IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81224

DIAMOND NATURAL RESOURCES PROTECTION & CONSERVATION ASSOCIATION; J&T FARMS, LLC; GALLAGHER FARMS LLC; JEFF LOMMORI; M&C HAY; CONLEY LAND & LIVESTOCK, LLC; JAMES ETCHEVERRY; NICK ETCHEVERRY; TIM HALPIN; SANDI HALPIN; DIAMOND VALLEY HAY COMPANY, INC.; MARK MOYLE FARMS LLC; D.F. & E.M. PALMORE FAMILY TRUST; WILLIAM H. NORTON; PATRICIA NORTON; SESTANOVICH HAY & CATTLE, LLC; JERRY ANDERSON; BILL BAUMAN; AND DARLA BAUMAN,

Appellants/Cross-Respondents,

v.

TIM WILSON, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; EUREKA COUNTY; DIAMOND VALLEY RANCH, LLC; AMERICAN FIRST FEDERAL, INC.; BERG PROPERTIES CALIFORNIA, LLC; BLANCO RANCH, LLC; BETH MILLS, TRUSTEE MARSHALL FAMILY TRUST; TIMOTHY LEE BAILEY; CONSTANCE MARIE BAILEY; FRED BAILEY; CAROLYN BAILEY; SADLER RANCH, LLC; IRA R. RENNER; AND MONTIRA RENNER,

Respondents/Cross-Appellants.

Appeal From Order Granting Petitions for Judicial Review
Seventh Judicial District Court of Nevada Case No. CV-1902-348

APPELLANTS' MOTION TO EXCEED PAGE LIMIT

LEONARD LAW, PC
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Appellants DIAMOND NATURAL RESOURCES PROTECTION & CONSERVATION ASSOCIATION; J&T FARMS, LLC; GALLAGHER FARMS LLC; JEFF LOMMORI; M&C HAY; CONLEY LAND & LIVESTOCK, LLC; JAMES ETCHEVERRY; NICK ETCHEVERRY; TIM HALPIN; SANDI HALPIN; DIAMOND VALLEY HAY COMPANY, INC.; MARK MOYLE FARMS LLC; D.F. & E.M. PALMORE FAMILY TRUST; WILLIAM H. NORTON; PATRICIA NORTON; SESTANOVICH HAY & CATTLE, LLC; JERRY ANDERSON; BILL BAUMAN; AND DARLA BAUMAN (collectively, "Appellants") move to exceed the ten-page limit imposed by NRAP 27(d)(2) for its Emergency Motion Under NRAP 27(e) for Stay Pending Appeal (Relief Requested by July 10, 2020) ("Motion to Stay") filed concurrently herewith. This motion is supported by the following points and authorities and declaration of Debbie Leonard that follows. A copy of the Motion to Stay (without exhibits) is attached hereto as Ex. 1.

MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 27(d)(2) states "[a] motion…shall not exceed 10 pages, unless the court permits or directs otherwise." NRAP 32(a)(7)(D) authorizes the filing of a motion to file a brief that exceeds the applicable page limit "on a showing of diligence and good cause." Appellants cite NRAP 32(a)(7)(D) by analogy here and comply with its requirements.

Appellants respectfully request leave to exceed the page limit pursuant to NRAP 27(d)(2) because the issues presented in the Motion to Stay required more pages than the rule allows. This case involves a matter of first impression and of statewide public importance. As a result, Appellants could not condense the discussion of the NRAP 8(c) factors into just 10 pages. The Motion to Stay is 28 pages, so Appellants seek leave to file an extra 18 pages than allowed under NRAP 27(d)(2).

Counsel for Appellants worked diligently to present the Motion to Stay in a concise manner. However, the Motion to Stay addresses complex issues concerning the first groundwater management plan (GMP) developed and approved under the authority of NRS 534.110(7) and NRS 534.037. Enacted in 2011, these statutes authorize the State Engineer to manage groundwater withdrawals in a basin that has been designated a critical management area without curtailing water use by seniority if an approved GMP is in place. This appeal will be the first to interpret the pertinent statutes and will have significant public policy implications for numerous over-appropriated groundwater basins in Nevada.

Additionally, the standard for a stay pending appeal requires a comprehensive discussion of the history of water appropriation in Diamond Valley, the legislative history of the statutes, the GMP planning process, and the aquifer

condition. It also requires a thorough analysis of the law so that the Court can review the merits of the appeal.

Appellants respectfully submit that they have exercised diligence and demonstrated good cause to exceed the 10-page limit in NRAP 27(d)(2) and request leave to do so.

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Date: July 6, 2020

/s/ Debbie Leonard

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Attorney for Appellants

DECLARATION OF DEBBIE LEONARD IN SUPPORT OF MOTION TO EXCEED THE PAGE LIMIT

I, Debbie Leonard, do hereby swear under penalty of perjury that the assertions of this declaration are true and correct.

1. I am over the age of eighteen (18) years. I have personal knowledge of the facts stated within this declaration. If called as a witness, I would be competent to testify to these facts.

2. I am the owner of Leonard Law, PC and counsel of record for Appellants in this case.

3. This declaration is offered in support of Appellants' Emergency Motion Under NRAP 27(e) for Stay Pending Appeal (Relief Requested by July 10, 2020) ("Motion to Stay") and in compliance with NRAP 32(a)(7)(D).

4. Appellants respectfully request leave to exceed the page limit pursuant to NRAP 27(d)(2) because the issues presented in the Motion to Stay required more pages than the rule allows. This case involves a matter of first impression and of statewide public importance. As a result, I could not condense the discussion of the NRAP 8(c) factors into just 10 pages. The Motion to Stay is 28 pages, a copy of which (without exhibits) is attached hereto as Ex. 1. Appellants request leave to file an additional 18 pages.

5. The Motion to Stay addresses complex issues concerning the first groundwater management plan (GMP) developed and approved under the authority

of NRS 534.110(7) and NRS 534.037. Enacted in 2011, these statutes authorize the State Engineer to manage groundwater withdrawals in a basin that has been designated a critical management area without curtailing water use by seniority if an approved GMP is in place. This appeal will be the first to interpret the pertinent statutes and will have significant public policy implications for numerous over-appropriated groundwater basins in Nevada.

6. Additionally, the standard for a stay pending appeal requires a comprehensive discussion of the history of water appropriation in Diamond Valley, the legislative history of the statutes, the GMP planning process, and the aquifer condition. It also requires a thorough analysis of the law so that the Court can review the merits of the appeal.

7. I worked diligently to present the Motion to Stay in a concise manner. However, due to the extensive factual background and complex arguments at issue, the motion exceeds the page limit set forth in NRAP 27(d)(2).

