

**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; DARLA BAUMAN; TIM WILSON, P.E.,  
NEVADA STATE ENGINEER, DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES;  
AND EUREKA COUNTY;

Appellants,

v.

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.

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

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**JOINT APPENDIX  
VOLUME I**

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LEONARD LAW, PC  
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## CHRONOLOGICAL INDEX TO JOINT APPENDIX

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02/11/2019	Bailey Petitioners' Notice of Appeal and Petition for Review of Nevada State Engineer Order No. 1302 (filed in Case No. CV-1902-350, later consolidated with CV-1902-348)	I	JA0090-0115
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## AFFIRMATION

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

Date: September 23, 2020

/s/ Debbie Leonard

Debbie Leonard (Nevada Bar No. 8260)

LEONARD LAW, PC

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*Attorney for DNRPCA Appellants*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on September 23, 2020, 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

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775)882-9900 - Telephone  
(775)883-9900 - Facsimile

1 Case No.

2 Dept. No.

NO. CV1902-349  
FILED

FEB 11 2019

By Eureka County Clerk  
Russ Haeberle

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4  
5  
6 **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF EUREKA**  
8

9 SADLER RANCH, LLC, a Nevada limited-  
10 liability company, and DANIEL S.  
11 VENTURACCI, an individual,

12 Petitioners,

13 vs.

14 TIM WILSON, P.E., Nevada State Engineer,  
15 DIVISION OF WATER RESOURCES,  
16 DEPARTMENT OF CONSERVATION AND  
17 NATURAL RESOURCES,

18 Respondent.

**PETITION FOR JUDICIAL REVIEW**

19 COME NOW, Petitioners SADLER RANCH, LLC, a Nevada limited-liability company ("Sadler  
20 Ranch"), and DANIEL S. VENTURACCI, an individual ("Venturacci"), by and through their counsel,  
21 PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of TAGGART &  
22 TAGGART, LTD., and hereby petition the Court to reverse or remand Order 1302 issued by the Nevada  
23 State Engineer on January 11, 2019, and attached hereto as Exhibit 1.<sup>1</sup> This Petition for Judicial Review,  
24 as well as Notice of Appeal, is filed pursuant to NRS 533.450.

25 ///

26 ///

27 ///

RECEIVED

FEB 11 2019

Eureka County Clerk

28 <sup>1</sup> Order 1302 was signed by former State Engineer Jason King, P.E., on his last day in office. Tim Wilson, P.E., assumed the office of State Engineer on January 14, 2019. As the successor in interest to Mr. King, Mr. Wilson is the proper party to name and serve in this action.

## JURISDICTIONAL STATEMENT

The State Engineer is authorized under NRS 534.037 to consider the adoption of a groundwater management plan ("GMP") upon submission of a petition requesting the same signed by a majority of the holders of water rights within the basin. Upon receipt of such a petition, the State Engineer is required to hold a hearing to take testimony and consider evidence for and against the submitted GMP. Under NRS 534.037(4), a decision by the State Engineer to approve a submitted GMP "may be reviewed by the district court of the county pursuant to NRS 533.450."

The Diamond Valley GMP was submitted to the State Engineer on August 20, 2018. A nominal "hearing" on the plan was held in Eureka, Nevada, on October 30, 2018. On January 11, 2019, the State Engineer issued Order 1302 in which he approved and adopted the Diamond Valley GMP. The majority of the property and appurtenant water rights subject to the GMP are located within Eureka County. Accordingly, pursuant to NRS 533.450, this Court has jurisdiction over this matter and is the proper venue for hearing any petitions requesting judicial review of Order 1302.

## STANDING

### I. Sadler Ranch

Sadler Ranch is the owner and operator of one of the oldest continuously operated ranches in Diamond Valley. The ranch is located in the Diamond Valley hydrographic basin and was established by Reinhold Sadler, who served as governor of Nevada from 1896 to 1903. The ranch consists of more than 3,000 acres of privately held property. Over 2,000 acres of the ranch were historically irrigated with water from the Big Shipley and Indian Camp Springs. Sadler Ranch's right to this water was established prior to 1905 and cannot be impaired by any action of the State Engineer.<sup>2</sup> In prior legal proceedings, the State Engineer has acknowledged that the water from these springs is hydrologically connected to the groundwater aquifer in Diamond Valley.<sup>3</sup> Because of this, groundwater pumping authorized under permits issued by the State Engineer in the 1950s and 1960s has detrimentally impacted the flow of Sadler Ranch's springs causing the springs to stop flowing entirely.<sup>4</sup> The adopted GMP will

<sup>2</sup> NRS 533.085.

<sup>3</sup> See State Engineer Ruling 6290.

<sup>4</sup> See State Engineer Ruling 6290.

1 allow the over-pumping of the groundwater basin to continue indefinitely, thereby continuing and  
2 exacerbating the harm suffered by Sadler Ranch to its pre-statutory vested water rights.

3 In addition to its pre-statutory vested rights Sadler Ranch owns groundwater permits issued by  
4 the State Engineer that may be subject to the provisions of the GMP.<sup>5</sup> These rights will be governed  
5 under the provisions of the GMP, which restricts the use of these rights in an inequitable manner.  
6 Because Order 1302 impairs Sadler Ranch's pre-statutory vested rights and treats its junior water rights  
7 in an inequitable manner, Sadler Ranch is a party directly aggrieved by Order 1302. Accordingly, Sadler  
8 Ranch has standing to file the instant petition pursuant to the provisions of NRS 534.037(4) and NRS  
9 533.450.

10 **II. Daniel S. Venturacci**

11 Daniel S. Venturacci is the owner and operator of the Thompson, Cox, Willow, Rock, and Mau  
12 ranches. These ranches are all located on the eastern side of the Diamond Valley hydrographic basin  
13 and were established in the late 1800s. Together the ranches total over 2,500 acres of land that was  
14 historically irrigated with water from various naturally occurring springs and seeps. Venturacci's right  
15 to this water was established prior to 1905 and cannot be impaired by any action of the State Engineer.<sup>6</sup>  
16 In prior legal proceedings, the State Engineer has acknowledged that the water from these springs is  
17 hydrologically connected to the groundwater aquifer in Diamond Valley.<sup>7</sup> Because of this, groundwater  
18 pumping authorized under permits issued by the State Engineer in the 1950s and 1960s has detrimentally  
19 impacted the flow of the springs causing them to stop flowing entirely.<sup>8</sup> The adopted GMP will allow  
20 the over-pumping of the groundwater basin to continue indefinitely thereby continuing and exacerbating  
21 the harm suffered by Venturacci to its pre-statutory vested water rights. Accordingly, Venturacci has  
22 standing to file the instant petition pursuant to the provisions of NRS 534.037(4) and NRS 533.450.

23 ///

24 ///

26 <sup>5</sup> The question of whether the proposed GMP can be involuntarily enforced against holders of permits who did not consent  
27 to the plan is an open question of law. Sadler Ranch expressly reserves its right to challenge enforcement of the provisions  
of the proposed GMP against its state-issued water rights permits.

28 <sup>6</sup> NRS 533.085.

<sup>7</sup> See State Engineer Ruling 6290.

<sup>8</sup> See State Engineer Ruling 6290.

## FACTUAL BACKGROUND

Diamond Valley is a large basin located just north of Eureka, Nevada. Prior to 1905, settlers were attracted to the valley by the numerous springs and seeps that naturally occurred along the alluvial fans that occurred at the base of the eastern and western mountain ranges bounding the valley floor. These springs ranged in size with some being quite large. Big Shipley Spring, located on the Sadler Ranch, was by far the largest of these features flowing at a rate of somewhere between 11 and 15 cubic-feet/second (this flow rate would produce approximately 8,000 – 11,000 acre-feet/annually (“afa”). Thompson Spring, located on the Thompson Ranch, was the next largest spring with an estimate flow rate of 6 cubic-feet/second (this flow rate would produce approximately 4,000 afa). These valley floor springs naturally supplied enough water to support the development of several large ranches including the Sadler Ranch and the Thompson Ranch.

In the 1950s and 1960s, the State Engineer began to issue a large number of permits authorizing the development of groundwater in Diamond Valley for irrigation purposes. These permits were issued despite the existence of reports indicating that the valley floor springs were hydrologically connected to the groundwater aquifer and that pumping of the groundwater rights would likely impact the flow of the springs.<sup>9</sup> In all, the State Engineer issued permits allowing for the use of more than 130,000 afa despite the fact that the perennial yield of the basin (the amount of water estimated to be available for sustainable pumping) is just 30,000 afa. Since the mid-1960s pumping by junior-priority users has permanently removed 1,750,000 acre-feet more water than the basin could replenish.<sup>10</sup> As a result, groundwater levels have dropped by more than 100 feet. Current pumping is in excess of 76,000 afa, more than twice the perennial yield.

The massive over-pumping of the groundwater basin has caused numerous environmental problems including the drying up of the valley floor springs. This was not an unexpected result. As early as 1962, and again in 1968, the State Engineer was alerted to the fact that the overpumping would

<sup>9</sup> EAKIN, THOMAS E., GROUNDWATER RESOURCES – RECONNAISSANCE SERIES REPORT 6 – GROUND-WATER APPRAISAL OF DIAMOND VALLEY EUREKA AND ELKO COUNTIES, NEVADA, (United States Geological Survey, February 1962); HARRILL, J.P., STATE OF NEVADA WATER RESOURCES BULLETIN NO. 35 – HYDROLOGIC RESPONSE TO IRRIGATION PUMPING IN DIAMOND VALLEY, EUREKA AND ELKO COUNTIES, NEVADA, 1950-65, (United States Geological Survey, 1968).

<sup>10</sup> HILLIS, DAVID G., P.E., REVIEW AND EVALUATION OF THE DIAMOND VALLEY GROUND WATER MANAGEMENT PLAN, Turnipseed Engineering (October 30, 2018).

1 result in serious impacts.<sup>11</sup> Rather than take action to prevent it, the State Engineer chose to disregard  
2 the warnings. As a result, holders of the most senior water rights in the basin have had their springs dry  
3 up. These senior users have been denied access to the water needed to operate their ranches and farms  
4 while junior-priority users continue to prosper by exploiting what is left of the basin's groundwater.

5 In 2011, facing an imminent threat of curtailment from the vested senior rights holders like  
6 Sadler Ranch and Venturacci, the junior-priority users were able to convince the Legislature to pass a  
7 bill authorizing them to develop a GMP as an alternative to regulation by strict priority. The main  
8 provisions of the bill were codified as NRS 534.037 and NRS 534.110(7). While the bill did not prohibit  
9 the State Engineer from issuing an order curtailing water use by priority, it provided him an excuse not  
10 to do so.

11 The criteria for approval of a GMP is set under NRS 534.037. Under the statute the State  
12 Engineer cannot approve a GMP unless substantial evidence demonstrates that the plan includes "the  
13 necessary steps for removal of the basin's designation as a critical management area."<sup>12</sup> Under NRS  
14 534.110(7) a Critical Management Area ("CMA") designation is applied when "withdrawals of  
15 groundwater consistently exceed the perennial yield of the basin." Accordingly, to approve a GMP the  
16 State Engineer must have substantial evidence showing that the plan will restrict groundwater use to  
17 such an extent that total withdrawals of water from the aquifer (not just withdrawals related to pumping  
18 of junior priority rights) will be less than the perennial yield of the basin.

19 Pursuant to the provisions of NRS 534.110(7), on August 25, 2015, the State Engineer issued  
20 Order 1264 designating Diamond Valley as a CMA. This began a 10-year clock during which a GMP  
21 must be approved. If a GMP is not approved in that timeframe, the State Engineer is required to  
22 immediately curtail pumping according to strict priority.

23 As noted above, the Diamond Valley GMP was submitted to the State Engineer on August 20,  
24 2018. Under NRS 534.037(3), the State Engineer is required to hold a hearing on a submitted plan, and  
25 a hearing was scheduled for October 30, 2018. Despite his duty to preside over the hearing as a neutral  
26 arbiter, the State Engineer opened the hearing by giving an impassioned speech in which he praised the  
27

28 <sup>11</sup> See fn 9, supra.

<sup>12</sup> NRS 534.037.



After the hearing participants were given three days to provide written objections to the GMP. On November 2, 2018, Sadler Ranch timely filed written objections to the GMP. These written objections identified numerous legal and technical problems with the proposed GMP.<sup>13</sup> Several other parties, including Venturacci, filed similar written objections.<sup>14</sup> The State Engineer ignored these objections and on January 11, 2019, issued Order 1302 approving and adopting the Diamond Valley GMP.

### GROUNDS FOR PETITION

Petitioners seek judicial review of Order 1302 on the following grounds: (1) the process the State Engineer used to review and adopt the GMP violated the requirements of NRS 534.037(3) and constitutional due process standards established by the Nevada Supreme Court, (2) the GMP is not supported by substantial evidence showing that its adoption and implementation will result in the removal of the CMA designation from the basin as required under NRS 534.037(1), (3) the GMP authorizes continued over-pumping of water in the basin, (4) the GMP fails to include a monitoring plan to measure whether pumping reductions will actually result in a stabilization of groundwater levels in the basin, (5) the GMP fails to provide any mitigation for past or future harms to holders of vested senior groundwater rights, (6) the GMP does not contain objective thresholds or triggers to determine whether more aggressive reductions in pumping will be required in the future, (7) the GMP improperly limits the State Engineer's discretion and authority to order accelerated pumping reductions, (8) the GMP ignores

<sup>13</sup> Exhibit 2 (Sadler Ranch objections).

<sup>14</sup> Exhibit 3 (Venturacci objections).

1 the impacts to holders of vested senior water rights that will result from allowing over-pumping in the  
2 basin to continue indefinitely, (9) the governance provisions of the GMP violate constitutional due  
3 process safeguards, (10) the GMP violates statutorily mandated provisions of Nevada's water laws, (11)  
4 the GMP violates the provisions of NRS 534.250 – 534.350, inclusive, in that it authorizes an aquifer  
5 storage and recovery program without complying with statutorily mandated permitting requirements,  
6 (12) the GMP unlawfully allows water right holders to change the point of diversion, manner of use,  
7 and place of use of their permits without submitting an application to do so with the State Engineer, (13)  
8 the GMP unlawfully authorizes the State Engineer to exempt wells from the well abandonment  
9 requirements of NRS 534 and NAC 534, (14) the GMP unlawfully places time limits on the State  
10 Engineer to perform certain actions and deems regulated activity automatically approved if the State  
11 Engineer fails to meet the time limits, (15) the GMP treats similarly situated persons differently based  
12 on arbitrary and capricious factors in violation of the equal protection clauses of the Nevada and United  
13 States Constitutions, (16) the GMP unlawfully takes private property without just compensation in  
14 violation of the Nevada and United States Constitutions, (17) the GMP violates the non-impairment  
15 doctrine enshrined in NRS 533.085, (18) the State Engineer has stated that he intends to enforce the  
16 GMP against holders of water rights who did not consent to its adoption, (19) the factual determinations  
17 made by the State Engineer in Order 1302 are not supported by substantial evidence in the record, (20)  
18 the State Engineer acted arbitrarily and capriciously when he adopted Order 1302, (21) the State  
19 Engineer abused his discretion when he adopted Order 1302, (22) the legal conclusions the State  
20 Engineer made in Order 1302 are erroneous and without merit, and (23) the State Engineer's actions in  
21 this matter were biased, inequitable, violated his duty to act as a neutral arbiter in water rights  
22 proceedings, and exhibited prejudice towards holders of pre-statutory water rights in the basin.

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**CONCLUSION**

For the reasons stated above, and for others that may be raised during the pendency of this appeal, Petitioners respectfully request that the Court overturn Order 1302 in its entirety. In the alternative, Petitioners request that Order 1302 be stayed and this matter remanded to the State Engineer with instructions to hold a properly noticed and structured evidentiary hearing to address the issues raised in this petition.

**AFFIRMATION**

**Pursuant to NRS 239B.030(4)**

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

DATED this 8<sup>th</sup> day of February, 2019.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby 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 as follows:

**[X] By HAND-DELIVERY**, addressed as follows:

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Nevada State Engineer  
Division of Water Resources  
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Carson City, NV 89701

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**[X] By U.S. POSTAL SERVICE, CERTIFIED, RETURN RECEIPT REQUESTED**, by depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

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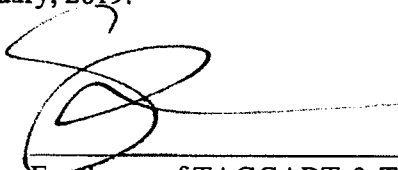
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DATED this 8th day of February, 2019.



Employee of TAGGART & TAGGART, LTD.

# EXHIBIT INDEX

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# **EXHIBIT 1**

# **EXHIBIT 1**

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

#1302

ORDER

**GRANTING PETITION TO ADOPT A GROUNDWATER MANAGEMENT PLAN FOR  
THE DIAMOND VALLEY HYDROGRAPHIC BASIN (07-153), EUREKA COUNTY,  
STATE OF NEVADA.**

**WHEREAS**, decades of declining water levels in the Diamond Valley Hydrographic Basin is due to the simple fact that groundwater pumping has consistently exceeded the perennial yield of the basin. An obvious solution to the problem caused by *over* pumping is to *reduce* groundwater pumping. Designating Diamond Valley a Critical Management Area (CMA) (the first and only basin thus far in Nevada), provided water right users within the Diamond Valley basin the opportunity to develop a customized groundwater management plan (GMP) that does in fact reduce groundwater pumping to a level that satisfies the State Engineer that the water levels will reach an equilibrium. The CMA and GMP process became law in 2011 specifically to allow those that truly have skin-in-the-game (the water right holders in the basin), to create a means to the same end as curtailment by priority, but without the dire and sudden impacts.

Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders. Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018. The testimony, written public comment and background of Appendix C of the GMP demonstrate that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment by priority to save their community and the established agricultural way of life in Diamond Valley. It is significant that the participants are not professional water right managers, but are ordinary citizens who made a Herculean effort to craft their own plan in response to a complex problem.

**WHEREAS**, this matter came before the State Engineer on a Petition to Adopt a Groundwater Management Plan (Petition), pursuant to Nevada Revised Statute (NRS) § 534.037 filed on August 20, 2018.

**WHEREAS**, the history leading up to the subject Petition is as follows:

Diamond Valley is a major groundwater farming area in the Diamond Valley Hydrographic Basin, Basin 153.<sup>1</sup> There are approximately 26,000 acres of irrigated land, which primarily produce premium quality alfalfa and grass hay. In 2013, it was estimated that approximately 110,000 tons of hay were produced annually for a total farming income of approximately \$22.4

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<sup>1</sup> GMP, p. 8.



million.<sup>2</sup> Approximately 126,000 acre-feet annually (afa) of irrigation groundwater rights are appropriated in Diamond Valley, and as of 2016, groundwater pumping for irrigation was estimated to be 76,000 afa. The perennial yield of Diamond Valley is 30,000 acre-feet (af).<sup>3</sup>

For over 40 years, annual groundwater pumping has exceeded the perennial yield of Diamond Valley.<sup>4</sup> In the years that groundwater pumping has exceeded the perennial yield, groundwater levels in Diamond Valley have consistently declined at a rate of up to 2 feet per year. Prior to declaring Diamond Valley a CMA pursuant to NRS § 534.110(7), the State Engineer held public meetings on numerous occasions in Diamond Valley to discuss over-appropriation of the basin and to encourage water rights holders to formulate solutions or a plan at the local level to address declining water levels.

Because withdrawals have consistently exceeded the perennial yield of the basin, on August 25, 2015, the State Engineer declared Diamond Valley a CMA pursuant to NRS § 534.110(7).<sup>5</sup> Once declared a CMA, holders of water rights within the basin have 10 years to create and present to the State Engineer a groundwater management plan; otherwise, the State Engineer is required to curtail the basin by priority.<sup>6</sup>

**WHEREAS**, the process for approval of a GMP by the State Engineer is as follows:

Nevada Revised Statute § 534.037(1) requires that a petition for the approval of a GMP that is submitted to the State Engineer must be signed by a majority of the holders of permits or certificates to appropriate water in the basin that are on file in the Office of the State Engineer.

At the time of filing the petition, there were 419 water right permits or certificates in the Diamond Valley Hydrographic Basin. Of these, 257 are represented by at least one signature in the petition. Comparing the signatories with the confirmed owner of record in the files of the Office of the State Engineer demonstrates that 223 water right permits or certificates are represented by the owner of record. If accepting the affirmation made on each page of the signed petition, then 257 rights of 419 rights is 61%. If limiting only to those signatures by a confirmed owner of record, then 223 of 419 is 53.2%. In either case, a majority of permits and certificates in the Diamond Valley Hydrographic Basin are represented in the petition; therefore, the State Engineer finds that the petition satisfies the requirement of NRS § 534.037(1).<sup>7</sup>

The total duty of groundwater rights in Diamond Valley is 130,625 afa. Of these, 126,188 afa are subject to the plan and 4,437 afa are not subject to the plan. The estimated amount of

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<sup>2</sup> GMP, p. 8.

<sup>3</sup> GMP, p. 8.; J.R. Harrill, *Hydrologic Response to Irrigation Pumping in Diamond Valley, Eureka and Elko Counties, Nevada, 1950-65*, Water Resources Bulletin No. 35, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of the Interior, Geological Survey), 1968.

<sup>4</sup> GMP, p. 8.

<sup>5</sup> Order 1264, official records in the Office of the State Engineer; GMP, p. 8.

<sup>6</sup> NRS § 534.110(7).

<sup>7</sup> Exhibit 1, public administrative hearing before the State Engineer October 30, 2018, official records in the Office of the State Engineer. Hereinafter the exhibits and transcript will be referred to solely by the exhibit number or transcript page.

groundwater committed to domestic wells at the statutory maximum of 2 afa per domestic well is 234 afa. By duty, over 96% of the total groundwater commitments are subject to the plan. It is reasonable that the focus of the plan to reduce the groundwater pumping be focused on those manners of use that have the greatest potential effect on the pumping in the groundwater basin.

The GMP assumes that the dividing line between senior and junior water rights holders is where the consumptive use of the water rights is estimated at 30,000 af, which is equal to the perennial yield of Diamond Valley; therefore, those rights with a priority date of May 12, 1960, or earlier are referred to in this Order as the senior rights (with a duty totaling 29,325 afa) and those rights with a priority date after May 12, 1960, are referred to as the junior rights. At the time of filing the petition, there were 77 senior water right permits or certificates, and 36, or 46.8%, of these were represented by at least one signature on the petition. The remaining 342 water right permits or certificate were junior, and 221, or 64.6%, of these were represented by at least one signature on the petition. Of the 29,325 afa of senior water rights, 18,700 afa, or about 64%, is represented by signatories of the petition. The State Engineer finds that significant portions of both senior and junior rights are represented in the petition.

Nevada Revised Statute § 534.037(3) requires that before approving or disapproving a groundwater management plan the State Engineer shall hold a public hearing to take testimony on the plan in the county where the basin lies or, if the basin lies in more than one county, within the county where the major portion of the basin lies. The State Engineer shall cause notice of the hearing to be:

- a. Given once each week for two consecutive weeks before the hearing in a newspaper of general circulation in the county or counties in which the basin lies.
- b. Posted on the Internet website of the State Engineer for at least two consecutive weeks immediately preceding the date of the hearing.

Notice of a public hearing to be held on October 30, 2018, was published in the *Eureka County Sentinel*, the *Elko Daily Free Press*, and the *Ely Times* during the weeks of the 15<sup>th</sup> and 22<sup>nd</sup> of October.<sup>8</sup> Also, notice of the hearing was posted on the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018.<sup>9</sup> Additional notice was also sent by certified mail directly to the boards of county commissioners for the counties of Eureka, Elko, and White Pine.<sup>10</sup> The GMP was made available through the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018, and was also available by request.<sup>11</sup>

A public hearing to take testimony on the proposed GMP was held in Eureka, Nevada, on October 30, 2018, during which testimony in favor of and in opposition to the GMP was received. In addition, the State Engineer held open the period for written public comment for an additional three working days following the hearing, during which time additional public comments were

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<sup>8</sup> Exhibit 4.

<sup>9</sup> [http://water.nv.gov/documents/Hearing\\_Notice-Diamond\\_Valley\\_GMP.pdf](http://water.nv.gov/documents/Hearing_Notice-Diamond_Valley_GMP.pdf)

<sup>10</sup> Exhibit 3.

<sup>11</sup> <http://water.nv.gov/documents/Final%20DV%20GMP%20for%20Petition.pdf>

received. This Order evaluates the testimony and written comments and other elements required for approval of the Petition.

Nevada Revised Statute § 534.037(1) requires that in a determination whether to approve a groundwater management plan, the State Engineer shall consider, without limitation:

- a. The hydrology of the basin;
- b. The physical characteristics of the basin;
- c. The geographic spacing and location of the withdrawals of groundwater in the basin;
- d. The quality of the water in the basin;
- e. The wells located in the basin, including, without limitation, domestic wells;
- f. Whether a groundwater management plan already exists for the basin; and
- g. Any other factor deemed relevant by the State Engineer.

**WHEREAS**, the Diamond Valley Groundwater Management Plan is summarized as follows:<sup>12</sup>

The predominant manner of use of existing rights in Diamond Valley is irrigation, where groundwater is pumped and used to produce primarily alfalfa and grass hay. Consequently, the GMP applies to irrigation rights and mining and milling rights with an irrigation base right, while vested rights, other manners of use and domestic wells are excluded from the plan. The GMP requires annual reductions in pumping with a goal of stabilizing groundwater levels and reducing consumptive use to the perennial yield. The GMP applies a formula to calculate the annual duty a rights holder can pump after required reductions, where the formula is based upon the original water right duty and priority of the right to arrive at a number of shares. The formula is defined as:

$$WR * PF = SA$$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

An annual amount of water that can be pumped per share is allocated to a rights holder (i.e., the annual allocation), and the reductions in pumping are accomplished by annually reducing the amount of water each share is allocated. In the initial year of the GMP, the total amount of water that can be pumped is equal to the amount of water currently in use. Unused allocations

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<sup>12</sup> Specific components of the GMP are discussed in greater detail below with reference to the public comments received; accordingly, an overview of the major GMP structure is introduced here.

may be banked, traded, leased or sold; thus, the GMP employs a market-based approach. The GMP also contains penalty provisions for pumping in excess of allocations. The GMP is governed by an Advisory Board of elected representatives that are charged with making recommendations to the State Engineer, who ultimately oversees and administers the Plan. The GMP is funded through annual assessments, which, in part, will be used to also fund a water manager employed by the Nevada Division of Water Resources, whose role is expected to involve implementation and management of the GMP.

**WHEREAS**, the comments made at the October 30, 2018, hearing on the Diamond Valley Groundwater Management Plan and the State Engineer's response are as follows<sup>13</sup>:

**I. COMMENTS RELATED TO LEGAL SUFFICIENCY**

Several comments were received challenging the legal sufficiency of the GMP as being in violation of established Nevada water law or that the GMP waives existing mandatory provisions required by the NRS including the prior appropriation doctrine, movement of allocations, well abandonment and a banking component without adequate permitting.<sup>14</sup>

Prior Appropriation

First, several commenters asserted that the GMP violates the doctrine of prior appropriation by eliminating the bedrock principle of "first in time, first in right." The violation, they allege, occurs because all water rights—both senior and junior—have their allocations reduced annually, rather than reductions being imposed solely on junior rights.<sup>15</sup>

While it is acknowledged that the GMP does deviate from the strict application of the prior appropriation doctrine with respect to "first in time, first in right," the following analysis demonstrates that the legislature's enactment of NRS § 534.037 demonstrates legislative intent to permit action in the alternative to strict priority regulation. Nevada Revised Statute § 534.037(1) provides that a groundwater management plan "must set forth the necessary steps for removal from the basin's designation as a [CMA]." Other prior appropriation states have addressed whether a

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<sup>13</sup> The following analysis is intended to address written and public comments received concerning the GMP. In large part, all of the comments made in opposition to the GMP in writing or at the hearing raised issues that were considered during the GMP drafting process. These issues, and many more, are succinctly summarized in a "comment and answer format" in Appendix C at pp. 241-255, entitled *GMP Issues and Concerns Identified Through the Process*.

<sup>14</sup> Written comments of Ira and Montira Renner, Timothy and Constance Marie Bailey, Sadler Ranch, LLC, and Great Basin Resource Watch.

<sup>15</sup> Appendix F to the GMP contains the preliminary table of all rights subject to the GMP and the share calculation for each right. The relative priority dates of all rights subject to the Plan are shown in the table. Notwithstanding the share calculations shown in Appendix F, one commenter acknowledged that if a GMP is not adopted and curtailment is ordered on all rights, that rights junior to about May 1960 would be curtailed. This would include a significant number of irrigation rights, all mining rights, and some municipal rights. See Written Comment of Great Basin Resource Watch, p. 5. In addition, the majority of domestic wells in the basin are junior and would also be completely curtailed. See NRS § 534.110(6) (the State Engineer may order that withdrawals, including withdrawals from domestic wells, be restricted to conform to priority rights).

shortage sharing plan violates the prior appropriation doctrine. For example, in *State Engineer v. Lewis*, 150 P.3d 375 (N.M. 2006), the New Mexico Supreme Court examined whether a settlement agreement entered into by the Interstate Stream Commission, the United States and three irrigation districts, upon which a partial final decree was entered in an adjudication proceeding, violated the New Mexico Constitution, which codified the prior appropriation doctrine.

The appellants, senior rights holders, contended that the settlement agreement violated the New Mexico Constitution, and that due to chronic water shortages for senior rights, the negotiating parties were duty-bound to adhere to the prior appropriation doctrine as it was traditionally understood and enforced, through a priority call. *Id.*

The court's examination focused on a statute that was enacted for the express purpose of achieving compliance with New Mexico's obligations under the Pecos River Compact (the compliance statute). *See id.* at 150 P.3d at 379. In the words of the court, the parties to the settlement agreement sought to cut the water shortage "Gordian knot" through a process more flexible than strict priority enforcement, yet still comply with the prior appropriation doctrine.

In interpreting the legislative intent of the compliance statute, the *Lewis* court found that the intent and purpose of the legislation was beyond dispute—to take charge of resolving a critical situation created by an amended decree, while complying with the obligation of protecting existing rights. In determining that the statute was constitutional, the court assumed that the legislature was aware of the prior appropriation doctrine when it enacted the statute, and that the statute was to be read as a clear signal that the legislature and governmental players wanted to create a solution other than a priority call as the first and only response. *Id.* at 150 P.3d 385.<sup>16</sup> Notwithstanding that the court found the statute constitutional and not violative of prior appropriation, the court found it important that the settlement agreement did not rule out a priority call if needed. *Id.* at 150 P.3d 386.

Nevada Revised Statute § 534.037(1) was enacted in 2011 by A.B. 419. Aside from the six specific and one general consideration codified in the statute, the State Engineer finds that the legislative history contains scarce direction concerning how a plan must be created or what the confines of any plan must be.

Like *Lewis*, in enacting NRS § 537.037, the Nevada legislature expressly authorized a procedure to resolve a shortage problem. And, like *Lewis*, the State Engineer assumes that the Legislature was aware of prior appropriation when it enacted NRS § 534.037,<sup>17</sup> and the State Engineer interprets the statute as intending to create a solution other than a priority call as the first and only response. Nothing in the legislative history of A.B. 419 or the text of NRS § 534.037 suggests that reductions in pumping have to be borne by junior rights holders alone—if that were

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<sup>16</sup> Although the prior appropriation doctrine is not codified in the Nevada Constitution, a similar analysis to *Lewis* is appropriate as prior appropriation is the law in Nevada.

<sup>17</sup> The fact that NRS § 534.110(7) requires the State Engineer to regulate by priority after 10 years if no GMP is adopted makes clear that the Legislature was aware of prior appropriation. Also, the remarks of Assemblyman Goicoechea, the bill sponsor, reinforces the Legislature's awareness of prior appropriation when the Assemblyman described regulation by priority (*e.g.*, pumping is curtailed and the basin is brought back into balance with only senior water rights being held). *See Minutes on the Assembly Committee on Government Affairs, 76<sup>th</sup> Session, p. 66 (March 30, 2011).*

the case, the State Engineer could simply curtail junior rights—a power already granted by pre-existing water law in NRS § 534.110(6). Thus, the State Engineer concludes that NRS § 534.037 provides flexibility outside regulation by priority, and the manner in which the GMP proposes to reduce pumping is authorized by Nevada law.

Notwithstanding, even though NRS § 534.037(1) does not require a GMP to impose reductions solely against junior rights, the most senior rights in the GMP have a higher priority factor than junior rights when the share calculation is made. Thus, the State Engineer finds that the GMP still honors prior appropriation by allocating senior rights a higher priority factor than junior rights.<sup>18</sup>

#### Well Use Approvals

Second, commenters opposed to the GMP challenged the GMP's provision to allow temporary movement (less than 1 year) of allocations, alleging the GMP contravenes existing law by automatically granting such changes, that the temporary approval process diminishes State Engineer and public review and encourages trading on annual bases, rather than filing for a permanent change.<sup>19</sup> On the other hand, other comments were received that supported the flexibility offered by the expedient temporary movement process.<sup>20</sup>

Existing water law has provisions that deal with temporary changes to water rights<sup>21</sup> and permanent changes to existing rights.<sup>22</sup> Because the GMP unbundles allocations from the place of use where existing water rights are appurtenant, movement of allocations is controlled by a new or existing well serving as the point of diversion.<sup>23</sup> Thus, the GMP was (1) modeled after existing law regarding temporary changes<sup>24</sup> and (2) still requires application of NRS § 533.370 to new wells or increased withdrawals exceeding 1 year.<sup>25</sup>

Section 14.8 of the GMP provides that any new wells or wells having withdrawals in excess of what was approved under the base right be submitted to the State Engineer. Such changes are approved after 14 days if not denied as impairing other rights or contrary to the public interest. The State Engineer finds that the existing law concerning temporary changes (NRS § 533.345(2))

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<sup>18</sup> The public comments during the hearing reiterated that the 20% spread of the priority factor likely received the greatest consideration and debate during the GMP process. Ultimately, a spread of priority factor between 0.9997 and 0.80 was what a majority of the plan proponents could agree to.

<sup>19</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>20</sup> Written comment of Marty Plaskett; *and see* Transcript, pp. 80-81 (Matt Morrison) (providing an example that when annual reductions are implemented, an irrigator may not have enough water for one pivot, but would have flexibility to combine allocations to water a full crop, while also allowing some irrigation on former irrigation lands to keep them viable until farming on that pivot could resume).

<sup>21</sup> NRS § 533.345(2).

<sup>22</sup> NRS § 533.370.

<sup>23</sup> *See* GMP §§ 14.8 and 14.9.

<sup>24</sup> GMP, p. 20 at fn. 20.

<sup>25</sup> GMP § 14.9.

expresses a command to grant temporary changes (*e.g.*, "shall approve") unless the State Engineer determined it impairs existing rights or is contrary to the public interest. Thus, the State Engineer finds that § 14.8 and § 533.345(2) to be entirely consistent. Further, the State Engineers agrees that allowing changes expediently up to the original duty at that well is permissible because the State Engineer already made such an affirmative analysis when the water right was granted. Additionally, the State Engineer finds that § 14.8 of the GMP is not a significant departure from existing law because temporary change applications do not undergo publication or hearing unless required by the State Engineer.<sup>26</sup> Thus, it is unpersuasive that § 14.8 diminishes State Engineer and public review. Finally, the potential of a rights holder to serially move allocations for less than 1 year to escape being subject to the procedures of NRS § 533.370, exists under current law, as there is no limitation in statute to the number of temporary applications to change. The State Engineer is mindful that when annual notices are given, to examine such notices to determine there is a motivation to avoid the statutory change process.

With respect to new wells, additional withdrawals exceeding 1 year, or where the State Engineer determined within the 14 calendar days may be not be in the public interest or may impair rights of other persons, the existing procedures under NRS chapters 533 and 534, including publication and protest provisions, still apply.<sup>27</sup>

#### Well Plugging Provisions

One commenter asserted that the GMP waived existing law regarding exempting wells from NRS Chapters 533 and 534.<sup>28</sup>

GMP §§ 14.2 and 14.3 direct when active, unused or inactive wells must be plugged and abandoned, or that a waiver of abandonment can be obtained. The State Engineer finds that these provisions are consistent with existing regulations found in NAC §§ 534.300 and 534.427. Additionally, GMP §§ 14.4 and 14.5 expressly require that well construction and maintenance must comply with the requirements of NRS and NAC Chapter 534. The State Engineer finds that the GMP does not waive or exempt wells from existing laws or regulations.

#### Banking and Aquifer Storage and Recovery

Lastly, one commenter stated that the banking component of the plan was an aquifer storage and recovery (ASR) project, which lacks a necessary permit required by NRS § 534.250, *et. seq.*<sup>29</sup>

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<sup>26</sup> NRS § 533.345(3).

<sup>27</sup> GMP § 14.9.

<sup>28</sup> Transcript, p. 19 (David Rigdon).

<sup>29</sup> Written comment of Sadler Ranch, LLC; Transcript, p. 14 (David Rigdon). The statement at the hearing was that this comment was based upon the report of the hydrogeologist in Appendix I that water banking is a type of aquifer storage and recovery project regulated by the State Engineer. As indicated by further findings, the State Engineer does not agree that the banking component of the GMP is an aquifer storage and recovery project.

Section 13.9 of the GMP allows unused allocations to be carried over and banked for use in a subsequent year to increase the amount of water the rights holder can use in the next year. The banked allocation is subject to depreciation in the amount that is carried over to account for natural losses over time.<sup>30</sup> In contrast to banking in the GMP, a typical aquifer storage and recovery project is operated by injecting or infiltrating water from a surface source into the aquifer for the purpose of accumulating storage for future use.<sup>31</sup> These elements of project operation are not part of the GMP. The State Engineer finds that banking of unused allocations in the GMP is a mechanism to allow flexibility by users to determine when to use their limited allocation and to encourage water conservation practices. Consequently, the State Engineer finds that the banking allocations in the GMP is a reasonable means to facilitate conservation and water planning by water users, as provided for under NRS § 534.037, and that the GMP is not required to fulfill the statutory obligations of NRS §§ 534.250–340.

## **II. COMMENTS RELATED TO ABANDONMENT, FORFEITURE, AND PROVING BENEFICIAL USE**

Some commenters stated that water rights that are currently unused should be abandoned or forfeited prior to reductions in pumping being imposed against existing water rights.<sup>32</sup> The State Engineer finds that pursuing forfeiture or abandonment prior to implementing any GMP is ill-advised for several reasons.

First, time is of the essence for rights holders to get a GMP approved prior to August 25, 2025, or curtailment by priority will be ordered for all rights in Diamond Valley. Because forfeiture and abandonment must be shown by clear and convincing evidence, it is doubtful whether there is sufficient time to investigate and assemble evidence concerning abandoned rights, to conduct administrative hearings and engage in any appellate proceedings with time left to secure a final table of water rights to support the GMP. Pursuing abandonment at this moment would likely lead to lengthy administrative and/or appeal proceedings, delaying action on a GMP until a final listing of active groundwater rights would be known.<sup>33</sup>

Second, a different problem is presented by forfeiture proceedings. Because the State Engineer conducts an annual inventory in Diamond Valley, information is available concerning those rights that may be subject to forfeiture. However, in 2017, NRS § 534.090 was amended to require that a notice of non-use be served prior to forfeiting unused water rights to provide one year to cure a forfeiture.<sup>34</sup> Serving notices of non-use at this stage would require that owners of water rights that are currently unused make efforts to resume beneficial use (*i.e.*, pumping). The

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<sup>30</sup> Section 13.9 describes that Diamond Valley is divided between the main farming area (generally located in the southern half of the basin) and the groundwater discharge area (the northern half of the basin). Banked water north of the dividing line in the discharge area depreciates at 17% and banked water south of the line at 1%. The depreciation factors are based on numerical flowing modeling analysis to justify and support these amounts. *See* GMP, Appendix I.

<sup>31</sup> *See, e.g.*, NRS §§ 534.250–340.

<sup>32</sup> Written comments of Sadler Ranch, LLC and Carolyn Bailey.

<sup>33</sup> *See, e.g.*, GMP, Appendix F.

<sup>34</sup> *See* NRS § 534.090(2).



consequence of resuming pumping is contrary to the intent of the GMP to *reduce* pumping. Thus, the State Engineer finds that in addition to similar timing problems discussed above, initiating forfeiture proceedings could exacerbate conditions in the basin by increasing pumping, prior to reducing pumping pursuant to the GMP, thereby lessening the effectiveness of the plan.<sup>35</sup>

Third, assuming *arguendo*, there are water rights existing only on paper (*e.g.*, that could be abandoned or forfeited), reductions in pumping by the GMP start at the ceiling of *actual pumping* (76,000 afa), not at the ceiling of existing rights (126,000 afa). Stated otherwise, even if the State Engineer assumed that the difference between existing rights and actual pumping (50,000 afa) was paper water, the elimination of paper water rights to match active rights will not change that the reductions in *pumping* begin at the component of active rights. The issue of paper water was raised and considered during the GMP drafting process, and it was determined that the GMP contemplated that any valid right in good standing was to be issued shares.<sup>36</sup> The State Engineer believes there is a low probability of success for abandonment, and the preceding paragraph describes the likely unanticipated effect of pursuing forfeiture. Therefore, the State Engineer finds that requests to eliminate paper water does not warrant halting this process in order to initiate abandonment or forfeiture proceedings.

Additionally, one commenter stated that existing permitted rights should prove beneficial use and become certificated prior to implementing a GMP. For reasons discussed above, including timing and discouraging increases in pumping, the State Engineer finds that requiring proof of beneficial use prior to implementing a GMP is not in the best interest of taking immediate action to adopt and implement a basin-wide GMP. Further, the GMP petition process expressly applies to the holders of *permits* and *certificates*. Therefore, the GMP statute implicitly recognizes that permitted rights which have not fully proven beneficial use will participate in the GMP process.

### III. COMMENTS RELATED TO APPLICABILITY OF PLAN TO ONLY CERTAIN WATER RIGHTS

Some comments were directed to the scope of GMP applying only to irrigation rights and mining and milling rights with a base irrigation right. Some expressed concern that it created a preference for certain manners of use, that there was no environmental component to the plan and it would result in water barons.<sup>37</sup> Many comments in favor of the plan described how they believed the plan would allow more irrigators or mines to stay in business, ultimately benefitting the greatest number of operators by providing more favorable conditions such as weed and rodent control.<sup>38</sup> The comments favored adoption of a GMP in lieu of curtailment, which many recognized would

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<sup>35</sup> The issue of forfeiture in Diamond Valley, particularly of pivot corners, pre-dates the 2017 amendments to NRS § 534.090. In the 1980s, the State Engineer pursued forfeiture of unused pivot corners in Diamond Valley, which lead to the enactment of NRS § 534.090(3) (pre-2017 version). See Nev. Stat. ch 559 (1983); and see, A.B. 597 (1983).

<sup>36</sup> See GMP, Appendix C, p. 244.

<sup>37</sup> Written comments of Great Basin Resources Watch, and Ari Erickson.

<sup>38</sup> Written comments of James Gallagher, Mark Moyle and Donald Palmore; Transcript, p. 68 (Jim Gallagher); pp. 80-81 (Matt Morrison).

likely force many junior irrigators into bankruptcy, and as a result, the community would suffer.<sup>39</sup> In addition, many comments in favor of the GMP spoke positively about methods for increasing efficiency to continue operations while reducing pumping.<sup>40</sup>

As discussed in the introductory paragraphs section, *supra*, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, the application of the plan to those rights that will have the most impact and be most impacted, is appropriate. While one commenter opined that the GMP does not address environmental concerns, the State Engineer does not agree. The GMP may not contain express provisions for the environment, but allowing the greatest number of irrigators to remain in business and keep cultivated lands active, will prevent the incursion of weeds, and will provide dust and rodent control. And ultimately, the State Engineer finds that the objective to reduce the pumping of groundwater to stabilize groundwater levels is a benefit of the groundwater basin, the irrigators and other members of the community that rely upon it and live within it, and that it is not necessary to explicitly identify certain areas of environmental concern within the scope of the plan for the plan to have a generalized benefit to the environment.

Finally, the State Engineer finds that comments that the GMP will result in "water barons" or that it will create a preference for certain manners of use, are speculative. Existing water law provides that water rights are a form of real property that are freely alienable and transferrable independent of land where the water was formerly appurtenant. In that way, the ownership of water rights and the manners of use are currently determined by a market of real property transactions.

#### **IV. COMMENTS RELATED TO PRACTICALITY OR REASONABLENESS OF THE PLAN IMPLEMENTATION**

##### **Mitigation Rights**

Some commenters challenged the fact that the GMP does not provide for mitigation of senior surface water rights that have been negatively impacted by junior groundwater pumping.<sup>41</sup>

The requirement for the approval of a GMP is that it "must set forth the necessary steps for removal of the basin's designation as a critical management area." NRS § 534.037(1). Neither the plain language nor the legislative history indicate that mitigation of senior surface water rights that have allegedly been adversely affected by groundwater pumping must be mitigated by a GMP.<sup>42</sup>

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<sup>39</sup> Written comments of William Norton and Donald Palmore; Transcript, pp. 80-81 (Matt Morrison).

<sup>40</sup> Written comment of William Norton, Marty Plaskett, Robert Burnham and James Gallagher; Transcript, p. 81 (Matt Morrison).

<sup>41</sup> Written comments of Sadler Ranch, LLC and Daniel Venturacci.

<sup>42</sup> In fact the opposite appears to be true from the legislative history. As proposed, A.B. 419 would have required the State Engineer "to consider the relationship between surface water and groundwater in the basin," but this consideration was amended out of the bill after the First Reprint.

Of note is that the State Engineer entered Order 1226, entered on March 26, 2013, which provided a mechanism for mitigation of senior surface water rights allegedly impacted by junior groundwater pumping. Two of the commenters at the hearing who raised this issue have taken advantage of the provisions of Order 1226, by filing for mitigation groundwater rights, which were granted by the State Engineer. Consequently, the State Engineer finds that mitigation is not a required element of the GMP; and in any event, the commenters who raised this issue have already taken advantage of Order 1226.<sup>43</sup>

#### Out-of-Basin Transfers

One commenter was concerned that unbundling water rights appurtenant to their place of use creates an incentive for out-of-basin transfers.<sup>44</sup> The commenter acknowledged that the current GMP prohibits out-of-basin transfers, but suggested the plan proponents may consider amending the plan to strengthen provisions to avoid incentivizing out-of-basin transfers. The State Engineer finds that NRS § 534.037 provides that once adopted, the GMP can be amended by the same procedure which allows for adoption of a plan.<sup>45</sup> Because the GMP currently prohibits out-of-basin transfers, there is currently no necessity to mandate changes to the GMP to strengthen provisions to disincentivize out-of-basin transfers. Some commenters involved the creation of the plan who spoke in favor of it acknowledged the plan may not be "perfect." Short of finding the current GMP cannot be approved as a matter of law, the State Engineer finds that denial of the Petition to require years of possible additional negotiations to merely better state existing plan provisions, to be unnecessary.<sup>46</sup>

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See A.B. 419 (First Reprint), Senate Committee on Government Affairs, 76th Sess. (May 25, 2011).

<sup>43</sup> See, e.g., Permits 81720, 82268, 81825 and 82572, official records in the Office of the State Engineer.

<sup>44</sup> Written comment of Great Basin Resource Watch.

<sup>45</sup> NRS § 534.037(5).

<sup>46</sup> The State Engineer values all comments and testimony received concerning the GMP. While it is clear the *Public Interest Review of the Proposed Diamond Valley Groundwater Management Plan* prepared for Great Basin Resource Watch was thorough in its analysis, the State Engineer gives great weight to comments and testimony from water rights holders in Diamond Valley, senior or junior whom are for or against approval of the GMP. Great Basin Resource Watch does not own water rights in Diamond Valley and it does not appear it was involved in the years of public meetings held in Eureka to negotiate the details of the GMP. See, e.g., GMP Appendix C at pp. 121-240. Indeed, its own written comment appears to recognize it is appropriate to afford great weight to those that created and are affected by the plan. See Written comment of Great Basin Resource Watch at p. 8 (a groundwater management plan should address the varied objectives or goals of water users and residents in the basin, and a worthwhile consideration is whether the GMP promotes bottom-up collaboration to promote broad buy-in from affected individuals and to provide flexibility in decision-making); and see also, Transcript, p. 65 (Mark Moyle) (responding to comments at the hearing, stating that the GMP was developed by the people who live in Diamond Valley and will be most affected and that everyone was making sacrifices).

Public and Local Community Interest

The same commenter stated that the public interest component was not adequately represented and that the description of local community interests could be strengthened.<sup>47</sup>

The State Engineer disagrees that the public interest is not adequately represented. As already discussed under well use approvals, new wells, additional withdrawals exceeding one year, or where the State Engineer rejected a request under § 14.8, is subject to the procedures of NRS § 533.370—including the public interest review for change applications.

Many comments in support of the GMP reflect the reality that it took years for the participants to negotiate an agreement that was able to attain majority support required to petition the State Engineer for approval. Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders.<sup>48</sup> Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018.<sup>49</sup> Appendix C of the GMP demonstrates that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment. The written comments overwhelmingly demonstrate the public and local community interests to be preserved by the approval of the plan, which are best stated by the following irrigator:<sup>50</sup>

The irrigators that support this plan understand that we all need to sacrifice for the long-term benefit of the community and the long-term continued success of the farming industry. Diamond Valley is the heart of southern Eureka County's economy. . . . Strong, willing, and giving people who understand that it takes community effort to sustain and survive built Diamond Valley. . . . The purpose of the DVGMP is to continue the ongoing success of the entire southern Eureka County area and the enterprises that exists [sic] there.

