

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.

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

**JOINT APPENDIX
VOLUME XIII**

LEONARD LAW, PC
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CHRONOLOGICAL INDEX TO JOINT APPENDIX

DATE	DOCUMENT	VOLUME	PAGE RANGE
02/11/2019	Sadler Ranch, LLC and Daniel S. Venturacci's Petition for Judicial Review (filed in Case No. CV-1902-349, later consolidated with CV-1902-348)	I	JA0001-0089
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
02/11/2019	Ira R. and Montira Renner Petition for Judicial Review	I	JA0116-0144
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04/25/2019	Order Following Telephone Status Hearing Held April 9, 2019	I	JA0183-0186
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05/10/2019	Order Granting Eureka County's Motion to Intervene	I	JA0189-0190
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09/16/2019	Opening Brief of Petitioners Sadler Ranch, LLC and Ira R. and Montira Renner	VII	JA1383-1450
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05/28/2019	Unopposed Motion to Extend Time to File the State Engineer's Record on Appeal	I	JA0225-0232

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
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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

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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 14 2020

[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. & MONIRA RENNER; SADLER RANCH,
LLC,

Petitioners,

vs.

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

Respondent.

EUREKA COUNTY; DIAMOND NATURAL
RESOURCES PROTECTION AND
CONSERVATION ASSOCIATION, 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,

Respondents/Intervenors.

_____ /

**DNRPCA INTERVENORS'
MOTION FOR STAY PENDING APPEAL
OF ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW
OF STATE ENGINEER ORDER 1302**

1 DIAMOND NATURAL RESOURCES PROTECTION AND CONSERVATION
2 ASSOCIATION, J&T FARMS, GALLAGHER FARMS, JEFF LOMMORI, M&C HAY,
3 CONLEY LAND & LIVESTOCK, LLC, JIM AND NICK ETCHEVERRY, TIM AND
4 SANDIE HALPIN, DIAMOND VALLEY HAY CO., MARK MOYLE FARMS, LLC, D.F.
5 AND E.M. PALMORE FAMILY TRUST, BILL AND PATRICIA NORTON, SESTANOVICH
6 HAY & CATTLE, LLC, JERRY ANDERSON, BILL AND DARLA BAUMAN (“DNRPCA
7 Intervenors”), by and through their attorney of record Debbie Leonard of Leonard Law, PC,
8 hereby move the Court pursuant to NRCP 62 for an order staying this Court’s Findings of Fact,
9 Conclusion of Law, Order Granting Petitions for Judicial Review of State Engineer Order No.
10 1302 (“the Order”), pending appeal to the Nevada Supreme Court, on an order shortening time.
11 A separate motion for order shortening time has been filed concurrently herewith. This Motion
12 is based upon the following Points and Authorities, the declarations of Mark Moyle, Martin L.
13 Plaskett, Dale C. Bugenig and Debbie Leonard attached hereto, the State Engineer’s record on
14 appeal and the briefs and arguments presented to the Court.

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. NOTICE OF MOTION**

17 A hearing on this matter is respectfully requested prior to the expiration of the 30-day
18 period following service of written notice of entry of the Court’s Order. A court reporter is
19 requested. It is estimated that 2 hours should be set aside for the hearing on this motion.
20 Pursuant to NRCP 62(a), a party may seek enforcement of a court order after the expiration of
21 30 days after service of written notice of its entry. Also, the Court’s Order has created great
22 uncertainty as to the management of water use in Diamond Valley. Therefore, it is imperative
23 that this matter be heard as soon as possible.

24 **II. INTRODUCTION**

25 Because Diamond Valley groundwater users have already commenced the 2020
26 irrigation season based on allocations made in the GMP, have made significant investments in
27 water-conserving equipment and will be seriously harmed without the GMP’s continued
28

1 implementation, the DNRPCA Intervenor seek a stay of the Court’s Order so that State
2 Engineer Order 1302 may remain in effect during the pendency of their appeal.

3 There has been tremendous buy-in into the GMP, with over 90% compliance so far. The
4 data show that the GMP’s requirements have been successful in conserving water and raising the
5 groundwater level. Indeed, the lead up to and implementation of the GMP successfully reduced
6 groundwater pumping in Diamond Valley by 20,000 acre feet from 2017 to 2019, an
7 approximately 26% decrease. As a result, groundwater levels are showing positive trends.
8 Absent a stay, the Court’s Order will have the perverse effect of *increasing* pumping because
9 irrigators will not be bound by the GMP and could pump the full extent of their permitted rights.

10 Moreover, the Court’s Order has created considerable uncertainty as to what rules
11 irrigators should now follow. The GMP imposed numerous requirements on water users, and the
12 State Engineer issued other orders besides Order 1302 to address GMP implementation. It is not
13 clear how irrigators should regard those Orders if the GMP is not in effect. Whether the GMP
14 may be reinstated by the Supreme Court or whether some form of curtailment may occur creates
15 unnecessary chaos among groundwater users, making fiscal planning and farm management
16 difficult, if not impossible.

17 To the extent the Court deems it necessary, the Court could exempt Petitioners from the
18 GMP as part of any stay order it issues. That way, they cannot claim any harm and would
19 continue to exercise their water rights as if no GMP were in place. Because the circumstances
20 warrant that Order 1302 remain in place, and the elements of a stay are met here, the DNRPCA
21 Intervenor respectfully ask the Court to grant this motion and enter the order submitted
22 concurrently herewith.

23 **III. BACKGROUND**

24 On February 11, 2019 Petitioners Timothy Lee and Constance Marie Bailey, Fred and
25 Carolyn Bailey (“Bailey Petitioners”), Sadler Ranch, LLC, and Ira R. and Montira Renner
26 (collectively “Petitioners”) filed Petitions for Judicial Review seeking the reversal of the State
27 Engineer’s Order 1302, which approved the Diamond Valley Groundwater Management Plan
28 (“GMP”). Following briefing, the Court held oral arguments on December 10-11, 2019 in

1 Eureka, Nevada. On April 27, 2020, the Court entered Findings of Fact, Conclusions of Law,
2 Order Granting Petitions for Judicial Review (“the Order”). Notices of Entry of the Order were
3 filed and served by the Petitioners on April 29, 2020.

4 Concurrently with this Motion, the DNRPCA Intervenors have filed a Notice of Appeal
5 of the Order to the Nevada Supreme Court. They seek a stay to keep Order 1302 and the GMP in
6 effect pending the outcome of the appeal.

7 **IV. DISCUSSION**

8 **A. Standard for a Stay of a Judgment Pending Appeal**

9 When an appeal is taken from a final judgment granting, dissolving, or denying an
10 injunction, the court has discretion to “stay, suspend, modify, restore, or grant an injunction on
11 terms for bond *or other terms that secure the opposing party’s rights.*” NRCP 62(c) (emphasis
12 added). A party is entitled to a stay pending appeal when such security exists. *See* NRCP
13 62(d)(2). A bond is only appropriate where the stay is from execution of a money judgment:

14 The purpose of security for a stay pending appeal is to protect the judgment
15 creditor's ability to collect the judgment if it is affirmed by preserving the status
16 quo and preventing prejudice to the creditor arising from the stay. However, a
supersedeas bond should not be the judgment debtor’s sole remedy, particularly
where other appropriate, reliable alternatives exist.

17 *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005), as modified (Jan. 25, 2006). By
18 the authority granted in NRS 534.037, Order 1302 was akin to an injunction that suspended the
19 need for curtailment by priority while the GMP was in place. The DNRPCA Intervenors
20 construe the Court’s Order to have dissolved Order 1302.

21 Although not explicitly applicable to a requested stay at the district court, Nevada Rule
22 of Appellate Procedure (“NRAP”) 8(c) requires an appellate court to consider the following
23 factors in deciding whether to issue a stay or injunction pending appeal:

- 24 (1) Whether the object of the appeal or writ petition will be
25 defeated if the stay or injunction is denied;
- 26 (2) Whether appellant/petitioner will suffer irreparable or serious
27 injury if the stay or injunction is denied;
- 28 (3) Whether respondent/real party in interest will suffer
irreparable or serious injury if the stay or injunction is granted;
and
- (4) Whether appellant/petitioner is likely to prevail on the merits
in the appeal or writ petition.

1 While the Nevada Supreme Court generally does not hold that one factor carries more
2 weight than others, the Court has recognized that if one or two factors are especially strong, they
3 may counterbalance other weak factors. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248,
4 251, 89 P.3d 36, 38 (2004) (citing *Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 659, 6 P.3d
5 982, 987 (2000)). In other contexts where the Legislature has created a right to engage in a
6 certain procedure afforded by statute, the Nevada Supreme Court has articulated that the first
7 stay factor takes on added significance and generally warrants a stay pending resolution of the
8 appeal. *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (addressing appeal from order
9 compelling arbitration). The other stay factors remain relevant to the Court’s analysis, but
10 “absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay
11 is granted, a stay should issue to avoid defeating the object of the appeal.” *Id.*, 120 Nev. at 251–
12 52, 89 P.3d at 38. The same rationale applies here to keep the GMP operational while the
13 Supreme Court considers the DNRPCA Intervenors’ appeal.

14
15 **B. The Circumstances Here Warrant That the GMP Remain in Place Pending Appeal**

16 Because the GMP has resulted in significant pumping reductions in Diamond Valley;
17 groundwater users have made investments and farm management decisions in reliance on its
18 existence; the 2020 irrigation season has already commenced; and a stay can be tailored to allow
19 the Petitioners to exercise their water rights even with the GMP in place, a stay is appropriate to
20 maintain the status quo.

21
22 **1. The Object of the Appeal Will be Defeated if the GMP Does Not Remain in Place While the Appeal is Pending**

23 The first factor should hold substantial weight because the absence of a stay could result
24 in *increased pumping* pending appeal, which completely defeats the purpose of NRS 534.037
25 and the groundwater management plan process created by the Legislature. Through benchmark
26 reductions, the GMP was designed to achieve groundwater level stabilization and the sustainable
27 health of the Eureka County community and economy, while maintaining the tax base and
28 avoiding disruption to the population. ROA 5, 228, 592, 706. Between 2017 and 2019, which

1 was Year 1 of the GMP, pumping in Diamond Valley was reduced from 76,000 acre feet to
2 56,339 acre feet. Declaration of Mark Moyle at ¶30, attached hereto as Ex. 2; Declaration of
3 Dale Bugenig at ¶8, attached hereto as Ex. 3. This is a significant reduction in pumping and was
4 achieved notwithstanding the absence of penalties for non-compliance in GMP Year 1. ROA
5 235. There can be no dispute that a 26% reduction in pumping greatly enhances aquifer health
6 and that continued pumping reductions should be encouraged and enforced. Moyle Decl., Ex. 2
7 at ¶30; Bugenig Decl., Ex. 3 at ¶8.

8 Moreover, hydrographs from the most recent groundwater data indicate a positive
9 influence on water levels in the basin as a result of a decrease in the total groundwater pumping.
10 Bugenig Decl., Ex. 3 at ¶11 and exhibit thereto. With one exception outside the main
11 agricultural area, the data show a decrease in the rate of water level decline in some wells, a
12 stabilization of water levels in other wells and a rise in water levels in the rest of the wells
13 monitored. Bugenig Decl., Ex. 3 at ¶¶11-12. The only groundwater decline was due to pumping
14 from a high-capacity well north of the main agricultural area, not due to those who are
15 participating in the GMP. Bugenig Decl., Ex. 3 at ¶¶11-12.

16 Because Diamond Valley was designated a Critical Management Area in 2015, the State
17 Engineer has no obligation to order curtailment by priority until 2025. *See* NRS 534.110(7).
18 Absent the continued validity of the GMP pending appeal, no reductions in pumping will be
19 required, and each groundwater user that would otherwise be subject to the GMP will be able to
20 pump the full amount of its permitted right. This will result in more pumping and the associated
21 declines in groundwater levels while the appeal is pending in the Nevada Supreme Court, which
22 is antithetical to the purpose of the GMP. Because all water users, including the Petitioners, will
23 benefit from continued enforcement of the GMP and its associated positive impacts to the
24 aquifer, the first factor under NRAP 8(c) favors a stay.

25
26 **2. The DNRPCA Intervenors and Eureka County Will Suffer Serious Injury
Absent the Continued Viability of the GMP While the Appeal is Pending**

27 With no GMP in place, Diamond Valley groundwater users and the basin as a whole will
28 be irreparably harmed by continued – yet needless – groundwater declines, great uncertainty as

1 to their current and future livelihoods, and the absence of clear and defined rules to govern
2 groundwater withdrawals.

