Around Ranch, recorded March 7, 1973, of Official Records of Douglas County, Nevada, as Document No. 64581.
2. The conformity to any zoning and/or land division ordinances of said parcels of the aforementioned Record of Survey.
3. The marketability of said parcels of the aforementioned Record of Survey.
4. The ability to pass the appropriate percolation tests for the purpose of installation of a sewer system on any or all of said parcels of the aforementioned Record of Survey.

GRANTEES join in the execution of this instrument to acknowledge their approval and consent of the above recital.

GRANTEES:

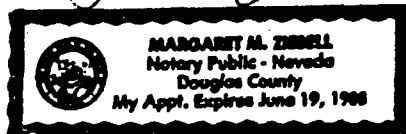
Gerald F. Whitmire
GERALD F. WHITMIRE

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

State of Nevada
County of Douglas

On January 3, 1986, before me, a Notary Public, in and for the County of Douglas, State of Nevada, personally appeared GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, known to me to be persons whose names are subscribed above and acknowledged to me that they executed the same.

Margaret M. Ziebell
Notary Public



REQUESTED BY
DOUGLAS COUNTY TITLE
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

86 JAN -6 A9:59

SUZANNE E. BOUTEAU
RECORDED

37th PAID *fy* DEPUTY

129025

BOOK 186 PAGE 216

JOINT TENANCY DEED

DEED NO.: 103235

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, an unmarried woman dealing
with her undivided 1/2 interest

In consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
 Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife

as joint tenants with right of survivorship, and not as tenants in common, and to the heirs and assigns of such Grantee forever, all that
 real property situated in the unincorporated County of Douglas

State of Nevada, bounded and described as follows:

SEE ATTACHED LEGAL DESCRIPTION MARKED "EXHIBIT A" CONSISTING OF
 SEE ATTACHED EXHIBIT "B" FOR RECITAL.

RESERVING UNTO the Grantor herein all water rights appurtenant to
 the herein described real property.
 This Deed creates a boundaryline adjustment between the property described
 herein and adjacent property to the south of this parcel, and does not
 create any new parcel.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof, excepting all water rights.

Witness my hand this 15th day of November, 19 85.

STATE OF NEVADA

COUNTY OF Washoe

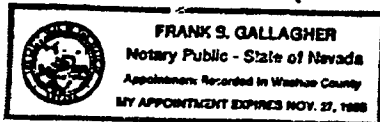
On November 12, 1985
 personally appeared before me, a Notary Public,

SS

June Irene Rolph
 JUNE IRENE ROLPH

who acknowledged that he executed
 the above instrument.

Frank S. Gallagher
 Notary Public



WHEN RECORDED MAIL TO:

The grantor(s) declare(s):
 Documentary transfer tax is \$ 288.75
 (☒) computed on full value of property conveyed, or
 (☐) computed on full value less value of liens and
 encumbrances remaining at time of sale.

FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

Grantor
P.O. Box 28018
Minneapolis, MN 55423

SHERRIN WALSH & REE
 ATTORNEYS AT LAW
 CLARK COUNTY
 CLARK COUNTY CLERK'S OFFICE
 CLARK COUNTY, NEVADA

129026
 BOOK 186 PAGE 217

PARCEL ONE:

LEGAL DESCRIPTION

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N $\frac{1}{2}$) and the South one-half (S $\frac{1}{2}$) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N $\frac{1}{4}$) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56 feet; thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

129026

BOOK 186 PAGE 218

Exhibit "B"

R E C I T A L


GRANTOR makes no warranty, expressed or implied, as to the following:

1. The legal existence of any or all of those certain parcels as shown on that certain Record of Survey for Run Around Ranch, recorded March 7, 1973, of Official Records of Douglas County, Nevada, as Document No. 64581.
2. The conformity to any zoning and/or land division ordinances of said parcels of the aforementioned Record of Survey.
3. The marketability of said parcels of the aforementioned Record of Survey.
4. The ability to pass the appropriate percolation tests for the purpose of installation of a sewer system on any or all of said parcels of the aforementioned Record of Survey.

GRANTEES join in the execution of this instrument to acknowledge their approval and consent of the above recital.

GRANTEES:

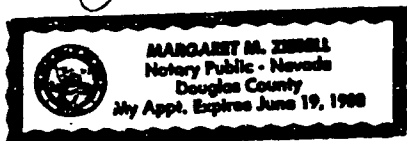

GERALD F. WHITMIRE


PAMELA F. J. WHITMIRE

State of Nevada
County of Douglas

On January 3, 1986, before me, a Notary Public, in and for the County of Douglas, State of Nevada, personally appeared GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, known to me to be persons whose names are subscribed above and acknowledged to me that they executed the same.


Notary Public



REQUESTED BY
DOUGLAS COUNTY TITLE
IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

'86 JAN -6 10:00

SUZANNE BEAUDREAU
RECORDER

\$ 7.00 PAID.  DEPUTY

129026
BOOK 186 PAGE 219

EXHIBIT D

EXHIBIT D

12- P.O. Box 11
Sheridan, Wyo.
89423

WATER DIVERSION AND USE AGREEMENT

THIS AGREEMENT is entered into by and between JUNE IRENE BARTLETT, who took title as June Irene Rolph, NANCY ROLPH WELCH, GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife as joint tenants, hereafter referred to as "Grantors" and JOSEPH S. LODATO, hereafter referred to as "Grantee", based upon the following facts:

1. Grantors are the owners of real property located in Douglas County, Nevada, as well as the owners of water rights which are appurtenant to, certificated or adjudicated to the benefit of the property owned by them in Douglas County, Nevada.

2. Grantee is the owner of real property located in Douglas County, Nevada, which was purchased heretofore from Grantors.

3. Grantors own and enjoy the right to use waters from Sheridan Creek.

4. There are no downstream users of water from these creeks, after this water is used by Grantors.

5. Grantee desires to divert some or all of the water from Sheridan Creek, onto his property, to be used in a non-consumptive manner to maintain water levels in ponds on Grantee's property, and thereafter to cause the water to be diverted back to the property of Grantors for irrigation purposes.

6. Grantors have agreed to such an arrangement, on the terms and conditions which follow.

THEREFORE, based upon the recital of facts set forth above, which are incorporated in the body of this agreement by reference, and the covenants and conditions which follow hereinafter, the parties do agree as follows:

A. For valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors do hereby give and grant to Grantee, as a covenant running to the benefit of the land described in Exhibit "A" attached hereto, the right to divert one hundred percent (100%) of the water from Sheridan Creek, onto the Exhibit "A" property, in perpetuity.

B. This grant is specifically made on the condition that the water will be used by Grantee in a non-consumptive fashion, to maintain water levels in a series of streams and ponds on the Exhibit "A" property, after which time it will be re-diverted to the irrigation ditches of Grantors.

C. Grantors are granted the right, upon reasonable notice, to have access to the Exhibit "A" property to ensure that the limitations set forth herein regarding use are being adhered to by Grantee.

D. Grantee is hereby given the right of access to other property of Grantors, in order to ensure that the water may be diverted to Grantee's property.

E. This grant of right to divert and use water includes the right of Grantee to divert the Sheridan Creek water from the natural creekbed or water course on the west side of Foothill Road and in an easement granted pursuant to Exhibit "B" which is attached hereto, and to return to the natural water course on property owned by Grantee just east of that 50-foot roadway and utility easement shown on Exhibit "C" which is attached hereto and incorporated herein by reference.

F. This promise to permit the use and diversion of water is intended to be and is made by Grantors to be a covenant running with the land, and the benefits thereof may be enjoyed by the heirs and assigns of Grantee, and subsequent owners of the Exhibit "A" property.

G. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

H. This agreement may be terminated by Grantors in the event a Court of competent jurisdiction determines that the Grantee has been violating the terms hereof, to the detriment of Grantors.

I. The interpretation and enforceability of this agreement shall be determined by the laws of the State of Nevada, and in the event a law suit is brought to enforce or

interpret this agreement, the prevailing party shall be awarded reasonable attorney's fees against the party not prevailing.

IN WITNESS WHEREOF, the parties have set their hands the day and year set forth below.

Date: _____

JUNE IRENE BARTLETT, who took
title as June Irene Rolph

Date: _____

NANCY ROLPH WELCH

Date: 6/9/86

Gerald F. Whitmire
GERALD F. WHITMIRE

Date: 6-9-86

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

Date: _____

Joseph S. Lodato
JOSEPH S. LODATO

STATE OF _____)
COUNTY OF _____) ss.

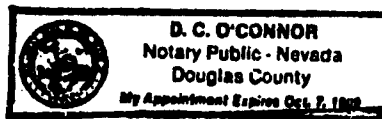
On _____, 1986, personally appeared before me, a notary public, JUNE IRENE BARTLETT, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

Notary Public

STATE OF Nevada)
COUNTY OF Douglas) ss.

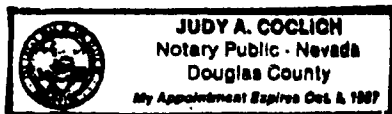
On June 9, 1986, personally appeared before me, a notary public, PAMELA F. J. WHITMIRE, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

D.C. O'Connor
Notary Public



STATE OF Nevada)
COUNTY OF Douglas) ss.

On June 9th, 1986, personally appeared before me, a notary public, JOSEPH S. LODATO, personally known to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for the purposes therein stated.



Judy A. Coclích
Notary Public

EXHIBIT "A"

4 A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.&M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or foreshortened to meet the called beginning.

XX

152147

BOOK 387 PAGE 2732

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCp 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Reply in Support of Motion to Intervene, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

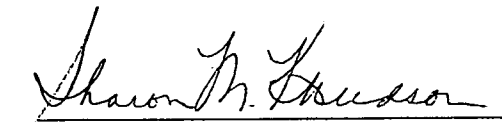
Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 23rd day of April, 2009.


Sharon M. Knudson

RECEIVED

FILED

Case No.: 08-CV-0363-D

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DOUGLAS COUNTY
DISTRICT COURT CLERK

2009 JUN 15 PM 3:03

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
BY _____ DEPUTY

IN AND FOR DOUGLAS COUNTY

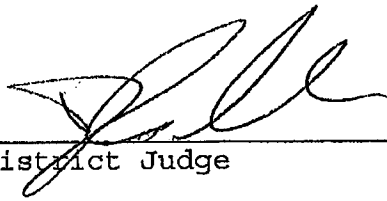
In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

ORDER ALLOWING INTERVENTION

In this cause, the Motion of HALL RANCHES, LLC, a Nevada
Limited Liability Company, THOMAS J. SCYPHERS and KATHLEEN M.
SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a
Nevada Limited Liability Company, DONALD S. FORRESTER and
KRISTINA M. FORRESTER, and RONALD R. MITCHELL and GINGER G.
MITCHELL ("Intervenors"), to Intervene as parties to this
action, and the Court having considered said Motion to
Intervene, the Opposition and Reply in Support thereof, and it
appearing to the Court that the said Intervenors have an
interest in the proceedings under consideration in this action,
and should be permitted to intervene as prayed, and the Court
being duly advised in the premises,

1 IT IS ORDERED, that the Intervenor have leave to intervene
2 in this cause, and are hereby made parties and claimants in this
3 cause, and to that end they may file their Notice of Exceptions
4 to the Final Order of Determination in this cause, and to that
5 same manner and with like effect as if named original parties to
6 this cause.
7

8 DATED this 12 day of June, 2009.

9
10 
11 _____
12 District Judge
13
14
15
16
17

18 Submitted by:
19 Thomas J. Hall, Esq.
20 Nevada Bar Number 0675
21 Post Office Box 3948
22 Reno, Nevada 89505
23 Telephone: (775) 348-7011
24 Facsimile: (775) 348-7211
25
26 Attorney for Intervenor
27
28

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

FILE

JUL 11 2016

TRACIE
CLERK
BY _____
SE

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 52351

District Court Case No. 08-CV-0363-D

J.W. BENTLEY and MARYANN
BENTLEY, Trustees of the Bentley Family
1995 Trust,

Petitioners.

v.

THE NINTH JUDICIAL DISTRICT
COURT of the State of Nevada, In and For
the County of Douglas, and THE
HONORABLE DAVID R. GAMBLE,
District Court Judge,

Respondents,

AND

DONALD S. FORRESTER; KRISTINA
M. FORRESTER; HALL RANCHES,
LLC, a Nevada limited liability company;
THOMAS J. SCYPHERS; KATHLEEN M.
SCYPHERS; FRANK SCHARO;
SHERIDAN CREEK EQUESTRIAN
CENTER, LLC, a Nevada limited liability
company; RONALD R. MITCHELL; and
GINGER G. MITCHELL as Intervenors
In the Matter of the Determination of the
Relative Rights in and to the Waters of
Mott Creek, Taylor Creek, Cary Creek
(aka Carey Creek), Monument Creek, and
Bulls Canyon, Stutler Creek (aka Stattler
Creek), Sheridan Creek, Gansberg Spring,
Sharpe Spring, Wheeler Creek No. 1,

50
JUL 11 2016
K. LINDEMAN
SHERIDAN CREEK COURT
DEPUTY CLERK

1 Wheeler Creek No. 2, Miller Creek, Beers)
2 Spring, Luther Creek, and Various)
3 Unnamed Sources in Carson Valley,)
4 Douglas Valley, Nevada,)
5 Real Parties in Interest.)
6

7 **VERIFIED PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

8 **PETITIONERS' APPENDIX**
9 **VOLUME 3**
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23 BROOKE · SHAW · ZUMPFT
24 MICHAEL L. MATUSKA, SBN 5711
25 1590 Fourth Street, Suite 100
26 P.O. Box 2860
27 Minden, Nevada 89423
28 (775) 782-7171 – Phone
(775) 782-3081 – Fax
Attorneys for Petitioners

THOMAS J. HALL, ESQ.
State Bar No. 675
305 South Arlington Avenue
Reno NV 89509
(775) 348-7011 – Phone
(775) 348-7211 - Fax
Attorney for Real Parties in
Interest

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5 Reno, Nevada 89505
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7 Facsimile: 775-348-7211

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument Case No.: 08-CV-0363-D
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek, Dept. No.: I
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

_____ /

MOTION TO CORRECT ORDER ALLOWING INTERVENTION

Comes now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and pursuant to
Rule 60(b)(1), move the Court to correct its Order Allowing
Intervention entered June 12, 2009, as follows:

\\\\\\\\

1 On June 12, 2009, this Court entered an Order Allowing
2 Intervention in the above entitled action providing in part:

3 IT IS ORDERED, that the Intervenors have leave to
4 intervene in this cause, and are hereby made parties
5 and claimants in this cause, and to that end they may
6 file their Notice of Exceptions to the Final Order of
7 Determination in this cause, and to that same manner
8 and with like effect as if named original parties to
9 this cause. [Emphasis added.]

10 Intervenors have no exceptions to the Final Order of
11 Determination. However, as set forth in their Motion to
12 Intervene and the Reply to Exceptions by Bentley to Final Order
13 of Determination, they do contest the grounds and basis for the
14 exceptions made by Bentley. They do not seek to promote and
15 advocate any exceptions on their own behalf, but only as to the
16 fact that allowing Bentley's exceptions necessarily impacts the
17 whole water system.

18 As stated by J. H. Davenport, in Nevada Water Law, 110
19 (2003), even parties who fail to take exceptions to an
20 adjudication are entitled to participation in consideration of
21 the adjudication. "An adjudication is not a separable
22 controversy between a few claimants. All claimants or water
23 users in a water rights adjudication proceeding under the water
24 statutes are essentially adverse." Citing In re Water Rights in
25 Silver Creek, 57 Nev. 232, 238, 60 P.2d 987 (1936):

26 Although satisfied with the final order of
27 determination of the state engineer, they are still
28 vitally concerned in every other appropriation,
because a modification of the order might affect them.

1 NRCP 60(b) provides for relief from judgment or order, as
2 follows:

3 (b) Mistakes; inadvertence; excusable neglect; newly
4 discovered evidence; fraud, etc. On motion and upon
5 such terms as are just, the court may relieve a party
6 or a party's legal representative from a final
7 judgment, order or proceeding for the following
8 reasons: (1) mistake, inadvertence, surprise or
9 excusable neglect;

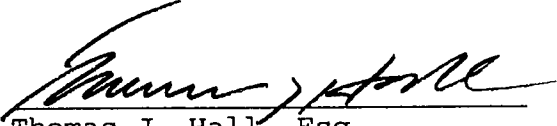
10 The Court clearly has jurisdiction to correct its prior
11 Order. Therefore, the Order should be corrected to read as
12 follows:

13 IT IS ORDERED, that the Intervenorors have leave to
14 intervene, and are hereby made parties in this cause,
15 and to that end, they may file their Opposition and
16 Reply to the Objections filed by Bentley to the Final
17 Order of Determination, and in that same manner and
18 with like effect participate in these proceedings as
19 if named original parties in this cause.

20 WHEREFORE, Intervenorors move this Court to amend and correct
21 its Order Allowing Intervention, pro tunc, in the form attached
22 hereto.

23 Respectfully submitted this 7th day of July, 2009.

24 LAW OFFICES OF THOMAS J. HALL

25 
26 Thomas J. Hall, Esq.
27 Nevada Bar No. 675
28 305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: (775) 348-7011
Facsimile: (775) 348-7211

Attorney for Intervenorors

Sharon/HallRanches/C'ville/SherCrAdjudCorrectOrder.motion

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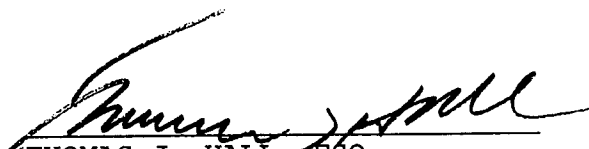
AFFIRMATION
(Pursuant to NRS 239B.030)

Case No. 08-CV-0363-D

The undersigned does hereby affirm that the preceding document, **Motion to Correct Order Allowing Intervention**, does not contain the social security number of any person.

DATED this 7th day of July, 2009.

LAW OFFICES OF THOMAS J. HALL


THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq.,
and that on this date, pursuant to NRCP 5(b), I placed in the
U.S. Mail, postage prepaid, a true and correct copy of the
Motion to Correct Order Allowing Intervention, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
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Gardnerville, Nevada 89460

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Deputy Attorney General
100 North Carson Street
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Hall Ranches, LLC
Post Office Box 3948
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Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 7th day of July, 2009.

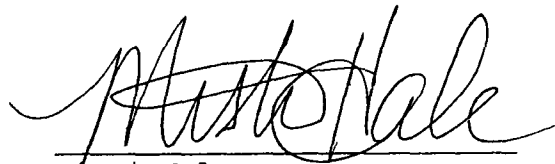

Misti Hale

EXHIBIT A

EXHIBIT⁴⁵⁵A

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3
4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5
6 IN AND FOR DOUGLAS COUNTY

7 In the Matter of the Determination of
8 the Relative Rights in and to the
9 Waters of Mott Creek, Taylor Creek,
10 Cary Creek (aka Carey Creek), Monument
11 Creek, and Bulls Canyon, Stutler Creek
12 (aka Stattler Creek), Sheridan Creek,
13 Gansberg Spring, Sharpe Spring,
14 Wheeler Creek No., 1 Wheeler Creek
15 No. 2, Miller Creek, Beers Spring,
16 Luther Creek and Various Unnamed
17 Sources in Carson Valley, Douglas
18 Valley, Nevada.

19
20 AMENDED ORDER ALLOWING INTERVENTION

21 In this cause, the Motion of HALL RANCHES, LLC, a Nevada
22 Limited Liability Company, THOMAS J. SCYPHERS and KATHLEEN M.
23 SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a
24 Nevada Limited Liability Company, DONALD S. FORRESTER and
25 KRISTINA M. FORRESTER, and RONALD R. MITCHELL and GINGER G.
26 MITCHELL ("Intervenors"), to Intervene as parties to this
27 action, and the Court having considered said Motion to
28 Intervene, the Opposition and Reply in Support thereof, and it
appearing to the Court that the said Intervenors have an
interest in the proceedings under consideration in this action,
and should be permitted to intervene as prayed, and the Court
being duly advised in the premises,

IT IS ORDERED, that the Intervenor have leave to
intervene, and are hereby made parties in this cause, and to
that end, they may file their Opposition and Reply to the
Objections filed by Bentley to the Final Order of Determination,
and in that same manner and with like effect participate in
these proceedings as if named original parties to this cause.

DATED this _____ day of _____, 2009.

District Judge

Submitted by:
Thomas J. Hall, Esq.
Nevada Bar Number 0675
Post Office Box 3948
Reno, Nevada 89505
Telephone: (775) 348-7011
Facsimile: (775) 348-7211
Attorney for Intervenors

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JUL 16 2009

DOUGLAS COUNTY
DISTRICT COURT CLERK

FILED

2009 JUL 16 PM 3:51

TED THIRAN
CLERK

BY K. WILFERT DEPUTY

Case No.: 08-CV-0363-D

Dept. No.: I

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**OPPOSITION TO MOTION TO
CORRECT ORDER**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby file this Opposition to the *Motion to Correct Order* filed by HALL RANCHES, LLC, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER (collectively, "Intervenors") to correct the earlier Order of 12 June 2009, for the reasons set forth below, including:

1. The 12 June 2009 Order was not a mistake and grants the relief requested by the Intervenors in their *Motion to Intervene*;
2. Intervenors have never moved for the relief described in their new proposed order;
3. Intervenors' new proposed order does not comply with NRCP 24(c);
4. Intervenors' departure from established procedure will make it more difficult for Bentley to raise all applicable defenses and affirmative defenses; and

1 5. Intervenors submitted their original proposed order without submitting it to
2 opposing counsel for comment first.

3 **1. The 12 June 2009 Order Was Not a Mistake.**

4 This Court correctly noted at the 1 April 2009 hearing that the *Final Order of*
5 *Determination* and the multiple *Notices of Exception to Final Order of Determination* constitute
6 the pleadings in this adjudication. This comports with NRS 533.170. Consequently, all other
7 submissions were stricken. Interested parties were given the chance to move to intervene.
8 Intervenors filed their *Motion to Intervene* on 10 April 2009.

9 NRCP 24(c) specifies that:

10 A person desiring to intervene shall serve a motion to intervene upon the
11 parties as provided in Rule 5. *The motion shall state the grounds therefore*
12 *and shall be accompanied by a pleading setting forth the claim or defense*
13 *for which intervention is sought.* The same procedure shall be followed
14 when a statute gives a right to intervene. (NRCP 24(c)) [italics added]

15 Intervenors' *Motion to Intervene* was one paragraph long. It did not specify the grounds
16 for intervention, it did not contain points and authorities, it was not accompanied by a proposed
17 pleading, and it did not set forth the claims or defenses for which intervention was sought. It
18 contained one (1) bare reference to Intervenors' earlier brief entitled *Reply to Exceptions by*
19 *Bentley to Final Order of Determination*. The single request in Intervenors' *Motion to Intervene*
20 was:

21 [Intervenors] move the Court for leave to intervene in this action, in order
22 to assert the *claims and defenses to be set forth in a proposed answer*, in
23 substance similar to the Reply to Exceptions by Bentley to Final Order of
24 Determination filed herein on March 27, 2009 (*Motion to Intervene* at p.1,
25 l. 28 – p.2, l. 5) [emphasis added]

26 As discussed above and noted by the Court at the 1 April 2009 hearing, a *Notice of*
27 *Exception* is akin to an answer in this proceeding. This Court granted Intervenors' request on
28 12 June 2009, when it signed and entered the proposed order that the Intervenors submitted and
29 ordered that:

30 ///

31 ///

Intervenors have leave to intervene in this cause, and are hereby made *parties and claimants in this cause, and to that end they may file their Notice of Exceptions to the Final Order of Determination in this cause, and to that same manner and with like effect as if named original parties to this cause (Order at p.2, lls. 1-6) [italics added]*

This Order allowed Intervenors to file their Notice of Exceptions. This Order was not the product of fraud, inadvertence, or excusable mistake. This Court granted the relief the Intervenors requested, and signed and entered the Order they submitted. It is noteworthy that the Intervenors did not submit their proposed Order to opposing counsel for comment before submitting it to the Court. Apparently, the Intervenors no longer want to file an *Answer* or *Notice of Exceptions* and are trying to change the Order so they can file an entirely different brief.

2. Intervenors' New Proposed Order Constitutes a Different Request that Should Require a Different Motion and Still Does Not Comply with NRCP 24(c).

Intervenors must have recently realized that their attack on the 23-year-old water diversion agreement faces so many procedural obstacles, not to mention the substantive hurdles, that the procedure of filing an answer or notice of exceptions that they originally contemplated cannot serve their purposes. However, that is their problem and they cannot obtain relief that was not requested and to which they are not entitled by asserting fraud, mistake, inadvertence, or excusable neglect. In fact, there is no affidavit to support a finding of such, even if this Court were charitably inclined to help them.

Moreover, the new proposed order Intervenors submitted represents a shortcut from the procedures set forth in NRCP 24(c); this shortcut would almost certainly work to the disadvantage of Bentley. Intervenors still have not submitted a proposed pleading that sets forth the claims or defenses for which intervention is sought. Intervenors' earlier document entitled *Reply to Exceptions by Bentley to Final Order of Determination* does not satisfy the requirements of NRCP 24(c). That document was filed by HALL RANCHES, LLC and FORRESTER, only, it was not a pleading, it has already been stricken, and it seeks to invalidate a water diversion agreement that has been in effect since 1986. The *Reply to Exceptions by Bentley to Final Order of Determination* did not even address most of the points raised in Bentley's *Notice of Exceptions*.

1 In short, Bentley needs to see a pleading which identifies the issues that Intervenors'
2 expect this Court to adjudicate. The proposed pleading must allow Bentley to file a responsive
3 pleading and assert applicable defenses and affirmative defenses, including laches, waiver, and
4 estoppel. Bentley believes that Intervenors know they face an uphill battle on their challenge to
5 the diversion agreement and are intentionally trying to shortcut the intervention process in the
6 hopes that Bentley somehow loses its ability to properly plead and defend itself.

7 Intervenors' challenge to the 23-year-old water diversion agreement should be asserted by
8 way of a new complaint in civil court where they will have to name all affected parties, specify
9 their legal theories, and offer the adverse parties the opportunity to properly plead and defend their
10 case. Intervenors should carry the burden of proof and Bentley and other named parties should
11 have the right to a jury trial and to discovery wherein they can properly call experts and others as
12 necessary to defend the case.

13 **3. Many of the Issues Intervenors Want Adjudicated are Beyond the Scope of**
14 **This Adjudication.**

15 Again, Intervenors' *Reply to Exceptions by Bentley to Final Order of*
16 *Determination* is not a pleading to which Bentley can file a responsive pleading. In addition,
17 many of the issues raised in that brief concern issues outside of this adjudication process.
18 Intervenors' challenge to the water diversion agreement would affect not only Bentley's diversion
19 rights, but diversion rights of other people who benefit from that agreement, as well as points of
20 diversion and easements, the scope of which are not easily described in this brief.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

1 WHEREFORE, Bentley respectfully submits that Intervenor's *Motion to Correct Order* is
2 an improper attempt to substitute their *Reply to Exceptions by Bentley to Final Order of*
3 *Determination* or other brief for the pleading required by NRCP 24(c) in order to mask the
4 problems with their case, shortcut the procedures set forth in NRCP 24, and make it more difficult
5 for Bentley to file a responsive pleading and assert the necessary defenses and affirmative
6 defenses.

7 Respectfully submitted,

8 DATED this 16th day of July 2009.

BROOKE · SHAW · ZUMPF

By: 

Michael L. Matuska
State Bar No. 5711
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 16th day of July 2009, I served a true and correct copy of the preceding
document entitled **OPPOSITION TO MOTION TO CORRECT ORDER** addressed to:

STATE OF NEVADA
Department of Conservation and Natural
Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to
Reno-Carson Messenger Service for delivery to the offices of the addressee.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.

☐ **BY EMAIL:** I transmitted via internet from the offices of Brooke · Shaw · Zumpft
the above-identified document in the ordinary course of business to the individuals and email
addresses indicated.

☐ **BY HAND DELIVERY:** I hand delivered an envelope containing the above-
identified document to the addressee stated above, in the ordinary course of business.

☐ **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.**


LIZ STERN, ALS

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211
10

11 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR DOUGLAS COUNTY**

13 In the Matter of the Determination of
14 the Relative Rights in and to the
15 Waters of Mott Creek, Taylor Creek,
16 Cary Creek (aka Carey Creek), Monument
17 Creek, and Bulls Canyon, Stutler Creek
18 (aka Stattler Creek), Sheridan Creek,
19 Gansberg Spring, Sharpe Spring,
20 Wheeler Creek No., 1 Wheeler Creek
21 No. 2, Miller Creek, Beers Spring,
22 Luther Creek and Various Unnamed
23 Sources in Carson Valley, Douglas
24 Valley, Nevada.
25 _____/

26 **REPLY IN SUPPORT OF MOTION TO**

27 **CORRECT ORDER ALLOWING INTERVENTION**

28 Comes now, HALL RANCHES, LLC, a Nevada Limited Liability
Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, DONALD S. FORRESTER and KRISTINA M.
FORRESTER, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), by and through their counsel, THOMAS J. HALL,

1 ESQ., and file their Reply in Support of Motion to Correct Order
2 Allowing Intervention, as follows:

3 1. The Intervenors Have No Exceptions And The Prior Order
4 Was In Error.

5 On July 8, 2009, the Intervenors filed their Motion to
6 Correct Order Allowing Intervention. Said Motion represented as
7 follows:
8

9 Intervenors have no exceptions to the Final Order of
10 Determination. However, as set forth in their Motion
11 to Intervene and the Reply to Exceptions by Bentley to
12 Final Order of Determination, they do contest the
13 grounds and basis for the exceptions made by Bentley.
14 They do not seek to promote and advocate any
15 exceptions on their own behalf, but only as to the
16 fact that allowing Bentley's exceptions necessarily
17 impacts the whole water system.

18 By letter dated June 24, 2009, Bentley, by and through his
19 attorney Michael L. Matuska, Esq., informed Intervenors that the
20 Intervenors as "claimants" were required to "file their Notice
21 of Exceptions to the Final Order of Determination." See Exhibit
22 A. Inasmuch as Intervenors do not have any exceptions to the
23 Final Order of Determination, the error and mistake of the prior
24 Order was thus revealed to them. Therefore, in response to the
25 June 24, 2009, letter calling the error to Intervenors'
26 attention, the Motion to Correct Order Allowing Intervention was
27 promptly filed.
28

\\\\\\

\\\\\\

1 2. Intervenors Have Stated Their Opposition To Bentley's
2 Exceptions.

3 By Intervenors' Reply to Exceptions by Bentley to Final
4 Order of Determination first filed herein on March 27, 2009, and
5 attached as Exhibit 1 to their Reply in Support of Motion to
6 Intervene filed April 24, 2009, Intervenors have clearly stated
7 and set forth the basis and grounds for their opposition to the
8 Bentley Exceptions.
9

10 It has been held in U.S. v. Alpine Land & Reservoir
11 Company, 503 F. Supp. 877 (D. Nev. 1980) (Alpine Decree); U.S.
12 v. Alpine Land & Reservoir Company, 279 F. 3d 1189 (9th Cir.
13 2002), amended opinion, 291 F. 3d 1062 (9th Cir.2002), that the
14 decision of the State Engineer shall be prima facie correct, and
15 the burden of proof shall be upon the party challenging the
16 State Engineer's decision.
17

18 The Intervenors are aligned with the State Engineer and
19 support the Final Order of Determination. No amount of
20 gamesmanship by Bentley will change that fact. Bentley bears
21 the substantial burden to overcome the Final Order of
22 Determination.
23

24 3. The Proposed Corrected Order Allowing Intervention
25 Complies With NRCP Rule 24.

26 The Motion to Intervene filed April 10, 2009, and the Reply
27 in Support of Motion to Intervene filed April 24, 2009,
28 substantially comply with the requirements of NRCP Rule 24. To

1 the extent that a proposed pleading setting forth the claims or
2 defenses for which intervention is sought, a Proposed Response
3 and Objections to Notice of Exceptions and Exceptions to Final
4 Order of Determination is attached to this Reply for ready
5 reference. See Exhibit B.

6 4. Intervenors Have Not Departed From Established
7 Procedure.
8

9 It is clear that Bentley and his counsel are nitpicking
10 with respect to the procedures outlined by the Court at the
11 Hearing held April 1, 2009. As set forth in the Motion to
12 Correct Order Allowing Intervention, "an adjudication is not a
13 separate controversy between a few claimants. All claimants or
14 water users in a water rights adjudication proceeding under the
15 water statutes are essentially adverse." In re Water Rights in
16 Silver Creek, 57 Nev. 232, 238, 60 P.2d 987 (1936). Because
17 Bentley is interfering with the water rights of the Intervenors
18 as downstream users, they have every right to intervene in these
19 proceedings.
20

21 WHEREFORE, it is respectfully requested that the Order
22 submitted to the Court on July 8, 2009, is appropriate and
23 correct for the purposes herein stated.
24

25 \\\

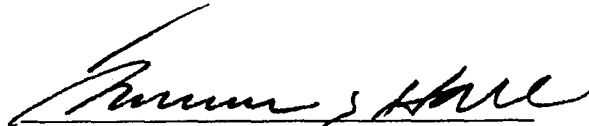
26 \\\

27 \\\

28 \\\

1 DATED this 21st day July, 2009.

2 LAW OFFICES OF THOMAS J. HALL

3
4 

5 Thomas J. Hall, Esq.
6 Nevada State Bar No. 675
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
10 Telephone: 775-348-7011
11 Facsimile: 775-348-7211

12
13 **AFFIRMATION**

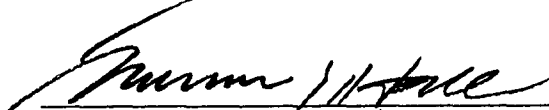
14 (Pursuant to NRS 239B.030)

15 Case No. 08-CV-0363-D

16 The undersigned does hereby affirm that the preceding
17 document, **Reply in Support of Motion to Correct Order Allowing**
18 **Intervention**, does not contain the social security number of any
19 person.

20 DATED this 21st day of July, 2009.

21 LAW OFFICES OF THOMAS J. HALL

22 

23 THOMAS J. HALL, ESQ.
24 Attorney for Intervenors
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Reply in Support of Motion to Correct Order Allowing Intervention, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 21st day of July, 2009.

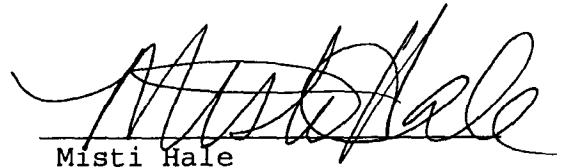

Misti Hale

EXHIBIT A

EXHIBIT A

BROOKE · SHAW · ZUMPF

Licensed to Practice in:
Nevada
California

Michael L. Matuska
matuska@brooke-shaw.com

24 June 2009

Via Facsimile (775) 348-7211 and U.S. Mail

Thomas J. Hall
305 S. Arlington Avenue
P. O. Box 3948
Reno, Nevada 89505

Re: *In the Matter of the Determination of the Relative Rights in and to the Water of
Mott Creek et al.*

Dear Mr. Hall:

I have received a copy of the Notice of Entry of Order Allowing Intervention as well as your Notice of Mandatory Early Case Conference. The Order Allowing Intervention allows your clients, the intervenors, to proceed as "claimants" to "file their Notice of Exceptions to the Final Order of Determination." I do not see that you have filed a Notice of Exceptions; therefore, the intervenors have not yet entered their pleading, so the early case conference is premature.

As a separate matter, I notice that your clients are on the service list. This seems odd, and raises the question of whether I am to serve them, as well as you.

Sincerely,

BROOKE · SHAW · ZUMPF

By:


Michael L. Matuska

cc: Clients

EXHIBIT B

EXHIBIT B

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR DOUGLAS COUNTY

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 [PROPOSED] RESPONSE AND OBJECTIONS TO NOTICE OF EXCEPTIONS AND
25 EXCEPTIONS TO FINAL ORDER OF DETERMINATION

26 Comes now, HALL RANCHES, LLC, a Nevada Limited Liability
27 Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
28 SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, DONALD S. FORRESTER and KRISTINA M.
FORRESTER, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), by and through their counsel, THOMAS J. HALL,

1 ESQ., and in response to the Notice of Exceptions and Exceptions
2 to the Final Order of Determination filed herein on December 11,
3 2008, assert the following affirmative defenses as follows:

4 AFFIRMATIVE DEFENSES

5 FIRST AFFIRMATIVE DEFENSE

6 The Notice of Exceptions and Exceptions to Final Order of
7 Determination fail to state claims upon which relief can be
8 granted.
9

10 SECOND AFFIRMATIVE DEFENSE

11 The lands of Intervenorors lie downstream from the lands of
12 Bentley and the uses and proposed uses by Bentley as described
13 in their Exceptions conflict with the rights of the Intervenorors
14 herein.
15

16 THIRD AFFIRMATIVE DEFENSE

17 The Water Diversion and Use Agreement is unenforceable.

18 FOURTH AFFIRMATIVE DEFENSE

19 The Water Diversion and Use Agreement is unenforceable
20 under the Nevada Statute of Frauds.

21 FIFTH AFFIRMATIVE DEFENSE

22 The use by Bentley to fill a new pond violates the Water
23 Diversion and Use Agreement, even if enforceable.
24

25 SIXTH AFFIRMATIVE DEFENSE

26 Bentley holds no permit for the new larger pond, in
27 violation of NRS 533.525.

28 \\\

1 WHEREFORE, Intervenor respectfully request as follows:

2 1. That Bentley take nothing by their Notice of Exceptions
3 and Exceptions to Final Order of Determination;

4 2. That Bentleys' Notice of Exceptions and Exceptions to
5 Final Order of Determination be dismissed;

6 3. That the Court award the Intervenor their costs and a
7 reasonable attorney fee;

8 DATED this 21st day of July, 2009.
9

10 LAW OFFICES OF THOMAS J. HALL
11

12
13 Thomas J. Hall, Esq.
14 Nevada State Bar No. 675
15 305 South Arlington Avenue
16 Post Office Box 3948
17 Reno, Nevada 89505
18 Telephone: 775-348-7011
19 Facsimile: 775-348-7211

20 **AFFIRMATION**
21 (Pursuant to NRS 239B.030)

22 Case No. 08-CV-0363-D

23 The undersigned does hereby affirm that the preceding
24 document, [Proposed] Response and Objections to Notice of
25 Exceptions and Exceptions to Final Order of Determination, does
26 not contain the social security number of any person.

27 DATED this 21st day of July, 2009.

28 LAW OFFICES OF THOMAS J. HALL

THOMAS J. HALL, ESQ.

RECEIVED

NOV 17 2009

Case No. 08-CV-0363-D

Dept. No. I

DOUGLAS COUNTY
DISTRICT COURT CLERK 2009 NOV 17 PM 2:01

M. SAGGION

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination
of the relative rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek),
Monument Creek, and Bulls Canyon,
Stutler Creek (aka Stattler Creek),
Sheridan Creek, Gansberg Spring,
Sharpe Spring, Wheeler Creek No. 1,
Wheeler Creek No. 2, Miller Creek,
Beers Spring, Luther Creek and
various unnamed sources in Carson
Valley, Douglas Valley, Nevada.

O R D E R

THIS MATTER comes before the Court upon a Motion To
Correct Order Allowing Intervention submitted by the following
interested parties: Donald S. Forrester and Kristina M.
Forrester, Hall Ranches, LLC, Thomas J. Scyphers and Kathleen
M. Scyphers, Frank Scharo, Sheridan Creek Equestrian Center,
LLC, and Ronald R. Mitchell and Ginger G. Mitchell (hereinafter
referred to collectively as "Intervenors"). Petitioners J.W.
Bentley and MaryAnn Bentley, Trustees of the Bentley Family
Trust 1995 Trust (hereinafter referred to as "Bentley") oppose
the motion.

Having examined all relevant pleadings and papers on file
herein and good cause appearing, the Court now enters the
following order:

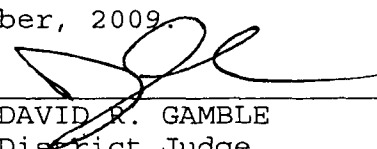
1 THAT the motion is GRANTED as set forth below.

2 The Court's prior Order Allowing Intervention acknowledged
3 that Intervenors have an interest in these proceedings and
4 should be permitted to intervene and ordered that Intervenors
5 had leave to intervene in this cause, were made parties and
6 claimants in this cause, and to that end could file their
7 Notice of Exceptions to the Final Order of Determination as if
8 named original parties to this cause. Intervenors' subsequent
9 pleadings clarify that they "are aligned with the State
10 Engineer and support the Final Order of Determination", Reply
11 In Support of Motion To Correct Order Allowing Intervention, p.
12 3, lines 18-19. Therefore, Intervenors wish to instead file
13 their Response and Objections to Notice of Exceptions and
14 Exceptions to Final Order of Determination previously filed by
15 Bently. Id. at p. 4, lines 1-5.

17 Having reviewed the proposed Response and Objections to
18 Bently's Notice of Exceptions and Exceptions, as attached to
19 Intervenors' Reply In Support of Motion To Correct Order,
20 Intervenors are hereby allowed to file and serve such document
21 in lieu of their own Notice of Exceptions and Exceptions as
22 previously authorized by the Court.

23 IT IS SO ORDERED.

24 Dated this 17 day of November, 2009.

25 
26 DAVID R. GAMBLE
27 District Judge
28

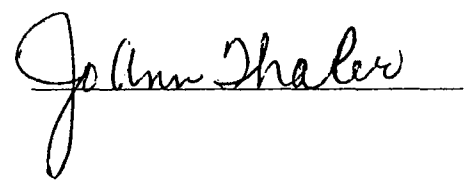
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Copies served by mail this 17th day of November, 2009 to:

Bryan L. Stockton, Esq.
Deputy Attorney General
State of Nevada
100 North Carson Street
Carson City, NV 89701

Thomas J. Hall, Esq.
P. O. Box 3948
Reno, NV 89505

Michael L. Matuska, Esq.
P. O. Box 2860
Minden, NV 89423



1 Case No.: 08-CV-0363-D
2 Dept. No.: I
3 Thomas J. Hall, Esq.
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5 305 South Arlington Avenue
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

_____ /

RESPONSE AND OBJECTIONS TO NOTICE OF EXCEPTIONS AND EXCEPTIONS
TO FINAL ORDER OF DETERMINATION

Comes now, HALL RANCHES, LLC, a Nevada Limited Liability
Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, DONALD S. FORRESTER and KRISTINA M.
FORRESTER, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), by and through their counsel, THOMAS J. HALL,

1 ESQ., and in response to the Notice of Exceptions and Exceptions
2 to the Final Order of Determination filed herein on December 11,
3 2008, assert the following affirmative defenses as follows:

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 The Notice of Exceptions and Exceptions to Final Order of
7 Determination fails to state any claims upon which relief can be
8 granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 The lands of Intervenor lie downstream from the lands of
11 Bentley and the uses and proposed uses by Bentley as described
12 in their Exceptions conflict with the rights of the Intervenor
13 herein.

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Water Diversion and Use Agreement is unenforceable.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 The Water Diversion and Use Agreement is unenforceable
18 under the Nevada Statute of Frauds.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 The use by Bentley to fill a new pond on their property
21 violates the Water Diversion and Use Agreement, even if
22 enforceable.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 Bentley holds no permit for the new larger pond, in
25 violation of NRS 533.525.

1 WHEREFORE, Intervenor respectfully request as follows:

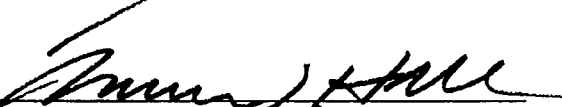
2 1. That the Bentleys take nothing by their Notice of
3 Exceptions and Exceptions to Final Order of Determination;

4 2. That Bentleys' Notice of Exceptions and Exceptions to
5 Final Order of Determination be dismissed;

6 3. That the Court award the Intervenor their costs and a
7 reasonable attorney fee.

8 DATED this 19th day of November, 2009.
9

10 LAW OFFICES OF THOMAS J. HALL

11
12 
13 Thomas J. Hall, Esq.
14 Nevada State Bar No. 675
15 305 South Arlington Avenue
16 Post Office Box 3948
17 Reno, Nevada 89505
18 Telephone: 775-348-7011
19 Facsimile: 775-348-7211

20 **AFFIRMATION**

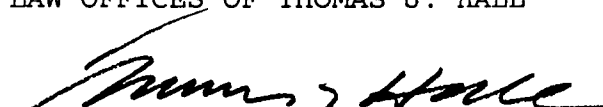
21 (Pursuant to NRS 239B.030)

22 Case No. 08-CV-0363-D

23 The undersigned does hereby affirm that the preceding
24 document, **Response and Objections to Notice of Exceptions and**
25 **Exceptions to Final Order of Determination**, does not contain the
26 social security number of any person.

27 DATED this 19th day of November, 2009.

28 LAW OFFICES OF THOMAS J. HALL


THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
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Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 19th of November, 2009.


Misti Hale

Case No.: 08-CV-0363-D

Dept. No.: I

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DEC 1 2009 2009 DEC -1 PM 4:25

DOUGLAS COUNTY
DISTRICT COURT CLERK

TED THUAN
CLERK

This document does not contain personal information of any person.

M. BIAGGINI DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO REDESIGNATE
AFFIRMATIVE DEFENSES AS
COUNTERCLAIMS**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby move pursuant to NRCP 12(b) to dismiss the *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination* ("Initial Pleading") filed by HALL RANCHES, LLC, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER (collectively, "Intervenors") based on the following reasons:

1. Lack of subject matter jurisdiction over the entire Initial Pleading;
2. Failure to state a claim upon which relief can be granted for the entire Initial Pleading;
3. Failure to state claim upon which relief can be granted for the Fourth Affirmative Defense – The Water Use and Diversion Agreement is Unenforceable under the Statute of Frauds;

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1 4. Failure to state a claim upon which relief can be granted for the Fifth Affirmative
2 Defense – The use by Bentley to fill a new pond violates the Water Diversion and Use Agreement,
3 even if enforceable; and

5. Failure to state a claim upon which relief can be granted for the Sixth Affirmative Defense – Bentley Holds No Permit for the Pond, as required by NRS 533.525 on the basis that (i) any matter concerning a permit matter is extraneous to the *Final Order of Determination*; (ii) NRS 533.525 does not require a permit; and (iii) there is no private right of action for failure to permit a pond.

Bentley will file a separate motion for summary judgment to address Intervenor's failure to name all parties who have an interest in the subject Water Use and Diversion Agreement.

DATED this 14 day of December 2009.

By: M. J. H.

28

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

I. BACKGROUND

Bentley filed its *Notice of Exceptions and Exceptions to Final Order of Determination* on 10 December 2008 ("Notice of Exceptions") and its *Amended Notice of Exceptions and Exceptions to Final Order of Determination* on 25 March 2009 ("Amended Notice of Exceptions").

On or about 19 November 2009, HALL RANCHES, LLC and DONALD S. FORRESTER and KRISTINA M. FORRESTER, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, and SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, (collectively, "Intervenors") filed their *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination* ("Initial Pleading"), a copy of which is provided herewith.

It is hard to describe Intervenors' Initial Pleading, which contained only affirmative defenses. The Initial Pleading is certainly not authorized by the Nevada Rules of Civil Procedure. This water rights adjudication "shall be as nearly as may be in accordance with the provisions of the Nevada Rules of Civil Procedure." NRS 533.170(5). Pursuant to NRCP 7, pleadings include a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third-party complaint, and a third-party answer. Affirmative defenses are not recognized as a pleading. This is true, regardless of whether Intervenors call their Initial Pleading *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination*. In fact, NRCP 7 does not recognize any pleading with that title, either.