This sentiment was repeated in all written comments submitted in support of the plan.<sup>51</sup> In addition, many stirring accounts were given at the public hearing about living and growing up in Diamond Valley, the desire to preserve the established way of life, the hardscrabble efforts made over decades to create the farms that exist in the valley today, and the determination of the community to work together to solve issues, both past and present, which challenged their continued existence.<sup>52</sup> The State Engineer finds that the GMP materials, written comments and testimony at the public hearing overwhelmingly describe and support the public and local

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<sup>47</sup> Written comment of Great Basin Resource Watch.

<sup>48</sup> GMP, Appendix B.

<sup>49</sup> See GMP, Appendices A, C.

<sup>50</sup> Written comment of Mark Moyle.

<sup>51</sup> See written comments of Robert Burnham, Russell Conley, Jim Etcheverry, James Gallagher, Andrew Goettle, William Norton, Donald Palmore, Marty Plaskett and Ruby Hill Mining Company; and see Transcript, pp. 52-53 (D'Mark Mick).

<sup>52</sup> Transcript, pp. 57-59 (James Moyle); pp. 75-77 (Vickie Buchanan); pp. 79-82 (Matt Morrison); pp. 84-85 (Lloyd Morrison); pp. 85-88 (Alberta "Birdie" Morrison).

community interests, which weigh heavily in the determination at hand. While many comments in the *Public Interest Review*<sup>53</sup> reflect aspirational components of what a plan *may* contain or how it could be best stated, the State Engineer finds that the GMP is acceptable in these areas.

#### Protections for Domestic Wells

One commenter suggested that domestic wells were not protected because pumping will continue to exceed the perennial yield while the GMP is carried out. The State Engineer finds that NRS § 534.110(7), states that unless a GMP has been approved for a basin pursuant to NRS § 534.037, "withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights." And that pursuant to NRS § 534.080, domestic wells are assigned the date of priority of the date the well was drilled. Thus, the GMP is protective of domestic wells because it specifically excludes the domestic wells from pro-rata reductions in use and allows for their continued use to the full statutory permitted amount, compared to the alternative that (a) the domestic wells in Diamond Valley are junior in priority to the 30,000 af PY, and (b) since, absent an approved GMP, domestic wells are subject to curtailment based upon their priority.

#### Advisory Board Makeup

Commenters had differing issues with the makeup of the Advisory Board.<sup>54</sup> One commenter stated that the GMP favors junior appropriators on the Advisory Board. Alternatively, another commenter posited that after a period of years, the makeup of the Advisory Board could favor non-irrigators over irrigators. The State Engineer finds that the plan was created by the individuals that will be subject to the plan, and the State Engineer accepts that a majority of the rights holders agreed that the makeup and voting structure of the participants agreed this to be a fair manner of representation on the Board.

### **V. COMMENTS RELATED TO SCIENTIFIC SOUNDNESS**

Some commenters challenged the GMP, asserting that the GMP is not supported by science and hydrologic analysis, with the following observations:<sup>55</sup>

- a. The scheduled reduction in pumping would exceed the perennial yield for the life of the GMP and in the process it would deplete aquifer storage in excess of the transitional storage volume.
- b. The GMP is not supported by a hydrogeologic analysis or a groundwater model to provide information on the effects of the plan.
- c. Some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because

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<sup>53</sup> Written comment of Great Basin Resource Watch.

<sup>54</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>55</sup> Written comments of Ira and Montira Renner and Sadler Ranch, LLC; Transcript, p. 19 (David Rigdon); pp. 23-24 (David Hillis).

of groundwater recovery and corresponding changes in groundwater ET.

- d. One commenter raised the lack of thresholds or triggers in the GMP.

The GMP is based on the simple fact that groundwater pumping is the cause of declining water levels, and therefore pumping must be reduced to solve the problem. The reduction in pumping is set at 3% per year for the first 10 years, and may be adjusted up or down thereafter as informed by groundwater level monitoring data. The goal of this approach is to progressively reduce groundwater pumping until the perennial yield is not consistently exceeded, and the measure of that ultimate outcome is a stabilization of water levels.

Perennial yield is based on the principle of conservation of mass, which dictates that water levels will stabilize when recharge equals discharge. Before any groundwater development occurs, an undeveloped basin is considered to be in equilibrium between natural groundwater recharge and discharge. When wells are developed, groundwater is initially drawn from aquifer storage in the vicinity of the well, but over time that groundwater removal is replaced by a decrease in natural discharge or increase in recharge until a new equilibrium is reached and the discharge by pumping is part of the basin water balance. Water drawn from storage in the period of time between the pre-development equilibrium and the post-developed equilibrium is defined as the transitional storage. The amount of transitional storage consumed before a new equilibrium state is reached may affect the depth to water at a new equilibrium condition, but as long as recharge and discharge are ultimately balanced then an equilibrium condition can be reached and the goal of the GMP to stabilize water levels can be achieved. The amount of storage consumed in the transitional period will not prevent equilibrium from being reached.

Groundwater modeling and hydrogeologic analysis are not the basis for the GMP's determination of pumping reduction rates and target pumping totals at the end of the plan. Instead, the pumping reduction rate was selected by agreement of the GMP authors, and the target for total pumping at the end of the GMP was selected from existing published values. Upon implementation, the real effects of the plan will be monitored and observed by measuring the change in groundwater levels throughout the basin. Those measurements will be the basis for plan review and any modifications of pumping reduction rates that the GMP requires after an observation period of 10 years.

Groundwater modeling is a helpful and informative tool for projecting the effects of pumping reduction and planning accordingly, but modeling is not necessary to conclude that reductions in pumping will lead to reductions in water level drawdown. Groundwater modeling and hydrogeologic analysis beyond what is publicly available in existing published reports would not change the fact that the cause of groundwater decline is due to pumping groundwater and that the stakeholder-authored plan seeks to reduce pumping. Modeling could be a useful tool for future evaluation of the plan and modifications to pumping reduction rates, but it is not required.

One commenter questioned whether the reductions in pumping under the plan combined with rights not subject to plan would bring withdrawals to the perennial yield based on his calculation of rights able to be pumped being excess of 42,000 afa.<sup>56</sup> As explained, the goal of the

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<sup>56</sup> See written comment of Ari Erickson.

GMP is to reduce consumptive use to the current perennial yield; and, as indicated in the introductory paragraphs, there are 4,437 af of groundwater rights in the basin not subject to the plan. Thus, the State Engineer does not find that there could be total pumping in excess of 42,000 afa in the basin at the end of 35 years under the GMP. Assuming, *arguendo*, that rights subject to the plan and those not subject to the plan were estimated to be 34,437 af, existing evidence used by the State Engineer to designate the basin a CMA demonstrates that there are wide variations in annual pumping—in some years, by several thousand acre-feet more or less than the prior year.<sup>57</sup> Because the designation of a CMA is based on withdrawals *consistently* exceeding the perennial yield, the State Engineer finds that existing law suggests some tolerance of variations on the annual amount of pumping. In addition, the State Engineer is mindful that perennial yield is an *estimate* of water availability and is only one-half of the equation of GMP success.<sup>58</sup> Actual observations of water levels are the most direct and reliable means of determining GMP success. The plan to reduce pumping, monitor the effects on water levels, and then adjust pumping reductions is a sound approach to achieving the goal of stabilizing water levels. The lack of a groundwater model or detailed hydrogeologic analysis does not preclude approval of the GMP as written.

One commenter raised the lack of thresholds or triggers in the GMP. The State Engineer finds that there is no express requirement in NRS § 534.037 for thresholds or triggers, and that a reference to thresholds or triggers is commonly in reference to a “Monitoring, Management and Mitigation (3M)” Plan. The State Engineer has historically utilized 3M Plans as a tool in approving new appropriations when impacts to existing rights are unknown. Consequently, the State Engineer finds that a 3M Plan having thresholds and triggers is different than the GMP now pending before the State Engineer, and that the two types of plans serve different functions. Nevertheless, the State Engineer finds that there has been robust monitoring of irrigation groundwater use in Diamond Valley by the State Engineer’s office for many decades and that monitoring groundwater use and groundwater levels is ongoing. Moreover, the GMP requires irrigators to install a smart meter, which will provide increased accuracy and nearly real-time knowledge of groundwater use.<sup>59</sup> Finally, the GMP incorporates the State Engineer’s enforcement authority concerning over-pumping of a user’s allocation, and contains penalties to be paid in water for over-pumping and stiff administrative fines for meter tampering.<sup>60</sup>

Finally, some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because of groundwater recovery and corresponding

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<sup>57</sup> See Order 1264, official records in the Office of the State Engineer.

<sup>58</sup> Both the GMP and the commenter acknowledged the release of a 2016 report by the U.S. Geological Survey, which estimated the perennial yield may be 35,000 af. GMP, p. 8 at fn. 2; Transcript, p. 37 (Ari Erickson). As part of a different administrative hearing proceeding, the State Engineer was requested to accept the USGS Report as the perennial yield in Diamond Valley. That matter is currently under submission, and no determination has been made by the State Engineer whether to accept this number. Consequently, the GMP was based on the current estimate of perennial yield of 30,000 af.

<sup>59</sup> See GMP § 15. The most recent groundwater inventory conducted by the State Engineer in 2018 revealed that there was nearly 100% compliance with smart meter installation already. This further affirms that rights holders have already made financial commitments of purchasing and installing smart meters to ensure success of the GMP.

<sup>60</sup> GMP §§ 16, 17.

changes in groundwater ET. The selection of these rates was the only component of the GMP expressly based on groundwater model simulations. The accuracy of the model and appropriateness of assigning ET depreciation rates based on model interpretation was discussed at GMP planning meetings. The ET depreciation rates in the final GMP were a compromise and there was never a consensus. Adjustments to these rates is provided for under the provisions to amend the GMP, as warranted by the data.

## **VI. COMMENTS RELATED TO PRECEDENCE**

Several commenters were concerned that any GMP adopted in Diamond Valley creates a precedent for other areas in the state that may be designated Critical Management Areas. The proposed GMP under consideration is the first plan in the state adopted through the process required by NRS § 534.037. As with most decisions involving water, the conditions and issues facing Diamond Valley are unique to Diamond Valley, and therefore the requirements of this plan may not be suitable for any other area in the state. Many individuals speaking in support of the plan made this observation, and the State Engineer concurs that the Diamond Valley GMP does not limit the possible solutions that may be employed by other groundwater management plans.

**WHEREAS**, based upon the foregoing, the State Engineer makes the following findings of fact, conclusions of law and order:

The State Engineer finds that Appendix D to the GMP sufficiently describes (a) the hydrology of the basin; (b) the physical characteristics of the basin; (c) the geographic spacing and location of the withdrawals of groundwater in the basin; (d) the quality of the water in the basin; and (e) the wells located in the basin, including, without limitation, domestic wells.

The State Engineer finds that there is currently no groundwater management plan in existence for Diamond Valley.

The State Engineer finds that the GMP is analogous to the settlement agreement at the center of the *Lewis* case, *i.e.*, an agreement supported by at least a majority of the permit and certificate holders in Diamond Valley to protect existing rights while cutting the Gordian knot of basin over-appropriation. Thus, the State Engineer concludes that adoption of the GMP is expressly authorized by statute and does not violate the prior appropriation doctrine because the statute provides flexibility outside strict regulation by priority.

The State Engineer finds that the GMP is not legally deficient nor waives any authority of the State Engineer to enforce Nevada water law.

The State Engineer finds that due to the length of time required, initiating abandonment or forfeiture proceedings or requiring proof of beneficial use prior to implementing a GMP is not in the best interest of reducing pumping and would only serve to delay such reductions.

As discussed in the introductory paragraphs, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, and that the application of the plan to those rights that will have the most impact, and that will be the most impacted, is appropriate.



The State Engineer finds that public and local community interests have been considered, and that such interests are a cornerstone of the plan by retaining the greatest number of farms or mines as economically viable, which will provide social, economic, and environmental benefits.

The State Engineer finds that the standard for determining success of the plan by stabilizing water levels is sound.

The State Engineer finds that groundwater modeling is an informative tool for projecting the effects of pumping reduction, and that future model results could add confidence to decisions on any changes to pumping reductions, but that the lack of a groundwater model or hydrogeologic analysis does not preclude approval of the GMP as written.

The State Engineer finds that the GMP's annual reductions in pumping will lead to the entire basin's groundwater pumping approaching the perennial yield and stabilization of groundwater levels.


The State Engineer finds that the GMP is a groundwater management plan and is not a monitoring, management and mitigation plan; therefore, not only is there no requirement that there be a mitigation component or thresholds and triggers for activation of mitigation actions, but also such components would cloud the plan's goal and objectives.

The State Engineer finds that 1 acre-foot is equal to 325,851 gallons pursuant to practice and policy of the Office of the State Engineer, and that this conversion rate will be used.

In light of the foregoing findings, having considered the comments for and against the GMP, the State Engineer concludes that the petitioning parties have met the requirements for the adoption of the Diamond Valley Groundwater Management Plan, and the Petition is accordingly granted.

#### **ORDER**

**NOW THEREFORE**, it is ordered that the Petition to Adopt the Groundwater Management Plan for the Diamond Valley Hydrographic Basin is hereby GRANTED.

  
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JASON KING, P.E.  
State Engineer

Dated at Carson City, Nevada this

11<sup>TH</sup> day of JANUARY, 2019.

# **EXHIBIT 2**

# **EXHIBIT 2**

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

IN THE MATTER OF THE PETITION FOR  
APPROVAL OF THE PROPOSED DIAMOND  
VALLEY GROUNDWATER MANAGEMENT  
PLAN.

**SADLER RANCH, LLC'S OBJECTIONS TO  
THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN**

COMES NOW, Sadler Ranch, LLC ("Sadler Ranch") by and through its attorneys of record, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD., and hereby respectfully submits its objections to the proposed Diamond Valley Groundwater Management Plan ("GMP").

**INTRODUCTION**

The proposed GMP fails to adequately protect the Diamond Valley groundwater aquifer and the vested, domestic, and other water rights holders who rely on it. The proposed GMP also fails to meet the requirements of NRS 534.037 because it is not supported by substantial evidence showing that its implementation will result in the removal of the basin's designation as a critical management area ("CMA"). The proposed reductions in pumping would allow perpetual drawdown of water levels in the basin, beyond the life of the plan, without providing any mitigation for the harm done to pre-statutory vested water rights holders.

The proposed GMP violates other important provisions of Nevada's water laws. For example, the proposed GMP improperly allows water users to "bank" unused water in the aquifer for use in later years despite the fact that no application for an Aquifer Storage and Recovery ("ASR") project has ever been applied for or approved by the State Engineer and that this water is not available for storage because it is water allocated in excess of the basin's perennial yield. The proposed GMP also improperly limits the State Engineer's ability to make and enforce needed regulations for the basin.

Because the GMP fails to meet the statutory criteria for approval and violates important provisions of Nevada's existing water law, it should not be approved.

### **JURISDICTION AND STANDING**

The State Engineer is authorized under NRS 534.037 to consider the adoption of a groundwater management plan upon submission of a petition requesting the same signed by a majority of the holders of water rights within the basin. Upon receipt of such a petition, the State Engineer is required to hold a hearing to take testimony and consider evidence for and against the plan. On October 1, 2018, the State Engineer issued a notice indicating that he had received a petition requesting approval of the proposed GMP and setting a date for a hearing. Accordingly, the State Engineer has jurisdiction to consider Sadler Ranch's objections to the proposed GMP.

Sadler Ranch is the owner and operator of one of the oldest continuously operated ranches in Nevada. The ranch is located in the Diamond Valley hydrographic basin and was established by Reinhold Sadler who served as governor of Nevada from 1896 to 1903. The ranch consists of more than 3,000 acres of privately held property. Over 2,000 acres of the ranch was historically irrigated with water from the Big Shipley and Indian Camp Springs. The State Engineer has previously determined that the water from these springs is hydrologically connected to the groundwater aquifer in Diamond Valley and that pumping in the aquifer by holders of junior priority permits has detrimentally impacted the flow of Sadler Ranch's springs.<sup>1</sup> In addition to its pre-statutory vested rights Sadler Ranch owns groundwater permits issued by the State Engineer that may be subject to the provisions of the GMP.<sup>2</sup> Accordingly, Sadler Ranch has standing to file the instant objections, provide testimony and evidence at the GMP hearing, and appeal any approval of the GMP pursuant to the provisions of NRS 534.037(4) and NRS 533.450.

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<sup>1</sup> See State Engineer Ruling 6290.

<sup>2</sup> The question of whether the proposed GMP can be involuntarily enforced against holders of permits who did not consent to the plan is an open question of law. Sadler Ranch expressly reserves its right to challenge enforcement of the provisions of the proposed GMP against its state-issued water rights permits.

## **STANDARD OF REVIEW**

Under NRS 534.037(1) a groundwater management plan is required to include “the necessary steps for removal of the basin’s designation as a critical management area.” A basin is designated as a CMA when “withdrawals of groundwater consistently exceed the perennial yield of the basin.”<sup>3</sup> Accordingly, to approve a groundwater management plan, the State Engineer must determine that the plan will result in withdrawals of groundwater from the basin being less than the basin’s perennial yield.

All State Engineer determinations must be supported by substantial evidence in the record.<sup>4</sup> Substantial evidence is evidence that a reasonable person would accept as adequate to support a conclusion.”<sup>5</sup> The Nevada Supreme Court has ruled that the substantial evidence standard of review is reliant on the fullness and fairness of the proceedings in front of the State Engineer and includes a requirement that the State Engineer clearly resolve all objections raised and provide detailed findings regarding those objections.<sup>6</sup>

Therefore, to approve the proposed GMP, the State Engineer must specifically reference substantial evidence in the record demonstrating that the implementation of the GMP will result in withdrawals of water in the basin consistently remaining below the 30,000 acre-feet/year (“afy”) perennial yield of the basin previously established by the State Engineer.<sup>7</sup> Any proposed groundwater management plan must also comply with the existing water law statutes.

In these proceedings the State Engineer is acting in a quasi-judicial capacity. Quasi-judicial proceedings “are those proceedings having a judicial character that are performed by administrative agencies.”<sup>8</sup> The functions of a quasi-judicial proceeding include “hearing the parties in open forum, taking the matter under advisement, deliberating, writing a written decision,

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<sup>3</sup> NRS 534.110(7).

<sup>4</sup> *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

<sup>5</sup> *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010).

<sup>6</sup> *Revert*, 95 Nev. at 787, 603 P.2d at 264-65.

<sup>7</sup> See Nevada Division of Water Resources, Hydrographic Area Summary for Basin 153 (Diamond Valley).

<sup>8</sup> *Stockmeier v. Nevada Dep’t of Corr. Psychological Review Panel*, 122 Nev. 384, 390, 135 P.3d 220, 223 (2006).

and making that decision available to the parties and to the public.”<sup>9</sup> Like a judge in a court of law, the agency’s function in a quasi-judicial proceeding is *not* to act as an advocate for one party, but to judge the request before it in a neutral and impartial manner.

In State Engineer proceedings, the burden of proof is on the party requesting approval of its application or plan.<sup>10</sup> Accordingly, the proponents of the GMP bear the burden of providing evidence demonstrating that the GMP will reduce withdrawals of water in the basin below the established perennial yield. The proponents cannot rely on the State Engineer to provide this evidence for them, or to fill in evidentiary gaps. Instead, they, themselves, must provide all the evidence required to meet the burden. In addition, such evidence must be relevant, authenticated, and credible. Based on the evidence included with the proposed GMP, the proponents have failed to meet their burden.<sup>11</sup>

### **OBJECTIONS**

The proposed GMP, as submitted, does not contain the necessary steps for removal of the CMA designation from Diamond Valley. First, the proposed pumping reductions are inadequate and authorize continued groundwater mining. Second, the proposed GMP continues to harm holders of senior vested rights in the basin. Third, several provisions of the proposed GMP violate Nevada’s existing water laws.

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<sup>9</sup> *Ariz. P.C., Inc. v. Ariz. Bd. of Tax App., Div. 1*, 558 P.2d 697, 699 (Ariz. 1978).

<sup>10</sup> *JM v. Dep’t of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996) (“The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof.”) (citing BERNARD SCHWARTZ, ADMINISTRATIVE LAW § 7.8 (2d ed. 1984)).

<sup>11</sup> The State Engineer has not established a formal evidence exchange prior to the hearing or required pre-hearing briefs from the parties. Accordingly, the only evidence that Sadler Ranch has had the opportunity to review is the proposed GMP and the appendices attached thereto.

I. **The GMP's proposed pumping reductions are inadequate because they will not cause withdrawals in the basin to be reduced below the established perennial yield, were not developed using the groundwater model, and have no monitoring plan or triggers and thresholds to guide future management decisions.**

For over 45 years pumping in Diamond Valley has consistently exceeded the basin's perennial yield.<sup>12</sup> Even under the most aggressive pumping reduction schedule provided in the GMP, at the end of the plan (35 years from now) withdrawals in the basin will still exceed the available water. This continuing deficit means that the proposed GMP does not meet the statutory mandate requiring withdrawals be less than the perennial yield. The purpose for the requirement that a proposed GMP bring withdrawals in a basin below the perennial yield is to ensure that groundwater levels will stabilize as a result of the implementation of the plan. Otherwise, groundwater mining of the aquifer will continue indefinitely and senior water right holders will continue to be harmed.

The proposed GMP states that the plan "must set forth the necessary steps for removal of the basin's designation as a critical management area" and that the standard for designating a critical management area is whether "withdrawals of groundwater consistently exceed the perennial yield of the basin."<sup>13</sup> In addition the proponents state that one of their goals is to "stabilize groundwater levels of the aquifer."<sup>14</sup> However, the proposed GMP lacks any scientific analysis describing how the pumping reduction goals relate to the characteristics of the Diamond Valley aquifer or whether these goals will actually result in a stabilization of groundwater levels. Absent credible scientific evidence showing that the proposed pumping reductions will correct the current basin deficit, and thereby meet the statutory goal of achieving a stabilization of groundwater levels, the State Engineer lacks substantial evidence to approve the plan.

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<sup>12</sup> The State Engineer has determined that the perennial yield of the basin is 30,000 afa. See Nevada Division of Water Resources, Hydrographic Area Summary for Basin 153 (Diamond Valley). Since 1971, pumping has consistently exceeded this level. See GMP at 169 (Figure 6).

<sup>13</sup> GMP at 10 (quoting NRS 534.037(1) and NRS 534.110(7)(a)).

<sup>14</sup> GMP at 18.

A. **The GMP contains no groundwater modeling or other evidence demonstrating that the reductions in pumping will result in a stabilization of groundwater levels.**

The only way to determine whether the proposed pumping reductions will result in a stabilization of groundwater levels is to retain a groundwater modeling expert and have them perform groundwater model simulations using various pumping reduction scenarios. This has not been done. The groundwater model that was used to determine the evapotranspiration depreciation percentages used in Section 13.9 of the plan<sup>15</sup> should also be used to determine the effect of the proposed pumping reductions on the aquifer.

The State Engineer has regularly required groundwater modeling of this type when reviewing permits requesting both new appropriations of groundwater and changes to existing appropriations. Because the proposed GMP allows water to be freely moved around the basin, and to be used for different purposes,<sup>16</sup> it should be treated in the same manner, and held to the same standards, as a change application. Since the State Engineer would require individuals submitting change applications of this magnitude to engage in some form of groundwater modeling to demonstrate that the pumping associated with such applications will not result in groundwater mining, he should do the same here.

Given that a groundwater model has already been developed for the Diamond Valley basin, it is unclear why this model was not used to evaluate the proposed GMP. The only reasonable inference that can be drawn from the failure to do so is that the proponents of the GMP instinctively know what such modeling will show – that the reductions in pumping proposed in the plan are inadequate to stem the existing groundwater declines and bring the basin back into balance.<sup>17</sup> Without a groundwater model simulation showing that the proposed reductions in pumping will balance the water budget in the basin and thereby halt the continuing decline in

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<sup>15</sup> GMP Appendix I.

<sup>16</sup> See GMP at 17 (Section 13.8 states that “[g]roundwater subject to this GMP may be withdrawn from Diamond Valley for any beneficial purpose under Nevada law.”)

<sup>17</sup> See *Bass-Davis v. Davis*, 122 Nev. 442, 448, 134 P.3d 103, 106 (2006) (“When evidence is willfully suppressed, NRS 47.250(3) creates a rebuttable presumption that the evidence would be adverse if produced.”).



groundwater levels, the State Engineer lacks the substantial evidence needed to support approval of the proposed GMP.

**B. The proposed GMP does not include a monitoring plan to measure its effectiveness in stabilizing water levels in the basin.**

The proposed GMP includes an appendix with two proposed pumping reduction schedules – a “Benchmark” schedule and a “Most Aggressive” schedule.<sup>18</sup> The plan states that, after an initial 10-year period, the State Engineer may adjust the benchmark pumping reduction schedule based on “groundwater level monitoring data multi-year trends.”<sup>19</sup> However, there is no description in the proposed GMP of the number or locations of the groundwater monitoring wells, the devices that will be used to measure groundwater levels, the frequency of observation, or the party responsible for taking measurements. There is also a lack of analysis regarding the placement of the monitoring wells and devices and a description of why such locations were chosen. In short, the proposed GMP fails to include a monitoring plan that can be used to guide the State Engineer in his decision-making process.

The Hydrologic Setting report included with the proposed GMP states that “[g]roundwater exploitation in the basin has caused the discharge from many springs to decline or cease to flow altogether.”<sup>20</sup> To be effective, any monitoring plan must provide for monitoring wells and devices that can specifically track the spread of the cone of depression from the southern pumping into these sensitive areas. Other natural resources that are being affected by the over-pumping of the basin must be identified and monitored as well. As the water table drops because of the continued over-pumping authorized by the plan, there should be system of tracking the effects of these declines on irrigation domestic, municipal, mining and stockwater wells in the basin. Without an effective monitoring plan, there will be no evidentiary basis the State Engineer can rely on in making the decision whether to attenuate or accelerate future pumping reductions.

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<sup>18</sup> GMP at 293.

<sup>19</sup> GMP at 18 (Section 13.13).

<sup>20</sup> GMP at 276.

C. **The proposed GMP does not include objective thresholds and triggers to determine whether more aggressive reductions in pumping will be required.**

The Nevada Supreme Court has determined that any decision made by the State Engineer regarding future water withdrawals in a basin must be based on “presently known substantial evidence, rather than information to be determined in the future.”<sup>21</sup> Accordingly, if a plan requires the State Engineer to make future determinations it must include objective triggers and thresholds to guide the State Engineer in making his decision.

As noted above, under the proposed GMP the State Engineer has the authority to increase pumping reductions beyond those provided in the benchmark schedule.<sup>22</sup> However, there are no objective standards guiding such a decision. Instead, the State Engineer is merely directed to consult with the Advisory Board and review multi-year groundwater data. Nothing in the plan lists factors or considerations that the Advisory Board and State Engineer must consider in making their decision. There are also no objective triggers or thresholds which, if crossed, require additional action be taken (i.e., if groundwater monitoring and modeling shows X, then the Advisory Board and the State Engineer must do Y).

Because the proposed GMP does not include any objective triggers and thresholds to guide the Advisory Board and State Engineer in making required future determinations, it does not provide substantial evidence showing that it includes the necessary steps to bring the basin back into balance.

D. **The proposed GMP improperly limits the State Engineer’s discretion to order accelerated pumping reductions.**

In addition to not providing objective triggers and thresholds to guide the determination of whether more aggressive pumping reductions are needed, the proposed GMP also artificially limits the State Engineer’s discretion regarding how much of an accelerated reduction can be ordered. Under the plan, the State Engineer is strictly prohibited from deviating from the

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<sup>21</sup> *Eureka Cnty. v. State Engineer*, 131 Nev. Ad. Op. 84, 359 P.3d 1114, 1120 (2015).

<sup>22</sup> GMP at 18 (Section 13.13).

benchmark reductions during the first 10-years of the plan.<sup>23</sup> Then, after the 10-year period expires, the State Engineer is only authorized to increase or decrease pumping reductions by a maximum of two percent per year.<sup>24</sup> This means that even if groundwater levels continue to decline, and even if such declines have catastrophic results, the State Engineer will be prohibited from taking action to correct the problem. Such provisions represent an unlawful intrusion on the State Engineer's authority to regulate the groundwater basin in a manner that protects both the environment and vested water right holders.

The Legislature has granted the State Engineer the power to "supervise" all groundwater wells within a basin (except domestic wells)<sup>25</sup> and "make such rules, regulations and orders as are deemed necessary essential for the welfare of the area involved."<sup>26</sup> In addition, the Legislature has authorized the State Engineer to order a curtailment of pumping in basins where evidence indicates that "average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees."<sup>27</sup> The State Engineer's authority under these provisions may not be limited or waived by the approval of a GMP.

With the adoption of NRS 534.037 and NRS 534.110(7) the Legislature permissively allowed the State Engineer to consider approving a GMP in lieu of regulation by priority. However, the Legislature did not, either expressly or impliedly, state that a GMP can excuse the State Engineer from exercising his general regulatory authority or limit the manner in which he may do so. The purpose of a GMP is to provide water right holders the opportunity to take collective action to limit their own appropriations in a manner that benefits everyone. The Legislature did not authorize a GMP to create an entirely new regulatory scheme that exempts water users from the State Engineer's general regulatory authority or from other mandatory provisions of the water law.

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<sup>23</sup> GMP at 18 (Section 13.13).

<sup>24</sup> *Id.*

<sup>25</sup> NRS 534.030(4).

<sup>26</sup> NRS 534.120(1).

<sup>27</sup> NRS 534.110(6).

Because the proposed GMP unlawfully restricts the State Engineer's ability to adopt future regulations if such regulations are needed to protect the groundwater resource in Diamond Valley, the GMP cannot be approved in its current form.

**II. The GMP does not protect holders of senior vested rights.**

A basic principle of Nevada's water laws is that vested rights to water (i.e., groundwater rights established before 1939<sup>28</sup> and artesian surface water rights established before 1913<sup>29</sup>) cannot be impaired by any action of the State Engineer. Adopting a groundwater management plan that authorizes continued water level declines, where such declines will continue to impact vested rights, would violate this non-impairment principle.

**A. The GMP ignores the impacts to senior vested rights holders of allowing for 35 more years of over-pumping of the basin aquifer.**

In 1968, J.R. Harrill, a USGS scientist, estimated that the top 100 feet of alluvium in the Diamond Valley basin holds approximately two million acre-feet of water.<sup>30</sup> This is commonly understood to be the quantity of water that can be removed from a basin during the time it transitions to a new equilibrium in response to groundwater development (i.e., transitional storage) as long as such withdrawals do not impact existing water users. Since the late 1960s, groundwater pumping in Diamond Valley has already captured 1.75 million acre-feet, or 87.5% of this water.<sup>31</sup> Despite this, the proposed GMP allows the over-pumping to continue for another 35 years<sup>32</sup> By the end of this 35-year period, it is estimated that more than 2.5 million acre-feet will have been removed from basin storage with no equilibrium in sight.<sup>33</sup> This means that not only will the irrigators in Diamond Valley have mined the entire quantity of transitional storage in the basin,

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<sup>28</sup> NRS 534.100(1).

<sup>29</sup> NRS 533.085(1).

<sup>30</sup> Exhibit 1.

<sup>31</sup> *Id.*

<sup>32</sup> As noted above, even after the 35-year period has expired, withdrawals of water from the basin will continue to exceed recharge by a significant amount.

<sup>33</sup> Exhibit 1.

they will have also mined an additional 500,000 acre-feet of water from the permanent aquifer with no end in sight.

Holders of senior-priority vested rights have already borne the brunt of this recklessness. Most of the artesian springs in the basin have stopped flowing or had their flows significantly reduced. In addition, land subsidence associated with groundwater declines has damaged property.<sup>34</sup> The subsidence has also resulted in uneven terrain on the ranch that has eliminated the ability to flood irrigate certain fields that were historically irrigated in this manner.<sup>35</sup> Continued over-pumping in the basin will only worsen the problem. As the USGS predicted, even with the pumping reductions in the proposed GMP, water levels in the basin will continue to decline thereby furthering the harm done to the vested right holders.

**B. The GMP fails to provide adequate mitigation for the existing and future harms senior vested rights holders have suffered and will continue to suffer.**

The proponents of the GMP claim that its purpose is not to address the inequities of the past, but to try and provide a path forward.<sup>36</sup> Assuming, *arguendo*, that this is an appropriate response to property owners who have suffered significant losses as a result of past over-pumping, if the plan authorizes continued pumping that harms such individuals it must also include mitigation measures to offset those harms.

While several vested right holders have been issued mitigation rights to replace lost spring flows, these rights do not provide the full measure of mitigation they are entitled to by law.<sup>37</sup> A senior water right holder who has been harmed by a junior right holder has the right to demand the full delivery of his water, at his customary headgate, *at no additional cost*.<sup>38</sup> Vested right

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<sup>34</sup> Exhibit 2.

<sup>35</sup> For additional information regarding the land subsidence problem in Diamond Valley see generally REI ARAI, APPLICATION OF SYNTHETIC APERTURE RADAR INTERFEROMETRY (INSAR) IN DEFINING GROUNDWATER-WITHDRAWAL-RELATED SUBSIDENCE, DIAMOND VALLEY, NEVADA (August 2009).

<sup>36</sup> GMP at 241 ("This GMP does not address the inequities of the past.").

<sup>37</sup> Sadler Ranch continues to dispute whether the quantity of its mitigation rights provide the same quantity of water as was historically used on the ranch.

<sup>38</sup> See *Pima Farms Co. v Proctor*, 245 P. 369, 372-73 (Ariz. 1926) ("An appropriator of water from a running stream is entitled to have it flow down the natural channel to his point of diversion undiminished in quantity and quality or, if diverted from the natural channel by other appropriators for their convenience, to have it delivered to him at available points by other means provided by subsequent appropriators and *at their expense*." ) (emphasis added).

holders like Sadler Ranch historically received their water from free-flowing groundwater springs. To access this water, they did not incur any expenses associated with drilling a well, installing and maintaining well pumps, or paying for electricity to run the pumps.

The mitigation rights the State Engineer issued do not provide any mitigation for the costs of diverting and using the water. Because of this, Sadler Ranch and other senior vested right holders have not received full mitigation for past and future damages to their water rights. This problem could be resolved in a properly formulated groundwater management plan. Such a plan would impose an assessment on junior water right holders and place the money in a fund that could be used to pay the additional costs incurred by the senior vested right holders. Unfortunately, the proposed GMP does no such thing, choosing instead to ignore vested rights holders altogether.

Because the proposed GMP does not provide adequate mitigation for the continued harm that will be inflicted on vested right holders as a result of continued over-pumping of the basin, substantial evidence does not exist to support its approval.

**C. The governance portions of the GMP must be changed to allow adequate representation by senior rights holders.**

The proposed GMP sets up an Advisory Board that will make recommendations to the State Engineer regarding plan management. The governance structure of this Advisory Board is heavily weighted in favor of junior water right holders who will have the ability to effectively silence the concerns of vested right holders.<sup>39</sup> To resolve this issue, and ensure that the Advisory Board operates in a fair and impartial manner, holders of vested senior water rights should be afforded equal representation on the Advisory Board. For example, if the Advisory Board has eight seats, four seats should be allocated to senior vested right holders, and four seats allocated to the permit holders. As the GMP is currently written, junior water right holders will be able to select the person who represents vested right holders on the Advisory Board. Instead, the plan

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<sup>39</sup> Exhibit 1.

should require that members of the Advisory Board representing specific water rights holders should be chosen only by those individuals.

**III. Several provisions of the proposed GMP violate existing provisions of Nevada water law.**

As noted above, the adoption of a GMP does not exempt water users in a basin from compliance with mandatory provisions of the statutory water law. Despite this, several provisions in the proposed GMP directly violate Nevada's water laws and water permitting requirements.

**A. Allowing water users to store unused water in the aquifer for use in later years without an approved aquifer storage and recovery permit violates the NRS 534.250 and other provisions of Nevada's water law.**

Nevada's statutory water law authorizes the State Engineer to approve ASR projects if those projects meet certain requirements. The proposed GMP sets up an ASR banking program that authorizes water users in Diamond Valley to "bank" their unused water allocations from one year and use or sell them in subsequent years.<sup>40</sup> In Appendix I of the proposed GMP Mr. Bugenig, a consulting hydrogeologist, states that:

The ability to "bank" the unused portion of an Annual Groundwater Allocation is an essential part of the Diamond Valley Groundwater Management Plan (Plan). Water banking, or saving un-pumped groundwater for use in a subsequent year or years, *is a type of aquifer storage of recovery (ASR) program regulated by the Nevada State Engineer.*<sup>41</sup>

Therefore, the banking program outlined in the proposed GMP falls within the definition of an ASR project under Nevada law and is required to comply with the statutes governing such projects.

Under Nevada law an ASR project must be properly permitted, the water being stored must be available for appropriation, and the plan must be hydrologically feasible. The ASR banking program proposed in the draft GMP does not meet any of these criteria.

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<sup>40</sup> GMP at 17 (Section 13.9).

<sup>41</sup> GMP at 305 (emphasis added).

**1. Banking water in the aquifer for use in later years requires a valid ASR permit.**

Under NRS.250(1) “[a]ny person desiring to operate a[n ASR] project must first make an application to, and obtain from, the State Engineer a permit to operate such a project.” The permit application must include, among other things, evidence of technical and financial feasibility, an identification of the source, quality, and quantity of water to be banked, the legal basis for acquiring and using the water in the project, and a hydrologic study demonstrating that the project is hydrologically feasible and will not cause harm to other users of water in the basin.<sup>42</sup> Before approving such an application, the State Engineer must determine that: (1) the applicant has the technical and financial capability to operate the project, (2) the applicant has a right to use the proposed source of water for recharge, (3) the project is hydrologically feasible, and (4) the project will not cause harm to other users of water.<sup>43</sup> The State Engineer must also require the applicant to monitor the operation of the project and the project’s effect on other water users.

The submission of a proposed groundwater management plan is not a substitute for the filing of an application to operate an ASR project. First and foremost, the proposed GMP does not include the mandatory information required for an ASR application to be deemed complete. Second, the proposed GMP was not noticed and published pursuant to the requirements of NRS 534.270. Finally, the “Memo” from Mr. Bugenig that is described in the proposed GMP as a “Groundwater Flow Modeling Report” addresses only one specific issue related to the ASR banking program – the depreciation factors used in the proposed GMP. The Memo does not demonstrate that the ASR banking program is hydrologically feasible and that it will not harm other water users.

Because the proper procedures have not been followed to establish an ASR banking program under Nevada law, and because this program has been deemed an “essential” component of the proposed GMP, the State Engineer lacks the substantial evidence needed to approve the GMP.

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<sup>42</sup> NRS 534.260.

<sup>43</sup> NRS 534.250(2).



2. **Because water above the perennial yield is not available for appropriation, it cannot be used to support an ASR banking program.**

As noted above, before the State Engineer can approve an ASR banking program he must determine that the water to be stored is otherwise available for appropriation.<sup>44</sup> Here the water proposed to be stored is from water rights permits that were issued above the basin's perennial yield. By definition, this is not water that is available for appropriation. Rather, it is water that is being unlawfully mined from the aquifer.

As defined in the proposed GMP, the perennial yield of the basin represents the "maximum amount of groundwater that can be salvaged each year."<sup>45</sup> This is the only water that is actually available for appropriation in Diamond Valley. In any given year, once withdrawals hit 30,000 acre-feet no other water remains available for use. The only way unused water allocations would be theoretically available to be stored in an ASR banking program would be if total withdrawals from the basin in a given year were less than 30,000 acre-feet. In that case, the total quantity of water available to be stored would be limited to the difference between the quantity of the withdrawals and the perennial yield (i.e., if total withdrawals in a given year were only 28,000 acre-feet, and the perennial yield is 30,000 acre-feet, then a maximum of 2,000 acre-feet would be available for banking).

Because the proposed GMP cannot demonstrate that the "unused" water that will be placed in the ASR banking program is available for appropriation the GMP violates Nevada's water laws governing ASR projects and cannot be approved in its current form.

3. **The storage loss coefficients proposed in the GMP are not supported by substantial evidence in the record.**

Section 13.9 of the proposed GMP states that "[b]anked groundwater shall be reduced at seventeen percent (17%) annually for water banked north of the dividing line and one percent (1%) annually for water banked south of the dividing line."<sup>46</sup> This division is supposedly justified

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<sup>44</sup> NRS 534.250(2)(b).

<sup>45</sup> GMP at 7.

<sup>46</sup> GMP at 17.

based on Mr. Bugenig's memo that is included in Appendix I.<sup>47</sup> In the memo Mr. Bugenig presents the results of a groundwater model simulation he performed. However, neither the memo, nor the proposed GMP, contain the numerical model, the modeling report, or an analysis of model calibrations and fit. Without this information there is no way to replicate Mr. Bugenig's findings.

Mr. Bugenig states that a depreciation rate was calculated by dividing the basin along an east/west line that follows a topographic divide.<sup>48</sup> Model simulations were then used to calculate the rate of groundwater loss to evapotranspiration for each of the sub-basins and this figure was determined to be the depreciation rate that should be applied within each sub-basin.<sup>49</sup> This approach ignores the fact that, according to the USGS, the groundwater divide in the basin is actively propagating northward as a result of the expanding cone of depression created by the over-pumping in the south. Therefore, groundwater lost to evapotranspiration in the north will continue to decline.

Mr. Bugenig also ignores the fact that no additional water will actually be stored in the basin as a result of the ASR banking program. Since the banking of a share allocation does not actually place additional water into the aquifer for storage, there is no stored water on either side of the groundwater divide that will actually be lost to evapotranspiration. Accordingly, applying a depreciation factor to any of the banked water, and applying different depreciation factors in different parts of the basin, is nonsensical.

Because Mr. Bugenig's memo is not accompanied by the numerical groundwater model, the modeling report, or an evaluation of model calibration and fit, his conclusions are unsupported and the memo should not be used as evidence to support the adoption of the proposed GMP.

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<sup>47</sup> GMP at 305.

<sup>48</sup> GMP at 306.

<sup>49</sup> GMP at 309.

**B. The proposed GMP cannot waive mandatory provisions of the existing water law.**

The provisions of the water law statute that allows for the designation of CMAs and the development of groundwater management plans contemplated changes in the management of water rights based on the consent of the property owners. Property owners can voluntarily choose to enter into a groundwater management plan whereby the pain of pumping reductions is shared between them, rather than seek strict enforcement of their priority rights. In providing this option, however, the Legislature did not contemplate changes to the State Engineer's statutory authority or authorize deviations from other mandatory provisions of the water law. Following are some examples of provisions in the proposed GMP that violate this principle.

**1. The proposed GMP unlawfully allows water right holders to change the point of diversion, manner of use, and place of use of their permits without submitting an application to do so with the State Engineer.**

Another essential component of the proposed GMP is the ability of water right shareholders to freely transfer and sell their water allocations to other users. In addition, while all the permits that are being converted into transferrable shares have a designated manner of use of irrigation, the GMP provides that shareholders may use their allocations for "any beneficial purpose under Nevada law."<sup>50</sup> This, in effect, converts the state-issued water rights permits, with well-defined places and manners of use, into a type of super-permit whose water can be diverted and used anywhere in the basin for any purpose whatsoever without complying with the permitting statutes.

Pursuant to NRS 533.325 "any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall . . . apply to the State Engineer for a permit to do so." Under NRS 533.345 any application requesting to change an existing water right "must contain such information as may be necessary to a full understanding of the proposed change." The purpose for requiring an applicant to submit a change application is to ensure that the changes being proposed will not have a negative impact

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<sup>50</sup> GMP at 17 (Section 13.8).

on other water users in the basin. Both statutes contain the mandatory language – “shall” and “must.”<sup>51</sup> Because these provisions are mandatory, the State Engineer has no authority, either through approval of a GMP or otherwise, to waive them.

In addition, NRS 533.330 provides that “[n]o application shall be for the water of more than one source *to be used for more than one purpose*.”<sup>52</sup> Accordingly, no water right permit may authorize water to be placed to more than one use and each beneficial use of water must be authorized by a separate permit. Again, the statute uses the mandatory language “shall” indicating that this is a non-waivable requirement. Because the permits underlying the shares distributed under the proposed GMP specify a particular beneficial use (irrigation), the GMP cannot authorize water users to place the water to some other use. As noted in the proposed GMP, water used for irrigation is not fully consumed by crops and a portion of the water ends up recharging the basin.<sup>53</sup> This is not the case with other beneficial uses, which generally consume the full duty of the appropriated water. Therefore, the proposed GMP will allow irrigation water users to convert their water to other higher consumptive uses without considering the lost recharge to the aquifer from the non-consumptive portion of their original permits. This violates standard water management practices that allow only the consumptively used portion of an irrigation permit to be transferred to another use.

Because the State Engineer is without authority to waive the requirement that a water user must submit an application before making any change in a place of diversion, place of use, or manner of use of an existing water right, and because no water right permit can be authorized for more than one beneficial use, the proposed GMP cannot be approved as submitted.

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<sup>51</sup> See NRS 0.025(c) & (d) (“ ‘Must’ expresses a requirement”; “ ‘Shall’ imposes a duty to act.”).

<sup>52</sup> Emphasis added.

<sup>53</sup> GMP at 269.

2. **The proposed GMP unlawfully authorizes the State Engineer to exempt wells from the well abandonment requirements of NRS 534 and NAC 534.**

The proposed GMP states that “[w]ells kept active and linked to a Groundwater Allocation Account shall be exempt from well abandonment requirements of NRS 534 and NAC 534.”<sup>54</sup> However, as discussed above, a GMP simply cannot exempt owners of wells from the existing statutes and regulations governing those wells. The Legislature established the well abandonment requirements of NRS 534. The State Engineer does not have any authority to override the Legislature and waive those mandates. Accordingly, this provision of the proposed GMP is unlawful and should be removed.

3. **The proposed GMP unlawfully places time limits on the State Engineer to perform certain actions and deems regulated activity automatically approved if the State Engineer fails to meet the time limits.**

Section 14.8 of the proposed GMP attempts to set up an alternative process for the approval of new, temporary wells.<sup>55</sup> Under this process, the State Engineer has just 14 days to evaluate an application for a new well, or increased diversions from an existing well. If the State Engineer fails to meet this deadline, the new well is deemed to be automatically approved.

The State Engineer must carefully consider all requests and applications submitted to him. This is a duty that cannot be waived. Where the circumstances of a particular request require additional study or evaluation, the State Engineer would be remiss to ignore these facts and instead act on the request simply to meet some artificial deadline.

As noted above, in administrative law the burden of proof rests with the party making a request or application unless a legislative statute provides otherwise. Only the Legislature, not the State Engineer or the proponents of the GMP, can shift the burden of proof to the State Engineer and declare that applications not acted upon within a certain timeframe will be automatically approved. Because the State Engineer does not have the authority to authorize a

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<sup>54</sup> GMP at 19 (Section 14.2)

<sup>55</sup> GMP at 20.

permitting scheme whereby requests are deemed approved unless acted upon within a certain timeframe, Section 14.8 must be eliminated from the proposed GMP.

**IV. Prior to approving and implementing the GMP, the State Engineer should require permits to be proven up and bring proceedings to forfeit unused permits.**

As noted in the proposed GMP, committed groundwater rights (not including vested claims) total more than 131,000 acre-feet/annually.<sup>56</sup> However, the proponents of the proposed GMP admit that “[a] significant amount of these water rights are currently not being exercised, such that approximately 76,000 acre-feet per year are being pumped at present.”<sup>57</sup> Under NRS 534.090, water rights that have not been used for five consecutive years are subject to forfeiture pursuant to a statutory process. Prior to approving any groundwater management plan for Diamond Valley, the State Engineer should pursue forfeiture of all unused water rights in the basin.

To do otherwise would be to provide a financial windfall to the holders of the unused permits. Under the proposed GMP every permit holder, including holders who have consistently failed to put their water to beneficial use, will have their water rights permits converted into allocated water shares.<sup>58</sup> As noted above, these shares are freely transferable throughout the basin and can be sold to other parties.<sup>59</sup> Accordingly, under the GMP, a water permit holder whose rights would otherwise be subject to forfeiture will be given new, transferable water right shares. Water permit holders with these rights will be able to trade these inactive paper rights as shares which can then become active and be used to gain the right to pump water. The proposed GMP should fully quantify and account for these inactive water rights and evaluate how their conversion to shares will impact other water rights in the basin.

The proposed GMP also provides that annual water allocations for each shareholder will be determined by dividing the total allowed pumping for that year by the total number of issued

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<sup>56</sup> GMP at 263.

<sup>57</sup> *Id.*

<sup>58</sup> GMP at 15.

<sup>59</sup> GMP at 17.

shares.<sup>60</sup> Because of this, holders of unused water permits will receive their share allocations at the expense of permit holders who properly maintained and used their permits. This is patently unfair.

When the statute authorizing GMPs was before the Legislature, Assemblyman Goicoechea, the bill's sponsor, raised this very issue. He stated that "[w]e have paper water rights and we have wet water rights in all these basins. Some of them are a water right that is being held and really does not have any proof of beneficial use attached to it."<sup>61</sup> Assemblyman Goicoechea stated that to resolve this issue a proposed GMP "will clearly have to require some people to surrender those paper rights [i.e., the perpetually unused rights]."<sup>62</sup> Nowhere, was it stated that holders of unused rights will be allowed to profit from their failure to use the water by converting their rights to tradeable shares.

Therefore, approval of the proposed GMP should be delayed until after the State Engineer first initiates proceedings to forfeit the significant quantity of unused water rights in Diamond Valley.