8. I believe diligence and good cause exist to grant the Motion to Exceed the Page Limit.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED: this 6th day of July, 2020.

/s/ Debbie Leonard
DEBBIE LEONARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on July 6, 2020, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system. All others will be served by first-class mail.

/s/ Tricia Trevino
An employee of Leonard Law, PC

EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81224

DIAMOND NATURAL RESOURCES PROTECTION & CONSERVATION ASSOCIATION; J&T FARMS, LLC; GALLAGHER FARMS LLC; JEFF LOMMORI; M&C HAY; CONLEY LAND & LIVESTOCK, LLC; JAMES ETCHEVERRY; NICK ETCHEVERRY; TIM HALPIN; SANDI HALPIN; DIAMOND VALLEY HAY COMPANY, INC.; MARK MOYLE FARMS LLC; D.F. & E.M. PALMORE FAMILY TRUST; WILLIAM H. NORTON; PATRICIA NORTON; SESTANOVICH HAY & CATTLE, LLC; JERRY ANDERSON; BILL BAUMAN; AND DARLA BAUMAN,

Appellants/Cross-Respondents,

v.

TIM WILSON, P.E., NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; EUREKA COUNTY; DIAMOND VALLEY RANCH, LLC; AMERICAN FIRST FEDERAL, INC.; BERG PROPERTIES CALIFORNIA, LLC; BLANCO RANCH, LLC; BETH MILLS, TRUSTEE MARSHALL FAMILY TRUST; TIMOTHY LEE BAILEY; CONSTANCE MARIE BAILEY; FRED BAILEY; CAROLYN BAILEY; SADLER RANCH, LLC; IRA R. RENNER; AND MONTIRA RENNER,

Respondents/Cross-Appellants.

Appeal From Order Granting Petitions for Judicial Review
Seventh Judicial District Court of Nevada Case No. CV-1902-348

APPELLANTS' EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING APPEAL
(Relief Requested by July 10, 2020)

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Diamond Natural Resources Protection and Conservation Association
J&T Farms, LLC
Gallagher Farms, LLC
Conley Land & Livestock, LLC
Diamond Valley Hay Co., Inc.
Mark Moyle Farms, LLC
Sestanovich Hay & Cattle, LLC

None of the entities have a parent corporation, nor is there a publicly held company that owns 10% or more of their stock.

The following law firms have lawyers who appeared on behalf of the Appellants or are expected to appear on their behalf in this Court:

Leonard Law, PC
McDonald Carano LLP

Date: July 6, 2020

/s/ Debbie Leonard

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Attorney for Appellants

I. INTRODUCTION

Pursuant to NRAP 27(e), Appellants Diamond Natural Resources Protection & Conservation Association; J&T Farms, LLC; Gallagher Farms LLC; Jeff Lommori; M&C Hay; Conley Land & Livestock, LLC; James Etcheverry; Nick Etcheverry; Tim Halpin; Sandi Halpin; Diamond Valley Hay Company, Inc.; Mark Moyle Farms LLC; D.F. & E.M. Palmore Family Trust; William H. Norton; Patricia Norton; Sestanovich Hay & Cattle, LLC; Jerry Anderson; Bill Bauman; and Darla Bauman move the Court for a stay to preserve the Diamond Valley Groundwater Management Plan ("GMP") during this appeal. The GMP has been in effect since January 11, 2019, when it was approved by the State Engineer in Order 1302. Ex. 1 (ROA 2-19). It is the first plan developed pursuant to NRS 534.110(7) and NRS 534.037, which were enacted in 2011 to avoid the catastrophic effects that would result from curtailment by priority in overappropriated groundwater basins throughout the State.

On April 27, 2020, the district court issued Findings of Fact, Conclusions of Law, and Order Granting Petitions for Judicial Review ("Order") filed by Respondents Ira R. & Montira Renner ("Renner"), Sadler Ranch, LLC ("Sadler"), Timothy Lee Bailey, Constance Maria Bailey, Fred Bailey and Carolyn Bailey ("the Baileys" and, collectively with Renner and Sadler, "the GMP Opponents"). Ex. 2. The Order invalidated the GMP. *Id.* The district court initially granted a stay

to keep the GMP in place temporarily but then declined to grant a stay for the duration of this appeal. Exs. 7 and 13.

Appellants move on an emergency basis because the district court's rejection of the GMP creates great uncertainty for Diamond Valley groundwater users. The 2020 irrigation season is already underway, with farmers and ranchers having made their farm plans based on the GMP's 2020 water allocations and implemented all measures required under the GMP. The GMP and associated orders imposed numerous requirements on water users regarding their water use, which are now in limbo. Accounting for tolling during the district court's temporary stay, the 30-day automatic stay of execution in NRCP 62(a), will expire July 10, 2020, after which the State Engineer will be unable to enforce the GMP.

There is also great uncertainty as to whether stakeholders must engage in yet another multi-year process to develop a new groundwater management plan when they believe the existing one complies with the law. Pursuant to NRS 534.110(7), to prevent mandatory curtailment, Diamond Valley groundwater users had 10 years from when the State Engineer designated the basin a Critical Management Area ("CMA") in 2015 to develop and obtain approval of a groundwater management plan. Because the district court invalidated the GMP, there is no plan in place while the 10-year clock in NRS 534.110(7) continues to tick.

The district court's reasoning would prohibit approval of *any* groundwater management plan that does not involve total curtailment of 60% of the water rights in Diamond Valley. That is the exact opposite result intended by the Legislature. Diamond Valley water users would not have made the significant investments in water-conserving equipment to meet the GMP's reduced water allocations if total curtailment of their rights were inevitable. They will be seriously harmed without the GMP's continued implementation.

On the other hand, there is no evidence that the GMP will harm the GMP Opponents. The Baileys are the only GMP Opponents who have "senior" permits that are subject to the GMP, and the Court can fashion a stay to exempt those permits from the GMP. Because Renner's and Sadler's permits would be entirely curtailed absent the GMP, the GMP helps, not hurts, them. The district court's conclusion that the GMP harms the GMP Opponents' vested rights is unsupported by any evidence and, if accepted, would render NRS 534.110(7) unconstitutional, a point never pressed by the GMP Opponents. Because the Order is fraught with legal errors and the equities favor a stay, Appellants ask the Court to grant this motion and keep the GMP in effect while it decides their appeal.

II. PROCEDURAL BACKGROUND

Appellants appealed the Order on May 14, 2020.[1] The same day, they filed a motion for stay in the district court, in which they presented the same arguments advanced here. Ex. 3. They also sought an order shortening time for briefing and decision on the stay motion. Ex. 4. The State Engineer and Eureka County joined in those motions. Ex. 5; Ex. 6.