This point is further reinforced by NRCP 8(c) which provides in pertinent part that:

In pleading to a preceding pleading, a party shall set forth affirmatively . . . statute of frauds . . . and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(NRCP 8(c))

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1 This above-quoted language confirms that (1) affirmative defenses must be asserted as part
2 of a pleading enumerated in NRCP 7 and not as a separate pleading; (2) claims should not be
3 confused with defenses; and (3) this court shall, when justice so requires, re-designate claims that
4 are mistakenly asserted as defenses.

5 Similarly, Intervenor's Initial Pleading is outside of anything authorized by NRS 533.170,
6 which makes clear that the only pleadings allowed in this case are the order of determination, the
7 statement or claims of claimants, and exceptions thereto. Intervenor's Initial Pleading does not
8 fall into any of those categories. "There shall be no other pleadings in the cause."
9 NRS 533.170(2).

10 Were Intervenor truly aligned with the State Engineer, as they purport to be, they could
11 simply have joined the Final Order of Determination and would, therefore, effectively be
12 proceeding as the plaintiff. However, they are not aligned with the State Engineer and their Initial
13 Pleading raises matters that are not related to the Final Order of Determination or Bentley's
14 Exceptions and Amended Exceptions thereto. Rather, Intervenor is trying to have this Court
15 resolve a private controversy as part of this water rights adjudication, rather than filing a separate
16 civil action and joining all interested parties.

17 II. STANDARD OF REVIEW

18 Pursuant to Nevada Rule of Civil Procedure 12(b)(5), a Complaint may be dismissed for
19 failure to state a claim upon which relief can be granted. A motion to dismiss pursuant to
20 NRCP 12(b)(5) "should not be granted unless it appears to a certainty that plaintiff is entitled to no
21 relief under any set of facts which could be proved in support of the claim." *Stockmeier v. Nevada*
22 *Department of Corrections*, 124 Nev. 30, 183 P.3d 133, 135 (2008).

23 For purposes of considering a Rule 12(b)(5) motion, a court must accept the allegations of
24 the complaint as true and draw all inferences in favor of the non-moving party. *Id.* at 135;
25 See also, *Haertel v. Sonshine Carpet Co.*, 102 Nev. 614, 730 P.2d 428 (1986). Dismissal is proper
26 where the allegations in a complaint are insufficient to establish the elements of a claim for relief.
27 *Stockmeier* at 135, citing *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002). If a
28 proper showing is made, a motion to dismiss for failure to state a claim may be granted irrespective

1 of the type of action involved or its complexity. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 21
2 P.3d 16 (2001).

3 **III. ARGUMENT**

4 A. **NRCP 12(b)(1) - The Issues Raised in Intervenor's Initial Pleading**
5 **Are Beyond the Subject Matter Jurisdiction of this Water Rights**
6 **Adjudication.**

7 Intervenor's "Affirmative Defenses" are unrelated to anything raised in the Final Order of
8 Determination. With one notable exception, Intervenor's "Affirmative Defenses" raise new
9 matters not placed at issue in Bentley's Notice of Exceptions and Amended Notice of Exception,
10 and cannot be considered a defense to those issues. Bentley's Notice of Exceptions and Amended
11 Notice of Exceptions raised a number of issues, including: EXCEPTION 2 – Add All Proofs to
12 Adjudication Map; EXCEPTION 3 – Correct Typographical Error (regarding superceded proof);
13 EXCEPTION 4 – Correct [Approved] Acreage; EXCEPTION 5 - Install Diversion Device.
14 Accordingly, the most substantive exception is Exception 4 relating to the approved acreage.

15 Intervenor's Initial Pleading is broken up into six (6) affirmative defenses: (i) the Notice
16 of Exceptions and Exceptions to Final Order of Determination fail to state claims upon which
17 relief can be granted; (ii) the lands of Intervenor lie downstream from the lands of Bentley and
18 the uses and proposed uses by Bentley as described in their Exceptions conflict with the rights of
19 the Intervenor herein; (iii) the Water Diversion and Use Agreement is unenforceable; (iv) the
20 Water Diversion and Use Agreement is unenforceable under the statute of frauds; (v) the use by
21 Bentley to fill a new pond violates the Water Diversion and Use Agreement, even if enforceable;
22 and (vi) Bentley holds no permit for the new larger pond, in violation of NRS 533.325.

23 Intervenor's Initial Pleading does not address any of these exceptions. Presumably, they
24 have acquiesced to Bentley's position on these matters, some of which would benefit all users of
25 the waters from the North Branch of Sheridan Creek, Intervenor included.

26 Likewise, Intervenor's "Affirmative Defenses" do not raise any issues that would preclude
27 the relief requested by Bentley regarding the approved acreage or any other of the above-
28 referenced exceptions. Accordingly, with minor exceptions noted below, Intervenor's Initial
Pleading must be seen as raising entirely new matters, essentially, new claims.

1 Despite framing their issues as "Affirmative Defenses," Intervenor must be considered the
2 claimant in these proceedings. This is the case for four (4) reasons:

3 First, despite the way Intervenor is trying to frame the issue, they are, in effect, asking
4 this Court to declare the Water Use and Diversion Agreement invalid, quiet title in their favor, and
5 enjoin Bentley from exercising the diversion rights provided in that agreement. This type of
6 affirmative declaratory and injunctive relief can only be granted upon claims, not affirmative
7 defenses.

8 Second, the State Engineer is effectively the claimant and Bentley, through its Notice of
9 Exceptions, is effectively a defendant. Because Intervenor purport to be aligned with the State
10 Engineer, they are effectively the claimant. However, they cannot be aligned with the State
11 Engineer as every issue they have raised is outside of the Final Order of Determination.
12 Moreover, were they truly aligned with the State Engineer, they would join the Final Order of
13 Determination, rather than filing Affirmative Defenses.

14 Third, Intervenor's Initial Pleading raises entirely new matters. It must be seen as a type of
15 complaint and treated as such. As explained above, it is a nonconforming pleading, subject to
16 dismissal under NRCP 12. Moreover, the Initial Pleading raises issues that are beyond the scope
17 of this water rights adjudication process. To the extent this Court may have jurisdiction over these
18 new claims, Intervenor has failed to state any claims upon which relief can be granted and the
19 claims are further subject to dismissal pursuant to NRCP 12(b)(5).

20 Fourth, and most important, Bentley needs the opportunity to assert affirmative defenses of
21 waiver, estoppel, and laches. Intervenor knows they cannot overcome their Affirmative Defenses
22 and are trying to impede Bentley's ability to defend the case on the Water Diversion Agreement.

23 Although Bentley's Exception No. 1 references the subject Diversion Agreement, Bentley
24 only requested a notation in the Final Order of Determination that this agreement would exempt
25 Bentley's stock water and wildlife diversion rights from the forthcoming rotation schedule.
26 In fact, a rotation schedule has not been imposed and is not part of the Final Order of
27 Determination. The stock water and wildlife proofs, which incorporated this diversion agreement,

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1 have already been approved. Regardless, Intervenor's effort to invalidate the agreement raises an
2 entirely new matter.

3 Intervenor's confusion and misuse of affirmative defenses is understandable. These
4 proceedings are governed by NRS 533.090-533.320, a statutory framework that was adopted in
5 1913. The statutes offer little guidance on the procedural and jurisdictional issues presented in
6 this case and, specifically, whether the Court can consider any of Intervenor's issues to the extent
7 those issues were not raised in the Final Order of Determination. Narrowly construed, the
8 proceedings contemplated in this statutory framework concern only the Final Order of
9 Determination and any exceptions to the provisions thereof. There is simply no room for the
10 Court to consider collateral issues of private agreements, pond permits, etc. Allowing Intervenor
11 to force these collateral issues into this adjudication process will only cause additional confusion.
12 This is especially true when Intervenor is intentionally vague about the causes of action they are
13 asserting and the relief they are requesting.

14 Intervenor has made no effort to date to explain whether and how this Court can hear a
15 dispute regarding the enforcement of a private agreement, statute of frauds, filling a pond, or pond
16 permits in the context of this water rights adjudication. This is particularly true in light of the fact
17 that there is no mention of this Diversion Agreement, statute of frauds, filling a pond, or pond
18 permit in the Final Order of Determination. Every issue raised in Intervenor's Initial Pleading is
19 extraneous to the Final Order of Determination.

20 **B. NRC 12(b)(5) - Intervenor's Initial Pleading Fails to State a Claim**
21 **Upon Which Relief Can Be Granted.**

22 Intervenor pled no facts to support the allegation that Bentley's stock water and wildlife
23 use conflicts with Intervenor's rights; that the Water Use and Diversion Agreement is
24 unenforceable; that the Water Use and Diversion Agreement violates the statute of frauds; that
25 filling Bentley's pond violates the agreement; or that Bentley is required to have a permit for the
26 pond pursuant to NRS 533.525. To the extent this Court has jurisdiction over the matters raised
27 by the Intervenor, the Intervenor should raise those issues through a claim, not affirmative
28 defenses.

1 Also, there is no remedy for Intervenor's alleged Affirmative Defenses. This Court's
2 enforcement powers are limited to enforcing the provisions of the Final Order of Determination.
3 See NRS 533.220.¹ Intervenor's are intentionally vague on what relief they are requesting. It is
4 unclear whether they are requesting declaratory relief, injunctive relief, monetary relief, or
5 something else entirely. Intervenor's have not explained how this Court can grant any relief on the
6 subject Diversion Agreement.

7 Although this Court could charitably interpret Intervenor's issues regarding the Water Use
8 and Diversion Agreement as a quiet title action, it is not pled as such. Rather, it is pled as an
9 affirmative defense. Accordingly, unless it were treated as an affirmative claim, this Court could
10 not invalidate the Water Use and Diversion Agreement, or enjoin Bentley's uses, even if it found
11 facts in favor of Intervenor's.

12 Moreover, it is impossible to see that any relief can be granted for Intervenor's claims
13 relating to filling and permitting a pond. Intervenor's allege that "The Use to Fill in a New Pond
14 Violates the Agreement." Again, it is unclear what type of relief Intervenor's are asking the Court
15 to grant pursuant to this issue. It is unclear whether they are expecting the Court to issue an
16 injunction to prevent Bentley from filling the pond or, because Bentley has already filled the pond,
17 to issue an affirmative injunction ordering Bentley to drain the pond. Intervenor's can cite no legal
18

19 ¹ **NRS 533.220 Distribution of water; enforcement of order or decision of State Engineer.**

20 1. From and after the filing of the order of determination in the district court, the distribution of water by the State
21 Engineer or by any of his assistants or by the water commissioners or their assistants shall, at all times, be under the
22 supervision and control of the district court. Such officers and each of them shall, at all times, be deemed to be
23 officers of the court in distributing water under and pursuant to the order of determination or under and pursuant to the
24 decree of the court.

25 2. Upon the neglect or refusal of any claimant to the use of water as provided in this chapter to carry out or abide
26 by an order or decision of the State Engineer acting as an officer of the court, the State Engineer may petition the
27 district court having jurisdiction of the matter for a review of such order and cause to be issued thereon an order to
28 show cause why the order and decision should not be complied with.

3. The order to show cause shall be personally served on the claimant or claimants complained of, who shall
appear and show cause on the day fixed in the court's order so to do.

4. The hearing on the petition and order to show cause shall be informal and summary in character, with full
opportunity afforded each party to present his case.

5. Appeals from the judgment may be taken to the Supreme Court in like manner as appeals in other civil cases;
but notice of appeal must be served and filed within 40 days from the entry of judgment.

[36 1/2:140:1913; added 1927, 337; A 1951, 132]

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1 authority for the proposition that this Court can order injunctive relief as part of this adjudicative
2 process. In fact, Intervenor can cite no legal authority to support their position that this Court can
3 interpret a private agreement as part of these proceedings at all. On the contrary, NRS 533.220 is
4 clear that the Court's enforcement powers are limited to enforcing the provisions of the Final
5 Order of Determination. Intervenor cannot obtain this relief by way of an affirmative defense.

6 C. NRCP 12(b)(5) - The Written Water Use and Diversion Agreement
7 Satisfies the Statute of Frauds.

8 Intervenor's Fourth Affirmative Defense that the Water Use and Diversion Agreement,
9 attached as an exhibit to Bentley's Notice of Exceptions and Amended Notice of Exceptions,
10 violates the statute of frauds is frivolous. By definition, a written agreement cannot violate the
11 statute of frauds. See NRS 111.205.

12 D. NRCP 12(b)(5) - There Is No Cause of Action or Affirmative Defense
13 for Filling the Pond.

14 Intervenor's Sixth Affirmative Defense is entitled "The Use By Bentley to Fill a New Pond
15 Violates the Water Diversion and Use Agreement." There is no such cause of action or affirmative
16 defense. That allegation has no bearing on the enforceability of the Water Diversion and Use
17 Agreement, the Final Order of Determination, or Bentley's Exceptions and Amended Exceptions.
18 Moreover, Bentley cannot even tell what relief Intervenor is expecting. Again, if they are
19 expecting this Court to order Bentley to drain the pond, then they need to proceed with an
20 affirmative claim for injunctive relief.

21 E. NRCP 12(b)(1), (5) - No Private Right of Action Exists for
22 Intervenor's Sixth Affirmative Defense.

23 Intervenor's Sixth Affirmative Defense is entitled "Bentley Holds No Permit for the New
24 Larger Pond, in Violation of NRS 533.525." Intervenor failed to allege any facts upon which this
25 Court can determine that Bentley is required to have a permit. In fact, NRS 533.525 mentions
26 nothing about a permit. That section simply states:

27 ///

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1 **NRS 533.525** Stored water may be conveyed through streams and
2 **reclaimed; conditions.** Any water stored for irrigation or other beneficial
3 purposes may be turned into the channel of any natural stream or
4 watercourse, and mingled with its waters, and then be reclaimed, but, in
 reclaiming it, water already appropriated by others shall not be diminished
 in quantity.

5 [1:49:1899; C § 424; RL § 4715; NCL § 8238]

6 There is nothing in that section that would require Bentley to have a pond permit.
7 Moreover, Intervenor would not have a private cause of action pertaining to the pond permit,
8 even if one were required. *See Baldonado v. Wynn Las Vegas*, 124 Nev. Adv. Op. 81
9 (9 October 2008) (holding that no private cause of action was created for violation of labor statutes
10 at issue and that Labor Commissioner had jurisdiction over such matters).

11 **IV. CONCLUSION**

12 No matter how they try to avoid the issue, Intervenor are raising new matters that are
13 beyond the scope of this water rights adjudication. They have done so through affirmative
14 defenses, rather than an actual complaint. However, to the extent Intervenor are asking the Court
15 to invalidate the Water Use and Diversion Agreement and quiet title in their favor, their
16 affirmative defenses must be treated as affirmative claims and should either be dismissed outright
17 or designated as such. This is also true to the extent Intervenor claim to be aligned with the State
18 Engineer, which is effectively the plaintiff, and because the matters raised by Intervenor are new
19 matters. Intervenor's so called "Affirmative Defenses" are therefore subject to dismissal pursuant
20 to NRCP 12(b).

21 In addition, the matters raised by Intervenor are beyond the scope of this water rights
22 adjudication. This includes the request to declare the Water Use and Diversion Agreement
23 unenforceable and barred by the statute of frauds, as well as the allegations about filling the pond

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27 ///

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1 and lack of a pond permit. Intervenors further failed to allege sufficient facts to support these
2 allegations. Accordingly, Intervenors' initial pleading should be dismissed with prejudice.

3 Respectfully submitted.

4 DATED this 1st December day of November 2009.

6 BROOKE · SHAW · ZUMPFT

7
8 By: 

Michael L. Matuska
State Bar No. 5711
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT and that on the 1st day of December 2009, I served a true and correct copy of the preceding document entitled **MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO REDESIGNATE AFFIRMATIVE DEFENSES AS COUNTERCLAIMS** addressed to:

STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada, in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individual and facsimile numbers indicated.


LIZ STERN, ALS

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR DOUGLAS COUNTY

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 RESPONSE AND OBJECTIONS TO NOTICE OF EXCEPTIONS AND EXCEPTIONS
25 TO FINAL ORDER OF DETERMINATION

26 Comes now, HALL RANCHES, LLC, a Nevada Limited Liability
27 Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
28 SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, DONALD S. FORRESTER and KRISTINA M.
FORRESTER, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), by and through their counsel, THOMAS J. HALL,

1 ESQ., and in response to the Notice of Exceptions and Exceptions
2 to the Final Order of Determination filed herein on December 11,
3 2008, assert the following affirmative defenses as follows:

4 AFFIRMATIVE DEFENSES

5 FIRST AFFIRMATIVE DEFENSE

6 The Notice of Exceptions and Exceptions to Final Order of
7 Determination fails to state any claims upon which relief can be
8 granted.
9

10 SECOND AFFIRMATIVE DEFENSE

11 The lands of Intervenor lie downstream from the lands of
12 Bentley and the uses and proposed uses by Bentley as described
13 in their Exceptions conflict with the rights of the Intervenor
14 herein.

15 THIRD AFFIRMATIVE DEFENSE

16 The Water Diversion and Use Agreement is unenforceable.
17

18 FOURTH AFFIRMATIVE DEFENSE

19 The Water Diversion and Use Agreement is unenforceable
20 under the Nevada Statute of Frauds.

21 FIFTH AFFIRMATIVE DEFENSE

22 The use by Bentley to fill a new pond on their property
23 violates the Water Diversion and Use Agreement, even if
24 enforceable.
25

26 SIXTH AFFIRMATIVE DEFENSE

27 Bentley holds no permit for the new larger pond, in
28 violation of NRS 533.525.

1 WHEREFORE, Intervenor respectfully request as follows:

2 1. That the Bentleys take nothing by their Notice of
3 Exceptions and Exceptions to Final Order of Determination;

4 2. That Bentleys' Notice of Exceptions and Exceptions to
5 Final Order of Determination be dismissed;

6 3. That the Court award the Intervenor their costs and a
7 reasonable attorney fee.

8 DATED this 19th day of November, 2009.
9

10 LAW OFFICES OF THOMAS J. HALL

11 

12 Thomas J. Hall, Esq.
13 Nevada State Bar No. 675
14 305 South Arlington Avenue
15 Post Office Box 3948
16 Reno, Nevada 89505
17 Telephone: 775-348-7011
18 Facsimile: 775-348-7211

19 **AFFIRMATION**

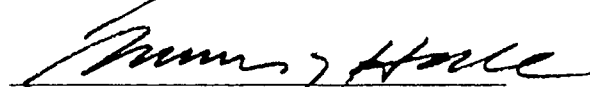
20 (Pursuant to NRS 239B.030)

21 Case No. 08-CV-0363-D

22 The undersigned does hereby affirm that the preceding
23 document, **Response and Objections to Notice of Exceptions and
Exceptions to Final Order of Determination**, does not contain the
social security number of any person.

24 DATED this 19th day of November, 2009.

25 LAW OFFICES OF THOMAS J. HALL

26 

27 THOMAS J. HALL, ESQ.
28

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
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Donald S. Forrester
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Post Office Box 3948
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Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 19th of November, 2009.


Misti Hale

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
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10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **OPPOSITION TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO**

25 **REDESIGNATE AFFIRMATIVE DEFENSES AS COUNTERCLAIMS**

26 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
27 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
28 SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by

1 and through their counsel, THOMAS J. HALL, ESQ., and file their
2 Opposition to the Bentleys' Motion to Dismiss as follows:

3 **I. PROCEDURAL HISTORY.**

4 At the hearing held herein on April 1, 2009, this Court
5 noted that all interested parties who sought to participate in
6 the adjudication procedures must file a Motion to Intervene, and
7 further, that the Court would liberally grant any such Motion.
8 For that reason, Intervenors filed an abbreviated Motion to
9 Intervene pursuant to NRS 533.170 and NRCP Rule 24.
10

11 On June 12, 2009, this Court entered an Order Allowing
12 Intervention.

13 On July 8, 2009, Intervenors filed their Motion to Correct
14 Order Allowing Intervention, which was duly opposed.

15 On November 17, 2009, this Court entered its Order
16 correcting the Order Allowing Intervention, which included the
17 following statement:
18

19 Having reviewed the proposed Response and Objections
20 to Bentleys' Notice of Exceptions and Exceptions, as
21 attached to Intervenors' Reply In Support of Motion to
22 Correct Order, Intervenors are hereby allowed to file
and serve such document in lieu of their own Notice of
Exceptions and Exceptions as previously authorized by
the Court.

23 **II. STATUS OF PLEADINGS.**

24 The Order filed November 17, 2009, found that "Intervenors'
25 subsequent pleadings clarify that they 'are aligned with the
26 State Engineer and support the Final Order of Determination . .
27

28 . . ."

1 The Court approved and validated the Intervenor's Proposed
2 Response. Therefore, the Intervenor's filed the same on November
3 19, 2009, being the identical response as previously attached to
4 their Reply in Support of Motion to Correct Order Allowing
5 Intervention.

6 It is noted by the Bentleys, under NRS 533.170(2), that the
7 special statutory proceedings for the review of the Final Order
8 of Determination are quite limited:
9

10 2. The order of determination by the State Engineer
11 and the statements or claims of claimants and
12 exceptions made to the order of determination shall
13 constitute the pleadings, and there shall be no other
14 pleadings in the cause. [Emphasis added.]

15 As set forth in NRS 533.160, "the final order of
16 determination when filed with the clerk of the district court as
17 provided in NRS 533.165, has the legal effect of a complaint in
18 a civil action." See, J. H. Davenport, Nevada Water Law, 101 -
19 117 (2003).

20 Water law is specific in character and must be strictly
21 complied with. G&M Properties v. District Court, 95 Nev. 301,
22 305, 594 P.2d 714 (1979).

23 Because the Intervenor's rights are aligned with the State
24 Engineer as set forth in the Final Order of Determination, no
25 further pleadings appear to be necessary, desirable or allowed.
26 The Affirmative Defenses in the Intervenor's Response are
27 adequate statements under the Nevada Rules of Civil Procedure to
28 alert the Bentleys and the Court as to the Intervenor's defenses

1 to the Bentleys' various claims and exceptions. Even if the
2 Intervenor had not set forth these defenses, as nonexcepting
3 claimants their rights would necessarily be influenced by the
4 Final Order of Determination and they would have standing as
5 real parties in interest in these proceedings. The Nevada
6 Supreme Court in In Re Silver Creek, 57 Nev. 232, 237-38, 61
7 P.2d 987 (1936), discussed this topic as follows:

8
9 However, the character of an adjudication, under the
10 water code, forbids the idea of separate controversies
11 being involved. It is a proceeding put in motion by
12 an agent of the state to determine the relative rights
13 of water claimants on a stream or stream system.
14 Necessarily such interrelated rights must be adjusted
15 as a whole in order to reach an equitable settlement
16 of the controversy. This conclusion has been
17 heretofore declared by this court. In Humboldt Land &
18 Cattle Company v. Sixth Judicial District Court, 47
19 Nev. 396, P. 612, 613, we said: "There is nothing in
20 the context or in the subject-matter to require such
21 construction [separable controversies], but the entire
22 scope of the legislation is persuasively to the
23 contrary. As said in one of the cases quoted from in
24 Re Chewaucan River, 89 Or. 659 [171 P. 402], 175 P.
25 421: 'It is a case where diverse and sundry parties
26 are entitled to use so much of the waters of a stream
27 as they have put to beneficial use and the purpose is
28 to ascertain their respective rights by a simple,
economical, effective, and comprehensive proceeding,
and is not a separable controversy between different
claimants.'"

NRCP Rule 8(b) provides:

Defenses; form of denials. A party shall state in
short and plain terms the party's defenses to each
claim asserted and shall admit or deny the averments
upon which the adverse party relies.

Further, Rule 8(c) provides:

Affirmative defenses. In a pleading to a preceding
pleading, a party shall set forth affirmatively . . .

1 any . . . matter constituting an avoidance or
2 affirmative defense.

3 Rule 8(d) provides:

4 *Effect of failure to deny.* Averments in a pleading to
5 which no responsive pleading is required or permitted
6 shall be taken as denied or avoided. [Emphasis added.]

7 NRCP Rule 12(b), provides:

8 *How presented.* Every defense, in law or fact, to a
9 claim for relief in any pleading, whether a claim,
10 counterclaim, cross-claim or third-party claim, shall
11 be asserted in the responsive pleading thereto if one
12 is required"

13 The Intervenor's Response complies with the spirit and
14 intent of NRCP Rules 8 and 12 by giving notice to the Bentleys
15 of the Intervenor's defenses to Bentleys' claims and exceptions.

16 If the Court determines that the Intervenor's Response is
17 deficient for not setting forth categorical denials, the
18 Intervenor respectfully request leave to amend their Response
19 to include categorical denials, as appropriate, pursuant to NRCP
20 Rule 15. There is no need to convert these defenses into a
21 counterclaim as such action would violate the confined special
22 statutory procedure outlined in NRS 533.165-180.

23 III. LEGAL ANALYSIS AND ARGUMENT.

24 A. The Intervenor's Are Landowners And Water Right Holders.

25 The Intervenor's are landowners and water right holders that
26 own land downstream from the Bentley Property. They also hold
27 water rights in Sheridan Creek, historically used to irrigate
28 their lands. They are obviously and necessarily interested in

1 the excessive diversions made upstream by the Bentleys in
2 violation of custom, practice, agreement and decree. A
3 tabulation of Intervenor's land holdings are set forth next, to
4 wit:

<u>Intervenor</u>	<u>APN</u>	<u>Acreage</u>
Donald S. and Kristina Forrester	1219-14-001-012	59.620
Hall Ranches, LLC	1219-14-001-003	23.800
Thomas J. Scyphers and Kathleen M. Scyphers	1219-14-001-004	13.010
Frank Scharo	1219-14-001-005	12.990
Sheridan Creek Equestrian Center Glenn Roberson	1219-14-001-008	35.960
Ronald R. and Ginger G. Mitchell	1219-14-001-009	10.020
	1219-14-001-010	10.480
	1219-14-001-011	<u>10.370</u>
Total Acreage of Intervenor's		176.430

19 The lands of the Intervenor's lie downstream from the lands
20 of the Bentleys. See Map attached as Exhibit A. The uses and
21 proposed uses by the Bentleys as described in their Exceptions
22 conflict with the rights of the Intervenor's identified above, as
23 more particularly described below and in the two attached
24 Affidavits.

25
26 B. Subject Matter Jurisdiction of the Court.

27 In their Notice of Exceptions and Exceptions to Final Order
28 of Determination filed herein on December 11, 2008, (the Amended

1 Notice of Exceptions having been stricken by the Court), the
2 Bentleys in EXCEPTION NO. 1, DIVERSION SCHEDULE, PROOFS V-06307
3 and V-06308, state that the Office of the State Engineer has
4 created a Diversion Schedule ("Diversion Schedule"), for the
5 waters from Sheridan Creek, Stutler Creek and Gansberg Springs.
6 The Bentleys contend they are not subject to the Diversion
7 Schedule because of a Water Diversion and Use Agreement
8 ("Diversion Agreement"), dated June 9, 1986 and recorded by
9 their predecessors in interest on March 27, 1987, in Book 387,
10 at Page 2726, as Document 152147, Douglas County Records and
11 attached as Exhibit 3 to their Exceptions. See additional copy
12 attached hereto for convenience as Exhibit B. For various
13 reasons, the Intervenorers believe that the Diversion Agreement is
14 unenforceable and, even if enforceable, has been violated by the
15 Bentleys.
16

17
18 If the Court has jurisdiction to consider Bentleys'
19 Exception No. 1, seeking to avoid the State's proposed Diversion
20 Schedule based on the Diversion Agreement, then the Court
21 presumably would have the same jurisdiction to hear the
22 Intervenorers' defenses to the Diversion Agreement as downstream
23 users.
24

25 Bentleys' Exception No. 2, follows in the same vein,
26 seeking a corresponding map amendment. The Court's jurisdiction,
27 or lack of jurisdiction, would be the same.
28

\\\\\\

1 C. The Water Diversion And Use Agreement Is Unenforceable.

2 The Bentleys contend that their diversion rights are set
3 forth in a Diversion Agreement between Bentleys' predecessors in
4 interest and the predecessors in interest of owners of other
5 properties identified in the Final Order, Tables 5 and 6.
6 Specifically, Bentleys attach to their Notice of Exceptions, as
7 Exhibit 3, the Diversion Agreement. First, examination of the
8 Water Diversion and Use Agreement shows that it was not signed
9 either by June Irene Bartlett, who took title as June Irene
10 Rolph, or by Nancy Rolph Welch. In recital number 3 of the
11 Diversion Agreement, at page 2726, it is stated:
12

13 3. Grantors own and enjoy the right to use waters from
14 Sheridan Creek.

15 Because the Diversion Agreement was not signed by the
16 holders of the water right, it is unenforceable under the Nevada
17 Statute of Frauds.

18 "It is well settled that a water right is realty." Netzel
19 v. Rochester Silver Corporation, 50 Nev. 352, 357, 259 Pac. 232
20 (1927); Carson City v. Estate of Lompa, 88 Nev. 541, 542, 501
21 P.2d 662 (1972).
22

23 Inasmuch as water rights are treated as realty in Nevada,
24 all agreements involving water rights are subject to the Nevada
25 Statute of Frauds. See NRS 111.205 (1), which provides:

26 111.205. No estate created in land unless by operation
27 of law or written conveyance; leases for terms not
28 exceeding 1 year.

1 1. No estate or interest in lands, other than for
2 leases for a term not exceeding 1 year, nor any trust
3 or power over or concerning lands, or in any manner
4 relating thereto, shall be created, granted, assigned,
5 surrendered or declared after December 2, 1861, unless
6 by act or operation of law, or by deed or conveyance,
in writing, subscribed by the party creating,
granting, assigning, surrendering or declaring the
same, or by his lawful agent thereunto authorized in
writing. [Emphasis added.]

7 For example, the recordation of a parcel map does not
8 satisfy the Statute of Frauds where the map is not subscribed by
9 the servient owner. Jim Marsh America v. Century Construction,
10 106 Nev. 727, 728, 802 P.2d 1 (1990). ("The creation of an
11 easement is subject to the statute of frauds. NRS 111.205(1).
12 The existence of an easement may not be established through
13 parol evidence. [I]n the absence of any writing subscribed to by
14 the servient estate owner, the alleged easement was never
15 created.").

17 So too here, the right to divert water under the 1987
18 Diversion Agreement was never created or not signed by all
19 parties.

20 The uses described in Bentleys' proposed Exceptions No. 1
21 and No. 2 to the Final Order, interfere with the rights of the
22 Intervenor and therefore must not be considered, accepted or
23 allowed.
24

25 \\\

26 \\\

1 D. The Use To Fill A New Pond Violates The Diversion
2 Agreement.

3 The right to divert water to fill ponds under the Diversion
4 Agreement must be restricted to the ponds existing on the date
5 of the Agreement, i.e., on June 9, 1986. The Diversion Agreement
6 specifically states:

7 5. Grantee desires to divert some or all of the water
8 from Sheridan Creek, onto his property, to be used in
9 a non-consumptive manner to maintain water levels in
10 ponds on Grantee's property, and thereafter to cause
11 the water to be diverted back to the property of
12 Grantors for irrigation purposes. [Emphasis added.]

13 Further, in the Agreement, paragraph B states:

14 B. This grant is specifically made on the condition
15 that the water will be used by Grantee in a non-
16 consumptive fashion, to maintain water levels in a
17 series of streams and ponds on the Exhibit "A"
18 property, after which time it will be re-diverted to
19 the irrigation ditches of Grantors. [Emphasis added.]

20 In 2008, the Bentleys created a new and additional large
21 pond of approximately one acre in size into which they divert
22 water from Sheridan Creek. The right for water diversion and
23 use under the Diversion Agreement is restricted in two forms.
24 First it is restricted to the ponds existing as of the date of
25 the Agreement, i.e., to ponds existing on June 9, 1986.
26 Secondly, it is restricted to a non-consumptive use. Bentleys
27 have violated the Diversion Agreement on both counts.

28 It is widely understood that once a right is created, it
may not be enlarged to the detriment of other parties without
prior permission or consent. Downstream users are entitled to

1 receive their customary flow of water without diminishment by
2 the Bentleys.

3 For example, "[I]t is the right of both parties to insist
4 that the easement for a ditch shall remain substantially as it
5 was at the time of its acquisition." Thomas v. Blaisdell, 25
6 Nev. 223, 228-29, 58 Pac. 903 (1899); Ennor v. Raine, 27 Nev.
7 178, 213 74 Pac. 1 (1903); Malstrom v. People's Ditch Co., 32
8 Nev. 246, 253, 255 107 Pac. 98 (1910).

9
10 "It is a general rule of law that, in the absence of
11 statute to the contrary, the location of an easement once
12 selected cannot be changed by either the landowner or the
13 easement owner without the other's consent." Swenson v. Strout
14 Realty, Inc., 85 Nev. 231, 239, 452 P.2d 972 (1969). See also 93
15 C.J.S., Waters, Section 192(b)(2) (1956) ("in the absence of
16 statute, the owner of a servient estate has no right to change
17 the place or location of an appropriator's ditch."); Archibeck
18 v. Mongiello, 276 P.2d 736, 739 (N.M. 1954) (applying general
19 prohibition on moving ditch easements): Lunn v. Schmidt, No.
20 49537, 1985 WL 8129, at 4, 1985 Ohio App. LEXIS 8840, at 12
21 (Ohio App. 1985) ("The plaintiffs correctly state the general
22 rule that neither the dominant landowner nor the servient
23 landowner may materially alter the easement without the consent
24 of both parties. The placing of closed pipe in a drainage ditch,
25 constitutes a material alteration.").

1 The ruling of the Court in Swenson was recently reviewed in
2 St. James Village v. Cunningham, 125 Nev. Ad. Op. 21, 210 P.3d
3 190 (2009), where the Court stated:

4 We conclude that the statement made in Swenson
5 indicating that fixed easements cannot be moved is
6 overbroad, and determine that adoption of section 4.8
7 of the Restatement (Third) of Property is warranted in
8 those circumstances where the creating instrument does
9 not define the easement through specific reference to
10 its location or dimensions and the unilateral
11 relocation will not materially inconvenience the
12 dominant estate owner¹. Because the creating instrument
13 in this case specifies the location and dimension of
14 the easement, we conclude that the district court
15 properly denied St. James Village's request for
16 declaratory relief [regarding unilateral relocation
17 and size of the easement.]

18 Here, however, relocating and increasing the number of
19 ponds has created an inconvenience and increased burden on the
20 downstream owners of the water rights. Therefore, the Bentleys

21 ¹ The precise wording of Restatement (Third) of Property
22 (Servitudes) § 4.8 follows:

23 Except where the location and dimensions are determined by
24 the instrument or circumstances surrounding creation of a
25 servitude, they are determined as follows:

26 (1) The owner of the servient estate has the right within
27 a reasonable time to specify a location that is reasonably
28 suited to carry out the purpose of the servitude.

(2) The dimensions are those reasonably necessary for
enjoyment of the servitude.

(3) Unless expressly denied by the terms of an easement,
as defined in § 1.2, the owner of the servient estate is
entitled to make reasonable changes in the location or
dimensions of an easement, at the servient owner's expense, to
permit normal use or development of the servient estate, but
only if the changes do not

- (a) significantly lessen the utility of the easement
- (b) increase the burdens on the owner of the easement
in its use and enjoyment, or
- (c) frustrate the purpose for which the easement was
created.

[Emphasis added.]

1 cannot relocate and enlarge the ponds after the date of the
2 Diversion Agreement and they cannot violate the Diversion
3 Agreement which provides for non-consumptive use.

4 Obviously the quantification of the burden, detriment,
5 inconvenience and losses to the downstream users, raises
6 multiple issues of fact that cannot be resolved on a Motion to
7 Dismiss.

8 Neither can the Bentleys argue for an enlarged prescriptive
9 right. In Boynton v. Longley, 19 Nev. 69, 76 (1885), the Nevada
10 Supreme Court stated:

12 The right acquired by prescription is only
13 commensurate with the right enjoyed. The extent of
14 the enjoyment measures the extent of the right. The
15 right gained by prescription is always confined to the
16 right as exercised for the full period of time
17 required by the statute, which is, in this state, five
years. A party claiming a prescriptive right for five
years, who, within that time, enlarges the use, cannot
at the end of that time claim the use as enlarged
within that period.

18 The pond recently created by Bentley was completed in 2008
19 and there has not been five years adverse or continuous use.

20 E. Bentleys Have Violated The Diversion Agreement By
21 Creating A Pond That Is Not Water Tight, Has Excess Seepage And
22 Consumes And Wastes Water.

23
24 Diversion Agreement Recital B, provides as follows:

25 B. This grant is specifically made on the condition
26 that the water will be used by the Grantee in a non-
27 consumptive fashion, to maintain water levels in a
28 series of streams and ponds on the Exhibit "A"
property, after which time it will be re-diverted to
the irrigation ditches of Grantors. [Emphasis added.]

1 Diversion Agreement Paragraph H provides for termination
2 upon violation in the following fashion:

3 H. This agreement may be terminated by Grantors in
4 the event a Court of competent jurisdiction determines
5 that the Grantee has been violating the terms hereof,
6 to the detriment of Grantors.

7 After construction of the new, larger and water wasting
8 pond, the Bentleys employed former State Engineer R. Michael
9 Turnipseed, P.E., to perform a Seepage Test on site. A Seepage
10 Test is a mechanism which measures differences in the water
11 level of a pond over time. The flow of the water is cut off for
12 a period of time, such as five days, and after the elapsed time,
13 the pond level is re-measured. The Seepage Test performed by Mr.
14 Turnipseed showed substantial seepage and subterranean loss of
15 water into the porous alluvial fan and aquifer which is not
16 recoverable for irrigation by the downstream users. The Bentleys
17 have refused to voluntarily produce the Seepage Test and Seepage
18 Report conducted and prepared by Mr. Turnipseed. Obviously,
19 during discovery in this proceeding, the Intervenors will
20 request a copy of the Seepage Test and Seepage Report to show
21 the consumptive use and water loss from the new pond. The gross
22 consumptive use by the Bentleys violates the provision of the
23 Diversion Agreement which was specifically conditioned on non-
24 consumptive use of water. Once the water from the new and larger
25 Bentley pond flows subterranean into the aquifer, it is lost to
26 the system and the downstream users do not have the ability to
27
28

1 recover the surface water for reuse. The total water system is
2 diminished by the water losses from the unlined pond the
3 Bentleys constructed in 2008.

4 The Intervenor believe that the Bentleys should not be
5 exempt from the Diversion Schedule put in place by the State
6 Engineer as the diversion of water through the Bentleys' pond is
7 a consumptive and wasteful use.

8 **F. The Bentleys Hold No Permit For The New Larger Pond And**
9 **Filling Same Violates The Diversion Agreement.**
10

11 It is stated in J. H. Davenport, Nevada Water Law, 138-139
12 (2003):

13 **E. Storage of Water in Reservoirs**

14 Storage of water is a beneficial use. Applications
15 for permits to store water proceed under the same
16 application requirements as to other appropriative
17 uses. However, the applicant is not required to prove
18 application of water to a beneficial use. Rather,
19 applicants must apply for a "secondary" permit in
20 order to withdraw stored water from the reservoir.
21 The notice requirements of initial permit applications
22 are waived. The secondary permit application must
23 refer to the reservoir as the water supply and
24 demonstrate a contractual arrangement with the
25 reservoir's owner committing his permanent and
26 sufficient interest in the reservoir to impound enough
27 water to support the beneficial use set forth in the
28 application. Certificates of appropriation issued on
secondary permits must refer to both the ultimate use
of the water, and its attendant works, as well as the
reservoir described in the primary permit. The
primary/secondary permit provision is often used in
the case of waste water generation, where the primary
permit holder is the effluent generator and the
secondary permit is in the ultimate user of effluent.

Water stored for irrigation or other beneficial
purposes may be turned into the channel of any natural

1 stream or watercourse, and mingled with its waters,
2 and then be reclaimed, but, in reclaiming it, water
3 already appropriated by others shall not be diminished
4 in quantity. [Emphasis added.]

5 Bentley does not hold a storage permit issued under NRS
6 533.440.

7 Further, the use the Bentleys propose actually does
8 diminish the quantity of water flowing to the Intervenor in
9 violation of NRS 533.525, to wit:

10 **533.525 Stored water may be conveyed through streams
11 and reclaimed; conditions.**

12 Any water stored for irrigation or other beneficial
13 purposes may be turned into the channel of any natural
14 stream or watercourse, and mingled with its waters,
15 and then be reclaimed, but, in reclaiming it, water
16 already appropriated by others shall not be diminished
17 in quantity. [Emphasis added.]

18 The State Engineer is also required to take reservoir
19 evaporation losses into account and consideration pursuant to
20 NRS 533.070(2) which provides as follows:

21 **533.070 Quantity of water appropriated limited to
22 amount reasonably required for beneficial use; duties
23 of State Engineer in connection with water diverted or
24 stored for purpose of irrigation.**

25 2. . . . In addition, in the case of storage of
26 water, reservoir evaporation losses should be taken
27 into consideration in determining the acre-footage of
28 storage to be granted in a permit. [Emphasis added.]

Finally, NRS 533.530, proscribes the waste of water:

**533.530. Unlawful diversion and waste of water;
penalty.**

1. It is an unlawful use and waste of water for any
person during the irrigating season:

1 (a) To divert and conduct the water, or portion
2 thereof, of any river, creek or stream into any
3 slough, dam or pond and retain, or cause the water to
be held or retained therein, without making any other
use of the water. . . .

4 These factual considerations preclude dismissal.

5 **III. CONCLUSION.**

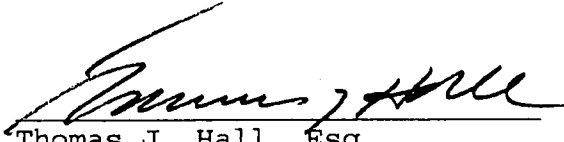
6 Clearly, the above discussion highlights a number of
7 factual issues that must be determined by the Court. In fact,
8 by their Response to Reply to Exceptions by Bentley to Final
9 Order of Determination filed herein on March 31, 2009, the
10 Bentleys stated:
11

12 The trial will involve the chain of titles for all
13 three (3) parcels and a history of the actual
diversions pursuant to the Diversion Agreement.
14 Bentley will also demand that Hall and Forrester
present evidence to support their conclusion that
15 Bentleys' ponds have had an adverse impact on the
downstream users.

16 According to the attached Affidavits by Thomas J. Scyphers
17 and Glenn Roberson, the new pond built by the Bentleys in 2008
18 and the changes in utilization of flows from Sheridan Creek,
19 have created a depletion of the water source available to the
20 downstream users, have never been a non-consumptive use as
21 provided in the Diversion Agreement and have simply resulted in
22 a waste of water. A trial in this matter will be necessary after
23 expert examination as to the issues surrounding lining of the
24 new pond, changes in utilized flows, the evaporation from the
25 new pond and other matters related to the Bentleys' wasteful
26 uses of water.
27
28

1 DATED this 17th day of December, 2009.

2 LAW OFFICES OF THOMAS J. HALL

3
4 

5 Thomas J. Hall, Esq.
6 Nevada State Bar No. 675
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
10 Telephone: 775-348-7011
11 Facsimile: 775-348-7211

12 **AFFIRMATION**

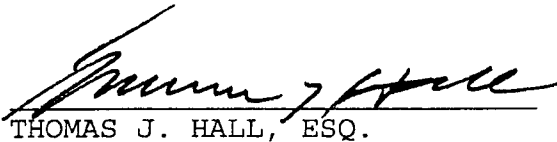
13 (Pursuant to NRS 239B.030)

14 Case No. 08-CV-0363-D

15 The undersigned does hereby affirm that the preceding
16 document, **Opposition to Motion to Dismiss or, In the**
17 **Alternative, to Redesignate Affirmative Defenses as**
18 **Counterclaims**, does not contain the social security number of
any person.

19 DATED this 17th day of December, 2009.

20 LAW OFFICES OF THOMAS J. HALL

21
22 
23 THOMAS J. HALL, ESQ.

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR DOUGLAS COUNTY

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 AFFIDAVIT OF GLENN ROBERSON IN SUPPORT OF OPPOSITION TO MOTION
25 TO DISMISS OR, IN THE ALTERNATIVE, TO REDESIGNATE AFFIRMATIVE
26 DEFENSES AS COUNTERCLAIMS

27 GLENN ROBERSON, being duly sworn upon his oath, deposes and
28 says:

29 1. I reside at 551 Centerville Lane, Gardnerville,
30 Nevada, 89460.

31 \\\

32 \\\

1 2. On October 18, 2005, my family acquired approximately
2 35.960 acres, more or less, denominated as Douglas County APN
3 1219-14-001-008.

4 3. On March 11, 2008, my family transferred said land to
5 the Sheridan Creek Equestrian Center, LLC, a Nevada Limited
6 Liability Company. I serve as Manager of this LLC.

7 4. After our purchase in 2005, my family made substantial
8 improvements to our land. We have expended in excess of
9 \$2,600,000 improving our property.
10

11 5. Since our purchase in 2005, I have become very
12 familiar with the diversion of water through Sheridan Creek and
13 the irrigation of our land and our neighbors' land.

14 6. I am familiar with the claimants J.W. Bentley and
15 Maryann Bentley, Trustees of the Bentley Family Trust 1995
16 Trust.
17

18 7. I have observed the flow of water through the Bentley
19 Property prior to the Bentleys' purchase and after the Bentleys'
20 purchase.

21 8. After their purchase, the Bentleys relocated and
22 changed some of the ditches on their property.

23 9. After the Bentleys' purchase, I have noticed a marked
24 decrease in the water coming down the irrigation ditches
25 downstream from the Bentley Property to our property.
26

27 10. I have also observed an increase in water use in the
28 original and existing pond on the Bentley Property.

1 11. I have always insisted that the Bentleys do not change
2 the natural flow of Sheridan Creek.

3 12. I have always insisted that the Bentleys do not put in
4 an additional pond.

5 13. I have attended several meetings at the Bentley
6 property in the past to determine what changes were being made
7 in regards to the construction of a new pond. I recall Mr.
8 Bentley discussing a soil test and an issue relating to water
9 loss.
10

11 14. After construction of the new pond in 2008, I became
12 aware that no pond liner was installed and that the water
13 consumption by evaporation and percolation has made additional
14 and previously non-existent demands on the Sheridan Creek water
15 system.
16

17 15. In the years 2008 and 2009, after the new and larger
18 pond was built by the Bentleys, the water coming downstream to
19 irrigate my family's property has significantly diminished.

20 16. Before the creation of the new and larger pond by the
21 Bentleys in 2008, I was able to obtain two cuttings of hay and
22 grass from my property. After the larger pond was created by the
23 Bentleys, I am only able to obtain to one cutting and stubble
24 for the second cutting. In addition, the quality of my hay crop
25 has diminished and is not as valuable or plentiful as before. I
26 will have to replant my hay fields with new seed to replenish
27
28

1 the quality of my hay crop after the original quantity of water
2 is restored.

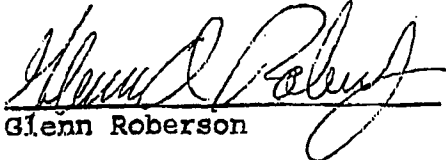
3 17. I believe that the new pond built by the Bentleys has
4 consumed an inordinate amount of water under the circumstances.
5 It is definitely not a non-consumptive use of Sheridan Creek
6 Water.

7 18. The construction of the new pond has also led to a
8 safety problem and potential flooding issue caused by winter
9 runoff due to improper overflow and water management control.

10 19. The construction of the additional pond and the change
11 in the flow and distribution of water clearly violate my water
12 rights.
13

14 20. The Affiant has personal knowledge of statements
15 contained in this Affidavit and could testify under oath and at
16 hearing concerning these matters.

17 Further, your Affiant saeth naught.
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21 Glenn Roberson
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1 STATE OF NEVADA)
2 Carson) ss.
3 COUNTY OF ~~DOUGLAS~~)

4 On December 17, 2009, before me, the undersigned, a Notary
5 Public in and for said State, personally appeared GLENN
6 ROBERSON, personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person who executed the above
8 instrument.