### **CONCLUSION**

For the reasons stated above, and others that may be raised in these proceedings,<sup>63</sup> Sadler Ranch respectfully requests the State Engineer reject the proposed GMP as submitted. However, Sadler Ranch also respectfully requests that, in doing so, the State Engineer provide specific guidance to the proponents of the GMP regarding how a future groundwater management plan should be developed and what it must include. Sadler Ranch has strongly supported the designation of Diamond Valley as a CMA and believes that approval and implementation of a properly designed GMP could be beneficial. Such a GMP should include the following elements:

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<sup>60</sup> *Id.*

<sup>61</sup> Minutes of the March 30, 2011, Assembly Committee of Government Affairs at 70.

<sup>62</sup> *Id.* at 71.

<sup>63</sup> Because there has been no formal briefing or evidence exchange prior to the October 30, 2018, hearing, Sadler Ranch reserves the right to raise additional issues or arguments in response to testimony or evidence presented by other participants (including, without limitation, the State Engineer or his staff) during or after the hearing.

(1) pumping reductions based on groundwater modeling demonstrating that such reductions will halt continued water level declines in the basin over a 10-year period, (2) a monitoring plan that measures the actual effectiveness of the pumping reductions and that will operate as a positive feedback mechanism to guide future management decisions, (3) triggers and thresholds tying future management decisions to objective criteria (like specific groundwater levels), (4) a mitigation plan that includes compensation to vested right holders for costs associated with drilling, installing, maintaining, and operating their mitigation wells, and (5) a governance structure that provides equal representation for the vested right holders.

Respectfully submitted this 2nd day of November, 2018.

TAGGART & TAGGART, LTD.  
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(775) 882-9900 – Telephone  
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By: 

PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
Nevada State Bar No. 13567  
Attorneys for Sadler Ranch, LLC



## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
1.	Expert Report by David Hillis, P.E.
2.	Photographs of damage from land subsidence.

# **EXHIBIT 1**

# **EXHIBIT 1**

# Review and Evaluation of the Diamond Valley Ground Water Management Plan

October 30, 2018



Nevada's Premier Water Rights Engineering Company

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**JA0056**

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## 1.0 INTRODUCTION

Since some time in the 1960's the amount of water appropriated in Hydrographic Area - 153 Diamond Valley, commonly known as Diamond Valley, has exceeded the estimates of the perennial yield. This over allocation of the groundwater resource has resulted in adverse effects throughout the basin. Some examples of these adverse effects include increasing depths of pumping, drying of wells, reduction of spring flows, and in some cases "dry" or inadequate wells being drilled. These impacts are the result of an over allocation and utilization of the resource. The current and former residents of Diamond Valley have been aware of the groundwater issues some time. Fearing corrective action without input to the State Engineer, who is the head of NDWR, a portion of the permit holders in Diamond Valley petitioned the State engineer to designate Diamond Valley as a Critical Management Area [CMA]. Additionally, legal action which requested basin curtailment was taken against the State Engineer. As a result of these actions on August 25, 2015 Diamond Valley became the first and only CMA in the state of Nevada. As required by NRS 534.037 holders of groundwater permits in a basin with a CMA designation must submit a groundwater management plan [GMP] to the State Engineer, and have the plan approved, or face an automatic curtailment by priority. For the plan to be approved, it must set forth the necessary steps for the removal of the basin's designation as a critical management area as further stated in NRS 534.037. When the State Engineer considers whether to approve a groundwater management plan he must consider:

- (a) The hydrology of the basin;
- (b) The physical characteristics of the basin;
- (c) The geographic spacing and location of the withdrawals of groundwater in the basin;
- (d) The quality of the water in the basin;
- (e) The wells located in the basin, including, without limitation, domestic wells;
- (f) Whether a groundwater management plan already exists for the basin; and
- (g) Any other factor deemed relevant by the State Engineer.

The Diamond Valley Ground Water Management Plan was submitted to NDWR on October 1, 2018 for consideration. After this submission Turnipseed Engineering, LTD was retained to review the plan, and provide feedback on any concerns with the possible implementation. After performing this review, it is my opinion that the GMP as written provides insufficient hydrogeological evidence to support the GMP's goals, appears to favor the junior priority water

appropriators, will continue to allow for the exploitation of the groundwater resource for the plans duration, and will not sufficiently reduce groundwater pumping to remove the CMA designation.

## 2.0 GROUNDWATER STORAGE DEPLETION

The over pumping in Diamond Valley has been documented numerous times. In 1968 J. R. Harrill discussed the overdraft of groundwater in, *Hydrologic Response to Irrigation Pumping in Diamond Valley, Eureka and Elko Counties, Nevada 1950-1965*,<sup>1</sup> and explains that the upper 100ft of alluvium throughout the entire basin holds 2 million acre-ft of storage (this is commonly considered the quantity of storage that can be safely removed from a basin during the time it transitions to a new equilibrium in response to pumping). Although this is a tremendous volume of water the reality is approximately 1,750,000 acre-ft of storage water has already been removed from storage due to over-pumping. In addition, if the proposed reductions described in Appendix F and G are implemented the exploitation of storage water will continue beyond the life of the proposed GMP.

Figure 1 below shows the historical irrigation pumping and the future pumping under the GMP. This figure displays the information from Figure 6 in Appendix D of the GMP with the proposed pumping described in Appendix F and G. From observation of the figure the withdrawals of groundwater only from water rights that are to be administered by the GMP will never fall below the perennial yield. If water rights which are not subject to the GMP are included the storage depletion would be much higher. The volume of water removed from storage since the perennial yield was exceeded can be calculated by determining the difference in estimated annual pumpage from the perennial yield. If this calculation is completed for timeline depicted in Figure 1 the result is 2,517,155 acre-ft of water will be permanently removed from storage. Figure 2 shows this depleted volume of storage water which, according to Harrill (1968), would completely remove all storage water from the first 100' of saturated alluvium and mine an additional approximately 500,000 acre-feet of water from the deeper aquifer.

Based on my review of the proposed GMP, the proposed pumping reduction regime will not result in the removal of the CMA designation.

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<sup>1</sup> This issue was also discussed in DAVID L. BERGER, ET AL., BUDGETS AND CHEMICAL CHARACTERIZATION OF GROUNDWATER FOR THE DIAMOND VALLEY FLOW SYSTEM, CENTRAL NEVADA 2011-12 72 (USGS Scientific Investigations Report 2016-5055, United States Department of Interior).

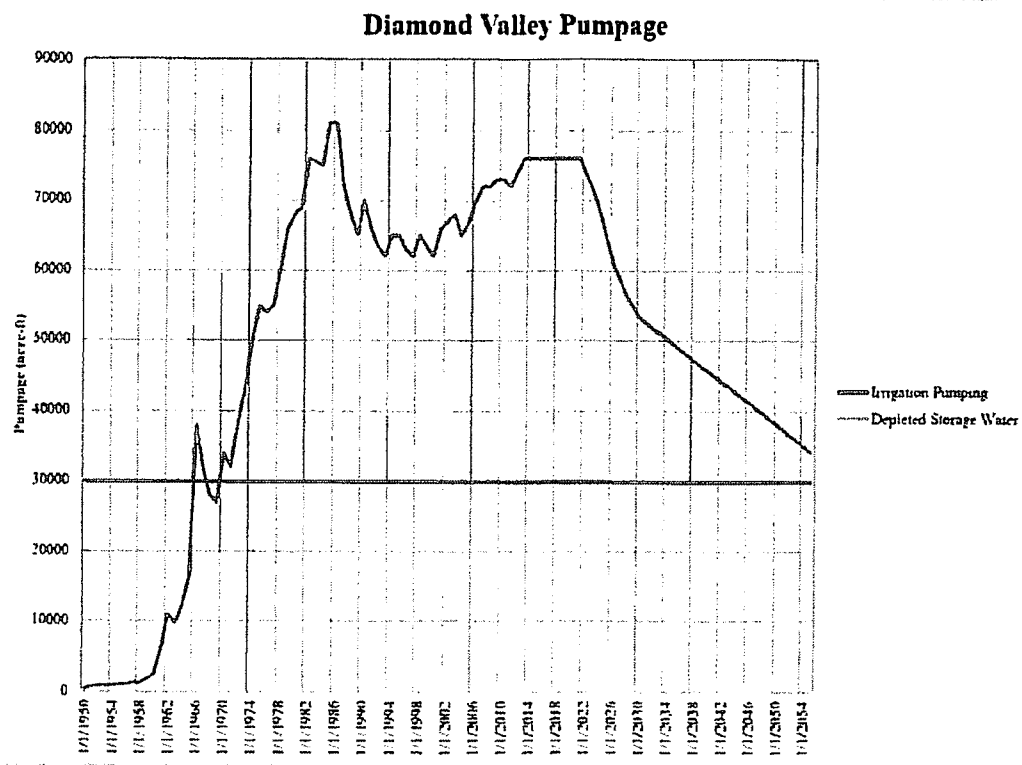


Figure 1 – Historical and Proposed Future Diamond Valley Pumpage



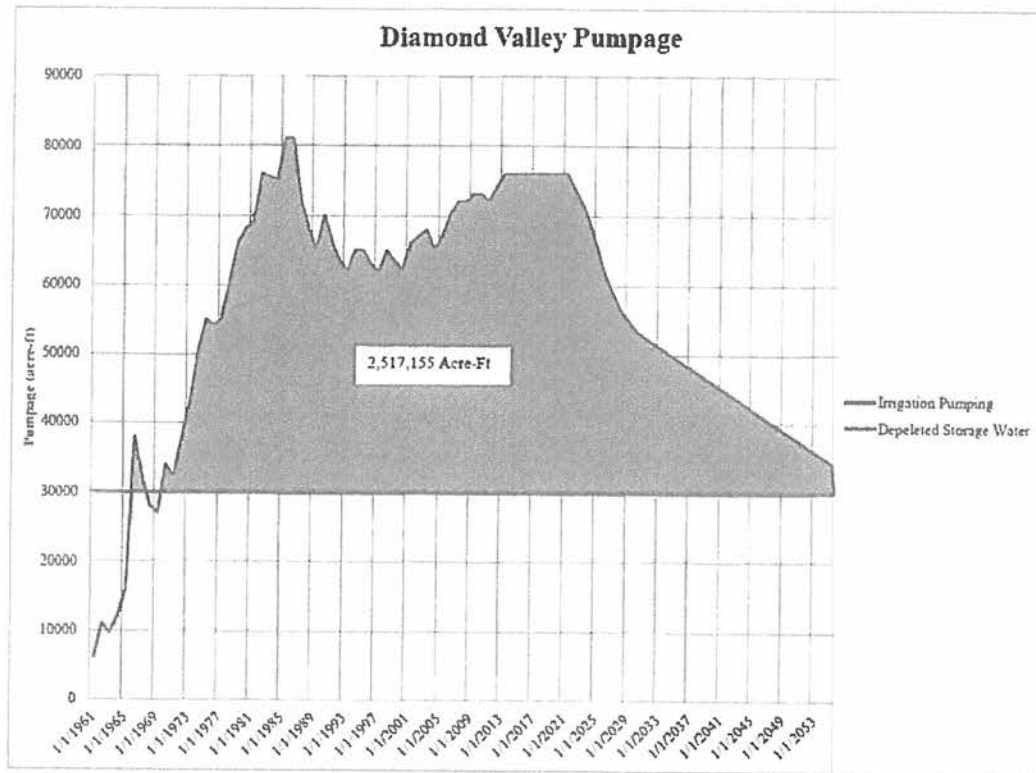


Figure 2 – Diamond Valley Historical Pumpage with Storage Depletion at Conclusion of GMP

### **3.0 INSUFFICIENT HYDROGEOLOGICAL EVIDENCE**

The GMP states that it “must set forth the necessary steps for removal of the basin’s designation as a critical management area” and that the criterion for removal of this designation is whether “withdrawals of groundwater consistently exceed the perennial yield of the basin.” Further the GMP states that one of its goals is to “stabilize groundwater levels of the aquifer.” However, there is no hydrogeologic based analysis in the GMP that which provides information on the ground water level status upon the GMP’s conclusion. In fact there is no discussion of the hydrogeological impacts of the plan, the anticipated groundwater level recovery, impacts to existing spring flows, description of the monitoring plan, and the mitigation measures to modify groundwater withdraw reductions. Also, the GMP states that in year 1 the “Benchmark Water Allocation” is 0.670 acre-ft per share. This value appears to be arbitrary as no discussion is presented on how this value was determined. These benchmark values should have been determined from groundwater modeling and groundwater level targets.

The plan does include Appendix D – Hydrologic Setting of Diamond Valley, which provides general information about the hydrologic conditions, and Appendix I – Groundwater Flow Modeling Report Supporting Banking Depreciation, which focuses on the degradation of “banked” water within the aquifer. This document states a calibrated numerical groundwater model from the time period of 1956 to 2006, which was used in support of the Mount Hope Project (Montgomery & Associates, et al., 2010), was used to analyze the depreciation.

Appendix I therefore raises many concerns as the model, the modeling report, model calibration with included modifications, and another report discussed in Appendix I, “Bugenig, 2017”, were not included, or available for review. Therefore, no interpretation and analysis can be conducted on the proposed depreciation values discussed in the GMP. In addition, this model could have been used to simulate and convey the effects of ground water levels for the GMP’s duration. Unfortunately, the recent USGS Berger, 2016 report appears to be disregarded or underutilized when evaluating the hydrogeologic conditions in Diamond Valley. As an example, Appendix I states that the depreciation of banked water will be 1% for the South Diamond Valley Sub-Area, and 17% for the North Diamond Valley Sub-Area which follows a groundwater divide. The USGS report clearly states this groundwater divide has moved to the north as a result of the

rapidly expanding cone of depression from over pumping in the south. This means that the position of the divide will continue to migrate to the north. As there is no discussion of this fact and it is possible that irrigators who may currently be south of the divide could have a different depreciation values in the future.

#### **4.0 SENIORITY VARIATIONS**

The GMP continuously shows bias toward junior water right holders throughout the document. This is evident in many cases including the purported 20% share allocation difference between senior and junior water right holders, the number of seats on the advisory board held by senior water right holders, the elimination of a senior water right holder seat from the advisory board, and the manner in how elections votes will be tallied. These items will be discussed in more detail in the section below.

Junior water right holder bias can be seen in Section 11 – GMP Advisory Board [AB] in the GMP document. This section describes the how the seats on the AB will be distributed, how AB members are elected, and how votes will be tallied. The GMP proposes an 8 members board: 1 mining water right holder seat, 1 vested water right holder seat, 4 agriculture water right seats with both senior and junior water rights, and 2 senior water right holder seats. If we assume that the 30,000 acre-ft perennial yield value was exceeded on 5/16/1960 with the issuance of current Permit 70587 this means that 30,008 acre-ft of water are senior appropriations. This 30,008 acre-ft of appropriations make up just 23.8% of the total 126,207.182 acre-ft of allocated permits within the basin. Therefore, the senior water right holders will represent 23.8% of the water rights governed by the AB and can be easily outvoted by the junior water right holders. In addition, as stated in Section 11.3 once the GMP is approved one of the two senior water right holder seats will expire, this will further bias the board distribution to the junior water right holders.

The issues described are a major concern because Nevada Water Law is based on the Prior Appropriation Doctrine, which is understood as “first in time, first in right.” When this doctrine is applied to a groundwater system the appropriations which occurred before the perennial yield was exceeded are the senior right holders. If the State Engineer were to regulate the basin by priority all junior appropriations would be prohibited from pumping. By contrast, the senior water right holders would receive no reduction in duty.

In section 12 - Groundwater Shares and Share Register the GMP claims there is a 20% share allotment spread from the most senior to the most junior water right holders in order to compensate the senior holders for their loss of priority. Unfortunately, when one reviews the volume of water a water right holder will actually receive under the GMP it demonstrates how misleading this statement is. For example: the most senior water right discussed in Appendix F in

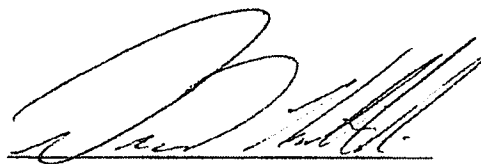
the GMP is Permit 30927 and this permit will receive 69.1024 shares from an original duty of 69.12 acre-ft. Therefore this reduction due to "Priority Factor" is .03%, which is essentially no reduction. The most junior water right discussed is Permit 80881 and this permit will receive 35.2455 shares from an original duty of 44.00 acre-ft. Therefore, this reduction in shares due to Priority Factor is 19.9%, which is essentially 20%. However, at the end of the proposed 35-year period described in Appendix G Permit 30927 will receive approximately 20.8 acre-ft of water which is 30.09% of the original duty granted. Permit 80881 will receive approximately 10.6 acre-ft of water which is 24.11% of the original duty granted. Accordingly, the difference in the percent of water duty actually received from the original allocation is not 20% but only 5.98% (30.09% - 24.11%). This means from the most senior water right holder to the most junior water right holder there is only approximately a 6% difference in acre-ft of water from their original allocations.

Also, the GMP states that in year 1 the "Benchmark Water Allocation" is 0.670 acre-ft per share. This value appears to be arbitrary as no discussion is presented on how this value was determined. These benchmark values should have been determined from groundwater modeling and groundwater level targets.

## **5.0 CONCLUSION**

As discussed in the preceding pages the Nevada State Engineer must consider many aspects when considering the approval of a GMP. One of the most important aspects is the hydrology of the basin. This GMP will continue the over pumping of the groundwater resource for an unreasonable timeframe. The plan also provides insufficient hydrogeological evidence to support the GMP's goals. Although the GMP states a numerical groundwater model was available it appears as though it was only utilized for the determination of banking depreciation. Finally this model appears to favor the junior priority water appropriators for the many reasons discussed in Section 4.0.

It is my professional opinion that the GMP as written will continue to allow for the exploitation of the groundwater resource for the plans duration, and will not sufficiently reduce groundwater pumping to remove the CMA designation.

A handwritten signature in black ink, appearing to read 'David G. Hillis, Jr.', is written over a horizontal line.

David G. Hillis, Jr., P.E., W.R.S.

## **EXHIBIT 2**

## **EXHIBIT 2**

**JA0068**

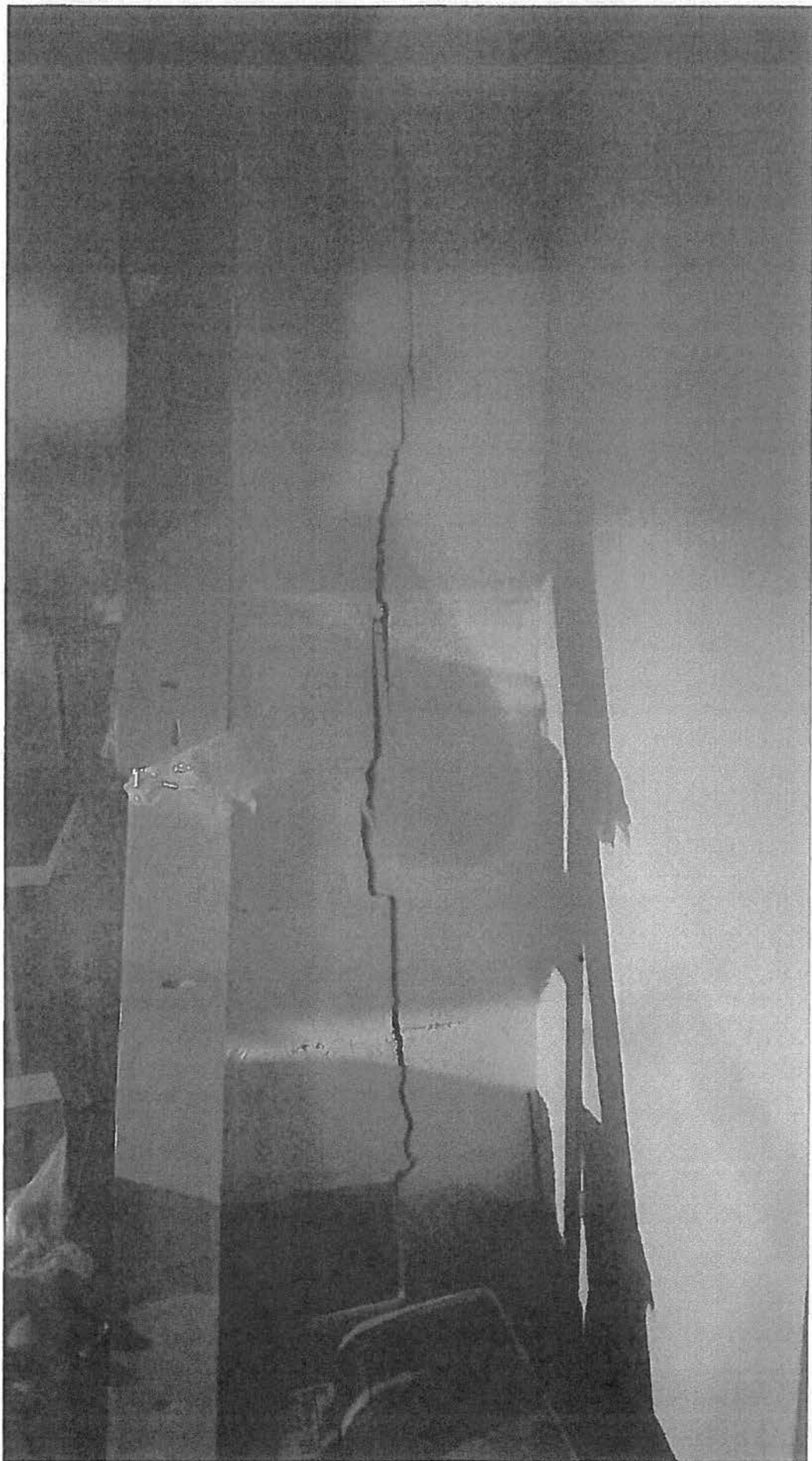


JA0069





JA0070



JA0071

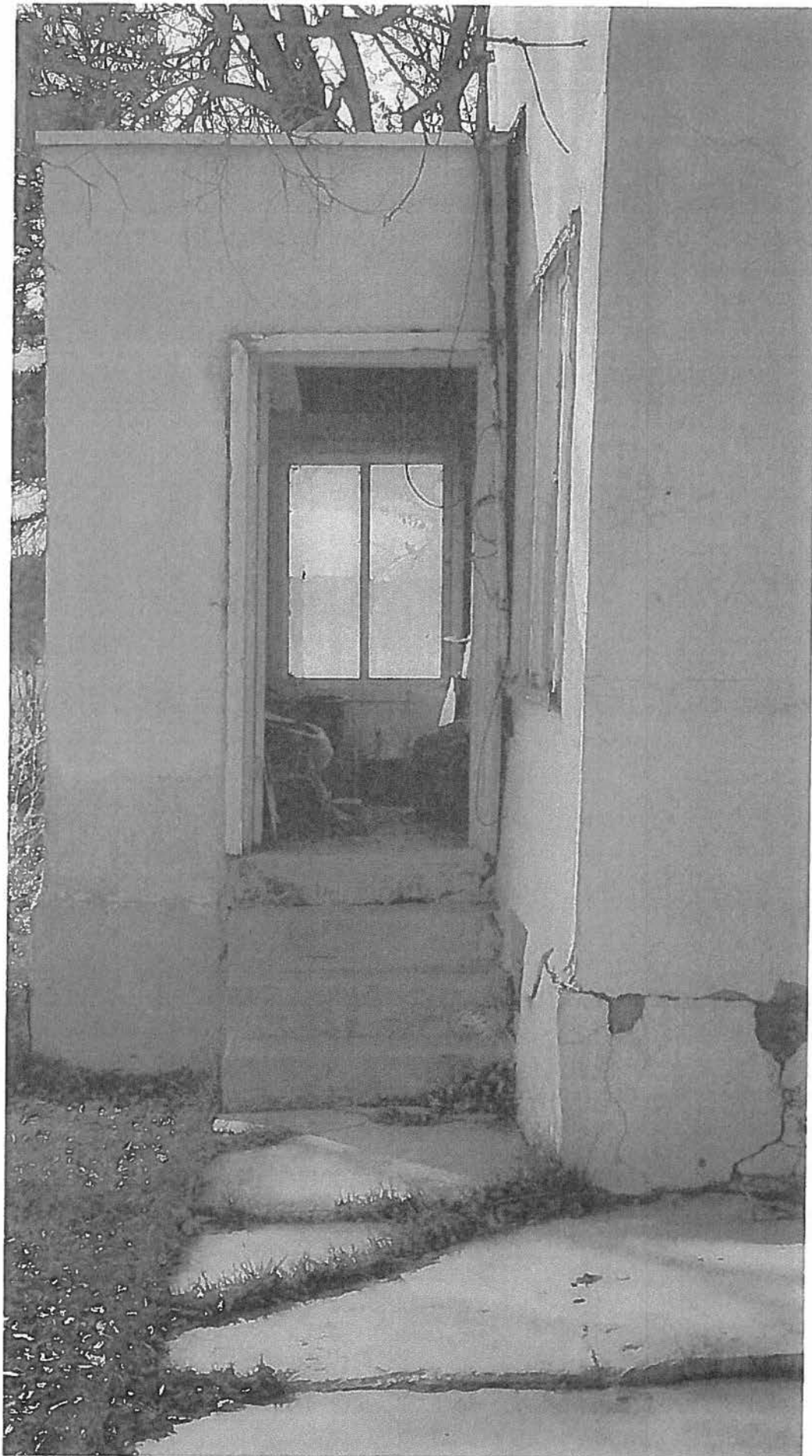


JA0072





JA0073



JA0074



JA0075





JA0076



JA0077



# **EXHIBIT 3**

# **EXHIBIT 3**

October 30, 2018

Jason King P.E.  
Nevada State Engineer  
Nevada Division of Water Resources  
901 South Stewart Street Suite 2002  
Carson City, NV

Re: Diamond Valley Groundwater Management Plan

Dear Mr. King,

My name is Daniel Venturacci, my wife and I own the Thompson Ranch located on the North End of Diamond Valley. The ranch consists of the deeded acres of the Home Ranch, Cox Ranch, Willow Field, Rock Field, Box Springs Ranch (Mau place), and Davis Canyon. In addition we also have the Diamond Springs BLM grazing permit which surrounds our deeded ground.

Due to the over allocation of pumping that has been allowed to continue to occur in Diamond Valley, all of the vested surface water irrigated and sub irrigated meadows located on the valley floor of the Thompson Ranch have been destroyed. The Thompson Ranch has been begging the State Engineer for help to restore its impaired vested water rights since 1982, the State Engineer has continued to let the over pumping impair the vested surface water rights on our ranch as well as others in Diamond Valley.

The current proposed Diamond Valley Groundwater Management Plan (GMP) allows Junior Water Right holders to continue to pump water in excess of the perennial yield, which in turn drops the water table and continues to impair vested surface water rights. Not only has the over allocation of Diamond Valley caused us to lose our vested surface water on the valley floor; our vested mountain runoff water is also being impaired. The over pumping has resulted in subsidence on the valley floor which creates large fissures; these fissures prevent the vested mountain runoff water from reaching the existing meadows therefore impairing our vested right even more (see attached pictures). As long as the over pumping is allowed to continue, these fissures will continue to increase both in number and size and cause us financial harm as well as impair our vested right.

We feel that the GMP is in violation of statute **NRS 533.085** which states:

1. Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.

2. Any and all appropriations based upon applications and permits on file in the Office of the State Engineer on March 22, 1913, shall be perfected in accordance with the laws in force at the time of their filing.

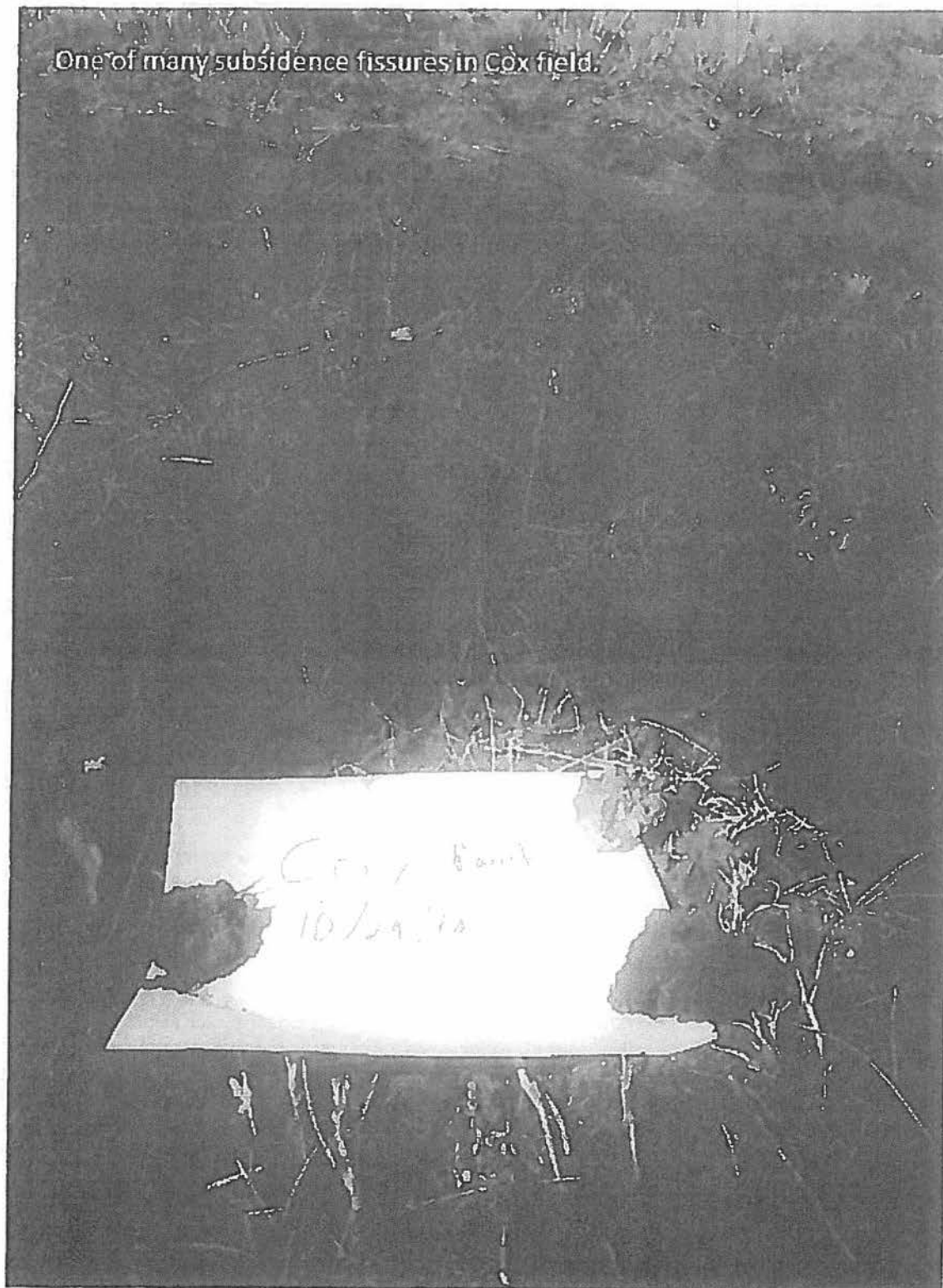
Due to the fact that vested surface water rights are continuing to be impaired and no mitigation plan is addressed in the GMP we will not support the GMP as written. We feel that before the GMP is signed by you Mr. King, our concerns need to be addressed and resolved immediately so that our vested surface water rights do not continue to be impaired.

Sincerely,

Daniel Venturacci

JA0079

One of many subsidence fissures in Cox field.



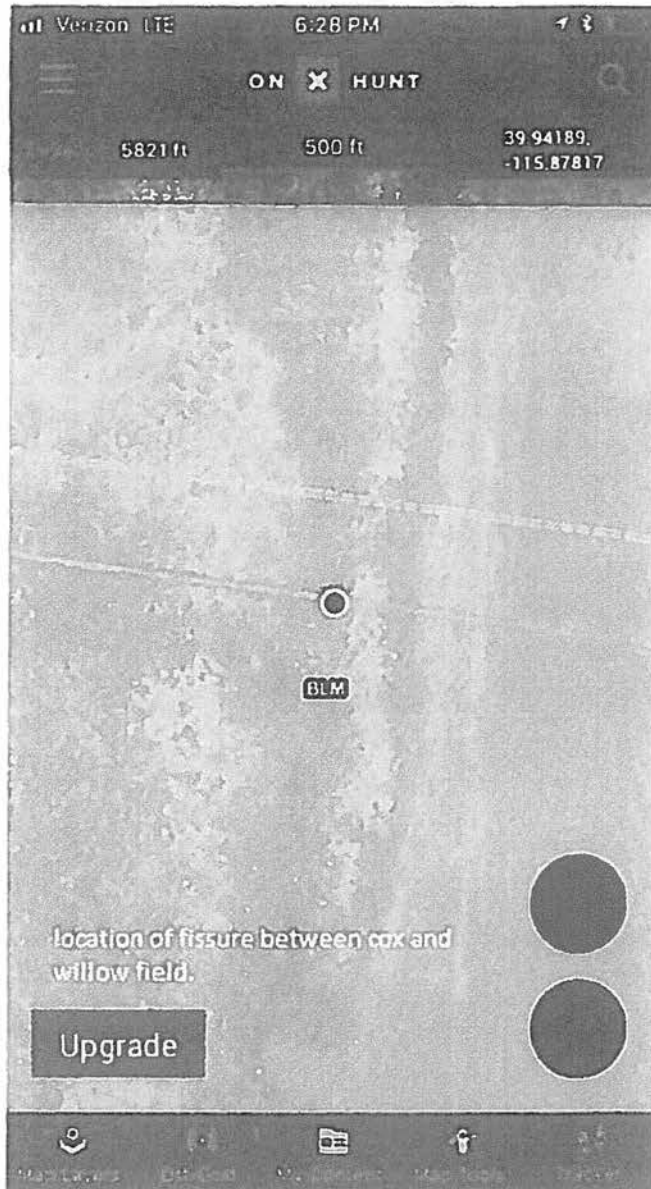




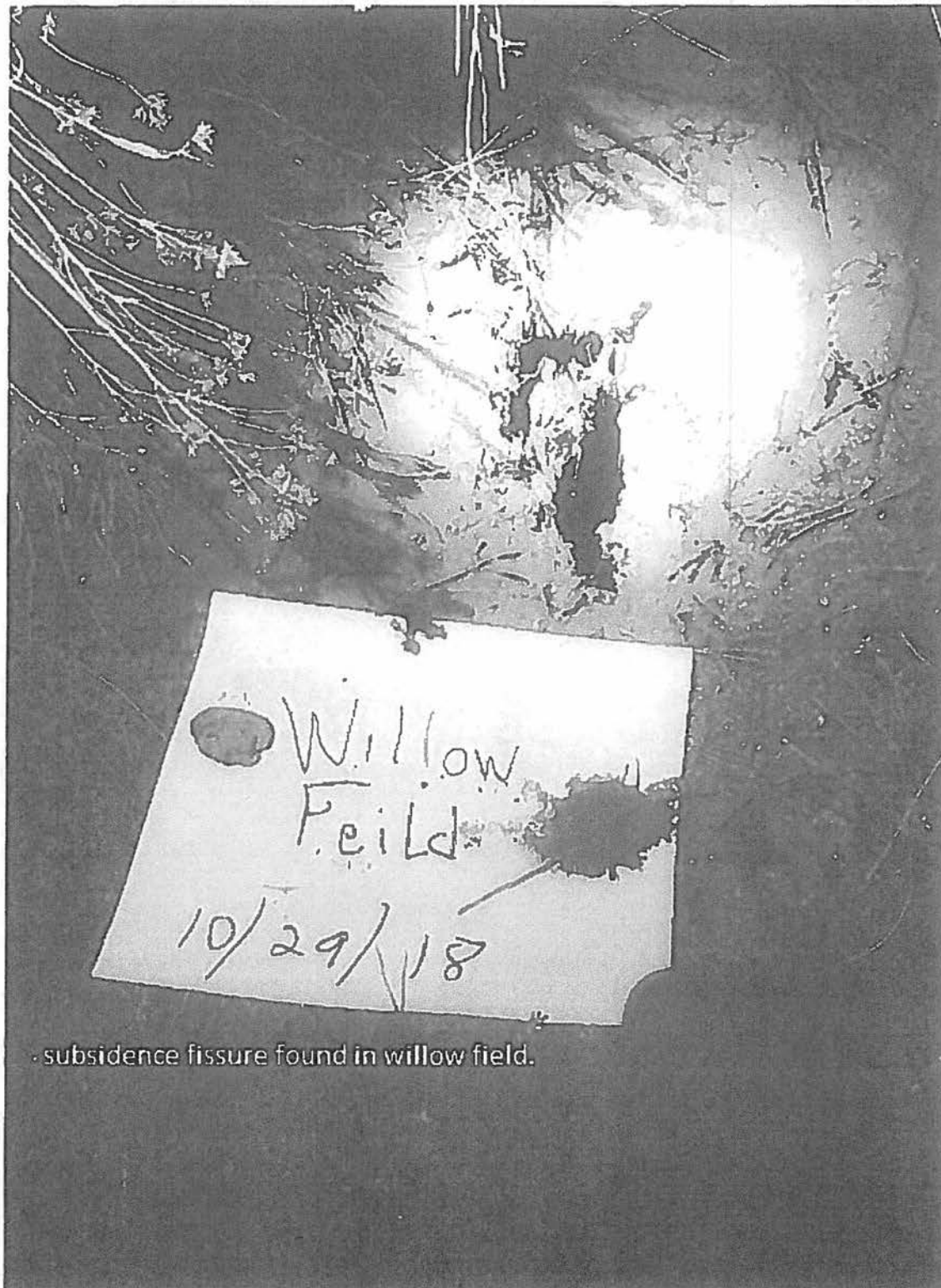


Picture of subsidence fissure  
between cox and willow field.

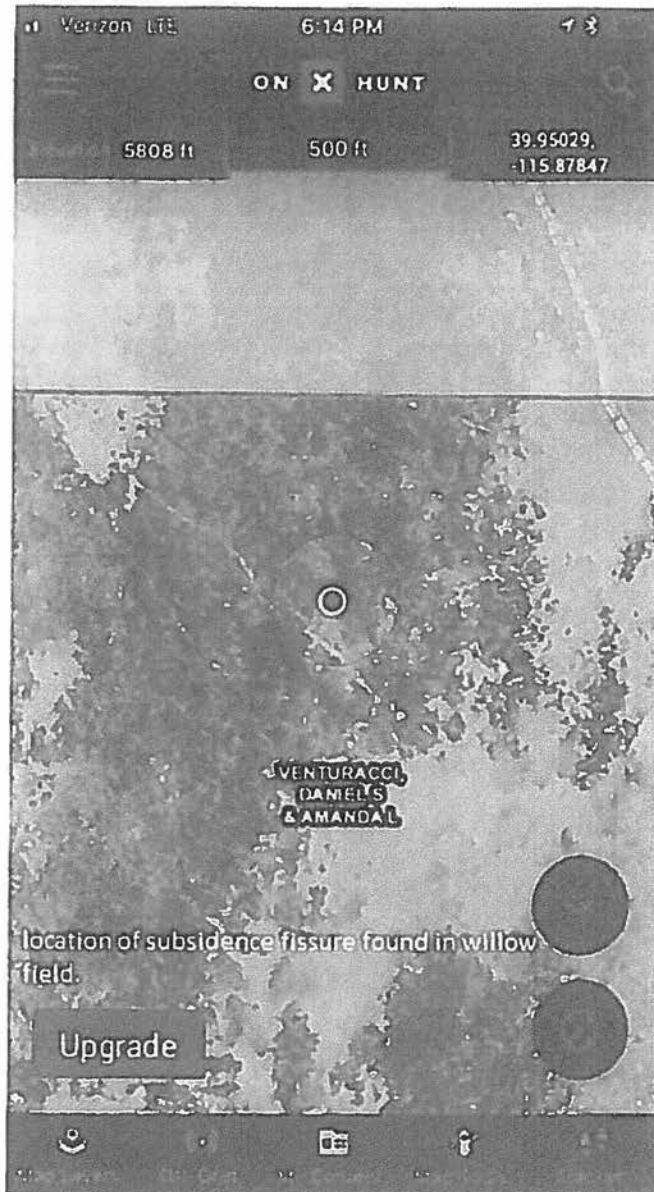
OLL WELL RD  
Between COX & Willow  
Ranch  
10/29/18







· subsidence fissure found in willow field.



Picture 2 of subsidence fissure found in willow field.





FEB 11 2019

*Eureka County Clerk*  
By Greg Hachne

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF EUREKA**

TIMOTHY LEE BAILEY and CONSTANCE  
MARIE BAILEY, a husband and wife; and  
FRED BAILEY and CAROLYN BAILEY, a  
husband and wife,

Petitioners,

vs.

NEVADA STATE ENGINEER,  
DEPARTMENT OF WATER RESOURCES,

Respondent.

**NOTICE OF APPEAL AND PETITION  
FOR REVIEW OF NEVADA STATE  
ENGINEER ORDER NO. 1302**

COME NOW, Petitioners TIMOTHY LEE BAILEY and CONSTANCE MARIE  
BAILEY, a husband and wife, and FRED BAILEY and CAROLYN BAILEY, a husband and  
wife, (collectively the "Baileys"), by and through their counsel, DON SPRINGMEYER, ESQ. and  
CHRISTOPHER W. MIXSON, ESQ., of the law firm of WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP, and hereby appeal from, and petition the Court to reverse and/or  
remand, Order No. 1302 Granting Petition to Adopt a Groundwater Management Plan for the  
Diamond Valley Hydrographic Basin ("Order 1302"), issued by the Nevada State Engineer ("State  
Engineer") on January 11, 2019, and attached hereto as Exhibit 1. This Petition for Judicial  
Review, as well as Notice of Appeal, is filed pursuant to NRS 533.450.

In Order 1302, the State Engineer approved and adopted the Diamond Valley Groundwater  
Management Plan ("GMP"). The specific grounds supporting the Baileys' request for reversal  
and/or remand, and the manner in which Order 1302 injuriously affects the Baileys, are  
enumerated below.

**RECEIVED**

**FEB 11 2019**

**Eureka County Clerk**

**JA0090**



## JURISDICTIONAL STATEMENT

The State Engineer is authorized under NRS 534.037 to consider the adoption of a groundwater management plan (“GMP”) upon submission of a petition requesting the same signed by a majority of the holders of water rights within the basin. Upon receipt of such a petition, the State Engineer is required pursuant to NRS 534.037(3) to hold a hearing to take testimony and consider evidence for and against the submitted GMP. Under NRS 534.037(4), a decision by the State Engineer to approve a submitted GMP “may be reviewed by the district court of the county pursuant to NRS 533.450.”

The Diamond Valley GMP was submitted to the State Engineer on August 20, 2018. A nominal “hearing” on the plan was held in Eureka, Nevada on October 30, 2018. On January 11, 2019, the State Engineer issued Order 1302 in which he approved and adopted the Diamond Valley GMP. On information and belief, the majority of the property and appurtenant water rights subject to the GMP are located within Eureka County. Accordingly, pursuant to NRS 533.450, this Court has jurisdiction to review Order 1302 and is the proper venue for hearing this and any other petition requesting judicial review of Order 1302.

## STANDING

The Baileys are the owners and operators of Bailey Ranches, comprised of several ranching and agricultural operations within the Diamond Valley hydrographic groundwater basin in Eureka, County, Nevada. Bailey Ranches has been in operation since 1863, and has supported seven generations of the Bailey family. Bailey Ranches owns certificated senior rights to the groundwater from the Diamond Valley Basin, including, but not limited to, those identified as Certificate Nos. 6182, 6183, 12552, 13361 and 15957. The adopted GMP violates Nevada's bedrock and sacrosanct doctrine of prior appropriation, illegally reducing and/or curtailing the Baileys' use and enjoyment of their senior groundwater rights.

Bailey Ranches is therefore directly aggrieved by Order 1302 and has standing to file the instant Petition pursuant to the provisions of NRS 534.037(4) and NRS 533.450.

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1 **FACTUAL BACKGROUND**

2 Diamond Valley is a large groundwater basin located just north of Eureka, Nevada.  
3 Beginning in the 1950s, largely in response to federal land policies, the State Engineer began  
4 issuing large numbers of permits authorizing the development of groundwater in Diamond Valley  
5 for irrigation purposes. In all, the State Engineer has issued permits allowing for the use of more  
6 than 130,000 acre-feet annually of groundwater in Diamond Valley. However, the perennial yield  
7 of the Diamond Valley Basin (the amount of water estimated to be available for sustainable  
8 pumping based on annual natural recharge to the aquifer) is only 30,000 acre-feet annually. Since  
9 the mid-1960s, as a result of the drastic mismatch between available groundwater and permitted  
10 pumping, the groundwater levels have dropped by more than 100 feet. Current annual pumping  
11 by junior groundwater users is approximately 76,000 acre-feet more than the perennial yield.

12 In 2011, the Nevada Legislature passed a bill, which the Governor signed into law,  
13 authorizing the development of groundwater management plans. The main provisions of the bill  
14 were codified as NRS 534.037 and NRS 534.110(7). This legislation was not intended to, and did  
15 not, abolish Nevada's prior appropriation system of water management, and therefore it did not  
16 authorize the State Engineer to approve a plan that is inconsistent with the law of prior  
17 appropriation.

18 The criteria for approval of a GMP are set forth in NRS 534.037. Under the statute, the  
19 State Engineer cannot approve a GMP unless substantial evidence demonstrates that the plan  
20 includes "the necessary steps for removal of the basin's designation as a critical management  
21 area." NRS 534.037. Under NRS 534.110(7), a Critical Management Area ("CMA") designation  
22 is applied when "withdrawals of groundwater consistently exceed the perennial yield of the basin."  
23 Accordingly, the State Engineer's decision to approve a GMP must be based upon substantial  
24 evidence in the record which supports a finding that the plan will reduce groundwater pumping  
25 such that withdrawals of water from the aquifer will not exceed the perennial yield of the basin.

26 Pursuant to the provisions of NRS 534.110(7), on August 25, 2015, the State Engineer  
27 issued Order 1264 designating Diamond Valley as a CMA. This began a 10 year period during  
28 which a GMP must be approved. If a GMP is not approved in that timeframe, the State Engineer

1 is required to immediately curtail pumping according to strict priority.

2 As noted above, the Diamond Valley GMP was submitted to the State Engineer on August  
3 20, 2018. Because NRS 534.037(3) requires the State Engineer to hold a hearing on a submitted  
4 plan, a hearing was scheduled for October 30, 2018. The hearing consisted of nothing more than  
5 the State Engineer praising the GMP proponents for their efforts and only allowing participants  
6 make public comments for or against approval. The GMP proponents made no factual  
7 presentation regarding the GMP, no sworn testimony was taken from any witnesses, no cross-  
8 examinations were performed, no expert witnesses were called in support of the plan, and no  
9 documentary evidence was presented in its support. The proceeding simply met none of the  
10 typical requirements for an evidentiary proceeding. The hearing merely served as an opportunity  
11 for participants to provide oral comments.

12 After the hearing, participants were given three days to provide written objections to the  
13 GMP. The Baileys timely submitted written objections to the GMP, as did others. Despite the  
14 serious objections raised by the Baileys and others, on January 11, 2019, the State Engineer issued  
15 Order 1302 approving and adopting the Diamond Valley GMP.

#### 16 **GROUND FOR PETITION**

17 Petitioners seek judicial review of Order 1302 on the following grounds:

18 1. The process adopted by the State Engineer to review and adopt the GMP violated  
19 NRS 534.037(3) and violated constitutional due process standards established by the Nevada  
20 Supreme Court;

21 2. The GMP is not supported by substantial evidence showing that it will result in the  
22 removal of the CMA designation from the Diamond Valley Hydrographic Basin as required by  
23 NRS 534.037(1);

24 3. The GMP authorizes continued over-pumping of water in the basin;

25 4. The GMP fails to include a monitoring plan to measure whether its mandated  
26 pumping reductions will actually result in the stabilization of groundwater levels in the basin;

27 5. The GMP ignores the impacts to holders of senior groundwater rights that will  
28 result from allowing over-pumping in the basin by junior groundwater users to continue



1 indefinitely;

2       6.     The governance provisions of the GMP violate constitutional due process  
3 safeguards;

4       7.     The GMP violates statutorily mandated provisions of Nevada's water laws;

5       8.     The GMP violates Nevada's prior appropriation doctrine;

6       9.     The GMP unlawfully allows water right holders to change the point of diversion,  
7 manner of use, and place of use of their permits without submitting an application to do so with  
8 the State Engineer;

9       10.    The GMP unlawfully authorizes the State Engineer to exempt wells from the well  
10 abandonment requirements of NRS 534 and NAC 534;

11       11.   The GMP unlawfully places time limits on the State Engineer to perform certain  
12 actions and deems regulated activity automatically approved if the State Engineer fails to meet the  
13 time limits;

14       12.   The GMP treats similarly situated persons differently based on arbitrary and  
15 capricious factors in violation of the equal protection clauses of the Nevada and United States  
16 Constitutions;

17       13.   The GMP unlawfully takes private property without just compensation in violation  
18 of the Nevada and United States Constitutions;

19       14.   The State Engineer has stated that he intends to enforce the GMP against holders of  
20 water rights who did not consent to its adoption;

21       15.   The factual determinations made by the State Engineer in Order 1302 are not  
22 supported by substantial evidence in the record;

23       16.   The State Engineer acted arbitrarily and capriciously when he reviewed, considered  
24 and adopted Order 1302;

25       17.   The State Engineer should have, at the least, postponed review and consideration of  
26 the GMP until after the completion and final approval, including judicial review, of the pending  
27 general adjudication of the Diamond Valley Hydrographic Basin.