On May 19, 2020, the district court denied the order shortening time but granted a temporary stay pending briefing and a decision on the motion to stay. Ex. 7. The GMP Opponents opposed the motion to stay. Ex. 8; Ex. 9. Appellants, the State Engineer and Eureka County filed replies. Ex. 10; Ex. 11; Ex. 12. On July 1, 2020, the district court served the parties with its order denying the motion for stay. Ex. 13. Pursuant to NRAP 8 and 27(e), Appellants now move the Court on an emergency basis to keep the GMP in place pending appeal.

III. STATUTORY AUTHORIZATION FOR THE GMP

Water rights owners structure their livelihoods around their water rights, with Nevada's rural economies depending upon limited water supplies. Previous State Engineers issued more permits than groundwater basins could sustain because, historically, not all appropriators were successful with their farming

[1] The State Engineer filed a notice of appeal on May 15, 2020, and Eureka County filed a notice of appeal on May 21, 2020. Appellants, the State Engineer and Eureka County filed a motion to modify the caption to identify them as Appellants.

efforts. Improved well technology and access to electricity made farming more successful, resulting in overappropriation of aquifers throughout the state.

Long ago, Nevada adopted the doctrine of prior appropriation, meaning "first in time, first in right." Under the prior appropriation doctrine, in times of shortage, more "junior" water users cannot exercise their rights. In simplest terms, a groundwater basin is essentially a bathtub, in which a shortage exists when the permitted rights exceed the amount of water that can be sustainably withdrawn over the long term, known as the basin's perennial yield. In Diamond Valley, the perennial yield is 30,000 acre-feet (af) annually, meaning the cut-off between "seniors" and "juniors" appropriators is May 12, 1960. Ex. 1 (ROA 3-4).

If enforced in an overappropriated groundwater basin, the prior appropriation doctrine could require that any water users whose rights are more junior than the date on which the perennial yield is exceeded be cut off completely. This is known as curtailment. In Diamond Valley, anyone with rights that were appropriated after May 12, 1960 could be curtailed completely if the prior appropriation doctrine were enforced. Ex. 1 (ROA 4, 499-501). Understandably, the State Engineer has been hesitant to enforce the priorities of groundwater rights and cut off more "junior" appropriators in Diamond Valley and elsewhere because it would result in devastating economic and social effects throughout Nevada.

Because of these draconian impacts, the Legislature has created certain exceptions to various aspects of the prior appropriation doctrine. It did so again in 2011 when, to protect Nevada's communities from the harsh repercussions of curtailment, the Legislature enacted AB 419, which is codified as NRS 534.037 and NRS 534.110(7). This legislation authorized the State Engineer to designate as a CMA any basin where water withdrawals consistently exceed groundwater recharge, which designation allows stakeholders to develop a groundwater management plan to avoid curtailment:

> [I]f a basin has been designated as a critical management area for at least 10 consecutive years, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, ***unless a groundwater management plan has been approved for the basin pursuant to NRS 534.037***.

NRS 534.110(7) (emphasis added). NRS 534.037 sets forth the procedure and criteria for approval of a groundwater management plan. The Diamond Valley GMP is the first plan developed and approved under these statutes.

IV. ARGUMENT

A. Standard for a Stay of a Judgment Pending Appeal

NRAP 8(c) sets forth the following factors in considering a stay:

> (1) Whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied;
> (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied;

(3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and
(4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

When addressing these factors, the movant must "present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay." *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

While, generally, one factor does not carry more weight than others, the Court has recognized that, if one or two factors are especially strong, they may counterbalance other weak factors. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *Hansen*, 116 Nev. at 659, 6 P.3d at 987). In another case, where the Legislature created a right to engage in a certain procedure afforded by statute, the Court articulated that the first factor takes on added significance and generally warrants a stay pending resolution of the appeal. *Mikohn Gaming*, 120 Nev. at 251, 89 P.3d at 38 (addressing appeal from order compelling arbitration). The other stay factors remain relevant to the Court's analysis, but "absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay is granted, a stay should issue to avoid defeating the object of the appeal." *Id.* at 251–52, 89 P.3d at 38. The same rationale applies here, yet the district court failed to address the *Mikohn* case or adhere to this standard when considering the motion to stay.

B. NRAP 8(c) Warrants That the GMP Remain in Place Pending Appeal to Maintain the Status Quo That Has Existed Since January 2019

1. The Object of the Appeal Will be Defeated if the GMP Does Not Remain in Place While the Appeal is Pending

The absence of a stay could result in increased pumping pending appeal, completely defeating the purpose of NRS 534.110(7). Through benchmark reductions, the GMP was designed to achieve groundwater level stabilization and the sustainable health of the Eureka County economy, while maintaining the tax base and avoiding disruption to the community. Ex. 1 (ROA 5, 228, 592, 706). Between 2017 and 2019, pumping in Diamond Valley was reduced nearly 20,000 af from 76,000 af to 56,339 af. Declaration of Mark Moyle at ¶30, Ex. 3-2; Declaration of Dale Bugenig at ¶8, Ex. 3-3. This is a significant reduction in pumping and was achieved notwithstanding the absence of penalties for non-compliance in 2019, which was GMP Year 1. Ex. 1 (ROA 235). There can be no dispute that a 26% reduction in pumping greatly enhances aquifer health and that continued pumping reductions should be encouraged and enforced. Moyle Decl., Ex. 3-2 at ¶30; Bugenig Decl., Ex. 3-3 at ¶8.

Moreover, hydrographs from the most recent groundwater data indicate a positive influence on water levels in the basin as a result of a decrease in the total groundwater pumping. Bugenig Decl., Ex. 3-3 at ¶11 and exhibit thereto. With one exception outside the main agricultural area, the data show a decrease in the rate of

water level decline in some wells, a stabilization of water levels in other wells and a rise in water levels in the rest of the wells monitored. Bugenig Decl., Ex. 3-3 at ¶¶11-12. The only groundwater decline was in the vicinity of Sadler's high-capacity well. Bugenig Decl., Ex. 3-3 at ¶¶11-12; Ex. 10-16.

Because Diamond Valley was designated a CMA in 2015, the State Engineer has no obligation to order curtailment by priority until 2025. *See* NRS 534.110(7). Absent the continued validity of the GMP pending appeal, no reductions in pumping will be required, and each groundwater user that would otherwise be subject to the GMP will be able to pump the full amount of its permitted right. This will result in more pumping and further groundwater declines while the appeal is pending, which is antithetical to the GMP's purpose.

