

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JASON KING, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Appellant,

vs.

HAPPY CREEK, INC.,

Respondent.

Electronically Filed  
Jan 31 2019 10:22 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT HAPPY CREEK, INC.'S NOTICE  
OF SUPPLEMENTAL AUTHORITY (NRAP 31(e))**

After the district court hearing on August 14, 2017, the State Engineer issued an additional curtailment order regarding Pine Forest Valley (29) which is the location of the water rights at issue in this appeal. State Engineer Order 1290 was issued September 14, 2017, and therefore could not be in the record at the time of the August 14, 2017, district court oral argument. This Court should take notice of the fact Order 1290 was issued by the State Engineer because it is a public record of the Nevada Division of Water Resources and pertains to the matters under consideration in this appeal.<sup>1</sup>

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<sup>1</sup> NRS 47.130(2)(b). *See* NRS 47.140.

In Happy Creek's answering brief, Happy Creek referenced prior administrative orders the State Engineer issued regarding Pine Forest Valley.<sup>2</sup> Also, the joint appendix contains prior administrative orders, including a curtailment order, regarding Pine Forest Valley.<sup>3</sup> This notice supplements the authorities cited in that portion of Happy Creek's answering brief. Happy Creek is citing to the State Engineer's Order 1290 for the legal proposition that Pine Forest Valley is both over-appropriated and over-pumped, making the priority of water rights in that valley of the upmost importance.<sup>4</sup>

State Engineer Order 1290 is entitled "Curtailing New Appropriations of Groundwater Within the Pine Forest Valley Hydrographic Basin (029)." In Order 1290, the State Engineer found that any new applications to appropriate groundwater pursuant to NRS Chapters 533 and 534 within the Pine Forest Valley Hydrographic Basin will be denied.<sup>5</sup> In Order 1290, the State Engineer stated that the Nevada Division of Water Resources' estimate of perennial yield in Pine Forest Valley is approximately 11,000 acre feet annually.<sup>6</sup> In Order 1290, the State Engineer also

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<sup>2</sup> Respondent's Answering Brief at 23, 35, 46.

<sup>3</sup> Joint Appendix at 259-261, 283.

<sup>4</sup> Respondent's Answering Brief at 35.

<sup>5</sup> State Engineer Order 1290 at 2.

<sup>6</sup> *Id.* at 1.

recognized that groundwater appropriations in Pine Forest Valley are approximately 33,350 acre feet annually, and greatly exceed the perennial yield for that valley.<sup>7</sup>

The State Engineer then stated in Order 1290 that the withdrawals of groundwater in the Pine Forest Valley Hydrographic Basin have consistently exceeded the basin's perennial yield since at least 1963.<sup>8</sup> The State Engineer further recognized that, in portions of Pine Forest Valley, groundwater levels have declined over 100 feet since 2008, and the water level continues to decline.<sup>9</sup>

DATED this 31<sup>st</sup> day of January, 2019.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(b), I certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of the foregoing document by electronic service to:

James N. Bolotin, Esq.  
Nevada Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
[jbolotin@ag.nv.gov](mailto:jbolotin@ag.nv.gov)

DATED this 31<sup>st</sup> day of January, 2019.

/s/ Sarah Hope  
An Employee of TAGGART & TAGGART, LTD.

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

**ORDER**

**#1290**

**CURTAILING NEW APPROPRIATIONS OF GROUNDWATER  
WITHIN THE PINE FOREST VALLEY HYDROGRAPHIC BASIN (029)**

**WHEREAS**, Nevada Revised Statute (NRS) § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

**WHEREAS**, the State Engineer designated the Pine Forest Valley Hydrographic Basin, located within Humboldt County, Nevada, as provided under the provisions of NRS § 534.030, by Order No. 711 dated May 1, 1978.

**WHEREAS**, the State Engineer issued Order No. 831 on December 1, 1983, curtailing new appropriations of groundwater in the Pine Forest Valley Hydrographic Basin for irrigation purposes.

**WHEREAS**, the Nevada Division of Water Resources estimates that 11,000 acre-feet of water annually are available as the perennial yield from the Pine Forest Valley Hydrographic Basin.<sup>1</sup>

**WHEREAS**, the committed groundwater appropriations of record in the Office of the State Engineer are approximately 33,350 acre-feet annually, which greatly exceeds the perennial yield of the basin.<sup>2</sup>

**WHEREAS**, the withdrawals of groundwater in the Pine Forest Valley Hydrographic Basin have consistently exceeded the perennial yield of the basin at least since 1963.

**WHEREAS**, in portions of the basin, groundwater levels have declined over 100 feet since 2008 and the water level continues to decline.<sup>3</sup>

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<sup>1</sup> William C. Sinclair, *Ground-water Resources of Pine Forest Valley, Humboldt County, Nevada*, Ground-Water Resources-Reconnaissance Series Report 4, (Department of Conservation and Natural Resources and United States Geological Survey), January 1962.

<sup>2</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Pine Forest Valley Hydrographic Basin (29), accessed August 24, 2017, official records in the Office of the State Engineer, available at <http://water.nv.gov/undergroundactive.aspx>.

<sup>3</sup> Water Level Database, accessed August 24, 2017, official records in the Office of the State Engineer, available at <http://water.nv.gov/WaterLevelData.aspx>.

**WHEREAS**, the State Engineer finds that conditions warrant the curtailment of new appropriations of groundwater within the Pine Forest Valley Hydrographic Basin.

**NOW THEREFORE, IT IS HEREBY ORDERED** that, with the following exceptions, any application to appropriate groundwater pursuant to NRS Chapters 533 and 534 within the designated Pine Forest Valley Hydrographic Basin will be denied. Applications filed under the exceptions below must also satisfy the criteria found in NRS Chapters 533 and 534.

**EXCEPTIONS:**

1. Those applications filed for environmental use pursuant to NRS §§ 533.437 to 533.4377, inclusive.
2. Those applications for temporary appropriations of groundwater for establishing fire-resistant vegetative cover filed pursuant to NRS § 533.436.
3. Those applications filed for temporary stockwater use pursuant to NRS § 533.504 that seek appropriations of less than two acre-feet of water annually.
4. Those applications filed for diversion rate only with no corresponding increase in duty of water.
5. Those applications filed for non-consumptive uses.

  
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JASON KING, P.E.  
State Engineer

Dated at Carson City, Nevada this

14th day of September, 2017.