3
4 **a. The Stakeholders Spent Years Developing the GMP and Considered the
Alternatives Suggested by the Court**

5 The GMP submitted to the State Engineer was the result of hundreds of hours of
6 meetings and intense efforts over many years by the DNRPCA Intervenors and other community
7 members to develop a GMP that could effectively reduce pumping and stabilize the aquifer, with
8 the stakeholders collectively contributing thousands of hours of their time to finding a solution
9 to overpumping. ROA 2, 277-475, 713-715; Moyle Decl., Ex. 2 at ¶¶7-20, 38. The stakeholders
10 considered numerous concepts for a groundwater management plan, including the possible plan
11 alternatives suggested by the Petitioners and referenced by the Court in its Order (at 32:10-18).
12 Moyle Decl., Ex. 2 at ¶¶23-24. The GMP that was presented to and approved by the State
13 Engineer incorporates many of these suggestions, such as junior pumping reduction, water
14 marketing, implementation of best farming practices, upgrade to more efficient sprinklers, and
15 flexibility to use a rotating water use schedule or a shorter irrigation system in order to reduce
16 pumping according to annual allocations. ROA 2-19, 217-247; Moyle Decl., Ex. 2 at ¶¶23-24.
17 None of these particular strategies is mandatory because the reduction in annual allocations are
18 mandatory. Moyle Decl., Ex. 2 at ¶23. It is up to each water user to determine how to manage its
19 operations to make the most efficient use of reduced water allocations. Moyle Decl., Ex. 2 at
20 ¶23.

21 The GMP proponents also determined that those other alternatives alone would not
22 successfully bring the basin into balance while maintaining the Eureka County economic base
23 and the Diamond Valley community because, absent participation by “senior” right holders (i.e.,
24 those whose rights predate May 12, 1960), complete curtailment of “junior” rights (i.e., those
25 that post-date May 12, 1960) will always be required. Moyle Decl., Ex. 2 at ¶24. No matter how
26 much the juniors conserve, pumping will always exceed 30,000 acre feet if the seniors do not
27 change their practices as well. Moyle Decl., Ex. 2 at ¶24. Only if juniors reduce their pumping to
28 zero (i.e., total curtailment) will withdrawals equal the perennial yield. Moyle Decl., Ex. 2 at

1 ¶24. This would have devastating effects on Diamond Valley and the town of Eureka, severely
2 impacting businesses, individuals, family farming operations, and the agricultural livelihood of
3 the community. Moyle Decl., Ex. 2 at ¶24. Complete destruction of livelihoods and the
4 associated impact to Eureka County’s economy defeats the entire purpose of NRS 534.037 and
5 NRS 534.110(7) and was not a viable plan option. Moyle Decl., Ex. 2 at ¶37.

6 **b. The Stakeholders Made Significant Financial Investments to Achieve the**
7 **Reductions Mandated by the GMP That Will be Lost Should the Court’s**
8 **Order Not be Stayed**

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

17 In order to continue their operations with the reduced allocations mandated by the GMP,
18 approximately 35% of Diamond Valley irrigators have purchased a new pivot or converted to
19 the most efficient spray application systems to conserve water. Plaskett Decl., Ex. 4 at ¶4. This
20 includes the purchase and installation of 58 Low Elevation Spray Application (“LESA”)
21 Systems, at an approximate cost of \$9,000 each for a total community investment of
22 approximately \$522,000. Due to being low to the ground in the crop canopy, LESA Systems are
23 the most efficient application systems available. Plaskett Decl., Ex. 4 at ¶5(b). It also includes
24 the purchase and installation of 10 new pivots equipped with LESA systems at an approximate
25 cost of \$75,000/each for a total community investment of approximately \$750,000. Plaskett
26 Decl., Ex. 4 at ¶5(c).

27 Diamond Valley irrigators have also purchased and installed 127 Medium Elevation
28 Spray Application (“MESA”) Systems at an approximate cost of \$3,500 each for a total
community investment of approximately \$444,500. Plaskett Decl., Ex. 4 at ¶5(d). Although

1 some irrigators installed MESA prior to when the groundwater management planning process
2 began in earnest, some have done so only recently in anticipation of the GMP. *Id.* Diamond
3 Valley irrigators have also purchased and installed 40 Ag Sense and Field Net Smart pivot
4 controllers and soil moisture field monitoring systems and subscriptions at an approximate cost
5 of \$1,700/each for total community investment of approximately \$68,000. Plaskett Decl., Ex. 4
6 at ¶5(e). Based on these equipment upgrades, the total estimated financial investment in water-
7 efficiency measures by stakeholders who are participating in the GMP is approximately
8 \$2,318,500. Plaskett Decl., Ex. 4 at ¶5(f).

9 Those stakeholders made these investments with the good-faith belief that the GMP
10 complied with NRS 534.037 and was what the Nevada Legislature intended in authorizing the
11 GMP process. Plaskett Decl., Ex. 4 at ¶6; Moyle Decl., Ex. 2 at ¶37. They would not have made
12 these investments if the only possible groundwater management plan that could be upheld in
13 court involved curtailment by priority. Plaskett Decl., Ex. 4 at ¶7; Moyle Decl., Ex. 2 at ¶37. If
14 junior appropriators will ultimately be forced to stop irrigating in the face of complete
15 curtailment, which the Court's conclusions necessitate a GMP to require, the cost of these
16 investments will be lost and can never be recovered. *See id.*

17
18 **c. Absent a Stay, There is Considerable Uncertainty Regarding the Rules
That Govern Management of the Basin**

19 Additionally, the Diamond Valley community and Eureka County as a whole will suffer
20 serious and irreparable harm should a stay not issue because the aquifer condition will decline,
21 and the Court's Order has left water users with ambiguity as to the rules they should follow.
22 Moyle Decl., Ex. 2 at ¶31. In furtherance of the GMP, the State Engineer issued other orders
23 regarding management of the Diamond Valley basin, such as Orders 1305 and 1305a, attached
24 hereto as Ex. 8. There is now uncertainty regarding the effectiveness of these orders and whether
25 extension requests are now required to prove beneficial use and prevent a forfeiture. Moyle
26 Decl., Ex. 2 at ¶35. With the Court's Order having struck down the GMP, there is great
27 uncertainty now among water users regarding the rules under which they are operating and
28

1 whether or not they should continue to invest in water-saving measures since curtailment may
2 now be inevitable. Moyle Decl., Ex. 2 at ¶31.

3 At the time the Court issued its Order, the 2020 irrigation season (GMP Year 2) had
4 already begun. Moyle Decl., Ex. 2 at ¶34. Water users made decisions as to what fields to
5 irrigate and other farm management plans based on the existence of GMP. Moyle Decl., Ex. 2 at
6 ¶34. Prior to the Court's Order, the share register for Year 2 was already issued to show the
7 annual allocations. Moyle Decl., Ex. 2 at ¶34; 2020 Share Register, attached hereto as Ex. 13.
8 Starting in Year 2, the GMP required that penalties be assessed for non-compliance. ROA 235;
9 Moyle Decl., Ex. 2 at ¶34. With the Court's Order striking down the GMP, there is no
10 mechanism in place to enforce the cap on annual allocations. Moyle Decl., Ex. 2 at ¶34. Without
11 such limits, pumping may increase, rather than decrease, as would occur were the GMP in force.
12 Moyle Decl., Ex. 2 at ¶34.

13 Because the GMP was developed by local stakeholders, community involvement and
14 buy-in to the GMP has been outstanding. Moyle Decl., Ex. 2 at ¶33. As a result, even since the
15 Order was issued, irrigators have continued to voluntarily comply with the GMP. Moyle Decl.,
16 Ex. 2 at ¶33. However, because the Court struck down the GMP and should no stay issue, water
17 rights holders may choose to pump the full amount of their permits, which will lead to increased
18 pumping while the GMP is on appeal, rather than the benchmark reductions required by the
19 GMP. Moyle Decl., Ex. 2 at ¶33. This is counterproductive to the goal of reducing pumping in
20 the basin. Moyle Decl., Ex. 2 at ¶33.

21 Absent the continued existence of the GMP pending appeal, the efforts of DNRPCA and
22 its members to develop a groundwater management plan that brings the basin into balance and
23 maintains the Diamond Valley economic base will be undermined. The uncertainty of whether
24 they will be able to continue irrigating five years from now (when the 10-year window after
25 CMA designation closes) will itself disrupt the economy, severely impacting businesses,
26 individuals, family farming operations, and the agricultural livelihood of the community. To
27 avoid serious, irreparable harm, it is important that Order 1302 remain in effect until the Nevada
28 Supreme Court reaches a final decision.

1 **d. The Water Manager’s Oversight Will be Lost Absent a Stay**

2 Nevada Division of Water Resources (“DWR”) staff spent many hours to assist Diamond
3 Valley irrigators bring the basin back into balance and avoid curtailment by priority. Moyle
4 Decl., Ex. 2 at ¶29. DWR also invested in the GMP by creating and maintaining the shares
5 database, developing procedures and forms to implement the GMP, training GMP participants,
6 and hiring a GMP Water Manager to oversee the GMP in Eureka County using fees assessed to
7 GMP participants. Moyle Decl., Ex. 2 at ¶29; DWR Forms, attached hereto as Ex. 9. The Water
8 Manager manages the GMP, verifies data reporting, and serves as a resource to water users who
9 are subject to the GMP. Moyle Decl., Ex. 2 at ¶29. If the Water Manager’s position is lost
10 because the Court has struck down the GMP, the important data verification function will not be
11 performed unless a stay is entered to keep the GMP in place pending appeal. Moyle Decl., Ex. 2
12 at ¶29.

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

14 Conversely, Petitioners will not suffer serious or irreparable harm if this stay is granted
15 because their rights continue to be satisfied. The Court’s Order states, without citing to evidence
16 in the record, that vested rights will be harmed by the GMP because “[t]he DVGMP on its face
17 fails to reduce the harm caused by overpumping and aggravates the depleted water basin.” Order
18 at 24:2-3. The DNRPCA Intervenors respectfully disagree with that conclusion, and the data do
19 not support it. *See* Bugenig Decl., Ex. 3 at ¶11 and GMP Monitoring Data attached thereto; *see*
20 *also* GMP Monitoring Data from DWR Website, attached hereto as Ex. 6. After GMP Year 1,
21 positive trends in groundwater levels were nearly ubiquitous in Diamond Valley. *See id.*

22 The record contains no causal connection between the GMP and alleged negative
23 impacts to vested rights. The Court assumed those impacts because the GMP allows for
24 continued pumping over the 30,000 acre feet perennial yield so that benchmark pumping
25 reductions could occur over time. Order at 24:13-15. Yet the Court also concluded that NRS
26 534.110(7) allowed for continued pumping over the perennial yield and did not require that the
27 basin come into balance within 10 years. Order at 15:1-16:7 As stated by the Court,
28

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

5 Order at 15:5-18. These conclusions are inconsistent, and the only way to reconcile them would
6 be for the Court to rule that the statute is unconstitutional because it allows vested rights to be
7 impaired, which the Court did not do and was not asked by Petitioners to do.

8 Based on the Court's conclusion regarding alleged impacts to vested rights, no
9 groundwater management plan could be approved in Diamond Valley other than one that
10 involves immediate and complete curtailment by priority for any rights that post-date May 12,
11 1960. This constitutes serious harm and deprives the junior appropriators of the benefits the
12 Legislature intended to confer with CMA designation and the ability to adopt a groundwater
13 management plan. *See* NRS 534.110(7).

14 There is no evidence in the record that the continued existence of the GMP while the
15 appeal is pending will cause harm to the Petitioners. To the contrary, Sadler and Bailey have
16 been granted mitigation rights for their vested surface claims. *See* Permit 63497, attached hereto
17 as Ex. 10; Permit 82268 and Permit 81720, attached hereto as Ex. 11. Because Sadler and Bailey
18 are pumping water from wells located in the spring sources, those sources will never start
19 producing again from the surface, whether or not the GMP is in place. Indeed, the scientific
20 evidence indicates that even with curtailment of the basin so that withdrawals are limited to
21 30,000 acre feet, those springs will not run again. ROA 464, 467. Renner has only recently
22 contended that its vested claims may be impacted by pumping in Diamond Valley and has
23 applied for mitigation rights. Appl. 89295 and 89296, attached hereto as Ex. 12. There has been
24 no determination by the State Engineer that Renner's vested rights have been impacted by
25 Diamond Valley pumping and that mitigation rights should be granted.