9 WITNESS my hand and official seal.

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NOTARY PUBLIC

STACEY BROWN
Notary Public State of Nevada
Appointment Number: 06-107100-12
My Appointment Expires: Jan 17, 2010.

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **AFFIDAVIT OF THOMAS J. SCYPHERS IN SUPPORT OF OPPOSITION TO**
25 **MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO REDESIGNATE**
26 **AFFIRMATIVE DEFENSES AS COUNTERCLAIMS**

27 THOMAS J. SCYPHERS, being duly sworn upon his oath, deposes
28 and says:

29 1. I reside at 1304 West Aylesbury Court, Gardnerville,
30 Nevada, 89460.

31 2. I own approximately 13.01 acres, more or less,
32 denominated as Douglas County APN 1219-14-001-004.

1 3. I purchased this property on or about December 15,
2 1999.

3 4. Since my purchase, I have become very familiar with
4 the diversion of water through Sheridan Creek and the irrigation
5 of my land and my neighbors' land.

6 5. I am familiar with the claimants J.W. Bentley and
7 Maryann Bentley.

8 6. I have observed the flow of water through the Bentley
9 Property prior to the Bentleys' purchase and after the Bentleys'
10 purchase.

11 7. After purchase, Bentley relocated and changed some of
12 the ditches on his property.

13 8. After the Bentleys' purchase, I have noted a marked
14 decline in the water coming down the irrigation ditches
15 downstream from the Bentley property.

16 9. I have observed an increase in water use in the
17 existing pond on the Bentley property.

18 10. I was approached by Mr. Bentley in the year 2008, with
19 regard to constructing a new pond. Mr. Bentley represented that
20 the new pond would be constructed using sound engineering and
21 technical standards and that the pond would be lined by some
22 form or substance to prevent percolation into the soil. Mr.
23 Bentley mentioned using bentonite as a pond liner or a membrane
24 during the course of construction.
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1
2 11. After construction of the new pond, I became aware
3 that no pond liner was installed and that the water consumption
4 by evaporation and percolation has made additional demands on
5 the water system.

6 12. In the years 2008 and 2009, after the pond was created
7 by the Bentleys, water coming downstream to irrigate my property
8 has significantly diminished.

9 13. I believe that the new pond created by the Bentleys
10 has consumed an inordinate amount of water under the
11 circumstances.

12 The Affiant has personal knowledge of statements contained
13 in this Affidavit and could testify under oath and at hearing
14 concerning these matters.

15 Further, your Affiant saeth naught.

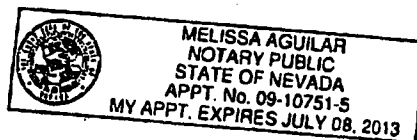
16
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18 Thomas J. Scaphers
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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF DOUGLAS)

4 On December 17, 2009, before me, the undersigned, a Notary
5 Public in and for said State, personally appeared THOMAS J.
6 SCYPHERS, personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person who executed the above
8 instrument.

9 WITNESS my hand and official seal.

10 *Melissa Aguilar*
11 NOTARY PUBLIC



CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the **Opposition to Motion to Dismiss or, In the Alternative, to Redesignate Affirmative Defenses as Counterclaims**, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mithcell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 18th day of December, 2009.


Misti Hale

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LIST OF EXHIBITS

- Exhibit A: Assessor's Parcel Map depicting properties of Bentley, Forrester and Hall Ranches.
- Exhibit B: Water Diversion and Use Agreement.

EXHIBIT A

EXHIBIT A

Yellow = Hail Ranches, LLC's Property

Green = Bentleys' Property

Douglas County, Nevada

Assessor's Parcels
Douglas County Assessor

Map Legend

- Parcel Boundary
- Sub'd Boundary
- Easements
- Town Boundary
- Township/Range/Section
- Open Space/Conserv. Ease.
- Receiving Area

000 Parcel Number

110 Parcel Sub/Seq Number

L00 Parcel Acreage

B L K A Parcel Block Number

I Parcel Lot Number

1100 Parcel Address

T12 N R19 E

SEC. 14

6	5	4	3	2	1
7	8	9	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
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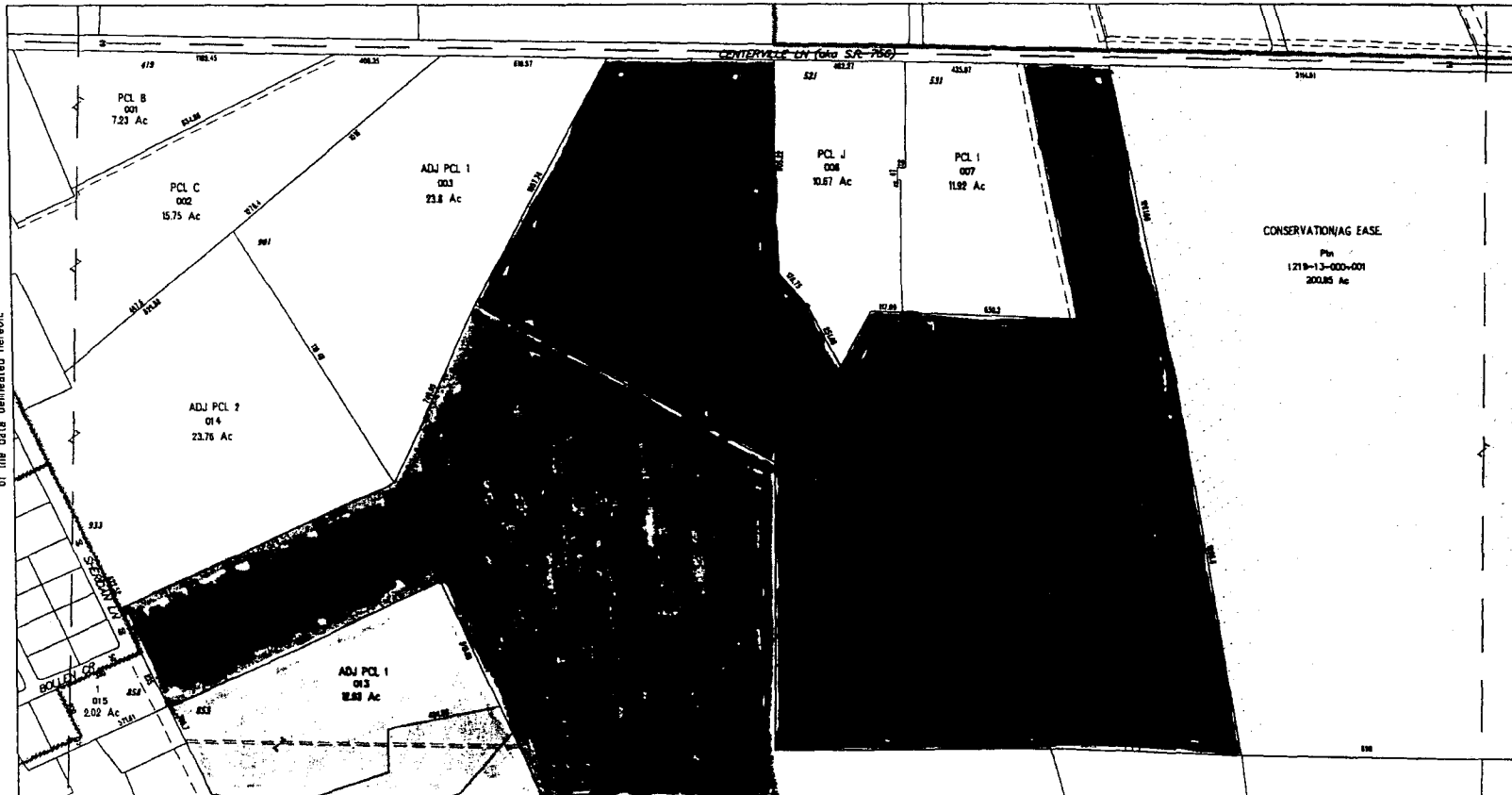
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1219-14-001

SCALE: 1" = 400'

REVSD: 04/06/2006



NOTE: This map is prepared for the use of Douglas County Assessor, for assessment and illustrative purposes only. It does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.

529

Green = Bentleys' Property

Douglas County, Nevada

Assessor's Parcels
Douglas County Assessor

Map Legend

- Parcel Boundary
- Sub'd Boundary
- Easements - See Recorded Documents
- Town Boundary
- Township/Range/Section
- Open Space/Conserv. Ease.
- Receiving Area

001	Parcel Number
110	Parcel Sub/Seq Number
1.06	Parcel Acreage
B L K A	Parcel Block Number
1	Parcel Lot Number
1100	Parcel Address

T12 N R19 E

SEC. 14

8	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
18	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

S 2 SEC

1	5
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1219-14-002

SCALE: 1" = 400'
REVSD: 10/08/2009

NOTE: This map is prepared for the use of Douglas County Assessor, for assessment and illustrative purposes only. It does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.

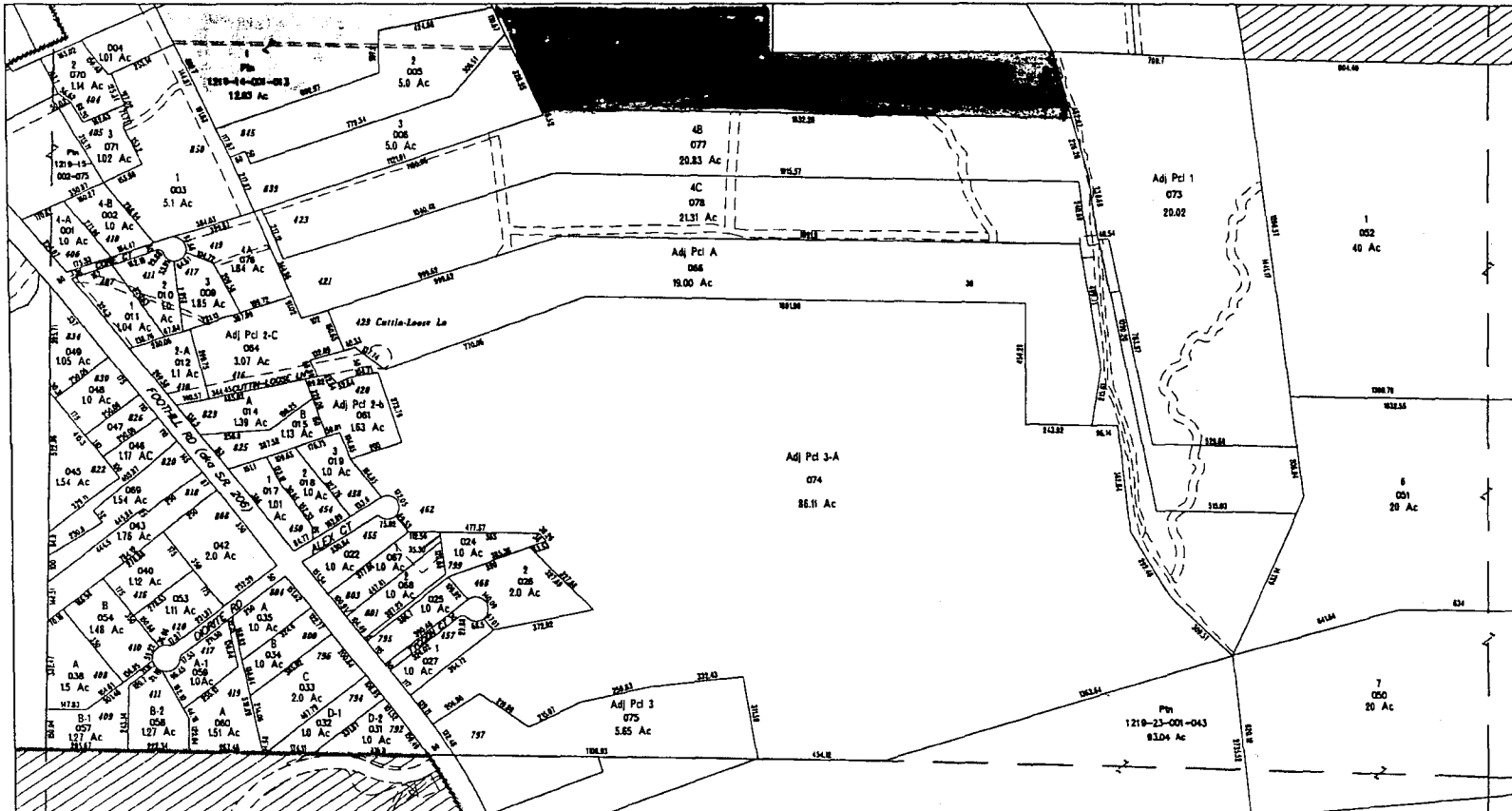


EXHIBIT B

EXHIBIT B

12- P.O. Box 11
Sheridan, Wyo.
89423

WATER DIVERSION AND USE AGREEMENT

THIS AGREEMENT is entered into by and between JUNE IRENE BARTLETT, who took title as June Irene Rolph, NANCY ROLPH WELCH, GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife as joint tenants, hereafter referred to as "Grantors" and JOSEPH S. LODATO, hereafter referred to as "Grantee", based upon the following facts:

1. Grantors are the owners of real property located in Douglas County, Nevada, as well as the owners of water rights which are appurtenant to, certificated or adjudicated to the benefit of the property owned by them in Douglas County, Nevada.
2. Grantee is the owner of real property located in Douglas County, Nevada, which was purchased heretofore from Grantors.
3. Grantors own and enjoy the right to use waters from Sheridan Creek.
4. There are no downstream users of water from these creeks, after this water is used by Grantors.
5. Grantee desires to divert some or all of the water from Sheridan Creek, onto his property, to be used in a non-consumptive manner to maintain water levels in ponds on Grantee's property, and thereafter to cause the water to be diverted back to the property of Grantors for irrigation purposes.

6. Grantors have agreed to such an arrangement, on the terms and conditions which follow.

THEREFORE, based upon the recital of facts set forth above, which are incorporated in the body of this agreement by reference, and the covenants and conditions which follow hereinafter, the parties do agree as follows:

A. For valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors do hereby give and grant to Grantee, as a covenant running to the benefit of the land described in Exhibit "A" attached hereto, the right to divert one hundred percent (100%) of the water from Sheridan Creek, onto the Exhibit "A" property, in perpetuity.

B. This grant is specifically made on the condition that the water will be used by Grantee in a non-consumptive fashion, to maintain water levels in a series of streams and ponds on the Exhibit "A" property, after which time it will be re-diverted to the irrigation ditches of Grantors.

C. Grantors are granted the right, upon reasonable notice, to have access to the Exhibit "A" property to ensure that the limitations set forth herein regarding use are being adhered to by Grantee.

D. Grantee is hereby given the right of access to other property of Grantors, in order to ensure that the water may be diverted to Grantee's property.

E. This grant of right to divert and use water includes the right of Grantee to divert the Sheridan Creek water from the natural creekbed or water course on the west side of Foothill Road and in an easement granted pursuant to Exhibit "B" which is attached hereto, and to return to the natural water course on property owned by Grantee just east of that 50-foot roadway and utility easement shown on Exhibit "C" which is attached hereto and incorporated herein by reference.

F. This promise to permit the use and diversion of water is intended to be and is made by Grantors to be a covenant running with the land, and the benefits thereof may be enjoyed by the heirs and assigns of Grantee, and subsequent owners of the Exhibit "A" property.

G. This agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors and assigns of the parties hereto.

H. This agreement may be terminated by Grantors in the event a Court of competent jurisdiction determines that the Grantee has been violating the terms hereof, to the detriment of Grantors.

I. The interpretation and enforceability of this agreement shall be determined by the laws of the State of Nevada, and in the event a law suit is brought to enforce or

interpret this agreement, the prevailing party shall be awarded reasonable attorney's fees against the party not prevailing.

IN WITNESS WHEREOF, the parties have set their hands the day and year set forth below.

Date: _____

JUNE IRENE BARTLETT, who took
title as June Irene Rolph

Date: _____

NANCY ROLPH WELCH

Date: 6/9/86

Gerald F. Whitmire
GERALD F. WHITMIRE

Date: 6-9-86

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

Date: _____

Joseph S. Lodato
JOSEPH S. LODATO

STATE OF _____)

COUNTY OF _____)

ss.

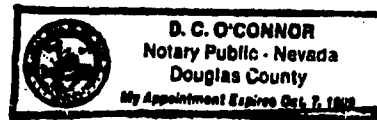
On _____, 1986, personally appeared before me, a notary public, JUNE IRENE BARTLETT, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

Notary Public

STATE OF Nevada)
COUNTY OF Douglas) ss.

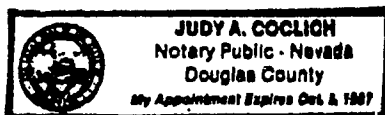
On June 9, 1986, personally appeared before me, a notary public, PAMELA F. J. WHITMIRE, personally known to me to be the person who executed the above instrument, and acknowledged to me that she executed the same for the purposes therein stated.

D.C. O'Connor
Notary Public

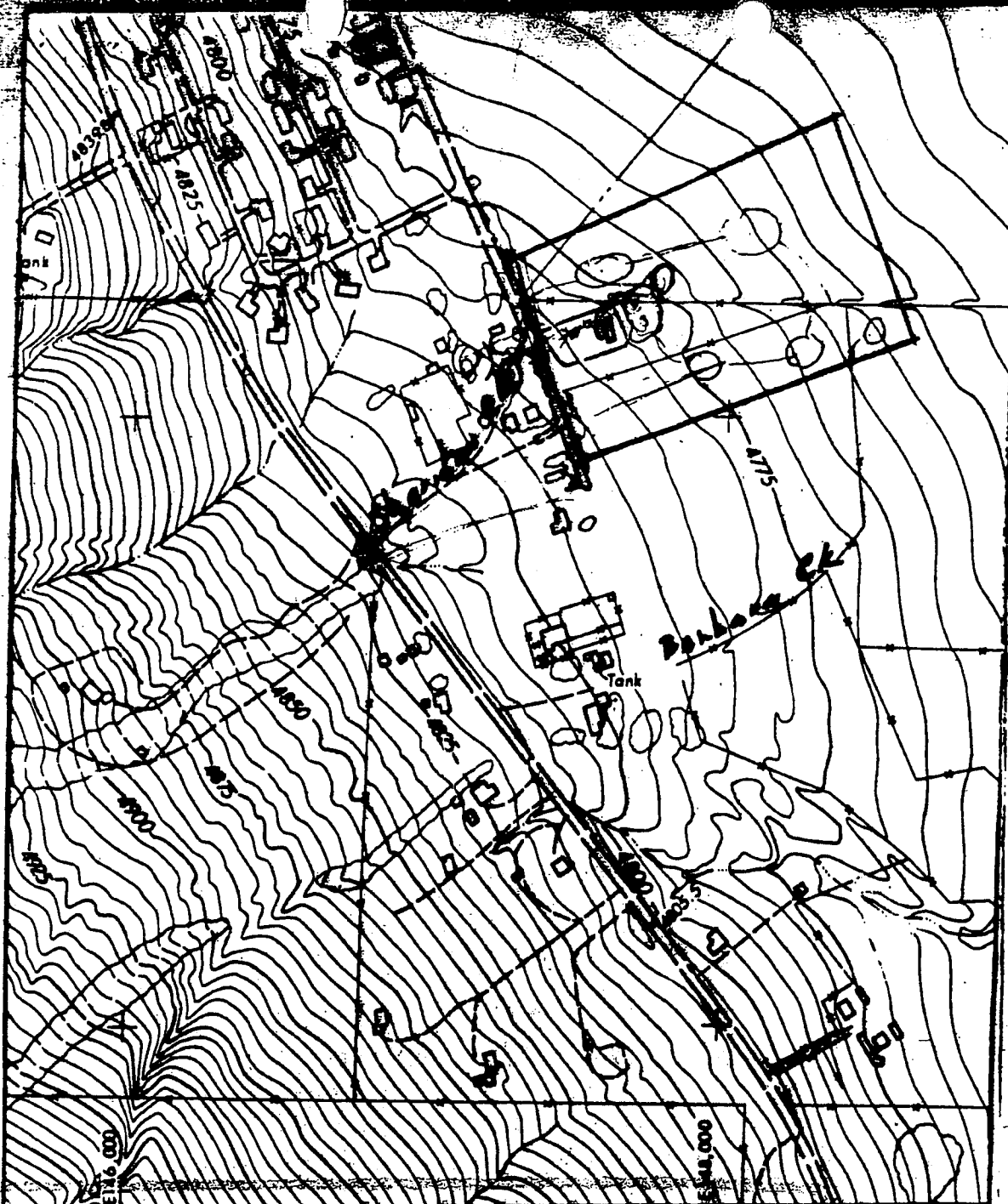


STATE OF Nevada)
COUNTY OF Douglas) ss.

On June 9th, 1986, personally appeared before me, a notary public, JOSEPH S. LODATO, personally known to me to be the person who executed the above instrument, and acknowledged to me that he executed the same for the purposes therein stated.



Judy A. Coclich
Notary Public



PROJECT

Scale: 1" = 400'
 Contour Interval: 5'
 Date of Photography: 6-1-77
 BOOK 307 PAGE 2731

152147

EXHIBIT "A"

A parcel of land lying in a portion of the South 1/2 of the Northwest 1/4 and the North 1/2 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East, M.D.B.&M., Douglas County, Nevada, further described as follows:

BEGINNING at the Southwest corner of Parcel 1 (Jones Ranch Survey) and the Southwest corner of a 1.246 acre parcel of the Rolph residence, which lies on an easterly 50 foot right-of-way extension of Sheridan Lane from which the North one-quarter corner of said Section 14, bears North 34°22'30" East, 3571.08 feet; thence South 24°49'00" East, 334.72 feet; thence North 70°37'51" East, 1120.70 feet; thence North 25°05'38" West 958.85 feet; thence South 64°05'08" West 1120.70 feet to the Easterly 50 foot easement of Sheridan Lane Extension; thence along said easement South 25°54'52" East, 496.34 feet to the Point of Beginning.

TOGETHER with an easement for ingress and egress fifty (50) feet wide along the westerly side of a line more particularly described as follows:

BEGINNING at the intersection of the easterly side of Sheridan Lane and the southerly side of Bolen Circle; thence running South 25°54'52" East, 728.00 feet, situate in the County of Douglas, State of Nevada.

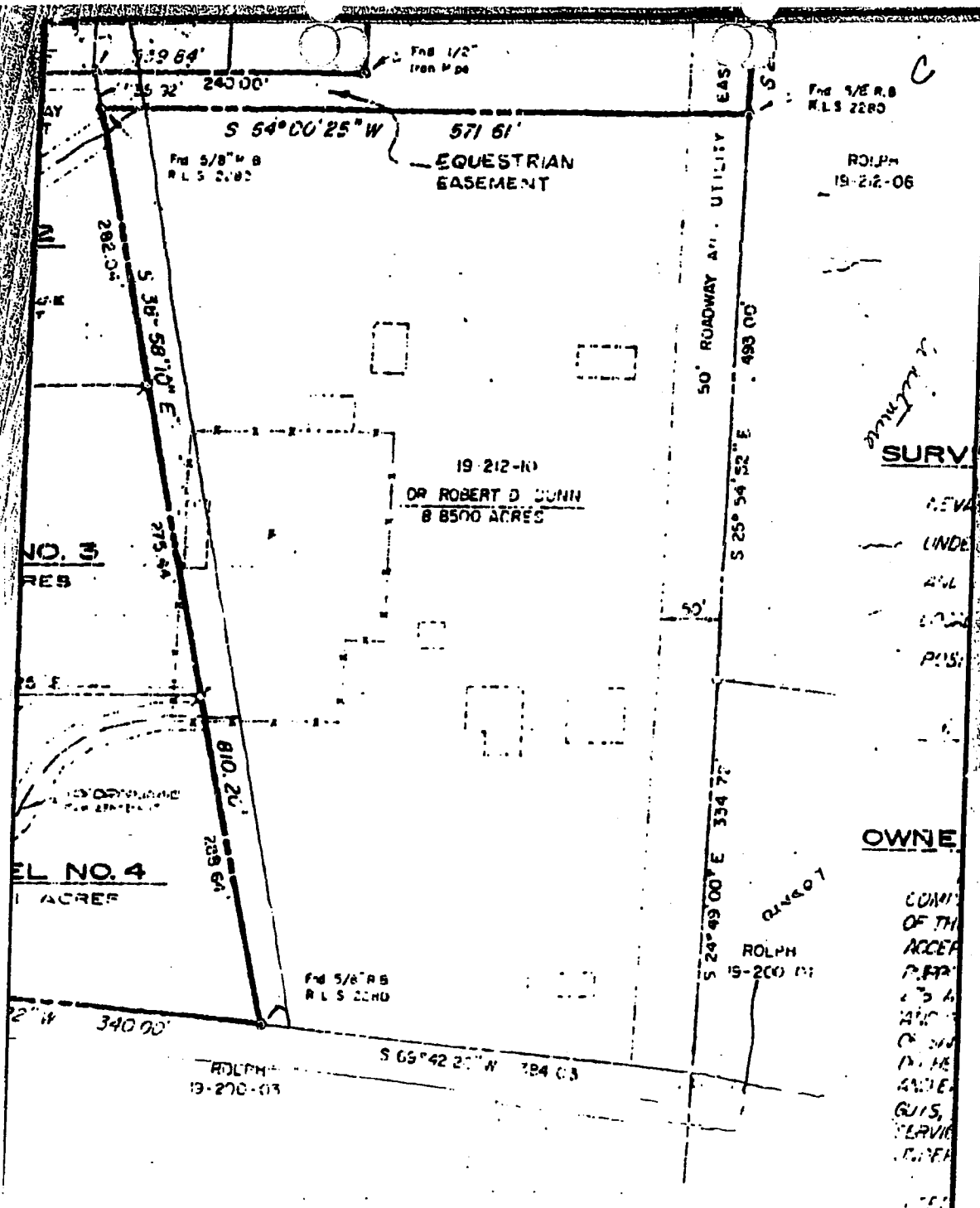
EXCEPTING THEREFROM an irrigation easement five (5) feet in width, located in the Northwest 1/4 of the Southwest 1/4 of Section 14, Township 12 North, Range 19 East M.D.B.&M., in Douglas County, Nevada, the centerline of an existing irrigation ditch being more particularly described as follows:

BEGINNING at a point from which the Southwest Corner of the parcel described in Document No. 64911, filed in the office of Douglas County Recorder bears South 25°54'52" East, a distance of 349.90 feet; said point being on the Easterly line of Sheridan Lane; thence North 89°45'00" East, a distance of 286.39 feet to a point on the Westerly line of an existing pond; thence North 88°39'49" East, a distance of 172.66 feet to a point on the Easterly side of said pond; thence North 81°56'51" East, a distance of 42.43 feet; thence South 06°12'18" West, a distance of 12.64 feet; thence North 83°28'21" East, a distance of 79.45 feet; thence South 89°50'46" East, a distance of 490.17 feet; thence South 24°36'11" East, a distance of 6.24 feet; thence North 89°37'20" East, a distance of 59.47 feet; thence North 89°59'01" East, a distance of 16.07 feet; thence South 47°29'25" East, a distance of 9.05 feet; thence North 89°20'58" East, a distance of 226.82 feet to the Point of Ending, from which the Southwest corner of the above mentioned parcel bears South 75°21'13" West, a distance of 1270.74 feet.

The side lines of the above described easement are to be forelengthened or shortened to meet the called beginning.

152147

BOOK 387 PAGE 2732



Survey
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STATE
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BY
 PUBLIC
 COUNCIL
 TO ME
 11/9/72

REQUESTED BY
Joseph D. Smith
 IN OFFICIAL RECORDS OF
 COUNTY OF CLATSOP, OREGON

'87 MAR 27 A9:52

SUZANNE GAUDREAU
 RECORDER
 S. 17th PAID *for* DEPUTY

152147

BOOK 387 PAGE 2733

Case No.: 08-CV0308

Department No.: 1

RECEIVED

DEC 18 2009

DOUGLAS COUNTY
DISTRICT COURT CLERK

FILED

2009 DEC 18 PM 2:56

TED THUAN
CLERK

BY: [Signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (AKA Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (AKA Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas County, Nevada.

**PARTIAL OPPOSITION
TO MOTION TO DISMISS**

The State of Nevada, and Tracy Taylor, P.E., in his capacity as State Engineer of Nevada, by and through their counsel, Attorney General Catherine Cortez Masto and Senior Deputy Attorney General Bryan Stockton, submit their Partial Opposition the Motion to Dismiss filed December 1, 2009.

ISSUES

1. Does the State Engineer takes no position on the issue of the pond agreement between the parties?

2. Should the interveners be dismissed from this action?

ARGUMENT

1. The State Engineer Takes No Position on the Pond Agreement.

The State Engineer is appointed by and is responsible to the Director of the Nevada Department of Conservation and Natural Resources and performs duties prescribed by law and by the Director of the Department. NRS 532.020, 532.110. Those duties include

1 administering the appropriation and management of Nevada's public water, both surface and
2 ground water, under NRS Chapters 533 and 534. *Id.*

3 The State Engineer is prohibited by law from making determinations as to title to water.
4 NRS 533.386(4). The pond water agreement appears to be a dispute over an issue related to
5 title and therefore the State Engineer will not take a position on the agreement. The
6 jurisdiction of the decree court over the pond agreement is not clearly proscribed by statute,
7 but may be beyond the scope of the adjudication.

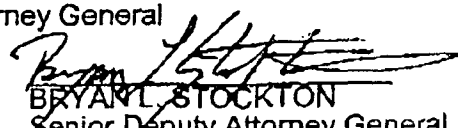
8 2. Interveners Should Not Be Dismissed.

9 NRS 533.240 Provides that "In any suit brought in the district court for the
10 determination of a right or rights to the use of water of any stream, all persons who claim the
11 right to use the waters of such stream and the stream system of which it is a part shall be
12 made parties." Thus, the interveners are already parties to the adjudication and were
13 provided notice of the Final Order of Determination by the State Engineer just like all other
14 claimants. This Court has placed reasonable limits and requirements on the Objectors and
15 Interveners. However, "Nevada is a notice-pleading jurisdiction and pleadings should be
16 liberally construed to allow issues that are fairly noticed to the adverse party." *Nevada State*
17 *Bank v. Jamison Family Partnership*, 106 Nev. 792, 801, 801 P.2d 1377, 1383 (1990). The
18 State Engineer takes the position that the pleadings should be liberally construed and the
19 interveners must not be dismissed from this sub-proceeding in the adjudication.

20
21 DATED this 18th day of December, 2009.

22 CATHERINE CORTEZ MASTO
23 Attorney General

24 By:


25 BRYAN L. STOCKTON
26 Senior Deputy Attorney General
27 Nevada State Bar #4764
28 100 North Carson Street
Carson City, Nevada 89701
(775) 684 -1228

CERTIFICATE OF MAILING

I certify that I Sandie Geyer, an employee of the Office of the Attorney General, State of Nevada, and that on this 18th day of December 2009, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing **PARTIAL OPPOSITION TO MOTION TO DISMISS**, addressed to the following:

Taggart & Taggart, Ltd.
Paul G. Taggart, Esq.
Tyler M. Elcano, Esq.
108 Minnesota Street
Carson City, Nevada 89701

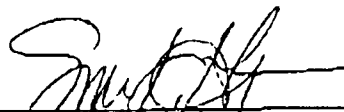
Ross E. de Lipkau, Esq.
Parsons Behle & Latimer
333 Holcomb Avenue, suite 300
Reno, Nevada 89502

Brent T. Kolvet, Esq.
Thorndahl, Armstrong, Delk,
Balkenbush, Elsinger
6590 South McCarren Blvd., Suite B
Reno, Nevada 89509

Kelly R. Chase, Esq.
P.O. Box 2800
Minden, Nevada 89423

Brooke, Shaw Zumpft
Jennifer Yturbide, Esq.
P.O. Box 2860
Minden, Nevada 89423

George M. Keele, Esq.
1692 County Road, Suite A
Minden, Nevada 89423


Sandie Geyer, LSJ

Nevada Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **NOTICE OF FILING ORIGINAL AFFIDAVITS**

25 Comes now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
26 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
27 SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
28 EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and file their
Notice of Filing of Original Affidavits to wit:

[illegible]

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
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10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 AFFIDAVIT OF GLENN ROBERSON IN SUPPORT OF OPPOSITION TO MOTION
25 TO DISMISS OR, IN THE ALTERNATIVE, TO REDESIGNATE AFFIRMATIVE
26 DEFENSES AS COUNTERCLAIMS

27 GLENN ROBERSON, being duly sworn upon his oath, deposes and
28 says:

29 1. I reside at 551 Centerville Lane, Gardnerville,
30 Nevada, 89460.

31 \\\

32 \\\

1 2. On October 18, 2005, my family acquired approximately
2 35.960 acres, more or less, denominated as Douglas County APN
3 1219-14-001-008.

4 3. On March 11, 2008, my family transferred said land to
5 the Sheridan Creek Equestrian Center, LLC, a Nevada Limited
6 Liability Company. I serve as Manager of this LLC.

7 4. After our purchase in 2005, my family made substantial
8 improvements to our land. We have expended in excess of
9 \$2,600,000 improving our property.
10

11 5. Since our purchase in 2005, I have become very
12 familiar with the diversion of water through Sheridan Creek and
13 the irrigation of our land and our neighbors' land.

14 6. I am familiar with the claimants J.W. Bentley and
15 Maryann Bentley, Trustees of the Bentley Family Trust 1995
16 Trust.
17

18 7. I have observed the flow of water through the Bentley
19 Property prior to the Bentleys' purchase and after the Bentleys'
20 purchase.

21 8. After their purchase, the Bentleys relocated and
22 changed some of the ditches on their property.

23 9. After the Bentleys' purchase, I have noticed a marked
24 decrease in the water coming down the irrigation ditches
25 downstream from the Bentley Property to our property.
26

27 10. I have also observed an increase in water use in the
28 original and existing pond on the Bentley Property.

1 the quality of my hay crop after the original quantity of water
2 is restored.

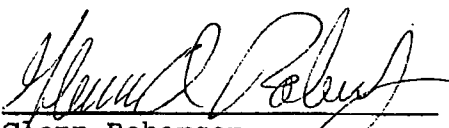
3 17. I believe that the new pond built by the Bentleys has
4 consumed an inordinate amount of water under the circumstances.
5 It is definitely not a non-consumptive use of Sheridan Creek
6 Water.

7 18. The construction of the new pond has also led to a
8 safety problem and potential flooding issue caused by winter
9 runoff due to improper overflow and water management control.
10

11 19. The construction of the additional pond and the change
12 in the flow and distribution of water clearly violate my water
13 rights.

14 20. The Affiant has personal knowledge of statements
15 contained in this Affidavit and could testify under oath and at
16 hearing concerning these matters.
17

18 Further, your Affiant saeth naught.

19
20 
21 Glenn Roberson
22
23
24
25
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27
28

1 STATE OF NEVADA)
2) *Carson*) ss.
3 COUNTY OF ~~DOUGLAS~~)

4 On December 17, 2009, before me, the undersigned, a Notary
5 Public in and for said State, personally appeared GLENN
6 ROBERSON, personally known to me or proved to me on the basis of
7 satisfactory evidence to be the person who executed the above
8 instrument.

9 WITNESS my hand and official seal.

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27
28
NOTARY PUBLIC



Case No.: 08-CV-0363-D

Dept. No.: I

Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

AFFIDAVIT OF THOMAS J. SCYPHERS IN SUPPORT OF OPPOSITION TO
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO REDESIGNATE
AFFIRMATIVE DEFENSES AS COUNTERCLAIMS

THOMAS J. SCYPHERS, being duly sworn upon his oath, deposes
and says:

1. I reside at 1304 West Aylesbury Court, Gardnerville,
Nevada, 89460.

2. I own approximately 13.01 acres, more or less,
denominated as Douglas County APN 1219-14-001-004.

3. I purchased this property on or about December 15, 1999.

4. Since my purchase, I have become very familiar with the diversion of water through Sheridan Creek and the irrigation of my land and my neighbors' land.

5. I am familiar with the claimants J.W. Bentley and Maryann Bentley, ~~Trustees of the Bentley Family Trust 1995~~
~~Trust~~.

6. I have observed the flow of water through the Bentley Property prior to the Bentleys' purchase and after the Bentleys' purchase.

7. After purchase, Bentley relocated and changed some of the ditches on his property.

8. After the Bentleys' purchase, I have noted a marked decline in the water coming down the irrigation ditches downstream from the Bentley property.

9. I have observed an increase in water use in the existing pond on the Bentley property.

10. I was approached by Mr. Bentley in the year 2008, with regard to constructing a new pond. Mr. Bentley represented that the new pond would be constructed using sound engineering and technical standards and that the pond would be lined by some form or substance to prevent percolation into the soil. Mr. Bentley mentioned using bentonite as a pond liner or a membrane during the course of construction.

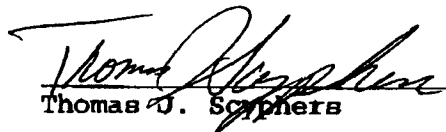
11. After construction of the new pond, I became aware that no pond liner was installed and that the water consumption by evaporation and percolation has made additional demands on the water system.

12. In the years 2008 and 2009, after the pond was created by the Bentleys, water coming downstream to irrigate my property has significantly diminished.

13. I believe that the new pond created by the Bentleys has consumed an inordinate amount of water under the circumstances.

The Affiant has personal knowledge of statements contained in this Affidavit and could testify under oath and at hearing concerning these matters.

Further, your Affiant saeth naught.


Thomas J. Scaphers

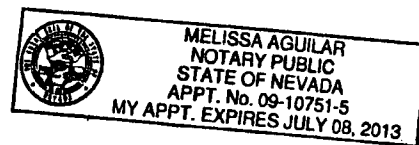
attached to Irrigation rights
form

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On December 17, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared THOMAS J. SCYPHERS, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the above instrument.

WITNESS my hand and official seal.


NOTARY PUBLIC



1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR DOUGLAS COUNTY

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 ERRATA AND SUPPLEMENT TO OPPOSITION TO MOTION TO DISMISS OR,

25 IN THE ALTERNATIVE, TO REDESIGNATE AFFIRMATIVE

26 DEFENSES AS COUNTERCLAIMS

27 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
28 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
29 SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
30 EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
31 RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
32 and through their counsel, THOMAS J. HALL, ESQ., and file their

1 Errata and Supplement to their Opposition to the Bentleys'
2 Motion to Dismiss as follows:

3 I. ERRATA.

4 The statement contained on page 9, lines 17-20 of the
5 Opposition filed herein on December 18, 2009 should be corrected
6 as follows:

7 So too here, the right to divert water under the 1987
8 Diversion Agreement was never created as it was not
9 signed by all parties.

10 II. SUPPLEMENT.

11 A. The Water Diversion And Use Agreement is Unenforceable.

12 The Diversion Agreement became a matter of public record on
13 March 27, 1987, at the time it was recorded. However, the
14 Diversion Agreement was not signed by Intervenor Ronald R.
15 Mitchell and Ginger G. Mitchell who had previously acquired two
16 of the burdened parcels of land, APN 1219-14-010-001 and 1219-
17 14-001-010, by Grant, Bargain, Sale Deed recorded on March 17,
18 1987, in Book 387, at Page 1506, as Document 151500, Douglas
19 County Records. See certified copy attached hereto as Exhibit C.

20
21 Because the Diversion Agreement was recorded after the
22 Mitchells acquired their property and is not signed by them, it
23 is not binding on them.

24 The Mitchell Deed recites that it was recorded pursuant to
25 a prior Agreement of Sale, to wit:

26
27 THIS INSTRUMENT I[S] BEING RECORDED IN SATISFACTION OF
28 THAT CERTAIN AGREEMENT OF SALE DATED THE 6TH DAY OF

1 FEBRUARY, 1986 AND RECORDED FEBRUARY 14, 1986; IN BOOK
2 186; PAGE 1242; DOCUMENT NO. 130952.

3 The Mitchell Agreement of Sale pre-dated the execution of
4 the Diversion Agreement signed June 9, 1986, by several months.

5 Paragraph G of the Diversion Agreement states as follows:

6 G. This agreement shall be binding upon and inure to
7 the benefit of the heirs, administrators, executors
8 and assigns of the parties hereto.

9 Inasmuch as the Mitchells were not and never have been
10 "assigns" of the parties, nor are they "subsequent owners" of
11 the burdened property (and, in fact, were prior owners), the
12 Diversion Agreement is unenforceable against them.

13 Since the Diversion Agreement grants an estate in real
14 property, it was properly recorded in the land records of the
15 county where the property is situated. NRS 247.200. However,
16 this recording only provides constructive notice to "subsequent
17 owners" according to the Nevada recording statutes, NRS 111.315,
18 111.320 and 247.190(1). Only subsequent purchasers and
19 mortgagees have notice of a properly recorded conveyance
20 affecting real property. Grellet v. Heilshorn, 4 Nev. 526, 531
21 (1868).

22 The Mitchells were not "subsequent owners" of the burdened
23 property and therefore are not subject to the Diversion
24 Agreement.
25

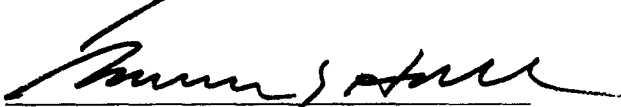
1 For the reasons hereinabove and previously stated, the
2 Bentleys have interfered with the water and property rights of
3 the Mitchells and the other Intervenors.

4 **III. CONCLUSION.**

5 Clearly, a number of factual issues remain to be determined
6 by the Court and preclude dismissal of the Intervenors'
7 defenses.

8 DATED this 29th day of December, 2009.

10 LAW OFFICES OF THOMAS J. HALL

11 
12 Thomas J. Hall, Esq.
13 Nevada State Bar No. 675
14 305 South Arlington Avenue
15 Post Office Box 3948
16 Reno, Nevada 89505
17 Telephone: 775-348-7011
18 Facsimile: 775-348-7211

19 **AFFIRMATION**

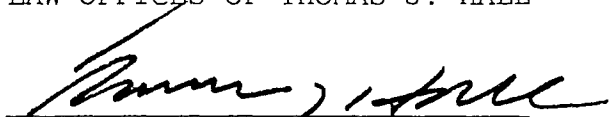
20 (Pursuant to NRS 239B.030)

21 Case No. 08-CV-0363-D

22 The undersigned does hereby affirm that the preceding
23 document, **Errata and Supplement to Opposition to Motion to
Dismiss or, In the Alternative, to Redesignate Affirmative
Defenses as Counterclaims**, does not contain the social security
number of any person.

24 DATED this 29th day of December, 2009.

25 LAW OFFICES OF THOMAS J. HALL

26 
27 THOMAS J. HALL, ESQ.
28

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Errata and Supplement to Opposition to Motion to Dismiss or, In the Alternative, to Redesignate Affirmative Defenses as Counterclaims, addressed to:

Brooke, Shaw, Sumpft
Michael L. Matuska, Esq.
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

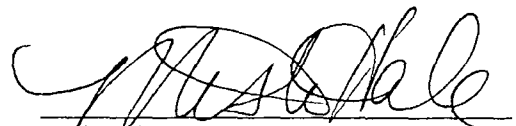
Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 29th day of December, 2009.


Misti Hale

LIST OF EXHIBITS

1
2 **Exhibit C:** Grant, Bargain, Sale Deed recorded March 17, 1987,
3 in Book 387, at Page 1506, as Document 151500, Douglas County
4 Records.
5
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EXHIBIT C

EXHIBIT C

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That GERALD F. WHITMIRE AND PAMELA F. J. WHITMIRE, husband

and wife

In consideration of \$ 10.00, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to RON MITCHELL AND GINGER MITCHELL, husband and wife, as Joint Tenants with right

of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the

County of Douglas, State of Nevada, bounded and described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR LEGAL DESCRIPTION

THIS INSTRUMENT IF BEING RECORDED IN SATISFACTION OF THAT CERTAIN AGREEMENT OF SALE DATED THE 6TH DAY OF FEBRUARY, 1986 AND RECORDED FEBRUARY 14, 1986; IN BOOK 186; PAGE 1242; DOCUMENT NO. 130952.

Together with all and singular the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

Witness OUR hand S this 6th day of February, 19 86

STATE OF NEVADA

SS

COUNTY OF Douglas

On February 6th 1986

personally appeared before me, a Notary Public,

Gerald F. Whitmire and

Pamela F. J. Whitmire

who acknowledged that they executed the above instrument.

Dixie C. Harris
Notary Public



DIXIE C. HARRIS
Notary Public - Nevada
Douglas County
My Appointment Expires Oct. 1, 1987

Gerald F. Whitmire
GERALD F. WHITMIRE

Pamela F. J. Whitmire
PAMELA F. J. WHITMIRE

ORDER NO.

ESCROW NO. 39745MM

WHEN RECORDED MAIL TO:

Ron and Ginger Mitchell

P.O. Box 10342

South Lake Tahoe, CA 95731

FOR RECORDER'S USE

The grantor(s) declare(s):

Documentary transfer tax is \$ 2.00 (10% of \$20.00)

() computed on full value of property conveyed, or

() computed on full value less value of liens and encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

Same as above

MANOUKIAN, SCARPELLO & ALLING, LTD.
ATTORNEYS AT LAW

CARSON CITY OFFICE
302 EAST FRONT ST. SUITE 200
CARSON CITY, NEVADA 89401
TELEPHONE (702) 887-1111

LAKE TAHOE OFFICE
1000 N. LAKE AVENUE, SUITE 100
SOUTH LAKE TAHOE, CA 95731
TELEPHONE (707) 796-1111

151500
3871551506

DEED DESCRIPTION

Exhibit A

Parcel E

A portion of the Northeast one-quarter (NE 1/4) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet; thence South 00°00'34" West, 2510.24 feet to the POINT OF BEGINNING, which is also the Northwest corner of Parcel E as shown on said Record of Survey; thence North 57°12'27" East, 705.47 feet; thence South 41°00'00" East, 225.62 feet; thence South 28°32'00" East, 585.00 feet; thence North 89°52'46" West, 1020.56 feet; thence North 00°00'34" East, 300.00 feet to the POINT OF BEGINNING.

Subject to all easements and right-of-ways as shown on that certain Record of Survey for the "Run Around Ranch" as recorded in Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581.

Parcel D

FARCEL NO. 2

A portion of the Northeast one-quarter (NE 1/4) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet; thence South 89°52'00" East, 1234.20 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'55" East, 1376.83 feet; thence North 89°52'46" West, 405.00 feet to the POINT OF BEGINNING which is also the Southeast corner of Parcel D; thence continuing North 89°52'46" West, 304.70 feet; thence North 28°32'00" West, 585.00 feet; thence North 41°00'00" West, 225.62 feet; thence North 57°12'27" East, 754.53 feet; thence South 05°06'52" East, 1097.89 feet to the POINT OF BEGINNING.

Subject to all easements, right-of-ways, and also subject to and together with a road easement as shown on that certain Record of Survey for the "Run Around Ranch" as recorded in Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581.

REQUESTED BY
LAWYERS TITLE
IN OFFICE OF RECORDS OF
DOUGLAS COUNTY, NEVADA

97 MAR 17 A9:58

151500

387 PAGE 1507

Case No.: 08-CV-0363-D

Dept. No.: I

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DEC 30 2009
DOUGLAS
DISTRICT COURT

FILED

2009 DEC 30 PM 4:17

TED THIRIAN
CLERK

B. WILLIAMS DEPUTY

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

RESPONSE TO PARTIAL OPPOSITION
TO MOTION TO DISMISS

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby respond to the Partial Opposition filed by the State Engineer to the Motion to Dismiss filed by Bentley.

The State Engineer's Partial Opposition confirms Bentley's position – the State Engineer is NOT aligned with the Intervenor regarding the Water Diversion and Use Agreement. In fact, the State Engineer has declined to take a position on that agreement. Although the parties may have anticipated at one point in time that a rotation schedule would likely be part of the Final Order of Determination, that is not the case. Intervenor's affirmative defenses and claims regarding the Water Diversion and Use Agreement should therefore be dismissed, as they are not properly pled and are outside the scope of this adjudication process. Intervenor's affirmative defenses and claims regarding a pond permit (none is required) are certainly outside the scope of this adjudication process.