28       18.   The State Engineer abused his discretion by including water rights that have been,

1 or are likely to be found to have been, abandoned and/or forfeited in the GMP groundwater  
2 allocation, shares, banking and trading scheme;

3 19. The State Engineer abused his discretion by failing to consider the effects of the  
4 GMP on the environment;

5 20. The State Engineer abused his discretion when he adopted Order 1302; and

6 21. The legal conclusions the State Engineer made in Order 1302 are erroneous and  
7 without merit.

8 **CONCLUSION**

9 For the reasons stated above, and for others that may be raised during the pendency of this  
10 appeal, Petitioners respectfully request that the Court reverse and overturn Order 1302 in its  
11 entirety. In the alternative, Petitioners request that Order 1302 be stayed and this matter remanded  
12 to the State Engineer with instructions to hold a properly noticed and structured evidentiary  
13 hearing to address the issues raised in this petition.

14 **AFFIRMATION**

15 **Pursuant to NRS 239B.030(4)**

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

18 DATED this 8th day of February, 2019

19 **WOLF, RIFKIN, SHAPIRO,**  
20 **SCHULMAN & RABKIN, LLP**

21  
22 By: 

23 DON SPRINGMEYER, ESQ.  
24 Nevada Bar No. 1021  
25 CHRISTOPHER W. MIXSON, ESQ.  
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27 3556 E. Russell Road, Second Floor  
28 Las Vegas, Nevada 89120  
(702) 341-5200/Fax: (702) 341-5300  
*Attorneys for Petitioners*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of WOLF, RIFKIN,  
3 SHAPIRO, SCHULMAN & RABKIN, LLP. and that on February 11, 2019, I served, or caused to  
4 be served, a true and correct copy of the foregoing document as follows:

5 By **HAND-DELIVERY** to:

6 Tim Wilson, P.E.  
7 Nevada State Engineer  
8 Division of Water Resources  
9 901 S. Stewart Street, Suite 2002  
10 Carson City, NV 89701

Tori N. Sundheim, Esq.  
Deputy Attorney General  
Nevada Attorney General's Office  
100 N. Carson Street  
Carson City, NV 89701

11 By U.S. POSTAL SERVICE, CERTIFIED, RETURN RECEIPT REQUESTED, by  
12 depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the  
13 above-identified document, at Las Vegas, Nevada, to:

14 Eureka County Board of Commissioners  
15 P.O. Box 694  
16 Eureka, NV 89316

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19 Alex Flangas Law  
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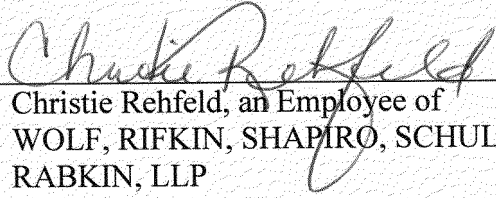
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4 By   
5 Christie Rehfeld, an Employee of  
6 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
7 RABKIN, LLP

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

**#1302**

**ORDER**

**GRANTING PETITION TO ADOPT A GROUNDWATER MANAGEMENT PLAN FOR  
THE DIAMOND VALLEY HYDROGRAPHIC BASIN (07-153), EUREKA COUNTY,  
STATE OF NEVADA.**

**WHEREAS**, decades of declining water levels in the Diamond Valley Hydrographic Basin is due to the simple fact that groundwater pumping has consistently exceeded the perennial yield of the basin. An obvious solution to the problem caused by *over* pumping is to *reduce* groundwater pumping. Designating Diamond Valley a Critical Management Area (CMA) (the first and only basin thus far in Nevada), provided water right users within the Diamond Valley basin the opportunity to develop a customized groundwater management plan (GMP) that does in fact reduce groundwater pumping to a level that satisfies the State Engineer that the water levels will reach an equilibrium. The CMA and GMP process became law in 2011 specifically to allow those that truly have skin-in-the-game (the water right holders in the basin), to create a means to the same end as curtailment by priority, but without the dire and sudden impacts.

Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders. Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018. The testimony, written public comment and background of Appendix C of the GMP demonstrate that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment by priority to save their community and the established agricultural way of life in Diamond Valley. It is significant that the participants are not professional water right managers, but are ordinary citizens who made a Herculean effort to craft their own plan in response to a complex problem.

**WHEREAS**, this matter came before the State Engineer on a Petition to Adopt a Groundwater Management Plan (Petition), pursuant to Nevada Revised Statute (NRS) § 534.037 filed on August 20, 2018.

**WHEREAS**, the history leading up to the subject Petition is as follows:

Diamond Valley is a major groundwater farming area in the Diamond Valley Hydrographic Basin, Basin 153.<sup>1</sup> There are approximately 26,000 acres of irrigated land, which primarily produce premium quality alfalfa and grass hay. In 2013, it was estimated that approximately 110,000 tons of hay were produced annually for a total farming income of approximately \$22.4

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<sup>1</sup> GMP, p. 8.

million.<sup>2</sup> Approximately 126,000 acre-feet annually (afa) of irrigation groundwater rights are appropriated in Diamond Valley, and as of 2016, groundwater pumping for irrigation was estimated to be 76,000 afa. The perennial yield of Diamond Valley is 30,000 acre-feet (af).<sup>3</sup>

For over 40 years, annual groundwater pumping has exceeded the perennial yield of Diamond Valley.<sup>4</sup> In the years that groundwater pumping has exceeded the perennial yield, groundwater levels in Diamond Valley have consistently declined at a rate of up to 2 feet per year. Prior to declaring Diamond Valley a CMA pursuant to NRS § 534.110(7), the State Engineer held public meetings on numerous occasions in Diamond Valley to discuss over-appropriation of the basin and to encourage water rights holders to formulate solutions or a plan at the local level to address declining water levels.

Because withdrawals have consistently exceeded the perennial yield of the basin, on August 25, 2015, the State Engineer declared Diamond Valley a CMA pursuant to NRS § 534.110(7).<sup>5</sup> Once declared a CMA, holders of water rights within the basin have 10 years to create and present to the State Engineer a groundwater management plan; otherwise, the State Engineer is required to curtail the basin by priority.<sup>6</sup>

**WHEREAS**, the process for approval of a GMP by the State Engineer is as follows:

Nevada Revised Statute § 534.037(1) requires that a petition for the approval of a GMP that is submitted to the State Engineer must be signed by a majority of the holders of permits or certificates to appropriate water in the basin that are on file in the Office of the State Engineer.

At the time of filing the petition, there were 419 water right permits or certificates in the Diamond Valley Hydrographic Basin. Of these, 257 are represented by at least one signature in the petition. Comparing the signatories with the confirmed owner of record in the files of the Office of the State Engineer demonstrates that 223 water right permits or certificates are represented by the owner of record. If accepting the affirmation made on each page of the signed petition, then 257 rights of 419 rights is 61%. If limiting only to those signatures by a confirmed owner of record, then 223 of 419 is 53.2%. In either case, a majority of permits and certificates in the Diamond Valley Hydrographic Basin are represented in the petition; therefore, the State Engineer finds that the petition satisfies the requirement of NRS § 534.037(1).<sup>7</sup>

The total duty of groundwater rights in Diamond Valley is 130,625 afa. Of these, 126,188 afa are subject to the plan and 4,437 afa are not subject to the plan. The estimated amount of

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<sup>2</sup> GMP, p. 8.

<sup>3</sup> GMP, p. 8.; J.R. Harrill, *Hydrologic Response to Irrigation Pumping in Diamond Valley, Eureka and Elko Counties, Nevada, 1950-65*, Water Resources Bulletin No. 35, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of the Interior, Geological Survey), 1968.

<sup>4</sup> GMP, p. 8.

<sup>5</sup> Order 1264, official records in the Office of the State Engineer; GMP, p. 8.

<sup>6</sup> NRS § 534.110(7).

<sup>7</sup> Exhibit 1, public administrative hearing before the State Engineer October 30, 2018, official records in the Office of the State Engineer. Hereinafter the exhibits and transcript will be referred to solely by the exhibit number or transcript page.

groundwater committed to domestic wells at the statutory maximum of 2 afa per domestic well is 234 afa. By duty, over 96% of the total groundwater commitments are subject to the plan. It is reasonable that the focus of the plan to reduce the groundwater pumping be focused on those manners of use that have the greatest potential effect on the pumping in the groundwater basin.

The GMP assumes that the dividing line between senior and junior water rights holders is where the consumptive use of the water rights is estimated at 30,000 af, which is equal to the perennial yield of Diamond Valley; therefore, those rights with a priority date of May 12, 1960, or earlier are referred to in this Order as the senior rights (with a duty totaling 29,325 afa) and those rights with a priority date after May 12, 1960, are referred to as the junior rights. At the time of filing the petition, there were 77 senior water right permits or certificates, and 36, or 46.8%, of these were represented by at least one signature on the petition. The remaining 342 water right permits or certificate were junior, and 221, or 64.6%, of these were represented by at least one signature on the petition. Of the 29,325 afa of senior water rights, 18,700 afa, or about 64%, is represented by signatories of the petition. The State Engineer finds that significant portions of both senior and junior rights are represented in the petition.

Nevada Revised Statute § 534.037(3) requires that before approving or disapproving a groundwater management plan the State Engineer shall hold a public hearing to take testimony on the plan in the county where the basin lies or, if the basin lies in more than one county, within the county where the major portion of the basin lies. The State Engineer shall cause notice of the hearing to be:

- a. Given once each week for two consecutive weeks before the hearing in a newspaper of general circulation in the county or counties in which the basin lies.
- b. Posted on the Internet website of the State Engineer for at least two consecutive weeks immediately preceding the date of the hearing.

Notice of a public hearing to be held on October 30, 2018, was published in the *Eureka County Sentinel*, the *Elko Daily Free Press*, and the *Ely Times* during the weeks of the 15<sup>th</sup> and 22<sup>nd</sup> of October.<sup>8</sup> Also, notice of the hearing was posted on the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018.<sup>9</sup> Additional notice was also sent by certified mail directly to the boards of county commissioners for the counties of Eureka, Elko, and White Pine.<sup>10</sup> The GMP was made available through the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018, and was also available by request.<sup>11</sup>

A public hearing to take testimony on the proposed GMP was held in Eureka, Nevada, on October 30, 2018, during which testimony in favor of and in opposition to the GMP was received. In addition, the State Engineer held open the period for written public comment for an additional three working days following the hearing, during which time additional public comments were

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<sup>8</sup> Exhibit 4.

<sup>9</sup> [http://water.nv.gov/documents/Hearing\\_Notice-Diamond\\_Valley\\_GMP.pdf](http://water.nv.gov/documents/Hearing_Notice-Diamond_Valley_GMP.pdf)

<sup>10</sup> Exhibit 3.

<sup>11</sup> <http://water.nv.gov/documents/Final%20DV%20GMP%20for%20Petition.pdf>

received. This Order evaluates the testimony and written comments and other elements required for approval of the Petition.

Nevada Revised Statute § 534.037(1) requires that in a determination whether to approve a groundwater management plan, the State Engineer shall consider, without limitation:

- a. The hydrology of the basin;
- b. The physical characteristics of the basin;
- c. The geographic spacing and location of the withdrawals of groundwater in the basin;
- d. The quality of the water in the basin;
- e. The wells located in the basin, including, without limitation, domestic wells;
- f. Whether a groundwater management plan already exists for the basin; and
- g. Any other factor deemed relevant by the State Engineer.

**WHEREAS**, the Diamond Valley Groundwater Management Plan is summarized as follows:<sup>12</sup>

The predominant manner of use of existing rights in Diamond Valley is irrigation, where groundwater is pumped and used to produce primarily alfalfa and grass hay. Consequently, the GMP applies to irrigation rights and mining and milling rights with an irrigation base right, while vested rights, other manners of use and domestic wells are excluded from the plan. The GMP requires annual reductions in pumping with a goal of stabilizing groundwater levels and reducing consumptive use to the perennial yield. The GMP applies a formula to calculate the annual duty a rights holder can pump after required reductions, where the formula is based upon the original water right duty and priority of the right to arrive at a number of shares. The formula is defined as:

$$WR * PF = SA$$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

An annual amount of water that can be pumped per share is allocated to a rights holder (i.e., the annual allocation), and the reductions in pumping are accomplished by annually reducing the amount of water each share is allocated. In the initial year of the GMP, the total amount of water that can be pumped is equal to the amount of water currently in use. Unused allocations

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<sup>12</sup> Specific components of the GMP are discussed in greater detail below with reference to the public comments received; accordingly, an overview of the major GMP structure is introduced here.



may be banked, traded, leased or sold; thus, the GMP employs a market-based approach. The GMP also contains penalty provisions for pumping in excess of allocations. The GMP is governed by an Advisory Board of elected representatives that are charged with making recommendations to the State Engineer, who ultimately oversees and administers the Plan. The GMP is funded through annual assessments, which, in part, will be used to also fund a water manager employed by the Nevada Division of Water Resources, whose role is expected to involve implementation and management of the GMP.

**WHEREAS**, the comments made at the October 30, 2018, hearing on the Diamond Valley Groundwater Management Plan and the State Engineer's response are as follows<sup>13</sup>:

### **I. COMMENTS RELATED TO LEGAL SUFFICIENCY**

Several comments were received challenging the legal sufficiency of the GMP as being in violation of established Nevada water law or that the GMP waives existing mandatory provisions required by the NRS including the prior appropriation doctrine, movement of allocations, well abandonment and a banking component without adequate permitting.<sup>14</sup>

#### Prior Appropriation

First, several commenters asserted that the GMP violates the doctrine of prior appropriation by eliminating the bedrock principle of "first in time, first in right." The violation, they allege, occurs because all water rights—both senior and junior—have their allocations reduced annually, rather than reductions being imposed solely on junior rights.<sup>15</sup>

While it is acknowledged that the GMP does deviate from the strict application of the prior appropriation doctrine with respect to "first in time, first in right," the following analysis demonstrates that the legislature's enactment of NRS § 534.037 demonstrates legislative intent to permit action in the alternative to strict priority regulation. Nevada Revised Statute § 534.037(1) provides that a groundwater management plan "must set forth the necessary steps for removal from the basin's designation as a [CMA]." Other prior appropriation states have addressed whether a

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<sup>13</sup> The following analysis is intended to address written and public comments received concerning the GMP. In large part, all of the comments made in opposition to the GMP in writing or at the hearing raised issues that were considered during the GMP drafting process. These issues, and many more, are succinctly summarized in a "comment and answer format" in Appendix C at pp. 241-255, entitled *GMP Issues and Concerns Identified Through the Process*.

<sup>14</sup> Written comments of Ira and Montira Renner, Timothy and Constance Marie Bailey, Sadler Ranch, LLC, and Great Basin Resource Watch.

<sup>15</sup> Appendix F to the GMP contains the preliminary table of all rights subject to the GMP and the share calculation for each right. The relative priority dates of all rights subject to the Plan are shown in the table. Notwithstanding the share calculations shown in Appendix F, one commenter acknowledged that if a GMP is not adopted and curtailment is ordered on all rights, that rights junior to about May 1960 would be curtailed. This would include a significant number of irrigation rights, all mining rights, and some municipal rights. See Written Comment of Great Basin Resource Watch, p. 5. In addition, the majority of domestic wells in the basin are junior and would also be completely curtailed. See NRS § 534.110(6) (the State Engineer may order that withdrawals, including withdrawals from domestic wells, be restricted to conform to priority rights).

shortage sharing plan violates the prior appropriation doctrine. For example, in *State Engineer v. Lewis*, 150 P.3d 375 (N.M. 2006), the New Mexico Supreme Court examined whether a settlement agreement entered into by the Interstate Stream Commission, the United States and three irrigation districts, upon which a partial final decree was entered in an adjudication proceeding, violated the New Mexico Constitution, which codified the prior appropriation doctrine.

The appellants, senior rights holders, contended that the settlement agreement violated the New Mexico Constitution, and that due to chronic water shortages for senior rights, the negotiating parties were duty-bound to adhere to the prior appropriation doctrine as it was traditionally understood and enforced, through a priority call. *Id.*

The court's examination focused on a statute that was enacted for the express purpose of achieving compliance with New Mexico's obligations under the Pecos River Compact (the compliance statute). *See id.* at 150 P.3d at 379. In the words of the court, the parties to the settlement agreement sought to cut the water shortage "Gordian knot" through a process more flexible than strict priority enforcement, yet still comply with the prior appropriation doctrine.

In interpreting the legislative intent of the compliance statute, the *Lewis* court found that the intent and purpose of the legislation was beyond dispute—to take charge of resolving a critical situation created by an amended decree, while complying with the obligation of protecting existing rights. In determining that the statute was constitutional, the court assumed that the legislature was aware of the prior appropriation doctrine when it enacted the statute, and that the statute was to be read as a clear signal that the legislature and governmental players wanted to create a solution other than a priority call as the first and only response. *Id.* at 150 P.3d 385.<sup>16</sup> Notwithstanding that the court found the statute constitutional and not violative of prior appropriation, the court found it important that the settlement agreement did not rule out a priority call if needed. *Id.* at 150 P.3d 386.

Nevada Revised Statute § 534.037(1) was enacted in 2011 by A.B. 419. Aside from the six specific and one general consideration codified in the statute, the State Engineer finds that the legislative history contains scarce direction concerning how a plan must be created or what the confines of any plan must be.

Like *Lewis*, in enacting NRS § 537.037, the Nevada legislature expressly authorized a procedure to resolve a shortage problem. And, like *Lewis*, the State Engineer assumes that the Legislature was aware of prior appropriation when it enacted NRS § 534.037,<sup>17</sup> and the State Engineer interprets the statute as intending to create a solution other than a priority call as the first and only response. Nothing in the legislative history of A.B. 419 or the text of NRS § 534.037 suggests that reductions in pumping have to be borne by junior rights holders alone—if that were

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<sup>16</sup> Although the prior appropriation doctrine is not codified in the Nevada Constitution, a similar analysis to *Lewis* is appropriate as prior appropriation is the law in Nevada.

<sup>17</sup> The fact that NRS § 534.110(7) requires the State Engineer to regulate by priority after 10 years if no GMP is adopted makes clear that the Legislature was aware of prior appropriation. Also, the remarks of Assemblyman Goicoechea, the bill sponsor, reinforces the Legislature's awareness of prior appropriation when the Assemblyman described regulation by priority (*e.g.*, pumping is curtailed and the basin is brought back into balance with only senior water rights being held). *See Minutes on the Assembly Committee on Government Affairs*, 76<sup>th</sup> Session, p. 66 (March 30, 2011).

the case, the State Engineer could simply curtail junior rights—a power already granted by pre-existing water law in NRS § 534.110(6). Thus, the State Engineer concludes that NRS § 534.037 provides flexibility outside regulation by priority, and the manner in which the GMP proposes to reduce pumping is authorized by Nevada law.

Notwithstanding, even though NRS § 534.037(1) does not require a GMP to impose reductions solely against junior rights, the most senior rights in the GMP have a higher priority factor than junior rights when the share calculation is made. Thus, the State Engineer finds that the GMP still honors prior appropriation by allocating senior rights a higher priority factor than junior rights.<sup>18</sup>

#### Well Use Approvals

Second, commenters opposed to the GMP challenged the GMP's provision to allow temporary movement (less than 1 year) of allocations, alleging the GMP contravenes existing law by automatically granting such changes, that the temporary approval process diminishes State Engineer and public review and encourages trading on annual bases, rather than filing for a permanent change.<sup>19</sup> On the other hand, other comments were received that supported the flexibility offered by the expedient temporary movement process.<sup>20</sup>

Existing water law has provisions that deal with temporary changes to water rights<sup>21</sup> and permanent changes to existing rights.<sup>22</sup> Because the GMP unbundles allocations from the place of use where existing water rights are appurtenant, movement of allocations is controlled by a new or existing well serving as the point of diversion.<sup>23</sup> Thus, the GMP was (1) modeled after existing law regarding temporary changes<sup>24</sup> and (2) still requires application of NRS § 533.370 to new wells or increased withdrawals exceeding 1 year.<sup>25</sup>

Section 14.8 of the GMP provides that any new wells or wells having withdrawals in excess of what was approved under the base right be submitted to the State Engineer. Such changes are approved after 14 days if not denied as impairing other rights or contrary to the public interest. The State Engineer finds that the existing law concerning temporary changes (NRS § 533.345(2))

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<sup>18</sup> The public comments during the hearing reiterated that the 20% spread of the priority factor likely received the greatest consideration and debate during the GMP process. Ultimately, a spread of priority factor between 0.9997 and 0.80 was what a majority of the plan proponents could agree to.

<sup>19</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>20</sup> Written comment of Marty Plaskett; *and see* Transcript, pp. 80-81 (Matt Morrison) (providing an example that when annual reductions are implemented, an irrigator may not have enough water for one pivot, but would have flexibility to combine allocations to water a full crop, while also allowing some irrigation on former irrigation lands to keep them viable until farming on that pivot could resume).

<sup>21</sup> NRS § 533.345(2).

<sup>22</sup> NRS § 533.370.

<sup>23</sup> *See* GMP §§ 14.8 and 14.9.

<sup>24</sup> GMP, p. 20 at fn. 20.

<sup>25</sup> GMP § 14.9.

expresses a command to grant temporary changes (*e.g.*, “shall approve”) unless the State Engineer determined it impairs existing rights or is contrary to the public interest. Thus, the State Engineer finds that § 14.8 and § 533.345(2) to be entirely consistent. Further, the State Engineers agrees that allowing changes expediently up to the original duty at that well is permissible because the State Engineer already made such an affirmative analysis when the water right was granted. Additionally, the State Engineer finds that § 14.8 of the GMP is not a significant departure from existing law because temporary change applications do not undergo publication or hearing unless required by the State Engineer.<sup>26</sup> Thus, it is unpersuasive that § 14.8 diminishes State Engineer and public review. Finally, the potential of a rights holder to serially move allocations for less than 1 year to escape being subject to the procedures of NRS § 533.370, exists under current law, as there is no limitation in statute to the number of temporary applications to change. The State Engineer is mindful that when annual notices are given, to examine such notices to determine there is a motivation to avoid the statutory change process.

With respect to new wells, additional withdrawals exceeding 1 year, or where the State Engineer determined within the 14 calendar days may be not be in the public interest or may impair rights of other persons, the existing procedures under NRS chapters 533 and 534, including publication and protest provisions, still apply.<sup>27</sup>

#### Well Plugging Provisions

One commenter asserted that the GMP waived existing law regarding exempting wells from NRS Chapters 533 and 534.<sup>28</sup>

GMP §§ 14.2 and 14.3 direct when active, unused or inactive wells must be plugged and abandoned, or that a waiver of abandonment can be obtained. The State Engineer finds that these provisions are consistent with existing regulations found in NAC §§ 534.300 and 534.427. Additionally, GMP §§ 14.4 and 14.5 expressly require that well construction and maintenance must comply with the requirements of NRS and NAC Chapter 534. The State Engineer finds that the GMP does not waive or exempt wells from existing laws or regulations.

#### Banking and Aquifer Storage and Recovery

Lastly, one commenter stated that the banking component of the plan was an aquifer storage and recovery (ASR) project, which lacks a necessary permit required by NRS § 534.250, *et. seq.*<sup>29</sup>

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<sup>26</sup> NRS § 533.345(3).

<sup>27</sup> GMP § 14.9.

<sup>28</sup> Transcript, p. 19 (David Rigdon).

<sup>29</sup> Written comment of Sadler Ranch, LLC; Transcript, p. 14 (David Rigdon). The statement at the hearing was that this comment was based upon the report of the hydrogeologist in Appendix I that water banking is a type of aquifer storage and recovery project regulated by the State Engineer. As indicated by further findings, the State Engineer does not agree that the banking component of the GMP is an aquifer storage and recovery project.

Section 13.9 of the GMP allows unused allocations to be carried over and banked for use in a subsequent year to increase the amount of water the rights holder can use in the next year. The banked allocation is subject to depreciation in the amount that is carried over to account for natural losses over time.<sup>30</sup> In contrast to banking in the GMP, a typical aquifer storage and recovery project is operated by injecting or infiltrating water from a surface source into the aquifer for the purpose of accumulating storage for future use.<sup>31</sup> These elements of project operation are not part of the GMP. The State Engineer finds that banking of unused allocations in the GMP is a mechanism to allow flexibility by users to determine when to use their limited allocation and to encourage water conservation practices. Consequently, the State Engineer finds that the banking allocations in the GMP is a reasonable means to facilitate conservation and water planning by water users, as provided for under NRS § 534.037, and that the GMP is not required to fulfill the statutory obligations of NRS §§ 534.250–340.

## **II. COMMENTS RELATED TO ABANDONMENT, FORFEITURE, AND PROVING BENEFICIAL USE**

Some commenters stated that water rights that are currently unused should be abandoned or forfeited prior to reductions in pumping being imposed against existing water rights.<sup>32</sup> The State Engineer finds that pursuing forfeiture or abandonment prior to implementing any GMP is ill-advised for several reasons.

First, time is of the essence for rights holders to get a GMP approved prior to August 25, 2025, or curtailment by priority will be ordered for all rights in Diamond Valley. Because forfeiture and abandonment must be shown by clear and convincing evidence, it is doubtful whether there is sufficient time to investigate and assemble evidence concerning abandoned rights, to conduct administrative hearings and engage in any appellate proceedings with time left to secure a final table of water rights to support the GMP. Pursuing abandonment at this moment would likely lead to lengthy administrative and/or appeal proceedings, delaying action on a GMP until a final listing of active groundwater rights would be known.<sup>33</sup>

Second, a different problem is presented by forfeiture proceedings. Because the State Engineer conducts an annual inventory in Diamond Valley, information is available concerning those rights that may be subject to forfeiture. However, in 2017, NRS § 534.090 was amended to require that a notice of non-use be served prior to forfeiting unused water rights to provide one year to cure a forfeiture.<sup>34</sup> Serving notices of non-use at this stage would require that owners of water rights that are currently unused make efforts to resume beneficial use (*i.e.*, pumping). The

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<sup>30</sup> Section 13.9 describes that Diamond Valley is divided between the main farming area (generally located in the southern half of the basin) and the groundwater discharge area (the northern half of the basin). Banked water north of the dividing line in the discharge area depreciates at 17% and banked water south of the line at 1%. The depreciation factors are based on numerical flowing modeling analysis to justify and support these amounts. *See* GMP, Appendix I.

<sup>31</sup> *See, e.g.*, NRS §§ 534.250–340.

<sup>32</sup> Written comments of Sadler Ranch, LLC and Carolyn Bailey.

<sup>33</sup> *See, e.g.*, GMP, Appendix F.

<sup>34</sup> *See* NRS § 534.090(2).

consequence of resuming pumping is contrary to the intent of the GMP to *reduce* pumping. Thus, the State Engineer finds that in addition to similar timing problems discussed above, initiating forfeiture proceedings could exacerbate conditions in the basin by increasing pumping, prior to reducing pumping pursuant to the GMP, thereby lessening the effectiveness of the plan.<sup>35</sup>

Third, assuming *arguendo*, there are water rights existing only on paper (*e.g.*, that could be abandoned or forfeited), reductions in pumping by the GMP start at the ceiling of *actual pumping* (76,000 afa), not at the ceiling of existing rights (126,000 afa). Stated otherwise, even if the State Engineer assumed that the difference between existing rights and actual pumping (50,000 afa) was paper water, the elimination of paper water rights to match active rights will not change that the reductions in *pumping* begin at the component of active rights. The issue of paper water was raised and considered during the GMP drafting process, and it was determined that the GMP contemplated that any valid right in good standing was to be issued shares.<sup>36</sup> The State Engineer believes there is a low probability of success for abandonment, and the preceding paragraph describes the likely unanticipated effect of pursuing forfeiture. Therefore, the State Engineer finds that requests to eliminate paper water does not warrant halting this process in order to initiate abandonment or forfeiture proceedings.

Additionally, one commenter stated that existing permitted rights should prove beneficial use and become certificated prior to implementing a GMP. For reasons discussed above, including timing and discouraging increases in pumping, the State Engineer finds that requiring proof of beneficial use prior to implementing a GMP is not in the best interest of taking immediate action to adopt and implement a basin-wide GMP. Further, the GMP petition process expressly applies to the holders of *permits* and *certificates*. Therefore, the GMP statute implicitly recognizes that permitted rights which have not fully proven beneficial use will participate in the GMP process.

### III. COMMENTS RELATED TO APPLICABILITY OF PLAN TO ONLY CERTAIN WATER RIGHTS

Some comments were directed to the scope of GMP applying only to irrigation rights and mining and milling rights with a base irrigation right. Some expressed concern that it created a preference for certain manners of use, that there was no environmental component to the plan and it would result in water barons.<sup>37</sup> Many comments in favor of the plan described how they believed the plan would allow more irrigators or mines to stay in business, ultimately benefitting the greatest number of operators by providing more favorable conditions such as weed and rodent control.<sup>38</sup> The comments favored adoption of a GMP in lieu of curtailment, which many recognized would

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<sup>35</sup> The issue of forfeiture in Diamond Valley, particularly of pivot corners, pre-dates the 2017 amendments to NRS § 534.090. In the 1980s, the State Engineer pursued forfeiture of unused pivot corners in Diamond Valley, which lead to the enactment of NRS § 534.090(3) (pre-2017 version). See Nev. Stat. ch 559 (1983); and see, A.B. 597 (1983).

<sup>36</sup> See GMP, Appendix C, p. 244.

<sup>37</sup> Written comments of Great Basin Resources Watch, and Ari Erickson.

<sup>38</sup> Written comments of James Gallagher, Mark Moyle and Donald Palmore; Transcript, p. 68 (Jim Gallagher); pp. 80-81 (Matt Morrison).

likely force many junior irrigators into bankruptcy, and as a result, the community would suffer.<sup>39</sup> In addition, many comments in favor of the GMP spoke positively about methods for increasing efficiency to continue operations while reducing pumping.<sup>40</sup>

As discussed in the introductory paragraphs section, *supra*, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, the application of the plan to those rights that will have the most impact and be most impacted, is appropriate. While one commenter opined that the GMP does not address environmental concerns, the State Engineer does not agree. The GMP may not contain express provisions for the environment, but allowing the greatest number of irrigators to remain in business and keep cultivated lands active, will prevent the incursion of weeds, and will provide dust and rodent control. And ultimately, the State Engineer finds that the objective to reduce the pumping of groundwater to stabilize groundwater levels is a benefit of the groundwater basin, the irrigators and other members of the community that rely upon it and live within it, and that it is not necessary to explicitly identify certain areas of environmental concern within the scope of the plan for the plan to have a generalized benefit to the environment.

Finally, the State Engineer finds that comments that the GMP will result in "water barons" or that it will create a preference for certain manners of use, are speculative. Existing water law provides that water rights are a form of real property that are freely alienable and transferrable independent of land where the water was formerly appurtenant. In that way, the ownership of water rights and the manners of use are currently determined by a market of real property transactions.

#### **IV. COMMENTS RELATED TO PRACTICALITY OR REASONABLENESS OF THE PLAN IMPLEMENTATION**

##### Mitigation Rights

Some commenters challenged the fact that the GMP does not provide for mitigation of senior surface water rights that have been negatively impacted by junior groundwater pumping.<sup>41</sup>

The requirement for the approval of a GMP is that it "must set forth the necessary steps for removal of the basin's designation as a critical management area." NRS § 534.037(1). Neither the plain language nor the legislative history indicate that mitigation of senior surface water rights that have allegedly been adversely affected by groundwater pumping must be mitigated by a GMP.<sup>42</sup>

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<sup>39</sup> Written comments of William Norton and Donald Palmore; Transcript, pp. 80-81 (Matt Morrison).

<sup>40</sup> Written comment of William Norton, Marty Plaskett, Robert Burnham and James Gallagher; Transcript, p. 81 (Matt Morrison).

<sup>41</sup> Written comments of Sadler Ranch, LLC and Daniel Venturacci.

<sup>42</sup> In fact the opposite appears to be true from the legislative history. As proposed, A.B. 419 would have required the State Engineer "to consider the relationship between surface water and groundwater in the basin," but this consideration was amended out of the bill after the First Reprint.



Of note is that the State Engineer entered Order 1226, entered on March 26, 2013, which provided a mechanism for mitigation of senior surface water rights allegedly impacted by junior groundwater pumping. Two of the commenters at the hearing who raised this issue have taken advantage of the provisions of Order 1226, by filing for mitigation groundwater rights, which were granted by the State Engineer. Consequently, the State Engineer finds that mitigation is not a required element of the GMP; and in any event, the commenters who raised this issue have already taken advantage of Order 1226.<sup>43</sup>

#### Out-of-Basin Transfers

One commenter was concerned that unbundling water rights appurtenant to their place of use creates an incentive for out-of-basin transfers.<sup>44</sup> The commenter acknowledged that the current GMP prohibits out-of-basin transfers, but suggested the plan proponents may consider amending the plan to strengthen provisions to avoid incentivizing out-of-basin transfers. The State Engineer finds that NRS § 534.037 provides that once adopted, the GMP can be amended by the same procedure which allows for adoption of a plan.<sup>45</sup> Because the GMP currently prohibits out-of-basin transfers, there is currently no necessity to mandate changes to the GMP to strengthen provisions to disincentivize out-of-basin transfers. Some commenters involved the creation of the plan who spoke in favor of it acknowledged the plan may not be "perfect." Short of finding the current GMP cannot be approved as a matter of law, the State Engineer finds that denial of the Petition to require years of possible additional negotiations to merely better state existing plan provisions, to be unnecessary.<sup>46</sup>

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See A.B. 419 (First Reprint), Senate Committee on Government Affairs, 76th Sess. (May 25, 2011).

<sup>43</sup> See, e.g., Permits 81720, 82268, 81825 and 82572, official records in the Office of the State Engineer.

<sup>44</sup> Written comment of Great Basin Resource Watch.

<sup>45</sup> NRS § 534.037(5).

<sup>46</sup> The State Engineer values all comments and testimony received concerning the GMP. While it is clear the *Public Interest Review of the Proposed Diamond Valley Groundwater Management Plan* prepared for Great Basin Resource Watch was thorough in its analysis, the State Engineer gives great weight to comments and testimony from water rights holders in Diamond Valley, senior or junior whom are for or against approval of the GMP. Great Basin Resource Watch does not own water rights in Diamond Valley and it does not appear it was involved in the years of public meetings held in Eureka to negotiate the details of the GMP. See, e.g., GMP Appendix C at pp. 121-240. Indeed, its own written comment appears to recognize it is appropriate to afford great weight to those that created and are affected by the plan. See Written comment of Great Basin Resource Watch at p. 8 (a groundwater management plan should address the varied objectives or goals of water users and residents in the basin, and a worthwhile consideration is whether the GMP promotes bottom-up collaboration to promote broad buy-in from affected individuals and to provide flexibility in decision-making); and see also, Transcript, p. 65 (Mark Moyle) (responding to comments at the hearing, stating that the GMP was developed by the people who live in Diamond Valley and will be most affected and that everyone was making sacrifices).



Public and Local Community Interest

The same commenter stated that the public interest component was not adequately represented and that the description of local community interests could be strengthened.<sup>47</sup>

The State Engineer disagrees that the public interest is not adequately represented. As already discussed under well use approvals, new wells, additional withdrawals exceeding one year, or where the State Engineer rejected a request under § 14.8, is subject to the procedures of NRS § 533.370—including the public interest review for change applications.

Many comments in support of the GMP reflect the reality that it took years for the participants to negotiate an agreement that was able to attain majority support required to petition the State Engineer for approval. Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders.<sup>48</sup> Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018.<sup>49</sup> Appendix C of the GMP demonstrates that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment. The written comments overwhelmingly demonstrate the public and local community interests to be preserved by the approval of the plan, which are best stated by the following irrigator:<sup>50</sup>

The irrigators that support this plan understand that we all need to sacrifice for the long-term benefit of the community and the long-term continued success of the farming industry. Diamond Valley is the heart of southern Eureka County's economy. . . . Strong, willing, and giving people who understand that it takes community effort to sustain and survive built Diamond Valley. . . . The purpose of the DVGMP is to continue the ongoing success of the entire southern Eureka County area and the enterprises that exists [sic] there.

This sentiment was repeated in all written comments submitted in support of the plan.<sup>51</sup> In addition, many stirring accounts were given at the public hearing about living and growing up in Diamond Valley, the desire to preserve the established way of life, the hardscrabble efforts made over decades to create the farms that exist in the valley today, and the determination of the community to work together to solve issues, both past and present, which challenged their continued existence.<sup>52</sup> The State Engineer finds that the GMP materials, written comments and testimony at the public hearing overwhelmingly describe and support the public and local

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<sup>47</sup> Written comment of Great Basin Resource Watch.

<sup>48</sup> GMP, Appendix B.

<sup>49</sup> See GMP, Appendices A, C.

<sup>50</sup> Written comment of Mark Moyle.

<sup>51</sup> See written comments of Robert Burnham, Russell Conley, Jim Etcheverry, James Gallagher, Andrew Goettle, William Norton, Donald Palmore, Marty Plaskett and Ruby Hill Mining Company; and see Transcript, pp. 52-53 (D'Mark Mick).

<sup>52</sup> Transcript, pp. 57-59 (James Moyle); pp. 75-77 (Vickie Buchanan); pp. 79-82 (Matt Morrison); pp. 84-85 (Lloyd Morrison); pp. 85-88 (Alberta "Birdie" Morrison).

community interests, which weigh heavily in the determination at hand. While many comments in the *Public Interest Review*<sup>53</sup> reflect aspirational components of what a plan *may* contain or how it could be best stated, the State Engineer finds that the GMP is acceptable in these areas.

#### Protections for Domestic Wells

One commenter suggested that domestic wells were not protected because pumping will continue to exceed the perennial yield while the GMP is carried out. The State Engineer finds that NRS § 534.110(7), states that unless a GMP has been approved for a basin pursuant to NRS § 534.037, “withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights.” And that pursuant to NRS § 534.080, domestic wells are assigned the date of priority of the date the well was drilled. Thus, the GMP is protective of domestic wells because it specifically excludes the domestic wells from pro-rata reductions in use and allows for their continued use to the full statutory permitted amount, compared to the alternative that (a) the domestic wells in Diamond Valley are junior in priority to the 30,000 af PY, and (b) since, absent an approved GMP, domestic wells are subject to curtailment based upon their priority.

#### Advisory Board Makeup

Commenters had differing issues with the makeup of the Advisory Board.<sup>54</sup> One commenter stated that the GMP favors junior appropriators on the Advisory Board. Alternatively, another commenter posited that after a period of years, the makeup of the Advisory Board could favor non-irrigators over irrigators. The State Engineer finds that the plan was created by the individuals that will be subject to the plan, and the State Engineer accepts that a majority of the rights holders agreed that the makeup and voting structure of the participants agreed this to be a fair manner of representation on the Board.

### **V. COMMENTS RELATED TO SCIENTIFIC SOUNDNESS**

Some commenters challenged the GMP, asserting that the GMP is not supported by science and hydrologic analysis, with the following observations:<sup>55</sup>

- a. The scheduled reduction in pumping would exceed the perennial yield for the life of the GMP and in the process it would deplete aquifer storage in excess of the transitional storage volume.
- b. The GMP is not supported by a hydrogeologic analysis or a groundwater model to provide information on the effects of the plan.
- c. Some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because

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<sup>53</sup> Written comment of Great Basin Resource Watch.

<sup>54</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>55</sup> Written comments of Ira and Montira Renner and Sadler Ranch, LLC; Transcript, p. 19 (David Rigdon); pp. 23-24 (David Hillis).

of groundwater recovery and corresponding changes in groundwater ET.

- d. One commenter raised the lack of thresholds or triggers in the GMP.

The GMP is based on the simple fact that groundwater pumping is the cause of declining water levels, and therefore pumping must be reduced to solve the problem. The reduction in pumping is set at 3% per year for the first 10 years, and may be adjusted up or down thereafter as informed by groundwater level monitoring data. The goal of this approach is to progressively reduce groundwater pumping until the perennial yield is not consistently exceeded, and the measure of that ultimate outcome is a stabilization of water levels.

Perennial yield is based on the principle of conservation of mass, which dictates that water levels will stabilize when recharge equals discharge. Before any groundwater development occurs, an undeveloped basin is considered to be in equilibrium between natural groundwater recharge and discharge. When wells are developed, groundwater is initially drawn from aquifer storage in the vicinity of the well, but over time that groundwater removal is replaced by a decrease in natural discharge or increase in recharge until a new equilibrium is reached and the discharge by pumping is part of the basin water balance. Water drawn from storage in the period of time between the pre-development equilibrium and the post-developed equilibrium is defined as the transitional storage. The amount of transitional storage consumed before a new equilibrium state is reached may affect the depth to water at a new equilibrium condition, but as long as recharge and discharge are ultimately balanced then an equilibrium condition can be reached and the goal of the GMP to stabilize water levels can be achieved. The amount of storage consumed in the transitional period will not prevent equilibrium from being reached.

Groundwater modeling and hydrogeologic analysis are not the basis for the GMP's determination of pumping reduction rates and target pumping totals at the end of the plan. Instead, the pumping reduction rate was selected by agreement of the GMP authors, and the target for total pumping at the end of the GMP was selected from existing published values. Upon implementation, the real effects of the plan will be monitored and observed by measuring the change in groundwater levels throughout the basin. Those measurements will be the basis for plan review and any modifications of pumping reduction rates that the GMP requires after an observation period of 10 years.

Groundwater modeling is a helpful and informative tool for projecting the effects of pumping reduction and planning accordingly, but modeling is not necessary to conclude that reductions in pumping will lead to reductions in water level drawdown. Groundwater modeling and hydrogeologic analysis beyond what is publicly available in existing published reports would not change the fact that the cause of groundwater decline is due to pumping groundwater and that the stakeholder-authored plan seeks to reduce pumping. Modeling could be a useful tool for future evaluation of the plan and modifications to pumping reduction rates, but it is not required.

One commenter questioned whether the reductions in pumping under the plan combined with rights not subject to plan would bring withdrawals to the perennial yield based on his calculation of rights able to be pumped being excess of 42,000 afa.<sup>56</sup> As explained, the goal of the

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<sup>56</sup> See written comment of Ari Erickson.

GMP is to reduce consumptive use to the current perennial yield; and, as indicated in the introductory paragraphs, there are 4,437 af of groundwater rights in the basin not subject to the plan. Thus, the State Engineer does not find that there could be total pumping in excess of 42,000 afa in the basin at the end of 35 years under the GMP. Assuming, *arguendo*, that rights subject to the plan and those not subject to the plan were estimated to be 34,437 af, existing evidence used by the State Engineer to designate the basin a CMA demonstrates that there are wide variations in annual pumping—in some years, by several thousand acre-feet more or less than the prior year.<sup>57</sup> Because the designation of a CMA is based on withdrawals *consistently* exceeding the perennial yield, the State Engineer finds that existing law suggests some tolerance of variations on the annual amount of pumping. In addition, the State Engineer is mindful that perennial yield is an *estimate* of water availability and is only one-half of the equation of GMP success.<sup>58</sup> Actual observations of water levels are the most direct and reliable means of determining GMP success. The plan to reduce pumping, monitor the effects on water levels, and then adjust pumping reductions is a sound approach to achieving the goal of stabilizing water levels. The lack of a groundwater model or detailed hydrogeologic analysis does not preclude approval of the GMP as written.

One commenter raised the lack of thresholds or triggers in the GMP. The State Engineer finds that there is no express requirement in NRS § 534.037 for thresholds or triggers, and that a reference to thresholds or triggers is commonly in reference to a “Monitoring, Management and Mitigation (3M)” Plan. The State Engineer has historically utilized 3M Plans as a tool in approving new appropriations when impacts to existing rights are unknown. Consequently, the State Engineer finds that a 3M Plan having thresholds and triggers is different than the GMP now pending before the State Engineer, and that the two types of plans serve different functions. Nevertheless, the State Engineer finds that there has been robust monitoring of irrigation groundwater use in Diamond Valley by the State Engineer’s office for many decades and that monitoring groundwater use and groundwater levels is ongoing. Moreover, the GMP requires irrigators to install a smart meter, which will provide increased accuracy and nearly real-time knowledge of groundwater use.<sup>59</sup> Finally, the GMP incorporates the State Engineer’s enforcement authority concerning over-pumping of a user’s allocation, and contains penalties to be paid in water for over-pumping and stiff administrative fines for meter tampering.<sup>60</sup>

Finally, some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because of groundwater recovery and corresponding

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<sup>57</sup> See Order 1264, official records in the Office of the State Engineer.

<sup>58</sup> Both the GMP and the commenter acknowledged the release of a 2016 report by the U.S. Geological Survey, which estimated the perennial yield may be 35,000 af. GMP, p. 8 at fn. 2; Transcript, p. 37 (Ari Erickson). As part of a different administrative hearing proceeding, the State Engineer was requested to accept the USGS Report as the perennial yield in Diamond Valley. That matter is currently under submission, and no determination has been made by the State Engineer whether to accept this number. Consequently, the GMP was based on the current estimate of perennial yield of 30,000 af.

<sup>59</sup> See GMP § 15. The most recent groundwater inventory conducted by the State Engineer in 2018 revealed that there was nearly 100% compliance with smart meter installation already. This further affirms that rights holders have already made financial commitments of purchasing and installing smart meters to ensure success of the GMP.

<sup>60</sup> GMP §§ 16, 17.

changes in groundwater ET. The selection of these rates was the only component of the GMP expressly based on groundwater model simulations. The accuracy of the model and appropriateness of assigning ET depreciation rates based on model interpretation was discussed at GMP planning meetings. The ET depreciation rates in the final GMP were a compromise and there was never a consensus. Adjustments to these rates is provided for under the provisions to amend the GMP, as warranted by the data.

## **VI. COMMENTS RELATED TO PRECEDENCE**

Several commenters were concerned that any GMP adopted in Diamond Valley creates a precedent for other areas in the state that may be designated Critical Management Areas. The proposed GMP under consideration is the first plan in the state adopted through the process required by NRS § 534.037. As with most decisions involving water, the conditions and issues facing Diamond Valley are unique to Diamond Valley, and therefore the requirements of this plan may not be suitable for any other area in the state. Many individuals speaking in support of the plan made this observation, and the State Engineer concurs that the Diamond Valley GMP does not limit the possible solutions that may be employed by other groundwater management plans.

**WHEREAS**, based upon the foregoing, the State Engineer makes the following findings of fact, conclusions of law and order:

The State Engineer finds that Appendix D to the GMP sufficiently describes (a) the hydrology of the basin; (b) the physical characteristics of the basin; (c) the geographic spacing and location of the withdrawals of groundwater in the basin; (d) the quality of the water in the basin; and (e) the wells located in the basin, including, without limitation, domestic wells.

The State Engineer finds that there is currently no groundwater management plan in existence for Diamond Valley.

The State Engineer finds that the GMP is analogous to the settlement agreement at the center of the *Lewis* case, *i.e.*, an agreement supported by at least a majority of the permit and certificate holders in Diamond Valley to protect existing rights while cutting the Gordian knot of basin over-appropriation. Thus, the State Engineer concludes that adoption of the GMP is expressly authorized by statute and does not violate the prior appropriation doctrine because the statute provides flexibility outside strict regulation by priority.

The State Engineer finds that the GMP is not legally deficient nor waives any authority of the State Engineer to enforce Nevada water law.

The State Engineer finds that due to the length of time required, initiating abandonment or forfeiture proceedings or requiring proof of beneficial use prior to implementing a GMP is not in the best interest of reducing pumping and would only serve to delay such reductions.

As discussed in the introductory paragraphs, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, and that the application of the plan to those rights that will have the most impact, and that will be the most impacted, is appropriate.

The State Engineer finds that public and local community interests have been considered, and that such interests are a cornerstone of the plan by retaining the greatest number of farms or mines as economically viable, which will provide social, economic, and environmental benefits.

The State Engineer finds that the standard for determining success of the plan by stabilizing water levels is sound.

The State Engineer finds that groundwater modeling is an informative tool for projecting the effects of pumping reduction, and that future model results could add confidence to decisions on any changes to pumping reductions, but that the lack of a groundwater model or hydrogeologic analysis does not preclude approval of the GMP as written.

The State Engineer finds that the GMP's annual reductions in pumping will lead to the entire basin's groundwater pumping approaching the perennial yield and stabilization of groundwater levels.

The State Engineer finds that the GMP is a groundwater management plan and is not a monitoring, management and mitigation plan; therefore, not only is there no requirement that there be a mitigation component or thresholds and triggers for activation of mitigation actions, but also such components would cloud the plan's goal and objectives.

The State Engineer finds that 1 acre-foot is equal to 325,851 gallons pursuant to practice and policy of the Office of the State Engineer, and that this conversion rate will be used.

In light of the foregoing findings, having considered the comments for and against the GMP, the State Engineer concludes that the petitioning parties have met the requirements for the adoption of the Diamond Valley Groundwater Management Plan, and the Petition is accordingly granted.

**ORDER**

**NOW THEREFORE**, it is ordered that the Petition to Adopt the Groundwater Management Plan for the Diamond Valley Hydrographic Basin is hereby GRANTED.

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

Dated at Carson City, Nevada this

11<sup>TH</sup> day of JANUARY, 2019.

NO. CV1902-348  
FILED

FEB 11 2019

*Eureka County Clerk*  
By Lisa Haehne

1 Case No.

2 Dept. No.

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6 **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF EUREKA**  
8

9 IRA R. RENNER, an individual, and MONTIRA  
10 RENNER, an individual,

11 Petitioners,

12 vs.

13 TIM WILSON, P.E., Nevada State Engineer,  
14 DIVISION OF WATER RESOURCES,  
15 DEPARTMENT OF CONSERVATION AND  
16 NATURAL RESOURCES,

Respondent.