26 The data show that GMP is having a positive influence on groundwater levels. Bugenig
27 Decl., Ex. 3 at ¶11. In that, without the GMP, pumping will likely increase and exert greater
28 stress on the aquifer, Petitioners cannot attribute any specific harm to the GMP should the GMP

1 remain in force pending appeal. To address any claimed harm, the Court can tailor a stay order
2 to exempt the Petitioners from the GMP. If Petitioners wish to be exempted from the GMP,
3 however, they likewise cannot avail themselves of the GMP's benefits, such as banking water
4 for a subsequent year. As the Court can see from the 2020 Share Register, the Bailey Petitioners
5 banked water from 2019. 2020 Share Register, Pages 3-4 of 10, Ex. 13 hereto. They will need to
6 forego that water and cannot bank additional water should the Court's stay order exclude them
7 from the GMP.

8
9 **4. The DNRPCA Intervenors Are Likely to Prevail on Appeal Because the Court's
Order Renders 534.110(7) Meaningless as to Diamond Valley**

10 Respectfully, the DNRPCA Intervenors believe the Court's Order contains multiple legal
11 errors that will result in reversal by the Supreme Court. By concluding that the Legislature did
12 not intend to stray at all from prior appropriation principles, the Court's Order rendered
13 meaningless the groundwater management plan provisions in NRS 534.110(7) and NRS
14 534.037. If the Court's analysis were accepted, as to Diamond Valley, no groundwater
15 management plan could be enacted unless it involves complete or nearly complete curtailment
16 by priority, which defeats the statutory purpose. *See* NRS 534.110(7). When taken to its logical
17 conclusion, the Court's analysis would prohibit a groundwater management plan that involves
18 any pumping over the 30,000 acre feet perennial yield.

19 Moreover, the DNRPCA Intervenors presented certain arguments that the Court did not
20 address at all. *See, e.g.*, DNRPCA Ansr. Br. at 14-15 (discussing other examples of where the
21 Legislature has departed from strict prior appropriation principles and the State Engineer's
22 authority to approve the GMP based on NRS 534.120(2), which allows him to manage
23 groundwater withdrawals for the public welfare). The DNRPCA Intervenors believe the
24 Supreme Court will find its arguments compelling and will uphold the GMP.

25 The Court also did not take into account that the majority of senior right holders agreed
26 to the GMP. Of the 30,000 acre feet of "senior" rights in the basin, 18,700 afa, or about 64%,
27 signed the petition. ROA 4, 148-216; Moyle Decl., Ex. 2 at ¶19. Some seniors who did not sign
28 the petition nevertheless provided public comments in favor of the GMP. ROA 545, 726; Moyle

1 Decl., Ex. 2 at ¶19. In total, those who voted in favor of the GMP or provided favorable
2 testimony represented 20,957.63 acre feet or 71.4% of the senior rights. ROA 167, 185-187,
3 191, 197-198, 200, 207, 209, 212, 214-215, 499-501, 545, 547, 588-589, 591, 594-595, 680-
4 682, 703-705, 711-721, 726-730, 736-737; Moyle Decl., Ex. 2 at ¶19. For context, the Bailey
5 Petitioners represent only 1,934.116 acre feet of senior rights, and Renner and Sadler
6 groundwater rights that are subject to the GMP are junior. ROA 499-501.

7 Regardless of what the Court thinks of the DNRPCA Intervenors' arguments, the
8 Supreme Court has held that where the object of an appeal will be defeated if the stay is denied,
9 a stay is generally warranted, regardless of the merits. *See Mikohn Gaming Corp.*, 120 Nev. at
10 253-54, 89 P.3d at 40. In such circumstances, a court should only deny the motion to stay if
11 "appellate relief is unattainable" or "clearly not warranted," such as where "the appeal appears
12 frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes." *Id.* at
13 253, 89 P.3d at 40. "[A] stay should generally be granted in other cases." *Id.* Because the
14 DNRPCA Intervenors have presented legitimate arguments and seek a stay to protect the
15 hydrologic and economic health of the Diamond Valley community, the circumstances here are
16 precisely those where a stay is warranted. *See id.*

17 **V. CONCLUSION**

18 Absent the continued existence of the GMP, the basin conditions will deteriorate.
19 Pumping will inevitably increase from where it was in 2019 and great uncertainty will cloud the
20 economy and social fabric of Eureka County. Without a stay, the purpose of the appeal will be
21 defeated, serious harm will occur to the Diamond Valley aquifer and the basin's water users, yet
22 the Petitioners will not be harmed at all should the GMP remain in place.

23 The DNRPCA Intervenors presented compelling arguments in support of the GMP, some
24 of which the Court did not address in its Order. Respectfully, the DNRPCA Intervenors believe
25 the Court's Order renders the pertinent statutes meaningless. Based on the foregoing, the
26 DNRPCA Intervenors respectfully request that this Court grant this Motion for Stay of Order
27 Granting Petitions for Judicial Review Pending Appeal, keep Order 1302 and the GMP in effect
28 while the case is before the Supreme Court, tailor the scope of the stay as needed to exclude the

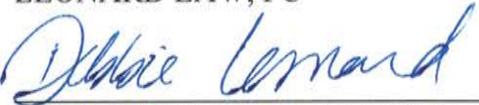
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Petitioners from the GMP, and toll NRS 534.110(7)'s deadline for mandatory curtailment while the appeal is considered. A proposed order is submitted concurrently herewith.

AFFIRMATION

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

DATED: this 14th day of May, 2020

LEONARD LAW, PC

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Attorney for DNRPCA Intervenors

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEONARD LAW, PC 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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wlopez@whitepinecountynv.gov

US MAIL TO:
Beth Mills, Trustee
Marshall Family Trust
HC 62 Box 62138
Eureka, NV 89316

Dated: May 14th 2020


Tricia Trevino

INDEX OF EXHIBITS
DNRPCA INTERVENORS' MOTION FOR STAY PENDING APPEAL

EXHIBIT	DESCRIPTION
1.	Debbie Leonard Declaration
2.	Mark Moyle Declaration
3.	Dale Bugenig Declaration (with hydrologic data attached)
4.	Marty Plaskett Declaration
5.	GMP Meters Pamphlet
6.	GMP Monitoring Data from DWR Website
7.	DWR Meters Presentation
8.	Orders 1305 and 1305a
9.	DWR Forms
10.	Permit 63497
11.	Permit 82268 and Permit 81720
12.	Applications 89295 and 89296
13.	2019 and 2020 Share Registers

EXHIBIT 1

EXHIBIT 1

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 RANCH,
12 LLC,

11 Petitioners,

12 vs.

**DECLARATION OF DEBBIE LEONARD IN
SUPPORT OF DNRPCA INTERVENORS'
MOTION FOR STAY OF ORDER
GRANTING PETITIONS FOR JUDICIAL
REVIEW OF STATE ENGINEER
ORDER 1302 PENDING APPEAL**

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

16 Respondent.

17 EUREKA COUNTY; DIAMOND NATURAL
18 RESOURCES PROTECTION AND
19 CONSERVATION ASSOCIATION, J&T
20 FARMS, GALLAGHER FARMS, JEFF
21 LOMMORI, M&C HAY, CONLEY LAND &
22 LIVESTOCK, LLC, JIM AND NICK
23 ETCHEVERRY, TIM AND SANDIE HALPIN,
24 DIAMOND VALLEY HAY CO., MARK
25 MOYLE FARMS, LLC, D.F. AND E.M.
26 PALMORE FAMILY TRUST, BILL AND
27 PATRICIA NORTON, SESTANOVICH HAY
28 & CATTLE, LLC, JERRY ANDERSON, BILL
AND DARLA BAUMANN,

Respondents/Intervenors.

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

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

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

3. This declaration is offered in support of DNRPCA Intervenor’s Motion for Stay of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Pending Appeal and to authenticate certain exhibits attached thereto.

4. I printed the following exhibits to the Motion from the website of the Division of Water Resources, which are available at the following link:
<http://water.nv.gov/news.aspx?news=Diamond%20Valley%20GMP>

- a. Attached as Exhibit 5 to the Motion is a true and correct copy of the State Engineer’s Pamphlet titled “Diamond Valley Groundwater Management Plan Implementation: Key Information.”
- b. Attached as Exhibit 6 to the Motion is a true and correct copy of the data from Eureka County & DNRPCA’s monitoring wells that is currently available on the State Engineer’s website. Dale C. Bugenig, whose declaration is attached as Ex. 3 to the Motion, contains more recent data.
- c. Attached as Exhibit 7 to the Motion is a true and correct copy of the State Engineer’s NDWR Meters Database presentation.
- d. Attached as Exhibit 9 to the Motion are true and correct copies of the State Engineer’s form Meter Variance Request Under the Diamond Valley Groundwater Management Plan, form Temporary Change to New Well Under the Diamond Valley Groundwater Management Plan and form Transfer of Water Allocation Under the Diamond Valley Groundwater Management Plan.

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e. Attached as Exhibit 13 to the Motion are true and correct copies of the State Engineer’s 2019 and 2020 Diamond Valley Groundwater Management Plan Share Register and Ledger.

5. Attached as Exhibit 8 to the Motion are true and correct copies of the State Engineer’s Orders 1305 and 1305a regarding the management of the Diamond Valley basin.

6. Attached as Exhibit 10 to the Motion is a true and correct copy of Permit No. 63497.

7. Attached as Exhibit 11 to the Motion are true and correct copies of Permit No.’s 82268 and 81720.

8. Attached as Exhibit 12 to the Motion are true and correct copies of Application No.’s 89295 and 89296.

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

DATED: this 14th day of May, 2020.



DEBBIE LEONARD

EXHIBIT 2

EXHIBIT 2

1 CASE NO.: CV-1902-348 (consolidated with
2 Case Nos. CV-1902-349 and CV-1902-350)

3 DEPT. NO.: 2

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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,

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 EUREKA COUNTY; DIAMOND NATURAL
22 RESOURCES PROTECTION AND
23 CONSERVATION ASSOCIATION, J&T
24 FARMS, GALLAGHER FARMS, JEFF
25 LOMMORI, M&C HAY, CONLEY LAND &
26 LIVESTOCK, LLC, JIM AND NICK
27 ETCHEVERRY, TIM AND SANDIE HALPIN,
28 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,

Respondents/Intervenors.

_____ /

**DECLARATION OF MARK MOYLE IN
SUPPORT OF DNRPCA INTERVENORS'
MOTION FOR STAY OF ORDER
GRANTING PETITIONS FOR JUDICIAL
REVIEW OF STATE ENGINEER ORDER
1302 PENDING APPEAL ON ORDER
SHORTENING TIME**

1 I Mark Moyle, do hereby swear under penalty of perjury that the assertions of this
2 declaration are true and correct.

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

6 2. This declaration is offered in support of DNRPCA Intervenors’ Motion for Stay
7 of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Pending Appeal
8 on Order Shortening Time (“Motion”). Concurrently with the Motion, the DNRPCA Intervenors
9 are filing a notice of appeal of the Court’s Order Granting Petitions for Judicial Review of State
10 Engineer Order 1302 (“Order”).

11 3. I am a manager of Mark Moyle Farms, LLC, which holds certain permits and
12 certificates of appropriation of water issued by the Nevada State Engineer for the Diamond
13 Valley Hydrographic Basin No. 153. Some of my water rights have priority dates that pre-date
14 May 12, 1960 (the dividing line between “seniors” and “juniors” in Diamond Valley at which
15 time 30,000 acre feet of groundwater was appropriated in the basin) and some have priority
16 dates that post-date May 12, 1960. I therefore own both “senior” and “junior” rights.

17 4. DNRPCA is a Nevada non-profit corporation comprised of water users in
18 Diamond Valley. I am president and chairman of DNRPCA’s board of directors.

19 5. This declaration summarizes some of the history to develop the GMP; the
20 successes of the GMP in Year 1 to significantly reduce pumping Diamond Valley; and the harm
21 to the Diamond Valley community should the Court not issue a stay that allows the GMP to
22 remain in place pending appeal.

23 6. I have been involved with the GMP development process from its inception
24 through the present.

25 7. Recognizing the need to stabilize groundwater levels and reduce pumping, water
26 users in Diamond Valley came together in 2010 to form DNRPCA to, among other things,
27 protect, conserve and promote the harmonious use of groundwater in Diamond Valley. Starting
28

1 in March 2014, many groundwater rights holders, primarily irrigators, came together to start
2 making progress towards developing a GMP.