///

1 Bentley concurs with the other point raised by the State Engineer – Intervenor are
2 necessary parties to the adjudication process and cannot be dismissed outright as parties. But the
3 claims and affirmative defenses asserted in their Initial Pleading should be dismissed. They will
4 remain parties and will be bound by the Final Decree entered on the Final Order of Determination,
5 as will other users of the streams that are the subject of this adjudication.

6 DATED this 30th day of December 2009.

7 BROOKE · SHAW · ZUMPFT

8
9 By: 

Michael L. Matuska
State Bar No. 5711
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT
3 and that on the 30th day of December 2009, I served a true and correct copy of the preceding
4 document entitled **RESPONSE TO PARTIAL OPPOSITION TO MOTION TO DISMISS**
5 addressed to:

6 STATE OF NEVADA
7 Department of Conservation and Natural
8 Resources
9 Division of Water Resources
10 Office of the State Engineer
11 901 South Stewart Street, Suite 2002
12 Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

13 Bryan L. Stockton
14 Deputy Attorney General
15 100 North Carson Street
16 Carson City, NV 89701

17 ☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
18 postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
19 in the ordinary course of business.

20 ☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
21 · Zumpft the above-identified document in the ordinary course of business to the individual and
22 facsimile numbers indicated.

23 
24 LIZ STERN, ALS

RECEIVED

FILED

Case No.: 08-CV-0363-D

DEC 31 2009

2009 DEC 31 AM 11:51

Dept. No.: I

CLERK

TED THORAN
CLERK

This document does not contain personal information of any person.

K. WILFERT DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

REPLY TO OPPOSITION TO
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO REDESIGNATE
AFFIRMATIVE DEFENSES AS
COUNTERCLAIMS

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby reply to the *Opposition to Bentley's Motion to Dismiss or, in the Alternative, to Redesignate Affirmative Defenses as Counterclaims* filed by HALL RANCHES, LLC, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER (collectively, "Intervenors") based on the following reasons:

1. Introduction

The briefs and pleadings filed by the Intervenors have uniformly been outside of anything authorized or contemplated by the Nevada Rules of Civil Procedure or Chapter 533 of the Nevada Revised Statutes. Intervenors also submitted a proposed order to this Court without first presenting the proposed order to opposing counsel for comment and failed to attach its proposed pleadings to the motion to intervene. Intervenors finally attached their proposed pleading to a

1 reply brief, whereby Bentley was unable to file an additional opposition to explain why the
2 proposed pleading was not authorized. Every issue raised in Intervenor's pleadings and briefs is
3 extraneous to the Final Order of Determination.

4 Intervenor has also misrepresented to this Court that they are "aligned" with the State
5 Engineer when, in truth, the State Engineer has confirmed that he is not taking a position on the
6 Water Diversion and Use Agreement.

7 Bentley respectfully submits that Intervenor's Initial Pleading is not authorized by any rule
8 or statute, that Intervenor is misrepresenting material facts and the position of the State Engineer
9 in this dispute, and that by proceeding with new claims under the guise of affirmative defenses,
10 Intervenor is attempting to prevent Bentley from pleading its affirmative defenses (including
11 laches, waiver, estoppel) and from asserting appropriate counterclaims. Bentley could
12 conceivably raise these issues by way of its own responsive pleading. Realistically, it is
13 impossible to actually respond to Intervenor's pleading, as that document fails to assert any
14 allegations of fact, and it is questionable whether any further pleadings are allowed under
15 NRS 533.170

16 The pleading standards and requirements are not mere formalities. For instance,
17 Intervenor claims in their Sixth Affirmative Defense that "Bentley holds no permit for the new
18 larger pond, in violation of NRS 533.525." NRS 533.525 does not require a pond permit, and if it
19 did, this Court would not have jurisdiction over such a complaint in this water rights adjudication
20 matter. As explained in the *Motion to Dismiss*, any such complaint would be an administrative
21 matter. Those types of issues should not be heard as part of the adjudication process.

22 2. Status of Pleadings

23 Bentley filed its *Notice of Exceptions and Exceptions to Final Order of Determination* on
24 10 December 2008 ("Notice of Exceptions"), and its *Amended Notice of Exceptions and*
25 *Exceptions to Final Order of Determination* on 25 March 2009 ("Amended Notice of
26 Exceptions"). Hall and Forrester filed their *Reply to Exceptions by Bentley to Final Order of*
27 *Determination* on 26 March 2009. At the hearing on 1 April 2009, this Court entered an order
28 from the bench that all filings except for the State Engineer's *Final Order of Determination* and

1 Notices of Exceptions thereto were stricken, but that interested parties would be allowed to file
2 motions to intervene. The order striking the other filings applied to Intervenor's 26 March 2009
3 *Reply to Exceptions by Bentley to Final Order of Determination*.¹

4 Hall and Forrester, along with the rest of the Intervenor's, filed their *Motion to Intervene* on
5 10 April 2009. Intervenor's did not provide a proposed pleading, identify whether they were
6 intervening on behalf of the State Engineer (the claimant) or identify which issues they wanted to
7 intervene on. Bentley opposed the motion for those reasons. One of the Intervenor's,
8 Thomas J. Hall, apparently acting pro se and as counsel for the other Intervenor's, submitted a
9 proposed order allowing intervention without first submitting that order to opposing counsel. That
10 proposed order was entered on 15 June 2009, and allowed Intervenor's to file their own Notice of
11 Exceptions to the Final Order of Determination.

12 Intervenor's eventually realized that they did not want to file a Notice of Exceptions to
13 Final Order of Determination as allowed by the order they submitted to the Court, but that they
14 wanted to file some other unspecified brief or pleading. Consequently, they filed a *Motion to*
15 *Correct Order Allowing Intervention* on 18 June 2009. Still, Intervenor's did not provide their
16 proposed pleading. Bentley opposed the *Motion to Correct Order Allowing Intervention* on
17 16 July 2009. Intervenor's provided their *[Proposed] Response and Objections to Notice of*
18 *Exceptions and Exceptions to Final Order of Determination* ("Initial Pleading") with their reply.

19 It was improper for Intervenor's to include a new matter with their reply, to wit, their
20 proposed pleading. By doing so, Intervenor's prevented Bentley from filing an opposition to
21 address the deficiencies of the proposed pleading before it was allowed by this Court's Order of
22 17 November 2009. The Initial Pleading has serious flaws and mistakes. Although Intervenor's
23 claim aligned with the State Engineer, who is the claimant in these proceedings, Intervenor's
24 Initial Pleading contains only affirmative defenses and actually aligns them with the Defendants,
25

26 ¹ Bentley is uncertain whether the Order striking all other filings included its 25 March 2009 *Amended Notice*
27 *of Exceptions and Exceptions to Final Order of Determination*. Bentley can move for leave to file the Amended
28 Notice of Exceptions if it is stricken and leave is required. That *Amended Notice of Exceptions* was filed at least five
(5) days in advance of the hearing and should be allowed to stand independently of the original *Notice of Exceptions*.
The State Engineer has not expressed any reluctance to have this Court address the question of approved acreage that
is raised in the *Amended Notice of Exceptions*. 568

1 although they obviously consider themselves to be adverse to Bentley. Intervenor is now trying
2 to use the 17 November 2009 Order allowing the Initial Pleading, which was entered without
3 offering Bentley the opportunity to file an opposition, as support for their argument that the Initial
4 Pleading is not subject to a motion to dismiss. That argument misrepresents the
5 17 November 2009 Order.

6 **3. The Initial Pleading is Defective**

7 It is hard to describe Intervenor's Initial Pleading, which contained only affirmative
8 defenses. Bentley explained in the *Motion to Dismiss* that affirmative defenses are not a pleading
9 that is allowed by NRS 533.170, which makes clear that the only pleadings allowed in this case
10 are the order of determination, the statement or claims of claimants, and exceptions thereto.
11 Intervenor even acknowledge that "As set forth in NRS 533.160, the final order of determination
12 when filed with the clerk of the district court as provided in NRS 533.165, has the legal effect of a
13 complaint in a civil action." Intervenor's Initial Pleading does not fall into any of those categories.
14 "There shall be no other pleadings in the cause." NRS 533.170(2). This water rights adjudication
15 "shall be as nearly as may be in accordance with the provisions of the Nevada Rules of Civil
16 Procedure." The Initial Pleading is certainly not authorized by the Nevada Rules of Civil
17 Procedure. Pursuant to the Nevada Rules of Civil Procedure, affirmative defenses are to be
18 included as part of a responsive pleading, not asserted as a separate pleading.

19 **4. Intervenor's Opposition Should Be Stricken**

20 Bentley filed its *Motion to Dismiss* on 1 December 2009. The purpose of a motion to
21 dismiss is to test the sufficiency of the allegations of the complaint, in this case, Intervenor's
22 Initial Pleading. Dismissal is proper where the allegations in a complaint are insufficient to
23 establish the elements of a claim for relief. *Stockmeier v. Nevada Department of Corrections*, 124
24 Nev. 30, 183 P.3d 135 (2008), citing *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439
25 (2002). If a proper showing is made, a motion to dismiss for failure to state a claim maybe
26 granted irrespective of the type of action involved or its complexity. *Kaldi v. Farmers Ins. Exch.*,
27 117 Nev. 273, 21 P.3d 16 (2001).

28 ///

Intervenors' did not even attempt to argue that the conclusory statements in their Initial Pleading were sufficient to state a cause of action. Rather, they provided an eighteen (18) page opposition, that was largely cut and pasted from their 26 March 2009 *Reply to Notice of Exceptions* that was already stricken. Their latest rendition contains affidavits and new, wild allegations of fact that are not part of their Initial Pleading. In other words, Intervenors' Initial Pleading lacks sufficient factual allegations and they are now resorting back to a pleading that was already stricken. This is improper. Bentley needs to be able to file a responsive pleading to Intervenors' Initial Pleading, not their *Opposition to Motion to Dismiss* or their earlier *Notice of Exceptions*.

5. **Intervenors' Opposition Misrepresents the Facts**

Intervenors' briefs and pleading to date are deceptive. The allegations are, at best, reckless, and most probably, intentionally misleading.

a. **Intervenors are Not Aligned with the State Engineer**

Intervenors insist that they are aligned with the State Engineer. This is impossible, as the Final Order of Determination does not address the subject Water Diversion and Use Agreement. The State Engineer has recently confirmed that he is not aligned with the Intervenors on this issue, and this will be a source for a future NRCP 11 motion against Intervenors. Moreover, were Intervenors truly aligned with the State Engineer, they could simply have joined the Final Order of Determination and would, therefore, effectively be proceeding as the plaintiff. However, they are choosing to proceed as some type of defendant through the affirmative defenses identified in their Initial Pleading.

In fact, in its *Partial Opposition to Bentley's Motion to Dismiss*, the State Engineer raised the same question of whether the dispute concerning the Water Diversion and Use Agreement can be heard as part of this adjudication. Again, if it is going to be heard as part of these proceedings, then Intervenors should at least file a complaint which sets forth specific allegations and causes of action and gives Bentley the opportunity to file a responsive pleading that sets forth defenses, affirmative defenses, and counterclaims. It is very difficult to see how Intervenors' charges concerning an alleged pond permit can proceed in this water rights adjudication.

1 **b. There is No Seepage Test**

2 One of Intervenor's most invidious misrepresentations concerns a third party,
3 R. Michael Turnipseed. Intervenor alleges, without a supporting affidavit, that:

4 Bentley employed former State Engineer, R. Michael Turnipseed, P.E., to
5 perform a Seepage Test on site . . . The Seepage Test performed by
6 Mr. Turnipseed showed substantial seepage and subterranean loss of water
7 into the porous alluvial fan aquifer which is not recoverable for irrigation
8 by downstream users. The Bentleys have refused to voluntarily produce
9 the Seepage Test and Seepage Report conducted and prepared by
10 Mr. Turnipseed.

11 (Opposition to Motion to Dismiss at p. 14, l. 7 – 19).

12 In the first place, Bentley is not required to identify its expert witnesses or to produce their
13 reports except in accordance with NRCP 16.1. In this manner, reports that Bentley chooses not to
14 use in this litigation do not have to be produced.

15 Second, it is noteworthy that Intervenor did not identify the date on which Mr. Turnipseed
16 allegedly performed the Seepage Test or prepared his report. This is because THERE IS NO
17 SEEPAGE TEST OR REPORT. Intervenor is making this up, and this will be an additional
18 basis for the NRCP 11 motion.

19 Third, it is noteworthy that Intervenor did not identify the date on which they requested
20 the alleged seepage test or report. That is because there is no such report, and Intervenor never
21 requested it. Intervenor is making this up, and this will be an additional basis for the NRCP 11
22 motion.

23 Fourth, Intervenor has not made any specific allegations or provided any technical
24 reports that would require or enable Bentley to procure an expert witness report in this case. This
25 goes back to the primary issue – if Intervenor feels that their case rests on technical studies, then
26 they should have the burden to produce those studies. But right now, they are trying to proceed as
27 a defendant, even though they claim to be aligned with the State Engineer, the claimant, and to
28 obtain reports from experts with whom Bentley may have consulted for free. Again, Intervenor
29 needs to proceed as the claimant, give Bentley the opportunity to file a responsive pleading and

///

1 plead its defenses, affirmative defenses, and counterclaims, and produce evidence, including
2 expert/technical reports.

3 **c. Intervenors' Testimony About Water Use and Loss is Irrelevant**
4 **and Incompetent**

5 Intervenors' affidavits about water loss are only relevant if the Water Diversion and Use
6 Agreement is set aside. Moreover, the testimony is not even competent, lacks any foundation, is
7 irrelevant to a motion to dismiss, and should be stricken.

8 For instance, Glen Roberson testified that "In the years 2008 and 2009, after the new larger
9 pond was built by the Bentleys, the water coming downstream to irrigate my family's property has
10 significantly diminished." (Affidavit of Glen Roberson at Par. 15).

11 Mr. Roberson does not identify himself or his limited liability company as a water rights
12 holder pursuant to the Final Order of Determination, and it is difficult to tell how he even thinks
13 he has standing in this case.

14 Mr. Roberson does not specify how he measured the flow of Sheridan Creek, either before
15 or after the time period referenced in his Affidavit, or that he is even qualified to do so.

16 Mr. Roberson seems to exclude other causes for the perceived decrease in flow, including a
17 protracted drought and the likelihood that some of the water dedicated to the North Branch of
18 Sheridan Creek is improperly being diverted by other users to the South Branch of Sheridan
19 Creek. In the *Amended Notice of Exceptions*, Bentley requests the installation of a diversion
20 device to better monitor the diversions between the north branch and the south branch.
21 Mr. Roberson should be supporting Bentley in this effort, rather than trying to make it more
22 difficult.

23 Mr. Roberson seems to ignore the fact that Bentley has between approximately 14.32 and
24 19.27 acre feet of water rights, for approved acreage of between 9.61 and 12.93 approved acres
25 pursuant to the Order of Final Determination. The exact amount is at issue by way of Bentley's
26 *Notice of Exceptions* and *Amended Notice of Exceptions*. Mr. Roberson did not allege that Bentley
27 is diverting more than its approved amount. Bentley asserts the right to divert the entire flow of
28 Sheridan Creek pursuant to the Water Diversion and Use Agreement, but has not been doing so.

1 Intervenor have not even alleged that he has actually diverted more than his right, and his
2 continued right to divert this amount of water will not be affected even if Intervenor succeed in
3 their effort to have the Water Diversion and Use Agreement annulled. Intervenor's efforts to date
4 are therefore misguided and will not affect the actual diversions.

5 Again, it is up to Intervenor to allege that Bentley is diverting more than its right and to
6 produce evidence on that issue, presumably by way of an expert/technical report. But they are
7 trying to proceed as Defendants, even though they claim to be aligned with the State Engineer, in
8 an effort to shift the burden to Bentley.

9 **d. Intervenor Misrepresent Bentley's Notice of Exceptions and the**
10 **Status of the Diversion Schedule**

11 Intervenor purport to cite Bentley's 10 December 2008 *Notice of Exceptions* for the
12 proposition that "the Office of the State Engineer has created a Diversion Schedule." (*Opposition*
13 at p. 7, lls. 3-4). In fact, the accurate quote is "Bentley is informed and believes that the Office of
14 the State Engineer has created a diversion schedule" (*Notice of Exceptions* at p. 2, lls. 26-27).
15 At that time, it was anticipated that a diversion schedule may become part of the Final Order of
16 Determination. That understanding was further qualified as expressed in the 25 March 2009
17 *Amended Notice of Exceptions*, wherein Bentley conveyed the belief that "the Office of State
18 Engineer is likely to impose a diversion schedule/rotation" There still is no rotation schedule,
19 and it appears increasingly unlikely that any forthcoming rotation schedule would become part of
20 the Final Order of Determination.

21 **e. Intervenor Misrpesent the Effect of the 17 November 2009 Order**

22 Intervenor assert that "The Court approved and validated the Intervenor's Proposed
23 Response." (*Opposition* at p. 3, lls. 1-2). Intervenor seem to think that the 17 November 2009
24 Order, which simply granted permission for Interevenor to file their Initial Pleading, somehow
25 precludes a motion to dismiss or similar motion. The 17 November 2009 Order did no such thing.
26 Moreover, Intervenor's Proposed Initial Pleading was attached to a reply brief, not a motion, so
27 Bentley was precluded from filing an opposition brief to address the problems with the proposed
28 pleading.

1 f. **Intervenors Are Not Being Candid About the Chain of Title**

2 Intervenors' entire case is based on the argument that the Water Diversion and Use
3 Agreement was executed only by Joseph Lodato and Gerald and Pamela Whitmire, and not by
4 June Irene Rolph and Nancy Rolph. Intervenors seem to assume that the Rolphs still owned the
5 water rights that were covered by the Water Diversion and Use Agreement, although they have
6 never alleged such or provided any evidence that would support such a conclusion. Regardless,
7 the Rolphs and the Whitmires ultimately clarified and completed the chain of title by executing
8 the Water Rights Deeds that were recorded on 9 November 1987, in favor of the Whitmires
9 (*Exhibit I*). If the Whitmires did not own the water rights when the Water Diversion and Use
10 Agreement was executed, they later acquired the water rights. The doctrine of after acquired title,
11 also known as estoppel by deed, applies to make the Whitmires' grants and the Water Diversion
12 and Use Agreement valid. *See Lanigir v. Arden*, 82 Nev. 28 (1966). Intervenors and their counsel
13 have had a copy of the water rights deeds since at least 31 March 2009 and their case is frivolous.
14 This will be another basis for an NRCP 11 motion.

15 g. **Intervenors Misrepresent the Number of Ponds Allowed in the**
16 **Water Diversion and Use Agreement**

17 Intervenors' argument about a new pond is confusing, contradicts the express terms of the
18 Water Diversion and Use Agreement as set forth in their *Reply*, and rests on conclusory and
19 inflammatory remarks that have no basis in law, fact, or the record. Intervenors argue at pages 10-
20 11 of their Opposition that Bentley's new pond violates the Water Diversion and Use Agreement.
21 However, Intervenors actually quote the portion of the Water Diversion and Use Agreement that
22 grants Bentley the right to "divert some or all of the water from Sheridan Creek . . . to maintain
23 water levels in ponds on Grantee's property" Hall and Forrester further quote the portion of
24 the Water Diversion and Use Agreement that grants Bentley the right to divert the water "in a non-
25 consumptive fashion, to maintain water levels in a series of streams and ponds" A close
26 inspection of the map submitted with the Water Diversion and Use Agreement reveals that the
27 Lodato property was serviced by six (6) ponds. In fact, there are currently only two (2) ponds on
28 ///

1 Bentley's property; therefore, it is difficult to see how either of Bentley's ponds can be in violation
2 of the Water Diversion and Use Agreement.

3 Likewise, Bentley is not consuming the water, as the water is not being used for irrigation
4 or domestic purposes. It is simply being used for Stock Watering or Wildlife Purposes as set forth
5 in the Proofs of Appropriation that have already been accepted in this adjudication. Again, those
6 Proofs of Appropriation specifically refer to the subject Water Diversion and Use Agreement and
7 indicate that Weber, like Lodato before them and Bentley after them, diverted water through the
8 series of streams and ponds for Stock Watering and Wildlife Purposes.

9 Neither is Bentley storing water. The water simply circulates through the ponds and
10 returns to the ditches. Intervenor's argument that Bentley's pond(s) violate any statute governing
11 water storage is made without an adequate legal and factual basis and should be stricken in its
12 entirety. Certainly, neither the Office of the State Engineer nor any other regulatory agency has
13 noted any licensing violation.

14 Intervenor's also provide lengthy argument regarding easements in their analysis of the new
15 pond. There is no issue concerning easements and their argument concerning the alteration or
16 relocation of an easement has no relevance to this dispute.

17 Intervenor's argument about the new pond violating the Water Diversion and Use
18 Agreement is also frivolous and will be the basis for an NRCP 11 motion.

19 Wherefore, Bentley's *Motion to Dismiss* should be granted and Intervenor's Initial
20 Pleading should be dismissed with prejudice.

21 Respectfully submitted.

22 DATED this 31st day of December 2009.

23 BROOKE · SHAW · ZUMPFT

24 By: _____

25 Michael L. Matuska
26 State Bar No. 5711
1590 4th Street/P.O. Box 2860
27 Minden NV 89423
(775) 782-7171
28 (775) 782-3081 (Fax)

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 31st day of December 2009, I served a true and correct copy of the preceding
document entitled **REPLY TO OPPOSITION TO MOTION TO DISMISS OR, IN THE
ALTERNATIVE, TO REDESIGNATE AFFIRMATIVE DEFENSES AS
COUNTERCLAIMS** addressed to:

STATE OF NEVADA
Department of Conservation and Natural
Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.


LIZ STERN, ALS

GRANT, BARGAIN, SALE DEED

ORDER NO.:

(5)

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, an unmarried woman dealing with
her undivided 1/2 interest; and NANCY ROLPH WELCH, a married woman as her sole
and separate property dealing with her undivided 1/2 interest
in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____

County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 217,
DOCUMENT NO. 129026.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.

Witness my hand this 29th day of October, 19 87.

STATE OF NEVADA

COUNTY OF Douglas

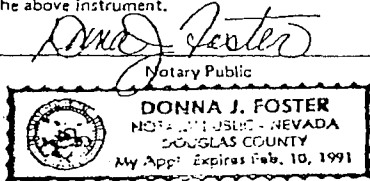
SS

June Irene Rolph
June Irene Rolph

On October 29, 1987

personally appeared before me, a Notary Public,
June Irene Rolph

who acknowledged that she executed
the above instrument.



The grantor(s) declare(s):

Documentary transfer tax is \$ -0- #3
() computed on full value of property conveyed, or
() computed on full value less value of liens and
encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. Whitmire
P.O. Box 2808
Minden, Nevada 89423

FOR RECORDER'S USE

166045

BOOK 1187 PAGE 1129

578

GRANT, BARGAIN, SALE DEED

ORDER NO.:

THIS INDENTURE WITNESSETH: That NANCY ROLPH WELCH, a married woman as her
sole and separate property dealing with her undivided 1/2 interest
in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and
Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____
County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 214,
DOCUMENT NO. 129025.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.

Witness my hand this 16 day of Oct, 19 87.

STATE OF NEVADA CALIFORNIA

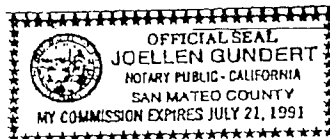
COUNTY OF SAN MATEO

SS

Nancy Rolph Welch
Nancy Rolph Welch

On OCTOBER 26, 1987
personally appeared before me, a Notary Public,
Nancy Rolph Welch

who acknowledged that she executed
the above instrument.

Joellen Gundert
Notary Public

WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. WhitmireP.O. Box 2808Minden, Nevada 89423

FOR RECORDER'S USE

The grantor(s) declare(s):
Documentary transfer tax is \$ -0-
() computed on full value of property conveyed, or
() computed on full value less value of liens and
encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

166045

BOOK 1187 PAGE 1130

LEGAL DESCRIPTION

PARCEL ONE:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56' thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

RECEIVED BY
STEWART TITLE OF DOUGLAS COUNTY

IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

87 NOV -9 P4:53

SUZANNE B. MCGREAU
RECORDER

7/15/87 DEPUTY

166045

580

BOOK 1187 PAGE 1131

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DOUGLAS COUNTY
DISTRICT COURT CLERK 2010 JAN -8 AM 10:03

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CLERK

BY WILLIAM S. JURY

Case No.: 08-CV-0363-D

Dept. No.: I

Thomas J. Hall, Esq.
Nevada State Bar No. 675
305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
Telephone: 775-348-7011
Facsimile: 775-348-7211

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

MOTION FOR DIVISION OF WATER AND FOR REMAND AND REFERENCE TO
STATE ENGINEER FOR FURTHER EVIDENCE

Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and move the
Court for an order directing the State Engineer to make a

1 division of all the water from Sheridan Creek stream involved in
2 these proceedings, in accordance with the Final Order of
3 Determination until further order of this Court, and also move
4 the Court pursuant to NRS 533.180 and 533.368 to refer the case
5 to the State Engineer to perform or order a Seepage Test of the
6 Old Pond and the New Pond built in 2008 by J.W. Bentley and
7 Maryann Bentley, Trustees of the Bentley Family Trust 1995
8 Trust, ("Bentleys"), and in support thereof, state as follows:
9

10 I. STATEMENT OF FACTS.

11 A. The Intervenorors Are Landowners And Water Right
12 Holderors.

13 J.W. Bentley and Maryann Bentley, as Trustees of the
14 Bentley Family Trust 1995 Trust, are successor landowners and
15 water right holders as set forth in the Final Order of
16 Determination, to wit:
17

<u>Owner</u>	<u>APN</u>	<u>Acreage</u>	<u>Proofs</u>
J.W. Bentley			V-06305
Maryann Bentley,	1219-14-001-013	12.93	V-06306
Trustees			V-06307
			V-06308

21
22 The Intervenorors are landowners and water right holders that
23 own land downstream from the Bentley Property. They also hold
24 water rights in Sheridan Creek, historically used to irrigate
25 their lands. They are obviously and necessarily interested in
26 the excessive diversions made upstream by the Bentleys in
27 violation of custom, practice, agreements and decrees. A
28

1 tabulation of Intervenor's land holdings and water rights as set
2 forth in the Final Order of Determination follows:

<u>Intervenor</u>	<u>APN</u>	<u>Acreage</u>	<u>Proofs</u>
Donald S. and Kristina Forrester	1219-14-001-012	59.620	V-06309 V-06310
Hall Ranches, LLC	1219-14-001-003	23.800	V-06340 V-06341
Thomas J. Scyphers and Kathleen M. Scyphers	1219-14-001-004	13.010	V-06311 V-06312
Frank Scharo	1219-14-001-005	12.990	V-06311 V-06312
Sheridan Creek Equestrian Center Glenn Roberson	1219-14-001-008	35.960	V-06310
Ronald R. and Ginger G. Mitchell	1219-14-001-009 1219-14-001-010 1219-14-001-011	10.020 10.480 <u>10.370</u>	V-06336 V-06337
Total Acreage of Intervenor's		176.430	

17 **B. The Final Order of Determination Diversion Schedule.**

18 The Bentleys state in their Notice of Exceptions and
19 Exceptions to Final Order of Determination filed herein on
20 December 11, 2008, (the Amended Notice of Exceptions having been
21 stricken by the Court), in EXCEPTION NO. 1, DIVERSION SCHEDULE,
22 PROOFS V-06307 and V-06308, that they are informed and believe
23 that the Office of the State Engineer has created a Diversion
24 Schedule ("Diversion Schedule"), for the waters from Sheridan
25 Creek, Stutler Creek and Gansberg Springs. The Bentleys contend
26 they are not subject to any such Diversion Schedule because of a
27
28

1 Water Diversion and Use Agreement ("Diversion Agreement")¹, dated
2 June 9, 1986 and recorded by their predecessors in interest on
3 March 27, 1987, in Book 387, at Page 2726, as Document 152147,
4 Douglas County Records and attached as Exhibit 3 to their
5 Exceptions. For various reasons, the Intervenor believe that
6 the Diversion Agreement is unenforceable and, even if
7 enforceable, has been violated by the Bentleys. As noted, the
8 State Engineer does not recognize the Diversion Agreement in
9 administering the waters from Sheridan Creek².

11 C. Rotation Schedule Within The Final Order Of
12 Determination.

13 The Final Order of Determination dated August 14, 2008, on
14 page 193 and 194, under Table 6 for Sheridan Creek - North and
15 South Diversions, states in pertinent part as follows:

16 The diversion rates for the north and south split of
17 Sheridan Creek are based on a spring and early summer
18 average stream flow of 3.5 c.f.s. Flow and diversion

19 ¹ The State Engineer, by and through his counsel, has described
20 the Diversion Agreement as a Pond Water Agreement, to wit
(Partial Opposition to Motion to Dismiss, page 2, lines 3-7):

21 The State Engineer is prohibited by law from making
22 determinations as to title to water. NRS 533.386(4).
23 The pond water agreement appears to be a dispute over
an issue related to title and therefore the State
24 Engineer will not take a position on the agreement.
The jurisdiction of the decree court over the pond
25 agreement is not clearly proscribed by statute, but
may be beyond the scope of an adjudication.

26 ² See Partial Opposition to Motion to Dismiss filed December 18,
27 2009, page 2, lines 4-5: "The pond water agreement appears to be
a dispute over an issue related to title and therefore the State
28 Engineer will not take a position on the agreement."

1 rates during periods of drought and middle to late
2 irrigation season will generally be less than the
3 rates determined in the Preliminary Order of
4 Determination. Therefore, all parties will have to
5 share the water shortage during periods of low flow.
6 The total diversion from either the north or south
7 split can be used in its entirety in a rotation system
8 of irrigation. [Emphasis added.]

9 Prior to the construction of the Bentleys' New Pond, the
10 various water right users shared water rights on a rotation
11 basis as indicated by the State Engineer's notation under Table
12 6. The creation of the New Pond by the Bentleys has upset the
13 historic rotation schedule and has created the problems that
14 have precipitated the conflict now before the Court.

15 II. ANALYSIS AND DISCUSSION.

16 A. The Final Order Of Determination Must Be Complied With 17 Pending Resolution Of The Bentleys' Claims.

18 NRS 533.230 provides as follows:

19 533.230. Division of water by State Engineer during
20 time order of determination is pending in district
21 court.

22 From and after the filing of the order of
23 determination, evidence and transcript with the county
24 clerk, and during the time the hearing of the order is
25 pending in the district court, the division of water
26 from the stream involved in such determination shall
27 be made by the State Engineer in accordance with the
28 order of determination. [Emphasis added.]

It has been held that "[t]he findings of the state engineer
are entitled to the presumption of correctness that they support
the decree." Scossa v. Church, 46 Nev. 254, 259, 205 P. 518, 210
P. 563 (1923). "The decision of the State Engineer shall be

1 prima facie correct, and the burden of proof shall be upon the
2 party challenging the Engineer's decision." U.S. v. Alpine Land
3 & Reservoir Company, 503 F. Supp. 877, ____ (D. Nev. 1980); U.S.
4 v. Alpine Land & Reservoir Co., 279 F. 3d 1189, ____ (9th Cir.
5 2002), *amended opinion*, 291 F. 3d 1062 (9th Cir. 2002). In
6 Anderson Family Assocs v. State Engineer, 124 Nev. Adv. Op. 17,
7 179 P.3d 1201, 1203 (2008), the Nevada Supreme Court held as
8 follows:
9

10 Still, because the appropriation of water in Nevada is
11 governed by statute, and the State Engineer is
12 authorized to regulate water appropriations, that
13 office has the implied power to construe the state's
14 water law provisions and great deference should be
15 given to the State Engineer's interpretation when it
16 is within the languages of those provisions.

17 According to the Affidavit of Glenn Roberson attached
18 hereto, he is of the belief that the water wasted by the
19 Bentleys' New Pond is depleting the water source by
20 approximately one third. In short, the Intervenor's are not
21 getting the water they have historically received and as set
22 forth in the Final Order of Determination.

23 Therefore the Intervenor's hereby request that the Court
24 order the division of water from Sheridan Creek to be made by
25 the State Engineer in rotation without reference to the
26 Diversion Agreement (or the Pond Water Agreement), in accordance
27 with the Final Order of Determination dated August 14, 2008,
28 until final judgment in this matter.

1 B. The Court Should Remand To The Division Of Water
2 Resources For Tests.

3 NRS 533.180 provides as follows:

4 533.180. Court may refer case to State Engineer for
5 further evidence.

6 The court may, if necessary, refer the case or any
7 part thereof for such further evidence to be taken by
8 the State Engineer as it may direct, and may require a
 further determination by him, subject to the court's
 instructions.

9 See also NRS 533.358(2), for procedural requirements, to
10 wit:

11 533.368. Hydrological, environmental or other study:
12 State engineer to determine need for study; cost of
13 study paid by applicant; regulations.

14 2. The required study must be conducted by the State
15 Engineer or by a person designated by him, the
16 applicant or a consultant approved by the State
 Engineer, as determined by the State Engineer.

17 The Intervenors were informed by J. W. Bentley that an
18 engineer, had prepared and performed a Seepage Test and Seepage
19 Report. The Bentleys, through counsel, in their Reply filed
20 December 31, 2009, state that there is no Seepage Test or
21 Seepage Report. Reply, page 6, lines 14-15. Since the Bentleys
22 contend that no Seepage Test or Seepage Report has been
23 conducted, they are obviously not in a position to contest
24 Intervenors' statements that the Bentleys' New Pond has depleted
25 by one third the available water flowing to the Intervenors'
26 lands from Sheridan Creek.
27

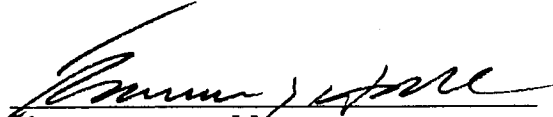
1 The State Engineer is most qualified as an independent and
2 neutral agency to prepare or order a Seepage Test and Seepage
3 Report of the Bentleys' Old Pond and New Pond and to provide
4 such evidence to the Court in this matter.

5 **III. CONCLUSION.**

6 It is respectfully requested that the Court enter an order
7 requiring the division of the water from Sheridan Creek by the
8 State Engineer be pursuant to the Final Order of Determination
9 during the time this action is pending and not otherwise, and to
10 specifically refer the case to the State Engineer to perform a
11 Seepage Test and Seepage Report concerning the Bentleys' Old
12 Pond and New Pond.
13

14 DATED this 8th day of January, 2010.

15
16 LAW OFFICES OF THOMAS J. HALL

17
18 
Thomas J. Hall, Esq.

19 Nevada State Bar No. 675
20 305 South Arlington Avenue
Post Office Box 3948
Reno, Nevada 89505
21 Telephone: 775-348-7011
22 Facsimile: 775-348-7211
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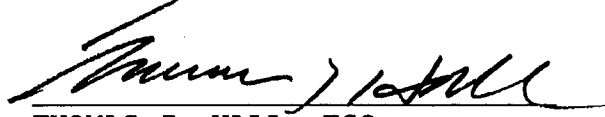
AFFIRMATION
(Pursuant to NRS 239B.030)

Case No. 08-CV-0363-D

The undersigned does hereby affirm that the preceding document, **Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence**, does not contain the social security number of any person.

DATED this 8th day of January, 2010.

LAW OFFICES OF THOMAS J. HALL


THOMAS J. HALL, ESQ.

1 Case No.: 08-CV-0363-D
2 Dept. No.: I
3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **AFFIDAVIT OF GLENN ROBERSON IN SUPPORT OF MOTION FOR**
25 **DIVISION OF WATER AND FOR REMAND AND REFERENCE**
26 **TO STATE ENGINEER FOR FURTHER EVIDENCE**

27 GLENN ROBERSON, being duly sworn upon his oath, deposes and
28 says:

1. I reside at 551 Centerville Lane, Gardnerville,
Nevada, 89460.

\\\\\\\\

\\\\\\\\

1 2. On October 18, 2005, my family acquired approximately
2 35.960 acres, more or less, denominated as Douglas County APN
3 1219-14-001-008, together with appurtenant water rights.

4 3. On March 11, 2008, my family transferred said land to
5 the Sheridan Creek Equestrian Center, LLC, a Nevada Limited
6 Liability Company. I serve as Manager of this LLC.

7 4. Since our purchase in 2005, I have become very
8 familiar with the diversion of water through Sheridan Creek and
9 the irrigation of our land and our neighbors' land.
10

11 5. I am familiar with the claimants J.W. Bentley and
12 Maryann Bentley.

13 6. I have observed the flow of water through the Bentley
14 Property prior to the Bentleys' purchase and after the Bentleys'
15 purchase.
16

17 7. After their purchase, the Bentleys relocated and
18 changed some of the ditches on their property.

19 8. I have attended several meetings at the Bentley
20 property in the past to determine what changes were being made
21 in regards to the construction of a New Pond.

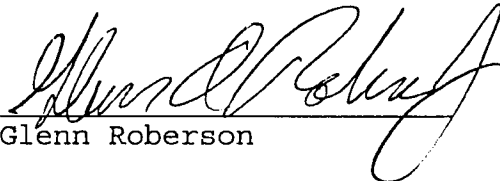
22 9. I recall Mr. Bentley discussing a soil test and an issue
23 relating to water loss and seepage. I recall Mr. Bentley
24 telling me that he had calculated the water loss and seepage
25 from his New Pond which was substantial.
26

27 10. After construction of the Bentleys' New Pond, I have
28 noticed a decrease of approximately one third of the water

1 coming down the irrigation ditches downstream from the Bentley
2 Property to our property.

3 11. The Affiant has personal knowledge of statements
4 contained in this Affidavit and could testify under oath and at
5 hearing concerning these matters.

6 Further, your Affiant saeth naught.

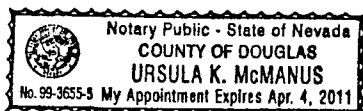
7
8 
9 Glenn Roberson

10
11
12
13
14 STATE OF NEVADA)
15) ss.
16 COUNTY OF DOUGLAS)

17 On January 8, 2010, before me, the undersigned, a Notary
18 Public in and for said State, personally appeared GLENN
19 ROBERSON, personally known to me or proved to me on the basis of
satisfactory evidence to be the person who executed the above
instrument.

20 WITNESS my hand and official seal.

21
22 
23 NOTARY PUBLIC



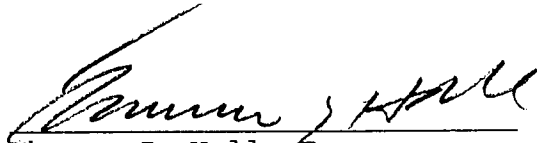
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CERTIFICATE OF HAND DELIVERY

I certify that on this date pursuant to NRCP 5(b), I,
Thomas J. Hall, Esq., hand delivered a true and correct copy of
the Motion for Division of Water and for Remand and Reference to
State Engineer for Further Evidence, to:

Michael L. Matúška, Esq.
Brooke, Shaw, Zumpft
1590 Fourth Street, Suite 100
Minden, Nevada 89423

DATED this 8th day of January, 2010.


Thomas J. Hall, Esq.

1
2 **CERTIFICATE OF SERVICE BY MAIL**

3 I certify that I am an employee of Thomas J. Hall, Esq.,
4 and that on this date, pursuant to NRCP 5(b), I placed in the
5 U.S. Mail, postage prepaid, a true and correct copy of the
6 Motion for Division of Water and for Remand and Reference to
7 State Engineer for Further Evidence, addressed to:

8
9 Thomas J. Scyphers
Kathleen M. Scyphers
10 1304 S. Aylesbury Court
Gardnerville, Nevada 89460

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

11
12 State of Nevada
Department of Conservation and
13 Natural Resources
Division of Water Resources
14 901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

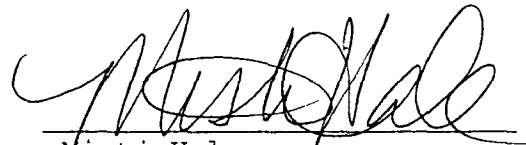
15
16 Bryan L. Stockton, Esq.
Deputy Attorney General
17 100 North Carson Street
Carson City, Nevada 89701

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

18
19 Hall Ranches, LLC
Post Office Box 3948
20 Reno, Nevada 89505

21 Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
22 281 Tiger Wood Court
Gardnerville, Nevada 89460

23
24 DATED this 8th day of January, 2010.

25
26 
27 Misti Hale
28

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 **REQUEST FOR EXPEDITED HEARING**

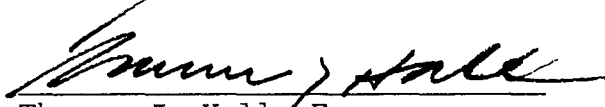
25 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
26 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
27 SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
28 EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and pursuant to
NJDCR Rule 6, NRS 533.230, NRS 533.180, NRS 533.358(2) and the
Final Order of Determination executed on August 14, 2008,

1 request oral argument and an expedited hearing on the Motion for
2 Division of Water and for Remand and Reference to State Engineer
3 for Further Evidence filed herein on January 8, 2010.

4 In support of their request for an expedited hearing, the
5 Intervenor note that the irrigation season begins April 1 and
6 ends October 15. Therefore, it is necessary to have a hearing on
7 this matter prior to April 1, 2010.

8 DATED this 8th day of January, 2010.

9
10 LAW OFFICES OF THOMAS J. HALL

11 

12 Thomas J. Hall, Esq.
13 Nevada State Bar No. 675
14 305 South Arlington Avenue
15 Post Office Box 3948
16 Reno, Nevada 89505
17 Telephone: 775-348-7011
18 Facsimile: 775-348-7211

19 **AFFIRMATION**

20 (Pursuant to NRS 239B.030)

21 Case No. 08-CV-0363-D

22 The undersigned does hereby affirm that the preceding
23 document, **Request for Expedited Hearing**, does not contain the
24 social security number of any person.

25 DATED this 8th day of January, 2010.

26 LAW OFFICES OF THOMAS J. HALL

27 
28 THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Request for Expedited Hearing, addressed to:

Michael L. Matuska, Esq.
Brooke, Shaw, Zumpft
1590 Fourth Street, Suite 100
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

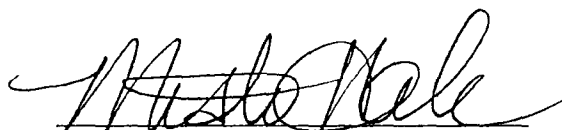
Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 8th day of January, 2010.


Misti Hale

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

ERRATA TO MOTION FOR DIVISION OF WATER AND FOR REMAND AND
REFERENCE TO STATE ENGINEER FOR FURTHER EVIDENCE

Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and hereby file
their Errata to their Motion for Division of Water and for

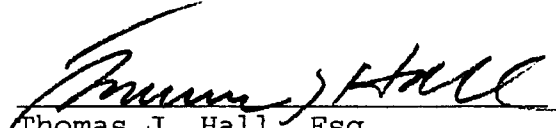
1 Remand and Reference to State Engineer for Further Evidence
2 filed herein on January 8, 2010, as follows:

3 The cases and citations referred to on page 6, lines 2-4,
4 should read and be corrected as follows:

5 "U.S. v. Alpine Land & Reservoir Company, 919 F.Supp. 1470,
6 1474 (D. Nev. 1996); U.S. v. Alpine Land & Reservoir Co., 279 F.
7 3d 1189, 1197-98 (9th Cir. 2002)."

8
9 DATED this 11th day of January, 2010.

10 LAW OFFICES OF THOMAS J. HALL

11
12 
13 Thomas J. Hall, Esq.
14 Nevada State Bar No. 675
15 305 South Arlington Avenue
16 Post Office Box 3948
17 Reno, Nevada 89505
18 Telephone: 775-348-7011
19 Facsimile: 775-348-7211

20 **AFFIRMATION**

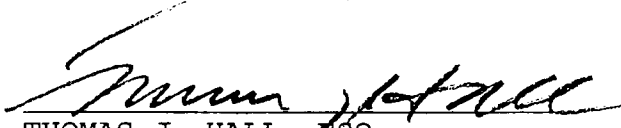
21 (Pursuant to NRS 239B.030)

22 Case No. 08-CV-0363-D

23 The undersigned does hereby affirm that the preceding
24 document, **Errata to Motion for Division of Water and for Remand
25 and Reference to State Engineer for Further Evidence**, does not
26 contain the social security number of any person.

27 DATED this 11th day of January, 2010.

28 LAW OFFICES OF THOMAS J. HALL


THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Errata to Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence, addressed to:

Michael L. Matuska, Esq.
Brooke, Shaw, Zumpft
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
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State of Nevada
Department of Conservation and
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Division of Water Resources
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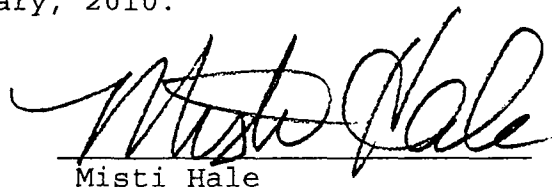
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Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 11th day of January, 2010.


Misti Hale

RECEIVED

JAN 11 2010

Case No.: 08-CV-0363-D

Dept. No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK

FILED

2010 JAN 11 PM 3:21

This document does not contain personal information of any person.

TED THIRAN
CLERK

B. WILLIAMS

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

MOTION TO STRIKE

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby move to strike the *Errata and Supplement to Opposition to Motion to Dismiss or, in the Alternative, to Redesignate Affirmataive Defenses and Counterclaims*.

This Motion is made and based on the Points and Authorities attached hereto, and all pleadings, exhibits and documents of record.

DATED this 7/16 day of January 2010.

BROOKE · SHAW · ZUMPFT

By:

Michael L. Matuska
State Bar No. 5711
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

BROOKE · SHAW · ZUMPFT
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE

1. Status of Pleadings

HALL RANCHES, LLC, DONALD S. FORRESTER and KRISTINA M. FORRESTER, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, and SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, (collectively, "Intervenors") continue to file briefs that are not authorized by the Nevada Rules of Civil Procedure or the Nevada Revised Statutes.

Bentley filed its *Notice of Exceptions and Exceptions to Final Order of Determination* on 10 December 2008 ("Notice of Exceptions"). Intervenors waited until 26 March 2009, five (5) days before the hearing, to file their *Reply to Exceptions by Bentley to Final Order of Determination*. The filing of Intervenors' *Reply to Exceptions by Bentley to Final Order of Determination* apparently overlapped with the filing of Bentley's *Amended Notice of Exceptions*. Intervenors' Reply was stricken at the hearing on 1 April 2009.

Intervenors filed their *Motion to Intervene* on 10 April 2009. Intervenors failed to specify which side of the case they sought to intervene on or the issues upon which they sought intervention, and they failed to provide a proposed pleading, all in violation of NRCP 24. Bentley opposed the *Motion to Intervene* on 20 April 2009. Intervenors filed their Reply on 23 April 2009, and included with their Reply a copy of the *Reply to Exceptions by Bentley to Final Order of Determination*. It was improper for Intervenors to provide new materials with their reply brief, especially since that brief had already been stricken. Regardless, Intervenors apparently wanted to intervene to re-file the same *Reply to Exceptions by Bentley to Final Order of Determination* that they previously filed on 26 March 2009.

Intervenors apparently submitted a proposed order to this Court without first submitting the order to opposing counsel for comment. This was improper, and in their proposed order, Intervenors requested relief that was not prayed for in their *Motion to Intervene*. Specifically, Intervenors requested leave to file their own Notice of Exceptions, even though they did not request such in their *Motion to Intervene* and never provided any exceptions with their briefs. As explained above, Intervenors sought to intervene to re-file. The Order was entered as submitted

1 on 12 June 2009.