**PETITION FOR JUDICIAL REVIEW**

17 COME NOW, Petitioner IRA R. RENNER, an individual, and MONTIRA RENNER, an  
18 individual ("Renner"), by and through their counsel, PAUL G. TAGGART, ESQ. and TIMOTHY D.  
19 O'CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD., and hereby petition the Court  
20 to reverse or remand Order 1302 issued by the Nevada State Engineer on January 11, 2019, and attached  
21 hereto as Exhibit 1.<sup>1</sup> This Petition for Judicial Review, as well as Notice of Appeal, is filed pursuant to  
22 NRS 533.450.

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RECEIVED

FEB 11 2019

Eureka County Clerk

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28 <sup>1</sup> Order 1302 was signed by former State Engineer Jason King, P.E., on his last day in office. Tim Wilson, P.E., assumed the office of State Engineer on January 14, 2019. As the successor in interest to Mr. King, Mr. Wilson is the proper party to name and serve in this action.



## **JURISDICTIONAL STATEMENT**

The State Engineer is authorized under NRS 534.037 to consider the adoption of a groundwater management plan ("GMP") upon submission of a petition requesting the same signed by a majority of the holders of water rights within the basin. Upon receipt of such a petition, the State Engineer is required to hold a hearing to take testimony and consider evidence for and against the submitted GMP. Under NRS 534.037(4), a decision by the State Engineer to approve a submitted GMP "may be reviewed by the district court of the county pursuant to NRS 533.450."

The Diamond Valley GMP was submitted to the State Engineer on August 20, 2018. A "hearing" on the plan was held in Eureka, Nevada, on October 30, 2018. On January 11, 2019, the State Engineer issued Order 1302 in which he approved and adopted the Diamond Valley GMP. The majority of the property and appurtenant water rights subject to the GMP are located within Eureka County. Accordingly, pursuant to NRS 533.450, this Court has jurisdiction over this matter and is the proper venue for hearing any petitions requesting judicial review of Order 1302.

## **STANDING**

Renner is the owner and operator of a ranch in Diamond Valley on the northwestern side of the Diamond Valley hydrographic basin that was established in the late 1800s. The ranch consists of hundreds of acres historically irrigated with water from various naturally occurring springs and seeps. The ranch also utilizes groundwater rights that are either comingled with or supplemental to the spring water to provide irrigation to about 300 acres of agricultural land. Renner's vested rights to the spring water were established prior to 1905 and cannot be impaired by any action of the State Engineer.<sup>2</sup> Further, as being in the northern portion of the basin, Renner's groundwater rights are treated more onerously than those in the southern portion of the basin, regardless of their priority. Renner did not sign the GMP and is treated differently than other groundwater right holders in the plan. The adopted GMP will (1) allow the over-pumping of the groundwater basin to continue indefinitely thereby continuing and exacerbating the harm to Renner's pre-statutory vested water rights, and (2) harm his groundwater rights that are subject to the plan without his permission. Accordingly, Renner has standing to file the instant petition pursuant to the provisions of NRS 534.037(4) and NRS 533.450.

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<sup>2</sup> NRS 533.085.



## **FACTUAL BACKGROUND**

Diamond Valley is a large basin located just north of Eureka, Nevada. Prior to 1905, settlers were attracted to the valley by the numerous springs and seeps that naturally occurred along the alluvial fans that occurred at the base of the eastern and western mountain ranges bounding the valley floor. Renner owns the most northerly of these ranches that were established prior to 1905 on the west side of the basin.

In the 1950s and 1960s, the State Engineer began to issue a large number of permits authorizing the development of groundwater in Diamond Valley for irrigation purposes. These permits were issued despite the existence of reports indicating that the valley floor springs were hydrologically connected to the groundwater aquifer and that pumping of the groundwater rights would likely impact the flow of the springs.<sup>3</sup> In all, the State Engineer issued permits allowing for the use of more than 130,000 afa despite the fact that the perennial yield of the basin (the amount of water estimated to be available for sustainable pumping) is just 30,000 afa. The majority of these permits are issued in the southern half of the basin. This concentrated and extensive pumping has permanently removed 1,750,000 acre-feet more water than the basin could replenish.<sup>4</sup> As a result, groundwater levels have dropped by more than 100 feet. Current pumping is in excess of 76,000 afa, more than twice the perennial yield. The harm and abuse of the aquifer has been concentrated in the southern half of the basin.

The massive over-pumping of the groundwater basin has caused numerous environmental problems including the drying up of the valley floor springs. This was not an unexpected result. As early as 1962, and again in 1968, the State Engineer was alerted to the fact that the overpumping would result in serious impacts.<sup>5</sup> Rather than take action to prevent it, the State Engineer chose to disregard the warnings. As a result, holders of the most senior water rights in the basin have had their springs dry up. These senior users have been denied access to the water needed to operate their ranches and farms while junior-priority users continue to prosper by exploiting what is left of the basin's groundwater.

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<sup>3</sup> EAKIN, THOMAS E., GROUNDWATER RESOURCES – RECONNAISSANCE SERIES REPORT 6 – GROUND-WATER APPRAISAL OF DIAMOND VALLEY EUREKA AND ELKO COUNTIES, NEVADA, (United States Geological Survey, February 1962); HARRILL, J.P., STATE OF NEVADA WATER RESOURCES BULLETIN NO. 35 – HYDROLOGIC RESPONSE TO IRRIGATION PUMPING IN DIAMOND VALLEY, EUREKA AND ELKO COUNTIES, NEVADA, 1950-65, (United States Geological Survey, 1968).

<sup>4</sup> HILLIS, DAVID G., P.E., REVIEW AND EVALUATION OF THE DIAMOND VALLEY GROUND WATER MANAGEMENT PLAN, Turnipseed Engineering (October 30, 2018).

<sup>5</sup> See fn 9, supra.

1 The State Engineer's office has taken numerous actions to manage groundwater development in  
2 Diamond Valley. In 1964, the State Engineer designated a portion of Diamond Valley as an area of  
3 active management pursuant to NRS 534.101 to 534.190.<sup>6</sup> Notably, the designation order related only  
4 to the southern portion of the basin where over pumping was an issue. By 1975, groundwater pumping  
5 in Diamond Valley did in fact exceed the estimated perennial yield of the basin and the State Engineer  
6 began limiting groundwater development.<sup>7</sup> In 1975, the State Engineer ordered that all applications to  
7 irrigate new or additional lands in the southern Diamond Valley be denied and applications to irrigate  
8 existing lands be considered on an individual basis.<sup>8</sup> In 1978, the State Engineer ordered that all  
9 applications filed after December 31, 1978, be denied in southern Diamond Valley.<sup>9</sup> In 1982, the State  
10 Engineer held a hearing to consider whether to curtail pumping in southern Diamond Valley. Instead of  
11 curtailing pumping, the State Engineer ordered totalizing meters to be installed for permitted and  
12 certificated groundwater rights and recognized that it might be necessary in the future to restrict  
13 withdrawals in the area to conform to priority rights.<sup>10</sup> In 1983, the State Engineer expanded the  
14 designated area to include all of Diamond Valley, not just the southern portion.<sup>11</sup> Finally, in 2013, the  
15 State Engineer ordered that all applications to appropriate groundwater in Diamond Valley be denied,  
16 with four limited exceptions. In 2011, facing an imminent threat of curtailment from the vested senior  
17 rights holders the junior-priority users were able to convince the Legislature to pass a bill authorizing  
18 them to develop a GMP as an alternative to regulation by strict priority. The main provisions of the bill  
19 were codified as NRS 534.037 and NRS 534.110(7).

20 The criteria for approval of a GMP is set under NRS 534.037. Under the statute the State  
21 Engineer cannot approve a GMP unless substantial evidence demonstrates that the plan includes "the  
22 necessary steps for removal of the basin's designation as a critical management area."<sup>12</sup> Under NRS  
23 534.110(7) a Critical Management Area ("CMA") designation is applied when "withdrawals of  
24

25 <sup>6</sup> Order 277 dated August 5, 1964; Order 280 dated August 28, 1964.

26 <sup>7</sup> U.S. Geological Survey, Irrigated Croplands, Estimated Pumpage, and Water-Level Changes in Diamond Valley, Eureka and Elko Counties, Nevada, through 1990, Open-File Report 95-107.

27 <sup>8</sup> Order 541 dated December 22, 1975.

28 <sup>9</sup> Order 717 dated July 10, 1978.

<sup>10</sup> Order 809 dated December 12, 1982; Order 813 dated February 7, 1983 (State Engineer extended the deadline for installing the meters by one year to May 1, 1984).

<sup>11</sup> Order 815 dated April 4, 1983.

<sup>12</sup> NRS 534.037.

1 groundwater consistently exceed the perennial yield of the basin.” Accordingly, to approve a GMP the  
2 State Engineer must have substantial evidence showing that the plan will restrict groundwater use to  
3 such an extent that total withdrawals of water from the aquifer (not just withdrawals related to pumping  
4 of junior priority rights) will be less than the perennial yield of the basin.

5 Pursuant to the provisions of NRS 534.110(7), on August 25, 2015, the State Engineer issued  
6 Order 1264 designating Diamond Valley as a CMA. This began a 10-year clock during which a GMP  
7 must be approved. If a GMP is not approved in that timeframe, the State Engineer is required to  
8 immediately curtail pumping according to strict priority.

9 As noted above, the Diamond Valley GMP was submitted to the State Engineer on August 20,  
10 2018. Under NRS 534.037(3), the State Engineer is required to hold a hearing on a submitted plan, and  
11 a hearing was scheduled for October 30, 2018. The hearing on October 30, 2018, was not a hearing in  
12 the normal definition of the word and instead served as a public forum for participants to provide oral  
13 comments, but not to offer testimony, cross examine witnesses, or exchange exhibits. At the hearing,  
14 Renner voiced objections to the GMP. The State Engineer ignored these objections and on January 11,  
15 2019, issued Order 1302 approving and adopting the Diamond Valley GMP without any changes or  
16 edits, or new conditions thereon.

### 17                     **GROUNDS FOR PETITION**

18 Petitioners seek judicial review of Order 1302 on the following grounds: (1) the process the State  
19 Engineer used to review and adopt the GMP violated the requirements of NRS 534.037(3) and  
20 constitutional due process standards established by the Nevada Supreme Court, (2) the GMP is not  
21 supported by substantial evidence showing that its adoption and implementation will result in the  
22 removal of the CMA designation from the basin as required under NRS 534.037(1), (3) the GMP  
23 authorizes continued over-pumping of water in the basin, (4) the GMP fails to include a monitoring plan  
24 to measure whether pumping reductions will actually result in a stabilization of groundwater levels in  
25 the basin, (5) the GMP fails to provide any mitigation for past or future harms to holders of vested senior  
26 groundwater rights, (6) the GMP does not contain objective thresholds or triggers to determine whether  
27 more aggressive reductions in pumping will be required in the future, (7) the GMP improperly limits the  
28 State Engineer’s discretion and authority to order accelerated pumping reductions, (8) the GMP ignores

1 the impacts to holders of vested senior water rights that will result from allowing over-pumping in the  
2 basin to continue indefinitely, (9) the governance provisions of the GMP violate constitutional due  
3 process safeguards, (10) the GMP violates statutorily mandated provisions of Nevada's water laws, (11)  
4 the GMP violates the provisions of NRS 534.250 – 534.350, inclusive, in that it authorizes an aquifer  
5 storage and recovery program without complying with statutorily mandated permitting requirements,  
6 (12) the GMP unlawfully allows water right holders to change the point of diversion, manner of use,  
7 and place of use of their permits without submitting an application to do so with the State Engineer, (13)  
8 the GMP unlawfully authorizes the State Engineer to exempt wells from the well abandonment  
9 requirements of NRS 534 and NAC 534, (14) the GMP unlawfully places time limits on the State  
10 Engineer to perform certain actions and deems regulated activity automatically approved if the State  
11 Engineer fails to meet the time limits, (15) the GMP treats similarly situated persons differently based  
12 on arbitrary and capricious factors in violation of the equal protection clauses of the Nevada and United  
13 States Constitutions, (16) the GMP unlawfully takes private property without just compensation in  
14 violation of the Nevada and United States Constitutions, (17) the GMP violates the non-impairment  
15 doctrine enshrined in NRS 533.085, (18) the State Engineer has stated that he intends to enforce the  
16 GMP against holders of water rights who did not consent to its adoption, (19) the factual determinations  
17 made by the State Engineer in Order 1302 are not supported by substantial evidence in the record, (20)  
18 the State Engineer acted arbitrarily and capriciously when he adopted Order 1302, (21) the State  
19 Engineer abused his discretion when he adopted Order 1302, (22) the legal conclusions the State  
20 Engineer made in Order 1302 are erroneous and without merit, and (23) the State Engineer's actions in  
21 this matter were biased, inequitable, violated his duty to act as a neutral arbiter in water rights  
22 proceedings, and exhibited prejudice towards holders of pre-statutory water rights in the basin.

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**CONCLUSION**


For the reasons stated above, and for others that may be raised during the pendency of this appeal, Petitioners respectfully request that the Court reverse or remand Order 1302.

**AFFIRMATION**  
**Pursuant to NRS 239B.030(4)**

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

DATED this 8 day of February, 2019.

TAGGART & TAGGART, LTD.  
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Carson City, Nevada 89703  
(775) 882-9900 – Telephone  
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By:   
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Attorneys for Petitioners

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby 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 as follows:

[X] By **HAND-DELIVERY**, addressed as follows:

Tim Wilson, P.E.  
Nevada State Engineer  
Division of Water Resources  
901 S. Stewart Street, Suite 2002  
Carson City, NV 89701

Tori N. Sundheim, Esq.  
Deputy Attorney General  
Nevada Attorney General's Office  
100 N. Carson Street  
Carson City, NV 89701

[X] By **U.S. POSTAL SERVICE, CERTIFIED, RETURN RECEIPT REQUESTED**, by depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Eureka County Board of Commissioners  
P.O. Box 694  
Eureka, NV 89316

William H. Norton  
HC 62 Box 62150  
Eureka, NV 89316

Ruby Hill Mining Company  
c/o Alex Flangas, Esq.  
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Reno, NV 89501

Mark Moyle Farms, LLC  
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Eureka County  
c/o Ted Beutel, Esq.  
Eureka County District Attorney  
P.O. Box 190  
Eureka, NV 89316-0190

DATED this 11<sup>th</sup> day of February, 2019.

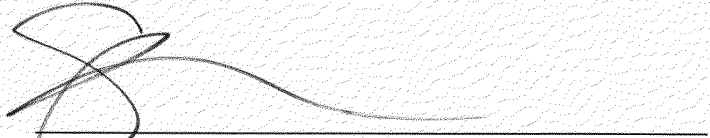
  
Employee of TAGGART & TAGGART, LTD.

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# **EXHIBIT 1**

# **EXHIBIT 1**

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

#1302

ORDER

**GRANTING PETITION TO ADOPT A GROUNDWATER MANAGEMENT PLAN FOR  
THE DIAMOND VALLEY HYDROGRAPHIC BASIN (07-153), EUREKA COUNTY,  
STATE OF NEVADA.**

**WHEREAS**, decades of declining water levels in the Diamond Valley Hydrographic Basin is due to the simple fact that groundwater pumping has consistently exceeded the perennial yield of the basin. An obvious solution to the problem caused by *over* pumping is to *reduce* groundwater pumping. Designating Diamond Valley a Critical Management Area (CMA) (the first and only basin thus far in Nevada), provided water right users within the Diamond Valley basin the opportunity to develop a customized groundwater management plan (GMP) that does in fact reduce groundwater pumping to a level that satisfies the State Engineer that the water levels will reach an equilibrium. The CMA and GMP process became law in 2011 specifically to allow those that truly have skin-in-the-game (the water right holders in the basin), to create a means to the same end as curtailment by priority, but without the dire and sudden impacts.

Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders. Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018. The testimony, written public comment and background of Appendix C of the GMP demonstrate that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment by priority to save their community and the established agricultural way of life in Diamond Valley. It is significant that the participants are not professional water right managers, but are ordinary citizens who made a Herculean effort to craft their own plan in response to a complex problem.

**WHEREAS**, this matter came before the State Engineer on a Petition to Adopt a Groundwater Management Plan (Petition), pursuant to Nevada Revised Statute (NRS) § 534.037 filed on August 20, 2018.

**WHEREAS**, the history leading up to the subject Petition is as follows:

Diamond Valley is a major groundwater farming area in the Diamond Valley Hydrographic Basin, Basin 153.<sup>1</sup> There are approximately 26,000 acres of irrigated land, which primarily produce premium quality alfalfa and grass hay. In 2013, it was estimated that approximately 110,000 tons of hay were produced annually for a total farming income of approximately \$22.4

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<sup>1</sup> GMP, p. 8.

million.<sup>2</sup> Approximately 126,000 acre-feet annually (afa) of irrigation groundwater rights are appropriated in Diamond Valley, and as of 2016, groundwater pumping for irrigation was estimated to be 76,000 afa. The perennial yield of Diamond Valley is 30,000 acre-feet (af).<sup>3</sup>

For over 40 years, annual groundwater pumping has exceeded the perennial yield of Diamond Valley.<sup>4</sup> In the years that groundwater pumping has exceeded the perennial yield, groundwater levels in Diamond Valley have consistently declined at a rate of up to 2 feet per year. Prior to declaring Diamond Valley a CMA pursuant to NRS § 534.110(7), the State Engineer held public meetings on numerous occasions in Diamond Valley to discuss over-appropriation of the basin and to encourage water rights holders to formulate solutions or a plan at the local level to address declining water levels.

Because withdrawals have consistently exceeded the perennial yield of the basin, on August 25, 2015, the State Engineer declared Diamond Valley a CMA pursuant to NRS § 534.110(7).<sup>5</sup> Once declared a CMA, holders of water rights within the basin have 10 years to create and present to the State Engineer a groundwater management plan; otherwise, the State Engineer is required to curtail the basin by priority.<sup>6</sup>

**WHEREAS**, the process for approval of a GMP by the State Engineer is as follows:

Nevada Revised Statute § 534.037(1) requires that a petition for the approval of a GMP that is submitted to the State Engineer must be signed by a majority of the holders of permits or certificates to appropriate water in the basin that are on file in the Office of the State Engineer.

At the time of filing the petition, there were 419 water right permits or certificates in the Diamond Valley Hydrographic Basin. Of these, 257 are represented by at least one signature in the petition. Comparing the signatories with the confirmed owner of record in the files of the Office of the State Engineer demonstrates that 223 water right permits or certificates are represented by the owner of record. If accepting the affirmation made on each page of the signed petition, then 257 rights of 419 rights is 61%. If limiting only to those signatures by a confirmed owner of record, then 223 of 419 is 53.2%. In either case, a majority of permits and certificates in the Diamond Valley Hydrographic Basin are represented in the petition; therefore, the State Engineer finds that the petition satisfies the requirement of NRS § 534.037(1).<sup>7</sup>

The total duty of groundwater rights in Diamond Valley is 130,625 afa. Of these, 126,188 afa are subject to the plan and 4,437 afa are not subject to the plan. The estimated amount of

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<sup>2</sup> GMP, p. 8.

<sup>3</sup> GMP, p. 8.; J.R. Harrill, *Hydrologic Response to Irrigation Pumping in Diamond Valley, Eureka and Elko Counties, Nevada, 1950-65*, Water Resources Bulletin No. 35, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of the Interior, Geological Survey), 1968.

<sup>4</sup> GMP, p. 8.

<sup>5</sup> Order 1264, official records in the Office of the State Engineer; GMP, p. 8.

<sup>6</sup> NRS § 534.110(7).

<sup>7</sup> Exhibit 1, public administrative hearing before the State Engineer October 30, 2018, official records in the Office of the State Engineer. Hereinafter the exhibits and transcript will be referred to solely by the exhibit number or transcript page.

groundwater committed to domestic wells at the statutory maximum of 2 afa per domestic well is 234 afa. By duty, over 96% of the total groundwater commitments are subject to the plan. It is reasonable that the focus of the plan to reduce the groundwater pumping be focused on those manners of use that have the greatest potential effect on the pumping in the groundwater basin.

The GMP assumes that the dividing line between senior and junior water rights holders is where the consumptive use of the water rights is estimated at 30,000 af, which is equal to the perennial yield of Diamond Valley; therefore, those rights with a priority date of May 12, 1960, or earlier are referred to in this Order as the senior rights (with a duty totaling 29,325 afa) and those rights with a priority date after May 12, 1960, are referred to as the junior rights. At the time of filing the petition, there were 77 senior water right permits or certificates, and 36, or 46.8%, of these were represented by at least one signature on the petition. The remaining 342 water right permits or certificate were junior, and 221, or 64.6%, of these were represented by at least one signature on the petition. Of the 29,325 afa of senior water rights, 18,700 afa, or about 64%, is represented by signatories of the petition. The State Engineer finds that significant portions of both senior and junior rights are represented in the petition.

Nevada Revised Statute § 534.037(3) requires that before approving or disapproving a groundwater management plan the State Engineer shall hold a public hearing to take testimony on the plan in the county where the basin lies or, if the basin lies in more than one county, within the county where the major portion of the basin lies. The State Engineer shall cause notice of the hearing to be:

- a. Given once each week for two consecutive weeks before the hearing in a newspaper of general circulation in the county or counties in which the basin lies.
- b. Posted on the Internet website of the State Engineer for at least two consecutive weeks immediately preceding the date of the hearing.

Notice of a public hearing to be held on October 30, 2018, was published in the *Eureka County Sentinel*, the *Elko Daily Free Press*, and the *Ely Times* during the weeks of the 15<sup>th</sup> and 22<sup>nd</sup> of October.<sup>8</sup> Also, notice of the hearing was posted on the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018.<sup>9</sup> Additional notice was also sent by certified mail directly to the boards of county commissioners for the counties of Eureka, Elko, and White Pine.<sup>10</sup> The GMP was made available through the Internet website of the Nevada Division of Water Resources commencing on October 1, 2018, and was also available by request.<sup>11</sup>

A public hearing to take testimony on the proposed GMP was held in Eureka, Nevada, on October 30, 2018, during which testimony in favor of and in opposition to the GMP was received. In addition, the State Engineer held open the period for written public comment for an additional three working days following the hearing, during which time additional public comments were

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<sup>8</sup> Exhibit 4.

<sup>9</sup> [http://water.nv.gov/documents/Hearing\\_Notice-Diamond\\_Valley\\_GMP.pdf](http://water.nv.gov/documents/Hearing_Notice-Diamond_Valley_GMP.pdf)

<sup>10</sup> Exhibit 3.

<sup>11</sup> <http://water.nv.gov/documents/Final%20DV%20GMP%20for%20Petition.pdf>

received. This Order evaluates the testimony and written comments and other elements required for approval of the Petition.

Nevada Revised Statute § 534.037(1) requires that in a determination whether to approve a groundwater management plan, the State Engineer shall consider, without limitation:

- a. The hydrology of the basin;
- b. The physical characteristics of the basin;
- c. The geographic spacing and location of the withdrawals of groundwater in the basin;
- d. The quality of the water in the basin;
- e. The wells located in the basin, including, without limitation, domestic wells;
- f. Whether a groundwater management plan already exists for the basin; and
- g. Any other factor deemed relevant by the State Engineer.

**WHEREAS**, the Diamond Valley Groundwater Management Plan is summarized as follows:<sup>12</sup>

The predominant manner of use of existing rights in Diamond Valley is irrigation, where groundwater is pumped and used to produce primarily alfalfa and grass hay. Consequently, the GMP applies to irrigation rights and mining and milling rights with an irrigation base right, while vested rights, other manners of use and domestic wells are excluded from the plan. The GMP requires annual reductions in pumping with a goal of stabilizing groundwater levels and reducing consumptive use to the perennial yield. The GMP applies a formula to calculate the annual duty a rights holder can pump after required reductions, where the formula is based upon the original water right duty and priority of the right to arrive at a number of shares. The formula is defined as:

$$WR * PF = SA$$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

An annual amount of water that can be pumped per share is allocated to a rights holder (i.e., the annual allocation), and the reductions in pumping are accomplished by annually reducing the amount of water each share is allocated. In the initial year of the GMP, the total amount of water that can be pumped is equal to the amount of water currently in use. Unused allocations

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<sup>12</sup> Specific components of the GMP are discussed in greater detail below with reference to the public comments received; accordingly, an overview of the major GMP structure is introduced here.

may be banked, traded, leased or sold; thus, the GMP employs a market-based approach. The GMP also contains penalty provisions for pumping in excess of allocations. The GMP is governed by an Advisory Board of elected representatives that are charged with making recommendations to the State Engineer, who ultimately oversees and administers the Plan. The GMP is funded through annual assessments, which, in part, will be used to also fund a water manager employed by the Nevada Division of Water Resources, whose role is expected to involve implementation and management of the GMP.

**WHEREAS**, the comments made at the October 30, 2018, hearing on the Diamond Valley Groundwater Management Plan and the State Engineer's response are as follows<sup>13</sup>:

#### **I. COMMENTS RELATED TO LEGAL SUFFICIENCY**

Several comments were received challenging the legal sufficiency of the GMP as being in violation of established Nevada water law or that the GMP waives existing mandatory provisions required by the NRS including the prior appropriation doctrine, movement of allocations, well abandonment and a banking component without adequate permitting.<sup>14</sup>

##### Prior Appropriation

First, several commenters asserted that the GMP violates the doctrine of prior appropriation by eliminating the bedrock principle of "first in time, first in right." The violation, they allege, occurs because all water rights—both senior and junior—have their allocations reduced annually, rather than reductions being imposed solely on junior rights.<sup>15</sup>

While it is acknowledged that the GMP does deviate from the strict application of the prior appropriation doctrine with respect to "first in time, first in right," the following analysis demonstrates that the legislature's enactment of NRS § 534.037 demonstrates legislative intent to permit action in the alternative to strict priority regulation. Nevada Revised Statute § 534.037(1) provides that a groundwater management plan "must set forth the necessary steps for removal from the basin's designation as a [CMA]." Other prior appropriation states have addressed whether a

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<sup>13</sup> The following analysis is intended to address written and public comments received concerning the GMP. In large part, all of the comments made in opposition to the GMP in writing or at the hearing raised issues that were considered during the GMP drafting process. These issues, and many more, are succinctly summarized in a "comment and answer format" in Appendix C at pp. 241-255, entitled *GMP Issues and Concerns Identified Through the Process*.

<sup>14</sup> Written comments of Ira and Montira Renner, Timothy and Constance Marie Bailey, Sadler Ranch, LLC, and Great Basin Resource Watch.

<sup>15</sup> Appendix F to the GMP contains the preliminary table of all rights subject to the GMP and the share calculation for each right. The relative priority dates of all rights subject to the Plan are shown in the table. Notwithstanding the share calculations shown in Appendix F, one commenter acknowledged that if a GMP is not adopted and curtailment is ordered on all rights, that rights junior to about May 1960 would be curtailed. This would include a significant number of irrigation rights, all mining rights, and some municipal rights. See Written Comment of Great Basin Resource Watch, p. 5. In addition, the majority of domestic wells in the basin are junior and would also be completely curtailed. See NRS § 534.110(6) (the State Engineer may order that withdrawals, including withdrawals from domestic wells, be restricted to conform to priority rights).

shortage sharing plan violates the prior appropriation doctrine. For example, in *State Engineer v. Lewis*, 150 P.3d 375 (N.M. 2006), the New Mexico Supreme Court examined whether a settlement agreement entered into by the Interstate Stream Commission, the United States and three irrigation districts, upon which a partial final decree was entered in an adjudication proceeding, violated the New Mexico Constitution, which codified the prior appropriation doctrine.

The appellants, senior rights holders, contended that the settlement agreement violated the New Mexico Constitution, and that due to chronic water shortages for senior rights, the negotiating parties were duty-bound to adhere to the prior appropriation doctrine as it was traditionally understood and enforced, through a priority call. *Id.*

The court's examination focused on a statute that was enacted for the express purpose of achieving compliance with New Mexico's obligations under the Pecos River Compact (the compliance statute). *See id.* at 150 P.3d at 379. In the words of the court, the parties to the settlement agreement sought to cut the water shortage "Gordian knot" through a process more flexible than strict priority enforcement, yet still comply with the prior appropriation doctrine.

In interpreting the legislative intent of the compliance statute, the *Lewis* court found that the intent and purpose of the legislation was beyond dispute—to take charge of resolving a critical situation created by an amended decree, while complying with the obligation of protecting existing rights. In determining that the statute was constitutional, the court assumed that the legislature was aware of the prior appropriation doctrine when it enacted the statute, and that the statute was to be read as a clear signal that the legislature and governmental players wanted to create a solution other than a priority call as the first and only response. *Id.* at 150 P.3d 385.<sup>16</sup> Notwithstanding that the court found the statute constitutional and not violative of prior appropriation, the court found it important that the settlement agreement did not rule out a priority call if needed. *Id.* at 150 P.3d 386.

Nevada Revised Statute § 534.037(1) was enacted in 2011 by A.B. 419. Aside from the six specific and one general consideration codified in the statute, the State Engineer finds that the legislative history contains scarce direction concerning how a plan must be created or what the confines of any plan must be.

Like *Lewis*, in enacting NRS § 537.037, the Nevada legislature expressly authorized a procedure to resolve a shortage problem. And, like *Lewis*, the State Engineer assumes that the Legislature was aware of prior appropriation when it enacted NRS § 534.037,<sup>17</sup> and the State Engineer interprets the statute as intending to create a solution other than a priority call as the first and only response. Nothing in the legislative history of A.B. 419 or the text of NRS § 534.037 suggests that reductions in pumping have to be borne by junior rights holders alone—if that were

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<sup>16</sup> Although the prior appropriation doctrine is not codified in the Nevada Constitution, a similar analysis to *Lewis* is appropriate as prior appropriation is the law in Nevada.

<sup>17</sup> The fact that NRS § 534.110(7) requires the State Engineer to regulate by priority after 10 years if no GMP is adopted makes clear that the Legislature was aware of prior appropriation. Also, the remarks of Assemblyman Goicoechea, the bill sponsor, reinforces the Legislature's awareness of prior appropriation when the Assemblyman described regulation by priority (*e.g.*, pumping is curtailed and the basin is brought back into balance with only senior water rights being held). *See* Minutes on the Assembly Committee on Government Affairs, 76<sup>th</sup> Session, p. 66 (March 30, 2011).

the case, the State Engineer could simply curtail junior rights—a power already granted by pre-existing water law in NRS § 534.110(6). Thus, the State Engineer concludes that NRS § 534.037 provides flexibility outside regulation by priority, and the manner in which the GMP proposes to reduce pumping is authorized by Nevada law.

Notwithstanding, even though NRS § 534.037(1) does not require a GMP to impose reductions solely against junior rights, the most senior rights in the GMP have a higher priority factor than junior rights when the share calculation is made. Thus, the State Engineer finds that the GMP still honors prior appropriation by allocating senior rights a higher priority factor than junior rights.<sup>18</sup>

#### Well Use Approvals

Second, commenters opposed to the GMP challenged the GMP's provision to allow temporary movement (less than 1 year) of allocations, alleging the GMP contravenes existing law by automatically granting such changes, that the temporary approval process diminishes State Engineer and public review and encourages trading on annual bases, rather than filing for a permanent change.<sup>19</sup> On the other hand, other comments were received that supported the flexibility offered by the expedient temporary movement process.<sup>20</sup>

Existing water law has provisions that deal with temporary changes to water rights<sup>21</sup> and permanent changes to existing rights.<sup>22</sup> Because the GMP unbundles allocations from the place of use where existing water rights are appurtenant, movement of allocations is controlled by a new or existing well serving as the point of diversion.<sup>23</sup> Thus, the GMP was (1) modeled after existing law regarding temporary changes<sup>24</sup> and (2) still requires application of NRS § 533.370 to new wells or increased withdrawals exceeding 1 year.<sup>25</sup>

Section 14.8 of the GMP provides that any new wells or wells having withdrawals in excess of what was approved under the base right be submitted to the State Engineer. Such changes are approved after 14 days if not denied as impairing other rights or contrary to the public interest. The State Engineer finds that the existing law concerning temporary changes (NRS § 533.345(2))

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<sup>18</sup> The public comments during the hearing reiterated that the 20% spread of the priority factor likely received the greatest consideration and debate during the GMP process. Ultimately, a spread of priority factor between 0.9997 and 0.80 was what a majority of the plan proponents could agree to.

<sup>19</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>20</sup> Written comment of Marty Plaskett; *and see* Transcript, pp. 80-81 (Matt Morrison) (providing an example that when annual reductions are implemented, an irrigator may not have enough water for one pivot, but would have flexibility to combine allocations to water a full crop, while also allowing some irrigation on former irrigation lands to keep them viable until farming on that pivot could resume).

<sup>21</sup> NRS § 533.345(2).

<sup>22</sup> NRS § 533.370.

<sup>23</sup> *See* GMP §§ 14.8 and 14.9.

<sup>24</sup> GMP, p. 20 at fn. 20.

<sup>25</sup> GMP § 14.9.



expresses a command to grant temporary changes (*e.g.*, “shall approve”) unless the State Engineer determined it impairs existing rights or is contrary to the public interest. Thus, the State Engineer finds that § 14.8 and § 533.345(2) to be entirely consistent. Further, the State Engineers agrees that allowing changes expediently up to the original duty at that well is permissible because the State Engineer already made such an affirmative analysis when the water right was granted. Additionally, the State Engineer finds that § 14.8 of the GMP is not a significant departure from existing law because temporary change applications do not undergo publication or hearing unless required by the State Engineer.<sup>26</sup> Thus, it is unpersuasive that § 14.8 diminishes State Engineer and public review. Finally, the potential of a rights holder to serially move allocations for less than 1 year to escape being subject to the procedures of NRS § 533.370, exists under current law, as there is no limitation in statute to the number of temporary applications to change. The State Engineer is mindful that when annual notices are given, to examine such notices to determine there is a motivation to avoid the statutory change process.

With respect to new wells, additional withdrawals exceeding 1 year, or where the State Engineer determined within the 14 calendar days may be not be in the public interest or may impair rights of other persons, the existing procedures under NRS chapters 533 and 534, including publication and protest provisions, still apply.<sup>27</sup>

#### Well Plugging Provisions

One commenter asserted that the GMP waived existing law regarding exempting wells from NRS Chapters 533 and 534.<sup>28</sup>

GMP §§ 14.2 and 14.3 direct when active, unused or inactive wells must be plugged and abandoned, or that a waiver of abandonment can be obtained. The State Engineer finds that these provisions are consistent with existing regulations found in NAC §§ 534.300 and 534.427. Additionally, GMP §§ 14.4 and 14.5 expressly require that well construction and maintenance must comply with the requirements of NRS and NAC Chapter 534. The State Engineer finds that the GMP does not waive or exempt wells from existing laws or regulations.

#### Banking and Aquifer Storage and Recovery

Lastly, one commenter stated that the banking component of the plan was an aquifer storage and recovery (ASR) project, which lacks a necessary permit required by NRS § 534.250, *et. seq.*<sup>29</sup>

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<sup>26</sup> NRS § 533.345(3).

<sup>27</sup> GMP § 14.9.

<sup>28</sup> Transcript, p. 19 (David Rigdon).

<sup>29</sup> Written comment of Sadler Ranch, LLC; Transcript, p. 14 (David Rigdon). The statement at the hearing was that this comment was based upon the report of the hydrogeologist in Appendix I that water banking is a type of aquifer storage and recovery project regulated by the State Engineer. As indicated by further findings, the State Engineer does not agree that the banking component of the GMP is an aquifer storage and recovery project.

Section 13.9 of the GMP allows unused allocations to be carried over and banked for use in a subsequent year to increase the amount of water the rights holder can use in the next year. The banked allocation is subject to depreciation in the amount that is carried over to account for natural losses over time.<sup>30</sup> In contrast to banking in the GMP, a typical aquifer storage and recovery project is operated by injecting or infiltrating water from a surface source into the aquifer for the purpose of accumulating storage for future use.<sup>31</sup> These elements of project operation are not part of the GMP. The State Engineer finds that banking of unused allocations in the GMP is a mechanism to allow flexibility by users to determine when to use their limited allocation and to encourage water conservation practices. Consequently, the State Engineer finds that the banking allocations in the GMP is a reasonable means to facilitate conservation and water planning by water users, as provided for under NRS § 534.037, and that the GMP is not required to fulfill the statutory obligations of NRS §§ 534.250–340.

## **II. COMMENTS RELATED TO ABANDONMENT, FORFEITURE, AND PROVING BENEFICIAL USE**

Some commenters stated that water rights that are currently unused should be abandoned or forfeited prior to reductions in pumping being imposed against existing water rights.<sup>32</sup> The State Engineer finds that pursuing forfeiture or abandonment prior to implementing any GMP is ill-advised for several reasons.

First, time is of the essence for rights holders to get a GMP approved prior to August 25, 2025, or curtailment by priority will be ordered for all rights in Diamond Valley. Because forfeiture and abandonment must be shown by clear and convincing evidence, it is doubtful whether there is sufficient time to investigate and assemble evidence concerning abandoned rights, to conduct administrative hearings and engage in any appellate proceedings with time left to secure a final table of water rights to support the GMP. Pursuing abandonment at this moment would likely lead to lengthy administrative and/or appeal proceedings, delaying action on a GMP until a final listing of active groundwater rights would be known.<sup>33</sup>

Second, a different problem is presented by forfeiture proceedings. Because the State Engineer conducts an annual inventory in Diamond Valley, information is available concerning those rights that may be subject to forfeiture. However, in 2017, NRS § 534.090 was amended to require that a notice of non-use be served prior to forfeiting unused water rights to provide one year to cure a forfeiture.<sup>34</sup> Serving notices of non-use at this stage would require that owners of water rights that are currently unused make efforts to resume beneficial use (*i.e.*, pumping). The

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<sup>30</sup> Section 13.9 describes that Diamond Valley is divided between the main farming area (generally located in the southern half of the basin) and the groundwater discharge area (the northern half of the basin). Banked water north of the dividing line in the discharge area depreciates at 17% and banked water south of the line at 1%. The depreciation factors are based on numerical flowing modeling analysis to justify and support these amounts. See GMP, Appendix I.

<sup>31</sup> See, *e.g.*, NRS §§ 534.250–340.

<sup>32</sup> Written comments of Sadler Ranch, LLC and Carolyn Bailey.

<sup>33</sup> See, *e.g.*, GMP, Appendix F.

<sup>34</sup> See NRS § 534.090(2).

consequence of resuming pumping is contrary to the intent of the GMP to *reduce* pumping. Thus, the State Engineer finds that in addition to similar timing problems discussed above, initiating forfeiture proceedings could exacerbate conditions in the basin by increasing pumping, prior to reducing pumping pursuant to the GMP, thereby lessening the effectiveness of the plan.<sup>35</sup>

Third, assuming *arguendo*, there are water rights existing only on paper (*e.g.*, that could be abandoned or forfeited), reductions in pumping by the GMP start at the ceiling of *actual pumping* (76,000 afa), not at the ceiling of existing rights (126,000 afa). Stated otherwise, even if the State Engineer assumed that the difference between existing rights and actual pumping (50,000 afa) was paper water, the elimination of paper water rights to match active rights will not change that the reductions in *pumping* begin at the component of active rights. The issue of paper water was raised and considered during the GMP drafting process, and it was determined that the GMP contemplated that any valid right in good standing was to be issued shares.<sup>36</sup> The State Engineer believes there is a low probability of success for abandonment, and the preceding paragraph describes the likely unanticipated effect of pursuing forfeiture. Therefore, the State Engineer finds that requests to eliminate paper water does not warrant halting this process in order to initiate abandonment or forfeiture proceedings.

Additionally, one commenter stated that existing permitted rights should prove beneficial use and become certificated prior to implementing a GMP. For reasons discussed above, including timing and discouraging increases in pumping, the State Engineer finds that requiring proof of beneficial use prior to implementing a GMP is not in the best interest of taking immediate action to adopt and implement a basin-wide GMP. Further, the GMP petition process expressly applies to the holders of *permits* and *certificates*. Therefore, the GMP statute implicitly recognizes that permitted rights which have not fully proven beneficial use will participate in the GMP process.

### III. COMMENTS RELATED TO APPLICABILITY OF PLAN TO ONLY CERTAIN WATER RIGHTS

Some comments were directed to the scope of GMP applying only to irrigation rights and mining and milling rights with a base irrigation right. Some expressed concern that it created a preference for certain manners of use, that there was no environmental component to the plan and it would result in water barons.<sup>37</sup> Many comments in favor of the plan described how they believed the plan would allow more irrigators or mines to stay in business, ultimately benefitting the greatest number of operators by providing more favorable conditions such as weed and rodent control.<sup>38</sup> The comments favored adoption of a GMP in lieu of curtailment, which many recognized would

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<sup>35</sup> The issue of forfeiture in Diamond Valley, particularly of pivot corners, pre-dates the 2017 amendments to NRS § 534.090. In the 1980s, the State Engineer pursued forfeiture of unused pivot corners in Diamond Valley, which lead to the enactment of NRS § 534.090(3) (pre-2017 version). See Nev. Stat. ch 559 (1983); and see, A.B. 597 (1983).

<sup>36</sup> See GMP, Appendix C, p. 244.

<sup>37</sup> Written comments of Great Basin Resources Watch, and Ari Erickson.

<sup>38</sup> Written comments of James Gallagher, Mark Moyle and Donald Palmore; Transcript, p. 68 (Jim Gallagher); pp. 80-81 (Matt Morrison).

likely force many junior irrigators into bankruptcy, and as a result, the community would suffer.<sup>39</sup> In addition, many comments in favor of the GMP spoke positively about methods for increasing efficiency to continue operations while reducing pumping.<sup>40</sup>

As discussed in the introductory paragraphs section, *supra*, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, the application of the plan to those rights that will have the most impact and be most impacted, is appropriate. While one commenter opined that the GMP does not address environmental concerns, the State Engineer does not agree. The GMP may not contain express provisions for the environment, but allowing the greatest number of irrigators to remain in business and keep cultivated lands active, will prevent the incursion of weeds, and will provide dust and rodent control. And ultimately, the State Engineer finds that the objective to reduce the pumping of groundwater to stabilize groundwater levels is a benefit of the groundwater basin, the irrigators and other members of the community that rely upon it and live within it, and that it is not necessary to explicitly identify certain areas of environmental concern within the scope of the plan for the plan to have a generalized benefit to the environment.

Finally, the State Engineer finds that comments that the GMP will result in "water barons" or that it will create a preference for certain manners of use, are speculative. Existing water law provides that water rights are a form of real property that are freely alienable and transferrable independent of land where the water was formerly appurtenant. In that way, the ownership of water rights and the manners of use are currently determined by a market of real property transactions.

#### **IV. COMMENTS RELATED TO PRACTICALITY OR REASONABLENESS OF THE PLAN IMPLEMENTATION**

##### **Mitigation Rights**

Some commenters challenged the fact that the GMP does not provide for mitigation of senior surface water rights that have been negatively impacted by junior groundwater pumping.<sup>41</sup>

The requirement for the approval of a GMP is that it "must set forth the necessary steps for removal of the basin's designation as a critical management area." NRS § 534.037(1). Neither the plain language nor the legislative history indicate that mitigation of senior surface water rights that have allegedly been adversely affected by groundwater pumping must be mitigated by a GMP.<sup>42</sup>

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<sup>39</sup> Written comments of William Norton and Donald Palmore; Transcript, pp. 80-81 (Matt Morrison).

<sup>40</sup> Written comment of William Norton, Marty Plaskett, Robert Burnham and James Gallagher; Transcript, p. 81 (Matt Morrison).

<sup>41</sup> Written comments of Sadler Ranch, LLC and Daniel Venturacci.

<sup>42</sup> In fact the opposite appears to be true from the legislative history. As proposed, A.B. 419 would have required the State Engineer "to consider the relationship between surface water and groundwater in the basin," but this consideration was amended out of the bill after the First Reprint.

Of note is that the State Engineer entered Order 1226, entered on March 26, 2013, which provided a mechanism for mitigation of senior surface water rights allegedly impacted by junior groundwater pumping. Two of the commenters at the hearing who raised this issue have taken advantage of the provisions of Order 1226, by filing for mitigation groundwater rights, which were granted by the State Engineer. Consequently, the State Engineer finds that mitigation is not a required element of the GMP; and in any event, the commenters who raised this issue have already taken advantage of Order 1226.<sup>43</sup>

#### Out-of-Basin Transfers

One commenter was concerned that unbundling water rights appurtenant to their place of use creates an incentive for out-of-basin transfers.<sup>44</sup> The commenter acknowledged that the current GMP prohibits out-of-basin transfers, but suggested the plan proponents may consider amending the plan to strengthen provisions to avoid incentivizing out-of-basin transfers. The State Engineer finds that NRS § 534.037 provides that once adopted, the GMP can be amended by the same procedure which allows for adoption of a plan.<sup>45</sup> Because the GMP currently prohibits out-of-basin transfers, there is currently no necessity to mandate changes to the GMP to strengthen provisions to disincentivize out-of-basin transfers. Some commenters involved the creation of the plan who spoke in favor of it acknowledged the plan may not be “perfect.” Short of finding the current GMP cannot be approved as a matter of law, the State Engineer finds that denial of the Petition to require years of possible additional negotiations to merely better state existing plan provisions, to be unnecessary.<sup>46</sup>

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See A.B. 419 (First Reprint), Senate Committee on Government Affairs, 76th Sess. (May 25, 2011).

<sup>43</sup> See, e.g., Permits 81720, 82268, 81825 and 82572, official records in the Office of the State Engineer.

<sup>44</sup> Written comment of Great Basin Resource Watch.

<sup>45</sup> NRS § 534.037(5).

<sup>46</sup> The State Engineer values all comments and testimony received concerning the GMP. While it is clear the *Public Interest Review of the Proposed Diamond Valley Groundwater Management Plan* prepared for Great Basin Resource Watch was thorough in its analysis, the State Engineer gives great weight to comments and testimony from water rights holders in Diamond Valley, senior or junior whom are for or against approval of the GMP. Great Basin Resource Watch does not own water rights in Diamond Valley and it does not appear it was involved in the years of public meetings held in Eureka to negotiate the details of the GMP. See, e.g., GMP Appendix C at pp. 121-240. Indeed, its own written comment appears to recognize it is appropriate to afford great weight to those that created and are affected by the plan. See Written comment of Great Basin Resource Watch at p. 8 (a groundwater management plan should address the varied objectives or goals of water users and residents in the basin, and a worthwhile consideration is whether the GMP promotes bottom-up collaboration to promote broad buy-in from affected individuals and to provide flexibility in decision-making); and see also, Transcript, p. 65 (Mark Moyle) (responding to comments at the hearing, stating that the GMP was developed by the people who live in Diamond Valley and will be most affected and that everyone was making sacrifices).

### Public and Local Community Interest

The same commenter stated that the public interest component was not adequately represented and that the description of local community interests could be strengthened.<sup>47</sup>

The State Engineer disagrees that the public interest is not adequately represented. As already discussed under well use approvals, new wells, additional withdrawals exceeding one year, or where the State Engineer rejected a request under § 14.8, is subject to the procedures of NRS § 533.370—including the public interest review for change applications.

Many comments in support of the GMP reflect the reality that it took years for the participants to negotiate an agreement that was able to attain majority support required to petition the State Engineer for approval. Years before the State Engineer declared the basin a CMA in 2015, the GMP process was initiated by the local community and stakeholders.<sup>48</sup> Work on the GMP continued for an additional three years after the CMA designation with numerous meetings of the community and stakeholders, ultimately arriving at the version presented to the State Engineer in 2018.<sup>49</sup> Appendix C of the GMP demonstrates that this process was emotional and difficult for the participants—yet they persisted in forging a plan in an effort to avoid curtailment. The written comments overwhelmingly demonstrate the public and local community interests to be preserved by the approval of the plan, which are best stated by the following irrigator:<sup>50</sup>

The irrigators that support this plan understand that we all need to sacrifice for the long-term benefit of the community and the long-term continued success of the farming industry. Diamond Valley is the heart of southern Eureka County's economy. . . . Strong, willing, and giving people who understand that it takes community effort to sustain and survive built Diamond Valley. . . . The purpose of the DVGMP is to continue the ongoing success of the entire southern Eureka County area and the enterprises that exists [sic] there.

This sentiment was repeated in all written comments submitted in support of the plan.<sup>51</sup> In addition, many stirring accounts were given at the public hearing about living and growing up in Diamond Valley, the desire to preserve the established way of life, the hardscrabble efforts made over decades to create the farms that exist in the valley today, and the determination of the community to work together to solve issues, both past and present, which challenged their continued existence.<sup>52</sup> The State Engineer finds that the GMP materials, written comments and testimony at the public hearing overwhelmingly describe and support the public and local

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<sup>47</sup> Written comment of Great Basin Resource Watch.

<sup>48</sup> GMP, Appendix B.

<sup>49</sup> See GMP, Appendices A, C.

<sup>50</sup> Written comment of Mark Moyle.

<sup>51</sup> See written comments of Robert Burnham, Russell Conley, Jim Etcheverry, James Gallagher, Andrew Goettle, William Norton, Donald Palmore, Marty Plaskett and Ruby Hill Mining Company; and see Transcript, pp. 52-53 (D'Mark Mick).

<sup>52</sup> Transcript, pp. 57-59 (James Moyle); pp. 75-77 (Vickie Buchanan); pp. 79-82 (Matt Morrison); pp. 84-85 (Lloyd Morrison); pp. 85-88 (Alberta "Birdie" Morrison).

community interests, which weigh heavily in the determination at hand. While many comments in the *Public Interest Review*<sup>53</sup> reflect aspirational components of what a plan *may* contain or how it could be best stated, the State Engineer finds that the GMP is acceptable in these areas.