3 8. The group held a meeting and decided to request that the Eureka Conservation
4 District (“ECD”), a locally elected, third-party, government entity, take the lead role in
5 facilitating the process. Soon thereafter, the ECD officially accepted the role of facilitating the
6 development of a GMP.

7 9. DNRPCA and its members worked extensively with Eureka County, ECD, the
8 Eureka Producers Cooperative and individual irrigators (collectively, “Planning Process
9 Participants”) on a GMP to address overdraft conditions in Diamond Valley.

10 10. The GMP evolved out of the State Engineer’s efforts to get stakeholder
11 involvement in the Diamond Valley groundwater management process. The State Engineer held
12 workshops in March 2009 and again in February 2014 to engage in discussions with Diamond
13 Valley irrigators regarding potential solutions to the overdraft conditions.

14 11. In June 2013, Hansford Economic Consulting was engaged to conduct a study to
15 assess the financial feasibility of developing a General Improvement District that could carry out
16 a water management program to enhance the sustainability of the underground water supply and
17 storage for the Diamond Valley Hydrographic Basin. In May 2014, Hansford Economic
18 Consulting was engaged to conduct a study of potential water use set-aside programs for
19 Diamond Valley.

20 12. Additionally, ECD contracted with Walker & Associates (“Walker”) in May
21 2014 to assist in scoping the GMP. ECD sent a letter to every groundwater right holder and all
22 known domestic well holders in Diamond Valley to inform them that Walker would be hosting
23 facilitated workshops and private meetings (if requested) to identify the issues, hurdles, and
24 opportunities that stakeholders believed were relevant to development of a GMP in Diamond
25 Valley, including potential strategies to reduce pumping. Walker held many facilitated public
26 workshops and private meetings, collecting comments and ideas for what a successful GMP
27 would look like.
28

1 13. Also in 2014, various Planning Process Participants researched water plans,
2 agreements, and programs that had been employed in other areas where overappropriation was
3 an issue. These were also discussed in the scoping process.

4 14. The Planning Process Participants entertained various possible solutions to the
5 overdraft problem and received presentations on the potential development and implementation
6 of a water market-based system meant to provide ultimate flexibility in using water, while
7 incentivizing conservation and allowing willing participants’ quick sale, lease, and trade of
8 water in times when needed. The GMP was developed to adapt these concepts to local needs,
9 desires, and constraints.

10 15. In 2015, Steve Lewis of the University of Nevada Cooperative Extension began
11 to facilitate sessions with stakeholders to develop a GMP. At that time, the Planning Process
12 Participants established a goal to have a draft GMP completed within 18 months. The Planning
13 Process Participants formed a committee to keep the planning process moving forward and to
14 communicate with stakeholders regarding the planning process.

15 16. On August 25, 2015, the State Engineer designated Diamond Valley as a Critical
16 Management Area (“CMA”). Pursuant to NRS 534.110, this designation started a ten-year time
17 period for groundwater rights holders to develop a GMP.

18 17. Starting in Spring 2015, the Planning Process Participants met regularly to
19 develop the GMP, working to ensure the GMP included provisions for, among other things,
20 governance, pumping reductions, recognition of vested rights, addressing overdraft conditions,
21 metering, efficiency, funding and compliance.

22 18. In February 2016, the Planning Process Participants elected a Groundwater
23 Management Plan Advisory Board (“AB”) by nomination and majority vote. Thereafter, the AB
24 took over much of the responsibility for facilitating GMP development from the professional
25 facilitators. The AB made recommendations for consideration to the entire group of groundwater
26 rights holders who were participating in the GMP process. From February 2016 until submittal
27 of the GMP to the State Engineer, there were an additional twenty-three formal Advisory Board
28 meetings and twenty formal full-group meetings.

1 19. The petition for approval of the GMP was submitted to the State Engineer on
2 August 20, 2018. Of the 30,000 acre feet of “senior” rights in the basin, 18,700 afa, or about
3 64%, signed the petition. Some seniors who did not sign the petition nevertheless spoke in favor
4 of the GMP at the State Engineer’s hearing. In total, those who voted in favor of the GMP or
5 provided favorable testimony represented 20,957.63 acre feet or 71.4% of the senior rights. For
6 context, the Bailey Petitioners represent only 1,934.116 acre feet of senior rights, and Renner
7 and Sadler groundwater rights that are subject to the GMP as junior.

8 20. The GMP submitted to the State Engineer was the result of hundreds of hours of
9 meetings and intense efforts over many years by the Planning Process Participants and the
10 Advisory Board. As this history shows, the GMP process was initiated by the local community
11 and stakeholders years before the State Engineer declared the basin a CMA in 2015, and then
12 continued for an additional three years after the designation.

13 21. On January 11, 2019, after receiving written public comments and conducting a
14 public hearing as specified in NRS 534.037, the State Engineer approved the GMP.

15 22. The GMP was designed to ensure groundwater level stabilization and the
16 sustainable health of the Eureka County community and economy, while maintaining the tax
17 base and avoiding disruption to the population. It provides flexibility through benchmark
18 reductions with yearly allocations adjusted through well monitoring data, annual precipitation
19 values, and conservation relief.

20 23. The Planning Process Participants considered the possible plan alternatives
21 suggested by the Petitioners and referenced by the Court in its Order (at 32:10-18). The GMP
22 that was presented to and approved by the State Engineer incorporates many of these
23 suggestions, such as junior pumping reduction, water marketing, implementation of best farming
24 practices, upgrade to more efficient sprinklers, and flexibility to use a rotating water use
25 schedule or a shorter irrigation system in order to reduce pumping according to annual
26 allocations. None of these particular strategies is mandatory because the reduction in annual
27 allocations are mandatory. It is up to each water user to determine how to manage its operations
28 to make the most efficient use of reduced water allocations.

1 24. The Planning Process Participants also determined that those other alternatives
2 alone would not successfully bring the basin into balance while maintaining the Eureka County
3 economic base and the Diamond Valley community because, absent participation by “senior”
4 right holders (i.e., those whose rights predate May 12, 1960), complete curtailment of “junior”
5 rights (i.e., those that post-date May 12, 1960) will always be required. No matter how much the
6 juniors conserve, pumping will always exceed the 30,000 acre-feet perennial yield if the seniors
7 do not change their practices as well. As long as the seniors continue to pump the full amount of
8 their permits, only if junior irrigators reduce their pumping to zero (i.e., total curtailment) will
9 withdrawals equal the perennial yield. This would have devastating effects on Diamond Valley
10 and the town of Eureka, severely impacting businesses, individuals, family farming operations,
11 and the agricultural livelihood of the community. Such complete destruction of livelihoods and
12 the associated impact to Eureka County’s economy defeats the entire purpose of NRS 534.037
13 and NRS 534.110(7) and was not a viable plan option.

14 25. The Planning Process Participants also looked for funding sources for a water
15 rights purchase program but were unsuccessful.

16 26. Prior to approval of the GMP, there was already an extensive network of
17 monitoring wells in Diamond Valley, including those of the State, Eureka County, and
18 DNRPCA. A key component of the DVGMP was the creation of an even more robust system for
19 data collection and reporting to monitor water use and groundwater levels. Data of groundwater
20 levels is regularly collected. The data collected in the last few years, as water users started to
21 invest in water-efficiency technologies and the GMP was implemented, show that groundwater
22 levels in Diamond Valley are starting to stabilize.

23 27. The GMP provides that “[a]ll groundwater pumped from Diamond Valley that is
24 subject to this GMP shall be metered using an approved Smart-capable flow meter...before any
25 groundwater subject to the GMP may be put to use.” This requirement promotes uniformity and
26 standardization and ensures accurate and reliable data reporting.

27 28. The 2019 irrigation season was Year 1 of the GMP. No penalties for non-
28 compliance were assessed in Year 1 so that water users could get the necessary infrastructure in

1 place and adjust to the new procedures. Notwithstanding the absence of penalties in Year 1,
2 there was over 90% irrigator compliance with the GMP’s meter requirement.

3 29. The Division of Water Resources (“DWR”) has invested considerable time and
4 labor into the GMP. DWR staff regularly communicate with the Planning Process Participants
5 during the development of the GMP and attended planning meetings. DWR developed and now
6 manages the meters database, educated irrigators in meter purchase and installation, and
7 developed forms to implement specific provisions of the GMP. Using assessments from water
8 users, DWR also hired a Water Manager to live in Eureka and manage the GMP, verify data
9 reporting, and serve as a resource to water users who are subject to the GMP. If the Water
10 Manager’s position is lost because the Court has struck down the GMP, the important data
11 verification function will not be performed unless a stay is entered to keep the GMP in place
12 pending appeal.

13 30. In 2017, prior to the GMP being approved, estimated basin-wide groundwater
14 usage was 76,000 acre feet based on crop inventory. In 2019, Year 1 of the GMP, actual usage
15 could be measured because of the GMP’s metering requirement and was reduced to
16 approximately 56,000 acre feet. This amounted to a 20,000 acre-foot, or about a 26%, reduction
17 in annual water use. This reduction far exceeded the Planning Process Participants’ expectations.
18 The benchmark reduction table in the GMP did not anticipate this level of reduction until Year 8
19 of the GMP. With this success, the general feeling in the community regarding the GMP has
20 been a sense of optimism that adequate reductions in pumping are achievable to bring the basin
21 into balance while also preserving the social and economic fabric of Eureka County.

22 31. With the Court’s Order having struck down the GMP, there is great uncertainty
23 now among water users regarding the rules under which they are operating and whether or not
24 they should continue to invest in water-saving measures since curtailment may now be
25 inevitable.

26 32. There has been significant community investment in and implementation of
27 conservation practices, as more specifically addressed in the Declaration of Martin L. Plaskett,
28 attached to the Motion.

1 33. Because the GMP was developed by local stakeholders, community involvement
2 and buy-in to the GMP has been outstanding. As a result, even since the Order was issued,
3 irrigators have continued to voluntarily comply with the GMP. However, because the Court
4 struck down the GMP, water rights holders may choose to pump the full amount of their
5 permits, which will lead to increased pumping while the GMP is on appeal, rather than the
6 benchmark reductions required by the GMP. This is counterproductive to the goal of reducing
7 pumping in the basin.

8 34. At the time the Court issued its Order, the 2020 irrigation season (GMP Year 2)
9 had already begun. Water users made decisions as to what fields to irrigate and other farm
10 management plans based on the existence of GMP. Prior to the Court's Order, the share register
11 for Year 2 was already issued to show the annual allocations. Starting in Year 2, the GMP
12 required that penalties be assessed for non-compliance. With the Court's Order striking down
13 the GMP, there is no mechanism in place to enforce the cap on annual allocations. Without such
14 limits, pumping may increase, rather than decrease, as would occur were the GMP in force.

15 35. In furtherance of the GMP, the State Engineer issued other orders regarding
16 management of the Diamond Valley basin, such as Order 1305 and 1305a. There is now
17 uncertainty regarding the effectiveness of these orders and whether extension requests are now
18 required to prove beneficial use and prevent a forfeiture.

19 36. Absent a stay that keeps the GMP in effect, the DNRPCA Intervenors and
20 Diamond Valley as a whole will be harmed by potential increases in pumping, the uncertainty
21 regarding the rules that should be followed, and the lost investments in water-saving
22 technologies to comply with the GMP if curtailment is inevitable, as the Court's Order suggests.

23 37. My company, Mark Moyle Farms, is one of the stakeholders who made
24 significant financial investments in water-conserving technologies to meet the reductions in
25 annual allocations that the GMP requires. I made these investments with the good-faith belief
26 that the GMP complied with NRS 534.037 and was what the Nevada Legislature intended in
27 authorizing the GMP process. I would not have made these investments if the only possible
28 groundwater management plan that could be upheld in court involved curtailment by priority.

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 RANCH,
12 LLC,

Petitioners,

vs.

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

Respondent.

17 EUREKA COUNTY; DIAMOND NATURAL
18 RESOURCES PROTECTION AND
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27 PATRICIA NORTON, SESTANOVICH HAY
28 & CATTLE, LLC, JERRY ANDERSON, BILL
AND DARLA BAUMANN,

Respondents/Intervenors.

_____ /

**DECLARATION OF DALE C. BUGENIG
IN SUPPORT OF DNRPCA
INTERVENORS' MOTION FOR STAY OF
ORDER GRANTING PETITIONS FOR
JUDICIAL REVIEW OF
STATE ENGINEER ORDER 1302
PENDING APPEAL ON
ORDER SHORTENING TIME**

1 I, Dale C. Bugenig, do hereby swear under penalty of perjury that the assertions of this
2 declaration are true and correct.