2 Intervenor then decided that the 12 June 2009 Order was a mistake, and on 7 July 2009,
3 filed a *Motion to Correct Order Allowing Intervention*. Intervenor provided a new proposed
4 order with that motion that would allow them to file a new document entitled *Opposition and*
5 *Reply to the Objections filed by Bentley to the Final Order of Determination*. They did not attach
6 the proposed filing to that motion, presumably because the document referenced for filing was the
7 same document that Intervenor had already filed on 26 March 2009. Bentley filed its Opposition
8 on 16 July 2009. Intervenor filed their Reply on 21 July 2009, and attached an entirely new
9 proposed pleading. That document included only affirmative defenses and matters that were
10 beyond the scope of the Final Order of Determination and Bentley's exceptions thereto. Because
11 that document was provided with a reply brief, Bentley was denied the opportunity to respond.

12 The Order granting Intervenor leave to file their new pleading was entered on
13 17 November 2009. However, that was a different order than the one submitted with Intervenor's
14 motion. Whereas the proposed order submitted with Intervenor's *Motion to Correct Order*
15 *Allowing Intervention* would have authorized Intervenor to re-file their *Opposition and Reply to*
16 *the Objections filed by Bentley to the Final Order of Determination*, the order that was entered on
17 17 November 2009 authorized Intervenor to file the new pleading entitled *Response and*
18 *Objections to Bentley's Notice of Exception and Exceptions* ("Initial Pleading").
19 On 19 November 2009, Intervenor filed that new pleading, which contained only affirmative
20 defenses. Those affirmative defenses raise issues that were not part of the Final Order of
21 Determination or Bentley's exceptions thereto.

22 The following chart is provided to better illustrate and demonstrate that Intervenor's
23 proposed orders and the briefs and pleadings they file do not match the relief requested in their
24 moving papers:

25 ///

26 ///

27 ///

28 ///

DATE	DOCUMENT NAME	RELIEF REQUESTED/GRANTED
26 March 2009	<i>Reply to Exceptions by Bentley to Final Order of Determination</i>	(Stricken at hearing on 1 April 2009)
10 April 2009	<i>Motion to Intervene</i>	leave to re-file 26 March 2009 <i>Reply to Exceptions by Bentley to Final Order of Determination</i> [not attached]
12 June 2009	Order Allowing Intervention	leave to file Notice of Exceptions [not requested in <i>Motion to Intervene</i>]
8 July 2009	<i>Motion to Correct Order Allowing Intervention</i>	leave to re-file 26 March 2009 <i>Reply to Exceptions by Bentley to Final Order of Determination</i> [not attached]
8 July 2009	[Proposed} Amended Order Allowing Intervention (submitted as Ex. A to <i>Motion to Correct Order Allowing Intervention</i>)	leave to file 26 March 2009 <i>Reply to Exceptions by Bentley to Final Order of Determination</i> [not attached]
21 July 2009	<i>Reply In Support of Motion to Correct Order</i>	leave to file [Proposed] <i>Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination</i> – attached [contains only affirmative defenses]
17 Nov. 2009	Order	leave to file <i>Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination</i> [contains only affirmative defenses]
20 Nov. 2009	<i>Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination</i> [contains only affirmative defenses]	

As demonstrated above, the pleading that Intervenors actually filed on 20 November 2009 entitled *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination* is radically different from the document that they referenced in either their *Motion to Intervene* or *Motion to Correct Order Allowing Intervention*. In fact, Intervenors never moved for leave to file the pleading that was filed on 20 November 2009. Intervenors deceptively managed to obtain leave by changing the proposed orders that were being submitted to the court, without first submitting them to opposing counsel for review, and by providing new matters with their reply briefs, thereby denying the opportunity to oppose those new matters.

Moreover, the pleading that Intervenors actually filed on 20 November 2009 entitled *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination*

contains only affirmative defenses, and is not a pleading that is authorized by either the Nevada Rules of Civil Procedure or NRS Chapter 533. The affirmative defenses are actually a backward attempt at a quiet title action concerning the Water Diversion and Use Agreement that was recorded in Official Records of Douglas County, Nevada 27 March 1987, at Book 387, Page 2726, Document No. 152147. Intervenor's pleading is not viable as either affirmative defenses or a quiet title action and should be dismissed.

2. Motion to Dismiss

Bentley moved to dismiss Intervenor's Initial Pleading on 1 December 2009, on the basis that it was not a proper pleading under the rules of civil procedure; failed to state a claim; was not authorized by the Nevada Revised Statutes; and was beyond the scope of this water rights adjudication. Bentley further argued that the affirmative defenses contained in Intervenor's Initial Pleading were actually new affirmative claims, not defenses, and should be labeled as such.

All of the arguments raised in Bentley's *Motion to Dismiss* are legal arguments, and Bentley's *Motion to Dismiss* does not present any issues of fact beyond the bare allegations of Intervenor's Initial Pleading. In contrast, Intervenor's *Opposition to Motion to Dismiss* contained almost entirely arguments on controverted issues of fact. Intervenor essentially tried to cure their defective pleading by making additional allegations in their Opposition. Their Opposition actually contained a number of misrepresentations of fact, including:

1. Intervenor is aligned with the State Engineer in opposition to the Water Diversion and Use Agreement (the State Engineer has declined to take a position on that issue);
2. Mike Turnipseed prepared a water seepage report (he did not);
3. Intervenor previously requested the water seepage report (they did not);
4. Only one (1) pond was contemplated by the water diversion and use agreement (multiple ponds are depicted in the Water Diversion and Use Agreement).

3. *Errata and Supplement to Opposition to Motion to Dismiss or, in the Alternative, to Redesignate Affirmative Defenses as Counterclaims*

Bentley filed its Reply to *Opposition to Motion to Dismiss* on 31 December 2009. At the same time that brief was prepared for filing, Bentley's counsel received another brief from

1 Intervenor, this one entitled *Errata and Supplement to Opposition to Motion to Dismiss or, in the*
2 *Alternative, to Redesignate Affirmative Defenses as Counterclaims*. Intervenor's latest brief is not
3 so much an errata as it is an entirely new theory and argument regarding the chronology of the
4 underlying chain of title concerning the Water Diversion and Use Agreement. As such, it is
5 essentially an improper, second opposition to *Bentley's Motion to Dismiss*. Intervenor's second
6 brief on the same issue was filed without leave of court and in direct violation of DCR 15(3),
7 which contemplates a single opposition brief and should be stricken for that reason. Moreover,
8 Intervenor's allegations of fact are irrelevant to the *Motion to Dismiss* and do not constitute an
9 opposition in the first place. Intervenor's "Errata" should be stricken for that reason, as well.

10 In the event this Court declines to strike Intervenor's "Errata," then Bentley respectfully
11 requests leave to file an additional reply brief to address the new factual arguments.

12 Respectfully submitted.

13 DATED this 11th day of January 2010.

BROOKE · SHAW · ZUMPFT

16 By: 

17 Michael L. Matuska
18 State Bar No. 5711
19 1590 4th Street/P.O. Box 2860
20 Minden NV 89423
21 (775) 782-7171
22 (775) 782-3081 (Fax)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 11th day of January 2010, I served a true and correct copy of the preceding
document entitled **MOTION TO STRIKE** addressed to:

STATE OF NEVADA
Department of Conservation and Natural
Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.


LIZ STERN, ALS

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10
11 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR DOUGLAS COUNTY**

13 In the Matter of the Determination of
14 the Relative Rights in and to the
15 Waters of Mott Creek, Taylor Creek,
16 Cary Creek (aka Carey Creek), Monument
17 Creek, and Bulls Canyon, Stutler Creek
18 (aka Stattler Creek), Sheridan Creek,
19 Gansberg Spring, Sharpe Spring,
20 Wheeler Creek No., 1 Wheeler Creek
21 No. 2, Miller Creek, Beers Spring,
22 Luther Creek and Various Unnamed
23 Sources in Carson Valley, Douglas
24 Valley, Nevada.

25
26 **OPPOSITION TO MOTION TO STRIKE**

27 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
28 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and hereby file
their Opposition to Motion to Strike as follows:

29 \\\

1 A. Pleadings.

2 This Court has already allowed the Intervenor to enter
3 into this case. As previously stated, the Intervenor do not
4 wish to file their own Notice of Exceptions. The Order entered
5 by the Court on November 17, 2009, was not a document submitted
6 to the Court by the Intervenor, but rather written and entered
7 by the Court itself. Thus, the argument by the Bentleys' that
8 the "Intervenor deceptively managed to obtain leave by changing
9 the proposed orders" is wholly erroneous.

10
11 As set forth in the Motion to Correct Order Allowing
12 Intervention, "an adjudication is not a separate controversy
13 between a few claimants. All claimants or water users in a
14 water rights adjudication proceeding under the water statutes
15 are essentially adverse." In re Water Rights in Silver Creek,
16 57 Nev. 232, 238, 60 P.2d 987 (1936).

17
18 The Nevada Supreme Court further stated as follows (id, at
19 237-38):

20 ...the purpose is to ascertain [the claimants']
21 respective rights by a simple, economical, effective,
22 and comprehensive proceeding, and is not a separable
23 controversy between different claimants. [Emphasis
24 added.]

25 Here, the Bentleys and their counsel continue to quibble
26 over the procedures outlined by the Court at the Hearing held
27 April 1, 2009, as well as every pleading filed herein since,
28 making this proceeding anything but simple or economical.

\\\\\\

1 B. Supplement To Opposition To Motion To Dismiss.

2 The Supplement to the Opposition to Motion to Dismiss
3 included information regarding the chain of title chronology
4 surrounding the Water Diversion and Use Agreement ("Diversion
5 Agreement") championed by the Bentleys themselves, as the
6 Intervenor believe Court should be made aware that a portion of
7 the water benefited property was sold to Intervenor Ronald and
8 Ginger Mitchell prior to recordation of the Diversion Agreement.
9 Having all information before the Court will allow the Court to
10 simply, economically and effectively resolve this matter, and
11 may even facilitate a settlement.
12

13 Furthermore, this information is all the more important for
14 the Court to have before it when it considers Intervenor's
15 Motion for Division of Water and for Remand and Reference to
16 State Engineer for Further Evidence filed herein on January 8,
17 2010.
18

19 C. Conclusion.

20 The Bentleys and their counsel seem to misconstrue the
21 pleadings and make false and fanciful assumptions as to the
22 basis of facts and arguments presented by the Intervenor. It is
23 respectfully requested that the Motion to Strike filed by the
24 Bentleys be denied.
25

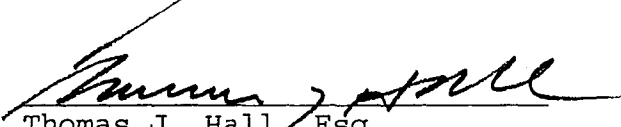
26 \\ \\ \\

27 \\ \\ \\

28 \\ \\ \\

1 DATED this 19th day of January, 2010.

2 LAW OFFICES OF THOMAS J. HALL

3
4 
5 Thomas J. Hall, Esq.
6 Nevada State Bar No. 675
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
10 Telephone: 775-348-7011
11 Facsimile: 775-348-7211

12
13
14
15 **AFFIRMATION**

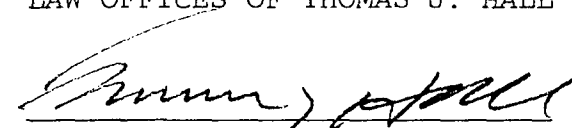
16 (Pursuant to NRS 239B.030)

17 Case No. 08-CV-0363-D

18 The undersigned does hereby affirm that the preceding
19 document, **Opposition to Motion to Strike**, does not contain the
20 social security number of any person.

21 DATED this 19th day of January, 2010.

22 LAW OFFICES OF THOMAS J. HALL

23 
24 THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the **Opposition to Motion to Strike**, addressed to:

Michael L. Matuska, Esq.
Brooke, Shaw, Zumpft
Post Office Box 2860
Minden, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
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Deputy Attorney General
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Carson City, Nevada 89701

Ronald R. Mitchell
Ginger G. Mitchell
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State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

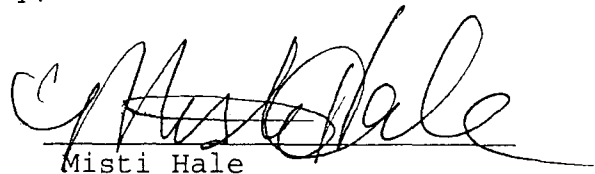
Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 19th day of January, 2010.


Misti Hale

BROOKE · SHAW · ZUMPF
POST OFFICE BOX 2860
MINDEN, NEVADA 89423
(775) 782-7171

RECEIVED

Case No.: 08-CV-0363-D JAN 20 2010

FILED

Dept. No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK

2010 JAN 20 PM 3:21

This document does not contain personal information of any person.

TED WILFERT
CLERK
K. WILFERT
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**MOTION TO STRIKE, OR IN THE
ALTERNATIVE, OPPOSITION AND
PARTIAL JOINDER TO MOTION FOR
DIVISION OF WATER AND FOR REMAND
AND REFERENCE TO STATE ENGINEER
FOR FURTHER EVIDENCE**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby file this Motion to Strike and Opposition to *Motion for Division of Water and For Remand and Reference to State Engineer for Further Evidence* filed by HALL RANCHES, LLC, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, and DONALD S. FORRESTER and KRISTINA M. FORRESTER (collectively, "Intervenors") for the reasons set forth as follows:

1. Intervenors' Motion is a non-conforming motion for preliminary injunction;
2. Intervenors are not entitled to a preliminary injunction;
3. Intervenors have not pled a claim that would entitle them to a preliminary or permanent injunction; nor have they prayed for such relief in their Initial Pleading;

4. This Court lacks jurisdiction over Intervenors' attempts to quiet title to the Water Diversion and Use Agreement in this water rights adjudication process as set forth in Bentley's

1 Motion to Dismiss which is now pending;

2 5. This Court and the State Engineer lack jurisdiction to conduct the seepage test and
3 impose a rotation as requested in Intervenor's Motion; and

4 6. The seepage test requested by Intervenor is irrelevant to these water rights
5 adjudication proceedings.

6 This Motion is made and based on the Points and Authorities attached hereto, the Affidavit
7 of James W. Bentley submitted herewith, and all pleadings, exhibits, and documents of record.

8 DATED this 1/14 day of January 2010.

BROOKE · SHAW · ZUMPFT

9
10
11 By: Michael L. Matuska

Michael L. Matuska
State Bar No. 5711
1590 4th Street/P.O. Box 2860
Minden NV 89423
(775) 782-7171
(775) 782-3081 (Fax)

**POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE
AND OPPOSITION**

1. Introduction

Intervenors request different relief in different portions of their *Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence* ("Motion").

Therefore, the Intervenors hereby request that the Court order the division of water from Sheridan Creek to be made by the State Engineer *in rotation without reference to the Diversion Agreement* (or the Pond Water Agreement), in accordance with the Final Order of Determination dated August 14, 2008, until final judgment in this matter. (Motion at p. 6, lls. 21-27). [Emphasis added]

This request of the Intervenors contains a subtle but extremely important difference from the request made by Bentley in the first exception as stated in its *Notice of Exceptions and Exceptions* and *Amended Notice of Exceptions and Exceptions*. In anticipation that a rotation schedule had been or would soon be imposed, Bentley sought to call the Water Diversion and Use Agreement to the attention of the Court and State Engineer. Bentley simply requested that the Final Order of Determination note that any rotation schedule is subject to the Water Diversion and Use Agreement that was recorded in Official Records of Douglas County, Nevada, on 27 March 1987, at Book 387, Page 2726, Document No. 152147.¹ Bentley did not ask the Court to interpret or enforce that agreement. The precise request, which has been mischaracterized and misunderstood by Intervenors, is as follows:

Accordingly, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid" should be amended to note that all diversion rights from the North Branch of Sheridan Creek (as well as Stutler Creek and Gansberg Springs (to the extent those sources are also diverted through the North Branch of Sheridan Creek) are subject to this diversion agreement and the Bentley property should be exempt from the rotation to the extent of diverting water through the ponds for stock watering and/or wildlife purposes, all of

¹ The State Engineer, and indirectly, this Court, already had notice of the Water Diversion and Use Agreement by way of Proofs 06306 and 06308 for Stockwater and Wildlife, both of which refer to and incorporate the Water Diversion and Use Agreement. The proofs were accepted in the Final Order of Determination (See Final Order of Determination, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid").

1 which is described as a non-consumptive use and returned to the irrigation
2 ditches. (*Amended Notice of Exceptions and Exceptions*, p. 3, IIs. 8-13).

3 Bentley never alleged that Water Diversion and Use Agreement augments the water rights
4 adjudicated in its favor, or that it has the right to consume the water diverted pursuant to the
5 agreement, other than the rights adjudicated in its favor. Although the Water Diversion and Use
6 Agreement has been in the chain of title to Intervenor's property for over twenty (20) years,
7 Bentley did not ask this Court to declare any rights vis-à-vis that Water Diversion and Use
8 Agreement, but simply to note its existence and potential impact on any rotation schedule. The
9 parties could then argue about the effect of that agreement in a separate proceeding without the
10 concern on Bentley's part that the Final Order of Determination could be mischaracterized as res
11 judicata on any issues pertaining to that agreement.
12

13 Intervenor's request, as quoted above, is quite different than Bentley's. Intervenor is
14 asking the Court to order the State Engineer to impose a rotation schedule that will override and
15 nullify the subject Water Diversion and Use Agreement that has been in the chain of title to
16 Intervenor's property for over twenty (20) years. Glenn Roberson, who has submitted multiple
17 affidavits in this matter, has admitted that he acquired his property in 2005. Tom Hall, likewise,
18 acquired his property through Hall Ranches, LLC at about the same time. There is no evidence
19 that their predecessors-in-interest (including Tom Hall's parents) ever contested the Water
20 Diversion and Use Agreement. Intervenor is now abusing this Court's processes by trying to
21 have this Court quiet their title against the Water Diversion and Use Agreement under the guise of
22 this water adjudication proceeding. Neither the Court nor the State Engineer has jurisdiction or
23 authority to quiet title or to nullify a private diversion agreement, either permanently or
24 temporarily.
25
26

27 If Intervenor wish to avoid the Water Diversion and Use Agreement, then they need to file
28 a complaint to quiet title. They know that they cannot prevail and that any such complaint will be

1 subject to affirmative defenses including: (1) Statute of Limitations; (2) Laches; and (3) Estoppel.
2 Bentley will also counterclaim for slander of title, abuse of process, and to quiet title to the new
3 easement that was recorded in Official Records of Douglas County, Nevada on 27 June 2008, at
4 Book 0608, Page 7181, Document No. 0725896 (*Exhibit 1*). That agreement modified and
5 improved the same easements, points of diversion, and water delivery arrangements that were
6 originally set forth in the Water Diversion and Use Agreement which Intervenor now oppose. If
7 the Water Diversion and Use Agreement is nullified, then the new easement agreement must be
8 nullified, as well. Bentley will now need to revoke and quiet title to that instrument. Disputes
9 concerning both instruments need to be litigated in the same proceeding. However, there is no way to
10 do so in these proceedings. As it now stands, Intervenor have actually pled their quiet title case
11 by way of inchoate affirmative defenses, thereby precluding Bentley from filing a responsive
12 pleading that includes defenses, affirmative defenses, and counterclaims.
13
14

15 Intervenor seem to assume that Bentley is diverting more than the amount allotted by the
16 Final Order of Determination. Bentley denies the same, and Intervenor have no evidence of such.
17 That is why they have to change and supplement the relief they are requesting elsewhere in their
18 motion:

19
20 It is respectfully requested that the Court enter an order requiring the
21 division of the water from Sheridan Creek by the State Engineer be
22 pursuant to the Final Order of Determination during the time this action is
23 pending and not otherwise, and to specifically refer the case to the State
24 Engineer to perform a Seepage Test and Seepage Report concerning the
25 Bentleys' Old Pond and New Pond. (Motion at p. 8, ls. 6-13).

26 Intervenor are therefore hoping that the State Engineer will discover some evidence to
27 support their case. In fact, a seepage test will not accomplish Intervenor's aims. Intervenor are
28 greatly exaggerating the amount of water loss, and Bentley simply denies that it is appropriating
more than its allotment.

///

1 2. **Intervenors' Motion is a Non-Compliant Motion for Preliminary Injunction**

2 Intervenors have brazenly asked this Court to "order the division of water from Sheridan
3 Creek . . . *in rotation without reference to the Diversion Agreement* . . . until final judgment in
4 this matter." (Motion at p. 6, lls. 21-27) [Emphasis added]. Not only do the Court and the State
5 Engineer lack any such jurisdiction in this water rights adjudication, but Intervenors cannot enjoin
6 Bentley's diversions pending trial except in strict compliance with the statutes and rules
7 concerning preliminary injunctions. Intervenors' Motion is defective for numerous reasons.

9 a. **Intervenors Failed to Pray for Injunctive Relief**

10 A party seeking an injunction must first plead a cause of action for which injunctive relief
11 is appropriate and then make a prayer for injunctive relief. Intervenors included no such claim or
12 prayer in their Initial Pleading of 19 November 2009. In essence, they are requesting relief that is
13 not prayed for and is outside the scope of their pleadings.

14 Intervenors are also trying to make Bentley's old pond an issue. Intervenors' Initial
15 Pleading concerned only a new pond, and their new argument about the old pond is also outside of
16 anything placed at issue in this case to date. Intervenors seem oblivious to the point that the
17 pleadings define the scope of inquiry. Intervenors are now trying to expand the inquiry beyond
18 anything raised in the Final Order of Determination, Bentley's Exception and Amended
19 Exceptions, and even Intervenors' non-conforming pleading.

20 b. **A Preliminary Injunction Cannot be Used to Alter the Status Quo**

21 A preliminary injunction is only available to preserve the status quo pending trial. *See e.g.*
22 *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d 1329 (1978). The
23 preliminary injunction sought by Intervenors would actually change the status quo by nullifying
24 the Water Diversion and Use Agreement that has been on record since 1987; stopping the
25 circulation of water through Bentley's ponds, including the old pond which was there before the
26 27 28

1 Intervenor acquired their properties; and imposing a rotation where there has been none, save and
2 excepting the Water Diversion and Use Agreement. With this in mind, Intervenor are actually
3 seeking a form of an affirmative injunction.

4
5 Were this Court going to issue an injunction to preserve the status quo, then this Court
6 would have to restrain Intervenor from altering the historical diversion through Bentley's ponds
7 or otherwise limiting or interfering with Bentley's right to appropriate between approximately
8 14.32 and 19.27 acre feet of water rights, for approved acreage of between 9.61 and 12.93
9 approved acres, pursuant to the Order of Final Determination (*See* Final Order of Determination,
10 pps. 50, 53-54, Tables 5 and 6, and Part VIII "Proofs Determined to Be Valid").

11 c. **Intervenor Cannot Demonstrate That They Have Been**
12 **Irreparably Harmed**

13 Intervenor must demonstrate they will be irreparably harmed if this Court does not enter a
14 preliminary injunction. *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 587 P.2d
15 1329 (1978). They have not alleged such in their Initial Pleading, nor have they demonstrated
16 such in their Motion.

17 d. **Intervenor Do Not Enjoy a Likelihood of Success on the Merits**

18 Intervenor must demonstrate that they enjoy a likelihood of success on the merits in order
19 for a preliminary injunction to issue. *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779,
20 587 P.2d 1329 (1978). Defendants have no chance of prevailing in their efforts to quiet title
21 against the Water Diversion and Use Agreement.

22 i. **The Chain of Title is Complete**

23 Intervenor's entire case is premised on the belief that the Whitmires did not own the water
24 rights when they executed the Water Division and Use Agreement, and the agreement is therefore
25 invalid because it lacked the signatures of June Irene Rolph and Nancy Rolph Welch. Intervenor
26 have presented no evidence to support their argument that the Rolphs needed to sign the Water
27 Diversion and Use Agreement. Moreover, the Rolphs did execute a water rights deed in favor of
28 the Whitmires (*Exhibit 2*). It does not matter that this deed was recorded after the Water
619

1 Diversion and Use Agreement was recorded as it completed the chain of title to the water rights at
2 that point, if the chain was not already complete.

3 Intervenor are all successors-in-interest to the Whitmires, and are therefore estopped from
4 denying the validity of the instruments executed by the Whitmires. *See Lanigir v. Arden*, 82 Nev.
5 28, 400 P.2d 891 (1966). The Forresters, in particular, acquired their property from Whitmire
6 before the water rights deed was executed (compare *Exhibits 2 and 3*). If the Whitmires' chain of
7 title is not complete such that the Water Diversion and Use Agreement is invalid, then those same
8 defects in the chain of title would mean that Intervenor never acquired water rights from the
9 Whitmires and they have no standing in these proceedings. The Forresters' argument is
10 inconsistent. They deny that the Whitmires had the right enter the Water Diversion and Use
11 Agreement because they did not yet have a water rights deed, but assume that the lack of a water
12 rights deed did not prevent the Whitmires from transferring water rights to the Forresters. It
13 would create an absurd result for the water rights to remain vested in the Whitmires, who are
14 presumed deceased, and who did not file proof of claims in these proceedings.

15 In contrast, Bentley does not have any such issues with its chain of title. Bentley traces its
16 chain of title through the Rolphs, not the Whitmires.

17 **ii. Statute of Limitations**

18 No action or defense to quiet title is valid unless it is brought by the current owner or the
19 owners' predecessor within five (5) years after the act complained of. NRS 11.070. In this case,
20 that means that Intervenor and/or their predecessors would have needed to file their complaint to
21 quiet title five (5) years after the Water Diversion and Use Agreement was recorded, which would
22 have been 26 March 1992. The recording of the Water Diversion and Use Agreement was
23 sufficient to impart notice to each of the Intervenor, who acquired their property after the
24 agreement was recorded. NRS 111.315; NRS 111.320; NRS 533.383.

26 ///

27 ///

iv. Estoppel

c. Intervenorors Have to Post a Bond

1. *... ..*
 2. *... ..*
 3. *... ..*

1 4. **This Court Lacks Jurisdiction to Order a Seepage Test, and the State**
2 **Engineer Lacks Authority to Conduct the Same**

3 A seepage test is outside of the scope of these proceedings. The purpose of these
4 proceedings is to determine the “relative rights of the various claimants to the water . . .” in
5 accordance with NRS 533.090. The seepage test is not relevant to the determination of relative
6 rights, nor is there any reference to a seepage test in the Nevada Revised Statutes. Intervenor
7 admit they are downstream of Bentley’s parcel, and that pursuant to the Water Diversion and Use
8 Agreement, the water circulates through Bentley’s ponds and is returned to the ditch conveyance
9 system. From there, it is appropriated in accordance with the relative rights of the Intervenor.
10 Bentley does not assert any ownership right over the Intervenor’s water rights. Intervenor do not
11 take exception to the Final Order of Determination which confirms Bentley’s water rights of
12 between 14.32 and 19.32 afa.

13 Although the Court may refer the case or any part thereof to the State Engineer for further
14 evidence or determination (NRS 533.180), any such reference would be in furtherance of the
15 adjudication of relative rights of the claimants, not to conduct a seepage test.

16 Likewise, although the State Engineer is authorized to conduct or hire hydrological studies
17 pursuant to NRS 533.368, those studies are to determine the amount of water available and the
18 recharge in order to determine the relative rights of the claimants. That is different than a seepage
19 study, which again, does not relate to the relative rights of the claimants. Moreover, pursuant to
20 NRS 533.368, Tom Hall would have to pay the cost of any such study.

21 As pointed out in the *Reply to Opposition to Motion to Dismiss*, Tom Hall doesn’t want to
22 hire his own expert. Or rather, he cannot find one to support his position. Therefore, he is trying
23 to get information from the Bentley’s consultant, R. Michael Turnipseed, and have the State
24 Engineer collect evidence to testify as an expert. Although the Court can hire experts
25 (NRS 533.175), the State Engineer is not an expert simply due to his official capacity.

Intervenors also seem to assume that seepage is a problem, although they do not explain why. Seepage presumably occurs all through the creek and ditch system, and it is unknown why they are focusing on Bentley's ponds 23 years after the Water Diversion and Use Agreement was recorded. Not only do they greatly exaggerate the amount of seepage (in fact, they do not try to quantify the amount), but they seem to think the seepage should stop. By advancing this argument, they seem to forget that the diversions are for stock and wildlife ponds. Bentley has approved Proofs of Claims for stock and wildlife purposes. Wildlife purposes are defined as a beneficial use. NRS 533.023. This definition includes "the watering of wildlife and the creation and maintenance of wetlands, fisheries, and other wildlife habitats."

The ponds support reeds, rushes, trees, fish, birds, insects, etc. This is consistent with the approved Proofs of Claim 06307 and 06308 and the statutory definitions of beneficial use and wildlife purposes. Some of the fish were found naturally occurring in the stream system and located to the ponds. The fish need a constant supply of oxygenated water and would almost certainly perish if the flows stopped, either due to unlawful diversions by the Intervenors or due to the imposition of a rotation schedule which would result in intermittent flows. The idea of lining the ponds or causing the ponds to suffer intermittent flows is contrary to the very concept of the approved permits for wildlife purposes.

4. **The Court and State Engineer Lack Jurisdiction to Impose a Rotation Schedule**

Intervenors seem to assume that the State Engineer can impose a rotation schedule upon the parties. There is no statutory authority to support this assumption. Although NRS 533.075 confirms that it is "lawful for water users owning lands to which water is appurtenant to rotate in the use of the supply to which they may be collectively entitled," that statute does not authorize the State Engineer to impose a rotation schedule over objecting parties. In this case, Intervenors seem to ignore the fact that Bentley has between approximately 14.32 and 19.27 acre feet of water

1 rights, for approved acreage of between 9.61 and 12.93 approved acres pursuant to the Order of
2 Final Determination. The exact amount is at issue by way of Bentley's *Notice of Exceptions* and
3 *Amended Notice of Exceptions*. Bentley actually consumes less than that amount and returns the
4 excess through his ponds. Intervenor's concerns about seepage are recklessly and grossly
5 exaggerated, and are irrelevant to Bentley's water rights. In fact, Bentley has the right pursuant to
6 the Water Diversion and Use Agreement to divert the entire flow and return it to the ditch system.
7 But Intervenor is trying to prevent him from diverting any water.

9 The imposition of a rotation schedule will harm all parties, and will actually result in less
10 water reaching the subject properties. That is because a large amount of seepage occurs when the
11 ditches are dry. In Mr. Roberson's case, the entire flow may be seep through the porous soil, if
12 dry, and not reach his property at all (*See* Affidavit of James W. Bentley, *Exhibit 4*).

13
14 **5. Partial Joinder**

15 Bentley partially joins Intervenor's Motion to the extent a preliminary injunction would
16 serve to stop Intervenor from appropriating more than their adjudicated allotment and interfering
17 with Bentley's rights. To understand the basis for this joinder, it is necessary to point out that
18 some of the Intervenor draw their water before it is diverted to Bentley's ponds (such as
19 Forrester). Some draw their water after it circulates through the first pond (Hall). Mr. Roberson
20 draws water from Bentley's second pond. Mr. Roberson has submitted affidavits in which he
21 testifies to a drop in the amount of water being delivered to his property, although there is no
22 measure to confirm his testimony and no foundation therefore. Moreover, he cannot establish any
23 causation to Bentley's pond, including the second pond that was there before Roberson purchased
24 his property. Because Mr. Roberson draws his water from Bentley's pond, the only way he can
25 experience a drop in the quantity of water being delivered is if it is not reaching Bentley's pond.

26
27 ///

1 Aside from the obvious, persistent drought, Bentley can confirm two (2) reasons why water is not
2 reaching the pond.

3 **a. Illegal Upstream Diversions**

4 Sheridan Creek splits into the North Branch and South Branch before reaching the
5 properties of the parties to this sub-proceeding. The parties to this sub-proceeding draw their
6 water from the North Branch of Sheridan Creek. Bentley is concerned that too much water is
7 being diverted down the South Branch of Sheridan Creek and has requested the installation of a
8 diversion device in Exception No. 5 of its Amended Notice of Exceptions. Intervenors should
9 have joined this exception instead of concocting their own wild theories and allegations.
10

11 **b. Illegal Diversion and Use of Bentley's Water Rights**

12 Bentley has the right to appropriate between approximately 14.32 and 19.27 acre feet of
13 water rights, for approved acreage of between 9.61 and 12.93 approved acres, pursuant to the
14 Order of Final Determination (*See* Final Order of Determination, pps. 50, 53, 54, Tables 5 and 6,
15 and Part VIII "Proofs Determined to Be Valid"). The exact amount is the subject of its *Amended*
16 *Notice of Exceptions*. The unlawful use of Bentley's water is a misdemeanor. NRS 533.460.
17 So is the unlawful interference with the headgates and water boxes that deliver Bentley's water.
18 NRS 533.465. But this does not stop the Intervenors, including specifically Donald Forrester,
19 from criminally trespassing onto the Bentley property, closing the headgates to Bentley's property,
20 and diverting all of the water to his own property. It is no wonder that the downstream users,
21 including Bentley and Mr. Roberson, are not able to deliver their allotted share of the water. The
22 State Engineer is empowered to arrest Mr. Forrester and other trespassers and turn them over to
23 local law enforcement. NRS 533.375.
24
25

26 **7. Conclusion**

27 Intervenors' Motion is a non-conforming motion for a preliminary injunction. Intervenors
28 are actually trying to change the status quo. Intervenors have not pled a claim for injunctive
25

1 relief, cannot show that they have been irreparably harmed, and cannot show a likelihood of
2 success on the merits.

3 The Court and the State Engineer lack jurisdiction to impose a rotation schedule and
4 conduct a seepage test as part of these proceedings. Moreover, a seepage test is irrelevant to the
5 water rights adjudication process.

6
7 In contrast, the State Engineer has statutory authority to prevent Intervenor and any other
8 persons from illegally diverting and using Bentley's water. This includes the diversions down the
9 South Branch of Sheridan Creek and Mr. Forrester's criminal trespasses and diversions to his
10 property. The unlawful diversions also cause the ditches to dry out and result in water loss and
11 seepage when the flow is restored.

12 Respectfully submitted.

13 DATED this 17 day of January 2010.

14 BROOKE · SHAW · ZUMPFT

15
16 By: 

17 Michael L. Matuska
18 State Bar No. 5711
19 1590 4th Street/P.O. Box 2860
20 Minden NV 89423
21 (775) 782-7171
22 (775) 782-3081 (Fax)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPF
and that on the 20th day of January 2010, I served a true and correct copy of the preceding
document entitled **MOTION TO STRIKE, OR IN THE ALTERNATIVE, OPPOSITION
AND PARTIAL JOINDER TO MOTION FOR DIVISION OF WATER AND FOR REMAND
AND REFERENCE TO STATE ENGINEER FOR FURTHER EVIDENCE** addressed to:

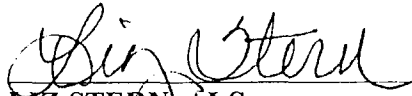
STATE OF NEVADA
Department of Conservation and Natural Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with
postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada,
in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw
· Zumpft the above-identified document in the ordinary course of business to the individual and
facsimile numbers indicated.


LIZ STERN, ALS

DOC # 0725896
06/27/2008 01:41 PM Deputy: GB
CONFORMED COPY
Requested By:
TOM HALL

Assessor's Parcel Number: 1219-14-001-013

Recording Requested By:

Name: J.W. & Maryann Bentley, Trustees

Address: 853 Sheridan Lane

City/State/Zip: Gardnerville, NV 89460

Mail Tax Statements to:

Name: J.W. & Maryann Bentley, Trustees

Address: 853 Sheridan Lane

City/State/Zip: Gardnerville, NV 89460

Please complete Affirmation Statement below:

X I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

-OR-

I the undersigned hereby affirm that this document submitted for Recording contains the social security number of a person or persons as required by law: (state specific law)

Thomas J. Hall
Signature (Print name under signature)

Attorney at Law

Title

Thomas J. Hall, Esq.

Grant of Water Pipeline Easement;
Affirmation of Pre-Existing
Water Pipeline Easment; Abandonment of Easements

(Title of Document)

If legal description is a metes & bounds description furnish the following information:

Legal description obtained from: GBS Deed (Document Title), Book: 0506 Page: 3496

Document # 0674437 recorded May 5, 2006 (Date) in the Douglas County Recorders Office.

-OR-

If Surveyor, please provide name and address:

This page added to provide additional information required by NRS 111.312 Sections 1-4.

(Additional recording fees apply)

WHEN RECORDED MAIL ORIGINAL
DOCUMENT AND TAX STATEMENTS TO:
J.W. Bentley, Trustee
Maryann Bentley, Trustee
853 Sheridan Lane
Gardnerville, Nevada 89460

Affecting Portions of:

APN 1219-14-001-001
APN 1219-14-001-002
APN 1219-14-001-003
APN 1219-14-001-004
APN 1219-14-001-005
APN 1219-14-001-008
APN 1219-14-001-012
APN 1219-14-001-013
APN 1219-14-001-014

GRANT OF WATER PIPELINE EASEMENT;
AFFIRMATION OF PRE-EXISTING
WATER PIPELINE EASEMENT;
ABANDONMENT OF EASEMENTS

J.W. Bentley and Maryann Bentley, Trustees of the Bentley Family Trust 1995 Trust ("Parties of the First Part") are owners of that real property located at 853 Sheridan Lane, Gardnerville, Nevada 89460 identified as APN 1219-14-001-013, and more particularly described on Exhibit A.1 attached hereto (the "Burdened Property").

Daniel P. Barden and Elaine V. Barden, 419 Centerville Lane, Douglas County, Nevada 89460; Joy S. Smith, 957 Sheridan Lane, Douglas County, Nevada 89460; Hall Ranches, LLC, a Nevada Limited Liability Company, Post Office Box 3690, Stateline, Nevada 89449;

Thomas J. Scyphers and Kathleen M. Scyphers, 1304 South Aylesbury Court, Gardnerville, Nevada 89460; Frank Scharo, Post Office Box 1225, Minden, Nevada 89423; Glen A. Roberson, Jr., 281 Tiger Wood Court, Gardnerville, Nevada 89460; Donald S. Forrester and Kristina Forrester, Trustees of the Donald Scott Forrester and Kristina Marie Forrester Trust dated February 15, 2006, 913 Sheridan Lane, Gardnerville, Nevada 89460; and Ernest E. Pestana, Trustee of the Pestana 1986 Family Trust, 2225 Oakland Road, San Jose, California 95131, are collectively referred to as "Parties of the Second Part" and owners of all that real property, situate in the County of Douglas, State of Nevada, identified as APNs 1219-14-001-001, 1219-14-001-002, 1219-14-001-003, 1219-14-001-004, 1219-14-001-005, 1219-14-001-008, 1219-14-001-012 and 1219-14-001-014 and more particularly described on Exhibits B.1 to B.8 attached hereto ("Benefited Property").

Whereas the Parties of the First Part wish to relocate certain irrigation and pipeline easements and related irrigation works that now burden their property; and

Whereas the Parties of the Second Part have agreed to the relocation of the irrigation and pipeline easements and related irrigation works, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

A. Grant of New Easement

Parties of the First Part do hereby Grant, Bargain, Sell and Convey to Parties of the Second Part, a Water Pipeline Easement ("Water Pipeline Easement") to construct, reconstruct, maintain and repair a water pipeline and related facilities, including but not necessarily limited to pipes, diversion boxes, cleanouts and vaults, all for the convenient conveyance of water to and for the benefit of the Benefited Properties described on Exhibits B.1 through B.8, attached hereto and incorporated herein by this reference, and including without limitation waters from Sheridan Creek and any drain or waste waters.

The new Water Pipeline Easement shall extend fifteen (15) feet in width over, along and across the Northerly boundary of the burdened property described as APN 1219-14-001-013, as more particularly described in Exhibit A.2 which is attached hereto and incorporated herein by this reference.

This new Water Pipeline Easement shall run perpetually with the benefited properties and shall inure to the benefit of Parties of the Second Part, their successors and assigns, and shall be binding upon the burdened property, the Parties of the First Part, and their successors and assigns forever.

The lands benefited by the grant of this Water Pipeline Easement are all those lands and real property situate in the Town

of Sheridan, County of Douglas, State of Nevada, more fully described on Exhibits B.1 to B.8, attached hereto and incorporated herein by this reference.

Access shall be freely given to the Parties of the Second Part, and their successors and assigns, for all required pipeline inspection, maintenance, repair, construction and reconstruction at all times. A twenty-four (24) hour notice shall be given prior to any inspection, maintenance, repair, construction or reconstruction work, except in the case of an emergency, whereupon reasonable notice under the circumstances will be given.

The parties of the First Part shall keep the Water Pipeline Easement clear of obstructions, and shall not locate any structures, building, paving, improvements or trees of any type, other than normal soil, gravel, grass and small shrubs, within the easement area.

B. Affirmation of Pre-Existing Easement

The parties to this Agreement hereby affirm the existing pipeline, ditch and public utility easement twenty (20) feet in width along the Westerly boundary of the Burdened Property that was previously created by way of a reservation in that certain Grant, Bargain and Sale Deed recorded on August 3, 1987, in Book 887, at Page 138, as Document 159532, Official Records of Douglas County, Nevada. Nothing in this Agreement shall be construed as an

abandonment of that easement or as a limitation on any rights which the Parties of the Second Part may enjoy pursuant to said easement.

C. Abandonment of All Other Easements

Parties of the Second Part do hereby abandon all other easements over the Burdened Property, and further devise, remise and quitclaim any and all other interests of any nature, over, in and to the Burdened Property, save and excepting the easements specifically created or affirmed in this Agreement. This abandonment includes but is not necessarily limited to the following easements:

1. A ditch easement thirty (30) feet in width, as depicted on the Parcel Map for Lodato Parcels recorded on June 26, 1987, in Book 687, at Page 3496, as Document 157268, Official Records of Douglas County, Nevada;

2. An irrigation and irrigation pipe easement fifteen (15) feet in width created by a reservation in that certain Grant, Bargain and Sale Deed recorded on August 3, 1987 in Book 887, at Page 138, as Document 159532, Official Records of Douglas County, Nevada;

3. An irrigation easement five (5) feet in width created by exception in a Grant Deed recorded on August 16, 1993, in Book

0893, at Page 2831, as Document 315103, Official Records of Douglas County, Nevada.

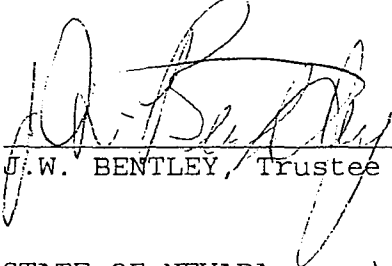
D. Miscellaneous

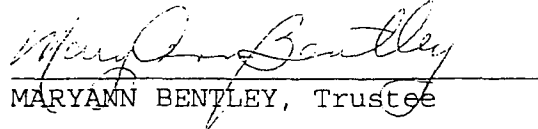
1. Covenant of Further Cooperation: The parties to this Agreement further covenant and agree to execute any further documentation that may be reasonably required to carry out the purposes of this Agreement.

2. Advice of Counsel: By signing below, the parties to this agreement affirm that they understand the contents and effect of this agreement and that they have voluntarily signed this agreement after conferring with counsel, or that they have knowingly waived their right to do so. The parties to this agreement further confirm that they have conducted their own investigation into the facts recited herein, or have voluntarily waived their right to do so, and have not relied on the advice or information provided by any other party to this agreement.

IN WITNESS WHEREOF, the Parties have executed this instrument this 10th day of October, 2007.

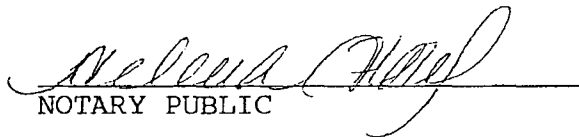
PARTIES OF THE FIRST PART:

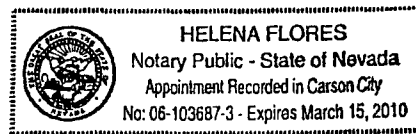

J.W. BENTLEY, Trustee


MARYANN BENTLEY, Trustee

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 4th day of ~~October~~^{DECEMBER}, 2007, personally appeared before me, a Notary Public, J. W. BENTLEY and MARYANN BENTLEY, who acknowledged to me that they executed the foregoing instrument.


NOTARY PUBLIC



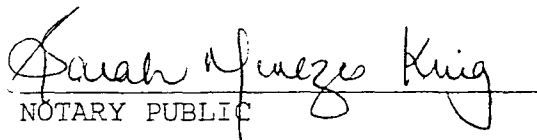
PARTIES OF THE SECOND PART:

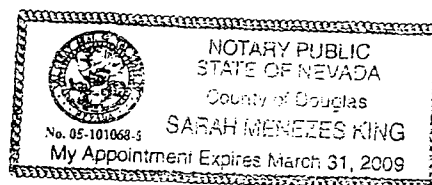

DANIEL P. BARDEN

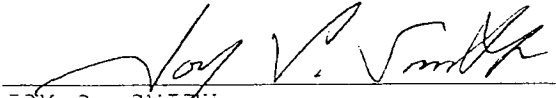

ELAINE V. BARDEN

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 24 day of Dec, 2007, personally appeared before me, a Notary Public, DANIEL P. BARDEN and ELAINE V. BARDEN, who acknowledged to me that they executed the foregoing instrument.

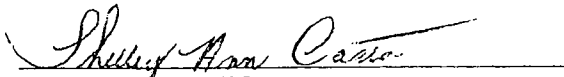

NOTARY PUBLIC



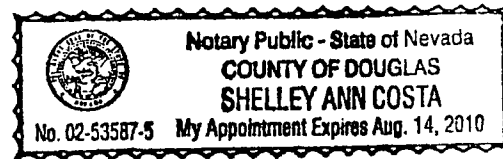

JOY S. SMITH

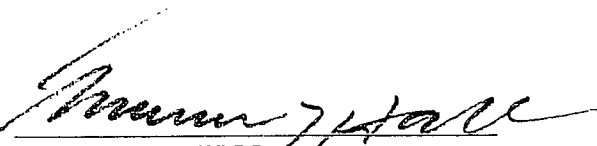
STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 2nd day of January 2008, personally appeared before me, a Notary Public, JOY S. SMITH, who acknowledged to me that she executed the foregoing instrument.


NOTARY PUBLIC

HALL RANCHES, LLC

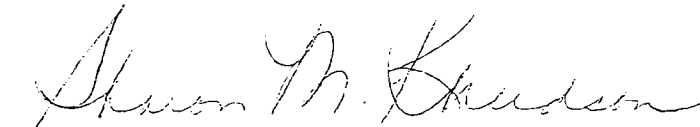


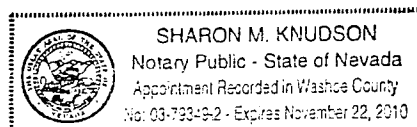
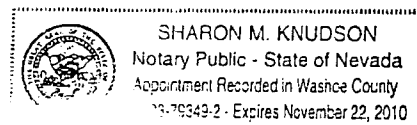
By: 
THOMAS J. HALL

Its: Manager

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 14th day of December, 2007, personally appeared before me, a Notary Public, THOMAS J. HALL, who acknowledged to me that he executed the foregoing instrument.


NOTARY PUBLIC



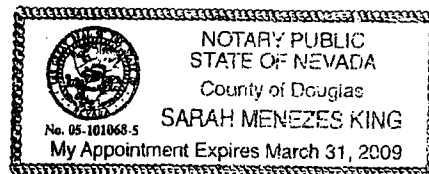
Thomas J. Scypers
THOMAS J. SCYPHERS

Kathleen M. Scypers
KATHLEEN M. SCYPHERS

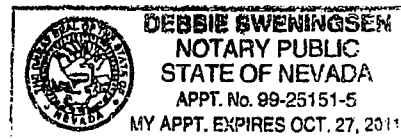
STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 20 day of December 2007, personally appeared before me, a Notary Public, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, who acknowledged to me that they executed the foregoing instrument.

Sarah Menezes King
NOTARY PUBLIC



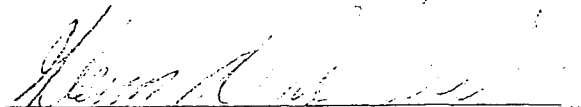
Frank Scharo
FRANK SCHARO



STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 17 day of JAN 2008, personally appeared before me, a Notary Public, FRANK SCHARO, who acknowledged to me that he executed the foregoing instrument.