In concluding otherwise, the district court stated that "[i]t is premature to confirm that the DVGMP is actually resulting in less impact on the Diamond Valley acquifer [*sic*] based only on the 2019 growing season." Ex. 13 at 3:18-20. Yet the only evidence submitted to the district court showed that, from 2016-2019, concurrently with the significant water-saving investments made by irrigators in anticipation of the GMP's implementation, water use decreased by 26%. Moyle Decl. ¶30, Ex. 3-2; Bugenig Decl. ¶8, Ex. 3-3. Absent continued enforcement of the GMP, it will be impossible to make conclusions regarding the GMP's

effectiveness. In other words, denial of a stay prevents Appellants from proving the very point the district court faulted them for being unable to prove.

Simply reinstating the GMP later should Appellants prevail on appeal, as the district court suggested (Ex. 13 at 4:5-6), means that, in the interim, the same problems that led to CMA designation will remain unaddressed. That defeats the GMP's purpose to reduce pumping in the near term, timely respond to the CMA designation, and ultimately have that designation removed. Ex. 1 (ROA 228). It also prevents scientists and others from drawing conclusions from groundwater data regarding the GMP's ongoing effectiveness.

Without any citation, the district court asserted that "[e]vidence exists that the DVGMP is actually increasing the volume of water removed from the acquifer [*sic*] rather than reducing at this time." Ex. 13 at 4:3-4. There is no such evidence. The only evidence shows the exact opposite. Moyle Decl. ¶30, Ex. 3-2; Bugenig Decl. ¶8, Ex. 3-3. The district court only speculates that water users will use shares banked in 2019 such that, in 2020, water use "could exceed the 2016 76,000 acre feet base line pumping in Diamond Valley that was used for the DVGMP." Ex. 13 at 4:1-3. But this fails to account for the evidence that water users have invested in water-saving technologies that may obviate the need to use banked water. Declaration of Martin L. Plaskett ¶¶4-5, Ex. 3-4. There is simply no evidence to support the district court's conclusion that continued implementation of the GMP

while this appeal is pending will be more harmful to the aquifer than reverting to the conditions that led to the CMA designation in the first instance.

Moreover, the Nevada Division of Water Resources ("DWR") invested in the GMP by creating and maintaining the shares database, developing procedures and forms to implement the GMP, training GMP participants, and hiring a GMP Water Manager to oversee the GMP using assessments to GMP participants. Moyle Decl., Ex. 3-2 ¶29; DWR Forms, Ex. 3-9. The Water Manager manages the GMP, verifies data reporting, and serves as a resource to water users who are subject to the GMP. Moyle Decl., Ex. 3-2 ¶29. Absent a stay, the State Engineer will not have authority to enforce the GMP's restrictions. For these reasons, the first NRAP 8(c) factor favors a stay.

2. Appellants Will Suffer Serious Injury Absent the Continued Viability of the GMP While the Appeal is Pending

With no GMP in place, Diamond Valley groundwater users and the basin as a whole will be irreparably harmed by continued – yet needless – groundwater declines, great uncertainty as to their current and future livelihoods, and the absence of clear and defined rules to reduce groundwater withdrawals.

a. The Stakeholders Spent Years Developing the GMP and Considered the Alternatives Suggested by the District Court

The GMP involved hundreds of hours of meetings and intense efforts over many years by Appellants and other community members to develop a GMP that

could effectively reduce pumping and stabilize the aquifer, with the stakeholders collectively contributing thousands of hours of their time. Ex. 1 (ROA 2, 277-475, 713-715); Moyle Decl., Ex. 3-2 ¶¶7-20, 38. The stakeholders considered numerous concepts, including the plan alternatives suggested by the GMP Opponents and referenced in the district court's Order (Ex. 2 at 32:10-18). Moyle Decl., Ex. 3-2 ¶¶23-24. The GMP incorporates many of these concepts, such as junior pumping reduction, water marketing, implementation of best farming practices, upgrade to more efficient sprinklers, and flexibility to use a rotating water use schedule or a shorter irrigation system in order to reduce pumping according to annual allocations. Ex. 1 (ROA 2-19, 217-247); Moyle Decl., Ex. 3-2 ¶¶23-24. None of these particular strategies is mandatory because the reduction in annual allocations are mandatory. Moyle Decl., Ex. 3-2 ¶23. Each water user must manage its operations to efficiently use reduced water allocations. Moyle Decl., Ex. 3-2 ¶23.

The GMP proponents also determined that those other alternatives alone would not successfully bring the basin into balance while maintaining the Eureka County economic base and the Diamond Valley community because, absent participation by "senior" right holders (i.e., those whose rights predate May 12, 1960), complete curtailment of "junior" rights (i.e., those that post-date May 12, 1960) will always be required. Moyle Decl., Ex. 3-2 ¶24. No matter how much the juniors conserve, pumping will always exceed 30,000 af if the seniors do not

change their practices as well. Moyle Decl., Ex. 3-2 ¶24. Only if juniors reduce their pumping to zero (i.e., total curtailment) will withdrawals equal the perennial yield. Moyle Decl., Ex. 3-2 ¶24; Ex. 1 (ROA 499-509). This would have devastating effects on Diamond Valley and the town of Eureka, severely impacting the economy, including businesses, individuals, family farming operations, and the agricultural base of the community. Moyle Decl., Ex. 3-2 ¶24. Complete destruction of livelihoods and the associated impact to Eureka County's economy defeats the purpose of NRS 534.110(7) and was not a viable plan option. Moyle Decl., Ex. 3-2 ¶37.

Moreover, the ten-year clock is ticking under NRS 534.110(7). Appellants should not be forced to develop a new plan where they have presented significant legal arguments that the GMP complies with Nevada law. *See* Ex. 14. A majority of senior rights approved the GMP. Ex. 1 (ROA 4); Moyle Decl., Ex. 3-2 ¶19. The purpose of the appeal will be defeated if Appellants are forced to engage in a new planning process only to have this Court ultimately uphold the existing GMP.

Even if such wasted effort could be justified (it cannot), given the extensive energy that went into this GMP, it is clear there is insufficient time to develop a new plan before curtailment must start. Moyle Decl., Ex. 3-2 ¶¶20, 38. The uncertainty claimed by Appellants is whether they should start planning now to pack up and abandon Diamond Valley or whether they should continue to invest in

their farms, purchase water-saving technologies to reduce their pumping and plan for a future in the community they call home. Absent a stay, Appellants and the State Engineer will be deprived of the benefits afforded them under NRS 534.110(7). *See*, *e.g.*, *New Motor Veh. Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (concluding "that any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury").