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

6 2. This declaration is offered in support of DNRPCA Intervenors' Motion for Stay
7 of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Pending Appeal
8 on Order Shortening Time ("Motion").

9 3. I am the managing member of Dale C. Bugenig, Consulting Hydrogeologist, LLC. I
10 work out of a field office in Eureka, Nevada.

11 4. I hold a Bachelor's degree in Geology and earned my Master of Science Degree in
12 Hydrology and Hydrogeology from the University of Nevada, Reno.

13 5. My knowledge of Eureka County dates back to the summer of 1973 when I
14 completed a comprehensive geologic field methods summer course near Mount Tenabo and Cortez in
15 western Eureka County and Eastern Lander County as a requirement of my undergraduate degree.

16 6. For more than 40 years I have provided consulting services in the discipline of
17 hydrogeology for clients located in the western U.S., primarily in the Basin and Range. As part of my
18 practice, I have been qualified as an expert in hydrogeology and groundwater modeling on multiple
19 occasions. I first testified as an expert in an administrative hearing before the Nevada State Engineer
20 in 1977, and since then, have provided expert testimony over the years in numerous proceedings
21 before the Nevada State Engineer. I have also been qualified as an expert in hydrogeology and
22 groundwater modeling in California Superior Court and before the U.S. District Court in Nevada.

23 7. Eureka County first engaged me in 2006 to help address water-resource issues
24 affecting the County. Work I have undertaken on the County's behalf includes the preparation of a
25 comprehensive Water Resource Master Plan encompassing all of Eureka County, which was
26 approved by the Board of County Commissioners in 2016. I have also prepared hydrogeologic reports
27 and evaluated hydrogeologic reports and groundwater models prepared by other entities in their
28 dealings with the County.

1 8. The GMP has already created positive results in Diamond Valley. Groundwater
2 withdrawals in 2017 were estimated at 76,000 AF/yr. Irrigators began voluntary reductions in 2018 in
3 anticipation of approval of the GMP by improving irrigation efficiency, in large part through higher-
4 efficiency nozzle packages and linking irrigation to local meteorological conditions. With these
5 practices, irrigators reduced groundwater pumpage by more than 13,000 AF/yr to 62,361 AF/yr in
6 2018. The GMP then went into effect in 2019, resulting in the further reduction of pumping to 56,339
7 AF/yr in 2019. As this shows, anticipation and implementation of the GMP has already reduced the
8 amount of groundwater pumped by approximately 20,000 AF/yr., a 26% reduction from 2017.

9 9. I initiated a groundwater monitoring network for the Diamond Valley Hydrographic
10 Area in 2011. The network initially consisted of 12 wells distributed mainly around the main
11 agricultural area of the basin. The initial six wells were equipped by Eureka County. Six additional
12 wells were equipped by the Diamond Natural Resource Protection and Conservation Association
13 (DNRPCA) through a grant from Eureka County. The network currently has 11 active wells.

14 10. The water-level data from the network are downloaded to a computer twice a year;
15 once in December and once in May. I incorporate the data into Excel[®] spreadsheets and prepare
16 hydrographs. The hydrographs are discussed at public meetings of the Board of County
17 Commissioners, DNRPCA and other public meetings. The hydrographs I prepare are also used by the
18 Nevada Division of Water Resources (DWR) as a source of information about the Diamond Valley
19 aquifer. The hydrographs posted on line by DWR represent data through December 2019¹ and were
20 prepared by me.

21 11. I downloaded the data logger network on May 6, 2020 and created updated
22 hydrographs, which are attached to this declaration. The hydrographs indicate a positive influence on
23 water levels in the basin as a result of a decrease in the total groundwater pumpage in 2018 of 62,361
24 acre-feet per year (AF/yr) to 56,339 AF/yr in 2019,² the inaugural year of the Diamond Valley
25 Groundwater Management Plan (GMP). This is evidenced by a decrease in the rate of water level
26

27 ¹ <http://water.nv.gov/news.aspx?news=Diamond%20Valley%20GMP>, last accessed 05/12/20.

28 ² Jared McCrum, DWR Water Commissioner, personal communication on 05/12/20 relaying provisional groundwater pumpage data for Diamond Valley Hydrographic Area.

1 decline in some wells, a stabilization of water levels in other wells and a rise in water levels in the rest
2 of the wells monitored.

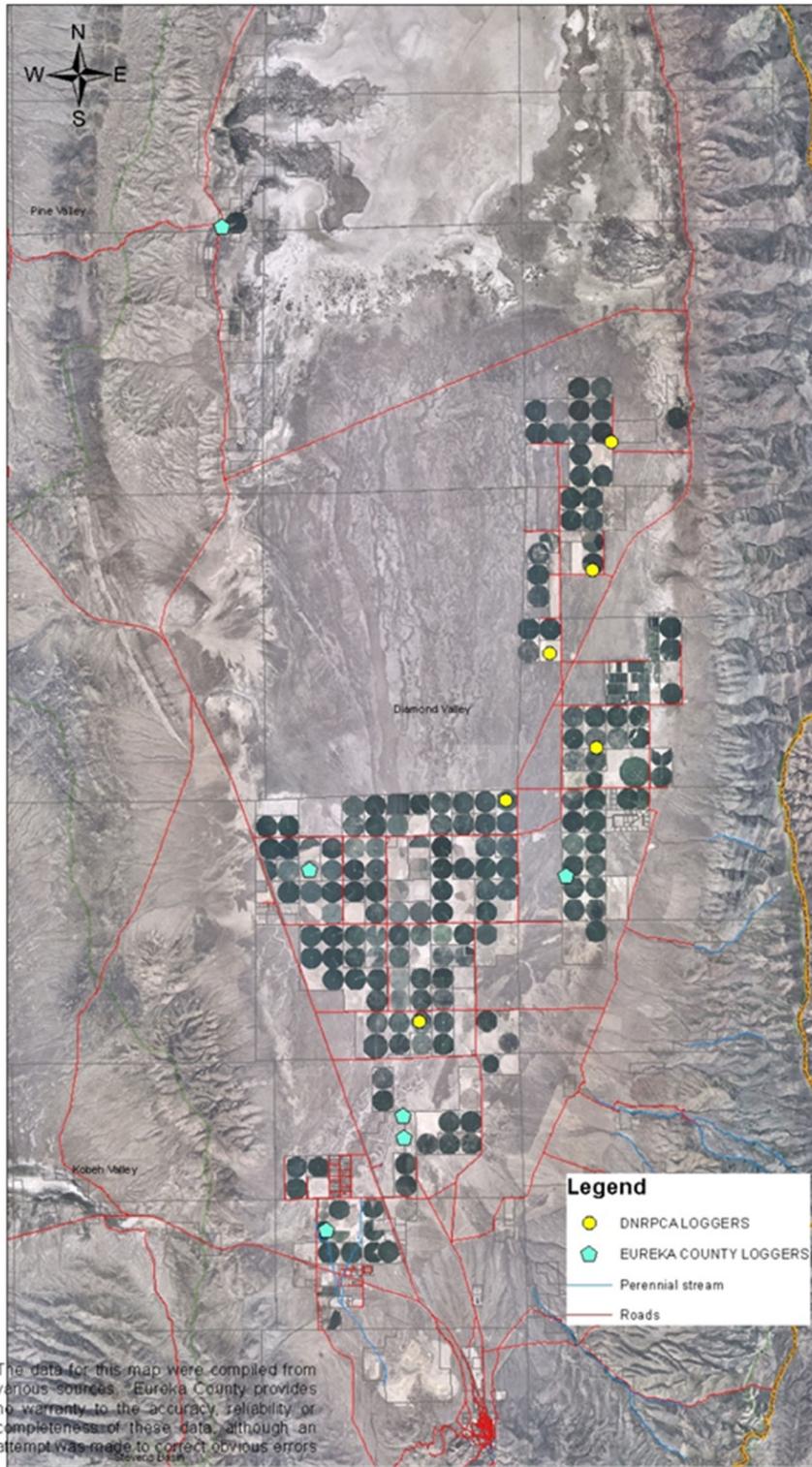
3 12. The only portion of Diamond Valley where water level trends are not positive is west
4 of the playa at a location approximately 14 miles north-northwest of the main agricultural area as
5 indicated in the hydrograph for the Bailey monitoring well. The data for this well show a rapid
6 decline of approximately 5 feet beginning in late 2018 in direct response to pumping a high-yield
7 irrigation well located approximately four miles to the north.

8 13. The monitoring well network, in combination with accurate metered pumpage data
9 that is now available because of the GMP's metering requirement, demonstrate a positive impact on
10 basin water levels from the GMP. The water-right holders who developed the GMP chose the
11 observed response of water levels to reductions in groundwater pumpage as the primary metric with
12 which to assess the effectiveness of the plan. This reliance on real-world data, as opposed to estimates
13 of the basin's safe yield, constitutes one of the foundations of the GMP.

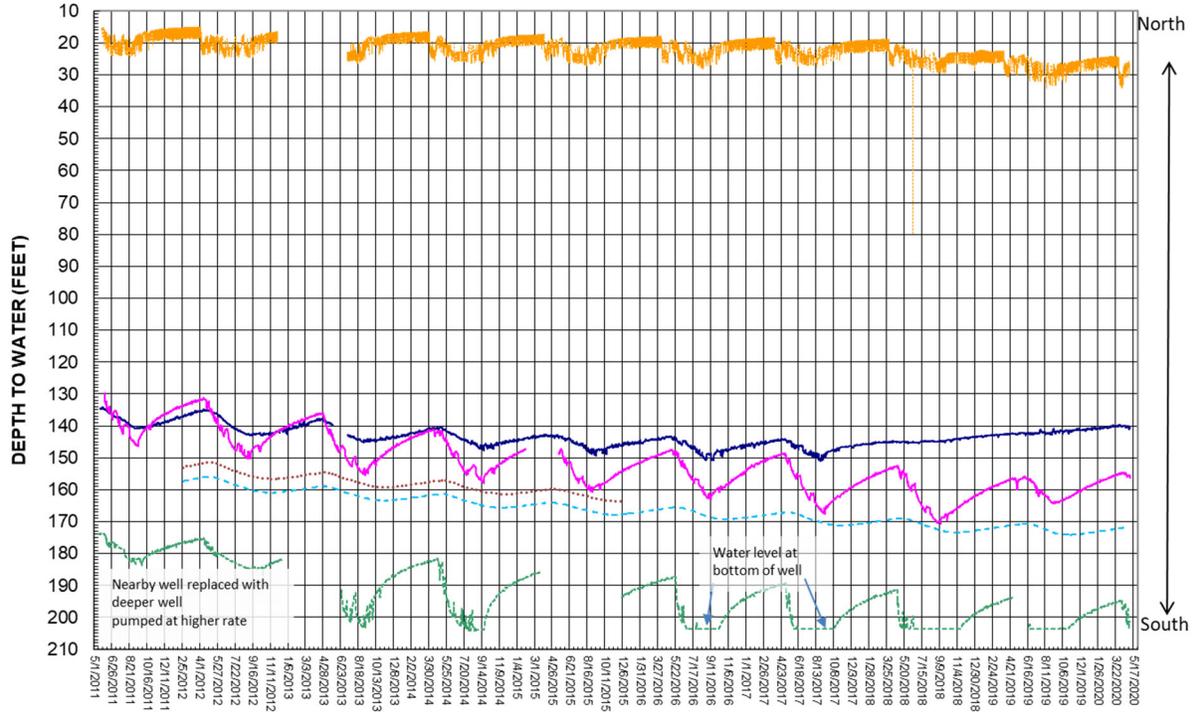
14 I declare under penalty of perjury under the laws of the State of Nevada that the
15 foregoing is true and correct.