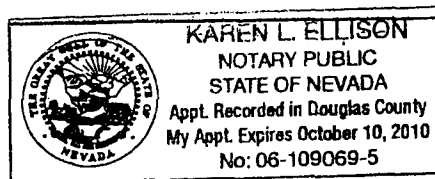
Debbie Sweningsen
NOTARY PUBLIC


GLENN A. ROBERSON, JR.

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 22nd day of February, 2008, personally appeared
before me, a Notary Public, GLENN A. ROBERSON, JR., who
acknowledged to me that he executed the foregoing instrument.


NOTARY PUBLIC

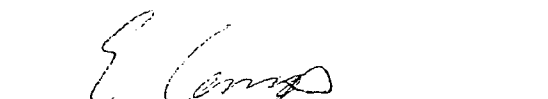


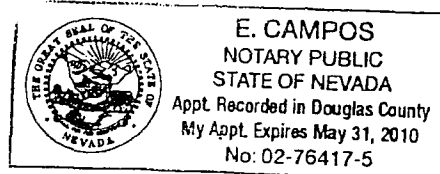

DONALD S. FORRESTER, Trustee


KRISTINA FORRESTER, Trustee

STATE OF NEVADA)
) ss.
COUNTY OF DOUGLAS)

On this 27th day of December, personally appeared
before me, a Notary Public, DONALD S. FORRESTER and KRISTINA
FORRESTER, who acknowledged to me that they executed the foregoing
instrument.


NOTARY PUBLIC



**Bentley Legal Description
Exhibit A.1**

All that certain lot, piece, parcel or portion of land situate, lying and being within the West ½ of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, more particularly described as follows:

All that portion of Parcels 1, 2 and 3, as shown on the Parcel Map filed for record on June 26, 1987, in Book 687, at Page 3496, as Document 157268, Official Records of Douglas County, Nevada, described as follows:

COMMENCING at the Southwest corner of Parcel 3, as shown on the aforesaid map; Thence along the Southwesterly line of Parcels 2 and 3 of said map, North 24°47'53" West, a distance of 335.33 feet to the Southwest corner of aforesaid Parcel 1, which point is the TRUE POINT OF BEGINNING; thence continuing along the Southwesterly line of said parcel North 25°53'28" West, a distance of 495.70 feet to the Northwesterly corner of said parcel; thence along the Northwesterly line of said parcel North 64°05'08" East, a distance of 1,120.70 feet to the Northeasterly corner of said parcel; thence along the Northeasterly line of said Parcels 1 and 3 South 25°05'38" East, a distance of 519.63 feet; thence leaving said line South 78°28'21" West, a distance of 424.88 feet; thence South 00°00'00" West, a distance of 167.20 feet; thence South 70°19'13" West, a distance of 632.57 feet to the TRUE POINT OF BEGINNING.

The Basis of Bearing of this description is the Southeasterly line of Parcel 3, which bears North 70°37'51" East, as shown on the Parcel Map filed for record on June 26, 1987, in Book 687, at Page 3496, as Document 157268, Official Records of Douglas County, Nevada.

This legal description was previously recorded on May 5, 2006, in Book 0506, at Page 3496, as Document 0674437, Official Records of Douglas County, Nevada.

APN 1219-14-001-013

Legal Description for Grant of New Easement

A.2

All that real property situate in the County of Douglas, State of Nevada, described as follows:

The Northerly fifteen (15) feet of Parcel 1 a shown on the Parcel Map for Lodato Parcels filed for record on June 26, 2987, in Book 687, at Page 3496, as Document 157268, Official Records of Douglas County, Nevada, and amended as shown on the Record of Survey to Accompany a Boundary Line Adjustment for Joseph S. Lodato, filed for record on January 4, 1996, in Book 196, at Page 787, as Document 378278, Official Records of Douglas County, Nevada.

Being a portion of APN 1219-14-001-013.

**Barden Legal Description
Exhibit B.1**

All that real property situate in the County of Douglas, State of Nevada, described as follows:

All that certain lot, piece or parcel of land situate, lying and being within the Northwest 1/4 of the Northwest 1/4 of Section 14 and the Northeast 1/4 of the Northeast 1/4 of Section 15, all in Township 12 North, Range 19 East, MDBM, Douglas County, Nevada and more particularly described as follows:

Commencing at the North 1/4 corner of aforesaid Section 14 as shown on the Record of Survey for Myron L. and Beverly R. Newell, filed for record in Book 184, at Page 309, as Document 93919, Official Records of Douglas County, Nevada;

thence South 00°19'01" East a distance of 20.00 feet to a point on the Southerly right-of-way line of Centerline Lane; thence along said line South 89°52'00" West a distance of 1,648.48 feet to the TRUE POINT OF BEGINNING; thence leaving said line South 60°35'02" West a distance of 834.88 feet; thence South 64°00'39" West a distance of 251.84 feet; thence North 24°29'37" West a distance of 568.83 feet to a point on the Southerly right-of-way line of Centerville Lane; thence along side line North 89°52'00" East a distance of 1,189.45 feet to the TRUE POINT OF BEGINNING.

Reference is made to adjusted Parcel B, as set forth on Record of Survey for Joy Whipple, recorded on July 27, 1992, in Book 792, at Page 4440, as Document 284275, Official Records of Douglas County, Nevada.

APN 1219-14-001-001

The above legal description was taken from instrument recorded on March 10, 2005, in Book 0305, at Page 3969, as Document 0638567, Official Records of Douglas County, Nevada.

Smith Legal Description
Exhibit B.2

All that real property situate in the County of Douglas, State of Nevada, described as follows:

All that certain lot, piece, parcel or portion of land situate, lying and being within the Northwest 1/4 of Section 14 and the Northeast 1/4 of the Northeast 1/4 of Section 15, all in Township 12 North, Range 19 East, MDBM, Douglas County, Nevada and more particularly described as follows:

A boundary line adjustment between those parcels described in Deed recorded on February 1, 1984, in Book 284, at Page 602, as Document 95691, Official Records of Douglas County, Nevada, and also known as Assessor's Parcel Numbers 19-212-18, 19-212-19 and 19-212-02 respectively and more particularly described as follows:

COMMENCING at the North 1/4 corner of aforesaid Section 14, as shown on the Record of Survey for Myron L. and Beverly R. Newell, recorded on January 6, 1984, in Book 184, at Page 309, as Document 93919, Official Records of Douglas County, Nevada; thence South 00°19'01" East, a distance of 20.00 feet to a point on the Southerly right-of-way line of Centerville Lane; thence along said line South 89°52'00" West, a distance of 1,240.13 feet to the TRUE POINT OF BEGINNING; thence leaving said line South 48°39'08" West, a distance of 1,945.87 feet; thence North 25°57'07" West, a distance of 416.90 feet; thence South 64°03'29" West, a distance of 199.95 feet to a point on the Northeasterly right-of-way line of Sheridan Lane; thence along said line North 25°43'08" West, a distance of 50.00 feet to the Southwest corner of Parcel 2 of Parcel Map 1 for Weyher Construction, recorded on July 11, 1979, in Book 779, at Page 603, as Document 34393, Official Records of Douglas County, Nevada; thence leaving said right-of-way line and along the Southerly and Easterly lines of Parcel 2 North 64°02'11" East, a distance of 199.82 feet; thence North 25°59'26" West, a distance of 150.09 feet; thence North 26°05'08" West, a distance of 156.93 feet; thence leaving said Parcel 2 North 63°24'15" East, a distance of 82.75 feet; thence South 26°20'38" East, a distance of 181.69 feet; thence North 65°27'33" East, a distance of 242.56 feet;

thence North 60°35'02" East, a distance of 934.88 feet to a point on the Southerly right-of-way line of Centerville Lane; thence along said line North 89°52'00" East, a distance of 408.35 feet to the TRUE POINT OF BEGINNING.

The above legal description was taken from instrument recorded on June 15, 2001, in Book 0601, at Page 3817, as Document 0516485, Official Records of Douglas County, Nevada.

Hall Ranches Legal Description
Exhibit B.3

A parcel of land located within the Northwest one-quarter of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel 2 as shown on the Land Division Map for Gerald F. Whitmire and Pamela P.J. Whitmire a recorded on December 4, 1986, in Book 1286, at Page 552, as Document 146147 and also shown as the Northwest corner of Parcel J as shown on the Record of Survey for the Run Around Ranch as recorded on March 7, 1973, in Book 373, at Page 133, as Document 64581, Official Records of Douglas County, Nevada; thence North 89°52'00" West, 620.56 feet to the TRUE POINT OF BEGINNING, said point also being the Northwest corner of the above described Parcel 2; thence South 27°34'29" West, 1,057.54 feet; thence South 23°54'16" West, 740.05 feet; thence North 32°09'36" West, 1,119.48 feet; thence North 48°55'15" East, 1,016.00 feet; thence South 89°52'00" East, 619.27 feet to the TRUE POINT OF BEGINNING.

This legal description was previously recorded on July 9, 1999, in Book 0799, at Page 1565, as Document 0472217, Official Records of Douglas County, Nevada.

APN 1219-14-001-003

Scyphers Legal Description
Exhibit B.4

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of the Northwest one-quarter of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel 2 as shown on the Land Division Map for Gerald F. and Pamela F.J. Whitmire as recorded on December 4, 1986, in Book 1286, at Page 552, as Document 146147, and also shown as the Northeast corner of Parcel J as shown on the Record of Survey for the Run Around Ranch and recorded on March 7, 1973, in Book 373, at Page 133, as Document 64581, Official Records of Douglas County, Nevada; thence along the Southerly right-of-way Centerville Lane as shown on said Land Division Map, Document 146147, North 89°52'00" West, 310.28 feet to THE POINT OF BEGINNING; thence South 08°04'17" West, 1,273.82 feet; thence North 62°25'31" West, 700.65 feet to the Westerly line of Existing Parcel 2 of said Land Division Map, Document 146147; thence along said Westerly line North 27°34'29" East, 1,057.74 feet to the Southerly right-of-way line of Centerville Lane; thence along said right-of-way line South 89°52'00" East, 310.28 feet to THE POINT OF BEGINNING.

Said Parcel, being more fully shown on that certain Record of Survey to accompany lot line adjustment for Gerald F. Whitmire, recorded on December 23, 1988, in Book 1288, at Page 3152, as Document 193174, Official Records of Douglas County, Nevada.

This legal description was previously recorded on December 15, 1999, in Book 1299, at Page 2767, as Document 0482627, Official Records of Douglas County, Nevada.

APN 1219-14-001-004

Scharo Legal Description
Exhibit B.5

All that real property situate in the County of Douglas, State of Nevada, described as follows:

A parcel of land located within a portion of the Northwest one-quarter of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel 2 as shown on the Land Division Map for Gerald F. and Pamela F.J. Whitmire as recorded on December 4, 1986, in Book 1286, at Page 552, as Document 146147 and also shown as the Northwest corner of Parcel J as shown in the Record of Survey for the Run Around Ranch and recorded on March 7, 1973, in Book 373, at Page 133, as Document 64581, Official Records of Douglas County, Nevada, THE POINT OF THE BEGINNING; thence along the common boundary of the said two recorded maps South $00^{\circ}00'34''$ West 1,515.79 feet; thence North $62^{\circ}25'31''$ West, 551.53 feet; thence North $08^{\circ}04'17''$ East, 1,273.82 feet to the Southerly right-of-way of Centerville Lane as shown on the Land Division Map; thence along said right-of-way South $89^{\circ}52'00''$ East, 310.58 feet to THE POINT OF BEGINNING.

Reference is hereby made to that certain Record of Survey to accompany lot line adjustments for Gerald F. Whitmire recorded December 23, 1988, in Book 1288, at Page 3152, as Document 193174, Official Records of Douglas County, Nevada.

Further reference is hereby made to that Record of Survey for Robert and June Severson recorded on December 29, 1999, in Book 1299, at Page 5228, as Document 483513, Official Records of Douglas County, Nevada.

The above metes and bounds description appeared previously in that certain Grant, Bargain and Sale Deed, recorded on April 22, 2005, in Book 0405, at Page 9107, as Document 0642436, Official Records of Douglas County, Nevada.

APN 1219-14-001-005

**Roberson Legal Description
Exhibit B.6**

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

A parcel of land located within a portion of the North one-half of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel 2 as shown on the Land Division Map for Gerald F. and Pamela F.J. Whitmire as recorded on December 4, 1986, in Book 1286, at Page 552, as Document 146147, and also as shown as the Northwest corner of Parcel J as shown in the Record of Survey for the Run Around Ranch and recorded on March 7, 1973, in Book 373, at Page 433, as Document 64581, Official Records of Douglas County, Nevada; thence along the common boundary of the said two recorded maps South 00°00'34" West, 805.22 feet to THE POINT OF THE BEGINNING; thence South 42°31'00" East 178.75 feet; thence South 27°26'00" East 251.49 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East 767.39 feet; thence North 11°37'30" East, 1,281.09 feet; thence South 09°55'55" East, 90.03 feet; thence South 78°30'00" West, 309.80 feet; thence South 11°30'00" East, 113.65 feet; thence South 57°12'27" West, 1,460.00 feet to the common boundary of the said two recorded maps; thence North 00°00'34" East, 1,505.02 feet to THE POINT OF BEGINNING.

Said land also shown as Adjusted Parcel H on Record of Survey to accompany Lot Line Adjustments for Gerald F. Whitmire, recorded on December 23, 1988, in Book 1288, at Page 3152, as Document 193174, Official Records of Douglas County, Nevada, and on Amended Record of Survey Map for Donald S. and Kristen Forrester, recorded on October 14, 2005, in Book 1005, at Page 6506, as Document 657826, Official Records of Douglas County, Nevada.

The above legal description was taken from Instrument recorded on October 13, 2005, in Book 1005, at Page 7854, as Document 0658097, Official Records of Douglas County, Nevada.

APN 1219-14-001-003

Forester Legal Description
Exhibit B.7

A parcel of land located within a portion of Section 14, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel 2 as shown on the Land Division Map for Gerald F. and Pamela F. J. Whitmire, as recorded on December 4, 1986, in Book 1286, at Page 552, as Document 146147, and also shown as the Northwest corner of Parcel J as shown on the Record of Survey for the Run Around Ranch as recorded on March 7, 1973, in Book 373, at Page 133, as Document 64581, Official Records of Douglas County, Nevada; thence along the boundary of the said two recorded maps, South $00^{\circ}00'34''$ West, 1,515.79 feet to THE POINT OF BEGINNING; thence continuing along said boundary $00^{\circ}00'34''$ West, 1,094.49 feet; thence South $89^{\circ}52'46''$ East, 1,020.56 feet; thence South $15^{\circ}47'16''$ East, 226.21 feet; thence North $89^{\circ}52'46''$ West, 1,932.04 feet; thence North $24^{\circ}45'26''$ West 923.33 feet; thence South $64^{\circ}25'28''$ West, 1,120.70 feet; thence North $25^{\circ}34'38''$ West, 231.66 feet; thence North $25^{\circ}39'21''$ West, 181.34 feet; thence North $64^{\circ}25'38''$ East, 1,126.86 feet; thence North $23^{\circ}54'16''$ East, 740.05 feet; thence South $62^{\circ}24'57''$ East, 1,252.18 feet to the POINT OF THE BEGINNING, the common boundary of said two recorded maps.

This legal description was previously recorded on April 11, 2006, in Book 0406, at Page 3621, as Document 0672498, Official Records of Douglas County, Nevada.

APN 1219-14-001-012

**Pestana Legal Description
Exhibit B.8**

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

All that certain lot, piece, parcel or portion of land situate, lying and being within the NW 1/4 of Section 14 and the NE 1/4 of Section 15, Township 12 North, Range 19 East, MDBM, Douglas County, Nevada, also being a portion of Adjusted Parcel 1 as shown on the Record of Survey for Gerald F. Whitmire, recorded on December 23, 1988, in Book 1288, at Page 3152, as Document 193174, Official Records of Douglas County, Nevada and more particularly described as follows:

Commencing at the northeast corner of Parcel 2 as shown on the Map of Division of Land Into Large Parcels for Gerald F. and Pamela F. J. Whitmire recorded on December 4, 1986, in Book 1286, on Page 552, as Document 146147, Official Records of Douglas County, Nevada;

thence along the northerly line of Parcels 1 and 2 of said Map North 09°52'00" West a distance of 1,239.83 feet to the northwest corner of said Parcel 1;

thence along the northwesterly line of said Parcel 1 South 48°55'15" West a distance of 1,016.00 feet to the TRUE POINT OF BEGINNING;

thence continuing along said line South 48°55'15" West a distance of 829.82 feet;

thence South 25°39'21" East a distance of 63.00 feet;

thence South 64°20'39" West a distance of 200.14 feet to a point on the northeasterly line of Sheridan Lane;

thence along said line South 25°39'21" East a distance of 822.52 feet;

thence leaving said line North 64°42'38" East a distance of 653.44 feet;

thence South 25°39'21" East a distance of 1.20 feet to a point on the southeasterly line of aforesaid Adjusted Parcel of Document 193174;

thence along said line North 64°25'38" West a distance of 473.46 feet; thence leaving said line North 32°09'36" West a distance of 1,119.48 feet to the TRUE POINT OF BEGINNING and containing 23.76 acres, more or less.

APN 1219-14-001-014 (Adjusted APN 19-212-41)

The above legal description was previously recorded on August 23, 1993, in Book 0893, at Page 4443, as Document 313764, Official Records of Douglas County, Nevada.

GRANT, BARGAIN, SALE DEED

ORDER NO.: 5

THIS INDENTURE WITNESSETH: That JUNE IRENE ROLPH, an unmarried woman dealing with
her undivided 1/2 interest; and NANCY ROLPH WELCH, a married woman as her sole
and separate property dealing with her undivided 1/2 interest
in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____
County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 217,
DOCUMENT NO. 129026.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
any reversions, remainders, rents, issues or profits thereof.

Witness my hand this 29th day of October, 19 87.

STATE OF NEVADA

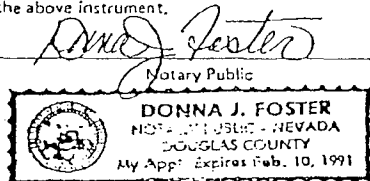
COUNTY OF Douglas

SS

June Irene Rolph
June Irene Rolph

On October 29, 1987
personally appeared before me, a Notary Public,
June Irene Rolph

who acknowledged that she executed
the above instrument.



The grantor(s) declare(s):
Documentary transfer tax is \$ -0- #3
() computed on full value of property conveyed, or
() computed on full value less value of liens and
encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. Whitmire
P.O. Box 2808
Minden, Nevada 89423

FOR RECORDER'S USE

166045

BOOK 1187 PAGE 1129

654

GRANT, BARGAIN, SALE DEED

ORDER NO.: _____

THIS INDENTURE WITNESSETH: That NANCY ROLPH WELCH, a married woman as her
sole and separate property dealing with her undivided 1/2 interest

in consideration of \$ -0-, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and

Convey to GERALD F. WHITMIRE and PAMELA F. J. WHITMIRE, husband and wife
as Joint Tenants with right of survivorship

and to the heirs and assigns of such Grantee forever, all that real property situated in the _____

County of Douglas, State of Nevada, bounded and described as follows:

SEE "LEGAL DESCRIPTION" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

THIS DOCUMENT IS BEING RECORDED FOR THE SOLE PURPOSE OF TRANSFERRING ANY
 AND ALL WATER RIGHTS APPURTENANT TO THE HEREIN DESCRIBED PROPERTY, THAT
 WERE RESERVED OUT IN DEED RECORDED JANUARY 6, 1986, IN BOOK 186, PAGE 214,
 DOCUMENT NO. 129025.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof.

Witness my hand this 16 day of OCT, 19 87.

STATE OF NEVADA CALIFORNIA

COUNTY OF SAN MATEO

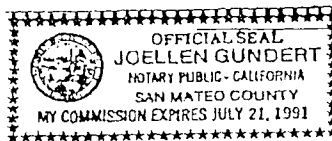
SS

Nancy Rolph Welch
 Nancy Rolph Welch

On OCTOBER 26, 1987
 personally appeared before me, a Notary Public,
Nancy Rolph Welch

who acknowledged that she executed
 the above instrument.

Joellen Gundert
 Notary Public



WHEN RECORDED MAIL TO:

Mr. & Mrs. Gerald F. Whitmire

P.O. Box 2803

Minden, Nevada 89423

FOR RECORDER'S USE

The grantor(s) declare(s):

Documentary transfer tax is \$ -0-

() computed on full value of property conveyed, or

() computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

166045

BOOK 1187 PAGE 1130

LEGAL DESCRIPTION

PARCEL ONE:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, to the POINT OF BEGINNING, thence South 00°00'34" West, 805.22 feet; thence South 42°31'00" East, 178.75 feet; thence South 27°26'00" East, 251.48 feet; thence North 28°02'20" East, 236.69 feet; thence South 88°40'00" East, 767.39 feet; thence North 11°30'00" West, 986.79 feet; thence South 89°52'00" East, 315.96 feet; thence South 11°37'30" East, 1281.09 feet; thence South 09°55'53" West, 1376.87 feet; thence North 89°52'46" West 1730.26 feet; thence North 00°00'34" East, 543.00 feet; thence North 72°07'14" West, 1481.17 feet; thence South 64°25'38" West, 1126.86 feet; thence North 25°39'21" West, 826.95 feet; thence North 64°20'39" East, 200.06 feet; thence North 25°30'21" West, 63.00 feet; thence North 48°55'15" East, 1846.02 feet; thence South 89°52'00" East, 1239.83 feet to the POINT OF BEGINNING.

PARCEL TWO:

A portion of the North one-half (N ½) and the South one-half (S ½) of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline & Meridian, Douglas County, Nevada, described as follows:

Commencing at the North one-quarter (N 1/4) corner of said Section 14 as set forth on that certain Record of Survey for the "Run Around Ranch," that was filed for record in the office of the County Recorder of Douglas County, Nevada, on the 7th day of March, 1973, in Book 373, at Page 133, as Document No. 64581; thence South 00°08'39" West, 33.00 feet, thence South 00°00'34" West, 2,100.23 feet to the POINT OF BEGINNING, thence continuing South 00°00'34" West, 543.00 feet; thence South 89°52'46" East, 1020.56 feet; thence South 15°47'16" East, 226.21 feet; thence North 89°52'46" West, 1932.04 feet; thence North 24°45'26" West, 923.33 feet; thence South 64°25'28" West, 1120.70 feet; thence North 25°34'38" West, 231.66 feet; thence North 25°39'21" West, 181.34 feet; thence North 64°25'38" East, 1126.86 feet; thence South 72°07'14" East, 1481.17 feet to the POINT OF BEGINNING.

PERFECTED BY
STEWART TITLE OF DOUGLAS COUNTY

IN OFFICIAL RECORDS OF
DOUGLAS COUNTY, NEVADA

87 MAY -9 P4:53

SUZANNE B. MOREAU
RECORDER

DEPUTY

166045

BOOK 1187 PAGE 1131

JOINT TENANCY DEED

THIS INDENTURE WITNESSETH: That GERALD F. WHITMIRE and PAMELA F. WHITMIRE
~~husband and wife as Joint Tenants~~

in consideration of \$ 10.00 (TEN), the receipt of which is hereby acknowledged, do hereby Grant Bargain Sell and
 Convey to DONALD S. FORRESTER and KRISTINA M. FORRESTER, husband and wife
~~as Joint Tenants~~

as joint tenants with right of survivorship, and not as tenants in common, all that real property situated in the _____
 County of DOUGLAS State of Nevada, bounded and described as follows:

SEE "EXHIBIT A" LEGAL DESCRIPTION, ATTACHED HERETO AND MADE A PART
 HEREOF BY REFERENCE.

ASSESSOR'S PARCEL NO. 19-212-32.

TOGETHER WITH AND INCLUDING ANY AND ALL WATER RIGHTS APPURTENANT HERETO.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and
 any reversions, remainders, rents, issues or profits thereof To have and to hold the said premises unto the Grantees, and to the
 survivor of them, and to the heirs and assigns of such survivor forever

Witness OUR hand S ON this 11th day of September, 19 87.

STATE OF NEVADA

COUNTY OF Douglas) SS

On August 11, 1987

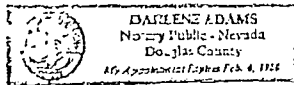
personally appeared before me, a Notary Public,

Gerald F. Whitmire and

Pamela F. Whitmire

who acknowledged that they executed
 the above instrument.

Darlene Adams
 Notary Public



The grantor(s) declare(s):

Documentary transfer tax is \$ 162.80

☒ computed on full value of property conveyed, or

☐ computed on full value less value of liens and
 encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

same as above

Sheerin & O'Reilly
 Attorneys at Law
 P. O. Box 603
 Carson City, Nevada 89701
 P. O. Box 1327
 Gardnerville, Nevada 89410

Gerald F. Whitmire
 Gerald F. Whitmire
Pamela F. Whitmire
 Pamela F. Whitmire

ORDER NO.

ESCROW NO.

WHEN RECORDED MAIL TO:

Mr. & Mrs. Donald S. Forrester

5745 Avenida Estorio

Long Beach, CA 90814

FOR RECORDER'S USE

163488

BOOK 987 PAGE 4989

"EXHIBIT A"

LEGAL DESCRIPTION

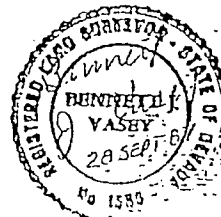
A parcel of land located within a portion of Section 14, Township 12 North, Range 19 East, Mount Diablo Baseline and Meridian, Douglas County, Nevada, described as follows:

Commencing at the Northeast corner of Parcel No. 2 as shown on the Land Division Map for Gerald F. and Pamela F. J. Whitmore as recorded in Book 1266 on Page 552 as Document No. 146147 and also shown as the Northwest corner of Parcel J as shown on the Record of Survey for "Run Around Ranch" as recorded in Book 373 on Page 133 as Document No. 64581, Douglas County, Nevada, Recorder's Office; thence along the boundary of the said two recorded maps South 00 00' 34" West, 2067.28 feet to THE POINT OF BEGINNING; thence continuing along said boundary South 00 00' 34" West, 543.00 feet; thence South 89 52' 46" East, 1020.56 feet; thence South 15 47' 16" East, 226.21 feet; thence North 89 52' 46" West, 1932.04; thence North 24 45' 26" West, 923.33 feet; thence South 64 25' 28" West, 1120.70 feet; thence North 25 34' 38" West, 231.66 feet; thence North 25 39' 21" West, 181.34 feet; thence North 64 25' 38" East, 1126.86 feet; thence South 72 07' 14" East, 1481.17 feet to THE POINT OF BEGINNING, the common boundary of said two recorded maps,

REQUESTED BY
STEWART TITLE OF DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO. NEVADA

87 SEP 30 P3:13

SUZANNE BEAUDREAU
RECORDER
S. *PAUL R. P.* DEPUTY



August 14, 1987

163488

987 PAGE 4990

Case No.: 08-CV-0363-D

Dept. No.: I

This document does not contain personal information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**AFFIDAVIT OF J.W. BENTLEY IN
SUPPORT OF MOTION TO STRIKE, OR
IN THE ALTERNATIVE, OPPOSITION
AND PARTIAL JOINDER TO MOTION
FOR DIVISION OF WATER AND FOR
REMAND AND REFERENCE TO STATE
ENGINEER FOR FURTHER EVIDENCE**

COMES NOW JAMES W. BENTLEY, who being first sworn, duly deposes and says:

1. That I am over the age of 18 of eighteen, and a party to the above identified sub-proceeding. That I have first hand knowledge of the facts recited herein, the same are true and correct, and I am competent to testify to these facts if called upon to do so.

2. That my wife, Maryann, and I, through our family trust, are the owners of that real property alternatively identified as APN 1219-14-001-013 and Adjusted Parcel 1 as shown on the Record of Survey to Accompany a Boundary Line Adjustment that was filed in the Official Records of Douglas County, Nevada, on 4 January 1986, at Book 196, Page 787, Document No. 378278. We acquired that property on 16 May 2006 from Theodore Weber and Katherine A. Weber. The property contains 12.93 acres more or less.

///

///

1 3. That prior to our purchase of our property, the Webers submitted proofs of claim
2 for irrigation and stock water and wildlife purposes for the North Branch of Sheridan Creek and
3 Stutler Creek. Those proofs of claim are identified as 06305, 06306, 06307 and 06308.

4 4. That the water from Gansberg Spring and Stutler Creek mingles with the water of
5 Sheridan Creek, such that all three (3) sources combine for what is essentially one (1) creek.
6 However, Sheridan Creek is splits into a North Branch and South Branch above my property. The
7 above identified proofs of claim, as well as the proofs of claims relating to the Intervenor's
8 properties, relate to the water rights from the North Branch of Sheridan Creek. I have asked for a
9 diversion device in the *Amended Notice of Exceptions and Exceptions* to ensure a more accurate
10 division of the water between the North Branch and South Branch of Sheridan Creek.

11 5. That those proofs of claim 06305, 06306, 06307, 06308 have been approved, with
12 minor exceptions, for a total of between 14.32 and 19.27 acre feet of water rights, for approved
13 acreage of between 9.61 and 12.93 acres, pursuant to the Order of Final Determination (*See Final*
14 *Order of Determination*, pps. 50, 53, 54, Tables 5 and 6, and Part VIII "Proofs Determined to Be
15 Valid"). The precise amount and some minor discrepancies are the subject the *Amended Notice of*
16 *Exceptions and Exceptions* filed on 25 March 2009. Intervenor's have not objected to this
17 approved amount, which is almost 1/3rd of the flow from the above-identified sources.

18 6. That I have never appropriated more than this approved amount, and any claims to
19 the contrary are false and reckless.

20 7. Intervenor's have made repeated attempts to prevent any flow from reaching the
21 ponds on my property. Specifically, Donald Forrester has trespassed on my property on numerous
22 occasions to close the headgates entirely. I have also caught him trespassing on parts of my
23 property that are removed from the ditch system and diversion boxes. That on at least one
24 occasion, he tried to cause malicious damage to my pond and the pipes that carry the water to the
25
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1 pond by sticking bricks down the pipe. I also believe that Mr. Forrester appropriates water far in
2 excess of his approved amount.

3 8. That a rotation schedule would decrease the total amount of water reaching the
4 properties served by the above-identified sources, including specifically Mr. Roberson's property.
5 This is so, because the water seeps into the ditches when dry. The ditch from my property through
6 Roberson's property is approximately 6234 feet. I have personally observed
7 that when the ditch is dry, it may take as much as 2 days for Sheridan Creek, at full flow, to reach
8 Mr. Roberson's property.

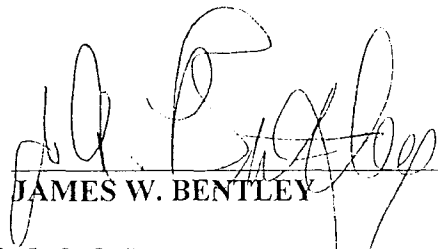
9 9. That when Mr. Forrester stops the flow of water to my property, it necessarily stops
10 or decreases the flow to the properties owned by his fellow Intervenor, including specifically Mr.
11 Roberson. This also allows the ditches to dry out. Mr. Roberson can draw water from my second
12 pond, which was full of water and had mature trees and willows when my wife and I bought the
13 property. I have informed Mr. Roberson that I am willing to alter the gate to allow a continuous
14 flow to his property. I am still willing to do this, although I will not be able to do so if Mr.
15 Forrester continues to interfere with my rightful flow.

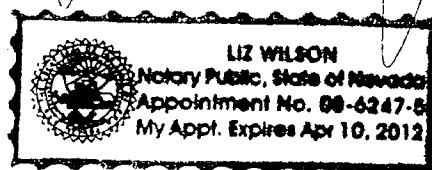
16 10. That to the best of my knowledge, information and belief, R. Michael Turnipseed
17 has not prepared a seepage test. I never told Tom Hall or any of the other Intervenor that Mr.
18 Turnipseed performed a seepage test. Likewise, neither Mr. Hall nor any of the other Intervenor
19 ever asked for the seepage test results or report.

20 DATED this 19th day of January 2010.

21 SUBSCRIBED and SWORN to before me
22 this 19th day of January 2010.

23
24
25
26
27
28 Notary Public


JAMES W. BENTLEY



RECEIVED

FILED

Case No.: 08-CV-0363-D

JAN 21 2010

Dept. No.: I

DOUGLAS COUNTY
DISTRICT COURT CLERK

2010 JAN 21 AM 11:30

TED THIRAN
CLERK

This document does not contain personal information of any person.

BY: _____ DEPUTY
K. WILFERT

IN THE NINTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the)
Relative Rights in and to the Waters of Mott)
Creek, Taylor Creek, Cary Creek (aka Carey)
Creek), Monument Creek, and Bulls Canyon,)
Stutler Creek (aka Stattler Creek), Sheridan)
Creek, Gansberg Spring, Sharpe Spring,)
Wheeler Creek No. 1, Wheeler Creek No. 2,)
Miller Creek, Beers Spring, Luther Creek and)
Various Unnamed Sources in Carson Valley,)
Douglas Valley, Nevada.)

**REPLY TO OPPOSITION TO MOTION
TO STRIKE**

COME NOW J.W. BENTLEY and MARYANN BENTLEY, Trustees of the Bentley Family Trust 1995 Trust ("Bentley"), by and through their counsel of record, Michael L. Matuska, Brooke · Shaw · Zumpft, and hereby reply to the Opposition filed by HALL RANCHES, LLC, DONALD S. FORRESTER and KRISTINA M. FORRESTER, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, and SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada limited liability company, (collectively, "Intervenors") to Bentley's Motion to Strike Intervenors' *Errata and Supplement to Opposition to Motion to Dismiss or, in the Alternative, to Redesignate Affirmataive Defenses and Counterclaims* ("Errata").

1. Procedural Posture

Intervenors filed their *Response and Objections to Notice of Exceptions and Exceptions to Final Order of Determination* ("Initial Pleading") on 19 November 2009. Intervenors' Initial Pleading contained only affirmative defenses, failed to allege any claim with the requisite particularity required by the Nevada Rules of Civil Procedure, raised issues that are beyond the scope of this water rights adjudication process, and was different than the pleading they requested

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1 leave to file. Bentley therefore filed the *Motion to Dismiss or, In the Alternative, to Redesignate*
2 *Affirmative Defenses as Counterclaims*. Intervenor's opposed that motion on 18 December 2009.
3 Their opposition contained almost entirely new assertions of fact, which is improper for an
4 opposition to a motion to dismiss. The State Engineer filed a *Partial Opposition* on
5 18 December 2009, which confirmed that Intervenor's are not aligned with the State Engineer
6 regarding the Water Diversion and Use Agreement because the State Diversion has not even taken
7 a position on that issue. Bentley filed its *Reply to Opposition to Motion to Dismiss or,*
8 *In the Alternative, to Redesignate Affirmative Defenses as Counterclaims* ("Reply") on
9 31 December 2009.

10 At the same time Bentley prepared its Reply for filing, Bentley's counsel received another
11 brief from Intervenor's, this one entitled *Errata and Supplement to Opposition to Motion to*
12 *Dismiss or, in the Alternative, to Redesignate Affirmative Defenses as Counterclaims* ("Errata").
13 Intervenor's' latest brief is not so much an Errata as it is an entirely new theory and argument
14 regarding the chronology of the underlying chain of title concerning the Water Diversion and Use
15 Agreement. As such, it is essentially an improper, second opposition to *Bentley's Motion to*
16 *Dismiss*. Intervenor's' second brief on the same issue was filed without leave of court and in direct
17 violation of DCR 15(3), which contemplates a single opposition brief and should be stricken for
18 that reason. Moreover, Intervenor's' allegations of fact are irrelevant to the *Motion to Dismiss* and
19 do not constitute an opposition in the first place. Intervenor's' "Errata" should be stricken for that
20 reason, as well. Bentley therefore filed its *Motion to Strike* on 11 January 2010. Intervenor's filed
21 their *Opposition to the Motion to Strike* on 19 January 2010. This reply follows.

22 2. **Intervenor's' "Errata" Was a Second Opposition That Contained New**
23 **Arguments**

24 Intervenor's do not rebut the central point of Bentley's Motion to Strike – that Intervenor's'
25 Errata contained new information and new, substantive arguments that were not raised in
26 Intervenor's' Opposition to Bentley's Motion to Dismiss. Therefore, when Intervenor's raise new
27 arguments by way of an "Errata" after Bentley has already filed its reply brief, Intervenor's have
28 effectively denied Bentley the right to rebut those arguments. Intervenor's have been doing this

1 repeatedly in these proceedings. Intervenor's new arguments must either be stricken, or Bentley
2 must have the right to file an additional reply. The need for a further reply has already been
3 demonstrated – there is no legal basis for Intervenor's complaints against Bentley, and
4 Intervenor's assertions of fact are reckless and false. Intervenor's argument that Bentley is
5 complicating what should be a simple procedure is misplaced. It is the Intervenor who cannot
6 follow the rules of civil procedure or the local rules, and necessitate additional briefing on almost
7 every issue.

8 3. Intervenor's Are Interfering With the Adjudication Process By Filing
9 Pleadings and Briefs on Issues that Are Extraneous to the
10 Adjudication

11 Rather than address the fact that Intervenor's "Errata" is not authorized by any rule of
12 procedure, Intervenor's try and make further argument about the jurisdiction of the Court in this
13 adjudication process. Ironically, Bentley agrees with Intervenor's observation that "the purpose of
14 these proceedings is to ascertain [the claimants'] respective rights by a simple, economical,
15 effective, and comprehensive proceeding" (Opposition at p. 2, lls. 20-21) (*quoting In re*
16 *Water Rights in Silver Creek*, 57 Nev. 232, 237-38, 60 P.2d 987). The purpose of these
17 proceedings is to "ascertain [the claimants'] respective rights" to the waters of Sheridan Creek.
18 This is exactly what Bentley has argued in the various briefs filed to date. None of the issues
19 raised in the Intervenor's Initial Pleading concern the respective rights of the claimants to the
20 waters of Sheridan Creek. Intervenor's are not contesting either the quantity of Bentley's approved
21 acreage or its allotted rights. Rather, Intervenor's have raised entirely new issues concerning
22 Bentley's second pond (at least five [5] ponds are depicted in the Water Diversion and Use
23 Agreement), lack of a pond permit (none required), and a Water Diversion and Use Agreement.
24 They have recently raised additional arguments concerning a seepage report and a rotation
25 schedule. Intervenor's arguments have nothing to do with the adjudication of the "claimants'
26 respective rights" to the waters of Sheridan Creek.

27 Moreover, because Intervenor's continue to file briefs that are not authorized regarding
28 issues that are extraneous to the Final Order of Determination and Bentley's Notice of Exceptions
and Exceptions, Intervenor's have unduly complicated this simple process and delayed the
666

1 resolution of Bentley's exceptions. It now appears that delay is Intervenor's true aim, rather than a
2 decision on the Water Diversion and Use Agreement, which is outside of the scope of this water
3 rights adjudication proceeding and which cannot be set aside for a number of reasons.
4 If Intervenor truly wanted a prompt resolution of their effort to quiet title to the Water Diversion
5 and Use Agreement, then they would have filed a quiet title action. Under no circumstance should
6 that quiet title action be part of the "simple, economical" procedures for the adjudication of the
7 respective rights of the claimants to the waters of Sheridan Creek.

8 Viewed in this light, Bentley is not simply "quibbling over procedures outlined by the
9 Court at the Hearing held April 1, 2009 . . ." as alleged by the Intervenor (Opposition at p. 2,
10 lls. 24-26). Intervenor's Initial Pleading (actually, affirmative defenses) was not before the Court
11 at the time of the hearing, and was not even mentioned. The current dispute is whether
12 Intervenor's Initial Pleading should even be part of these proceedings. Intervenor is delaying
13 progress on Bentley's exceptions by interjecting the issues raised in that pleading into the
14 adjudication process.

15 Intervenor knows that their effort to quiet title cannot withstand the pleading requirements,
16 discovery rules, motion practice, and evidentiary standards applicable in civil court. That is why
17 they are hoping for a more lenient forum, and are trying to convince the Court to hear their quiet
18 title action as a sort of simplified, summary proceeding. Bentley does not agree that the
19 procedures in this adjudication process are more lenient, and in fact, NRS 533.170(c) incorporates
20 the Nevada Rules of Civil Procedure. This includes the pleading requirements of NRCP 7 and 8.
21 Intervenor's Initial Pleading, which contains only affirmative defenses, is not an authorized
22 pleading. Consequently, it must be dismissed. This would have to be the result regardless of
23 whether Intervenor filed their Initial Pleading as a new quiet title action or as affirmative defenses
24 in this water rights adjudication proceeding.

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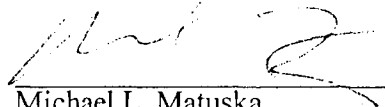
1 In conclusion, Intervenor did not rebut the argument that their "Errata" is an unauthorized,
2 second bite of the apple, filed without leave of court, that would deny Bentley the opportunity to
3 file a rebuttal if it were allowed to stand. It now appears that Intervenor agree with Bentley that
4 these proceedings should concern the respective rights of the claimants to the waters of Sheridan
5 Creek. All extraneous matters should be dismissed. The mere fact that this Court permitted
6 Intervenor's to file their Initial Pleading does not mean that the Initial Pleading is immune to a
7 motion to dismiss. This is particularly true where Intervenor have raised extraneous matters by
8 way of affirmative defenses that are not part of any authorized pleading.

9 Respectfully submitted.

10 DATED this 21st day of January 2010.

11 BROOKE · SHAW · ZUMPFT

12 By:

13 
14 Michael L. Matuska
15 State Bar No. 5711
16 1590 4th Street/P.O. Box 2860
17 Minden NV 89423
18 (775) 782-7171
19 (775) 782-3081 (Fax)
20
21
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24
25
26
27
28

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POST OFFICE BOX 2360
MINDEN, NEVADA 89423
(775) 782-7171

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BROOKE · SHAW · ZUMPFT and that on the 21st day of January 2010, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION TO STRIKE** addressed to:

STATE OF NEVADA
Department of Conservation and Natural
Resources
Division of Water Resources
Office of the State Engineer
901 South Stewart Street, Suite 2002
Carson City NV 89701

Thomas J. Hall, Esq.
305 South Arlington Avenue
P.O. Box 3948
Reno NV 89505-3948

Bryan L. Stockton
Deputy Attorney General
100 North Carson Street
Carson City, NV 89701

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document at Minden, Nevada, in the ordinary course of business.

☐ **BY FACSIMILE:** I transmitted via facsimile from the offices of Brooke · Shaw · Zumpft the above-identified document in the ordinary course of business to the individual and facsimile numbers indicated.


LIZ STERN, ALS

1 Case No.: **08-CV0363-D**

2 Department No.: **1**

3
4
5
6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR COUNTY OF DOUGLAS**
8

9 In the Matter of the Determination of the)
10 Relative rights in and to the Waters of Mott)
11 Creek, Taylor Creek, Cary Creek (AKA Carey)
12 Creek), Monument Creek, and Bulls Canyon,)
13 Stutler Creek (AKA Stattler Creek), Sheridan)
14 Creek, Gansberg Spring, Sharpe Spring,)
15 Wheeler Creek No. 1, Wheeler Creek No. 2,)
16 Miller Creek, Beers Spring, Luther Creek and)
17 Various Unnamed Sources in Carson Valley,)
18 Douglas County, Nevada.)

19 **RESPONSE TO MOTION FOR DIVISION OF WATER AND FOR REMAND AND**
20 **REFERENCE TO STATE ENGINEER FOR FURTHER EVIDENCE, AND**
21 **RESPONSE TO REQUEST FOR EXPEDITED HEARING.**
22

23 The State of Nevada, and Tracy Taylor, P.E., in his capacity as State Engineer of
24 Nevada, and Jason King in his capacity as acting State Engineer, by and through their
25 counsel, Attorney General Catherine Cortez Masto and Senior Deputy Attorney General Bryan
26 Stockton, hereby respond to the Motion for Division of Water and for Remand and Reference
27 to State Engineer for Further Evidence, and also respond to the Request for Expedited
28 Hearing filed January 8, 2010.

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1 **POINTS IN RESPONSE**

2 The Motion and Request at issue do not really prejudice the State Engineer in any way
3 in regard to this litigation. However, the parties to Subpart D have filed a number of Motions
4 that have added unneeded complexity to the case. See, Motion to Strike filed by Bentley on
5 or about January 11, 2010, p. 4. The State Engineer does not oppose the hearing requested
6 by Forester, but would suggest that the hearing address the issues to be determined by the
7 Court in Subpart D. The only issues clearly presented are those raised in the Bentley
8 Exceptions to the State Engineer's Final Order of Determination.

9 **Request for Expedited Hearing**

10 The current "bone of contention" between the parties is the amount of water loss from
11 the newly constructed Bentley pond. The State Engineer has concerns that the loss from the
12 pond is excessive. If one-third of the waters of Sheridan Creek are leaching out of the pond
13 as alleged by Forester, then this could be a waste of water. As the decree Court, this Court
14 has taken jurisdiction over the water rights at issue herein and should properly decide all
15 issues related thereto. *Mineral County v. Dept. of Conservation and Natural Resources*, 117
16 Nev. 235, 244, 20 P.3d 800, 806 (2001) ("The general rule is that the first court, whether state
17 or federal, which assumes jurisdiction over real property is entitled to maintain continuing and
18 exclusive jurisdiction over that property.").

19 Disputes concerning title to water are outside the jurisdiction of the State Engineer.
20 NRS 533.386(4). The appropriate mechanism to determine title is an action in the district
21 court between the record owners of the water rights and the putative owners of the water
22 rights. NRS 40.010 ("An action [at law] may be brought by any person against another who
23 claims an estate or interest in real property, adverse to him, for the purpose of determining
24 such adverse claim."). The District Courts of Nevada have exclusive original jurisdiction over
25 real property matters NEV. CONST. ART. 6, §6 (See also NRS 4.370 (2)). A quiet title action is
26 obviously appropriate. See, *Adaven Management, Inc. v. Mountain Falls Acquisition Corp.*,
27 124 Nev. Adv. Op. 67, 191 P.3d 1189 (2008).

28 ///

1 Therefore, State Engineer encourages the Court to consider a pre-hearing conference
2 or a hearing to help define the issues to be decided in Subpart D so that the efforts of the
3 parties may be properly focused.

4 **Water Loss Study**

5 The State Engineer has been ordered by the governor of the State of Nevada to trim its
6 budget several times in the last year. Budget shortfalls have caused the state to implement
7 furlough days for employees, and when employees leave state service, many positions remain
8 vacant. The Division of Water Resources currently does not have the staff to conduct a study
9 of the kind requested by Forrester without significant disruption to its operation and duties in
10 enforcing the Water Law of the state.

11 The study requested by Forester could be somewhat expensive if conducted by a
12 consultant. In discussing the issue internally within the State Engineer's office, there may be
13 a simple method for the parties to have a rough estimate that would suffice for purposes of
14 these proceedings. The parties are scheduled to meet on January 29, 2010 and could
15 discuss this matter.


16 **CONCLUSION**

17 The State Engineer does not oppose or support the conduct of a study, nor the
18 scheduling of a hearing, but encourages this Court to consider a pre-hearing conference or a
19 hearing to focus the issues.

20
21 DATED this 21st day of January, 2010.