The district court asserted, "If this Courts's [*sic*] order granting petitions for judicial review is affirmed on appeal, there remains 5 years of the 10 year period during which another GMP consistent with Nevada law can be implemented." Ex. 13 at 4:20-24. This demonstrates a serious misunderstanding of the appellate process. The Court could take 18 months or more to decide this appeal, particularly because it presents issues of first impression that have great statewide importance. If the GMP remains in effect while the appeal is pending, equitable tolling principles could prevent the waste of significant time and resources to develop a new plan when the proponents believe the existing one complies with the law. *See*, *generally*, *O'Lane v. Spinney*, 110 Nev. 496, 501, 874 P.2d 754, 757 (1994); *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983).

b. The Stakeholders Made Significant Financial Investments to Achieve the Reductions Mandated by the GMP That Will be Lost Should the District Court's Order Not be Stayed

Those who are subject to the GMP have made significant investments in water-efficient technologies and meters in reliance on the GMP. Plaskett Decl. ¶¶4-5, Ex. 3-4; Moyle Decl., Ex. 3-2 ¶37. The GMP required the purchase of a specific type of meter. Ex. 1 (ROA 17, 221, 237); GMP Meters Pamphlet, Ex. 3-5; DWR Meters Presentation, Ex. 3-7. Over 90% of Diamond Valley irrigators have purchased and installed the type of totalizing meters specified in the GMP. Plaskett Decl., Ex. 3-4 ¶4. At an approximate cost of $3,000/each, these 178 meters represent a total community investment of approximately $534,000 in meters. Plaskett Decl., Ex. 3-4 ¶5(a).

In order to continue their operations with the reduced allocations mandated by the GMP, approximately 35% of Diamond Valley irrigators purchased a new pivot or converted to the most efficient spray application systems to conserve water. Plaskett Decl., Ex. 3-4 ¶4. This includes the purchase and installation of 58 Low Elevation Spray Application ("LESA") Systems, at an approximate cost of $9,000 each, for a total community investment of approximately $522,000. Due to being low to the ground in the crop canopy, LESA Systems are the most efficient application systems available. Plaskett Decl., Ex. 3-4 ¶5(b). It also includes the purchase and installation of 10 new pivots equipped with LESA systems at an

approximate cost of $75,000/each, for a total community investment of approximately $750,000. Plaskett Decl., Ex. 3-4 ¶5(c).

Diamond Valley irrigators also purchased and installed 127 Medium Elevation Spray Application ("MESA") Systems at an approximate cost of $3,500 each for a total community investment of approximately $444,500. Plaskett Decl., Ex. 3-4 ¶5(d). Although some irrigators installed MESA prior to when the groundwater management planning process began in earnest, some have done so only recently in anticipation of the GMP. *Id.* Diamond Valley irrigators also purchased and installed 40 Ag Sense and Field Net Smart pivot controllers and soil moisture field monitoring systems and subscriptions at an approximate cost of $1,700/each for total community investment of approximately $68,000. Plaskett Decl., Ex. 3-4 ¶5(e). Based on these equipment upgrades, the total estimated financial investment in water-efficiency measures by stakeholders participating in the GMP is approximately $2,318,500. Plaskett Decl., Ex. 3-4 ¶5(f).

Those stakeholders made these investments with the good-faith belief that the GMP complied with NRS 534.037 and was what the Nevada Legislature intended in authorizing the GMP process in NRS 534.110(7). Plaskett Decl., Ex. 3-4 ¶6; Moyle Decl., Ex. 3-2 ¶37. They would not have made these investments if the only possible groundwater management plan that could be upheld in court involved curtailment by priority. Plaskett Decl., Ex. 3-4 ¶7; Moyle Decl., Ex. 3-2 ¶37. If

junior appropriators will ultimately be forced to stop irrigating in the face of complete curtailment, which the district court's conclusions necessitate a GMP to require (Ex. 2 at 24:2-25:6), the cost of these investments will be lost and can never be recovered. *See id.* The pumping reductions required by the GMP could not be achieved absent such investments, yet such investments are useless if curtailment is inevitable. Moyle Decl., Ex. 3-2 ¶37; Plaskett Decl., Ex. 3-4 ¶8.

In denying a stay, the district court failed to understand this point, contending instead that "[a]ny water and crop conservation improvements were necessary even if no GMP was in place … [and] it was misguided for any farmers to make their water conservation investments as alleged solely on the validity of the DVGMP." Ex. 13 at 4:13-15. Yet the district court's Order essentially leaves open only two possible types of GMP models that it deems lawful: (1) a plan that involves voluntary actions by senior right holders (either sale of their water to juniors or implementation of water-efficient irrigation practices encouraged by payments from juniors); or (2) a plan that involves complete curtailment of rights that post-date May 12, 1960. Ex. 2 at 23:6-25:6, 26:15-29:14, 32:2-36:16). These were considered and rejected by the GMP proponents for multiple reasons, not least of which is that the goal of any GMP was to maintain the viability of Eureka County's agricultural economy and avoid curtailment. Moyle Decl., Ex. 3-2 ¶¶22-24. Funding for buy-outs was unavailable, and in any event, absent the seniors'

willingness to respond to money, curtailment was the only other alternative. Moyle Decl., Ex. 3-2 ¶24.

A GMP that involved complete or nearly complete curtailment of junior rights was no different than what could be achieved without a GMP in place. Appellants would not have spent years developing the GMP or made significant investments in water-saving technologies if curtailment was a foregone conclusion, with or without a groundwater management plan. Moyle Decl., Ex. 3-2 ¶37; Plaskett Decl., Ex. 3-4 ¶8. They would have simply packed up and left Diamond Valley rather than investing in equipment they could never use.

c. Absent a Stay, There is Considerable Uncertainty Regarding the Rules That Govern Management of the Basin

Additionally, the Diamond Valley community and Eureka County as a whole will suffer serious and irreparable harm absent a stay because the aquifer condition will decline, and the district court's Order has left water users with ambiguity as to the rules they should follow. Moyle Decl., Ex. 3-2 ¶31. In furtherance of the GMP, the State Engineer issued other orders regarding management of the Diamond Valley basin, such as Orders 1305 and 1305a, Ex. 3-8. There is now uncertainty regarding the effectiveness of these orders and whether extension requests are now required to prove beneficial use and prevent a forfeiture. Moyle Decl., Ex. 3-2 ¶35.

At the time the district court issued its Order, the 2020 irrigation season (GMP Year 2) had already begun, and the share register showing annual allocations had issued. Moyle Decl., Ex. 3-2 ¶34; 2020 Share Register, Ex. 3-13. Water users made decisions as to what fields to irrigate and other farm management plans based on the existence of GMP. Moyle Decl., Ex. 3-2 ¶34. Absent the continued existence of the GMP, there is no mechanism in place to enforce the cap on annual allocations and no incentive for even the seniors who agreed to the GMP to continue investing in water-saving equipment and reducing their pumping. *Id.*; Ex. 1 (ROA 235).