16 DATED: this 13th day of May, 2020.

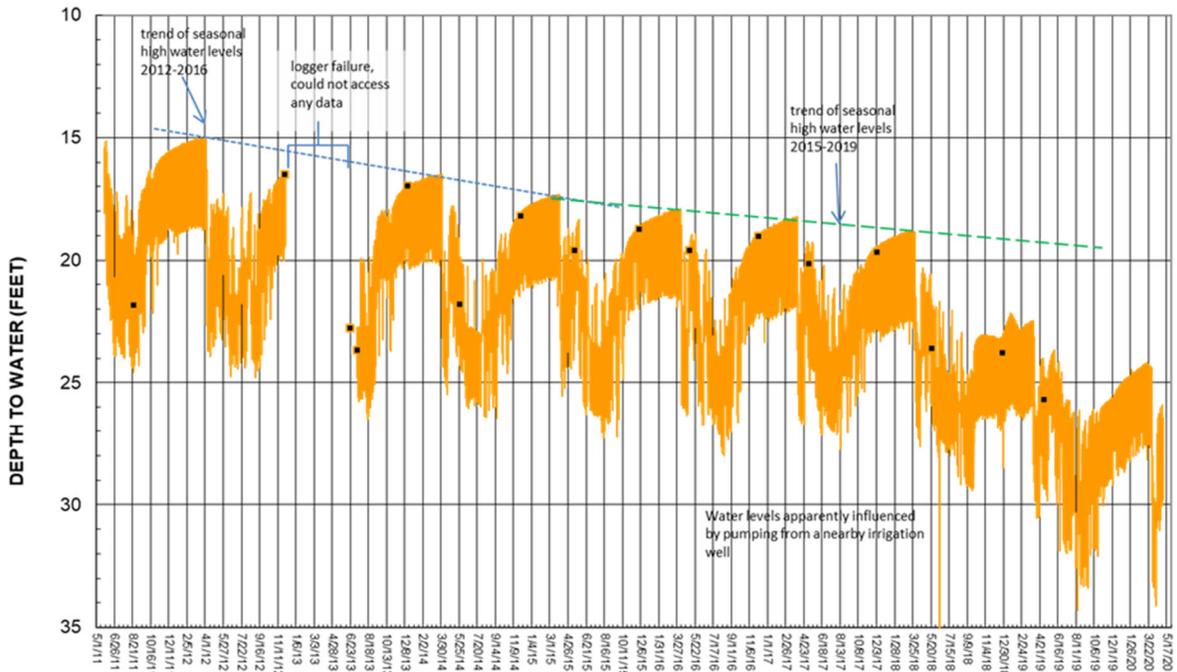
17 
18 DALE C. BUGENIG



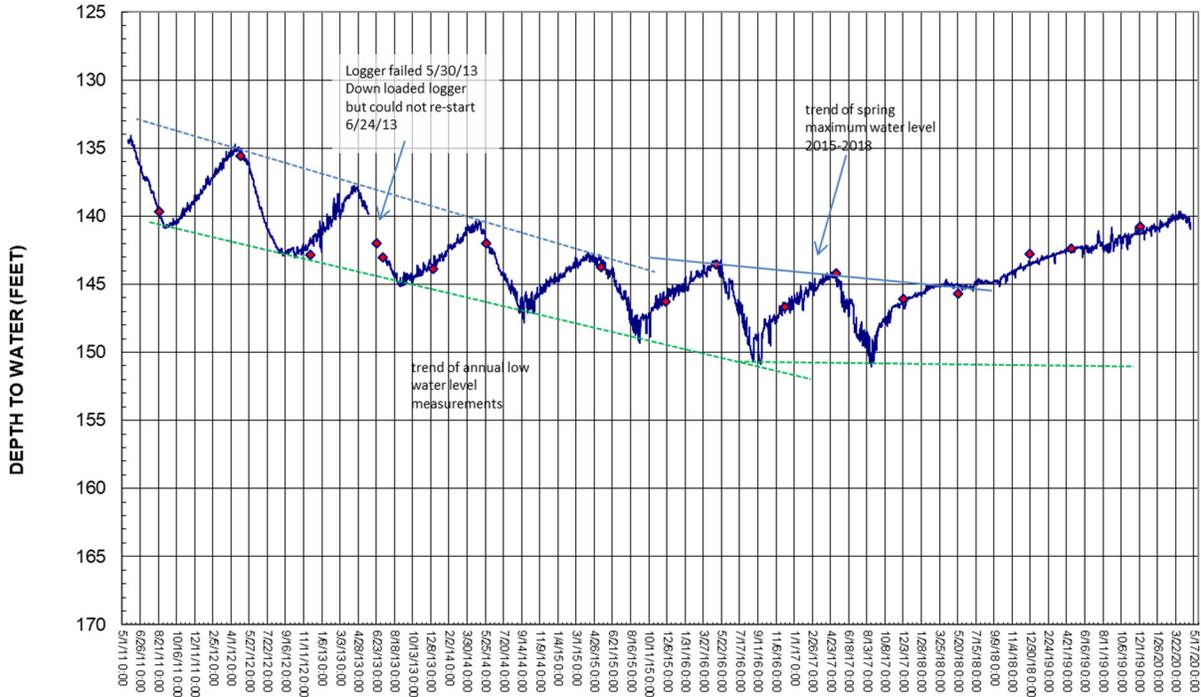
EUREKA COUNTY DATA LOGGERS



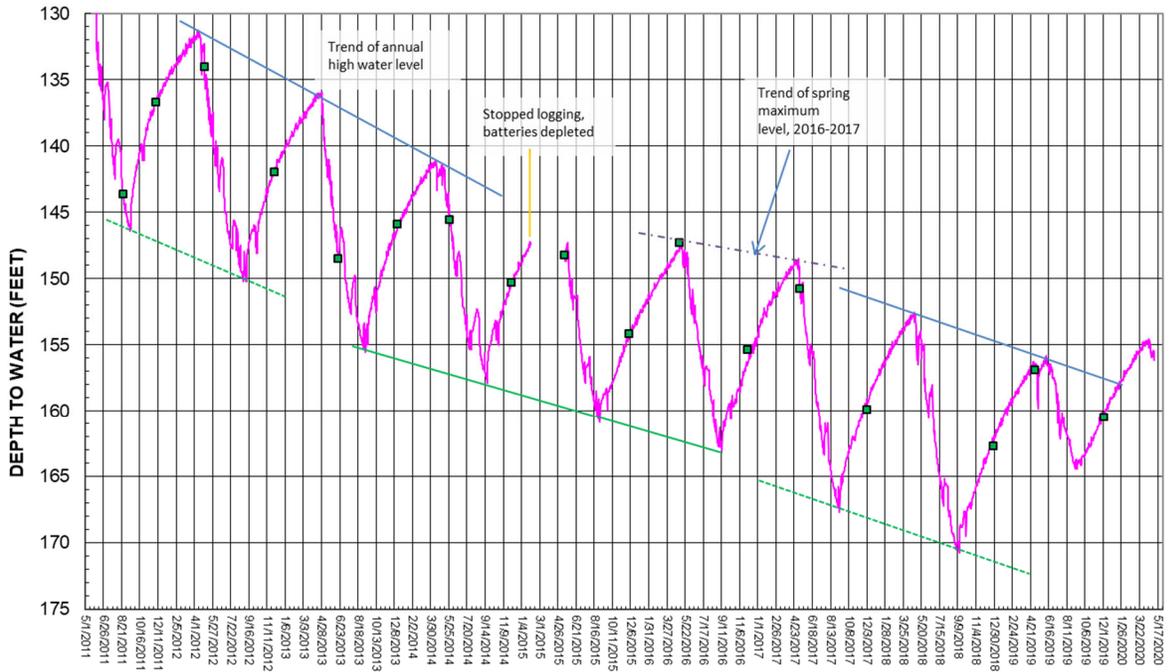
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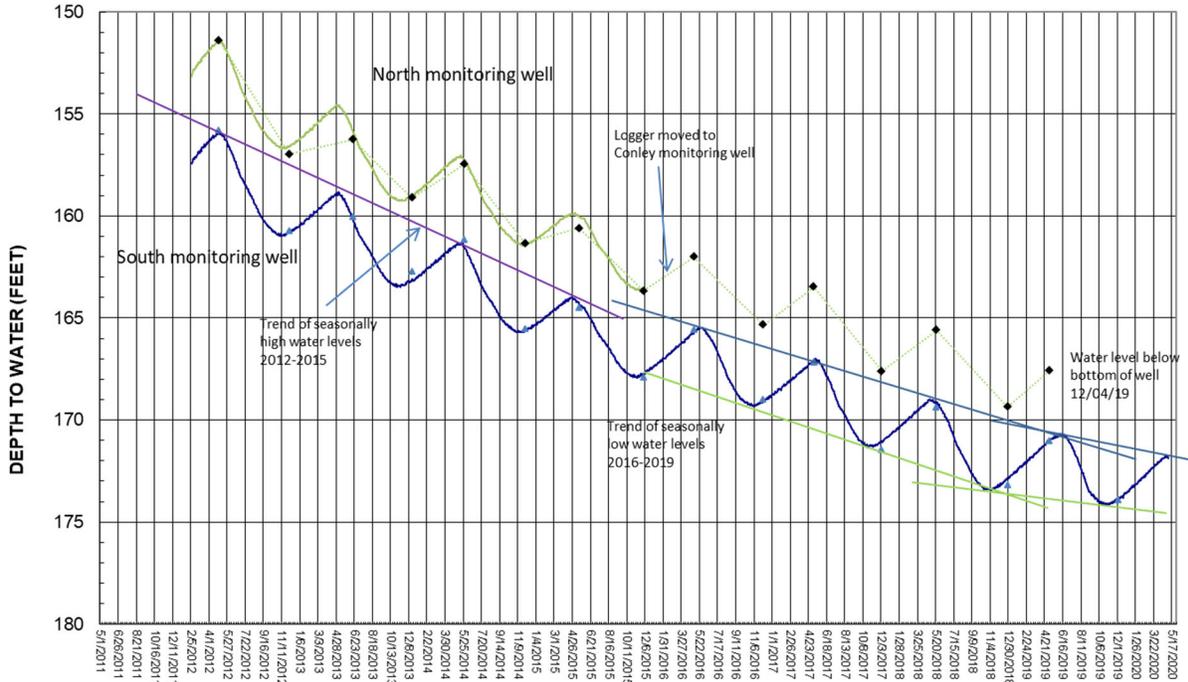
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Morrison Monitoring Well**



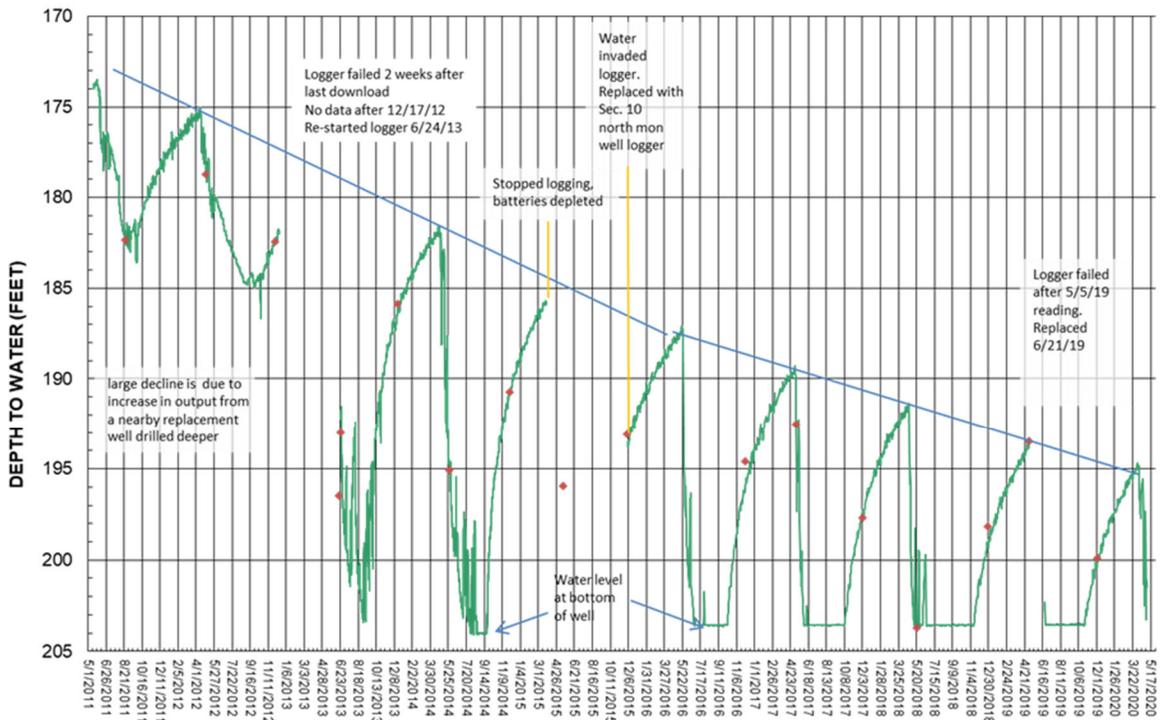
**EUREKA COUNTY DATA LOGGERS
Section 8 (nee Burnham) Monitoring Well**