22 CATHERINE CORTEZ MASTO
23 Attorney General

24 By:


25 BRYAN L. STOCKTON
26 Senior Deputy Attorney General
27 Nevada State Bar #4764
28 100 North Carson Street
Carson City, Nevada 89701
(775) 684 -1228

CERTIFICATE OF MAILING

I certify that I Sandie Geyer, an employee of the Office of the Attorney General, State of Nevada, and that on this 21st day of January 2010, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the foregoing **RESPONSE TO MOTION FOR DIVISION OF WATER AND REMAND; REQUEST FOR EXPEDITED HEARING**, addressed to the following:

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Hall Ranches, LLC
P.O. Box 3948
Reno, Nevada 89505

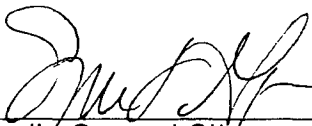
Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

Brooke, Shaw Zumpft
Jennifer Yturbide, Esq.
P.O. Box 2860
Minden, Nevada 89423

Frank Scharo
P.O. Box 1225
Minden, Nevada 89423

Ronald R. Mitchell
Ginger G. Mitchell
P.O. Box 5607
Stateline, Nevada 89449


Sandie Geyer, LSII

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR DOUGLAS COUNTY**

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.

24 REPLY IN SUPPORT OF MOTION FOR DIVISION OF WATER AND FOR REMAND
25 AND REFERENCE TO STATE ENGINEER FOR FURTHER EVIDENCE AND
26 OPPOSITION TO MOTION TO STRIKE

27 Come now, DONALD S. FORRESTER and KRISTINA M. FORRESTER,
28 HALL RANCHES, LLC, a Nevada Limited Liability Company, THOMAS J.
SCYPHERS and KATHLEEN M. SCYPHERS, FRANK SCHARO, SHERIDAN CREEK
EQUESTRIAN CENTER, LLC, a Nevada Limited Liability Company, and
RONALD R. MITCHELL and GINGER G. MITCHELL ("Intervenors"), by
and through their counsel, THOMAS J. HALL, ESQ., and hereby

1 submit their Reply in Support of the Motion for Division of
2 Water and for Remand and Reference to State Engineer for Further
3 Evidence and their Opposition to Motion to Strike and in support
4 thereof state:

5 **A. Nevada Statutory Water Law Controls.**

6 Almost a century ago, in 1913, the Nevada Legislature
7 adopted the Nevada Water Code. Within the Nevada Water Code is
8 NRS 533.230 which provides:

9
10 533.230. Division of water by State Engineer during
11 time order of determination is pending in district
12 court.

13 From and after the filing of the order of
14 determination, evidence and transcript with the county
15 clerk, and during the time the hearing of the order is
16 pending in the district court, the division of water
from the stream involved in such determination shall
be made by the State Engineer in accordance with the
order of determination. [Emphasis added.]

17 In State Ex Rel. Hinckley v. District Court, 53 Nev. 343, 1
18 P.2d 105 (1931), the Nevada Supreme Court held that the waters
19 of the Humboldt River subject to an order of determination could
20 be properly and legally distributed by the State Engineer only
21 when done in accordance with the terms of the order. In the
22 course of its opinion, the Court stated (53 Nev. at 352-53):

23 In determining this question, we must look to the
24 intention of the legislature in enacting the water
25 law. In Vineyard Land & Stock Co. v. District Court,
26 42 Nev. 1, 171 Pac. 166, we held that the proceeding
27 under the water law is a quasi public proceeding,
28 wherein all claimants to the use of water of a stream
system may have their claims adjudicated, to the end
that the waters of the stream may be distributed under
public supervision without needless waste or

1 controversy. In other words, it was the intention of
2 the legislature that the people who are entitled to
3 the use of the waters of a stream system actually get
it without needless waste or controversy. The statute
must be interpreted in the light of that intention.

4 * * *

5 Section 38 of the water law as amended (Stats. 1915,
6 p. 381, 382, sec. 8; section 7928, N.C.L.) provides
7 that from and after the filing of the order of
8 determination and during the time the hearing of said
9 order is pending, as in the instant matter, the water
10 of the stream system shall be distributed in
11 accordance with the terms of said order of
12 determination; and section 36 1/2 of the water law as
13 amended (Stats. 1927, p.337; section 7926, N.C.L.)
14 provides that from and after the filing of such order
15 of determination the distribution of the water of such
stream system by the state engineer, his assistants,
the water commissioners or their assistants, shall be
under the supervision and control of the court, and
they shall be deemed officers of the court in
distributing water under and pursuant to the order of
determination or pursuant to a decree of the court.
[Emphasis added.]

16 The Nevada Attorney General has offered the same opinion
17 that the State Engineer should distribute water of river subject
18 to an order of determination according to that order of
19 determination until a court decree is filed. AGO 31-12 (3-10-
20 1931).

21
22 The Nevada Supreme Court has declared in many cases that
23 the Nevada Water Law is specific in character requiring strict
24 compliance. G. & M. Properties v. District Court, 95 Nev. 301,
25 305, 594 P.2d 714 (1979). Here, the Bentleys are misclassifying
26 the Intervenor's request for the division of water according to
27 the Final Order of Determination as a request for a preliminary
28

1 injunction or a quiet title action. The provisions of NRS
2 533.230 are specific and require strict compliance as sustained
3 by the Nevada Supreme Court several times. The non-water case
4 of Number One Rent-A-Car v. Ramada Inns, Inc., 94 Nev. 779, 587
5 P. 2d 1329 (1978), cited by the Bentleys, has no application to
6 this water right case.

7
8 **B. The Bentleys Are Not Without Relief.**

9 The Bentleys are not without relief under the circumstances
10 presented here, to wit:

11 1. The Bentleys could stop diverting water into their New
12 Pond and follow the Final Order of Determination of the State
13 Engineer pending resolution of this case.

14 2. The Bentleys could line their New Pond with an
15 impervious membrane or bentonite clay and make the pond
16 watertight as Mr. Bentley previously promised his neighbors, the
17 Intervenor, at the time the New Pond was constructed.

18 3. The Bentleys could post a bond to stay the Final Order
19 of Determination pursuant to NRS 533.235. Said section provides
20 in pertinent part:

21
22 533.235. Operation of order of determination may be
23 stayed by filing bond with court; conditions of bond;
24 duties of State Engineer.

25 1. At any time after the order of determination,
26 evidence and transcript has been filed with the clerk
27 of the court, the operation of the order of
28 determination may be stayed in whole or in part by any
party upon filing a bond in the court wherein such
determination is pending in such amount as the judge
thereof may prescribe, conditioned that such party

1 will pay all damage that may accrue by reason of such
2 determination not being enforced, pending a decree by
the court.

3 Because the Bentleys have suggested a bond of \$1,500,000 as
4 adequate for their purposes and protection, the Intervenor
5 believe such a bond is adequate for their purposes and
6 protection as well¹.

7 C. Seepage Test.

8 A Seepage Test is needed and important to clarify the water
9 loss from the Bentleys' New Pond. The Intervenor moved the
10 court to refer the matter back to the State Engineer to conduct
11 a Seepage Test, as the State Engineer may perform, or order to
12 be performed, so that a final and impartial finding can be made
13 as to the water loss surrounding the New Pond recently
14 constructed by the Bentleys and the Old Pond constructed by
15 others. The request for referral is specifically authorized
16 under NRS 533.180.
17
18

19 ¹ The Bentleys attach a Grant of Water Pipeline Easement;
20 Affirmation of Pre-Existing Water Pipeline Easement; Abandonment
21 of Easements as Exhibit 1 to their Motion to Strike. Said Grant
22 came about as a result of the Bentleys destroying the
23 Intervenor's water diversion structures and digging up their
24 irrigation pipeline. Upon discovery, the Intervenor inquired of
25 Mr. Bentley as to what he was doing destroying the Intervenor's
26 diversion structures and pipeline. As a result of those
27 discussions, the subject Grant came about whereby an easement
28 crossing the Bentleys' property was abandoned by the Intervenor
and others and two additional easements were granted by the
Bentleys to them to divert water around the perimeter of the
Bentley property. It was at that occasion that Mr. Bentley
promised some of the Intervenor that he would line his New Pond
with an impervious membrane or bentonite clay to make it
watertight.

1 The State Engineer has replied that because of budgetary
2 constraints, "the study requested by Forrester could be somewhat
3 expensive if conducted by a consultant. In discussing the issue
4 internally with the State Engineer's office, there may be a
5 simple method for the parties to have a rough estimate of the
6 water loss that would suffice for purposes of these
7 proceedings." That suggestion will certainly be pursued. The
8 Court also clearly has the authority under NRS 533.175 to employ
9 an expert as follows:
10

11 533.175. **Employment of experts by court.** For further
12 information on any subject in controversy the court
13 may employ one or more qualified persons to
14 investigate and report thereon, under oath, subject to
examination by any party in interest as to his
competency to give expert testimony thereon.

15 At a pre-trial hearing on this matter, the parties should
16 be able to advise the Court as to the optimal and correct
17 procedure. Incidentally, Justin Huntington, Assistant Research
18 Scientist, Desert Research Institute, Reno, Nevada, has been
19 recommended as a suitable consultant and expert.
20

21 **D. Conclusion.**

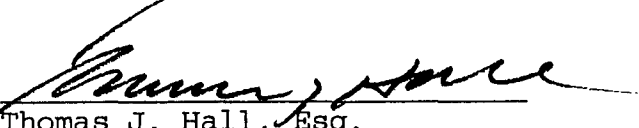
22 The instant Motion for Division of Water and for Remand and
23 Reference to State Engineer for Further Evidence was made
24 specifically pursuant to the Nevada law. It is not disguised as
25 a motion for preliminary injunction as misclassified by the
26 Bentleys. Therefore, there is no basis for the Bentleys' Motion
27 to Strike and the same should be dismissed.
28

1 It is respectfully requested that the Court enter an order
2 requiring the division of the water from Sheridan Creek by the
3 State Engineer to be pursuant to the Final Order of
4 Determination during the pendency of this action and to refer
5 the case to the State Engineer for further evidence in the form
6 of a Seepage Test. If the State Engineer is not able or willing
7 to perform the Seepage Test, to order the Seepage Test to be
8 done by another qualified consultant and expert.
9

10 Further, if the Bentleys wish to stay the operation of the
11 Final Order of Determination, they must be ordered to file a
12 bond pursuant to NRS 533.235.

13 DATED this 25th day of January, 2010.
14

15 LAW OFFICES OF THOMAS J. HALL

16 
17 Thomas J. Hall, Esq.
18 Nevada State Bar No. 675
19 305 South Arlington Avenue
20 Post Office Box 3948
21 Reno, Nevada 89505
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23 Facsimile: 775-348-7211
24
25
26
27
28

AFFIRMATION
(Pursuant to NRS 239B.030)

Case No. 08-CV-0363-D

The undersigned does hereby affirm that the preceding document, **Reply in Support of Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence and Opposition to Motion to Strike**, does not contain the social security number of any person.

DATED this 25th day of January, 2010.

LAW OFFICES OF THOMAS J. HALL

THOMAS J. HALL, ESQ.

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Reply in Support of Motion for Division of Water and for Remand and Reference to State Engineer for Further Evidence and Opposition to Motion to Strike, addressed to:

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State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
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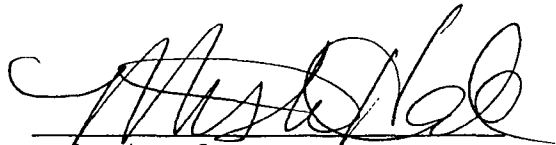
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Frank Scharo
Post Office Box 1225
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Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 25th day of January, 2010.


Misti Hale

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Case No. 08-CV-0363-D
Dept. No. I

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URGENT

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

In the Matter of the Determination of the
Relative rights in and to the Waters of Mott
Creek, Taylor Creek, Cary Creek (aka Carey
Creek), Monument Creek, and Bulls Canyon,
Stutler Creek (aka Stattler Creek), Sheridan
Creek, Gansberg Spring, Sharpe Spring,
Wheeler Creek No. 1, Wheeler Creek No. 2,
Miller Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

ORDER SETTING HEARING

The above-entitled matter is set for: Case Conference/Status Conference

TO COMMENCE on May 17, 2010 at 9:00 a.m.

TIME ALLOWED: 1/2 day

COURT REPORTER REQUESTED:

() No (XX) Yes (XX) Plaintiff (XX) Defendant

DATED this 29th day of March 2010

DAVID R. GAMBLE
DISTRICT JUDGE

1 Copies served by mail this 29th day of March 2010 to:

2 Bryan L. Stockton, Esq.
3 Deputy Attorney General
4 Office of the Attorney General
5 100 North Carson Street
6 Carson City, NV 89701

7 Michael L. Matuska, Esq.
8 P. O. Box 2860
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10 Thomas J. Hall, Esq.
11 P. O. Box 3948
12 Reno, NV 89505

John Thaler

CERTIFIED COPY

Case No. 08-CV-0363-D

Dept. No. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

BEFORE THE HONORABLE DISTRICT COURT JUDGE DAVID R. GAMBLE

---oOo---

In the Matter of the Determination
Of the Relative rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek and Bulls Canyon, Stutler Creek
(Aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring, Wheeler
Creek No. 1, Wheeler Creek No. 2, Miller
Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

PARTIAL TRANSCRIPT OF PROCEEDINGS

CASE CONFERENCE/STATUS CONFERENCE

MONDAY, MAY 17, 2010

MINDEN, NEVADA

APPEARANCES:

For the State Engineer: BRYAN L. STOCKTON, ESQ.
Senior Deputy Attorney General

For the Interveners: THOMAS J. HALL, ESQ.
Attorney at Law

For the Bentleys: MICHAEL L. MATUSKA, ESQ.
Attorney at Law

REPORTED BY: CHRISTY Y. JOYCE, CCR #625
Capitol Reporters
(775)882-5322

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MONDAY, MAY 17, 2010, 9:07 A.M.

---oOo---

THE COURT: This is Case Number 08-CV-0363-D.

This is a portion of the adjudication of the waters of Mott Creek, Sheridan Creek, et cetera.

Show the appearance of Mr. Hall on behalf of the interveners, Mr. Stockton on behalf of the State Engineer and Mr. Matuska on behalf of the Bentleys.

This is a pretrial conference today. It may well be that we end up deciding some motions today.

I have a couple questions to begin with so that I can begin to get a handle on where we are, and they're primarily for Mr. Stockton. Mr. Stockton, it appears that the exceptions by the Bentleys in this case consist of a couple different categories of things. One has to do with what they describe as a rotation schedule, which I'll talk to you about in a minute. But there appear to be two proof numbers or two proofs that they believe have not been included in the State Engineer's final determination.

MR. STOCKTON: As I recall, it was two proof numbers that were incorrect and we agree that it was a typographical error.

THE COURT: Well, I'm looking at page three of the original exceptions document by Mr. Matuska.

MR. STOCKTON: Give me one second to find it,

1 your Honor. Okay. On page three?

2 THE COURT: Yeah. I'm looking at the issue
3 concerning proofs 307 and 308, 6307 and 6308.

4 MR. STOCKTON: And I'm not sure what those are as
5 far as that needs to be developed because we talked about in
6 the --

7 THE COURT: Well, let me say it this way. I'm
8 sorry to interrupt you. I apologize. What Mr. Matuska has
9 asked concerning that is that tables five and six and part
10 eight of the final order called proofs determined to be
11 valid, those have been excluded from that. So his
12 exception -- he alleges those have been excluded from that
13 and his exception asks that those be included in that. Is
14 that pretty much accurate, Mr. Matuska? I don't want you to
15 speak for a long time, but is that what you're talking about?

16 MR. MATUSKA: Yes. And I don't think that they
17 were overlooked in the final determination. I just think
18 they weren't in the final table.

19 THE COURT: Right. You don't think they were
20 overlooked?

21 MR. MATUSKA: I think they're mentioned elsewhere
22 other than the final order. They just aren't on the final
23 table. It's just really a question of precision of that
24 final table.

25 THE COURT: Maybe.

1 MR. STOCKTON: I think that's the same issue we
2 talked about in subpart F. If you have an existing duty of
3 water for your land, your stock water right is subsumed in
4 that duty of water. You don't get an extra amount of water
5 for your cattle.

6 THE COURT: But my point right now is, and I
7 don't want to talk about the merits of it yet, my point is
8 right now that the State Engineer apparently in his order
9 rejected those proofs. Would that be accurate?

10 MR. STOCKTON: No, I don't think so. I think
11 those proofs, they don't get any additional duty of water for
12 those proofs. And my understanding is they were not
13 rejected. It's just you don't get any additional water for
14 those claims and for the stock water claim. The amount of
15 the duty of water for your land, you water your stock out of
16 that and that's the way most of the decrees in this state
17 work.

18 THE COURT: But I've identified the problem. I'm
19 not saying it right. It hasn't been rejected by the State
20 Engineer, but the Bentleys are seeking to have water
21 appropriated pursuant to those proofs?

22 MR. STOCKTON: That's my understanding. They
23 want additional water for stock water and it's not done that
24 way in Nevada.

25 THE COURT: Okay. I know you disagree with that,

1 Mr. Matuska. This is really, really preliminary.

2 MR. MATUSKA: I appreciate that.

3 THE COURT: I'm just trying to figure out where
4 we're at. Okay. So let's leave that for a second.

5 And then the other claim or maybe it's
6 intermingled with this because those may involve the rotation
7 schedule itself. But you've taken the position in your --
8 in a pleading that the State Engineer does not get involved
9 with rotation schedules, I think, or words to that effect.
10 Let me go to that so I can remind you.

11 MR. STOCKTON: If I did say that, that was not my
12 intent.

13 THE COURT: Well, you probably didn't exactly say
14 that. It's in the partial opposition to the motion to
15 dismiss. Okay. Here it is. And this is a pleading that was
16 filed December 8th. It's the partial opposition to the
17 motion to dismiss. That's the name of the pleading. And
18 what it actually says is that the State Engineer takes no
19 position on the pond agreement.

20 Now, Mr. Matuska, let me just ask you is the pond
21 agreement a portion of one of the proofs?

22 MR. MATUSKA: The water -- the 1986 -- the water
23 use and diversion agreement is identified or cross-referenced
24 in the proofs for -- it's cross-referenced in the proofs for
25 stock water and wildlife purposes.

1 THE COURT: And that's 307 and 308?

2 MR. MATUSKA: I'm going to have to double-check,
3 but I believe so, yes, it's cross-referenced in those proofs.

4 THE COURT: Okay.

5 MR. STOCKTON: Can I clarify that, your Honor?
6 What this pleading was intended to do is they have an
7 agreement that was executed at some time to allow the water
8 to go through Mr. Bentley's pond. Whether or not that
9 agreement is valid or not is not the State Engineer's issue.
10 That's a district court issue. However, there's certain
11 terms in the agreement that the State Engineer has to look at
12 such as the agreement says it's to be a non-consumptive use.
13 The complaint is, and I'm not saying it's true or not, that
14 it is a consumptive use, it's a highly consumptive use. So
15 that fact would be part of the State Engineer or the Court's
16 determination. But the actual existence and validity of the
17 pond agreement, the State Engineer is not going to take a
18 position on that at all.

19 THE COURT: Right. I understand that. One of
20 the Bentleys' claims is that that pond agreement or that
21 agreement which provides for water to flow through
22 Mr. Bentley's property in ponds and out of ponds should be
23 the subject of a separate lawsuit. I'm concerned about that
24 because it seems to me that it is, although I understand the
25 difference between a water right and that, it -- and a simple

1 agreement between the parties, it seems to me that there are
2 a lot of considerations about that action, that activity of
3 ponding the water and flowing it through that may or may not
4 have impact on downstream users and may or may not have an
5 effect on this litigation.

6 MR. STOCKTON: And I think that's been our
7 position all along that you as the decree court could hear
8 that issue. And I think you should because I think it's part
9 and parcel of the decree rights. And once the decree is
10 issued, the way it works is you're basically in charge of
11 this water forever after, the Court is. And the State
12 Engineer just acts as a water commissioner to administer it
13 based on whatever level the Court orders the State Engineer
14 to take. And so it's been our position all along that you
15 can as the decree court that you can hear the issues
16 regarding that pond agreement. It's just the State Engineer
17 since it's a title issue won't be taking a position.

18 THE COURT: Okay. Now, one last preliminary
19 question before we start talking about things themselves.
20 The State Engineer -- The interveners have asked that I refer
21 this back for a seepage test on the ponds, a use examination
22 on the activities of the Bentleys. You've indicated as --
23 You've indicated that the State is not in a position to, I
24 guess -- Well, why don't you tell me what you've said about
25 that.

1 MR. STOCKTON: Well, I did say we weren't in a
2 position to do that but I've since found out that -- as you
3 know from prior cases, if you order the study done depending
4 on how extensive it is, the State Engineer has a statute,
5 533.368, order the study done and then order the parties to
6 pay for it. But apparently there's a fairly simple way to do
7 the test and so my client is willing to take that on, right,
8 I think?

9 MR. WALMSLEY: Yeah. We --

10 THE COURT: I'm sorry.

11 MR. STOCKTON: He said yes.

12 THE COURT: That didn't sound like yes but I'll
13 accept that.

14 MR. STOCKTON: He started to qualify it but it
15 started out with yes.

16 THE COURT: Okay. Thank you. Now, what I would
17 like to do next is, Mr. Stockton, stay up, what I would like
18 to do next is have you give me your scenario about how best
19 you think to proceed from this point to the end of the decree
20 process on this subsection.

21 MR. STOCKTON: Okay. You have several motions
22 pending in front of you which are really procedural. So I
23 think the best way is we need to do the seepage test. I
24 don't think it takes a remand. I think you can do the
25 seepage test as part of your adjudication just to say who's

1 right. Mr. Bentley says there's no excessive losses. The
2 other people say there are excessive losses. Let's find out
3 who's right and then fix it. I think that's the best way to
4 proceed.

5 Because until we know that, I mean, there's an
6 allegation that up to 40 percent of the creek is being lost
7 and then there's an allegation -- and there's going to be
8 some evaporation and I think that has to be included in the
9 agreement. But if it's losing an excessive amount, let's
10 find out. And I don't think we can proceed to the end until
11 we get that figured out.

12 As far as Mr. Bentley's exceptions, those are all
13 valid exceptions and we need to litigate those and those
14 should be a hearing. But until we figure out this seepage
15 issue I'm not sure how far we can go. So that's my position.

16 THE COURT: Okay. Thank you. As the next party
17 in order, Mr. Matuska, how do you see -- what's your position
18 on how the case should proceed from this point forward?

19 MR. MATUSKA: We've expressed our willingness to
20 Mr. Stockton to go forward with these issues on the
21 exceptions promptly. They really aren't very complicated.
22 There are only a few issues. They're pretty discrete except
23 the understanding about the diversion agreement.

24 The difficulty has been that we've expressed in
25 our pleadings and our briefs our reluctance to go forward

1 with this case and Mr. Hall is trying to make this a case
2 about quiet title to the diversion agreement, so essentially
3 we haven't gone very far for that reason.

4 My suggestion on the best way to proceed is just
5 to direct the Bentleys and the State Engineer to proceed with
6 the exception and possibly do a 16.1 conference or something
7 similar to that.

8 I think it is incumbent though, your Honor, on
9 Mr. Hall's side, on the interveners' side to file an actual
10 pleading that puts these issues that they're raising at issue
11 in this case. We have the procedural issue on whether your
12 Honor would hear that as part of this. I'm not so concerned
13 about that. I wouldn't have concern about you, Judge Gamble,
14 hearing that. My concerns have been that there's no pleading
15 which puts these matters at issue. You need an actual
16 complaint to quiet title, something about the pond permits.

17 THE COURT: Mr. Matuska, you said several times
18 in your pleadings something about quieting title to an
19 agreement. And I have been trying to wrestle with that term
20 and all I've ever heard about is quieting title to things, to
21 property.

22 MR. MATUSKA: Well, the diversion agreement is in
23 their chain of title obviously and they're trying to have it
24 declared null and void and no further force and effect. I
25 did describe that as a form of quiet title or akin to a quiet

1 title action. They just aren't bringing it in those terms.
2 They brought all of these issues forth in affirmative
3 defenses and they -- and it begs the question affirmative
4 defenses to what pleading. They're setting forth affirmative
5 claims essentially or requesting affirmative relief by way of
6 affirmative defense and it's very difficult for us.

7 THE COURT: I fell in to that same trap at the
8 beginning of this by ordering that they be allowed to file
9 exceptions and that wasn't their position they came in on.

10 MR. MATUSKA: Their intent, right.

11 THE COURT: So I think when a person has
12 intervened as in essence I guess I would have to call it a
13 party plaintiff because they are seeking to sustain the State
14 Engineer's final order plus some things --

15 MR. MATUSKA: Plus some things, yes.

16 THE COURT: I'm with you there. It puts them in
17 a position that there may well be no affirmative pleading.
18 But I understand the conceptual problem you're showing me
19 that -- I understand what you're talking about as far as
20 there not being a pleading that's at direct issue.

21 MR. MATUSKA: I would further add to that the
22 issues on the title regarding that division agreement, these
23 water rights change of title frankly are probably some of the
24 most complex that I've ever looked at. The issue and the
25 presentation on that, or the discovery and the presentation

1 on that issues is going to be extensive. It's going to be a
2 lot more complicated than the proceedings on our exceptions.

3 THE COURT: Why don't you describe your
4 exceptions to me briefly, the ones that you would like to
5 proceed on, as you said.

6 MR. MATUSKA: Well, I filed the initial exception
7 in December of 2008 and the hearing was on April 1st of 2009.
8 I filed an amended exception five or six days before the
9 hearing, so I would submit that the amended exception is the
10 one that we should be looking at.

11 THE COURT: That was filed in April.

12 MR. MATUSKA: It was filed March 25th, six days
13 before the hearing. The amended exception has all the
14 exceptions that you just looked at plus one.

15 THE COURT: Well, that may be part of my
16 confusion because I don't have in this file -- this has been
17 really complicated for the clerks' office to try to divide
18 these things out in to the different subsections, but I don't
19 have your amended notice of exceptions.

20 MR. MATUSKA: I can make it easy for our purposes
21 today. I have a file stamp for March 25th so I would submit
22 it was filed five days before.

23 THE COURT: Yeah, I believe you. I just don't
24 have it in front of me.

25 MR. MATUSKA: It's almost verbatim, the original

1 exception plus one additional issue.

2 THE COURT: Hang on. John, this says stricken
3 across the front of it. It was filed March 25th. And is
4 there an order striking this?

5 MR. SEDDON: No. You orally entered the strike
6 during the April 1st 2009 hearing.

7 MR. MATUSKA: And can I explain that, your Honor?

8 THE COURT: Sure.

9 MR. MATUSKA: The order from the bench was that
10 all filings except for the initial exceptions were going to
11 be stricken. And we haven't addressed that specifically. I
12 would ask the Court to interpret that to mean all of the
13 other motions that were filed were stricken but our second
14 exceptions should not have been stricken.

15 THE COURT: Okay. Tell me what the difference is
16 in the amended notice of exceptions and the original one.

17 MR. MATUSKA: There's only one significant change
18 and it's an addition. The amended notice identifies an issue
19 with acreage.

20 THE COURT: Where?

21 MR. MATUSKA: Issue number four, exception number
22 four has an issue with acreage. The approved acreage is
23 described differently in different places of the final order
24 of determination. So we do need to resolve that issue of
25 approved acreage.

1 THE COURT: Okay. Let me just make clear for the
2 record what that refers to. I guess this P 53 means page 53?
3 I'm looking at your amended notice. Would you look at that
4 with me? Does that mean page 53?

5 MR. MATUSKA: Yes, your Honor.

6 THE COURT: Page 53, I take it, to the final
7 order of adjudication?

8 MR. MATUSKA: Yes, your Honor.

9 THE COURT: Pertaining to proof 6305 to Stutler
10 Creek was submitted for 10.36 but approved for only 9.61.
11 And Mr. Matuska indicates a conflict between that and part
12 20, table five which shows the 10.36 approved acres. Okay.
13 So I see that problem. I don't know what's accurate about it
14 or inaccurate about it. But that was not brought up. That
15 was found later and not brought up in the original?

16 MR. MATUSKA: Yes, your Honor. And I'm comparing
17 my amended exception to the original one. The next
18 exception, exception number five under subheading six is an
19 addition also. This creek system is a little bit unique.
20 Sheridan Creek splits between a north branch and a south
21 branch before it gets to those subjects properties and the
22 decree testifies how much is supposed to be going down the
23 south and north branch, but there's no measuring device.

24 THE COURT: There's no rock there? That's what
25 we've always used.

1 UNIDENTIFIED SPEAKER: There is.

2 THE COURT: A rock with paint on it that says
3 which way you're supposed to turn it. It's always worked
4 before. I'm kidding. The record should reflect that I'm not
5 serious about it. Although that is how I found Genoa Creek
6 when I got there.

7 MR. MATUSKA: And as we've been working through
8 these issues, there is a concern or possibility that more is
9 being diverted down the south branch.

10 THE COURT: With the natural erosion of the rock.
11 Sorry. I'll stop now.

12 Okay. Let me make this clear, I'm not going to
13 rescind the order striking these documents, but I am going to
14 include those issues as issues that we may address during a
15 hearing on the merits of the exceptions that you've made. Is
16 that clear?

17 MR. MATUSKA: Yes, your Honor.

18 THE COURT: So I need an order from you after
19 this hearing confirming that a portion of this litigation
20 will be examination and decision about the exceptions
21 referred to in the previously stricken document under
22 paragraphs five and six, Roman Numeral 5 and Roman Numeral 6.

23 MR. MATUSKA: Yes, your Honor.

24 THE COURT: So will you do that order for me,
25 please?

1 MR. MATUSKA: Yes.

2 THE COURT: Okay. So that's something we got
3 accomplished.

4 Now, you were describing to me how you thought we
5 should proceed and you said you thought we should proceed
6 with the exceptions right away. And I had asked you to
7 describe your exceptions to me.

8 MR. MATUSKA: Yes.

9 THE COURT: You've now described those exceptions
10 that are in the new request and I have some level of
11 understanding of what those are about anyway. So now would
12 you do the same for me on your original notice of exception
13 and describe the rest of them to me in that same sort of
14 abbreviated fashion.

15 MR. MATUSKA: Yes. Exception number one is just
16 to have the proofs for stock water and wildlife purposes
17 referenced in the tables.

18 THE COURT: Although it talks about diversion
19 schedule, which is what you don't want me to hear; right?

20 MR. MATUSKA: I have it backward. No, you're
21 right. Exception number one is about the diversion schedule.
22 And if I can just explain, when we were going through the
23 process putting the exceptions together we had some
24 preliminary communications with the State Engineer's office.
25 We thought a rotation schedule was imminent and had maybe

1 even been prepared and imposed and obviously that wasn't the
2 case. And what seemed imminent or an accomplished fact in
3 December of 2008 has never come to fruition.

4 Exception number two was just to add all of the
5 proofs to the final map. Those are the proofs for stock
6 water and wildlife purposes. They aren't seeking additional
7 rights by way of those proofs but just for the purpose of
8 accuracy to make sure that they're identified on the maps and
9 the tables.

10 Exception number three really is just a
11 typographical error. It refers to a wrong proof number in
12 one section of the final order of determination.

13 THE COURT: Why don't you tell me what you think
14 about the issue of me ordering a seepage test on the Bentley
15 ponds.

16 MR. MATUSKA: I have to refer back to my comments
17 about the status of the pleadings, your Honor. The approved
18 pleadings or the final order of determination and the notices
19 of exception there's nothing in those documents that makes a
20 seepage test an issue. There's nothing in those documents
21 that makes the diversion schedule an issue except our request
22 to note that there is a diversion schedule.

23 I would be concerned that by ordering a seepage
24 test we are jumping to the final issue on this case of
25 whether there's even standing or law or a basis on which

1 these interveners can proceed and complain about the
2 diversion to the ponds in the first place.

3 My request and my suggestion is for the
4 interveners to file an actual complaint. And if there's a
5 way to consolidate it or join it with this action or just to
6 have it proceed in department one so it's proceeding before
7 the same judge, I think that that would be a better way. But
8 there's no actual complaint that makes the pond an issue.

9 THE COURT: Well, would you say that your
10 exception number one does?

11 MR. MATUSKA: No. I don't agree with that.
12 What's being asked in exception number one is just to note in
13 the tables that there is a diversion agreement. We never
14 asked the Court to interpret it, to enforce it.

15 THE COURT: But to ratify it.

16 MR. MATUSKA: No. Just to note that there is --
17 that the -- that the schedules and tables, the water rights
18 identifying the scheduled tables may be subject to documents
19 recording in the chain of title for these properties. My
20 reason for requesting that is I was concerned if we had the
21 final order of determination that set forth the respective
22 rights of the parties and did not even reference the
23 diversion agreement that it would encourage the interveners
24 to claiming a separate proceeding that this final order of
25 determination somehow overrode that diversion agreement. So

1 I was really looking for a notation that there is a diversion
2 agreement. And I think to decide the force and effect of it
3 is beyond the scope of these proceedings.

4 I understand the reasons why a proceeding about
5 the diversion agreement should proceed at the same time, but
6 their efforts to nullify the diversion agreement is really
7 outside of the scope of these proceedings.

8 And I haven't been presented with a pleading that
9 I can file a responsive pleading to, which is another point.
10 I have to be able to file my own affirmative defense. By
11 rule of pleading I can't file affirmative defenses to
12 affirmative defenses. You have affirmative defenses, a
13 statute of limitations, estoppel, waiver of laches. People
14 who signed it, I presume that they are dead. There are very,
15 very serious issues. I have to have a way to plead in
16 response to --

17 THE COURT: Wasn't that agreement just in '86?

18 MR. MATUSKA: Yes.

19 THE COURT: Some of us might still be alive.

20 MR. MATUSKA: Lodato isn't. And I haven't found
21 anyone who knows about the Witmeiers or Rolfs frankly.

22 THE COURT: Okay. I think I understand that.
23 Would you answer me another question. I'm going to ask
24 Mr. Hall the same question about each of his clients. How
25 many acres do the Bentleys own about?

1 MR. MATUSKA: 13 acres.
2 THE COURT: What do they do there?
3 MR. MATUSKA: They are not irrigating alfalfa.
4 THE COURT: I know one thing they're not doing.
5 MR. MATUSKA: That's right.
6 THE COURT: What are they doing?
7 MR. MATUSKA: They enjoy the property. These
8 ponds are just for landscaping.
9 THE COURT: If I went out and looked right now
10 what would it look like?
11 MR. MATUSKA: You would see a nice house.
12 Mr. Bentley built a large utility barn about two years ago
13 and landscaped the pond in front of the utility barn.
14 There's another large pond that's been there for a long time,
15 has mature trees and everything else.
16 THE COURT: Do they harvest any crops?
17 MR. MATUSKA: No, your Honor. They submit though
18 that they are --
19 THE COURT: I'm not saying that's dispositive of
20 anything.
21 MR. MATUSKA: No. I understand. They submit
22 that they are using the water for stock and wildlife
23 purposes. There are trout in the ponds.
24 THE COURT: Do they own stock?
25 MR. MATUSKA: The proofs are for stock and

1 wildlife purposes.

2 THE COURT: I know. That's why I'm asking. I
3 don't ask compound questions, unlike you. Do they own stock?

4 MR. MATUSKA: No.

5 THE COURT: Do deer get in the fences and drink?

6 MR. MATUSKA: No. The water is being used for
7 the wildlife purposes.

8 THE COURT: Deer are among those.

9 MR. MATUSKA: Ducks, deer, fish. There are fish
10 in the ponds.

11 THE COURT: And who owns the fish?

12 MR. MATUSKA: I think he stocks some of them.

13 THE COURT: I think you probably stock all of
14 them.

15 MR. MATUSKA: I think that there are some that
16 live in the creek system.

17 THE COURT: There might be some brookies in
18 there.

19 MS. BENTLEY: There are brookies in there.

20 MR. MATUSKA: It's been in use for that long, a
21 long time and that's why we ask that there be a specific
22 reference in the orders of determination for those stock and
23 wildlife purposes because it could be important for
24 additional reasons.

25 THE COURT: Okay. Thank you.

1 Mr. Hall, first I want to ask you how you think
2 this should proceed as I've asked the other two lawyers.

3 MR. HALL: The first order the Court should enter
4 is an order enforcing the final order of determination
5 pending any further action or conduct in this case. The
6 statute is extremely clear that this is the final order of
7 the State Engineer and it comes to the court prima facie
8 correct and full. And what we've heard about from
9 Mr. Matuska and his client are reasons that they want to
10 object to it.

11 But the first thing that the Court receives is
12 the final order of determination and it becomes the complaint
13 in the case. And it's entitled to great weight and
14 affirmation until it's changed. So we believe that the first
15 order of this Court is to enter the full intent and purposes
16 and schedules that are in the order of determination.

17 THE COURT: Mr. Hall, let me ask you this, I've
18 noted that you have requested expediency in this because of
19 the now current irrigation schedule. And I want to talk
20 about that in a little while when I talk about what your
21 clients do with their property. But let me ask you this, if
22 I enter an order, which would be relatively normal, enforcing
23 the State Engineer's order pending adjudication, would that
24 result in water ceasing, in your estimation, water ceasing to
25 flow through the Bentley pond system?

1 MR. HALL: We have prepared two schedules, a
2 proposed 15-day rotation and a proposed 21-day rotation.
3 Mr. Bentley can use the day of his rotation, the water that
4 he would receive under the rotation any way he wants and
5 under the proofs that he's filed. But for the days that he's
6 not entitled to receive the rotation then he cannot use the
7 water to go in to his pond.

8 THE COURT: Currently and since 1986 my
9 understanding is that all the water has basically flowed
10 through that pond system.

11 Please, folks, I need you to not do that, okay.
12 There's going to be lots of things you think you know about
13 and that's what I'm trying to learn. So everybody just chill
14 and I'll talk to the lawyers, okay.

15 Now, my understanding is, I guess I'm wrong about
16 this, let me say it this way, that a lot of the water has
17 flowed through the Bentley pond systems to the other users.
18 I'm not familiar with the old --

19 MR. HALL: I brought some displays. It would
20 take me about one minute to explain to the Court. This is
21 the before and after pictures, your Honor. Your Honor, this
22 is the before picture, 2004. And this is the Bentley --

23 THE COURT: Okay. I don't want to talk about the
24 size of the ponds.

25 MR. HALL: I'm just telling you the existence of

1 the ponds. There was an old pond, original pond.

2 THE COURT: Yeah, I see the difference there.

3 MR. HALL: So the water went basically out --
4 there was only one place did it go down to Mitchell and two
5 of the interveners down here. The pond water went across
6 here to Forester and all of these.

7 THE COURT: Well, that's my actual question.
8 Where is your -- Point out to me on the maps. I can't see
9 them from here so just tell me real quickly, where are your
10 clients.

11 MR. HALL: It's everyone except Bentley. Bentley
12 owns this piece here.

13 THE COURT: Right. Does anybody want to look?

14 MR. MATUSKA: Judge, his clients aren't everyone
15 but Bentley. His clients are a few people.

16 MR. HALL: I can explain to the question. This
17 is the Bentley piece, this kind of square, old pond and new
18 pond of 2008. In years past, an old pond the water went
19 through the pond down to these. But all the parcels north
20 were diverted outside of this pond. In 2008 --

21 THE COURT: Excuse me. Where outside the pond?

22 MR. HALL: There was a diagonal line that went
23 across here.

24 THE COURT: Where's the diversion box?

25 MR. HALL: It's up here.

1 THE COURT: On the other side of Sheridan Lane?
2 MR. HALL: Right on Sheridan Lane.
3 THE COURT: Where that little bridge is?
4 MR. HALL: Yeah. There's actually --
5 THE COURT: Is this above Lodato's old place? Do
6 you guys have where the old house is?
7 MR. MATUSKA: I think the old house is on the
8 other side of Sheridan Way, isn't it?
9 THE COURT: Okay. I'm wrong. Sorry. Go ahead.
10 MR. HALL: Well, in 2008, Mr. Bentley wanted to
11 construct this pond so he started ripping out this diagonal
12 pipeline. The neighbors said what are you doing. He said,
13 "I want to build a house or a barn."
14 THE COURT: I want to be really careful that you
15 don't advocate during this section. I know that's your task.
16 I see what appears be a ditch line kind of running northeast
17 and the diversion, the place of diversion, the point of
18 diversion from the creek was roughly --
19 MR. HALL: It's basically here and it comes down
20 and splits off in to two parts, north and a little bit south.
21 THE COURT: Okay. And now would you describe
22 just real briefly where your clients are.
23 MR. HALL: This, this, this, this, this.
24 THE COURT: Tell me names while you do it.
25 MR. HALL: Okay. This is Forester. No. This is

1 not a client. This is Forester here. This is Hall Ranches.
2 Frank Charo. Tom Sipher, Glen Roberson and Mitchell.

3 THE COURT: Tell me where Mitchell is again.

4 MR. HALL: Down this way.

5 THE COURT: Okay.

6 MR. HALL: Mitchell is the farthest down.

7 THE COURT: Okay. Okay. Good. That gives me a
8 real brief handle on it. Now, the reason you came up here is
9 a different question. I asked you historically how it
10 happened. And I'm talking about from '86 to present, from
11 '86 to 2007.

12 MR. HALL: Okay. For '86 to 2007 water flowed
13 north diagonally northeast up in to the distribution system
14 in this area and part flowed through the pond directly east
15 to the lower pond. This is the Park and Bull ditch. So
16 irrigation flows up to that and then drops in to the ditch so
17 there's no irrigation north and east of the Park and Bull.

18 So up until the date the pond was created, the
19 new pond, in 2008, part of the water flowed through the old
20 pond and then downstream to the downstream users. When the
21 new pond was created in 2008, water goes in to the pond and
22 then from there to the different places.

23 THE COURT: Is that same ditch in use as an
24 outlet? No, not that one. The other one.

25 MR. HALL: No. It was torn up and Mr. Bentley

1 built a new pipeline to the northeast corner here and then
2 east to intercept the old point of diversion.

3 THE COURT: And it's actually pipe, not ditch?

4 MR. HALL: It's pipe, plastic pipe.

5 THE COURT: Okay. Thank you. So if I enforce
6 pending adjudication what is the result to those diversions?

7 MR. HALL: The result is it basically reverts
8 back to the old system and Mr. Bentley is entitled to use his
9 water under the diversion schedule for his acreage on the day
10 of use as he sees fit. It can go in to the pond or not.
11 It's his choice. But right now there's a continuous flow of
12 water in to the new pond. It seeps in to -- it's alluvial
13 sand, gravel, whatever. So we're pretty confident that the
14 seepage test will show an excess use.

15 THE COURT: If I enforce the order pending
16 adjudication there are currently no diversion works to
17 enforce what you --

18 MR. HALL: No. There are.

19 THE COURT: Okay. Tell me about that.

20 MR. HALL: The old system when he cut out this
21 diagonal line he built a new diversion works to the northwest
22 corner and then easterly. So the process is just not to put
23 the water in to the pond. The process is to use the newly
24 constructed in 2008 works, water works and avoid the pond.
25 And when the day comes for him to use his water, he just

1 turns it in to the pond and the day that he's off line he
2 stops putting it in the pond and it goes down in the normal
3 fashion as before.

4 THE COURT: What's the rough flow of -- What's
5 the rough CFS flow on that northern half of the diversion?

6 MR. HALL: I don't have that. What has been
7 historic, your Honor, before the new pond was that there was
8 a system of rotation that has been ongoing for about 25
9 years. Don Forester is in the audience today and was in
10 charge of the rotation. And until the new pond came, every
11 one was basically in equilibrium and happy.

12 The problem is when Mr. Bentley built his new
13 pond he said he was going to line it with bentonite and not
14 be a consumptive use.

15 THE COURT: I read about that. Mr. Stockton, do
16 you have a rough seasonal stream flow for that northern
17 diversion?

18 MR. STOCKTON: Not specifically. But
19 Mr. Walmsley thinks it's about one CFS, one and a half CFS,
20 one to one and a half CFS, somewhere in there.

21 THE COURT: What time of year? Now?

22 MR. STOCKTON: I guess it would be higher.

23 THE COURT: Is that a seasonal average?

24 MR. WALMSLEY: Mid-June. It would be higher
25 right now as snow melts.

1 THE COURT: Right. But your one and a half CFS
2 would be a mid-June flow?

3 MR. WALMSLEY: Probably mid-June and then it
4 would be close to one cubic foot per second by the time you
5 get in to July and you've had flow recession of the snow
6 melt.

7 THE COURT: But it is a year-round stream?

8 MR. WALMSLEY: Yes, it is. It's a perennial
9 stream.

10 THE COURT: And how big is the new pond?

11 MR. MATUSKA: In terms of surface area? Do you
12 have an estimate?

13 MR. BENTLEY: About 15,000 square feet.

14 MR. MATUSKA: 15,000 square feet is his estimate.

15 MR. HALL: We've heard estimates up to an acre.

16 THE COURT: These are all interesting questions
17 and I'm going to ask them all. Right now I'm going to go
18 back to how you think it should proceed.

19 MR. HALL: The first order is to order the State
20 Engineer to administer the stream based on the final order of
21 determination. We also had a proposed 15-day rotation
22 schedule that just for information purposes I just wanted to
23 demonstrate to the Court that we have been thinking about
24 this.

25 THE COURT: Do you have a copy of this? I'm just

1 letting it be used right now for illustration of his
2 statement to how he thinks the case should proceed.

3 MR. HALL: I found this morning that the clients
4 prefer a 21-day rotation and so that would allow the parties
5 to use their rotation water right as decreed in the rotation
6 during times of scarcity. And beginning of this year in
7 March and April, the soil was water-logged, ample water to go
8 around. It's not until June, July and August that the
9 rotation really needs to kick in to apportion the water.

10 The next step to be done, if Mr. Bentley wants to
11 continue to divert all of the water in his pond in and out he
12 can post a bond or other security that would allow him to
13 proceed as he sees fit. So he's not without a remedy.

14 The next step would be to order a chain of title
15 and proof that the Court desires of all the parcels. They've
16 already been filed with the State Engineer so I don't think
17 there's a monumental problem.

18 THE COURT: Right. And I have that before me in
19 the State Engineer's filings.

20 MR. HALL: Right. Yeah. I don't think that's a
21 big problem. The pond seepage test only comes up -- Well, it
22 comes up in the administration of the stream. And I think
23 with, Mr. Stockton, that it would be important for the Court
24 to order a seepage test in the June, July and August period
25 of time. We had tried to get it under way in April but the

1 water table is quite high. So there likely wouldn't be any
2 great accomplishment by doing it when the water is flowing
3 all over the place. So it's July and August is when the
4 water becomes less that it would be very important. And we
5 would need security, 24-hour security. I would need to have
6 more water in the pond than when we started because of
7 inadvertent flowage in to the pond.

8 If the Court wants a quiet title suit, I think
9 it's the burden of Mr. Bentley to upset the final order of
10 determination. If his diversion agreement or pond agreement
11 is enforceable in some way, there's the proponent of that
12 agreement. We're not the proponent so we should not be
13 burdened with bringing a suit or action to declare -- I think
14 it's a declaratory relief action more properly than a quiet
15 title action.

16 The final order of determination is what the
17 Court -- the State Engineer did after a preliminary after --
18 This goes back to 1994, so we've been at it a long time. And
19 just to come in to court and say we don't like it and throw
20 it out the window, I don't think is fair to the State
21 Engineer or the process that have been set by the
22 legislature.

23 So the final order needs to be determined. The
24 rotation schedule needs to be implemented. Mr. Bentley can
25 use the water that he's entitled to on those days, 6.99

1 percent, however he wants to use it. But he's off line when
2 the rest of the neighbors are entitled to use their water.

3 THE COURT: Can I interrupt you for just a
4 second, Mr. Hall? I know I can. Please excuse my
5 interruption.

6 MR. HALL: Please do, your Honor.

7 THE COURT: Mr. Matuska, currently how does water
8 get to the northern users?

9 MR. MATUSKA: If I can refer back to the aerial
10 photographs.

11 THE COURT: Yeah.

12 MR. MATUSKA: Sheridan Creek comes right through
13 those trees, enters the Bentley property and then splits, one
14 pipe going north and Sheridan Creek continue down to this
15 pond. So there is piping around the perimeter of the
16 property.

17 THE COURT: He told me the same thing.

18 MR. MATUSKA: So it doesn't go through the pond
19 first. It's piped around the property and there's actually a
20 head gate here with a little diversion that allows some water
21 to go there. So it absolutely is piped around the perimeter
22 of the property essentially like it's always been.