Because the GMP was developed by local stakeholders, community involvement and buy-in has been outstanding. Moyle Decl., Ex. 3-2 ¶33. However, absent a stay, water rights holders may choose to pump the full amount of their permits, which will lead to increased pumping while the GMP is on appeal, rather than the benchmark reductions required by the GMP. Moyle Decl., Ex. 3-2 ¶¶33-34. This is counterproductive to the goal of reducing pumping in the basin. Moyle Decl., Ex. 3-2 ¶33.

3. Petitioners Will Suffer No Harm Should the GMP Remain in Place

Notwithstanding that the GMP Opponents offered no evidence of actual harm, the district court stated that "[i]t appears the petitioners would suffer serious or irreparable harm if the stay were granted." Ex. 13 at 4:25-26. The district court

failed to cite to any evidence to support that assertion and none exists. The district court's speculation that "continued trading of water shares, use of banked water shares, and continued over pumping of the Diamond Valley aquifer for up to an additional 30 years will have an adverse impact on petitioners' senior certificated rights, as well as, their vested rights" lacks any evidentiary support. *Id.* at 5:1-4.

It also mimics the flawed reasoning in the Order, which stated (again without evidentiary support) that vested rights will be harmed by the GMP because "[t]he DVGMP on its face fails to reduce the harm caused by overpumping and aggravates the depleted water basin." Ex. 2 at 24:2-3. There is no data to support this conclusion, and the data show otherwise. Bugenig Decl., Ex. 3-3 ¶11 and Monitoring Data attached thereto; *see also* DWR Monitoring Data, Ex. 3-6. After GMP Year 1, positive trends in groundwater levels were nearly ubiquitous in Diamond Valley. *See id.*

The record contains no causal connection between the GMP and alleged negative impacts to vested rights. The district court assumed those impacts because the GMP allows for continued pumping over the 30,000 af perennial yield so that benchmark pumping reductions could occur over time. Ex. 2 at 24:13-15. Yet the district court also concluded that NRS 534.110(7) allowed for continued pumping over the perennial yield and did not require that the basin come into balance within 10 years. Ex. 2 at 15:1-16:7 As stated by the district court,

> NRS 534.110(7) does not state a GMP must accomplish the goal of equilibrium in a CMA basin within 10 years from the GMP approval. An undertaking as immense as bringing a depleted aquifer into balance could easily surpass 10 years depending on the extent of harm to the aquifer … If the State Engineer finds, which he did here, that the DVGMP sets forth the necessary steps for removal of the basin as a CMA, he may approve a GMP even if the DVGMP exceeds a 10 year period.

Ex. 2 at 15:5-18. These conclusions are inconsistent, and the only way to reconcile them would be for the district court to rule that the statute is unconstitutional because it allows vested rights to be impaired. The district court never looked at the constitutionality of NRS 534.110(7) because the GMP Opponents never launched an attack on the statute.

There is no evidence that the GMP's continued existence while the appeal is pending will cause harm to the GMP Opponents' vested rights. To the contrary, the GMP Opponents' wells are interfering with their own and one another's vested springs rights. Ex. 1 (ROA 131); Ex. 10-16. Under the authority of their mitigation permits, Sadler and Bailey have drilled wells in their springs, so any alleged harm to their vested rights is self-inflicted. Ex. 3-10 and Ex. 3-11. Renner only recently applied for mitigation rights, but there has been no determination by the State Engineer that Renner's vested rights have been impacted by Diamond Valley pumping and that mitigation rights should be granted. Ex. 3-12. Sadler's representative stated that pumping by the other GMP Opponents interfere with the

springs on Sadler Ranch. Ex. 10-15. Bailey's predecessor admitted that his farm is more productive with the mitigation well than it was with the spring. Ex. 10-14.

This evidence clearly shows that the purported harm to vested rights assumed by the district court cannot be attributed to the GMP, yet the district court failed to even address it. Based on the district court's conclusion regarding alleged impacts to vested rights, no groundwater management plan could be approved in Diamond Valley other than one that involves immediate and complete curtailment of any rights that post-date May 12, 1960.

The Baileys are the only GMP Opponents who have "senior" groundwater rights that are reduced by the GMP's share allocations. Ex. 1 (ROA 499-501). Contrary to the district court's erroneous conclusion (Ex. 13 at 5:3), Sadler and Renner's groundwater permits are junior, not senior. Ex. 1 (ROA 499-509). According to the district court's analysis, therefore, Sadler and Renner are the cause, not the sufferer, of alleged harm. Because, absent the GMP, Renner and Sadler would be subject to 100% curtailment, they cannot claim irreparable harm from the GMP. Ex. 1 (ROA 499-509).

4. The Respective Equities Warrant a Stay

The history of Diamond Valley presents particular equities that are relevant to this stay request. Most of the groundwater appropriations occurred within a fairly narrow window of time in the early 1960's. Ex. 1 (ROA 499-509). Over 100

appropriations occurred in 1960 alone, and there are approximately 100 "junior" permits with priority dates that post-date May 12, 1960 by just days, weeks and months. Ex. 1 (ROA 499-504). Only a matter of days separates Fred and Carolyn Bailey from the May 12, 1960 cut-off line. Ex. 1 (ROA 501). And only two months separates the most "senior" Bailey rights from the "junior" appropriators that the Baileys contend must be cut off completely. Ex. 1 (ROA 499-500).

No one working the land in Diamond Valley in May 1960 knew or could have known that breaking away from their farming to file paperwork in Carson City a few days later than their neighbors would rob them of 100% of their water permits 50 years later. They cultivated their land and used their water in good-faith reliance upon the State Engineer's approval of their applications. Ex. 1 (ROA 541, 590, 708, 727, 731-732, 738). Although the permits were issued subject to existing rights on the source, the State Engineer continued to issue permits for new irrigation applications for another nearly 20 years in the total approximate amount of 126,000 af. Ex. 1 (ROA 3, 499-509). Appellants had no control over the State Engineer's actions. Only later, when better science became available and the effects of overpumping more known, did the State Engineer establish a 30,000 af perennial yield, rendering May 12, 1960 a significant date. *Id.*

For the last decade, Appellants have been working to address the overdraft problem in the basin, including their tireless efforts since 2014 to develop a GMP.