#### Protections for Domestic Wells

One commenter suggested that domestic wells were not protected because pumping will continue to exceed the perennial yield while the GMP is carried out. The State Engineer finds that NRS § 534.110(7), states that unless at GMP has been approved for a basin pursuant to NRS § 534.037, "withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights." And that pursuant to NRS § 534.080, domestic wells are assigned the date of priority of the date the well was drilled. Thus, the GMP is protective of domestic wells because it specifically excludes the domestic wells from pro-rata reductions in use and allows for their continued use to the full statutory permitted amount, compared to the alternative that (a) the domestic wells in Diamond Valley are junior in priority to the 30,000 af PY, and (b) since, absent an approved GMP, domestic wells are subject to curtailment based upon their priority.

#### Advisory Board Makeup

Commenters had differing issues with the makeup of the Advisory Board.<sup>54</sup> One commenter stated that the GMP favors junior appropriators on the Advisory Board. Alternatively, another commenter posited that after a period of years, the makeup of the Advisory Board could favor non-irrigators over irrigators. The State Engineer finds that the plan was created by the individuals that will be subject to the plan, and the State Engineer accepts that a majority of the rights holders agreed that the makeup and voting structure of the participants agreed this to be a fair manner of representation on the Board.

### **V. COMMENTS RELATED TO SCIENTIFIC SOUNDNESS**

Some commenters challenged the GMP, asserting that the GMP is not supported by science and hydrologic analysis, with the following observations:<sup>55</sup>

- a. The scheduled reduction in pumping would exceed the perennial yield for the life of the GMP and in the process it would deplete aquifer storage in excess of the transitional storage volume.
- b. The GMP is not supported by a hydrogeologic analysis or a groundwater model to provide information on the effects of the plan.
- c. Some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because

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<sup>53</sup> Written comment of Great Basin Resource Watch.

<sup>54</sup> Written comments of Sadler Ranch, LLC and Great Basin Resource Watch.

<sup>55</sup> Written comments of Ira and Montira Renner and Sadler Ranch, LLC; Transcript, p. 19 (David Rigdon); pp. 23-24 (David Hillis).

of groundwater recovery and corresponding changes in groundwater ET.

- d. One commenter raised the lack of thresholds or triggers in the GMP.

The GMP is based on the simple fact that groundwater pumping is the cause of declining water levels, and therefore pumping must be reduced to solve the problem. The reduction in pumping is set at 3% per year for the first 10 years, and may be adjusted up or down thereafter as informed by groundwater level monitoring data. The goal of this approach is to progressively reduce groundwater pumping until the perennial yield is not consistently exceeded, and the measure of that ultimate outcome is a stabilization of water levels.

Perennial yield is based on the principle of conservation of mass, which dictates that water levels will stabilize when recharge equals discharge. Before any groundwater development occurs, an undeveloped basin is considered to be in equilibrium between natural groundwater recharge and discharge. When wells are developed, groundwater is initially drawn from aquifer storage in the vicinity of the well, but over time that groundwater removal is replaced by a decrease in natural discharge or increase in recharge until a new equilibrium is reached and the discharge by pumping is part of the basin water balance. Water drawn from storage in the period of time between the pre-development equilibrium and the post-developed equilibrium is defined as the transitional storage. The amount of transitional storage consumed before a new equilibrium state is reached may affect the depth to water at a new equilibrium condition, but as long as recharge and discharge are ultimately balanced then an equilibrium condition can be reached and the goal of the GMP to stabilize water levels can be achieved. The amount of storage consumed in the transitional period will not prevent equilibrium from being reached.

Groundwater modeling and hydrogeologic analysis are not the basis for the GMP's determination of pumping reduction rates and target pumping totals at the end of the plan. Instead, the pumping reduction rate was selected by agreement of the GMP authors, and the target for total pumping at the end of the GMP was selected from existing published values. Upon implementation, the real effects of the plan will be monitored and observed by measuring the change in groundwater levels throughout the basin. Those measurements will be the basis for plan review and any modifications of pumping reduction rates that the GMP requires after an observation period of 10 years.

Groundwater modeling is a helpful and informative tool for projecting the effects of pumping reduction and planning accordingly, but modeling is not necessary to conclude that reductions in pumping will lead to reductions in water level drawdown. Groundwater modeling and hydrogeologic analysis beyond what is publicly available in existing published reports would not change the fact that the cause of groundwater decline is due to pumping groundwater and that the stakeholder-authored plan seeks to reduce pumping. Modeling could be a useful tool for future evaluation of the plan and modifications to pumping reduction rates, but it is not required.

One commenter questioned whether the reductions in pumping under the plan combined with rights not subject to plan would bring withdrawals to the perennial yield based on his calculation of rights able to be pumped being excess of 42,000 afa.<sup>56</sup> As explained, the goal of the

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<sup>56</sup> See written comment of Ari Erickson.



GMP is to reduce consumptive use to the current perennial yield; and, as indicated in the introductory paragraphs, there are 4,437 af of groundwater rights in the basin not subject to the plan. Thus, the State Engineer does not find that there could be total pumping in excess of 42,000 afa in the basin at the end of 35 years under the GMP. Assuming, *arguendo*, that rights subject to the plan and those not subject to the plan were estimated to be 34,437 af, existing evidence used by the State Engineer to designate the basin a CMA demonstrates that there are wide variations in annual pumping—in some years, by several thousand acre-feet more or less than the prior year.<sup>57</sup> Because the designation of a CMA is based on withdrawals *consistently* exceeding the perennial yield, the State Engineer finds that existing law suggests some tolerance of variations on the annual amount of pumping. In addition, the State Engineer is mindful that perennial yield is an *estimate* of water availability and is only one-half of the equation of GMP success.<sup>58</sup> Actual observations of water levels are the most direct and reliable means of determining GMP success. The plan to reduce pumping, monitor the effects on water levels, and then adjust pumping reductions is a sound approach to achieving the goal of stabilizing water levels. The lack of a groundwater model or detailed hydrogeologic analysis does not preclude approval of the GMP as written.

One commenter raised the lack of thresholds or triggers in the GMP. The State Engineer finds that there is no express requirement in NRS § 534.037 for thresholds or triggers, and that a reference to thresholds or triggers is commonly in reference to a “Monitoring, Management and Mitigation (3M)” Plan. The State Engineer has historically utilized 3M Plans as a tool in approving new appropriations when impacts to existing rights are unknown. Consequently, the State Engineer finds that a 3M Plan having thresholds and triggers is different than the GMP now pending before the State Engineer, and that the two types of plans serve different functions. Nevertheless, the State Engineer finds that there has been robust monitoring of irrigation groundwater use in Diamond Valley by the State Engineer’s office for many decades and that monitoring groundwater use and groundwater levels is ongoing. Moreover, the GMP requires irrigators to install a smart meter, which will provide increased accuracy and nearly real-time knowledge of groundwater use.<sup>59</sup> Finally, the GMP incorporates the State Engineer’s enforcement authority concerning over-pumping of a user’s allocation, and contains penalties to be paid in water for over-pumping and stiff administrative fines for meter tampering.<sup>60</sup>

Finally, some commenters had questions about the accuracy of the ET depreciation rate, and whether this rate may change over time because of groundwater recovery and corresponding

---

<sup>57</sup> See Order 1264, official records in the Office of the State Engineer.

<sup>58</sup> Both the GMP and the commenter acknowledged the release of a 2016 report by the U.S. Geological Survey, which estimated the perennial yield may be 35,000 af. GMP, p. 8 at fn. 2; Transcript, p. 37 (Ari Erickson). As part of a different administrative hearing proceeding, the State Engineer was requested to accept the USGS Report as the perennial yield in Diamond Valley. That matter is currently under submission, and no determination has been made by the State Engineer whether to accept this number. Consequently, the GMP was based on the current estimate of perennial yield of 30,000 af.

<sup>59</sup> See GMP § 15. The most recent groundwater inventory conducted by the State Engineer in 2018 revealed that there was nearly 100% compliance with smart meter installation already. This further affirms that rights holders have already made financial commitments of purchasing and installing smart meters to ensure success of the GMP.

<sup>60</sup> GMP §§ 16, 17.

changes in groundwater ET. The selection of these rates was the only component of the GMP expressly based on groundwater model simulations. The accuracy of the model and appropriateness of assigning ET depreciation rates based on model interpretation was discussed at GMP planning meetings. The ET depreciation rates in the final GMP were a compromise and there was never a consensus. Adjustments to these rates is provided for under the provisions to amend the GMP, as warranted by the data.

## **VI. COMMENTS RELATED TO PRECEDENCE**

Several commenters were concerned that any GMP adopted in Diamond Valley creates a precedent for other areas in the state that may be designated Critical Management Areas. The proposed GMP under consideration is the first plan in the state adopted through the process required by NRS § 534.037. As with most decisions involving water, the conditions and issues facing Diamond Valley are unique to Diamond Valley, and therefore the requirements of this plan may not be suitable for any other area in the state. Many individuals speaking in support of the plan made this observation, and the State Engineer concurs that the Diamond Valley GMP does not limit the possible solutions that may be employed by other groundwater management plans.

**WHEREAS**, based upon the foregoing, the State Engineer makes the following findings of fact, conclusions of law and order:

The State Engineer finds that Appendix D to the GMP sufficiently describes (a) the hydrology of the basin; (b) the physical characteristics of the basin; (c) the geographic spacing and location of the withdrawals of groundwater in the basin; (d) the quality of the water in the basin; and (e) the wells located in the basin, including, without limitation, domestic wells.

The State Engineer finds that there is currently no groundwater management plan in existence for Diamond Valley.

The State Engineer finds that the GMP is analogous to the settlement agreement at the center of the *Lewis* case, *i.e.*, an agreement supported by at least a majority of the permit and certificate holders in Diamond Valley to protect existing rights while cutting the Gordian knot of basin over-appropriation. Thus, the State Engineer concludes that adoption of the GMP is expressly authorized by statute and does not violate the prior appropriation doctrine because the statute provides flexibility outside strict regulation by priority.

The State Engineer finds that the GMP is not legally deficient nor waives any authority of the State Engineer to enforce Nevada water law.

The State Engineer finds that due to the length of time required, initiating abandonment or forfeiture proceedings or requiring proof of beneficial use prior to implementing a GMP is not in the best interest of reducing pumping and would only serve to delay such reductions.

As discussed in the introductory paragraphs, over 96% of committed rights are represented in the plan; therefore, the State Engineer finds that given the overwhelming majority of irrigation rights and mining and milling rights having irrigation base rights, and that the application of the plan to those rights that will have the most impact, and that will be the most impacted, is appropriate.

The State Engineer finds that public and local community interests have been considered, and that such interests are a cornerstone of the plan by retaining the greatest number of farms or mines as economically viable, which will provide social, economic, and environmental benefits.

The State Engineer finds that the standard for determining success of the plan by stabilizing water levels is sound.

The State Engineer finds that groundwater modeling is an informative tool for projecting the effects of pumping reduction, and that future model results could add confidence to decisions on any changes to pumping reductions, but that the lack of a groundwater model or hydrogeologic analysis does not preclude approval of the GMP as written.

The State Engineer finds that the GMP's annual reductions in pumping will lead to the entire basin's groundwater pumping approaching the perennial yield and stabilization of groundwater levels.

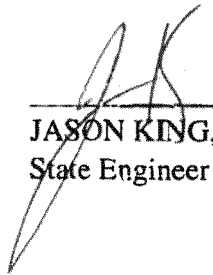
The State Engineer finds that the GMP is a groundwater management plan and is not a monitoring, management and mitigation plan; therefore, not only is there no requirement that there be a mitigation component or thresholds and triggers for activation of mitigation actions, but also such components would cloud the plan's goal and objectives.

The State Engineer finds that 1 acre-foot is equal to 325,851 gallons pursuant to practice and policy of the Office of the State Engineer, and that this conversion rate will be used.

In light of the foregoing findings, having considered the comments for and against the GMP, the State Engineer concludes that the petitioning parties have met the requirements for the adoption of the Diamond Valley Groundwater Management Plan, and the Petition is accordingly granted.

**ORDER**

**NOW THEREFORE,** it is ordered that the Petition to Adopt the Groundwater Management Plan for the Diamond Valley Hydrographic Basin is hereby GRANTED.

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

Dated at Carson City, Nevada this

11<sup>TH</sup> day of JANUARY, 2019.

Case No. CV-1902-348  
(consolidated with Case Nos.  
CV-1902-349 and CV-1902-350)

Dept. No. Two

NO. \_\_\_\_\_ FILED  
APR 03 2019  
Eureka County Clerk  
By Olga N. [Signature]

IN THE SEVENTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR  
THE COUNTY OF EUREKA

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES,

Respondent.

EUREKA COUNTY'S MOTION TO INTERVENE

EUREKA COUNTY, by and through its counsel of record, ALLISON MacKENZIE, LTD. and THEODORE BEUTEL, ESQ., the EUREKA COUNTY DISTRICT ATTORNEY, pursuant to Nevada Rules of Civil Procedure ("NRCP") 24(a) and (b) and Nevada Revised Statutes ("NRS") 12.130 (Intervention) respectfully moves to intervene as a Respondent in the above consolidated actions. This motion is supported by the points and authorities that follow, as well as the pleadings and papers on file in the above consolidated actions.

///

I.

POINTS AND AUTHORITIES

**A. FACTUAL BACKGROUND**

On or about February 11, 2019, TIMOTHY LEE & CONSTANCE MARIE BAILEY, FRED & CAROLYN BAILEY (collectively "Bailey"); IRA R. & MONTIRA RENNER ("collectively "Renner"); and SADLER RANCH, LLC ("Sadler") and DANIEL S. VENTURACCI ("Venturacci") (collectively "Petitioners"), filed Notices of Appeal and Petitions for Judicial Review pursuant to NRS 533.450 to reverse and/or remand Order 1302 Granting Petition to Adopt a Groundwater Management Plan for the Diamond Valley Hydrographic Basin (07-153), Eureka County, State of Nevada ("Order 1302") issued by Respondent, STATE ENGINEER ("State Engineer") on January 11, 2019.

On or about February 25, 2019, the State Engineer filed his Notice of Appearance in each action. On or about March 4, 2019, counsel for each of the Petitioners entered their Notices of Appearance in the other's cases.<sup>1</sup> EUREKA COUNTY was served with all the above pleadings by the parties.

On March 20, 2019, in an open meeting, the Eureka County Board of Commissioners voted to intervene in the above-captioned proceedings.

On March 27, 2019, the Court entered its Order granting the Stipulation and Order to Consolidate Cases. The Court also set a telephonic status conference for April 9, 2019 at 9:30 a.m.

EUREKA COUNTY owns vested surface water rights and permitted or certificated groundwater rights in Diamond Valley that it uses to provide municipal water services to the citizens of Eureka County. It also owns certain irrigation rights dedicated pursuant to Eureka County's parcel map dedication requirements. EUREKA COUNTY will be affected if the State Engineer's Order 1302 is reversed or remanded as Petitioners seek by their Petitions for Judicial Review. The Groundwater

<sup>1</sup> Petitioners did not file NRCP 24 Motions to Intervene in each other's cases and apparently filed their Notices of Appearances as a matter of right pursuant to NRS 533.450.



1 Management Plan ("GMP" or "Plan") approved by the State Engineer exempts vested  
2 water rights and municipal groundwater rights from the Plan. See Order. at 4; GMP at  
3 1,12. If the GMP is reversed or remanded, curtailment of groundwater rights by  
4 priority may be ordered. NRS 534.110(7)(b) and GMP at 1, 8. This is the relief  
5 Petitioners appear to desire based upon the allegations of error contained in their  
6 Petitions for Judicial Review. Only a few of EUREKA COUNTY's municipal  
7 groundwater rights are above the "cut line" for curtailment by priority. If curtailed  
8 pumping is ordered, EUREKA COUNTY may not be able to provide municipal water  
9 service to its residents. EUREKA COUNTY is concerned that it would lose its ability  
10 to serve its municipal customers if the State Engineer's Order 1302 is reversed or  
11 remanded as sought in the instant Petitions for Judicial Review. EUREKA  
12 COUNTY's use of water, for municipal purposes, would be most severely affected  
13 and it would be extremely difficult to terminate water service for residential and  
14 commercial uses.

15 EUREKA COUNTY supported Assembly Bill 419 in the 2011 Nevada  
16 Legislative Session which resulted in the statutes under which the GMP was  
17 developed. These provisions of law now allow appropriators of the water resource to  
18 address the issues in the over-appropriated basin outside of strict curtailment by  
19 priority by developing a GMP to get the basin back on its way to recovery and to  
20 bring the basin back into balance. EUREKA COUNTY supported County Staff  
21 facilitating the GMP formation and meeting process. The process under law was  
22 followed; a GMP was developed and approved well within the 10 year timeframe  
23 required and EUREKA COUNTY supports allowing the GMP to work as intended to  
24 avoid strict curtailment by priority and to bring Diamond Valley back into balance.

25 The socioeconomic structure, viability, and stability of Diamond Valley and  
26 southern Eureka County and the associated County tax and revenue base would be  
27 severely compromised should curtailment by strict priority be mandated due to the  
28 GMP not being upheld and allowed to work.

1           **B.     INTERVENTION OF EUREKA COUNTY**

2           Effective March 1, 2019, NRCP 24(a) provides as follows:

3           “(a) Intervention of Right. Upon timely motion, the court must permit  
4           anyone to intervene who: (1) is given an unconditional right to  
5           intervene by a state or federal statute; or (2) claims an interest relating  
6           to the property or transaction that is the subject of the action, and is so  
          situated that disposing of the action may as a practical matter impair  
          or impede the movant’s ability to protect its interest, unless existing  
          parties adequately represent that interest.”

7           Intervention of right exists through two different avenues. First, the right to intervene  
8           may be provided by statute. NRS 533.450 is the statute applicable to judicial review  
9           of State Engineer’s Orders. Second, the party seeking intervention may have an  
10          interest relating to the property or transaction that is the subject of the action and is so  
11          situated that disposing of the action may as a practical matter impair or impede that  
12          movant’s ability to protect its interest. NRCP 24(a)(2); See State Indus. Ins. Sys. v.  
13          Eighth Judicial Dist. Court, 111 Nev. 28, 32-33, 888 P.2d 911, 913 (1995). As  
14          discussed below, EUREKA COUNTY satisfies all of these requirements and therefore  
15          should be allowed to intervene as a matter of right.

16                   (1)   Timeliness

17          Rule 24(a) requires that a motion to intervene be timely filed. The law in  
18          Nevada is clear that the timeliness of the filing of a request for intervention is a  
19          determination that lies within the sound discretion of the court. Lawler v. Ginochio,  
20          94 Nev. 623, 626, 584 P.2d 667, 668-669 (1978); See also Dangberg Holdings v.  
21          Douglas Co., 115 Nev. 129, 141, 978 P.2d 311, 318 (1999). The most important  
22          question to be resolved in determining the timeliness of a motion for intervention is  
23          the extent of prejudice to the rights of the existing parties rather than the actual length  
24          of the delay. Id.

25          The Petitions for Judicial Review were filed with the Court on or about  
26          February 11, 2019. The Eureka County Board of Commissioners approved  
27          intervening in this proceeding at a regular Board meeting held March 20, 2019. This  
28          proceeding is in its initial stages. Other than the Stipulation for consolidation and

1 Notices of Appearances being filed, no procedural schedule has been set, the record  
2 on appeal has not yet been filed and briefing has not commenced. EUREKA  
3 COUNTY does not object to the consolidation of the cases on the terms contained in  
4 the Order granting the Stipulation and Order to Consolidate Cases entered March 27,  
5 2019. Petitioners and the State Engineer will not be prejudiced by EUREKA  
6 COUNTY's intervention. Therefore, EUREKA COUNTY's motion is timely.

7 (2) Intervention of Right

8 EUREKA COUNTY is a political subdivision of the State of Nevada and  
9 provides water service within portions of Eureka County, Nevada. EUREKA  
10 COUNTY owns the following or portions of the following junior groundwater rights  
11 in Diamond Valley: Permits 18851, 18988, 20565, 22217, 23462, 24378, 26542,  
12 29603, 40393, 55660, 57856, 57857, 62929, 63052, 64117, 66207, 66208, 67902,  
13 68923, 71843, 72936, 76526, 79707, 83241, 83243, 83245, 87437, 87716, 87717,  
14 87718, 87719, 88191, 88192, 88193, 88194 and 88195.

15 EUREKA COUNTY was served by the Petitioners with their respective  
16 Petitions for Judicial Review and Notices of Appeal as required by NRS 533.450(3).  
17 NRS 533.450(3) requires ".... A similar notice must also be served personally or by  
18 registered or certified mail upon the person who may have been affected by the order  
19 or decision." EUREKA COUNTY is entitled to participate in these consolidated  
20 judicial review proceedings as a "person who may have been affected" by the State  
21 Engineer's Order 1302 as provided in NRS 533.450(3). Further, NRS 533.450(2)  
22 provides judicial review of the proceedings in this instance must be informal and  
23 summary, but full opportunity to be heard must be had before judgment is  
24 pronounced.<sup>2</sup>

25 ///

26  
27 <sup>2</sup> See NRS 533.450(5) which recognizes "each party of record" must be served with a motion for stay and "any party"  
28 may oppose the motion. No formal intervention is required to be granted to participate as a "party" pursuant to NRS  
533.450(5). Further, this Court has authority to drop or add parties of its own initiative at any stage of the action  
pursuant to NRCP 21. See Desert Valley Water Co. v. State, 104 Nev. 718, 721, 766 P.2d 886, 887 (1988) (Participation  
in District Court proceedings on judicial review of STATE ENGINEER determinations should be encouraged).



1 Groundwater Management Plans are governed by NRS 534.037. Because this  
2 is not a water right proceeding challenging a Ruling issued by the State Engineer on a  
3 water right application or protest to the water right application such that EUREKA  
4 COUNTY was defined as a party as provided in NAC 533.050, practice and procedure  
5 for protest hearings, EUREKA COUNTY files this Motion to Intervene seeking to  
6 intervene as a matter of right under NRS 533.450 for this GMP proceeding governed  
7 by NRS 534.037.

8 With regard to NRCP 24(a)(2), in the GMP approved by the State Engineer,  
9 EUREKA COUNTY's municipal water rights are exempted from the GMP.  
10 Petitioners request the Court reverse the State Engineer's approval of the GMP upon  
11 numerous grounds as set forth in their Petitions for Judicial Review. The alleged  
12 errors appear to advocate curtailed pumping by priority as the solution to over-  
13 pumping in Diamond Valley. EUREKA COUNTY is so situated that it is not able to  
14 protect its water rights and their status under the GMP, avoiding curtailment by  
15 priority, unless it participates in this action.

16 As the Nevada Supreme Court noted in Eureka County v. Seventh Judicial  
17 District Court in and for the County of Eureka, 134 Nev. Adv. Op. 37, 417 P.3d 1121,  
18 1123 (2018), water rights are unique forms of property and those with an ownership  
19 interest cannot be adequately represented by others. Id. at 1125-1126. Participation in  
20 District Court proceedings on judicial review of STATE ENGINEER determinations  
21 should be encouraged. Desert Valley Water Co. v. State, 104 Nev. 718, 721, 766 P.2d  
22 886, 887 (1988).

23 If the relief requested by Petitioners in their Petitions for Judicial Review is  
24 granted, EUREKA COUNTY will be substantially and directly impacted by any  
25 action which may be taken by the Court. EUREKA COUNTY's interest in this  
26 proceeding can only be protected by EUREKA COUNTY's participation as an  
27 intervenor in this case. EUREKA COUNTY therefore should be granted intervention  
28 in this consolidated proceeding.

1 (3) Permissive Intervention

2 Alternatively, EUREKA COUNTY should be allowed to intervene on the basis  
3 of NRCP 24(b)(1)(B) which provides that on timely motion, the court may permit  
4 anyone to intervene who "has a claim or defense that shares with the main action a  
5 common question of law or fact." In exercising its discretion, the Court shall consider  
6 whether the intervention will unduly delay or prejudice the adjudication of the original  
7 parties' rights. See NRCP 24(b)(3); Dangberg Holdings v. Douglas Co., 115 Nev.  
8 129, 141, 978 P.2d 311, 318 (1999) (granting intervention was not manifest abuse of  
9 discretion where bringing all parties together in one proceeding before one tribunal  
10 would foster the principles of judicial economy and finality).

11 EUREKA COUNTY has vested surface water rights and permitted or  
12 certificated groundwater water rights in Diamond Valley. The issues to be litigated  
13 before the Court contain questions of law and fact common to Petitioners, the State  
14 Engineer and EUREKA COUNTY. EUREKA COUNTY seeks to uphold Order 1302  
15 to protect its property interests and its water rights. EUREKA COUNTY's  
16 intervention will not delay or prejudice the adjudication of the rights of the original  
17 parties. EUREKA COUNTY's intervention in the proceeding will facilitate  
18 adjudication of the issues addressed by Petitioners. EUREKA COUNTY, therefore,  
19 respectfully requests that it be allowed, alternatively, permissive intervention in the  
20 event that this Court does not allow EUREKA COUNTY to intervene as a matter of  
21 right.

22 **C. POSITION OF EUREKA COUNTY**

23 NRCP 24(c) provides that a motion to intervene shall be accompanied by a  
24 pleading that sets out the claim or defense for which intervention is sought. EUREKA  
25 COUNTY requests to be joined as a Respondent in this action. EUREKA COUNTY  
26 is a vested water right and groundwater right holder in Diamond Valley. The State  
27 Engineer is responsible for the administration and management of the State's surface  
28 and groundwater sources. EUREKA COUNTY has been granted water rights by the

1 State Engineer in Diamond Valley. EUREKA COUNTY's position is that State  
2 Engineer Order 1302 should be upheld on judicial review. Based upon the errors  
3 alleged in their Petitions of Judicial Review, Petitioners seek to usurp the jurisdiction  
4 and discretion of the State Engineer to manage the Diamond Valley groundwater basin  
5 and instead seek an order requiring the State Engineer to curtail groundwater pumping  
6 in Diamond Valley. This is improper in light of NRS 534.037. EUREKA  
7 COUNTY's Notice of Appearance and Intent to Participate as a Respondent aligned  
8 with upholding State Engineer Order 1302 is attached hereto as **Exhibit "1"**.

9 II.

10 CONCLUSION

11 For the foregoing reasons, EUREKA COUNTY respectfully requests the Court  
12 grant it leave to intervene. As an intervenor, EUREKA COUNTY requests the  
13 Court's permission to file pleadings, fully participate in the consolidated actions and  
14 present argument and legal briefs as its interests may appear on issues developed  
15 during the course of the proceedings. EUREKA COUNTY's intervention is mandated  
16 by the public's interest as well as its own direct and substantial interest in the Petitions  
17 for Judicial Review seeking to reverse and/or remand Order 1302 approving the  
18 Groundwater Management Plan affecting groundwater right holders in Diamond  
19 Valley. EUREKA COUNTY's interests cannot be adequately represented by any  
20 other party to this proceeding. A proposed Order Granting EUREKA COUNTY's  
21 Motion to Intervene is attached hereto as **Exhibit "2"**.

22 III.

23 AFFIRMATION

24 The undersigned does hereby affirm that the preceding document **DOES NOT**  
25 contain the social security number of any person.

26 ///

27 ///

28 ///

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1 DATED this 3<sup>rd</sup> day of April, 2019.

2 KAREN A. PETERSON, ESQ.  
3 Nevada State Bar No. 366  
4 ALLISON MacKENZIE, LTD.  
5 402 North Division Street  
6 Carson City, Nevada 89703  
7 Telephone: (775) 687-0202  
8 Email: [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)

9 ~ and ~

10 EUREKA COUNTY DISTRICT ATTORNEY  
11 701 South Main Street  
12 Post Office Box 190  
13 Eureka, Nevada 89316  
14 Telephone: (775) 237-5315  
15 Email: [tbeutel@eurekacountynv.gov](mailto:tbeutel@eurekacountynv.gov)

16 BY:

17   
18 THEODORE BEUTEL, ESQ.  
19 Nevada State Bar No. 5222

20 Attorneys for EUREKA COUNTY  
21  
22  
23  
24  
25  
26  
27  
28



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E-Mail Address: law@allisonmackenzie.com

## CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, this document applies to Case Nos. CV1902-348; -349; and -350; and that on this date, I caused the foregoing document to be served to all parties to this action by:

✓ Electronic transmission

Paul G. Taggart, Esq.  
David H. Rigdon, Esq.  
Timothy D. O'Connor, Esq.  
Attorneys for Renner, Sadler Ranch  
and Venturacci  
[Paul@legaltnt.com](mailto:Paul@legaltnt.com)  
[David@legaltnt.com](mailto:David@legaltnt.com)  
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Tori N. Sundheim, Esq.  
Attorneys for State Engineer  
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Don Springmeyer, Esq.  
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✓ Placing a true copy thereof in a sealed postage prepaid envelope, in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

Courtesy Copy to:  
Hon. Gary D. Fairman  
Department Two  
P.O. Box 151629  
Ely, NV 89315  
[wlopez@whitepinecountynv.gov](mailto:wlopez@whitepinecountynv.gov)

DATED this 3<sup>rd</sup> day of April, 2019.

  
NANCY FONTENOT

**INDEX OF EXHIBITS**

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	EUREKA COUNTY's Notice of Appearance and Intent to Participate	03
"2"	Order Granting EUREKA COUNTY's Motion to Intervene	03

4826-4926-5806, v. 1

ALLISON MacKENZIE, LTD.  
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# **EXHIBIT “1”**

1 Case No. CV-1902-348  
2 (consolidated with Case Nos.  
3 CV-1902-349 and CV-1902-350)

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7 Dept. No. Two

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11 **IN THE SEVENTH JUDICIAL DISTRICT COURT**  
12 **OF THE STATE OF NEVADA IN AND FOR**  
13 **THE COUNTY OF EUREKA**

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TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES; and  
EUREKA COUNTY,

Respondents.

**EUREKA COUNTY'S NOTICE OF APPEARANCE**  
**AND INTENT TO PARTICIPATE**

EUREKA COUNTY, by and through its counsel of record, ALLISON  
MacKENZIE, LTD. and THEODORE BEUTEL, ESQ., the EUREKA COUNTY  
DISTRICT ATTORNEY, hereby enters its notice of appearance and intent to  
participate as a Respondent in the proceedings on the Petitions for Judicial Review in  
the above consolidated actions.

///

///



ALLISON MacKENZIE, LTD.  
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AFFIRMATION

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

DATED this 3<sup>rd</sup> day of April, 2019.

KAREN A. PETERSON, ESQ.  
Nevada State Bar No. 366  
ALLISON MacKENZIE, LTD.  
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Carson City, Nevada 89703  
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~ and ~

EUREKA COUNTY DISTRICT ATTORNEY  
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Email: [theutel@eurekacountynv.gov](mailto:theutel@eurekacountynv.gov)

BY:

  
\_\_\_\_\_  
THEODORE BEUTEL, ESQ.  
Nevada State Bar No. 5222

Attorneys for Intervenor,  
EUREKA COUNTY

4830-7843-3425, v. 1

# **EXHIBIT “2”**

1 Case No. CV-1902-348  
2 (consolidated with Case Nos.  
3 CV-1902-349 and CV-1902-350)

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11 **IN THE SEVENTH JUDICIAL DISTRICT COURT**  
12 **OF THE STATE OF NEVADA IN AND FOR**  
13 **THE COUNTY OF EUREKA**

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TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES; and  
EUREKA COUNTY,

Respondents.

**ORDER GRANTING EUREKA COUNTY'S MOTION TO INTERVENE**

THIS MATTER is before this Court on EUREKA COUNTY's Motion to Intervene. This Court having considered the applicable law and facts hereby finds as follows:

1. The Motion to Intervene is **GRANTED**.
2. EUREKA COUNTY shall be joined as a Respondent in this action and shall be entitled to file pleadings, fully participate in the consolidated actions and present argument and legal briefs as its interests may appear on issues developed during the course of the proceedings.

1                   3.    The caption of the above consolidated actions shall reflect  
2 EUREKA COUNTY as a Respondent.

3                   **IT IS SO ORDERED.**

4                   DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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7                   DISTRICT JUDGE \_\_\_\_\_

8 4847-5943-1569, v. 1  
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ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

1           **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
2                                   **IN AND FOR THE COUNTY OF EUREKA**

3 TIMOTHY LEE & CONSTANCE MARIE  
4 BAILEY; FRED & CAROLYN BAILEY;  
5 IRA R. & MONTIRA RENNER; SADLER  
6 RANCH, LLC; and DANIEL S.  
7 VENTURACCI,

8                                   Petitioners,

9 vs.

10 TIM WILSON, P.E., Nevada State Engineer,  
11 DIVISION OF WATER RESOURCES,  
12 DEPARTMENT OF CONSERVATION AND  
13 NATURAL RESOURCES,  
14  
15 Respondent.

Case No. CV1902-348

(Consolidated with Case Nos. CV1902-349  
and CV-1902-350)

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER TO CONSOLIDATE CASES**

NO. \_\_\_\_\_ FILED \_\_\_\_\_

**APR 05 2019**

By *Eureka County Clerk*

16           NOTICE IS HEREBY GIVEN that the STIPULATION AND ORDER TO  
17 CONSOLIDATE CASES was signed by the Judge on March 26, 2019 and was entered in the  
18 above-captioned consolidated matters on March 27, 2019. True and correct copies of each  
19 stipulation and order for each case are attached hereto.

**AFFIRMATION**

**Pursuant to NRS 239B.030(4)**

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

22           DATED this 3rd day of April, 2019

**WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

By *Don Springmeyer*

DON SPRINGMEYER, ESQ.  
Nevada Bar No. 1021  
CHRISTOPHER W. MIXSON, ESQ.  
Nevada Bar No. 10685  
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Las Vegas, Nevada 89120  
(702) 341-5200/Fax: (702) 341-5300  
*Attorneys for Petitioners*

**RECEIVED**

**APR 05 2019**

**Eureka County Clerk**

**JA0162**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 3rd day of April, 2019, a true and correct copy of NOTICE OF  
3 ENTRY OF STIPULATION AND ORDER TO CONSOLIDATE CASES was placed in an  
4 envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00  
5 p.m. at WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established  
6 procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an  
7 employee and deposited in a U.S. Mail box.

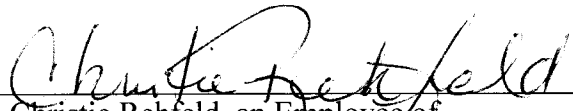
8 Tim Wilson, P.E.  
9 Nevada State Engineer  
10 Division of Water Resources  
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Allison MacKenzie, Ltd.  
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14 Ted Beutel, Esq.  
15 Eureka County District Attorney  
P.O. Box 190  
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16  
17 By   
18 Christie Rehfeld, an Employee of  
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
20 RABKIN, LLP  
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MAR 27 2019

*Eureka County Clerk*  
*[Signature]*

1 **IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

2 **IN AND FOR THE COUNTY OF EUREKA**

3  
4  
5 TIMOTHY LEE & CONSTANCE MARIE  
6 BAILEY; FRED & CAROLYN BAILEY; IRA R.  
7 & MONTIRA RENNER; SADLER RANCH,  
8 LLC; and DANIEL S. VENTURACCI,

Case No. CV1902-350

(proposed to be consolidated with Case Nos.  
CV1902-348 and CV-1902-349)

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Respondent.

**STIPULATION AND ORDER TO CONSOLIDATE CASES**

COME NOW, IRA R. RENNER, an individual, and MONTIRA RENNER, an individual ("Renner"), by and through their counsel, PAUL G. TAGGART, ESQ. and TIMOTHY D. O'CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD.; SADLER RANCH, LLC, a Nevada limited-liability company ("Sadler"), and DANIEL S. VENTURACCI, an individual ("Venturacci"), by and through their counsel, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD.; TIMOTHY LEE BAILEY and CONSTANCE MARIE BAILEY, a husband and wife; and FRED BAILEY and CAROLYN BAILEY, a husband and wife (collectively, the "Baileys"), by and through their counsel, DON SPRINGMEYER, ESQ. and CHRISTOPHER W. MIXSON, ESQ., of the law firm of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP; and TIM WILSON, P.E., Acting Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, by and through his counsel, AARON D. FORD, Attorney General of the State of Nevada, and TORI N. SUNDHEIM, Deputy Attorney General, hereby agree and stipulate to consolidate Case No. CV1902-348 (*Ira R. Renner, et*

Taggart & Taggart, Ltd.  
101 North Mississippi Street  
Carson City, Nevada 89703  
(775) 882-9900 Telephone  
(775) 882-9900 Facsimile

MAR 25 2019

Eureka County Clerk

1 *al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and  
2 Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*), all pending in Department  
3 1 of the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. Pursuant  
4 to Nevada Rule of Civil Procedure ("NRCP") 42(3), actions before the Court that involve a common  
5 question of law or fact may be consolidated. As these cases all involve substantially similar issues of  
6 law and facts arising from State Engineer Order 1302, all parties agree they should be consolidated.

7 The parties hereby agree and stipulate that:

8 1. Documents filed subsequent to consolidation shall:

- 9 a. include a caption in substantially the same format as the caption set forth above,  
10 b. be filed only in Case No. CV1902-348, and shall designate the case number as  
11 "Case No. CV1902-348 (consolidated with Case Nos. CV1902-349 and CV1902-350)", and  
12 c. shall include on the certificate of service the following information: "This  
13 document applies to Case Nos. CV1902-348; -349; and -350."

14 2. All filings in this matter may be served electronically using the following email  
15 addresses:

16 Paul G. Taggart, Esq.  
David H. Rigdon, Esq.  
17 Timothy D. O'Connor, Esq.  
Attorneys for Renner, Sadler Ranch, and Venturacci  
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Email: [david@legaltnt.com](mailto:david@legaltnt.com)  
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24 Tori N. Sundheim, Esq.  
Attorney for State Engineer  
25 Email: [tsundheim@ag.nv.gov](mailto:tsundheim@ag.nv.gov)

26 3. Consolidation of the three petitions for judicial review shall not broaden or otherwise  
27 enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise  
28 appeal issues only to the extent that they are authorized to do so under their respective petitions.



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4. Consolidation of the three petitions for judicial review shall not limit any party's substantive or procedural rights, including the number and sequencing of written briefing.

5. Once the above-referenced cases have been consolidated, the parties request a status conference be set at the soonest available date and time.

6. At the conclusion of briefing and oral argument, the Court should render one judgment that shall be considered a full adjudication of all three cases.

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 18<sup>th</sup> day of March, 2019.

DATED this 18<sup>th</sup> day of March, 2019.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 - Telephone  
(775) 883-9900 - Facsimile

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By: 

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Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
Nevada State Bar No. 13567  
TIMOTHY D. O'CONNOR, ESQ.  
Nevada State Bar No. 14098

By:  

DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
CHRISTOPHER W. MIXSON, ESQ.  
Nevada State Bar No. 10685

*Attorneys for the Baileys*

*Attorneys for Renner, Sadler Ranch, and  
Venturacci*

DATED this 19<sup>th</sup> day of March, 2019.

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1219 - Telephone  
(775) 684-1108 - Facsimile

By: 

TORI N. SUNDHEIM, ESQ.  
Nevada State Bar No. 14156

*Attorney for State Engineer*

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 Telephone  
(775) 883-9900 Facsimile

**ORDER**

**UPON CONSIDERATION**, and good cause appearing therefore, this Court hereby **GRANTS** the foregoing Stipulation and Order to Consolidate Cases.

**IT IS HEREBY ORDERED** that, pursuant to NRCP 42(3), Case No. CV1902-348 (*Ira R. Renner, et al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*) are consolidated into Case No. CV1902-348. At the conclusion of briefing and oral argument, the Court will render one judgment that shall be considered a full adjudication of all three cases.

**IT IS HEREBY FURTHER ORDERED** that documents filed subsequent to consolidation shall:

- a. include a caption in substantially the same format as the caption set forth in the parties' stipulation for consolidation,
- b. be filed only in Case No. CV1902-348, and shall designate the case number as "Case No. CV1902-348 (consolidated with Case Nos. CV1902-349 and CV1902-350)", and
- c. shall include on the certificate of service the following information: "This document applies to Case Nos. CV1902-348; -349; and -350."

**IT IS HEREBY FURTHER ORDERED** that all papers filed in this consolidated case shall be served on the parties at the email addresses listed above in Paragraph 2 of the Stipulation and Order to Consolidate Cases.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not broaden or otherwise enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise appeal issues only to the extent that they are authorized to do so under their respective petitions.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not limit any party's substantive or procedural rights, including the number and sequencing of written briefing.

**IT IS HEREBY FURTHER ORDERED** that a copy of this Order shall be filed in each of the three district court dockets for the consolidated cases.

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IT IS HEREBY FURTHER ORDERED that <sup>telephonic</sup> a status conference be set on the 9<sup>th</sup> day  
of April, 2019, at the hour of 9 : 30 A.m.

IT IS SO ORDERED.

March 26, 2019



DISTRICT COURT JUDGE

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 883-0900 Telephone  
(775) 883-0900 Facsimile

MAR 27 2019

By [Signature]  
Eureka County Clerk

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF EUREKA**

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Case No. CV1902-348

(proposed to be consolidated with Case Nos.  
CV1902-349 and CV-1902-350)

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES,

Respondent.

**STIPULATION AND ORDER TO CONSOLIDATE CASES**

COME NOW, IRA R. RENNER, an individual, and MONTIRA RENNER, an individual ("Renner"), by and through their counsel, PAUL G. TAGGART, ESQ. and TIMOTHY D. O'CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD.; SADLER RANCH, LLC, a Nevada limited-liability company ("Sadler"), and DANIEL S. VENTURACCI, an individual ("Venturacci"), by and through their counsel, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of TAGGART & TAGGART, LTD.; TIMOTHY LEE BAILEY and CONSTANCE MARIE BAILEY, a husband and wife; and FRED BAILEY and CAROLYN BAILEY, a husband and wife (collectively, the "Baileys"), by and through their counsel, DON SPRINGMEYER, ESQ. and CHRISTOPHER W. MIXSON, ESQ., of the law firm of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP; and TIM WILSON, P.E., Acting Nevada State Engineer, DIVISION OF WATER RESOURCES, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, by and through his counsel, AARON D. FORD, Attorney General of the State of Nevada, and TORI N. SUNDHEIM, Deputy Attorney General, hereby agree and stipulate to consolidate Case No. CV1902-348 (*Ira R. Renner, et*

1 *al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and  
2 Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*), all pending in Department  
3 I of the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. Pursuant  
4 to Nevada Rule of Civil Procedure ("NRCP") 42(3), actions before the Court that involve a common  
5 question of law or fact may be consolidated. As these cases all involve substantially similar issues of  
6 law and facts arising from State Engineer Order 1302, all parties agree they should be consolidated.

7 The parties hereby agree and stipulate that:

8 1. Documents filed subsequent to consolidation shall:

9 a. include a caption in substantially the same format as the caption set forth above,

10 b. be filed only in Case No. CV1902-348, and shall designate the case number as

11 "Case No. CV1902-348 (consolidated with Case Nos. CV1902-349 and CV1902-350)", and

12 c. shall include on the certificate of service the following information: "This  
13 document applies to Case Nos. CV1902-348; -349; and -350."

14 2. All filings in this matter may be served electronically using the following email  
15 addresses:

16 Paul G. Taggart, Esq.

David H. Rigdon, Esq.

17 Timothy D. O'Connor, Esq.

Attorneys for Renner, Sadler Ranch, and Venturacci

18 Email: [paul@legaltnt.com](mailto:paul@legaltnt.com)

Email: [david@legaltnt.com](mailto:david@legaltnt.com)

19 Email: [tim@legaltnt.com](mailto:tim@legaltnt.com)

20 Don Springmeyer, Esq.

21 Christopher W. Mixson, Esq.

Attorneys for the Baileys

22 Email: [dspringmeyer@wrslawyers.com](mailto:dspringmeyer@wrslawyers.com)

Email: [cmixson@wrslawyers.com](mailto:cmixson@wrslawyers.com)

23 Tori N. Sundheim, Esq.

24 Attorney for State Engineer

25 Email: [tsundheim@ag.nv.gov](mailto:tsundheim@ag.nv.gov)

26 3. Consolidation of the three petitions for judicial review shall not broaden or otherwise  
27 enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise  
28 appeal issues only to the extent that they are authorized to do so under their respective petitions.

Laggart & Laggart, Ltd.  
88 North Maryland Street  
Carson City, Nevada 89401  
(775) 882-0900 Telephone  
(775) 883-4900 Facsimile

1           4. Consolidation of the three petitions for judicial review shall not limit any party's  
2 substantive or procedural rights, including the number and sequencing of written briefing.

3           5. Once the above-referenced cases have been consolidated, the parties request a status  
4 conference be set at the soonest available date and time.

5           6. At the conclusion of briefing and oral argument, the Court should render one judgment  
6 that shall be considered a full adjudication of all three cases.

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 18<sup>th</sup> day of March, 2019.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 - Telephone  
(775) 883-9900 - Facsimile

By: 

PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
Nevada State Bar No. 13567  
TIMOTHY D. O'CONNOR, ESQ.  
Nevada State Bar No. 14098

*Attorneys for Renner, Sadler Ranch, and  
Venturacci*

DATED this 18<sup>th</sup> day of March, 2019.

WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP  
3556 E. Russell Road, Second Floor  
Las Vegas, Nevada 89120  
(702) 341-5200 - Telephone  
(702) 341-5300 - Facsimile

By: 

DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
CHRISTOPHER W. MIXSON, ESQ.  
Nevada State Bar No. 10685

*Attorneys for the Baileys*

DATED this \_\_\_\_\_ day of March, 2019.

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1219 - Telephone  
(775) 684-1108 - Facsimile

By: \_\_\_\_\_

TORI N. SUNDHEIM, ESQ.  
Nevada State Bar No. 14156

*Attorney for State Engineer*

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 - Telephone  
(775) 883-9900 - Facsimile



**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this \_\_\_\_\_ day of March, 2019.

DATED this \_\_\_\_\_ day of March, 2019.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 – Telephone  
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WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP  
3556 E. Russell Road, Second Floor  
Las Vegas, Nevada 89120  
(702) 341-5200 – Telephone  
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By: \_\_\_\_\_  
PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
Nevada State Bar No. 13567  
TIMOTHY D. O'CONNOR, ESQ.  
Nevada State Bar No. 14098

By: \_\_\_\_\_  
DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
CHRISTOPHER W. MIXSON, ESQ.  
Nevada State Bar No. 10685

*Attorneys for the Baileys*

*Attorneys for Renner, Sadler Ranch, and  
Venturacci*

DATED this 18<sup>TH</sup> day of March, 2019.

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1219 – Telephone  
(775) 684-1108 – Facsimile

By: \_\_\_\_\_  
TORI N. SUNDHEIM, ESQ.  
Nevada State Bar No. 14156

*Attorney for State Engineer*

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 Telephone  
(775) 883-9900 Facsimile

**ORDER**

**UPON CONSIDERATION**, and good cause appearing therefore, this Court hereby **GRANTS** the foregoing Stipulation and Order to Consolidate Cases.

**IT IS HEREBY ORDERED** that, pursuant to NRCP 42(3), Case No. CV1902-348 (*Ira R. Renner, et al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*) are consolidated into Case No. CV1902-348. At the conclusion of briefing and oral argument, the Court will render one judgment that shall be considered a full adjudication of all three cases.

**IT IS HEREBY FURTHER ORDERED** that documents filed subsequent to consolidation shall:

- a. include a caption in substantially the same format as the caption set forth in the parties' stipulation for consolidation,
- b. be filed only in Case No. CV1902-348, and shall designate the case number as "Case No. CV1902-348 (consolidated with Case Nos. CV1902-349 and CV1902-350)", and
- c. shall include on the certificate of service the following information: "This document applies to Case Nos. CV1902-348; -349; and -350."

**IT IS HEREBY FURTHER ORDERED** that all papers filed in this consolidated case shall be served on the parties at the email addresses listed above in Paragraph 2 of the Stipulation and Order to Consolidate Cases.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not broaden or otherwise enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise appeal issues only to the extent that they are authorized to do so under their respective petitions.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not limit any party's substantive or procedural rights, including the number and sequencing of written briefing.

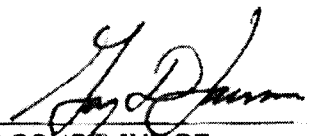
**IT IS HEREBY FURTHER ORDERED** that a copy of this Order shall be filed in each of the three district court dockets for the consolidated cases.

Jaggart & Jaggart, Ltd.  
801 North Minnesota Street  
Carson City, Nevada 89701  
(775) 882-9900 Telephone  
(775) 882-9900 Facsimile

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IT IS HEREBY FURTHER ORDERED that a <sup>telephonic</sup> status conference be set on the 9<sup>th</sup> day  
of April, 2019, at the hour of 9:30 A.m.

IT IS SO ORDERED.



DISTRICT COURT JUDGE

MAR 27 2019

Eureka County Clerk  
By: *[Signature]*

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF EUREKA**

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Case No. CV1902-349

(proposed to be consolidated with Case Nos.  
CV1902-348 and CV-1902-350)

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES,

Respondent.