23 THE COURT: Is there a -- Within that pipe
24 system -- I'm just going to ask clients because lawyers don't
25 know about these things. Does anybody have any objection to

1 that?

2 MR. HALL: Mr. Forester probably knows about
3 that.

4 THE COURT: I'll ask Mr. Forester questions too.

5 Mr. Bentley -- Excuse me, Mr. Matuska. Is there
6 a diversion upstream of your pond, of what's been called the
7 new pond? Can you turn water in to the pipe or in to the
8 pond?

9 MR. BENTLEY: Yes.

10 THE COURT: Or both at the same time?

11 MR. BENTLEY: Yes.

12 THE COURT: Do you have a splitter there or what
13 is it?

14 MR. BENTLEY: Yeah, it splits. In the north or
15 the northeast or west corner there's a box that I built and
16 which all the water, not all the water, most of the water
17 goes in to that. Some of it is actually diverted as it was
18 before -- since 1986 and goes straight down to that old pond.

19 THE COURT: That part I'm not talking about.

20 MR. BENTLEY: Okay. This part is just a matter
21 of putting gates in one way or the other. We have no gates
22 in there. I take probably about one-third of the water goes
23 through my pond and it diverts through and then comes back in
24 at the --

25 THE COURT: Northeast corner?

1 MR. BENTLEY: No. At the -- Yeah, the northeast
2 corner.

3 MS. BENTLEY: No, it doesn't go back in there.
4 It goes through your pond and then it goes over to that other
5 diversion.

6 MR. BENTLEY: It can either go back over to the
7 Forester side or it can go down to the Roberson and the
8 Mitchell side. And it can all be balanced right there. And
9 the question of course is am I doing anything wrong.

10 THE COURT: Right. Right now I'm just trying to
11 figure out mechanically how it works. You said in the middle
12 of that that currently there are no gates in. So the water
13 just naturally comes through the -- from the northern
14 diversion of the creek, I'm not talking about the part that
15 goes through old pond.

16 MR. BENTLEY: Yeah.

17 THE COURT: But the northern portion it can flow
18 either through the pipe to the northwest corner or in to the
19 pond?

20 MR. BENTLEY: Yes.

21 THE COURT: Freely?

22 MR. BENTLEY: It does freely with, about
23 one-third of it flows freely in to the upper pond when
24 there's no gates involved.

25 THE COURT: Okay. And right now at this time of

1 year there's probably no gates; right?

2 MR. BENTLEY: Well, there's no gates, yeah.

3 THE COURT: Okay. So the part that goes in to

4 the pond --

5 MR. BENTLEY: I took mine home.

6 THE COURT: Okay. Then the part that goes in to

7 the pond, the overflow from the pond goes out the northwest

8 corner?

9 MR. BENTLEY: It goes out the east corner. Yeah,

10 the east corner.

11 MS. BENTLEY: No. Through the pond it goes

12 through the northwest corner.

13 MR. BENTLEY: Northwest. No, it doesn't. It

14 comes out --

15 THE COURT: Would you come up and point to it for

16 me. Don't let him use that thing. Just put that thing away.

17 MR. BENTLEY: We get confused. We get confused

18 here. It comes up to here and goes either down here to

19 Mr. Forester's pump house and on down this way or else it

20 comes in to here or both. It does both at this time. It

21 comes out here, goes in here and then it comes over here and

22 goes out here or it goes down this ditch here or it does

23 both.

24 THE COURT: Mr. Forester, would you come up and

25 do this, compare and contrast. I know this is unusual. I'm

1 trying to get a basic understanding.

2 MR. FORESTER: I can describe it also. Basically
3 the water box that used to be on the property was torn out,
4 so we now have a water box on the corner of the property.
5 I'm going to have to figure out where we're at. The water
6 comes down, it won't go to the old pond. It goes right here
7 to the water box in this corner. This is my property right
8 here. And there's a pipe running either down here that feeds
9 the whole ranch or a pipe on the back of this pond. And then
10 there's an overflow from this pond in to the old pond.

11 THE COURT: Okay.

12 MR. FORESTER: And then he has a pipe that will
13 run back and catch in to this pipe running this way. So
14 whatever water is not used up by the ponds comes back to me
15 and all the people downstream of me.

16 There's also on the bottom of the old pond, he
17 has a head gate there and he can let water run down the old
18 Sheridan Creek to feed the Roberson property and the Mitchell
19 property. So the water can be diverted all of it in to the
20 pond or all of it this way with the two head gates. And
21 there are no head gates in those two pipes right now.

22 THE COURT: Right now they're just open; right?

23 MR. FORESTER: Right. So I don't know what
24 percentage is going in to the two pipes. Right now in the
25 spring there's pretty good water.

1 THE COURT: I think I have a handle on that point
2 now.

3 So Mr. Hall, go ahead.

4 MR. HALL: And then I think as Mr. Stockton said,
5 I think we need a seepage test of the pond. We tried to
6 arrange it but it didn't really work out. And without Court
7 order we're not going to work it out. So I think in June or
8 July we should have a seepage test that determines once and
9 for all the issue of what we call waste out of that pond.
10 Mr. Glen Roberson said that his flow is about a third
11 diminished. And that's pretty sizeable. So I think what you
12 heard is this new pumping and piping arrangement has created
13 more structures, more valves, more piping, more confusion.

14 So our request is that the Court orders the
15 parties abide by the final order, the rotation schedule be
16 implemented that would be agreed by all parties based on
17 percentages of land and flows, that the seepage test be
18 ordered. And that if someone wants to champion the water
19 diversion agreement that they need to bring that forward to
20 the Court in the form of a proper pleading, either a dec
21 relief or quiet title, which I don't think quite works. But
22 we're not championing the diversion agreement. We think it's
23 outside the scope of the determination. It's outside of the
24 purview of the Court's jurisdiction right now. But if
25 someone wants to bring it in and consolidate we're okay with

1 that.

2 THE COURT: Do you see any impediment to setting
3 an early trial date on the exceptions that the Bentleys have
4 brought besides the exception concerning the diversion
5 agreement and or the impact of water loss from the --

6 MR. HALL: I do not. And frankly those
7 exceptions I think can be almost stipulated.

8 THE COURT: I actually think they could be.
9 Especially the typographical one. But maybe the other one
10 where the acreage is five and six that I was looking at.

11 MR. HALL: We're not here really to deprive
12 Mr. Bentley of his rights and if that can be expedited and
13 stipulated by agreement, if I can look at with my eyes what
14 the maps show, I think that can be concluded without even a
15 court hearing. But we certainly wouldn't stand in the way.

16 The real problem that this controversy brings
17 forward is this new pond and the new pumping and the new
18 valves and all of that and the water loss for this pond. So
19 that's the meat of the issue as far as we're concerned, your
20 Honor.

21 THE COURT: Okay. I'm now -- Thank you,
22 Mr. Hall. I'm now going to turn to -- We already talked some
23 about this but I'm now going to turn to temporary this
24 irrigation season resolution and try to get there, all right.

25 Mr. Matuska, it is currently your position that

1 based upon the diversion agreement Mr. Bentley -- the
2 Bentleys have the ability to divert the entire flow through
3 their pond system and then on out via other users; is that
4 accurate?

5 MR. MATUSKA: Yes. But they've never contended
6 that they've actually done that.

7 THE COURT: I understand. But that's your
8 position that they have a right to do that. I have a very
9 specific question I want you to talk to your clients about.
10 We're going to recess after I ask this question because what
11 I want to do is come up with some kind of rotation or system
12 to deal with irrigation this season, all right. That's my
13 intention at this moment.

14 And I failed to do something with Mr. Hall so
15 excuse me for just a minute. Would you describe for me
16 briefly what the parties, what your clients do with their
17 property.

18 MR. HALL: Yes. All of them are irrigating their
19 respective parcels. Forester irrigates his property and hays
20 it in the fall.

21 THE COURT: With grass hay or pasture hay?

22 UNIDENTIFIED SPEAKER: All pasture.

23 MR. HALL: Hall Ranches has a tenant and grazing
24 and irrigation lease.

25 THE COURT: A grazing lease?

1 MR. HALL: Grazing lease.

2 THE COURT: And they irrigate for you?

3 MR. HALL: They irrigate and they run 60 head of
4 cattle on this parcel. Charo has a house and horses, runs a
5 horse arena and a fair. Sipher has a home and runs cattle.

6 THE COURT: Which side of the ditch?

7 MR. HALL: Well, both sides.

8 THE COURT: Okay.

9 MR. HALL: Roberson has an equestrian center.
10 You can see this big barn he built for 2.6 million and he
11 hays on the upside above Park and Bull and then the
12 equestrian center south. Roberson leases, land leases the
13 land from Mitchell and he runs his horses, hays, cuts crop.

14 So all of the users that are, and the interveners
15 have a need and use for the water, not just architectural or
16 aesthetic purposes.

17 THE COURT: Thank you, Mr. Hall.

18 My specific question for you, Mr. Matuska,
19 through you to the Bentleys is my task at the moment is try
20 to -- to try to preserve everyone's benefit as best I can
21 until we have a final adjudication. What I'm interested in
22 trying to do is see whether there can be a rotation schedule
23 put in to place for this ag season which would preserve the
24 Bentleys' wildlife use and would preserve the irrigation
25 rights for the parties downstream. I'm thinking that the way

1 to do that would be a rotation schedule which would allow the
2 Bentleys to -- I'm talking about the new pond more than the
3 other, because the other one, the whole southern portion of
4 the creek flows through, about the idea of a rotation
5 schedule so they can keep the pond levels up, although
6 perhaps not overflowing up and yet get the water down to the
7 folks that irrigate.

8 So I'm going to take a brief recess. I'm going
9 to ask you to discuss that. All I want you to talk about at
10 this point is a rotation schedule for this season because
11 we'll have this done before next season. Okay. We'll be in
12 recess. Thank you.

13 (Recess was taken)

14 (Hearing continued on and was reported but was already
15 transcribed and is in a separate transcript provided to all
16 parties)

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHRISTY Y. JOYCE, Nevada Certified Court
Reporter Number 625, do hereby certify:

That I was present in the District Court of
Minden Township, in and for the State of Nevada, on Monday,
the 17th day of May, 2010, for the purposes of reporting in
verbatim stenotype notes the within-entitled hearing;

That the foregoing transcript, consisting of
pages 1 through 41, is a full, true, and correct transcript
of said hearing.

Dated at Reno, Nevada, this 5th day of June,
2010.


CHRISTY Y. JOYCE, CCR #625

1 CAPITOL REPORTERS
2 1201 N. Stewart Street, Suite 130
3 Carson City, Nevada 89706
4 (775)882-5322

5 NINTH JUDICIAL DISTRICT COURT
6 IN AND FOR DOUGLAS COUNTY, STATE OF NEVADA
7

8 In the Matter of the
9 Determination of the
10 Relative rights in and
11 To the waters of
12 Mott Creek, et al.
13 _____/

Case No. 08-CV-0363-D

Dept. No. 1

14 **AFFIRMATION**
15 Pursuant to NRS 239B.030

16 The undersigned does hereby affirm that the following
17 document **DOES NOT** contain the social security number of any
18 person: (List document(s) attached below)

19 1) Partial transcript of Proceedings 5-17-10

20 2) _____

21 3) _____

22 -OR-

23 The undersigned does hereby affirm that the document
24 named below **DOES** contain the social security number of a
25 person as required by state or federal law or for the
administration of a public program or for an application for
a federal or state grant: (List the document(s) attached
containing social security number information below)

1) _____

2) _____

3) _____

Signature  Date 6-5-10

CHARTERED COPY

Case No. 08-CV-0363-D

Dept. No. 1

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

BEFORE THE HONORABLE DISTRICT COURT JUDGE DAVID R. GAMBLE

---oOo---

In the Matter of the Determination
Of the Relative rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring, Wheeler
Creek No. 1, Wheeler Creek No. 2, Miller
Creek, Beers Spring, Luther Creek and
Various Unnamed Sources in Carson Valley,
Douglas Valley, Nevada.

PARTIAL TRANSCRIPT OF PROCEEDINGS

CASE CONFERENCE/STATUS CONFERENCE

MONDAY, MAY 17, 2010

MINDEN, NEVADA

APPEARANCES:

For the State Engineer: BRYAN L. STOCKTON, ESQ.
Senior Deputy Attorney General

For the Interveners: THOMAS J. HALL, ESQ.
Attorney at Law

For the Bentleys: MICHAEL L. MATUSKA, ESQ.
Attorney at Law

REPORTED BY: CHRISTY Y. JOYCE, CCR #625
Capitol Reporters
(775)882-5322

1 MONDAY, MAY 17, 2010

2 ---oOo---

3 THE COURT: Gentlemen, have you had any success
4 talking about a rotation schedule?

5 MR. MATUSKA: Yes, in a manner of speaking. But
6 the Bentleys are still resistant to the issue of being put on
7 a rotation schedule. The reason is although Mr. Hall said he
8 was asking the Court to enforce the final order of
9 determination as written or a temporary order enforcing as
10 written, a rotation schedule is not part of the final order
11 of determination.

12 THE COURT: I know.

13 MR. MATUSKA: And the effect is to override the
14 diversion agreement. Can I make a suggestion? It's a very
15 easy one.

16 THE COURT: Before you make a suggestion, and I
17 do want to hear that, in addition to whatever pond rights he
18 has, your client has, he also, I believe, has adjudicated --
19 has within the order of adjudication has 12.93 acres or 10.7
20 or six-point-whatever.

21 MR. MATUSKA: Between ten and 12.

22 THE COURT: Between ten and 12 some place. I
23 think there's one number lower than that. But I don't know
24 the numbers yet. But he has actual irrigation water.

25 MR. MATUSKA: Yes, your Honor.

1 THE COURT: And so that -- I mean there has to be
2 a rotation schedule for that.

3 MR. MATUSKA: He isn't irrigating so it hasn't
4 been an issue and he doesn't have any immediate intent to
5 irrigate, so he's just defending the flows through the pond
6 at this point. So that's the primary concern.

7 If I can make a suggestion by reference to the
8 aerial photos that we already looked at. Mr. Bentley
9 explained that the waters diverted around the perimeter of
10 the property down through the old pond and from here it can
11 split and go north.

12 THE COURT: You just told me that.

13 MR. MATUSKA: Or split and go south and east to
14 the Mitchell and the Roberson properties and that would allow
15 all of Mr. Hall's clients to put themselves on a rotation
16 schedule after it's gone through the ponds and they won't
17 lose the ability to get the water up to these upper parts.

18 The diversion box for these northern properties
19 is right about here anyway. So it goes from the pond to --
20 It can go from the pond to the diversion box as it is or it
21 can go from the pond down to the Roberson and Mitchell
22 properties and they can put themselves on a diversion
23 schedule.

24 And that's actually attractive for a couple of
25 reasons. One, because it's very possible that the Mitchells

1 and Mr. Roberson are going to find out that this underlying
2 ditch from the lower pond down from the properties that
3 irrigate is so long that if they're on a rotation schedule
4 and it dries out, it's going to take them a day to get the
5 water down to their properties anyway. And they're talking
6 about putting properties on a rotation that gives them a
7 single day in a rotation. They're going to lose that water
8 in the ditches. I think they're going to find out that
9 they're very disappointed with the rotation schedule.

10 Mr. Bentley has maintained that some of
11 Mr. Hall's clients have interfered with the diversion through
12 those ponds and we're not surprised that Mr. Roberson is
13 experiencing a diminished flow. So if they actually put
14 themselves on a rotation schedule, when it comes out of the
15 pond, it eliminates the possibility that Mr. Hall's clients
16 on the northern properties are taking the water away from
17 Mr. Roberson.

18 THE COURT: I'm sure everybody would like --
19 Well, I'm not going to say that. Can you tell me whether
20 that pond in the northwest portion of Mr. Bentley's property
21 existed when the diversion schedule was put in to place in
22 1986?

23 MR. MATUSKA: I can't.

24 THE COURT: Well, I can. I mean did it?

25 MR. MATUSKA: I can't, your Honor, because the

1 diversion schedule has --

2 THE COURT: There was a pond built in 2008,
3 Mr. Matuska.

4 MR. MATUSKA: Yeah.

5 THE COURT: Well, then it wasn't there in 1986.

6 MR. MATUSKA: But there are seven ponds marked on
7 that diversion schedule and I don't know if those ponds were
8 intended or if they were existing.

9 THE COURT: Why don't you take a look at the
10 other picture.

11 MR. MATUSKA: This is a picture from 2004. But
12 on the 1986 diversion schedule there are seven ponds marked
13 on the diversion schedule. And part of the problem is we
14 have no way of knowing now if those were there or existing,
15 but those are part of the diversion schedule. The diversion
16 schedule refers to ponds plural and there's seven marks on
17 the diversion schedule.

18 THE COURT: Mr. Hall, do you have a copy of the
19 21-day rotation schedule?

20 MR. HALL: Yes, I do, your Honor.

21 THE COURT: Can I see that please? Have you
22 looked at that, Mr. Matuska?

23 MR. MATUSKA: Yes, your Honor. The 15-day
24 rotation schedule.

25 MR. HALL: On the 15-day schedule, your Honor, we

1 tried to group the users in to four groups, A, B, C and D
2 because that's where the flow pretty much goes. So A
3 group -- And the 21-day one I just handed you wasn't grouped
4 for flowage because it works better when Hall Ranches, Charo
5 and Sipher all group their day together so that they get the
6 full flush of the water on that day. And Forester would have
7 the northern quadrant and then Bentley would have his day and
8 a half on the southern quadrant.

9 So we actually developed a little more from what
10 is in front of you and I would like to ask the Court
11 permission to regroup that and submit it. If the indication
12 of the Court is to adopt a 21-day, I would like to submit a
13 revised schedule for consideration, because we didn't quite
14 get all of our pieces together is what I'm saying.

15 MR. MATUSKA: Your Honor, may I address another
16 issue about the rotation schedule?

17 THE COURT: Uh-huh.

18 MR. MATUSKA: It identifies Pastania, Barton and
19 Smith in quadrant D. Those are the properties north of the
20 Forester property, Pastania, Barton and Smith. They're
21 getting a continuous flow now, so this rotation schedule
22 would have the effect of changing what is the status quo to
23 them in addition to status quo of Bentley and they aren't
24 part of this subproceeding so we don't have all the necessary
25 parties here to be doing this.

1 THE COURT: Okay. Thank you. I'm now going to
2 try to address the actual issues that are pending in front of
3 me right now. The motion to correct, which was filed July
4 8th of last year, has been ruled on.

5 With regard to the -- I've addressed the issue of
6 whether the two additional claims contained in the amended
7 notice of exception will be dealt with in this litigation by
8 ordering that it will be.

9 We then have on the one hand the motion to
10 dismiss or in the alternative to redesignate affirmative
11 defenses as counter-claims and the opposition to that. We
12 have a set of pleadings with regard to the errata to that
13 document. And we have the motion to remand. And within
14 those we have various motions to strike, et cetera.

15 Let me make a couple of overall findings and then
16 we'll address the other parts in more detail. It is my
17 intention to order a seepage test for -- to determine water
18 loss in the pond systems of Mr. Bentley. I will hear from
19 counsel about their advice about how to implement that before
20 we're done here today.

21 Secondly, it's my intention to keep a declaration
22 of rights with regard to the diversion agreement within this
23 litigation and I'll address how to do that momentarily.

24 Finally, it's my intention to proceed with a
25 trial on the objections -- the exceptions to the final

1 determination not included in events surrounding the
2 diversion agreement with relative alacrity. I want to set
3 that as quickly as I can. I take it that with regard to
4 those there's not going to be a need for substantial
5 discovery. I think the issues are before me and so I'm going
6 to set that as soon as I can, as soon as counsel's calendars
7 permit.

8 And then with regard to the -- So now let me
9 backtrack. And I'm going to rule on the remainder of the
10 motions in accordance with those rulings that I just made.
11 In other words, I'm not going to address the motions to
12 strike. They're denied except as they are -- A denial is
13 inconsistent with what I've just ruled. The errata is
14 allowed. The striking the errata is denied. And the motion
15 to dismiss is denied. And Mr. Hall's most recent request
16 that that be separated out is also denied. So we're going to
17 keep that piece in this litigation.

18 Now, I would hear from counsel about the
19 appropriate method of proceeding with the water loss testing.
20 People have said there's an easy way to do this but I don't
21 know what you're talking about at this point. Mr. Stockton.

22 MR. STOCKTON: Your Honor, as my client has
23 explained it to me, and I'm not a hydrologist, what we can do
24 is there's a way to go in there, you go in there at a time
25 certain and you set up a measuring stick and shoot the level

1 of the water in the pond and you tell what the level of the
2 water is. You cut off the inflow and the outflow and then
3 you wait 24 hours and then you shoot the level of the water.

4 And then the State Engineer has a hydrologist.
5 As long as nobody messes with it, you have a hydrologist that
6 can determine two -- there's two factors that are going to
7 involved in there. There's a certain amount of the
8 evaporation loss and that will have to be accounted for. And
9 then the remainder of the loss would be seepage loss. And so
10 from that they can make the calculation and tell what
11 percentage of the flow is being lost from seepage.

12 THE COURT: And we have the ability to cut off
13 inflow by virtue of the diversion works that Mr. Bentley told
14 me about. We have the ability to control outflow by virtue
15 of the head gate on this side and that side of the big pond,
16 the northwest and southeast, sort of; correct?

17 MR. MATUSKA: Yes, your Honor.

18 THE COURT: Okay. And who would you suggest do
19 the testing? Is that what you've indicated the state will
20 do?

21 MR. STOCKTON: We can do that internally. It's a
22 fairly simple test, I think.

23 THE COURT: Well, yeah, I understand it's a
24 simple test and it needs to not be interfered with. That's
25 the real problem. So I have to free up the State Engineer's

1 personnel to be there and do that.

2 Now I'm going to suggest that given the
3 geological character of this land that probably everybody
4 sitting here knows about, it probably should be done more
5 than once and it probably should be done soon and then it
6 should be done later in the water year.

7 I'm sure that they'll be able to interpolate
8 using meteorological data from this year, but I think that
9 it's going to be better to have at least a two-stage test
10 done, one soon while we're in -- while we're in snow melt
11 phase, say by the middle of April, end of the first week
12 of -- middle -- by the end of -- Geez. By the end of May is
13 what I'm trying to say, which is only two weeks, so if it
14 slops over in to the first week of June. And then another
15 one in I would say something like mid-July, mid-July and
16 August. And that will give us a lot better baseline, give
17 them a lot better baseline to interpolate data from year to
18 year.

19 And it would be my intention at this point,
20 absent objection, to simply do that on the new pond. Is that
21 what we're talking about? That's all we're talking about,
22 isn't it?

23 MR. HALL: Well, your Honor, we would ask that it
24 be done on both ponds because we're still in kind of an
25 unknown territory there and also they mentioned a 24-hour

1 test. When I talked to Mr. Stockton before, he mentioned a
2 48-hour test. So I think the idea of having it repetitive
3 twice is good and we want to make sure under the hospices of
4 the State Engineer they feel they have a good test. So I
5 request them to do both ponds and then enlarge the test
6 period to an ample period.

7 THE COURT: I haven't talked about the older pond
8 system -- Let me wait until they're done talking.

9 MR. STOCKTON: I'm sorry. Was I up again?

10 THE COURT: Not really. Mr. Hall suggested that
11 you had talked earlier about 48-hour periods. He did talk
12 more importantly about not just that pond but the other pond.
13 And I'm not as comfortable that we have the ability to stop
14 inflow and outflow on that simply because I haven't talked
15 about it. So is that possible to do? Is it possible to stop
16 inflow to the older pond?

17 MR. BENTLEY: Yeah.

18 THE COURT: Is it possible to stop outflow?

19 MR. BENTLEY: Yeah.

20 THE COURT: Well, we might as well get a good
21 reading on all of it then. And if they need to be 48-hour
22 tests, Mr. Walmsley, I'm not restricting anybody from that.

23 Now, I'm mindful that I'm hearing an echo of
24 problems that have arisen fairly recently with regard to
25 moving -- to moving or changing diversion methods and I just

1 simply can't have that happening. It would be wrong of me to
2 not quote Mark Twain at this point in every section of this
3 case because whiskey is for drinking and water is for
4 fighting. But I simply cannot have interference with these
5 tests and I'm not sure exactly -- I would prefer to just
6 simply order people not to interfere with these tests and
7 leave it at that.

8 MR. STOCKTON: Once you order the State Engineer
9 to do it, they are serving as an officer of the Court, so
10 interfering with that is contempt of court and there's case
11 law for that.

12 THE COURT: Okay. I'm satisfied with that. So
13 it will be my order that the State Engineer accomplish those
14 tests as I've described them and I'll ask Mr. Stockton to
15 prepare the order consistent with that.

16 And now the last thing I would like to address, I
17 think it's the last thing, is the pleading problem that we
18 have. I'm much less concerned about that than counsel is,
19 but you already knew that. In this case at the beginning in
20 our initial -- in my initial view of this whole overarching
21 case, I said that I was simply going to control to the extent
22 that I could the pleading and the means of arriving at
23 answers to questions. And I still feel that way.

24 What I would like to do is to allow Mr. -- I know
25 the State's position with regard to this already so I would

1 like to allow both sides to file a brief pleading setting
2 forth their position about this agreement, this diversion
3 agreement and its impact and its validity and without regard
4 to whether something is an affirmative defense or a claim.

5 The rules of civil procedure are important to me,
6 however, the real issue I want to get to is whether this
7 agreement is valid and enforceable or whether it's not. And
8 that would incorporate all issues concerning its recordation,
9 its history, all parts of its validity.

10 And the only time this becomes important is when
11 we get to the fact-finding stage of it and I have to
12 determine what the burden of proof are at that point and I
13 will do that at that point. But until then I don't think
14 it's necessary for me to do.

15 So without -- I don't know if I'm making myself
16 understood. What I want from each side is a position paper
17 with regard to this claim about the diversion agreement. And
18 the situation is confused because Mr. Hall is right that the
19 original order of the State Engineer constitutes the
20 complaint in the case by statute. And so that makes him a
21 party plaintiff and it makes Mr. Matuska a party defendant.
22 However, I'm really disinterested in that right now because
23 the State Engineer did not make findings with regard to this
24 diversion agreement and specifically decided not to do that.
25 And so I'm going to be looking at it de novo. I'm going to

1 be looking at it as a finder of fact. And I will make burden
2 of proof determinations when the time becomes necessary for
3 me to do that.

4 Are you able to understand what I've said,
5 Mr. Hall?

6 MR. HALL: Would it be kind of a simultaneous
7 filing in 20 days?

8 THE COURT: Yeah. Whatever time period we put in
9 place. Just a simultaneous filing with one opportunity to
10 respond by each side.

11 MR. HALL: So brief and opposition to the
12 diversion agreement?

13 THE COURT: Yeah. And objector's brief in
14 support of the diversion agreement.

15 MR. MATUSKA: Yes.

16 THE COURT: Do you understand what I've said,
17 Mr. Matuska?

18 MR. MATUSKA: Yes, your Honor.

19 THE COURT: We'll deal with it that way. And
20 then each side will have the opportunity to respond to that.
21 There will be a simultaneous first filing and I'll set a date
22 for that. And then you'll have ten days to make the
23 pleadings complete, ten days to respond to the other side's
24 plea. Does that work? Do you have comments or a
25 recommendation about that, either side?

1 MR. MATUSKA: You've given us your direction,
2 your Honor. Still, I've expressed from my side the
3 difficulty proceeding without an actual pleading because I
4 don't think we actually pled these issues. It's difficult
5 because we're talking about trying to get a measurement from
6 a seepage test without even any idea on what it means to us
7 when we get a number for seepage. And I don't know that
8 until I see a pleading.

9 THE COURT: That has nothing to do with the
10 validity agreement.

11 MR. MATUSKA: I don't know that seepage is an
12 issue for these proceedings at all. I don't have a pleading
13 that sets before me why they think seepage is an issue for
14 those proceedings at all.

15 THE COURT: Well, yes you do. First of all, you
16 introduced it in your initial exception. That's the first
17 place it comes from. The second place it comes from is the
18 claim of overuse of water right as opposed to overuse of the
19 water right that the Bentleys have under the State Engineer's
20 order by virtue of loss of water through the pond system that
21 is -- And the State Engineer has made it clear from their
22 perspective that when you have a stock or wildlife right, it
23 is not a right to consumptive use. And you have said
24 repeatedly that it's not a consumptive use and the agreement
25 says it's not consumptive use, and so that's how the issue

1 comes in to play, through all of these means.

2 I understand that it's kind of uncomfortable to
3 not have the case come to issue by something called a
4 complaint and an answer and a reply. I understand the lack
5 of comfort there. I am trying to free you up to do both
6 things in this case --

7 MR. MATUSKA: I appreciate that.

8 THE COURT: -- to both complain and defend.

9 MR. MATUSKA: Can I express another concern about
10 the seepage test?

11 THE COURT: Sure.

12 MR. MATUSKA: This is an unlined ditch system
13 that's a couple miles long. My concern is going to be
14 misleading the focus on impoundment instead of the entire
15 system. The water seeps when it's going between these
16 properties too.

17 THE COURT: No doubt. That's why we're only
18 going to measure what's in the reservoirs.

19 MR. MATUSKA: Okay.

20 THE COURT: There's nothing -- I don't think
21 there's anything misleading about that. We all know there's
22 ditch loss in all of these ditches above and below, and
23 there's no doubt that there is.

24 MR. MATUSKA: Right.

25 THE COURT: The claim or the concern is that

1 there's water loss from the reservoirs that exceeds the
2 Bentleys' water right, therefore making it to some extent a
3 consumptive use. I don't know whether that's true or not.
4 It's not whether there's seepage, because there is.

5 MR. MATUSKA: There obviously is.

6 THE COURT: The issue is whether it exceeds their
7 water right.

8 MR. MATUSKA: Okay.

9 THE COURT: I mean that's my initial thought
10 about it.

11 MR. MATUSKA: And the result or the conclusion at
12 the end of the case is going to be if it does not exceed the
13 water rights there's no real issue.

14 THE COURT: There may be other parameters to
15 that, but I'm not ready to say that out loud.

16 MR. MATUSKA: And if it exceeds the water rights
17 then we have to consider that in reference to the diversion
18 agreement.

19 THE COURT: Right. I think that's true. Or
20 perhaps we even do -- if it doesn't exceed it. I haven't
21 thought that part through yet. But I do know I need answers
22 to all of those questions in order to arrive at a complete
23 answer.

24 Mr. Hall.

25 MR. HALL: I don't think I'm going to be able to

1 bring much new to the table. I'm going to rephrase it so
2 that it's absolutely perfectly clear to the Court.

3 THE COURT: Which is sometimes more difficult
4 than other times. Yeah. I'm doing that for your comfort
5 level. I'm comfortable going to trial on the issues today.
6 I know what the issues are. But I know that you need to
7 frame them from an advocacy standpoint and I want you to be
8 free to do that. That's the purpose for it.

9 Frankly, I don't believe that it's as important
10 to me as it is to you. But I understand that it needs to be
11 brought to issue for everybody's comfort level so that's what
12 we'll do.

13 And it is still notice pleading and I haven't
14 changed that rule, so it's not going to really restrict what
15 the proof is going to be more than it normally would.

16 MR. HALL: Your Honor, I'm going to be traveling
17 a little bit this next couple weeks. Can we have 30 days
18 from today?

19 THE COURT: Any objection to that?

20 MR. MATUSKA: No.

21 THE COURT: 30 days is fine for the first initial
22 filing and then ten days following that for a response.

23 And Mr. Stockton, I'm not requiring you to do
24 that. You can file a brief position paper if you want in
25 regard to the original diversion agreement but you need not.

1 MR. STOCKTON: Thank you, your Honor. I doubt
2 we'll get involved in that.

3 THE COURT: Oh, now, we still need to figure out
4 who gets water this summer. And what I'm going to do is
5 allow Mr. Hall to file as soon as he can have it done, I'm
6 hoping within the next five days, a more detailed 21-day
7 rotation schedule. And then I'm going to invite Mr. Matuska
8 within five days after that to tell me objections to the
9 rotation schedule. I know what some of them are already.
10 But I would like substantive objections to the actual
11 schedule also. And then I'm going to simply rule on how we
12 deal with the issue this water year. Everybody understand?

13 MR. MATUSKA: Yes, your Honor.

14 THE COURT: Okay. And I'm going to ask
15 Mr. Stockton, I am going to ask you to do this. I've asked
16 Mr. Matuska to do one order. I've asked Mr. Hall to another
17 order. I'm going to ask you to do an order simply codifying
18 or putting down in writing the rest of the things that I've
19 said about how we're going to deal with this case. It should
20 be real easy. Okay. Thank you. We'll be in recess.
21 Anything else before we go?

22 MR. HALL: Thank you, your Honor.

23 THE COURT: Okay. Thank you. We'll be in
24 recess.

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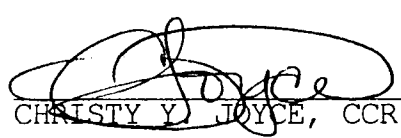
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHRISTY Y. JOYCE, Nevada Certified Court
Reporter Number 625, do hereby certify:

That I was present in the District Court of
Minden Township, in and for the State of Nevada, on Monday,
the 17th day of May, 2010, for the purposes of reporting in
verbatim stenotype notes the within-entitled hearing;

That the foregoing transcript, consisting of
pages 1 through 19, is a full, true, and correct transcript
of said hearing.

Dated at Reno, Nevada, this 21st day of May,
2010.


CHRISTY Y. JOYCE, CCR #625

1 CAPITOL REPORTERS
1201 N. Stewart Street, Suite 130
2 Carson City, Nevada 89706
(775)882-5322

3 NINTH JUDICIAL DISTRICT COURT
4 IN AND FOR DOUGLAS COUNTY, STATE OF NEVADA

5 In the Matter of the
6 Determination of the
7 Relative rights in and
8 To the waters of
9 Mott Creek, et al.

Case No. 08-CV-0363-D

Dept. No. 1

10 **AFFIRMATION**
11 **Pursuant to NRS 239B.030**

12 The undersigned does hereby affirm that the following
13 document **DOES NOT** contain the social security number of any
14 person: (List document(s) attached below)

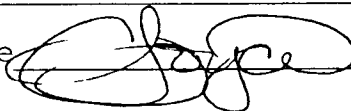
- 15 1) Transcript of Proceedings 5-17-10
16 2) _____
17 3) _____

18 -OR-

19 The undersigned does hereby affirm that the document
20 named below **DOES** contain the social security number of a
21 person as required by state or federal law or for the
22 administration of a public program or for an application for
23 a federal or state grant: (List the document(s) attached
24 containing social security number information below)

- 25 1) _____
2) _____
3) _____

Signature



Date

5-24-10

1 Case No.: 08-CV-0363-D

2 Dept. No.: I

3 Thomas J. Hall, Esq.
4 Nevada State Bar No. 675
5 305 South Arlington Avenue
6 Post Office Box 3948
7 Reno, Nevada 89505
8 Telephone: 775-348-7011
9 Facsimile: 775-348-7211

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR DOUGLAS COUNTY

12 In the Matter of the Determination of
13 the Relative Rights in and to the
14 Waters of Mott Creek, Taylor Creek,
15 Cary Creek (aka Carey Creek), Monument
16 Creek, and Bulls Canyon, Stutler Creek
17 (aka Stattler Creek), Sheridan Creek,
18 Gansberg Spring, Sharpe Spring,
19 Wheeler Creek No., 1 Wheeler Creek
20 No. 2, Miller Creek, Beers Spring,
21 Luther Creek and Various Unnamed
22 Sources in Carson Valley, Douglas
23 Valley, Nevada.
24 _____/

25 NOTICE OF ENTRY OF ORDER

26 PLEASE TAKE NOTICE that on the 18th day of June, 2010, this
27 Court entered an Order for Division of Water in the above
28 entitled matter. A copy of the Order for Division of Water is
attached hereto as Exhibit 1.

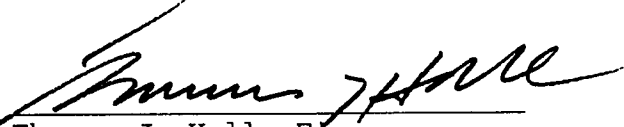
\\ \\ \\

\\ \\ \\

\\ \\ \\

1 DATED this 23rd day of June, 2010.

2 LAW OFFICES OF THOMAS J. HALL

3
4 
5 Thomas J. Hall, Esq.
6 Nevada State Bar No. 675
7 305 South Arlington Avenue
8 Post Office Box 3948
9 Reno, Nevada 89505
10 Telephone: 775-348-7011
11 Facsimile: 775-348-7211

12 **AFFIRMATION**

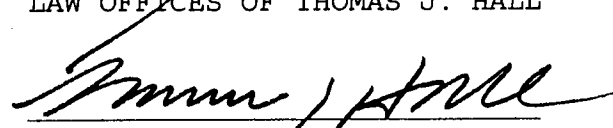
13 (Pursuant to NRS 239B.030)

14 Case No. 08-CV-0363-D

15 The undersigned does hereby affirm that the preceding
16 document, **Notice of Entry of Order**, does not contain the social
17 security number of any person.

18 DATED this 23rd day of June, 2010.

19 LAW OFFICES OF THOMAS J. HALL

20 
21 THOMAS J. HALL, ESQ.
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAIL

I certify that I am an employee of Thomas J. Hall, Esq., and that on this date, pursuant to NRCP 5(b), I placed in the U.S. Mail, postage prepaid, a true and correct copy of the Notice of Entry of Order, addressed to:

Michael L. Matuska, Esq.
Brooke, Shaw, Zumpft,
Attorneys at Law
Post Office Box 2860
Gardnerville, Nevada 89423

Thomas J. Scyphers
Kathleen M. Scyphers
1304 S. Aylesbury Court
Gardnerville, Nevada 89460

State of Nevada
Department of Conservation and
Natural Resources
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Donald S. Forrester
Kristina M. Forrester
913 Sheridan Lane
Gardnerville, Nevada 89460

Bryan L. Stockton, Esq.
Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701

Frank Scharo
Post Office Box 1225
Minden, Nevada 89423

Hall Ranches, LLC
Post Office Box 3948
Reno, Nevada 89505

Ronald R. Mitchell
Ginger G. Mitchell
Post Office Box 5607
Stateline, Nevada 89449

Sheridan Equestrian Center, LLC
Glenn A. Roberson, Jr.
281 Tiger Wood Court
Gardnerville, Nevada 89460

DATED this 23rd day of June, 2010.

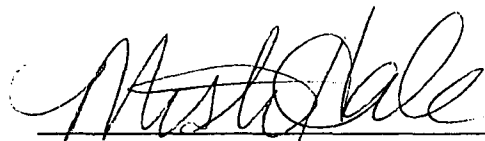

Misti Hale

EXHIBIT 1

EXHIBIT 1

Case No.: 08-CV-0363-D

RECEIVED

FILED

Dept. No.: I

JUN 18 2010

DOUGLAS COUNTY
DISTRICT COURT CLERK

2010 JUN 18 AM 11:51

TED THIRAN
CLERK

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

KB WILFERT DEPUTY

IN AND FOR DOUGLAS COUNTY

In the Matter of the Determination of
the Relative Rights in and to the
Waters of Mott Creek, Taylor Creek,
Cary Creek (aka Carey Creek), Monument
Creek, and Bulls Canyon, Stutler Creek
(aka Stattler Creek), Sheridan Creek,
Gansberg Spring, Sharpe Spring,
Wheeler Creek No., 1 Wheeler Creek
No. 2, Miller Creek, Beers Spring,
Luther Creek and Various Unnamed
Sources in Carson Valley, Douglas
Valley, Nevada.

ORDER FOR DIVISION OF WATER

Upon the Motion for Division of Water filed herein on
January 8, 2010, by DONALD S. FORRESTER and KRISTINA M.
FORRESTER, HALL RANCHES, LLC, a Nevada Limited Liability
Company, THOMAS J. SCYPHERS and KATHLEEN M. SCYPHERS, FRANK
SCHARO, SHERIDAN CREEK EQUESTRIAN CENTER, LLC, a Nevada Limited
Liability Company, and RONALD R. MITCHELL and GINGER G. MITCHELL
("Intervenors"), and upon a hearing having been held in this
matter on May 17, 2010, with all parties and their counsel
present and following the presentation of evidence and argument
by counsel, the Court entered its oral order for the Division of
Water and the implementation of a Rotation Schedule, and good
cause appearing,

1 NOW THEREFOR, the Court finds and concludes as follows:

2 1. NRS 533.230 provides as follows:

3 **533.230. Division of water by State Engineer during**
4 **time order of determination is pending in district**
5 **court.**

6 From and after the filing of the order of
7 determination, evidence and transcript with the county
8 clerk, and during the time the hearing of the order is
9 pending in the district court, the division of water
from the stream involved in such determination shall
be made by the State Engineer in accordance with the
order of determination.

10 2. The Final Order of Determination dated August 14,
11 2008, on page 193 and 194, under Table 6 for Sheridan Creek -
12 North and South Diversions, states as follows:

13 The diversion rates for the north and south split of
14 Sheridan Creek are based on a spring and early summer
15 average stream flow of 3.5 c.f.s. Flow and diversion
16 rates during periods of drought and middle to late
17 irrigations season will generally be less than the
18 rates determined in the Preliminary Order of
19 Determination. Therefore, all parties will have to
share the water shortage during periods of low flow.
The total diversion from either the north or south
split can be used in its entirety in a rotation system
of irrigation.

20 3. The Court finds the 21 Day Rotation Schedule attached
21 hereto as Exhibit 1 is a fair and equitable Rotation Schedule *for*
22 *the 2010 irrigation season.*

23 4. The Court finds the parties should be ordered to
24 adhere to the 21 Day Rotation Schedule until further order of
25 this Court.

26 IT IS HEREBY ORDERED, that the State Engineer make division
27 of the water of Sheridan Creek in accordance with the Final
28 Order of Determination dated August 14, 2008 and specifically in

1 accordance with the attached 21 Day Rotation Schedule commencing
2 immediately and continuing until further order of this Court.

3 DATED this 18 day of June, 2010.

4
5 
6 _____
7 District Judge
8
9
10
11
12
13

14 Submitted by:
15 Thomas J. Hall, Esq.
16 Nevada Bar Number 0675
17 Post Office Box 3948
18 Reno, Nevada 89505
19 Telephone: (775) 348-7011
20 Facsimile: (775) 348-7211

21 Attorney for Intervenors
22
23
24
25
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27
28

EXHIBIT 1

EXHIBIT 1

SHERIDAN CREEK ADJUDICATION

21 DAY ROTATION SCHEDULE

The following property owners are entitled to receive water from Sheridan Creek in rotation. The list shows acreage to be supplied water from Sheridan Creek and may not include total acreage owned due to other rights from Park & Bull Ditch.

Group	Owner's Name	Acreage	Percentage of Total	21 Day Rotation	Group Combined
A	J.W. Bentley	12.93	7.67%	1.6	<u>1.6</u>
B	Hall Ranches, LLC	22.03	13.06%	2.7	
B	Thomas Scyphers	9.63	5.54%	1.2	
B	Frank Scharo	7.26	4.28%	0.9	<u>4.8</u>
C	Sheridan Equestrian, LLC	11.31	6.64%	1.4	
C	Ronald Mitchell	10.37	6.15%	1.3	<u>2.7</u>
D	Donald Forrester	49.56	29.40%	6.2	
D	Ernest Pestana	23.76	13.66%	2.9	
D	Allan D. Sapp (currently not in rotation)	5.10			
D	Daniel Barden (currently not in rotation)	7.23	4.29%	0.9	
D	Joy Smith a/k/a Joy Whipple (currently not in rotation)	<u>17.71</u>	<u>9.31%</u>	1.9	<u>11.9</u>
	Total acreage with water rights (not including Lodato)	176.61	100.00%	21.0	21.0

July 2, 2010

Hon. David R. Gamble
Ninth Judicial District Court, Dept. One
1625 Eighth Street
Minden NV 89423

Re: *Ninth Judicial District Court Case No. 08-CV-0363-D*
Court Order of May 17, 2010

Dear Judge Gamble:

The undersigned owners of property and related water rights to the north split of the Sheridan Creek and other subject water sources referenced in the 17 May 2010 Order ("Order") are being impacted adversely by the Order. In response, the undersigned parties do hereby petition the Court to amend the Order in order that the distribution of water be improved for greater efficiency and more equitable distribution among its users.

Specifically, this petition requests that the 21-Day Rotation Schedule that is a part of the Order be replaced by a provision for continual usage of water rights ("Continual Usage Provision") according to the respective interests of each of the holders of water rights impacted by the Order. The Continual Usage Provision will require that the following capital improvements be made in a good workmanship quality and manner to enhance the efficacy of the distribution at the sole cost and expense of the Bentley Family Trust in an expeditious manner:

1. Excavation, construction, and installation of water master-approved Distribution Box at the northwest corner of the Bentley Family Trust property immediately to the east of Sheridan Lane;
2. Excavation, construction, and installation of water master-approved Distribution Box to permit the diversion of only the proportionate share of water owned by Sheridan Creek Equestrian Center and Ronald & Ginger Mitchell from the point immediately to the east of Foothill Road to the south pond on the Bentley property;
3. Excavation, construction, and installation of a 6-inch SDR pipe commencing near the east outlet of the south pond on the Bentley property and running the length of the easement to the east along the south fence line of the Donald and Kristina Forrester to its termination at the southwest corner of the Ronald and Ginger Mitchell property;
4. Excavation, construction, and installation of water master-approved Distribution Box at the northwest corner of Bentley property to permit the diversion of only the proportionate share of water owned by the Bentley

Family 1995 Trust, Donald and Kristina Forrester, Hall Ranches LLC, Joy Smith, Elaine and Dan Barden, Thomas and Kathleen Scyphers, and Frank Sharo as specified on *Exhibit A*, attached and made a part hereof by reference.

5. Excavation, construction, and installation of a 6-inch SDR pipe commencing at the north outlet of the new Distribution Box defined in paragraph 4 above and running northward within the existing ditch easement to the south fence line of the Pestana property, if possible, or otherwise of the Joy Smith property, and then eastward within an easement to be designated along the south fence lines of the Smith and Hall properties, terminating at the southwest corner of the Scyphers property.

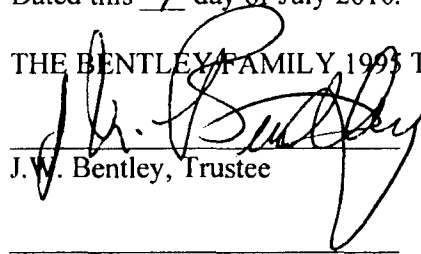
The Continual Usage Provision will call for all available water from the subject water sources to be distributed via the remaining existing conduits and the newly installed distribution elements identified above to be delivered in a continual, unfettered manner according to the proportional interests of the respective parties.

Subject to the final documents necessary to memorialize this petition in the form of The Continual Usage Provision, the undersigned parties agree to the terms of this petition and request your approval of its substitution in lieu of the above-referenced Order.

Dated this 7th day of July 2010.

THE BENTLEY FAMILY 1995 TRUST

HALL RANCHES, LLC


J.W. Bentley, Trustee

Thomas J. Hall

Donald S. Forrester

Kristina M. Forrester

Thomas J. Scyphers

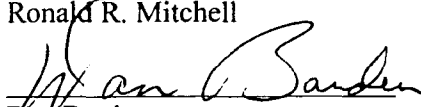
Kathleen M. Scyphers

Frank Scharo

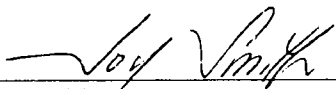
Allan Sapp

Ronald R. Mitchell

Ginger G. Mitchell


Dan Barden


Elaine Barden


Joy Smith

Ernest Pestana

SHERIDAN CREEK EQUESTRIAN CENTER, LLC

By: _____
(Signature)

(Print Name)

Its: _____
(Title)