Moyle Decl., Ex. 3-2 ¶¶7-20. The GMP they created was based on a good-faith interpretation of the Legislature's enactment of NRS 534.110(7). Plaskett Decl., Ex. 3-4 ¶6; Moyle Decl., Ex. 3-2 ¶37. It sought to address the overdraft problem while maintaining the social and economic fabric of Eureka County. Ex. 1 (ROA 228). The GMP proponents studied numerous other frameworks for what a groundwater management plan might entail, including those proposed by the Petitioners and suggested by the district court, and ultimately rejected them as infeasible. Moyle Decl., Ex. 3-2 ¶¶23-24. They made significant investments of money and time to implement the GMP the State Engineer approved. Plaskett Decl., Ex. 3-4 ¶¶4-7; Moyle Decl., Ex. 3-2 ¶37. Had their only option been a groundwater management plan that involved curtailment by priority, they would not have made those investments. Plaskett Decl., Ex. 3-4 ¶7-8; Moyle Decl., Motion Ex. 3-2 ¶37. Rather, they would have simply continued to use the full amount of their permitted rights until the State Engineer ordered curtailment, after which they would decide whether to leave Diamond Valley. *See id.*

In denying a stay, the district court failed to identify any equitable reason why the 2020 irrigation season should be disrupted now. *See Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204, 1206 (1971) (reinstating order that allowed professional basketball player to play during the stay because the season had already begun). This is particularly so where the GMP Opponents never sought a

stay of the GMP pending their petitions for judicial review. *See* NRS 533.450(5). Given their lack of affirmative conduct to obtain a stay to protect themselves from alleged harm they contend the GMP causes them, the equities weigh against the GMP Opponents. *See Latta v. W. Inv. Co.*, 173 F.2d 99, 107 (9th Cir. 1949) ("[e]quity frowns upon stale demands"); *Daly v. Lahontan Mines Co.*, 39 Nev. 14, 158 P. 285, 286 (1916) (equity requires the timely assertion of rights).

5. Appellants Are Likely to Prevail on Appeal Because the District Court's Order Renders 534.110(7) Meaningless as to Diamond Valley

The Court has held that where the object of an appeal will be defeated, a stay should only be denied if "appellate relief is unattainable" or "clearly not warranted," such as where "the appeal appears frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes." *Mikohn Gaming Corp.*, 120 Nev. at 253-54, 89 P.3d at 40. "[A] stay should generally be granted in other cases." *Id.* Appellants readily meet this standard, yet the district court did not even address it.

The merits warrant a stay here because, in granting the petitions for judicial review, the district court considered matters outside the record, made assumptions unsupported by the evidence and incorrectly interpreted the law. By concluding that the Legislature did not intend to stray from prior appropriation principles, the district court rendered meaningless the groundwater management plan provisions in NRS 534.110(7) and NRS 534.037. Contrary to the district court's statements

(Ex. 2 at 29:12-14), Appellants' arguments do not disregard the prior appropriation doctrine. Rather, they demonstrate that the Legislature intended to avoid the heavy-handed effects of curtailment when a basin is designated a CMA. Ex. 14 at 11-18. If the district court's analysis were accepted, no groundwater management plan could be enacted in Diamond Valley that allows pumping in excess of the perennial yield for any period of time. This is no different than complete curtailment by priority, which defeats the statutory purpose. *See* NRS 534.110(7).

The district court's conclusion that the GMP impairs vested rights is unsupported by evidence, contradicts its own conclusion that NRS 534.110(7) allows the perennial yield to be exceeded, and attacks the legality of NRS 534.110(7) itself (a contention never raised by the GMP Opponents). Moreover, the district court's conclusion that the GMP violates the beneficial use statute ignores that the State Engineer properly exercised his discretion under NRS 534.090 when he reached the logical conclusion that initiating forfeiture and abandonment proceedings prior to GMP approval would result in *increased* pumping that would exacerbate, rather than alleviate, the overdraft problem.

The reductions in annual share allocations over time means that, under the GMP, the unexercised rights cannot be used anyway. Ex. 1 (ROA 234-235, 510). This is particularly the case where many of the unexercised rights in Diamond Valley arise from field corners that are not being irrigated using center pivots. Ex.

1 (ROA 465, 467). The State Engineer has discretion to approve the banking and trading provisions under NRS 534.120(2), and the GMP provides a mechanism by which the State Engineer can analyze those procedures. Ex. 1 (ROA 234-237).

Moreover, Appellants presented certain arguments that the district court did not address at all. Ex. 14 at 14-15 (discussing other examples of where the Legislature has departed from strict prior appropriation principles and the State Engineer's authority to approve the GMP based on NRS 534.120(2), which allows him to manage groundwater withdrawals for the public welfare). The district court also ignored that the majority of senior right holders agreed to the GMP. Of the 30,000 af of "senior" rights in the basin, 18,700 afa, or about 64%, signed the petition. Ex. 1 (ROA 4, 148-216); Moyle Decl., Ex. 3-2 ¶19. Some seniors who did not sign the petition nevertheless provided public comments in favor of the GMP. Ex. 1 (ROA 545, 726); Moyle Decl., Ex. 3-2 ¶19. In total, those who voted in favor of the GMP or provided favorable testimony represented 20,957.63 af or 71.4% of the senior rights. Ex. 1 (ROA 499-501); Moyle Decl., Ex. 3-2 ¶19. For context, the Bailey Petitioners represent only 6.4% of senior rights, and Renner and Sadler have no senior groundwater certificates at all. Ex. 1 (ROA 499-501).

Because Appellants have presented legitimate arguments and seek a stay to preserve and protect the Diamond Valley community based on a good-faith interpretation of NRS 534.110(7) and NRS 534.037, the circumstances here are

precisely those where a stay is warranted. *See Mikohn Gaming Corp.*, 120 Nev. at 253-54, 89 P.3d at 40; *Hansen*, 116 Nev. at 659, 6 P.3d at 987. Simply because the district court disagreed with Appellants on the law was not a basis to deny their request for stay. *See NAACP v. Trump*, 321 F.Supp.3d 143, 147 D.D.C. 2018) (partially staying order that vacated agency action because "the fact that the Court has thus far been unpersuaded by [the movant's] case does not preclude the issuance of a stay").

V. CONCLUSION

For the foregoing reasons, Appellants respectfully ask the Court to enter a stay to keep the GMP in place pending their appeal.

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Date: July 6, 2020

/s/ Debbie Leonard

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NRAP 27(e) CERTIFICATE

I, Debbie Leonard, as counsel of record for Appellants, certifies the following pursuant to NRAP 27(e):

1. The telephone numbers and office addresses of the attorneys for the parties and the telephone numbers and addresses for any pro se parties are listed below:

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Client(s): Beth Mills, Trustee Marshall Family Trust[2]

[2] Diamond Valley Ranch, LLC; American First Federal, Inc.; Berg Properties California, LLC; Blanco Ranch, LLC; and Beth Mills, Trustee Marshall Family Trust intervened in the district court but did not file briefs or provide argument for or against Order 1302.