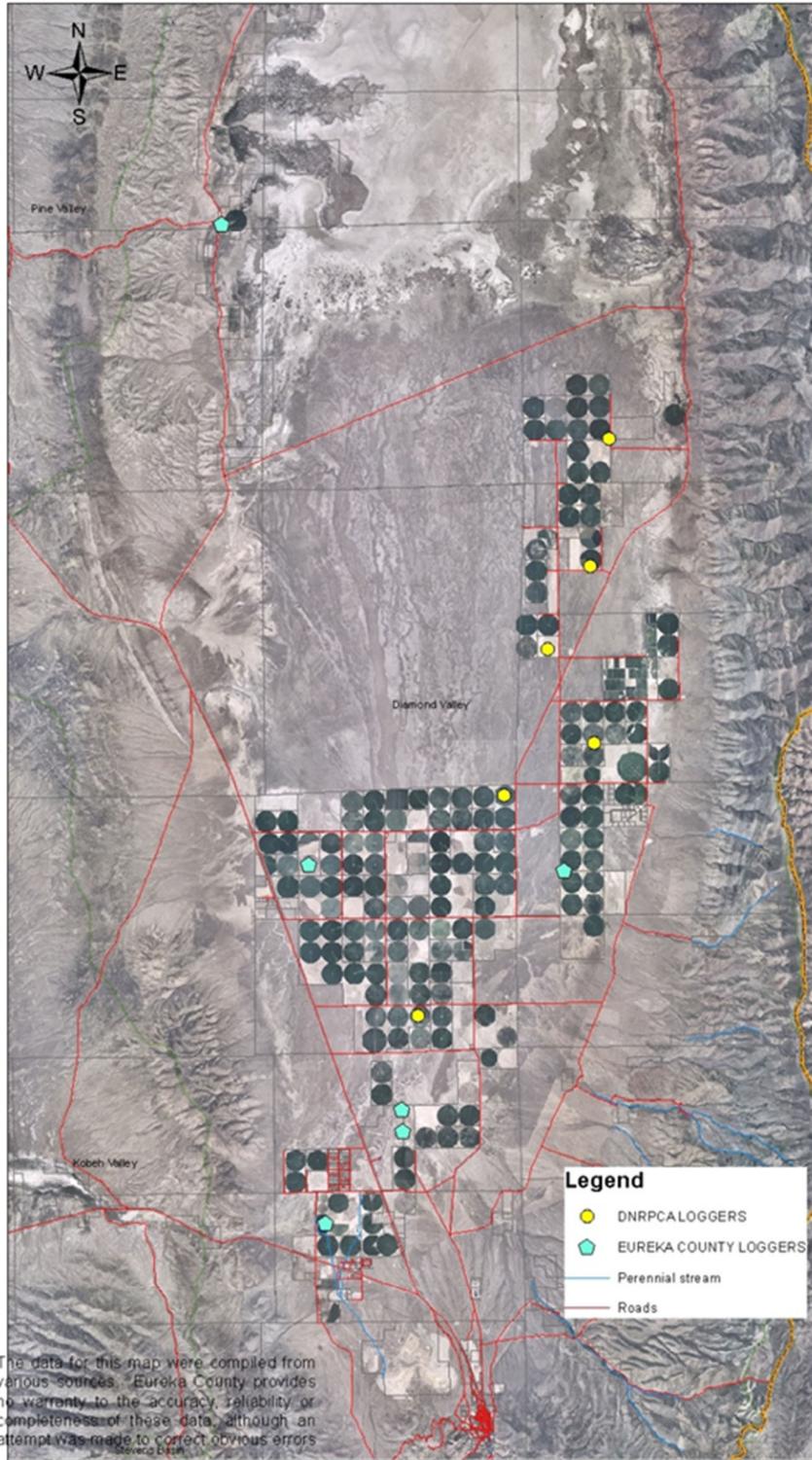


**EUREKA COUNTY DATA LOGGERS
Section 10 Monitoring Wells**

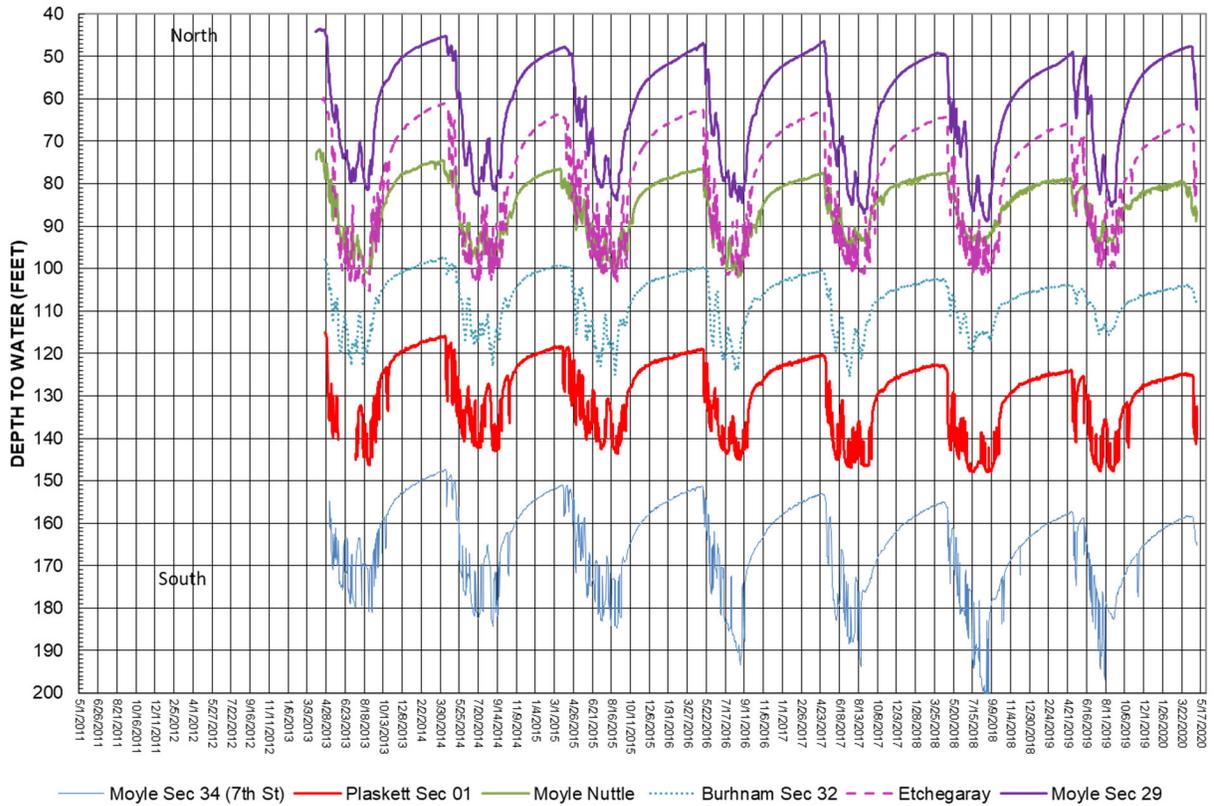


**EUREKA COUNTY DATA LOGGERS
Conley Monitoring Well**

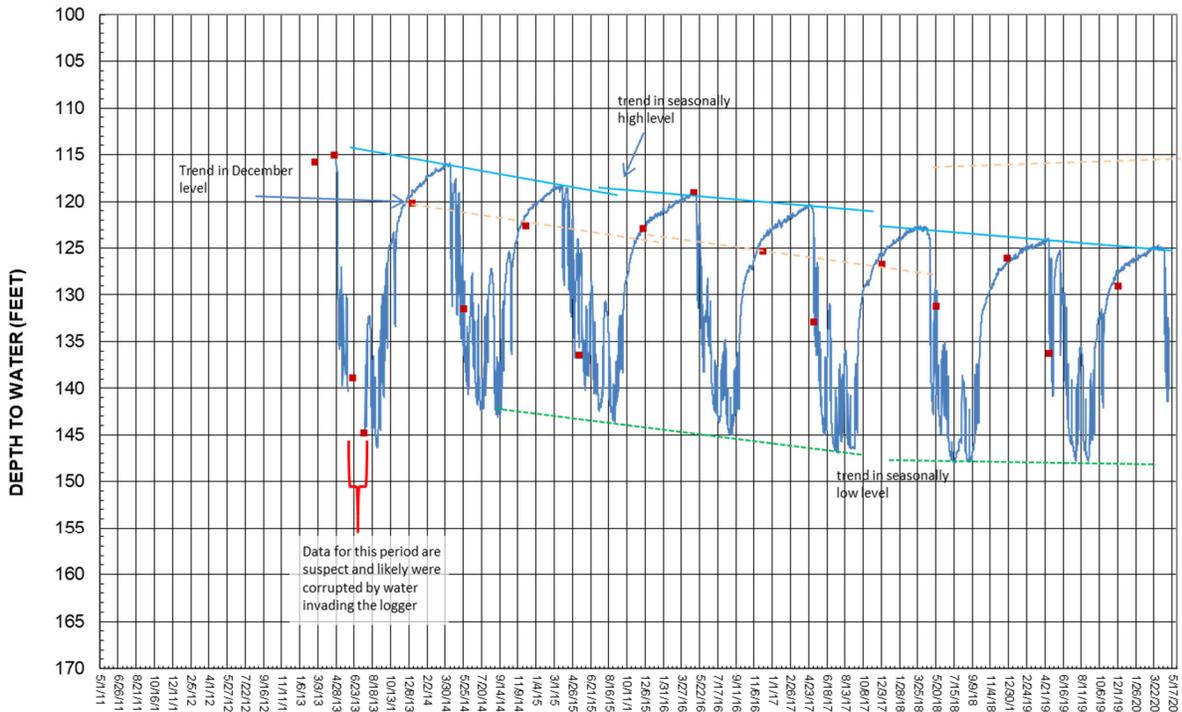




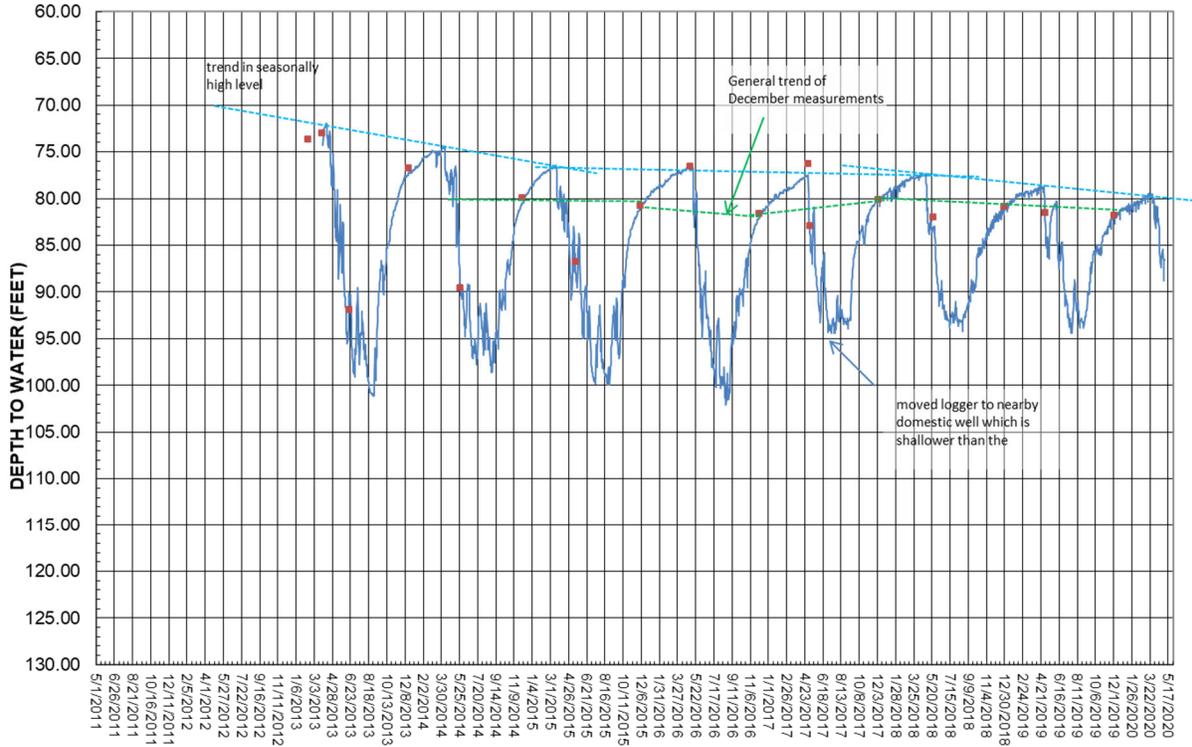
DNRPCA MONITORING WELLS



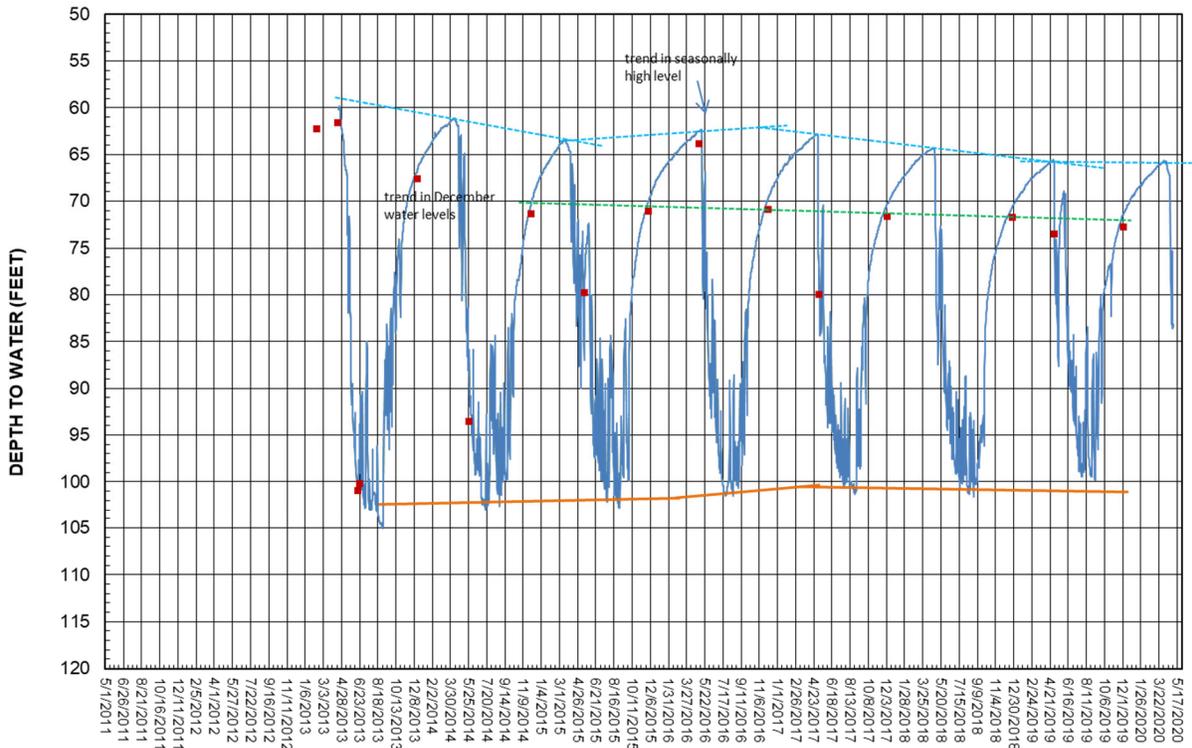
DNRPCA DATA LOGGERS Plaskett Section 01 Well



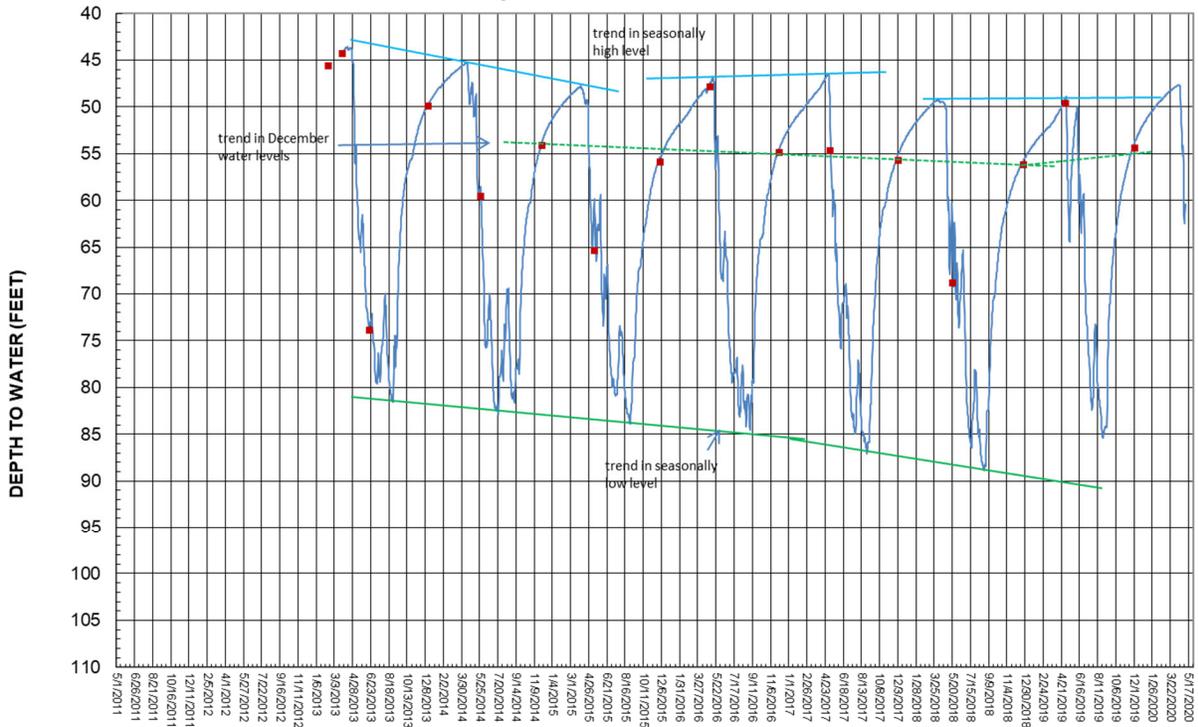
DNRPCA DATA LOGGERS
Moyle Nuttle Well



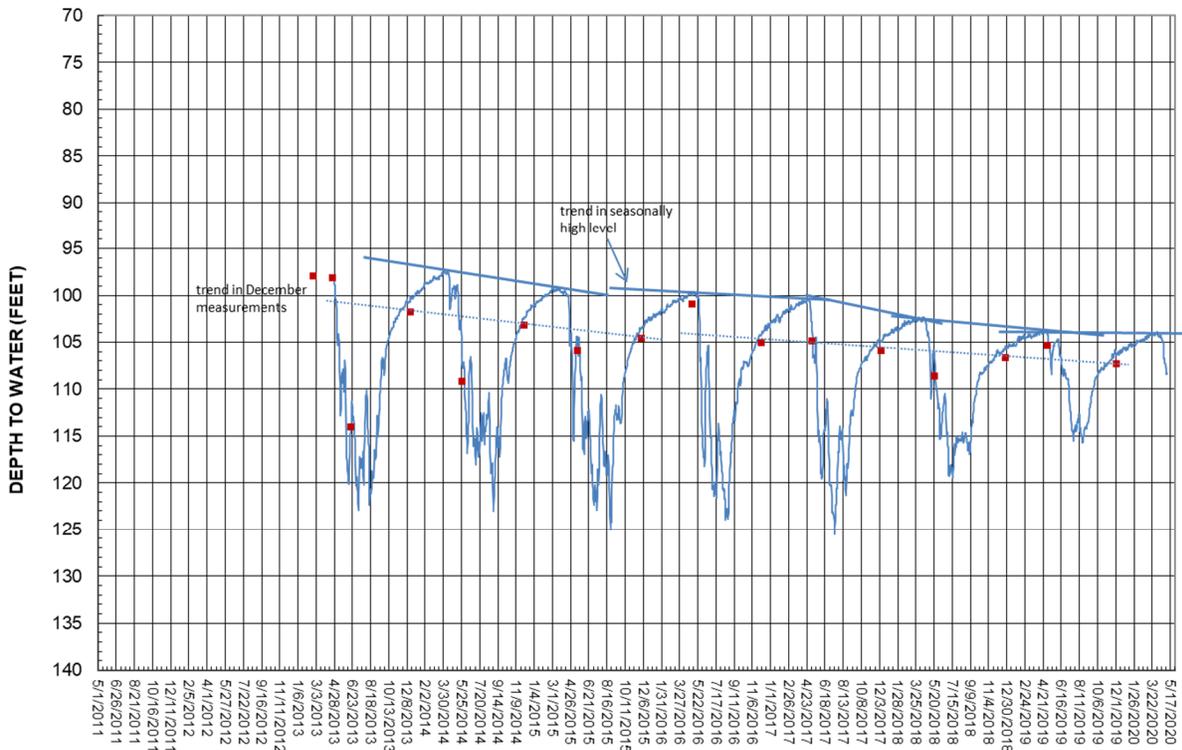
DNRPCA DATA LOGGERS