**STIPULATION AND ORDER TO CONSOLIDATE CASES**

COME NOW, IRA R. RENNER, an individual, and MONTIRA RENNER, an individual  
("Renner"), by and through their counsel, PAUL G. TAGGART, ESQ. and TIMOTHY D. O'CONNOR,  
ESQ., of the law firm of TAGGART & TAGGART, LTD.; SADLER RANCH, LLC, a Nevada limited-  
liability company ("Sadler"), and DANIEL S. VENTURACCI, an individual ("Venturacci"), by and  
through their counsel, PAUL G. TAGGART, ESQ. and DAVID H. RIGDON, ESQ., of the law firm of  
TAGGART & TAGGART, LTD.; TIMOTHY LEE BAILEY and CONSTANCE MARIE BAILEY, a  
husband and wife; and FRED BAILEY and CAROLYN BAILEY, a husband and wife (collectively, the  
"Baileys"), by and through their counsel, DON SPRINGMEYER, ESQ. and CHRISTOPHER W.  
MIXSON, ESQ., of the law firm of WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP; and  
TIM WILSON, P.E., Acting Nevada State Engineer, DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, by and through his counsel,  
AARON D. FORD, Attorney General of the State of Nevada, and TORI N. SUNDHEIM, Deputy  
Attorney General, hereby agree and stipulate to consolidate Case No. CV1902-348 (*Ira R. Renner, et*

Taggart & Taggart, Ltd.  
108 North Mississippi Street  
Carson City, Nevada 89703  
(775) 882-9900 Telephone  
(775) 883-4900 Facsimile

MAR 25 2019

Eureka County Clerk

1 *al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and  
2 Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*), all pending in Department  
3 1 of the Seventh Judicial District Court of the State of Nevada in and for the County of Eureka. Pursuant  
4 to Nevada Rule of Civil Procedure ("NRCP") 42(3), actions before the Court that involve a common  
5 question of law or fact may be consolidated. As these cases all involve substantially similar issues of  
6 law and facts arising from State Engineer Order 1302, all parties agree they should be consolidated.

7 The parties hereby agree and stipulate that:

8 1. Documents filed subsequent to consolidation shall:

- 9 a. include a caption in substantially the same format as the caption set forth above,  
10 b. be filed only in Case No. CV1902-348, and shall designate the case number as  
11 "Case No. CV1902-348 (consolidated with Case Nos. CV1902-349 and CV1902-350)", and  
12 c. shall include on the certificate of service the following information: "This  
13 document applies to Case Nos. CV1902-348; -349; and -350."

14 2. All filings in this matter may be served electronically using the following email  
15 addresses:

16 Paul G. Taggart, Esq.  
17 David H. Rigdon, Esq.  
18 Timothy D. O'Connor, Esq.  
19 Attorneys for Renner, Sadler Ranch, and Venturacci  
20 Email: [paul@legaltnt.com](mailto:paul@legaltnt.com)  
21 Email: [david@legaltnt.com](mailto:david@legaltnt.com)  
22 Email: [tim@legaltnt.com](mailto:tim@legaltnt.com)

23 Don Springmeyer, Esq.  
24 Christopher W. Mixson, Esq.  
25 Attorneys for the Baileys  
26 Email: [dspringmeyer@wrslawyers.com](mailto:dspringmeyer@wrslawyers.com)  
27 Email: [cmixson@wrslawyers.com](mailto:cmixson@wrslawyers.com)

28 Tori N. Sundheim, Esq.  
Attorney for State Engineer  
Email: [tsundheim@ag.nv.gov](mailto:tsundheim@ag.nv.gov)

3 Consolidation of the three petitions for judicial review shall not broaden or otherwise  
4 enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise  
5 appeal issues only to the extent that they are authorized to do so under their respective petitions.

1           4.     Consolidation of the three petitions for judicial review shall not limit any party's  
2 substantive or procedural rights, including the number and sequencing of written briefing.

3           5.     Once the above-referenced cases have been consolidated, the parties request a status  
4 conference be set at the soonest available date and time.

5           6.     At the conclusion of briefing and oral argument, the Court should render one judgment  
6 that shall be considered a full adjudication of all three cases.

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Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-4900 - Telephone  
(775) 883-9900 - Facsimile

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 18<sup>th</sup> day of March, 2019.

DATED this 18<sup>th</sup> day of March, 2019.

TAGGART & TAGGART, LTD.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 - Telephone  
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WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
RABKIN, LLP  
3556 E. Russell Road, Second Floor  
Las Vegas, Nevada 89120  
(702) 341-5200 - Telephone  
(702) 341-5300 - Facsimile

By: 

By: 

PAUL G. TAGGART, ESQ.  
Nevada State Bar No. 6136  
DAVID H. RIGDON, ESQ.  
Nevada State Bar No. 13567  
TIMOTHY D. O'CONNOR, ESQ.  
Nevada State Bar No. 14098

DON SPRINGMEYER, ESQ.  
Nevada State Bar No. 1021  
CHRISTOPHER W. MIXSON, ESQ.  
Nevada State Bar No. 10685

*Attorneys for Renner, Sadler Ranch, and  
Venturacci*

*Attorneys for the Baileys*

DATED this 19<sup>th</sup> day of March, 2019.

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
AARON D. FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1219 - Telephone  
(775) 684-1108 - Facsimile

By: 

TORI N. SUNDHEIM, ESQ.  
Nevada State Bar No. 14156

*Attorney for State Engineer*

Taggart & Taggart, Ltd.  
108 North Minnesota Street  
Carson City, Nevada 89703  
(775) 882-9900 - Telephone  
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**ORDER**

**UPON CONSIDERATION**, and good cause appearing therefore, this Court hereby **GRANTS** the foregoing Stipulation and Order to Consolidate Cases.

**IT IS HEREBY ORDERED** that, pursuant to NRCP 42(3), Case No. CV1902-348 (*Ira R. Renner, et al. v. Tim Wilson, P.E.*), Case No. CV1902-349 (*Sadler Ranch, LLC, et al. v. Tim Wilson, P.E.*), and Case No. CV-1902-350 (*Timothy Lee Bailey, et al. v. Nevada State Engineer*) are consolidated into Case No. CV1902-348. At the conclusion of briefing and oral argument, the Court will render one judgment that shall be considered a full adjudication of all three cases.

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- a. include a caption in substantially the same format as the caption set forth in the parties' stipulation for consolidation,
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- c. shall include on the certificate of service the following information: "This document applies to Case Nos. CV1902-348; -349; and -350."

**IT IS HEREBY FURTHER ORDERED** that all papers filed in this consolidated case shall be served on the parties at the email addresses listed above in Paragraph 2 of the Stipulation and Order to Consolidate Cases.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not broaden or otherwise enlarge the appeal rights of any Petitioner and each Petitioner shall be allowed to participate and raise appeal issues only to the extent that they are authorized to do so under their respective petitions.

**IT IS HEREBY FURTHER ORDERED** that consolidation of the three petitions for judicial review shall not limit any party's substantive or procedural rights, including the number and sequencing of written briefing.

**IT IS HEREBY FURTHER ORDERED** that a copy of this Order shall be filed in each of the three district court dockets for the consolidated cases.



Laggart & Laggart, Ltd.  
108 North Main Street  
Carson City, Nevada 89703  
Tel: (775) 882-9900 Telephone  
(775) 883-0900 Facsimile

1 **IT IS HEREBY FURTHER ORDERED** that a <sup>telephonic</sup> status conference be set on the 9<sup>th</sup> day  
2 of April, 2019, at the hour of 9:30 A.m.  
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5 **IT IS SO ORDERED.**

MARCH 26, 2019

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DISTRICT COURT JUDGE  
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APR 25 2019

By Eureka County Clerk

Case No. CV-1902-348 consolidated with case nos.  
CV-1902-349 and CV-1902-350

Dept No. 2

**IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF EUREKA**

\*\*\*\*\*

TIMOTHY LEE BAILEY and  
CONSTANCE MARIE BAILEY; FRED  
BAILEY and CAROLYN BAILEY; IRA  
R.RENNER, an individual, and  
MONTIRA RENNER, an individual;  
SADLER RANCH, LLC; and DANIEL S.  
VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

**ORDER FOLLOWING TELEPHONE  
STATUS HEARING HELD APRIL 9, 2019**

On January 11, 2019, Jason King, P.E., Nevada State Engineer, Division of Water Resources, Department of Conservation and Natural Resources ("State Engineer"), entered Order #1302.<sup>1</sup> On February 11, 2019, petitioners, Ira R. Renner, an individual, and Montira Renner, an individual ("Renner" or "the Renners") filed a petition for judicial review

<sup>1</sup>On or about January 14, 2019, Tim Wilson, P.E., assumed Mr. King's position under the title of acting Nevada State Engineer. Petition for judicial review filed February 11, 2019, at 1, notice of appearance for respondent State Engineer filed February 25, 2019, at 1.

RECEIVED

APR 25 2019

Eureka County Clerk

JA0183

SEVENTH JUDICIAL DISTRICT COURT  
GARY D. FAIRMAN  
DISTRICT JUDGE  
DEPARTMENT 2  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA





1 ("Renner petition") and a notice of appeal of Nevada State Engineer order #1302 ("Renner  
2 notice of appeal") in case no. CV-1902-348. On February 11, 2019, Sadler Ranch, LLC,  
3 a Nevada limited liability company, ("Sadler Ranch") and Daniel S. Venturacci  
4 ("Venturacci"), an individual, collectively referred to a ("S/V") filed a notice of appeal of  
5 Nevada State Engineer order #1302 ("S/V) notice of appeal") and a petition for judicial  
6 review ("S/V petition") in case no. 1902-349. On February 11, 2019, petitioners, Timothy  
7 Lee Bailey and Constance Marie Bailey, a husband and wife and Fred Bailey and Carolyn  
8 Bailey, a husband and wife ("Bailey" or "the Baileys") filed a notice of appeal and petition  
9 for review of Nevada State Engineer order no. 1302 ("Bailey" or "the Bailey's" petition) in  
10 case no. CV-1902-350.

11 On February 2, 2019, the State Engineer filed a notice of appearance for  
12 respondent State Engineer in case nos. CV-1902-348, CV-1902-349, CV-1902-350. On  
13 March 27, 2019, the State Engineer and the current petitioners in case nos. CV-1902-348,  
14 CV-1902-349, and CV-1902-350 filed a stipulation and order to consolidate cases whereby  
15 case nos. CV-1902-349 and CV-1902-350 were consolidated into case no CV-1902-348.

16 On April 9, 2019, the court held a telephone status conference to discuss briefing  
17 and other procedural issues. Appearing at the telephone conference were David H  
18 Rigdon, Esq., representing Sadler Ranch, Venturacci, and the Renners, Don Springmeyer,  
19 Esq., and Christopher W. Mixon, Esq., representing the Baileys, Tori N. Sundheim, Esq.,  
20 representing the State Engineer, and Karen A. Peterson, Esq., representing Eureka  
21 County.<sup>2</sup>

22 During the conference call the court and parties discussed briefing, service of  
23 pleadings and other documents, exhibits format, case consolidation, the record on appeal

24 <sup>2</sup>Although not a party to this case, Eureka County filed a motion to intervene prior to the  
25 telephone conference date. The court found it appropriate to include Eureka County in  
26 the conference call for logistical reasons, including scheduling, to minimize redundancy  
in the event Eureka County becomes a party to these consolidated cases.



1 ("ROA"), the persons entitled to initial notice of these cases, and the scheduling of a future  
2 telephone status conference.

3 Good cause appearing;

4 IT IS HEREBY ORDERED that the parties in each case, as well as any additional  
5 future parties to these cases, shall file all pleadings and serve all parties in case nos. CV-  
6 1902-348 consolidated with case nos. CV-1902-349 and CV-1902-350 with copies of all  
7 briefs, other pleadings, and all other documents that are filed in the consolidated cases.

8 IT IS HEREBY FURTHER ORDERED that each party shall provide a paper courtesy  
9 copy of each brief (excluding paper exhibits) to the court at its chambers in Ely, Nevada.

10 IT IS HEREBY FURTHER ORDERED that the State Engineer shall file the ROA with  
11 the clerk on or before April 30, 2019.

12 IT IS HEREBY FURTHER ORDERED that the ROA filed with the clerk be in a CD  
13 format and any exhibits referenced in any brief or other pleading filed by any party be  
14 submitted to the parties and the court in a CD format.

15 IT IS HEREBY FURTHER ORDERED that pursuant to the agreement of the parties,  
16 the parties shall accept service of all pleadings and documents electronically at the email  
17 addresses in the stipulation and order to consolidate cases. Any additional parties shall  
18 file a notice of email address for electronic service of pleadings.

19 IT IS HEREBY FURTHER ORDERED that this order shall be filed in case nos. CV-  
20 1902-348, CV-1902-349, and CV-1902-350.

21 IT IS HEREBY FURTHER ORDERED that legal counsel for the parties shall meet  
22 and confer by telephone on or before May 24, 2019, for the purpose of discussing the  
23 contents of the ROA, as filed, any proposed supplemental exhibits to the ROA, as well as  
24 any other matter counsel deem appropriate.

25 IT IS HEREBY FURTHER ORDERED that the parties be knowledgeable of the  
26 court's standing orders entered November 26, 2013, and November 2, 2017, regarding



1 brief and motion length and exhibits. The parties are encouraged to communicate with  
2 each other in the event a brief or other motion is expected to exceed the maximum page  
3 limitation prior to filing a motion for leave to file a non-conforming motion or brief.<sup>3</sup>

4 IT IS HEREBY FURTHER ORDERED that a telephone status conference with the  
5 court and counsel be held on June 4, 2019, at 9:30 a.m.

6 DATED this 16<sup>th</sup> day of April, 2019.

7   
8 DISTRICT JUDGE

19  
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21  
22  
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24  
25 <sup>3</sup>The court is cognizant of the number of issues petitioners have raised in each petition  
26 and the novel and complex nature of the issues in these consolidated cases.



AARON D. FORD  
*Attorney General*

CAROLINE BATEMAN  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*

JESSICA L. ADAIR  
*Chief of Staff*

RACHEL J. ANDERSON  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

April 26, 2019

The Honorable Gary D. Fairman  
Seventh Judicial District Court  
County of Eureka  
Post Office Box 677  
Eureka, Nevada 89316

**Re: *Bailey, et al. v. State Engineer***  
**Case No. CV-1902-348 (Consol. with 1902-349 & 1902-350)**

Dear Judge Fairman:

During the April 2, 2019, telephonic status conference to set the briefing schedule for the above-referenced matter, the parties agreed that the Respondent Nevada State Engineer would file the Record on Appeal ("ROA") on April 30, 2019, which is next Tuesday. Since that time, the parties have been engaged in discussions regarding the contents of the ROA, resulting in outstanding requests for the inclusion of certain documents. These requests need to be reviewed by the State Engineer's Office. Therefore, counsel for the parties, including pending Intervenor Eureka County, hereby stipulate and request that the Court extend the time for the State Engineer to file the ROA to May 24, 2019.

The parties will continue to meet and confer regarding the documents constituting the ROA. By agreeing to this extension of time to file the ROA, the parties further agree that no party is waiving its right to seek any future relief from the Court regarding the ROA.

The Honorable Gary D. Fairman  
Re: *Bailey, et al. v. State Engineer*  
April 26, 2019  
Page 2

Should the Court wish for the parties to prepare and file a stipulation and proposed order to extend the time for the State Engineer to file the ROA, they will do so promptly.

Sincerely,

/s/ Tori N. Sundheim  
TORI N. SUNDHEIM  
Deputy Attorney General

/s/ David H. Rigdon  
DAVID H. RIGDON, ESQ.

/s/ Christopher W. Mixson  
CHRISTOPHER W. MIXSON, ESQ.

/s/ Karen A. Peterson  
KAREN A. PETERSON, ESQ.

TNS:dw  
cc: The Honorable Gary D. Fairman  
801 Clark Street, Suite 7  
Ely, Nevada 89301

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

Case No. CV-1902-348  
(consolidated with Case Nos.  
CV-1902-349 and CV-1902-350)

Dept. No. Two

NO. \_\_\_\_\_ FILED

MAY 10 2019

By *Eureka County Clerk*

IN THE SEVENTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND FOR  
THE COUNTY OF EUREKA

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA R.  
& MONTIRA RENNER; SADLER RANCH,  
LLC; and DANIEL S. VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State Engineer,  
DIVISION OF WATER RESOURCES,  
DEPARTMENT OF CONSERVATION AND  
NATURAL RESOURCES; and  
EUREKA COUNTY,

Respondents.

**ORDER GRANTING EUREKA COUNTY'S MOTION TO INTERVENE**

THIS MATTER is before this Court on EUREKA COUNTY's Motion to Intervene. This Court having considered the applicable law and facts hereby finds as follows:

1. The Motion to Intervene is **GRANTED**.
2. EUREKA COUNTY shall be joined as a Respondent in this action and shall be entitled to file pleadings, fully participate in the consolidated actions and present argument and legal briefs as its interests may appear on issues developed during the course of the proceedings.

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Eureka County Clerk

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McDONALD CARANO  
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501  
PHONE 775.788.2000 • FAX 775.788.2020

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CASE NO.: CV-1902-348 (consolidated with  
Case Nos. CV-1902-349 and CV-1902-350)  
  
DEPT. NO.: 2

NO. \_\_\_\_\_ FILED  
  
MAY 13 2019  
By *Eureka County Clerk*

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
  
IN AND FOR THE COUNTY OF EUREKA

\* \* \*

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA  
R. & MONIRA RENNER; SADLER RANC,  
LLC; DANIEL S. VENTURACCI,

MOTION TO INTERVENE

Petitioners,

vs.

TIM WILSON, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

Real Parties-in-Interest J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C  
HAY, CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND  
SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F.  
AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH  
HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN ("the  
Individual Real Parties-in-Interest"), and DIAMOND NATURAL RESOURCES  
PROTECTION AND CONSERVATION ASSOCIATION, a Nevada non-profit corporation  
("the Association" and, collectively with the Individual Real Parties-in-Interest, the "Real  
Parties-in-Interest"), move this Court pursuant to NRCP 24 and NRS 12.130 for an order  
permitting them to intervene as respondents in the above-captioned action and to file an  
answering brief in response to the Petitions, according to the schedule to be established by the

1 Court. Real Parties in Interest will participate in support of the Groundwater Management Plan  
2 (“GMP”) being challenged by the Petitioners.

3 This Motion is made and based on the following Memorandum of Points and  
4 Authorities, the GMP and its appendices and the declaration of Mark Moyle attached hereto, all  
5 of the pleadings and papers on file in this action, and any oral argument that the Court may order  
6 in this matter. As this case involves petitions for judicial review, which are “in the nature of an  
7 appeal” pursuant to NRS 533.450(1), there is no particular “pleading” for the Real Parties-in-  
8 Interest to file with this Motion, as anticipated by NRCP 24. Real Parties-in-Interest seek to file  
9 an answering brief according to the schedule set by the Court and otherwise participate fully as  
10 respondents in this action. Attached hereto as Exhibits 3 and 4 are a proposed order granting this  
11 Motion and a Notice of Appearance and Intent to Participate, respectively.

## 12 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 13 **I. FACTUAL BACKGROUND**

14 As demonstrated by Appendix F attached to the GMP submitted to the State Engineer (a  
15 copy of which is attached hereto as Exhibit 1), the individual Intervenors/Real Parties-in-Interest  
16 are the holders of water rights that will be affected should the Court grant the relief requested by  
17 Petitioners. The property interests of Real Parties-in-Interest are further explained in Exhibit 1  
18 attached hereto and the declaration of Mark Moyle attached hereto as Exhibit 2. The Real Parties  
19 in Interest participated extensively in the process to develop the GMP. (Ex. 2 ¶6).  
20 Intervenor/Real Party in Interest DNRPCA is a non-profit entity formed by Diamond Valley  
21 irrigators, including the Individual Intervenors, specifically for the purpose of developing a  
22 long-term sustainable solution to overdraft problems in the Diamond Valley Hydrographic  
23 Basin, including developing and drafting the GMP. (Ex. 2 ¶¶4-5, 19).

24 The State Engineer issued Order 1302 Granting Petition to Adopt a Groundwater  
25 Management Plan for the Diamond Valley Hydrographic Basin (07-153), Eureka County, State  
26 of Nevada (“Order 1302”) on January 11, 2019. Petitioners filed three separate petitions for  
27 judicial review on February 8 and 11, 2019. On or about February 25, 2019, the State Engineer  
28 filed his Notice of Appearance in each action. On or about March 4, 2019, counsel for each of

1 the Petitioners entered their Notices of Appearance in the other's cases. On March 27, 2019, the  
2 Court entered its Order granting the Stipulation and Order to Consolidate Cases.

3 On April 3, 2019, Eureka County moved to intervene in this consolidated action. The  
4 Court held a telephonic status conference on April 9, 2019. On April 25, 2019, the Court entered  
5 an Order Following Telephonic Status Hearing Held April 9, 2019. Undersigned counsel  
6 understands that the State Engineer has not yet filed the record on appeal, and no further court  
7 proceedings have occurred.

## 8 II. LEGAL ARGUMENT

### 9 A. Real Parties-in-Interest Should Be Allowed to Intervene as of Right

#### 10 1. Legal Standard for Intervention as of Right

11 Rule 24(a) of the Nevada Rules of Civil Procedure provides:

12 (a) Intervention of Right. On timely motion, the court must permit anyone to  
13 intervene who: (1) is given an unconditional right to intervene by a state or  
14 federal statute; or (2) claims an interest relating to the property or transaction  
15 that is the subject of the action, and is so situated that disposing of the action  
16 may as a practical matter impair or impede the movant's ability to protect its  
17 interest, unless existing parties adequately represent that interest.

18 NRCP 24(a); *see State Indus. Ins. Sys. v. Eighth Jud. Dist. Ct.*, 111 Nev. 28, 32-33, 888 P.2d  
19 911, 913 (1995). NRS 12.130 provides a statutory basis for intervention:

20 (a). Before the trial, any person may intervene in an action or proceeding, who  
21 has an interest in the matter in litigation, in the success of either of the parties,  
22 or an interest against both.

23 (b). An intervention takes place when a third person is permitted to become a  
24 party to an action or proceeding between other persons, either by joining the  
25 plaintiff in claiming what is sought by the complaint, or by uniting with the  
26 defendant in resisting the claims of the plaintiff, or by demanding anything  
27 adversely to both the plaintiff and the defendant.

28 (c). Intervention is made as provided by the Nevada Rules of Civil Procedure.

(d). The court shall determine upon the intervention at the same time that the  
action is decided. If the claim of the party intervening is not sustained, he shall  
pay all costs incurred by the intervention.

NRS 12.130.

The Nevada Supreme Court has adopted a four-factor test for determining when a non-

///

party may intervene in a lawsuit as of right under NRCP 24(a)(2). The party must demonstrate:

(1) that it has a sufficient interest in the litigation's subject matter, (2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its interest is not adequately represented by existing parties, and (4) that its application is timely. Determining whether an applicant has met these four requirements is within the district court's discretion.

*Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). "The most important question to be resolved in the determination of the timeliness of an application for intervention is not the length of the delay by the intervenor but the extent of prejudice to the rights of existing parties resulting from the delay." *Lawler v. Ginocchio*, 94 Nev. 623, 626, 584 P.2d 667, 668-669 (1978); accord *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999).

## **2. Real Parties-in-Interest Satisfy the Standard for Intervention as of Right**

As the holders of water rights in Diamond Valley that will be affected should the State Engineer's Order 1302 be reversed, and as water rights holders who petitioned the State Engineer for approval of the GMP, the Individual Real Parties-in-Interest have a sufficient interest in the litigation's subject matter to intervene as of right. As demonstrated by the list attached hereto as Exhibit 1 and the declaration of Mark Moyle attached hereto as Exhibit 2, Real Parties-in-Interest hold title to water rights in the Diamond Valley basin that are subject to the GMP. The permits and certificates issued by the State Engineer to Real Parties-in-Interest and their predecessors constitute property rights. See *Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). If the GMP is reversed or remanded, curtailment of groundwater rights by priority may be ordered. See NRS 534.110(7)(b) and GMP at 1, 8. As a result, the Individual Real Parties in Interests' rights will be affected should the Petitioners get the relief they seek.

Real Parties-in-Interests' ability to protect their rights will be severely impaired if they are not permitted to intervene in this action. (Moyle Decl., Ex. 2 at ¶12). If the State Engineer's approval of the GMP is reversed, as Petitioner's seek, the rights of the Individual Real Parties in Interest could be subjected to curtailment by priority. Their property rights are not represented by any current party in this action. No other party will adequately represent Real Parties-in-

1 Interest's position in this action.

2 The Association is a non-profit organization that was formed, among other things, to  
3 develop the GMP for irrigators in Diamond Valley. (Ex. 2 ¶¶5-6). Its members hold water rights  
4 that could be curtailed if the GMP is reversed. (*Id.* at ¶18). The Association and its members  
5 worked tirelessly on the GMP to address overdraft conditions in Diamond Valley. (*Id.* at ¶¶6-  
6 20).

7 The GMP evolved out of the State Engineer's efforts to get stakeholder involvement in  
8 the groundwater management process. (*Id.* at ¶7). The State Engineer held workshops in March  
9 2009 and again in February 2014 to engage in discussions with Diamond Valley irrigators  
10 regarding potential solutions to the overdraft conditions. (*Id.*). In January 2013, the Association  
11 received a grant from Eureka County to purchase and install six additional well data loggers to  
12 be placed throughout Diamond Valley to collect more thorough groundwater data. (*Id.* at ¶19).  
13 In June 2013, Hansford Economic Consulting conducted a study to assess the financial  
14 feasibility of developing a General Improvement District (GID) that could carry out a water  
15 management program to enhance the sustainability of the underground water supply and storage  
16 for the Diamond Valley Hydrographic Basin. (*Id.* at ¶9). In May 2014, Hansford Economic  
17 Consulting conducted a study of potential water use set-aside programs for Diamond Valley. In  
18 the summer of 2014, the Eureka Conservation District (ECD) retained consultant Steve Walker  
19 to facilitate a scoping process for establishing a GMP in Diamond Valley, including the  
20 identification of issues, hurdles, and potential solutions. (*Id.* at ¶10). In October 2014, ECD sent  
21 out a questionnaire to Diamond Valley water users regarding designation of a CMA in Diamond  
22 Valley by the State Engineer. (*Id.*). In 2015, Steve Lewis of the University of Nevada  
23 Cooperative Extension began to facilitate sessions with stakeholders to develop a Groundwater  
24 Management Plan. (*Id.* at ¶12).

25 In 2015, the State Engineer designated Diamond Valley as a Critical Management Area  
26 (CMA). (*Id.* at ¶13). By law, this designation provides 10 years for groundwater rights holders to  
27 develop a GMP to remove the basin from CMA designation. (*Id.* at ¶13). If the GMP had not  
28 been developed, supported by a majority of water right holders, approved by the State Engineer,

1 and implemented in that timeframe, the State Engineer would be mandated to regulate the  
2 groundwater basin by strict priority. *See* NRS 534.110(7). Junior groundwater rights and  
3 domestic wells (after about May 1960) would be prohibited entirely or severely restricted from  
4 pumping. (Ex. 2 at ¶18).

5 To prevent this from occurring, the Association and its members actively engaged in the  
6 efforts to develop the GMP and address the overdraft conditions in Diamond Valley through a  
7 long-term sustainable groundwater management plan. (*Id.* at ¶19). Reversal of the GMP would  
8 undermine these efforts and severely affect or destroy the livelihood of the Real Parties-in-  
9 Interest. (*Id.* at ¶22).

10 Real Parties-in-Interest's motion to intervene is timely as the Court only recently  
11 consolidated the actions into one; the record on appeal has not yet been filed; and the Petitioners  
12 have not yet filed an opening brief. Participation by the Real Parties-in-Interest will not create a  
13 delay in this action and would not prejudice the rights of the existing parties.

14 **B. Alternatively, Real Parties-in-Interest Should Be Granted Permissive**  
15 **Intervention**

16 **1. Legal Standard for Permissive Intervention**

17 Rule 24(b) of the Nevada Rules of Civil Procedure permits a non-party to an on-going  
18 lawsuit to permissively intervene in certain situations:

19 On timely motion, the court may permit anyone to intervene who: (A) is given a  
20 conditional right to intervene by a state or federal statute; or (B) has a claim or  
21 defense that shares with the main action a common question of law or fact.... In  
22 exercising its discretion, the court must consider whether the intervention will  
unduly delay or prejudice the adjudication of the original parties' rights.

23 NRCP 24(b).

24 **2. Real Parties-in-Interest Satisfy the Standard for Permissive Intervention**

25 At a minimum, NRS 12.130 gives Real Parties-in-Interest a conditional right to  
26 intervene, which should be granted because Real Parties-in-Interest have a significant interest in  
27 the matter and in the State Engineer's success in defending against the petition. Moreover, Real  
28 Parties-in-Interest's defense has common questions of law and fact with that of the State

Engineer; namely, whether the GMP should be affirmed to prevent curtailment by priority. As a result, Real Parties-in-Interest satisfy the standard for permissive intervention

### III. CONCLUSION

Based on the foregoing, the Real Parties-in-Interest request that Court grant them the right to intervene, to submit an answering brief in response to the Petition according to the schedule to be determined by the Court, to present oral argument and to otherwise participate fully in the proceedings as respondents. A proposed Order granting this Motion is attached hereto as Ex. 3. A proposed Notice of Appearance and Intent to Participate is attached hereto as Ex. 4.

### AFFIRMATION

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

DATED: this 10th day of May, 2019.

MCDONALD CARANO LLP



DEBBIE LEONARD (NSBN 8260)  
100 West Liberty Street, 10<sup>th</sup> Floor  
Reno, NV 89505-2670

*Attorneys for Intervenors/Real Parties-in-Interest*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on this date I caused the foregoing document to be served to all parties to this action by electronic transmission to:

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David H. Rigdon  
Timothy D. O'Connor  
Taggart & Taggart  
108 North Minnesota Street  
Carson City, NV 89703

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*Counsel for Petitioner Baileys*

**COURTESY COPY TO:**

Honorable Gary D. Fairman  
Department Two  
P.O. Box 151629  
Ely, NV 89315  
[wlopez@whitepinecountynv.gov](mailto:wlopez@whitepinecountynv.gov)

Dated: May 10, 2019

  
\_\_\_\_\_  
Nancy A. Hoy

## **EXHIBIT 1**

## **EXHIBIT 1**

# Appendix F – Preliminary Table of Groundwater Rights and Associated Shares

Permit No.	Cert. No.	Priority Date	MOU	Water Right Duty (Acre-Feet)	Owner of Record	Cumulative Duty	Priority Factor	Shares
30927	11110	3/2/1951	IRR	69.120	CHANEY ASSOCIATES,LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED 12/9/13	69.1200	0.9997	69.1024
44606	12431	3/2/1951	IRR	18.880	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	88.0000	0.9997	18.8752
44609	12433	3/2/1951	IRR	236.800	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	324.8000	0.9997	236.7397
48871	13200	9/17/1951	IRR	296.495	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	621.2950	0.9988	296.1493
70588	18508	9/17/1951	IRR	229.105	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	850.4000	0.9988	228.8378
14948	6406	3/30/1953	IRD	617.200	DONALD F AND ELIZA M. FAMILY TRUST	1467.6000	0.9967	615.1874
44451	11639	3/30/1953	IRR	576.580	DONALD F. AND LIZA M. PALMORE FAMILY TRUST	2044.1800	0.9967	574.6999
53872	14215	3/30/1953	IRR	617.200	PALMORE FAMILY TRUST	2661.3800	0.9967	615.1874
71748	20006	5/9/1955	IRR	506.800	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	3168.1800	0.9950	504.2556
77447		3/29/1957	MMD	52.400	RUBY HILL MINING COMPANY, LLC	3220.5800	0.9947	52.1230
77449		3/29/1957	MMD	80.000	RUBY HILL MINING COMPANY, LLC	3300.5800	0.9947	79.5771
83506		3/29/1957	MMD	185.600	RUBY HILL MINING COMPANY, LLC	3486.1800	0.9947	184.6189
18242	6510	8/13/1959	IRR	640.000	ANDERSEN, BONNIE G.,ANDERSEN, HARLOW B.	4126.1800	0.9930	635.4907
72370		8/13/1959	IRR	640.000	ANDERSEN, HARLOW B. & BONNIE G.	4766.1800	0.9930	635.4907
18621	6233	3/7/1960	IRD	412.580	MACHACEK, EUNICE & LAVERNE,RUBY HILL MINING COMPANY, LLC	5178.7600	0.9858	406.7362
18622	6234	3/7/1960	IRD	412.580	MACHACEK, LAVERNE & EUNICE,RUBY HILL MINING COMPANY, LLC	5591.3400	0.9858	406.7362
18623	6205	3/7/1960	IRD	673.231	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA,MACHACEK, JERRY L. & TRINA L.,RUBY HILL MINING COMPANY, LLC	6264.5706	0.9858	663.6949
22194	6182	3/7/1960	IRR	536.000	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	6800.5706	0.9858	528.4081

22195	6183	3/7/1960	IRR	622.000	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	7422.5706	0.9858	613.1900
22551	6235	3/7/1960	IRR	439.649	MACHACEK, EUNICE & LAVERNE, RUBY HILL MINING COMPANY, LLC	7862.2200	0.9858	433.4222
22648	6358	3/7/1960	IRR	593.440	BENSON, KENNETH F., BENSON, PATTI E.	8455.6600	0.9858	585.0345
22921	7874	3/7/1960	IRR	593.440	BENSON, KENNETH F., BENSON, PATTI E.	9049.1000	0.9858	585.0345
22922	7875	3/7/1960	IRR	279.740	BENSON, PATTI E. AND KENNETH F.	9328.8396	0.9858	275.7773
27976	9084	3/7/1960	IRR	504.480	MARSHALL FAMILY TRUST, RAND, JOSEPH & ELLEN	9833.3196	0.9858	497.3345
36321	10136	3/7/1960	IRR	177.707	BENSON, PATTI E. AND KENNETH F.	10011.0269	0.9858	175.1903
36322	10137	3/7/1960	IRR	188.913	BENSON, PATTI E. AND KENNETH F.	10199.9400	0.9858	186.2373
42891	12226	3/7/1960	IRR	77.165	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	10277.1048	0.9858	76.0718
55727	15957	3/7/1960	IRR	20.556	BAILEY, CAROLYN, BAILEY, FRED	10297.6608	0.9858	20.2648
64630	16943	3/7/1960	IRR	157.122	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	10454.7827	0.9858	154.8964
64631	16944	3/7/1960	IRR	157.122	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	10611.9045	0.9858	154.8964
64632	16945	3/7/1960	IRR	39.031	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	10650.9360	0.9858	38.4786
86032		3/7/1960	IRR	35.320	BENSON, KENNETH F. AND PATTI E.	10686.2560	0.9858	34.8197
86037		3/7/1960	IRR	159.800	BENSON, KENNETH F. AND PATTI E.	10846.0560	0.9858	157.5366
22982	6191	3/9/1960	IRR	1260.800	AMERICAN FIRST FEDERAL	12106.8560	0.9808	1236.6107
24609	7228	3/14/1960	IRD	1108.140	DIAMOND VALLEY RANCH, LLC, SEWELL, J.H. - LIBERTY LIVESTOCK	13214.9960	0.9791	1084.9336
22352	6309	3/21/1960	IRR	129.280	MARK MOYLE FARMS, LLC	13344.2760	0.9779	126.4255
22353	6310	3/21/1960	IRR	632.000	MARK MOYLE FARMS, LLC	13976.2760	0.9779	618.0455
70940	17146	3/21/1960	IRR	502.720	MARK MOYLE FARMS, LLC	14478.9960	0.9779	491.6200
23803	6521	4/11/1960	IRR	684.800	MILLER, ANTHONY	15163.7960	0.9753	667.8906
83622		4/11/1960	IRR	836.000	LC PROPERTIES	15999.7960	0.9753	815.3571
22566	6561	4/22/1960	IRR	468.000	BUFFHAM, JAMES OR PAMELA, MILLER, LAVON AND KRISTI	16467.7960	0.9704	454.1384
22567	6562	4/22/1960	IRR	468.000	BUFFHAM, JAMES OR PAMELA, MILLER, LAVON AND KRISTI	16935.7960	0.9704	454.1384
23272	6303	4/22/1960	IRR	640.000	BURNHAM FARMS, LLC, BURNHAM, ROBERT O.	17575.7960	0.9704	621.0440
24574	7013	4/22/1960	IRD	680.680	MORRISON, D. LLOYD	18256.4760	0.9704	660.5191
28641	9226	4/22/1960	IRR	640.000	BURNHAM FARMS, LLC	18896.4760	0.9704	621.0440
29405	9671	4/22/1960	IRR	591.320	MORRISON, D. LLOYD	19487.7960	0.9704	573.8059
50963	13183	4/22/1960	IRR	172.000	KOBEH VALLEY RANCH LLC	19659.7960	0.9704	166.9056
57838	15993	4/22/1960	IRR	172.000	KOBEH VALLEY RANCH LLC	19831.7960	0.9704	166.9056

70249	6302	4/22/1960	IRR	1270.800	BURNHAM, ROBERT O.	21102.5960	0.9704	1233.1605
18786	5756	5/2/1960	IRD	640.000	RUTH MARTIN RANCHES, LLC	21742.5960	0.9626	616.0708
18787	5757	5/2/1960	IRD	640.000	RUTH MARTIN RANCHES, LLC	22382.5960	0.9626	616.0708
18788	5758	5/2/1960	IRD	640.000	RUTH MARTIN RANCHES, LLC	23022.5960	0.9626	616.0708
18789	5759	5/2/1960	IRD	640.000	RUTH MARTIN RANCHES, LLC	23662.5960	0.9626	616.0708
18794	6480	5/2/1960	IRD	480.000	MOYLE, DENISE L. AND HICKS, DEANNE M.	24142.5960	0.9626	462.0531
18796	6482	5/2/1960	IRD	640.000	SMITH, CRAIG ALLEN & SHELBA KAY	24782.5960	0.9626	616.0708
18797	6483	5/2/1960	IRD	640.000	SMITH, CRAIG ALLAN & SHELBA KAY	25422.5960	0.9626	616.0708
28036	8415	5/3/1960	IRR	277.000	BAILEY, CAROYLN, BAILEY, FRED	25699.5960	0.9589	265.6139
48948	13361	5/3/1960	IRR	478.560	BAILEY, CAROLYN, BAILEY, FRED	26178.1560	0.9589	458.8887
18802	6024	5/4/1960	IRR	640.000	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	26818.1560	0.9575	612.8009
18834	5988	5/12/1960	IRR	1276.230	NEWTON, DEBRA L.	28094.3860	0.9545	1218.1188
18835	5987	5/12/1960	IRR	1277.800	NEWTON, DEBRA L.	29372.1860	0.9545	1219.6173
18851	6831	5/16/1960	IRD	512.440	GALLAGHER FARMS, LLC	29884.6260	0.9522	487.9577
70587	18507	5/16/1960	IRR	123.560	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	30008.1860	0.9522	117.6568
83616		5/16/1960	IRR	544.000	J & T FARMS LLC	30552.1860	0.9522	518.0099
24127	6884	5/18/1960	IRR	640.000	CONAWAY, DALE R., CONAWAY, ELMA G.	31192.1860	0.9491	607.4060
24128	6883	5/18/1960	IRR	640.000	CONAWAY, DALE R., CONAWAY, ELMA G.	31832.1860	0.9491	607.4060
24129	7005	5/18/1960	IRR	620.400	MORRISON, ALBERTA J., MORRISON, DONALD E.	32452.5860	0.9491	588.8042
24130	7006	5/18/1960	IRR	620.400	MORRISON, ALBERTA J., MORRISON, DONALD E.	33072.9860	0.9491	588.8042
24264	6961	6/3/1960	IRR	928.920	BUFFHAM, JAMES OR PAMELA, DIAMOND VALLEY HAY CO., INC.	34001.9060	0.9446	877.4361
24265	6962	6/3/1960	IRR	944.000	BUFFHAM, JAMES OR PAMELA, DIAMOND VALLEY HAY CO., INC.	34945.9060	0.9446	891.6803
57839		6/3/1960	IRR	156.460	KOBEH VALLEY RANCH LLC	35102.3660	0.9446	147.7884
57840		6/3/1960	IRR	156.460	KOBEH VALLEY RANCH LLC	35258.8260	0.9446	147.7884
66062		6/3/1960	IRR	303.080	KOBEH VALLEY RANCH LLC	35561.9060	0.9446	286.2823
18978	6517	6/6/1960	IRD	730.679	BENSON, CRAIG AND KATHRYN, COOPER, CHARLES C.	36292.5848	0.9417	688.0805
80799		6/6/1960	MMD	123.306	BLISS, CHAD D. & ROSIE J.	36415.8908	0.9417	116.1173
81229		6/6/1960	MMD	39.200	BLISS, CHAD D. & ROSIE J.	36455.0908	0.9417	36.9147
81612		6/6/1960	MMD	222.500	GARAVENTA, GARY G AND MELODY I	36677.5908	0.9417	209.5283
81653		6/6/1960	MMD	222.500	GARAVENTA, GARY G AND MELODY I	36900.0908	0.9417	209.5283
83504		6/6/1960	MMD	100.000	BLISS, CHAD D. & ROSIE J.	37000.0908	0.9417	94.1700
87315T		6/6/1960	MMD	123.306	RUBY HILL MINING COMPANY, LLC	37123.3968	0.9417	116.1173

42019	11844	6/6/1960	IRR	325.041	BENSON, CRAIG AND KATHRYN	37448.4380	0.9417	306.0915
18911	6814	6/8/1960	IRD	1176.000	HILL, HOWARD SR., HILL, KATHY	38624.4380	0.9388	1104.0194
18927	6085	6/14/1960	IRD	640.000	A.G. FARM COMMODITIES, INC., HOVIOUS, JOHN R.	39264.4380	0.9373	599.8533
18928	6084	6/14/1960	IRD	640.000	A.G. FARM COMMODITIES, INC., HOVIOUS, JOHN R.	39904.4380	0.9373	599.8533
18975	6488	7/1/1960	IRD	727.280	SESTANOVICH HAY & CATTLE LLC, SESTANOVICH RANCHES	40631.7180	0.9352	680.1615
34950	10550	7/1/1960	IRR	502.720	SESTANOVICH HAY & CATTLE LLC	41134.4380	0.9352	470.1502
18981	6520	7/6/1960	IRD	80.760	BENSON, CRAIG AND KATHRYN, COOPER, ERMYLE R.	41215.1980	0.9338	75.4150
39552	11804	7/6/1960	IRR	552.120	BENSON, CRAIG AND KATHRYN	41767.3180	0.9338	515.5786
39553	11805	7/6/1960	IRR	543.240	BENSON, CRAIG AND KATHRYN	42310.5580	0.9338	507.2863
18988	6163	7/8/1960	IRD	638.000	SESTANOVICH HAY AND CATTLE	42948.5580	0.9314	594.2539
18989	6164	7/8/1960	IRD	640.000	SESTANOVICH HAY & CATTLE LLC	43588.5580	0.9314	596.1168
18999	6734	7/11/1960	IRD	91.200	COOPER, CHARLES E.	43679.7580	0.9278	84.6144
21426	6720	7/11/1960	IRR	640.000	MORRISON, LLOYD & BELINDA FAYE	44319.7580	0.9278	593.7854
21839	6733	7/11/1960	IRR	632.000	BERGENER, LINDA AND DON	44951.7580	0.9278	586.3631
21841	6736	7/11/1960	IRR	632.000	MICHEL & MARGARET ETHCEVERRY FAMILY LP	45583.7580	0.9278	586.3631
21843	6715	7/11/1960	IRR	624.000	MORRISON, LLOYD AND BELINDA FAYE	46207.7580	0.9278	578.9408
21844	6718	7/11/1960	IRR	632.000	M & C HAY MORRISON TRUST DATED MARCH 26, 2016	46839.7580	0.9278	586.3631
42021	11846	7/11/1960	IRR	548.800	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	47388.5580	0.9278	509.1710
19014	6860	7/13/1960	IRR	640.000	J & T FARMS, LLC	48028.5580	0.9235	591.0115
83615		7/13/1960	IRR	189.360	J & T FARMS LLC	48217.9180	0.9235	174.8655
83617		7/13/1960	IRR	442.640	J & T FARMS LLC	48660.5580	0.9235	408.7583
19052	5989	7/21/1960	IRD	0.000	NEWTON, DEBRA L.	48660.5580	0.9229	0.0000
19053	5990	7/21/1960	IRR	0.008	NEWTON, DEBRA L.	48660.5660	0.9229	0.0074
19110	6963	8/10/1960	IRD	640.000	MARK MOYLE FARMS, LLC	49300.5660	0.9214	589.6837
19111	6964	8/10/1960	IRD	622.000	MILES, HAROLD R., MILES, MURIEL M.	49922.5660	0.9214	573.0988
43268	11523	8/12/1960	IRR	782.100	MARK MOYLE FARMS, LLC	50704.6660	0.9196	719.2571
21428	6722	8/22/1960	IRR	465.960	BENSON, PATTI E. AND KENNETH F.	51170.6260	0.9188	428.1229
86035		8/22/1960	IRR	142.040	BENSON, KENNETH F. AND PATTI E.	51312.6660	0.9188	130.5060
19145	6719	8/24/1960	IRD	640.000	MOYLE, JAMES L., MOYLE, NANCY J.	51952.6660	0.9177	587.3093
24606	7229	9/7/1960	IRD	1232.000	DIAMOND VALLEY RANCH, LLC	53184.6660	0.9157	1128.1652
19191	6824	9/9/1960	IRD	524.300	ANDERSON, JERRY LEE	53708.9660	0.9144	479.4277
19192	6769	9/9/1960	IRD	596.600	HALPIN FAMILY TRUST	54305.5660	0.9144	545.5399
19218	6713	9/23/1960	IRD	362.400	EUREKA MOLY LLC	54667.9660	0.9130	330.8663
19218	6713	9/23/1960	IRD	348.560	MILLER, OWEN J. AND CHERYL	55016.5260	0.9130	318.2306

19218	6713	9/23/1960	IRD	24.720	WALTER, NORBERT AND EILEEN B.	55041.2460	0.9130	22.5690
24607	7043	9/29/1960	IRD	1232.000	DIAMOND VALLEY RANCH, LLC	56273.2460	0.9108	1122.1352
21929	6189	10/6/1960	IRR	630.400	DIAMOND VALLEY RANCH, LLC	56903.6460	0.9083	572.6177
21930	6215	10/6/1960	IRR	635.200	AMERICAN FIRST FEDERAL	57538.8460	0.9083	576.9778
22316	6190	10/6/1960	IRR	628.800	AMERICAN FIRST FEDERAL	58167.6460	0.9083	571.1644
78906		10/6/1960	IRR	584.400	DIAMOND VALLEY RANCH LLC	58752.0460	0.9083	530.8341
21399	6504	10/10/1960	IRR	1013.168	MICHEL AND MARGARET ANN ETCHEVERRY FAMILY LIMITED PARTNERSHIP	59765.2140	0.9053	917.2112
19279	6870	10/17/1960	IRR	332.000	DUBRAY, FERNO L. & CARRIE M., GENERAL MOLY, INC.	60097.2140	0.9045	300.3028
44621	12228	10/17/1960	IRR	0.000	RUBY HILL MINING COMPANY, LLC	60097.2140	0.9045	0.0000
48226	11908	10/17/1960	IRR	300.000	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	60397.2140	0.9045	271.3579
64633	16946	10/17/1960	IRR	0.000	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	60397.2140	0.9045	0.0000
19292	6195	10/24/1960	IRD	559.200	DAMELE FARMS, INC.	60956.4140	0.9024	504.6288
19293	6279	10/24/1960	IRD	529.600	DAMELE FARMS, INC.	61486.0140	0.9024	477.9174
23739	6723	10/24/1960	IRR	9.000	EUREKA MOLLY, LLC	61495.0140	0.9024	8.1217
23739	6723	10/24/1960	IRR	893.760	MILLER, OWEN J. AND CHERYL	62388.7740	0.9024	806.5397
35418	10861	11/2/1960	IRR	4.000	RUBIO, DAVID M., RUBIO, SALLY R.	62392.7740	0.9008	3.6033
47521	11617	11/2/1960	IRR	168.240	ANDERSON, EDWARD B.	62561.0140	0.9008	151.5543
85134		11/2/1960	IRR	240.000	RENNER, IRA R. AND MONTIRA	62801.0140	0.9008	216.1973
19324	6549	11/9/1960	IRD	632.000	SESTANOVICH HAY & CATTLE LLC, WILBANKS, LEROY WINDELL	63433.0140	0.8995	568.4701
19360	6490	11/25/1960	IRD	620.000	ETCHEGARAY FAMILY TRUST	64053.0140	0.8980	556.7626
19361	6491	11/25/1960	IRD	620.000	ETCHEGARAY FAMILY TRUST	64673.0140	0.8980	556.7626
78771		12/5/1960	IRR	362.400	J.W.L. PROPERTIES, LLC	65035.4140	0.8969	325.0356
78774		12/5/1960	IRR	52.000	J.W.L. PROPERTIES, LLC	65087.4140	0.8969	46.6387
19378	7235	12/9/1960	IRR	949.564	MOYLE, DUSTY L.	66036.9779	0.8937	848.6426
19379	6784	12/9/1960	IRD	632.000	MOYLE, DUSTY L.	66668.9779	0.8937	564.8299
19381	6785	12/9/1960	IRR	960.000	MOYLE, DUSTY L.	67628.9779	0.8937	857.9695
24605	7078	12/9/1960	IRR	306.436	MOYLE, DUSTY L.	67935.4140	0.8937	273.8675
19411	7025	12/19/1960	IRD	384.000	HOMESTAKE MINING COMPANY OF CALIFORNIA, RUBY HILL MINING COMPANY, LLC	68319.4140	0.8916	342.3712
73204		12/19/1960	MM	16.000	RUBY HILL MINING COMPANY, LLC	68335.4140	0.8916	14.2655
79706		12/19/1960	MMD	48.000	RUBY HILL MINING COMPANY, LLC	68383.4140	0.8916	42.7964
85646		12/19/1960	MMD	65.000	RUBY HILL MINING COMPANY, LLC	68448.4140	0.8916	57.9535
87314T		12/19/1960	MMD	113.000	RUBY HILL MINING COMPANY, LLC	68561.4140	0.8916	100.7498
19490	6807	1/25/1961	IRD	0.000	SOLARLOS LLC	68561.4140	0.8914	0.0000
19492	6786	1/27/1961	IRD	624.000	CONLEY, BEVERLY A. AND CONLEY, KENNETH E.	69185.4140	0.8878	553.9950