2. Appellants are filing their Motion for Stay on an emergency basis to ensure the Court considers and decides it before the 30-day automatic stay afforded by NRCP 62(a)(1), in which a judgment may not be enforced, expires. The 30-day period in NRCP 62(a)(1) began running from April 29, 2020, when Appellants were served with Notice of Entry of the District Court's Findings of Fact, Conclusions of Law, Order Granting Petitions for Judicial Review ("Order"), which is the order on appeal. Ex. 2. This time period was tolled on May 20, 2020 when the District Court granted a temporary stay pending decision on DNRPCA Intervenors' Motion for Stay Pending Appeal. Ex. 7. The temporary stay order was served 21 days into the 30-day period afforded by NRCP 62(a)(1), leaving nine days remaining.

The 30-day period began to run again on July 1, 2020 upon service of the District Court's Order Denying DNRPCA Intervenors' Motion for Stay Pending Appeal. Ex. 13. Therefore, the 30-day period in which the judgment may not be enforced expires on Friday July 10, 2020, which is nine days from service of the July 1, 2020 Order. Ex. 13.

Moreover, as set forth in Appellant's Emergency Motion for Stay Pending Appeal filed concurrently herewith, the District Court's Order, which invalidated the Diamond Valley Groundwater Management Plan ("GMP"), has resulted in considerable uncertainty among Diamond Valley irrigators as to management of

the basin and the rules that govern their water use. The 2020 irrigation season has begun, and the annual water allocations have already been determined. Farm management decisions have already been made in compliance with the GMP. Changing the rules now will result in considerable disruption to irrigators.

Additionally, many irrigators have made significant investments in water-efficient technology. The hydrographs from monitoring wells indicate that, concurrently with these water conservation efforts and GMP implementation, there have been positive trends in groundwater levels. Negative impacts to the aquifer may result if irrigators are not bound by the limits in the GMP and pump as much as their permits allow. The uncertainty and ill-effects of that uncertainty will continue unchecked if the Motion to Stay Pending Appeal is heard in the ordinary course.

There is also considerable uncertainty as to whether the Appellants must start to engage in a new groundwater management process due to the deadline imposed by NRS 534.110(7), even though they, in good faith, believe the GMP complies with Nevada law. These and other facts showing the urgency of the situation are more fully set forth in the Emergency Motion to Stay.

Based on the impending July 10, 2020 expiration of the 30-day period specified in NRCP 62(a) and the considerable uncertainty among Diamond Valley irrigators as to management of the basin and the rules that govern their water use,

Appellants respectfully request that the Court consider the Motion to Stay on an emergency basis by July 10, 2020.

3. Opposing counsel was notified on July 6, 2020 by email and will be served with the Emergency Motion for Stay Pending Appeal through the Supreme Court's EFlex system upon filing.

Date: July 6, 2020

/s/ Debbie Leonard
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Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on July 6, 2020, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system. All others will be served by first-class mail.

/s/ Tricia Trevino
An employee of Leonard Law, PC

INDEX OF EXHIBITS

Ex. #	Document Description
1.	Excerpts from Record on Appeal filed by State Engineer in District Court
2.	April 27, 2020 Findings of Fact, Conclusions of Law, Order Granting Petitions for Judicial Review
3.	May 14, 2020 DNRPCA Intervenors' Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Exhibits: 1. Debbie Leonard Declaration 2. Mark Moyle Declaration 3. Dale Bugenig Declaration (with hydrologic data attached) 4. Marty Plaskett Declaration 5. GMP Meters Pamphlet 6. GMP Monitoring Data from DWR Website 7. DWR Meters Presentation 8. Orders 1305 and 1305a 9. DWR Forms 10. Permit 63497 11. Permit 82268 and Permit 81720 12. Applications 89295 and 89296 13. 2019 and 2020 Share Registers
4.	May 14, 2020 DNRPCA Intervenors' Ex Parte Motion for Order Shortening Time on Motion for Stay of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Pending Appeal Exhibits: 1. Debbie Leonard Declaration

5. May 19, 2020 State Engineer's Joinder to DNRPCA Intervenors' Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302

6. May 21, 2020 Eureka County's Joinder to DNRPCA Intervenors' Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302

7. May 19, 2020 Order Denying DNRPCA Intervenors' Ex Parte Motion for Order Shortening Time; Order Granting DNRPCA Intervenors' Motion for Temporary Stay Pending Decision on Intervenors' Motion for Stay Pending Appeal

8. May 26, 2020 Sadler Ranch, LLC and Ira R. & Montira Renner Opposition to DNRPCA Intervenors' Motion for Stay Pending Appeal

    Exhibits:

    1. September 2018 Draft State Engineer Order limiting groundwater pumping in several basins in southern Nevada

9. May 26, 2020 Opposition of Bailey Petitioners to DNRPCA Intervenors' Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302

10. June 1, 2020 DNRPCA Intervenors' Reply in Support of Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302

    Exhibits:

    14. Testimony of Wilfred Bailey, In The Matter Of Applications 81719, 81720, 81825, 82268, 82570, 82571, 82572 and 82573, Nov. 21, 2013 Transcript Excerpts

    15. Testimony of Levi Shoda, Sadler Ranch Manager, In The Matter Of Applications 81719, 81720, 81825, 82268, 82570, 82571, 82572 and 82573, Nov. 22, 2013 Transcript Excerpts

    16. Supplemental Declaration of Dale Bugenig and attached maps

    17. State Engineer's Motion to Stay in Case No. 77722, Supporting Declaration and Supreme Court's Order Granting Stay (all other exhibits omitted)

11. June 1, 2020 State Engineer's Reply in Support of DNRPCA Intervenors' Motion for Stay Pending Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302

12. June 1, 2020 Eureka County's Reply in Support of Motion for Stay Pending Appeal

    Attachments:

    1. February 12, 2013 Findings of Fact, Conclusions of Law, and Order Partially Granting Petition for Judicial Review, Case No. CV-1409-204
    2. March 23, 2018 Findings of Fact, Conclusions of Law; Order Partially Granting Supplemental Petition for Judicial Review; Order for Issuance of Mitigation Rights Permit; Order Partially Denying Supplemental Petition for Judicial Review, Case No. CV-1409-204

13. June 30, 2020 Order Denying DNRPCA Intervenors' Motion for Stay Pending Appeal

14. October 23, 2019 DNRPCA Intervenors' Answering Brief