19492	6786	1/27/1961	IRD	632.000	MOYLE, DUSTY L.	69817.4140	0.8878	561.0975
19500	7464	1/27/1961	IRR	664.400	CONLEY LAND & LIVESTOCK, LLC	70481.8140	0.8878	589.8626
19501	7465	1/27/1961	IRD	657.920	CONLEY LAND & LIVESTOCK, LLC	71139.7340	0.8878	584.1096
19502	7517	1/27/1961	IRR	609.080	CONLEY LAND & LIVESTOCK, LLC	71748.8140	0.8878	540.7488
22217	7576	1/27/1961	IRR	644.280	CONLEY LAND AND LIVESTOCK LLC	72393.0940	0.8878	571.9998
19526	6759	2/3/1961	IRD	1204.000	BAUMAN, JAMES E.,BAUMAN, VERA L.	73597.0940	0.8834	1063.5787
87115T		2/8/1961	IRR	418.670	DIAMOND VALLEY RANCH, LLC	74015.7640	0.8823	369.3948
87116T		2/8/1961	IRR	146.530	DIAMOND VALLEY RANCH, LLC	74162.2940	0.8823	129.2842
87117T		2/8/1961	IRR	468.000	DIAMOND VALLEY RANCH, LLC	74630.2940	0.8823	412.9190
19563	6258	2/13/1961	IRD	1279.480	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	75909.7740	0.8797	1125.5664
19760	6797	4/18/1961	IRD	1276.000	BURNHAM FARMS, LLC	77185.7740	0.8767	1118.7180
24272	7072	4/18/1961	IRR	640.000	BURNHAM FARMS, LLC,EDEN ESTATES, LLC	77825.7740	0.8767	561.1125
46505	13353	4/18/1961	IRR	510.400	BURNHAM FARMS, LLC	78336.1740	0.8767	447.4872
19904	6484	6/6/1961	IRR	0.000	DIAMOND VALLEY RANCH, LLC	78336.1740	0.8759	0.0000
19965	6764	7/3/1961	IRD	632.000	BAR D LAND & LIVESTOCK, LLC,RAND, JOSEPH L. AND ELLEN M.	78968.1740	0.8733	551.9505
19966	7041	7/3/1961	IRR	218.200	BAR D LAND & LIVESTOCK, LLC,RAND, JOSEPH L. & ELLEN M.	79186.3740	0.8733	190.5627
19971	8082	7/3/1961	IRD	0.000	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	79186.3740	0.8733	0.0000
19972	6241	7/3/1961	IRR	456.893	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	79643.2670	0.8733	399.0226
19973	6242	7/3/1961	IRR	456.893	PLASKETT, TOMMYE,PLASKETT, WALTER	80100.1600	0.8733	399.0226
28160	9043	7/3/1961	IRR	0.000	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	80100.1600	0.8733	0.0000
34948	10615	7/3/1961	IRR	180.287	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	80280.4468	0.8733	157.4516
46348	11793	7/3/1961	IRR	187.247	PLASKETT, TOMMYE J.,PLASKETT, WALTER L.	80467.6940	0.8733	163.5304
78447		7/3/1961	IRR	0.000	BAR D LAND & LIVESTOCK, LLC	80467.6940	0.8733	0.0000
80581		7/3/1961	IRR	405.800	BAR D LAND & LIVESTOCK, LLC	80873.4940	0.8733	354.4011
20000	6991	7/24/1961	IRD	0.000	MOYLE, DUSTY L.	80873.4940	0.8717	0.0000
78772		7/24/1961	IRR	128.000	J.W.L. PROPERTIES, LLC	81001.4940	0.8717	111.5826
20015	6760	7/28/1961	IRD	0.000	MOYLE, DUSTY L.	81001.4940	0.8716	0.0000
20046	6545	8/23/1961	IRR	640.000	BURNHAM FARMS, LLC	81641.4940	0.8706	557.1988
20087	6173	9/19/1961	IRD	0.000	DIAMOND VALLEY RANCH, LLC	81641.4940	0.8706	0.0000
20088	6227	9/19/1961	IRD	16.000	DIAMOND VALLEY RANCH, LLC	81657.4940	0.8706	13.9294
24262	6959	9/19/1961	IRR	7.540	BUFFHAM, JAMES OR PAMELA,DIAMOND VALLEY HAY CO., INC.	81665.0340	0.8706	6.5642



24263	6960	9/19/1961	IRR	7.540	BUFFHAM, JAMES OR PAMELA, DIAMOND VALLEY HAY CO., INC.	81672.5740	0.8706	6.5642
57835		9/19/1961	IRR	0.000	KOBEH VALLEY RANCH LLC	81672.5740	0.8706	0.0000
57836		9/19/1961	IRR	0.000	KOBEH VALLEY RANCH LLC	81672.5740	0.8706	0.0000
20366	6196	3/14/1962	IRR	638.310	MARK MOYLE FARMS, LLC	82310.8840	0.8696	555.0503
21561	6958	3/21/1962	IRR	3.000	EUREKA MOLY LLC	82313.8840	0.8693	2.6080
21561	6958	3/21/1962	IRR	132.560	MILLER, OWEN J. AND CHERYL	82446.4440	0.8693	115.2395
21561	6958	3/21/1962	IRR	24.720	WALTER, NORBERT AND EILEEN B.	82471.1640	0.8693	21.4900
81650		3/21/1962	IRR	106.448	EUREKA MOLY, LLC	82577.6120	0.8693	92.5393
80780		5/23/1962	IRR	0.000	SESTANOVICH HAY & CATTLE LLC	82577.6120	0.8691	0.0000
80781		5/23/1962	IRR	0.000	SESTANOVICH HAY & CATTLE LLC	82577.6120	0.8691	0.0000
20487	7352	5/25/1962	IRR	510.800	BUFFHAM, JAMES OR PAMELA, MARSHALL, REESE W.	83088.4120	0.8682	443.4907
50962	13182	5/25/1962	IRR	129.200	KOBEH VALLEY RANCH LLC	83217.6120	0.8682	112.1750
20565	6942	7/12/1962	IRR	250.000	MINOLETTI, JOHN B. AND NANCY M	83467.6120	0.8677	216.9323
20694	6503	9/6/1962	IRD	0.000	MICHEL AND MARGARET ANN ETCHEVERRY FAMILY LIMITED PARTNERSHIP	83467.6120	0.8677	0.0000
48872	13201	12/10/1962	IRR	203.540	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	83671.1520	0.8667	176.4103
67172	17329	12/10/1962	IRR	495.070	MARK MOYLE FARMS, LLC	84166.2220	0.8667	429.0824
78568	18992	12/10/1962	IRR	327.800	MARK MOYLE FARMS, LLC	84494.0220	0.8667	284.1077
21085	6485	2/18/1963	IRD	623.600	MILLER, ANTHONY	85117.6220	0.8651	539.4854
43270	11525	8/7/1963	IRR	217.900	MARK MOYLE FARMS, LLC	85335.5220	0.8648	188.4332
83623		8/16/1963	IRR	402.000	LC PROPERTIES	85737.5220	0.8641	347.3811
23738	6529	10/30/1963	IRR	0.000	EUREKA MOLLY, LLC, MILLER, OWEN J. AND CHERYL	85737.5220	0.8641	0.0000
44452	11640	3/4/1964	IRR	637.020	DONLAD F. AND ELIZA M. PALMORE FAMILT TRUST	86374.5420	0.8631	549.8264
40010	10593	8/6/1964	IRR	458.640	THE LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	86833.1820	0.8620	395.3635
40011	10594	8/6/1964	IRR	108.590	BURNHAM FARMS, LLC	86941.7720	0.8620	93.6083
80879	19853	8/6/1964	IRR	249.520	NORTON, WILLIAM H JR AND PATRICIA A	87191.2920	0.8620	215.0948
80880	19854	8/6/1964	IRR	87.280	NORTON, WILLIAM H JR AND PATRICIA A	87278.5720	0.8620	75.2384
79707		10/19/1964	MMD	3.000	RUBY HILL MINING COMPANY, LLC	87281.5720	0.8614	2.5843
83501		10/19/1964	MMD	10.000	RUBY HILL MINING COMPANY, LLC	87291.5720	0.8614	8.6143
83502		10/19/1964	MMD	55.200	RUBY HILL MINING COMPANY, LLC	87346.7720	0.8614	47.5507
83507		10/19/1964	MMD	134.800	RUBY HILL MINING COMPANY, LLC	87481.5720	0.8614	116.1202
85647		10/19/1964	MMD	35.000	RUBY HILL MINING COMPANY, LLC	87516.5720	0.8614	30.1499

68923		10/19/1964	IRR	236.000	RUBY HILL MINING COMPANY, LLC	87752.5720	0.8614	203.2966
83505		2/22/1965	MMD	105.454	RUBY HILL MINING COMPANY, LLC	87858.0256	0.8606	90.7542
85645		2/22/1965	MMD	206.134	RUBY HILL MINING COMPANY, LLC	88064.1600	0.8606	177.4010
50581	12378	12/13/1965	IRR	249.660	EZRA C. LUNDAHL, INC.,SADLER RANCH, LLC	88313.8200	0.8599	214.6807
77083		12/13/1965	IRR	198.290	SADLER RANCH, LLC	88512.1100	0.8599	170.5081
23462	7831	10/28/1966	IRR	0.000	MILLER, ANTHONY	88512.1100	0.8597	0.0000
23711	6794	2/23/1967	IRR	0.000	EUREKA MOLLY, LLC,MILLER, OWEN J. AND CHERYL	88512.1100	0.8597	0.0000
50650	13836	4/17/1967	IRR	640.000	MOYLE, JAMES L.,MOYLE, NANCY JANE	89152.1100	0.8582	549.2645
77666		4/17/1967	IRR	394.120	BAR D LAND & LIVESTOCK, LLC	89546.2300	0.8582	338.2439
83567		4/17/1967	IRR	149.280	BAR D LAND & LIVESTOCK, LLC	89695.5100	0.8582	128.1159
29765	8881	5/15/1967	IRR	656.200	HALPIN FAMILY TRUST	90351.7100	0.8568	562.2453
23893	7695	5/25/1967	IRR	0.000	MILES, HAROLD R.,MILES, MURIEL M.	90351.7100	0.8568	0.0000
23918	8648	6/5/1967	IRR	44.400	NORTON, WILIAM H. AND SHIRLEY,NORTON, WILLIAM H. JR.	90396.1100	0.8566	38.0315
77646	19847	6/5/1967	IRR	123.600	WILLIAM H NORTON	90519.7100	0.8566	105.8714
80926	19851	6/5/1967	IRR	103.200	NORTON, WILLIAM H JR	90622.9100	0.8566	88.3975
47520	11616	7/13/1967	IRR	638.720	ANDERSON, EDWARD B.	91261.6300	0.8554	546.3471
24214	8174	11/13/1967	IRR	600.320	ANDERSON, EDWARD B.,ANDERSON, JERRY LEE	91861.9500	0.8544	512.9295
28061	8639	12/11/1967	IRR	0.000	BURNHAM FARMS, LLC	91861.9500	0.8544	0.0000
24378	8556	2/22/1968	IRR	0.000	EUREKA MOLY LLC,RUBY HILL RANCH, INC.,SEAN PECK,WALTER, NORBERT AND EILEEN B.	91861.9500	0.8544	0.0000
78905		7/25/1968	IRR	0.000	DIAMOND VALLEY RANCH LLC	91861.9500	0.8544	0.0000
81230		12/30/1968	MMD	0.000	BLISS, CHAD D. & ROSIE J.	91861.9500	0.8544	0.0000
83503		12/30/1968	MMD	0.000	BLISS, CHAD D. & ROSIE J.	91861.9500	0.8544	0.0000
30102	10113	8/27/1969	IRR	890.270	MOYLE, JAMES L.,MOYLE, NANCY JANE	92752.2200	0.8530	759.4145
46287	13993	9/14/1970	IRR	632.000	GROTH, DANIEL E..	93384.2200	0.8516	538.1833
51647	13582	9/14/1970	IRR	578.800	GROTH, DANIEL E.	93963.0200	0.8516	492.8805
26437	11004	12/14/1971	IRR	508.800	ALLEN, ROGER B. & JUDY B.	94471.8200	0.8499	432.4229
47591	11243	12/14/1971	IRR	508.800	ALLEN, ROGER B. & JUDY B.	94980.6200	0.8499	432.4229
26664	8945	4/12/1972	IRR	160.000	KEPHART, MARY A.,KEPHART, RICHARD E.	95140.6200	0.8491	135.8567
56652	14447	4/12/1972	IRR	160.000	KEPHART, MARI A.,KEPHART, RICHARD E.	95300.6200	0.8491	135.8567
29278	9262	4/9/1973	IRR	0.000	BURNHAM FARMS, LLC	95300.6200	0.8490	0.0000
28035	8414	1/23/1974	IRR	201.560	BAILEY, CAROLYN,BAILEY, FRED	95502.1800	0.8487	171.0555
28561	9171	8/1/1974	IRR	520.000	BURNHAM FARMS, LLC	96022.1800	0.8478	440.8737
43271	11526	3/17/1975	IRR	525.615	BERG PROPERTIES CALIFORNIA, LLC	96547.7950	0.8449	444.1084
43272	11527	3/17/1975	IRR	525.615	BERG PROPERTIES CALIFORNIA, LLC	97073.4100	0.8449	444.1084

43273	11528	3/17/1975	IRR	514.385	BERG PROPERTIES CALIFORNIA, LLC	97587.7950	0.8449	434.6199
43274	11529	3/17/1975	IRR	514.385	BERG PROPERTIES CALIFORNIA, LLC	98102.1800	0.8449	434.6199
43837	11531	3/17/1975	IRR	111.985	BLANCO RANCH, LLC	98214.1650	0.8449	94.6196
43838	11532	3/17/1975	IRR	111.985	BLANCO RANCH, LLC	98326.1500	0.8449	94.6196
43839	11533	3/17/1975	IRR	109.615	BLANCO RANCH, LLC	98435.7650	0.8449	92.6171
43840	11534	3/17/1975	IRR	109.615	BLANCO RANCH, LLC	98545.3800	0.8449	92.6171
29557	10090	7/29/1975	IRR	487.360	MOYLE, JAMES L. & N. JANE	99032.7400	0.8426	410.6282
43397	11636	7/29/1975	IRR	640.000	MOYLE, JAMES L. & N. JANE	99672.7400	0.8426	539.2359
39156	10716	8/8/1975	IRR	891.855	FRED L. ETCHEGARAY & JOHN J. ETCHEGARAY (PTR), A NEVADA PARTNERSHIP	100564.5946	0.8404	749.4716
55535	14918	8/8/1975	IRR	358.385	FRED L. ETCHEGARAY & JOHN J. ETCHEGARAY (PTR), A NEVADA PARTNERSHIP	100922.9800	0.8404	301.1698
29873	10129	12/24/1975	IRR	194.865	MOYLE, JAMES L., MOYLE, NANCY JANE	101117.8450	0.8396	163.6095
81268		12/24/1975	IRR	194.865	MOYLE, JAMES L AND N JANE	101312.7100	0.8396	163.6095
29895	11107	1/7/1976	IRR	502.640	BLEHM, RONALD W. AND GLADYS A., OLIVIERA, EGIDIO	101815.3500	0.8380	421.2053
30928	11111	1/7/1976	IRR	433.520	CHANEY ASSOCIATES, LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED 12/9/13	102248.8700	0.8380	363.2837
44604	12429	1/7/1976	IRR	137.360	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	102386.2300	0.8380	115.1058
44605	12430	1/7/1976	IRR	109.760	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	102495.9900	0.8380	91.9774
49185	13309	6/1/1976	IRR	502.720	MOYLE, DUSTY L.	102998.7100	0.8368	420.6652
40402	11634	6/10/1976	IRR	508.800	MOYLE, DUSTY L.	103507.5100	0.8360	425.3426
30913	11109	12/10/1976	IRR	477.800	MOYLE, DUSTY L.	103985.3100	0.8352	399.0657
50582	12379	12/22/1976	IRR	850.380	EZRA C. LUNDAHL, INC., SADLER RANCH, LLC	104835.6900	0.8333	708.6299
85145		12/22/1976	IRR	703.790	SADLER RANCH LLC	105539.4800	0.8333	586.4750
31062	10132	2/2/1977	IRR	553.680	BAR D LAND & LIVESTOCK, LLC	106093.1600	0.8315	460.3628
31063	10133	2/2/1977	IRR	523.200	BAR D LAND & LIVESTOCK, LLC	106616.3600	0.8315	435.0199
31108	9331	2/17/1977	IRR	541.440	MOYLE, DENISE L. AND HICKS, DEANNE M.	107157.8000	0.8274	447.9760
31110	9333	2/17/1977	IRR	541.440	MOYLE, DENISE L. AND HICKS, DEANNE M.	107699.2400	0.8274	447.9760
31111	9334	2/17/1977	IRR	158.000	MOYLE, DENISE L. AND HICKS, DEANNE M.	107857.2400	0.8274	130.7259
31113	9336	2/17/1977	IRR	533.600	MOYLE, DENISE L. AND HICKS, DEANNE, M	108390.8400	0.8274	441.4893
31114	9337	2/17/1977	IRR	537.600	MOYLE, DENISE L. AND HICKS, DEANNE M.	108928.4400	0.8274	444.7989
76358		2/17/1977	IRR	545.440	MOYLE, DENISE L. AND HICKS, DEANNE M.	109473.8800	0.8274	451.2855
77569		2/17/1977	IRR	326.380	MOYLE, DENISE L. AND HICKS, DEANNE M.	109800.2600	0.8274	270.0399

78062		2/17/1977	IRR	628.000	MOYLE, DENISE L. AND HICKS, DEANNE M.	110428.2600	0.8274	519.5939
81269		2/17/1977	IRR	207.220	MOYLE, DENISE L. AND HICKS, DEANNE M.	110635.4800	0.8274	171.4494
31454	10708	5/3/1977	IRR	520.000	HALPIN, JAYME L.	111155.4800	0.8233	428.1079
31455	10709	5/3/1977	IRR	512.120	HALPIN, JAYME L.	111667.6000	0.8233	421.6204
81004		5/3/1977	IRR	51.080	HALPIN, JAYME L.	111718.6800	0.8233	42.0534
43269	11524	7/21/1977	IRR	76.800	BLANCO RANCH, LLC	111795.4800	0.8228	63.1940
43836	11530	7/21/1977	IRR	0.000	MARK MOYLE FARMS, LLC	111795.4800	0.8228	0.0000
33018	11069	8/3/1977	IRR	480.000	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JENNIFER	112275.4800	0.8213	394.2118
33019	11070	8/3/1977	IRR	480.000	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JENNIFER	112755.4800	0.8213	394.2118
42367	14443	8/3/1977	IRR	40.000	KEPHART, MARI ALICE,KEPHART, RICHARD E.	112795.4800	0.8213	32.8510
42368	14444	8/3/1977	IRR	40.000	KEPHART, MARI ALICE,KEPHART, RICHARD E.	112835.4800	0.8213	32.8510
42369	14445	8/3/1977	IRR	120.000	KEPHART, MARI ALICE,KEPHART, RICHARD E.	112955.4800	0.8213	98.5530
42370	14446	8/3/1977	IRR	120.000	KEPHART, MARI ALICE,KEPHART, RICHARD E.	113075.4800	0.8213	98.5530
33668	9386	9/19/1977	IRR	611.870	WISEHART, LARRY	113687.3500	0.8184	500.7308
33669	9387	9/19/1977	IRR	611.870	WISEHART, LARRY	114299.2200	0.8184	500.7308
33670	10433	9/19/1977	IRR	632.350	WISEHART, LARRY	114931.5700	0.8184	517.4908
33671	9672	9/19/1977	IRR	632.350	WISEHART, LARRY	115563.9200	0.8184	517.4908
33817	12364	9/27/1977	IRR	511.600	BELL, SCOTT THOMAS AND KRISTINE LOUISE,MULFORD, DELLA C. AND DENNY S.	116075.5200	0.8154	417.1440
33818	12365	9/27/1977	IRR	510.800	BELL, SCOTT THOMAS AND KRISTINE LOUISE,MULFORD, DELLA C. AND DENNY S.	116586.3200	0.8154	416.4917
85131		9/27/1977	IRR	33.200	RENNER, IRA R. AND MONTIRA	116619.5200	0.8154	27.0703
85132		9/27/1977	IRR	128.400	RENNER, IRA R. AND MONTIRA	116747.9200	0.8154	104.6937
34561	10529	11/3/1977	IRR	516.010	MARK MOYLE FARMS, LLC	117263.9300	0.8138	419.9168
34562	10530	11/3/1977	IRR	499.480	MARK MOYLE FARMS, LLC	117763.4100	0.8138	406.4651
34596	11007	11/10/1977	IRR	330.628	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	118094.0385	0.8126	268.6704
48225	11907	11/10/1977	IRR	317.768	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	118411.8060	0.8126	258.2195
73899		11/21/1977	IRR	508.776	DENNIS L WEST & KIM KENNEDY WEST,DENNIS L. WEST & KIM KENNEDY WEST	118920.5820	0.8115	412.8463
78358		11/21/1977	IRR	122.400	DENNIS L WEST AND KIM KENNEDY WEST	119042.9820	0.8115	99.3215
34939	11044	2/3/1978	IRR	520.000	MARK MOYLE FARMS, LLC	119562.9820	0.8105	421.4751
44610	12434	2/3/1978	IRR	0.000	BURNHAM FARMS, LLC	119562.9820	0.8105	0.0000

35009	10225	2/16/1978	IRR	487.560	BENSON, KENNETH F., BENSON, PATTI E.	120050.5420	0.8084	394.1201
35012	12453	2/16/1978	IRR	511.600	ETCHEVERRY, JAMES F., MULFORD, DENNY S. & DELLA C.	120562.1420	0.8084	413.5528
35013	11623	2/16/1978	IRR	546.640	MICHEL & MARGARET ETHCEVERRY FAMILY LP	121108.7820	0.8084	441.8775
39554	11806	2/16/1978	IRR	0.000	BENSON, CRAIG AND KATHRYN	121108.7820	0.8084	0.0000
42020	11845	2/16/1978	IRR	0.000	BENSON, CRAIG AND KATHRYN	121108.7820	0.8084	0.0000
85133		2/16/1978	IRR	128.400	RENNER, IRA R. AND MONTIRA	121237.1820	0.8084	103.7924
86033		2/16/1978	IRR	144.440	BENSON, KENNETH F. AND PATTI E.	121381.6220	0.8084	116.7583
46461	12213	3/17/1978	IRR	576.000	MOYLE, DUSTY L.	121957.6220	0.8059	464.2182
49188	12674	3/17/1978	IRR	502.720	MOYLE, DUSTY L.	122460.3420	0.8059	405.1593
50095	13310	3/17/1978	IRR	508.800	MOYLE, DUSTY L.	122969.1420	0.8059	410.0594
35374	12193	5/2/1978	IRR	108.440	DUBRAY, FERNO L. & CARRIE M.	123077.5820	0.8044	87.2323
35375	12194	5/2/1978	IRR	387.040	DUBRAY, FERNO L. AND CARRIE M., ROUSE, W.E. & BARBARA J.	123464.6220	0.8044	311.3462
49853	12206	5/2/1978	IRR	59.260	DUBRAY, FERNO L. & CARRIE M.	123523.8820	0.8044	47.6705
49854	12207	5/2/1978	IRR	59.260	DUBRAY, FERNO L. & CARRIE M.	123583.1420	0.8044	47.6705
47518	11614	5/12/1978	IRR	463.200	ANDERSON, EDWARD B.	124046.3420	0.8034	372.1461
78773		8/7/1978	IRR	398.400	J.W.L. PROPERTIES, LLC	124444.7420	0.8027	319.8049
78775		8/7/1978	IRR	88.000	J.W.L. PROPERTIES, LLC	124532.7420	0.8027	70.6396
47519	11615	9/13/1978	IRR	0.000	ANDERSON, EDWARD B.	124532.7420	0.8027	0.0000
41883	10476	9/20/1978	IRR	78.400	MILLER, OWEN J. AND CHERYL	124611.1420	0.8025	62.9134
41884	10477	9/20/1978	IRR	78.400	MILLER, OWEN J. AND CHERYL	124689.5420	0.8025	62.9134
36070	10135	10/20/1978	IRR	0.000	MOYLE, JAMES L., MOYLE, NANCY JANE	124689.5420	0.8010	0.0000
40013	10595	10/20/1978	IRR	44.000	THE LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	124733.5420	0.8010	35.2455
40014	10596	10/20/1978	IRR	393.000	BURNHAM FARMS, LLC	125126.5420	0.8010	314.8065
77695	19848	10/20/1978	IRR	469.920	WILLIAM H NORTON	125596.4620	0.8010	376.4221
77696	19849	10/20/1978	IRR	295.120	WILLIAM H NORTON	125891.5820	0.8010	236.4013
80717	19852	10/20/1978	IRR	136.000	NORTON, WILLIAM H JR AND PATRICIA A	126027.5820	0.8010	108.9407
80718	19850	10/20/1978	IRR	135.600	NORTON, WILLIAM H JR	126163.1820	0.8010	108.6203
80881	19855	10/20/1978	IRR	44.000	NORTON, WILLIAM H JR AND PATRICIA A	126207.1820	0.8010	35.2455
44607	12432	12/29/1978	IRR	0.000	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	126207.1820	0.8000	0.0000
48437	11947	12/29/1978	IRR	0.000	MARK MOYLE FARMS, LLC	126207.1820	0.8000	0.0000
					<b>Total Shares</b>	<b>113513.6415</b>		

## **EXHIBIT 2**

## **EXHIBIT 2**

1 CASE NO.: CV-1902-348 (consolidated  
2 with Case Nos. CV-1902-349 and CV-1902-350)  
3 DEPT. NO.: 2  
4  
5

6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF EUREKA

8 \* \* \*

9 TIMOTHY LEE & CONSTANCE MARIE  
10 BAILEY; FRED & CAROLYN BAILEY; IRA  
11 R. & MONIRA RENNER; SADLER RANCH,  
12 LLC; DANIEL S. VENTURACCI,

13 Petitioners,

14 vs.

15 TIM WILSON, P.E., Nevada State  
16 Engineer, DIVISION OF WATER  
17 RESOURCES, DEPARTMENT OF  
18 CONSERVATION AND NATURAL  
19 RESOURCES,

20 Respondent.  
21

22 **DECLARATION OF MARK MOYLE**

23 **IN SUPPORT OF MOTION TO INTERVENE**

24 I Mark Moyle, do hereby swear under penalty of perjury that the assertions of this  
25 declaration are true and correct.

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

2. This declaration is offered in support of the Motion to Intervene filed by  
Diamond Natural Resources Protection Association ("DNRPCA") and individual irrigators  
whose water rights are affected by this action (collectively, "Real Parties-in-Interest").

1           3.     I am a manager of Mark Moyle Farms, LLC, the holder of certain permits and  
2 certificates of appropriation of water issued by the Nevada State Engineer for the Diamond  
3 Valley Hydrographic Basin No. 153. I am also president and chairman of DNRPCA's board of  
4 directors.

5           4.     DNRPCA is a Nevada non-profit corporation comprised of water users in  
6 Diamond Valley.

7           5.     DNRPCA was formed in 2010 to, among other things promote and undertake  
8 activities to protect, conserve and promote the harmonious use of the Diamond Valley  
9 groundwater flow system in order to perpetuate the availability of the water resources  
10 comprising the Diamond Valley flow system for irrigation as well as domestic, municipal and  
11 industrial uses.

12           6.     DNRPCA and its members worked extensively with Eureka County, the Eureka  
13 Conservation District ("ECD"), the Eureka Producers Cooperative and individual irrigators  
14 (collectively, "Planning Process Participants") on a Groundwater Management Plan ("GMP") to  
15 address overdraft conditions in Diamond Valley. The State Engineer approved the GMP on  
16 January 11, 2019.

17           7.     The GMP evolved out of the State Engineer's efforts to get stakeholder  
18 involvement in the Diamond Valley groundwater management process. The State Engineer held  
19 workshops in March 2009 and again in February 2014 to engage in discussions with Diamond  
20 Valley irrigators regarding potential solutions to the overdraft conditions. Various Planning  
21 Process Participants, including myself, were in regular contact with the State Engineer and his  
22 staff regarding development of the GMP.

23           8.     This declaration summarizes some of the history and process to develop the  
24 GMP. I was involved with this process from its inception through petitioning the State Engineer  
25 for approval.

26           9.     In June 2013, Hansford Economic Consulting was engaged to conduct a study to  
27 assess the financial feasibility of developing a General Improvement District (GID) that could  
28 carry out a water management program to enhance the sustainability of the underground water



1 supply and storage for the Diamond Valley Hydrographic Basin. In May 2014, Hansford  
2 Economic Consulting was engaged to conduct a study of potential water use set-aside programs  
3 for Diamond Valley.

4 10. In May 2014, the ECD approved a contract with Steve Walker of Walker &  
5 Associates to facilitate a scoping process to establish a GMP in Diamond Valley, including the  
6 identification of issues, hurdles, and potential solutions. Mr. Walker held workshops and met  
7 with water users to gather information and ideas for the GMP. Mr. Walker compiled that  
8 information and prepared a report in July 2014. In October 2014, ECD sent out a questionnaire  
9 to Diamond Valley water users regarding designation of a critical management area ("CMA") in  
10 Diamond Valley by the State Engineer.

11 11. Also in 2014, various Planning Process Representatives researched water  
12 plans/agreements that had been employed in other areas where water overappropriation was an  
13 issue. These included the Klamath Basin in California and Oregon and the Murray Darling  
14 Basin in Australia. Professor Mike Young of the University of Adelaide in Australia has come  
15 to Diamond Valley and spoken with Planning Process Representatives to advise them on a water  
16 management plan developed for the Murray Darling Basin in Australia. Professor Young had  
17 been invited to Nevada by Governor Sandoval to help with, among other things, Diamond  
18 Valley's water issues.

19 12. In April 2015, Steve Lewis of the University of Nevada Cooperative Extension  
20 began to facilitate sessions with stakeholders to develop a GMP. At that time, the Planning  
21 Process Participants established a goal to have a draft GMP completed within 18 months. The  
22 Planning Process Participants formed a committee to keep the planning process moving forward  
23 and to communicate with stakeholders regarding the planning process.

24 13. In 2015, the State Engineer designated Diamond Valley as a Critical  
25 Management Area (CMA). Pursuant to NRS 534.110, this designation provides 10 years for  
26 groundwater rights holders to develop a GMP to remove the basin from CMA designation.

27 14. The Planning Process Participants met regularly since spring 2015 to develop the  
28 GMP.

1           15. Rick Felling from the Nevada Division of Water Resources participated in most  
2 of the meetings regarding the planning process.

3           16. The Planning Process Participants worked to ensure the GMP included provisions  
4 for, among other things, governance, pumping reductions, recognition of vested rights,  
5 addressing overdraft conditions, metering, efficiency, funding and compliance.

6           17. The Planning Process Participants obtained the signatures of the statutorily  
7 required number of Diamond Valley groundwater users and petitioned for the State Engineer's  
8 approval. The State Engineer approved the GMP on January 11, 2019.

9           18. The petitions for judicial review that challenge the GMP put DNRPCA's  
10 members' livelihoods are at stake. Should the Order 1302 that approved the GMP be reversed or  
11 vacated, the Stat Engineer may have to commence curtailment by priority. Many of the water  
12 rights held by DNRPCA's members would likely be curtailed. Junior groundwater rights and  
13 domestic wells (after about May 1960) would be prohibited entirely or severely restricted from  
14 pumping.

15           19. In addition to the GMP planning process, for years, irrigators in Diamond Valley  
16 have engaged in other efforts to address overdraft in the basin, which have included  
17 collaborations with Eureka County, ECD, the United States Bureau of Reclamation ("BOR"),  
18 the University of Nevada Cooperative Extension, the United States Geological Survey  
19 ("USGS") and the University of Idaho. These include:

- 20           a. Comprehensive groundwater monitoring throughout Diamond Valley through a  
21 network of 12 geographically distributed wells, which are equipped with  
22 transducers and dataloggers. Data has been regularly collected and hydrographs  
23 produced to monitor groundwater levels. In January 2013, DNRPCA received a  
24 grant from Eureka County to purchase and install 6 additional well data loggers  
25 to be placed throughout Diamond Valley to collect more thorough groundwater  
26 data. DNRPCA contracts with hydrogeologist Dale Bugenig to collect and report  
27 on the data. Mr. Bugenig regularly presents his findings to DNRPCA. In May  
28 2016, the DNRPCA board approved of a new one-year proposal from Mr.

1 Bugenig to continue to read and report on the data loggers. Mr. Bugenig has  
2 reported to DNRPCA that his data indicates that water conservation efforts are  
3 positively affecting groundwater levels.

4 b. Eureka County entered into a multi-year joint funding agreement with the U.S.  
5 Geological Survey ("USGS") to better understand the hydrology of the Diamond  
6 Valley flow system. The USGS recently published its Scientific Investigations  
7 Report 2016-5055, entitled Budgets and Chemical Characterization of  
8 Groundwater for the Diamond Valley Flow System, Central Nevada, 2011-12.  
9 The USGS Report estimates the perennial yield for Diamond Valley at 35,000  
10 acre feet and estimates that the combined total decline of flow from all springs in  
11 the entire Diamond Valley hydrographic basin as a result of groundwater  
12 pumping is only 6,000 acre feet. The USGS Report also estimates the perennial  
13 yield in Kobeh Valley as higher than currently estimated, which is useful  
14 information because one potential solution being explored to address overdraft in  
15 Diamond Valley is an importation project from neighboring Kobeh Valley.

16 c. BOR's Agrimet Program has established an AgriMet site in Diamond Valley,  
17 which is an automated agricultural weather station that collects and telemeters the  
18 meteorological parameters required to model crop evapotranspiration (ET).  
19 Many irrigators in Diamond Valley use this information to adjust their irrigation  
20 practices to more closely conform to crop water needs.

21 d. Many irrigators in Diamond Valley have equipped their center-pivot irrigation  
22 systems with state-of-the-art nozzle packages and soil moisture probes to more  
23 efficiently schedule irrigation to minimize water usage. Irrigators have also  
24 explored the use of dry land and low-water-use crops.

25 20. These actions are in furtherance of the GMP's goals to reduce consumptive use  
26 and stabilize groundwater levels in Diamond Valley.

100 WEST LIBERTY STREET, TENTH FLOOR • RENTON, WA 98056  
PHONE 775.788.2000 • FAX 775.788.2001

*Mark Moyle*  
MARK MOYLE

## **EXHIBIT 3**

## **EXHIBIT 3**

1 CASE NO.: CV-1902-348 (consolidated with  
2 Case Nos. CV-1902-349 and CV-1902-350)

3 DEPT. NO.: 2  
4  
5

6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF EUREKA

8 \* \* \*

9 TIMOTHY LEE & CONSTANCE MARIE  
10 BAILEY; FRED & CAROLYN BAILEY; IRA  
11 R. & MONIRA RENNER; SADLER RANC,  
12 LLC; DANIEL S. VENTURACCI,

13 Petitioners,

14 vs.

15 TIM WILSON, P.E., Nevada State  
16 Engineer, DIVISION OF WATER  
17 RESOURCES, DEPARTMENT OF  
18 CONSERVATION AND NATURAL  
19 RESOURCES,

20 Respondent.  
21  
22

23 **ORDER GRANTING MOTION TO INTERVENE**

24 THIS MATTER is before this Court on the Motion to Intervene filed by J&T FARMS,  
25 GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK,  
26 LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY  
27 HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST,  
28 BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY  
ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES  
PROTECTION AND CONSERVATION ASSOCIATION. This Court having considered the  
applicable law and facts hereby finds as follows:

1. The Motion to Intervene is **GRANTED**.

///

2. J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES PROTECTION AND CONSERVATION ASSOCIATION shall be joined as Respondents in this action and shall be entitled to file pleadings, fully participate in the consolidated actions and present argument and legal briefs as their interests may appear on issues developed during the course of the proceedings.

3. The caption of the above consolidated actions shall reflect J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES PROTECTION AND CONSERVATION ASSOCIATION as Respondents.

**IT IS SO ORDERED.**

DATED: this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
DISTRICT JUDGE

## **EXHIBIT 4**

## **EXHIBIT 4**



1 CASE NO.: CV-1902-348 (consolidated with  
2 Case Nos. CV-1902-349 and CV-1902-350)

3 DEPT. NO.: 2  
4  
5

6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF EUREKA

8 \* \* \*

9 TIMOTHY LEE & CONSTANCE MARIE  
10 BAILEY; FRED & CAROLYN BAILEY; IRA  
11 R. & MONIRA RENNER; SADLER RANC,  
12 LLC; DANIEL S. VENTURACCI,

13 Petitioners,

14 vs.

15 TIM WILSON, P.E., Nevada State  
16 Engineer, DIVISION OF WATER  
17 RESOURCES, DEPARTMENT OF  
18 CONSERVATION AND NATURAL  
19 RESOURCES,

20 Respondent.  
21  
22

23 **NOTICE OF APPEARANCE AND**  
24 **INTENT TO PARTICIPATE**

25 J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY  
26 LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE  
27 HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M.  
28 PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH HAY &  
CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN ("the Individual Real  
Parties-in-Interest"), and DIAMOND NATURAL RESOURCES PROTECTION AND  
CONSERVATION ASSOCIATION, by and through their counsel of record, DEBBIE  
LEONARD of McDONALD CARANO LLP, hereby enter their notice of appearance and intent  
to participate as a Respondent in the proceeding on the Petitions for Judicial Review in the

1 above consolidated actions.

2 **AFFIRMATION**

3 The undersigned does hereby affirm that the preceding document DOES NOT contain  
4 the social security number of any person

5 DATED: this 10th day of May, 2019.

6 McDONALD CARANO LLP

7  
8 DEBBIE LEONARD (NSBN 8260)  
9 100 West Liberty Street, 10<sup>th</sup> Floor  
10 Reno, NV 89505-2670

11 *Attorneys for Intervenors/Real Parties-in-Interest*  
12  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that on this date I caused the foregoing document to be served to all parties to this action by electronic transmission to:

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Timothy D. O'Connor  
Taggart & Taggart  
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*Counsel for Petitioner Baileys*

**COURTESY COPY TO:**

Honorable Gary D. Fairman  
Department Two  
P.O. Box 151629  
Ely, NV 89315  
wlopez@whitepinecountynv.gov

Dated: May 10, 2019

\_\_\_\_\_  
Pamela Miller



COPY

NO. \_\_\_\_\_ FILED

MAY 28 2019

By Eureka County Clerk  
*[Signature]*

Case No. CV-1902-348  
(Consolidated with CV-1902-349 and CV-1902-350)

Dept. No. 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF EUREKA

OFFICE OF THE ATTORNEY GENERAL  
CARSON CITY, NEVADA

JUN 24 2019

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY;  
IRA R. & MONTIRA RENNER; SADLER  
RANCH, LLC; and DANIEL S.  
VENTURACCI,

BUREAU OF GOVERNMENT AFFAIRS  
GNR/BL/APPELLATE

Petitioners,

vs.

TIM WILSON, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

**UNOPPOSED  
MOTION TO EXTEND TIME  
TO FILE THE STATE ENGINEER'S  
RECORD ON APPEAL**

Tim Wilson, P.E., in his capacity as Acting Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources (hereafter "State Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford and Deputy Attorney General Tori N. Sundheim, hereby files this Unopposed Motion to Extend Time to File the State Engineer's Record on Appeal. This Unopposed Motion is based upon the attached Points and Authorities and the pleadings and papers on file herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

The State Engineer requests a fourteen (14) day extension of time to file the Record on Appeal ("ROA") to June 7, 2019. Under NRCP 6(b) (1) "[t]he court may, for good cause, extend the time: with or without or notice if the court acts, or if a request is

1 made, before the original time or its extension expires." The Court has broad discretion  
2 to control its own calendar and appellate courts consistently respect this discretion.<sup>1</sup>  
3 "The setting of trial dates, the ordering of postponements for cause and other matters  
4 having to do with arrangement of court calendars have always been considered as  
5 essentially within the discretion of the trial courts, and this court, in the absence of  
6 arbitrary action, has never entered into, and is not now inclined to interfere with any  
7 arrangement of district court calendars."<sup>2</sup>

8 The State Engineer had the ROA prepared to file on April 30, 2019, in accordance  
9 with this Court's April 25, 2019, Order.<sup>3</sup> The State Engineer is diligently working to  
10 process Petitioners' list of proposed requests for possible inclusion in the ROA. The State  
11 Engineer was scheduled to complete the review and file the ROA on May 24, 2019, as  
12 stipulated by all parties on April 26, 2019.<sup>4</sup> However, additional time is needed for the  
13 State Engineer to complete this review.

14 On April 9, 2019, the Court held a telephone status conference with the parties to  
15 discuss briefing and other procedural matters. During the conference, the parties  
16 discussed the State Engineer's ROA. Thereafter, the Court ordered the State Engineer to  
17 file his ROA on April 30, 2019. Order at p. 3. Further, the Court ordered that "legal  
18 counsel for the parties shall meet and confer by telephone on or before May 24, 2019, for  
19 the purpose of discussing the contents of the ROA, as filed, [and] any proposed  
20 supplemental exhibits to the ROA." *Id.*

21 Accordingly, the State Engineer prepared the ROA for filing and shared the draft  
22 Summary of the ROA with opposing counsel in this case on April 16, 2019. In response to  
23 the State Engineer's draft Summary of the ROA, on April 23, 2019, Petitioners sent a list  
24

25 <sup>1</sup> *City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 363, 302 P.3d 1118, 1129 (2013)  
26 (This Court has the inherent authority to manage its own affairs as part of its "incidental  
powers reasonably and necessary to carry out the duties required for the administration  
of justice.")

27 <sup>2</sup> *Close v. Second Jud. Dist. Ct. ex rel. Washoe Cty.* 73 Nev. 194, 196 314 P.2d 379,  
380 (1957).

28 <sup>3</sup> See April 25, 2019, Order Following Telephone Status Hearing Held April 9, 2019.

<sup>4</sup> Ex. 1.

1 of proposed requests for inclusion within the ROA. The scope of these requests  
2 necessitated a stipulated extension of time to file the ROA on May 24, 2019.<sup>5</sup>

3 The State Engineer could have filed the ROA on April 30, 2019, in accordance with  
4 this Court's Order. However, the stipulated extension of time was needed in order to  
5 review the high volume of Petitioners' requests and determine whether some or all of  
6 these documents were in fact considered by the State Engineer in the preparation of  
7 Order #1302. The State Engineer is diligently working to consider these requests, and  
8 requires additional time to process what should be included. Counsel for the State  
9 Engineer has conferred with all of the other parties, and none object to an additional  
10 two weeks of time for the State Engineer to file the ROA.

11 **III. CONCLUSION**

12 For the foregoing reasons, the State Engineer respectfully requests the Court  
13 to grant a fourteen (14) day extension of time to file the State Engineer's ROA, to  
14 June 7, 2019.

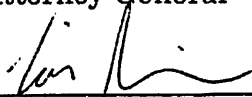
15 **AFFIRMATION**

16 The undersigned does hereby affirm that the preceding Unopposed Motion to  
17 Extend Time to File the State Engineer's Record on Appeal does not contain the social  
18 security number of any person.

19 DATED this 23rd day of May, 2019.

20 AARON D. FORD  
21 Attorney General

22 By:

23   
24 TORI N. SUNDHEIM (Bar No. 14156)  
25 Deputy Attorney General  
26 State of Nevada  
27 Office of the Attorney General  
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T: (775) 684-1219  
E: [tsundheim@ag.nv.gov](mailto:tsundheim@ag.nv.gov)  
*Attorney for Respondent,*  
*State Engineer*

---

<sup>5</sup> See Ex. 1.

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 23rd day of May, 2019, I served a true and correct copy of the foregoing UNOPPOSED MOTION TO EXTEND TIME TO FILE THE STATE ENGINEER'S RECORD ON APPEAL, said document applies to Case Nos. CV-1902-348, -349 and -350, electronically to:

Paul G. Taggart, Esq.  
David H. Rigdon, Esq.  
Timothy O'Connor, Esq.  
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*Attorneys for Petitioners Baileys*

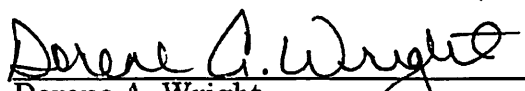
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*Attorney for Eureka County*

Debbie Leonard, Esq.  
McDONALD CARANO LLP  
E: [dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
*Attorney for Intervenors/Real Parties-in-Interest*

and via U.S. Mail to:

*Courtesy Copy to Chambers in Ely:*  
The Honorable Gary D. Fairman  
801 Clark Street, Suite 7  
Ely, Nevada 89301

  
Dorene A. Wright

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**INDEX OF EXHIBITS**

<b>EXHIBIT No.</b>	<b>EXHIBIT DESCRIPTION</b>	<b>NUMBER OF PAGES</b>
1.	April 26, 2019, Stipulated Extension of Time	2



# EXHIBIT 1

# EXHIBIT 1

AARON D. FORD  
*Attorney General*

CAROLINE BATEMAN  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

JESSICA L. ADAIR  
*Chief of Staff*

RACHEL J. ANDERSON  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

April 26, 2019

The Honorable Gary D. Fairman  
Seventh Judicial District Court  
County of Eureka  
Post Office Box 677  
Eureka, Nevada 89316

Re: ***Bailey, et al. v. State Engineer***  
**Case No. CV-1902-348 (Consol. with 1902-349 & 1902-350)**

Dear Judge Fairman:

During the April 2, 2019, telephonic status conference to set the briefing schedule for the above-referenced matter, the parties agreed that the Respondent Nevada State Engineer would file the Record on Appeal ("ROA") on April 30, 2019, which is next Tuesday. Since that time, the parties have been engaged in discussions regarding the contents of the ROA, resulting in outstanding requests for the inclusion of certain documents. These requests need to be reviewed by the State Engineer's Office. Therefore, counsel for the parties, including pending Intervenor Eureka County, hereby stipulate and request that the Court extend the time for the State Engineer to file the ROA to May 24, 2019.

The parties will continue to meet and confer regarding the documents constituting the ROA. By agreeing to this extension of time to file the ROA, the parties further agree that no party is waiving its right to seek any future relief from the Court regarding the ROA.

The Honorable Gary D. Fairman  
Re: *Bailey, et al. v. State Engineer*  
April 26, 2019  
Page 2

Should the Court wish for the parties to prepare and file a stipulation and proposed order to extend the time for the State Engineer to file the ROA, they will do so promptly.

Sincerely,

/s/ Tori N. Sundheim  
TORI N. SUNDHEIM  
Deputy Attorney General

/s/ David H. Rigdon  
DAVID H. RIGDON, ESQ.

/s/ Christopher W. Mixson  
CHRISTOPHER W. MIXSON, ESQ.

/s/ Karen A. Peterson  
KAREN A. PETERSON, ESQ.

TNS:dw  
cc: The Honorable Gary D. Fairman  
801 Clark Street, Suite 7  
Ely, Nevada 89301

JUN 07 2019

By Eureka County Clerk  
[Signature]

CASE NO.: CV-1902-348 (consolidated with  
Case Nos. CV-1902-349 and CV-1902-350)

DEPT. NO.: 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF EUREKA

\* \* \*

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY; IRA  
R. & MONIRA RENNER; SADLER RANC,  
LLC; DANIEL S. VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

**ORDER GRANTING MOTION TO INTERVENE**

THIS MATTER is before this Court on the Motion to Intervene filed by J&T FARMS,  
GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK,  
LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY  
HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST,  
BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY  
ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES  
PROTECTION AND CONSERVATION ASSOCIATION. This Court having considered the  
applicable law and facts hereby finds as follows:

1. The Motion to Intervene is **GRANTED**.

///

JA0233

2. J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES PROTECTION AND CONSERVATION ASSOCIATION shall be joined as Respondents in this action and shall be entitled to file pleadings, fully participate in the consolidated actions and present argument and legal briefs as their interests may appear on issues developed during the course of the proceedings.

3. The caption of the above consolidated actions shall reflect J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY, CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F. AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMANN, and DIAMOND NATURAL RESOURCES PROTECTION AND CONSERVATION ASSOCIATION as Respondents.

**IT IS SO ORDERED.**

DATED: this 29<sup>th</sup> day of MAY, 2019.

  
DISTRICT JUDGE



ORIGINAL

NO. \_\_\_\_\_ FILED \_\_\_\_\_

JUN 07 2019

Case No. CV-1902-348  
(Consolidated with CV-1902-349 and CV-1902-350)

By Eureka County Clerk  
*[Signature]*

Dept. No. 2

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF EUREKA

TIMOTHY LEE & CONSTANCE MARIE  
BAILEY; FRED & CAROLYN BAILEY;  
IRA R. & MONTIRA RENNER; SADLER  
RANCH, LLC; and DANIEL S.  
VENTURACCI,

Petitioners,

vs.

TIM WILSON, P.E., Nevada State  
Engineer, DIVISION OF WATER  
RESOURCES, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES,

Respondent.

**ORDER GRANTING MOTION TO  
EXTEND TIME TO FILE THE STATE  
ENGINEER'S RECORD ON APPEAL**

Respondent Tim Wilson, P.E., in his capacity as Acting Nevada State Engineer,  
requested a fourteen (14) day extension of time to file the Record on Appeal ("ROA") to  
June 7, 2019.

Based upon the foregoing and good cause appearing:

IT IS HEREBY ORDERED that Respondent's Motion to Extend Time to File the  
State Engineer's Record on Appeal is GRANTED.

ORDERED this 29<sup>th</sup> day of May, 2019.

*[Signature]*  
DISTRICT JUDGE

RECEIVED

MAY 28 2019

Eureka County Clerk

JA0235