Etchegaray Well



**DNRPCA DATA LOGGERS
Moyle North Well**



**DNRPCA DATA LOGGERS
Sec 32(nee Burnham 32) Well**



DNRPCA DATA LOGGERS
Moyle Section 34 Well

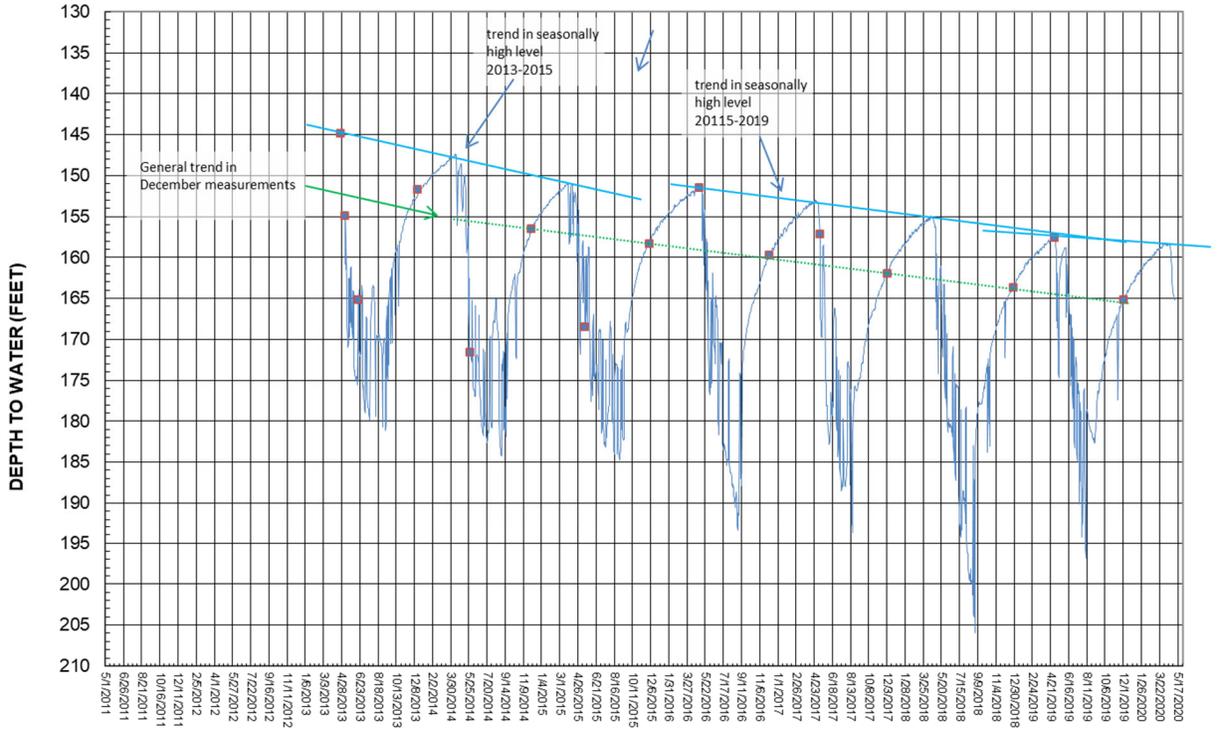


EXHIBIT 4

EXHIBIT 4

1 CASE NO.: CV-1902-348 (consolidated with
2 Case Nos. CV-1902-349 and CV-1902-350)

3 DEPT. NO.: 2
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PATRICIA NORTON, SESTANOVICH HAY
& CATTLE, LLC, JERRY ANDERSON, BILL
AND DARLA BAUMANN,

Respondents/Intervenors.

**DECLARATION OF
MARTIN L. PLASKETT IN SUPPORT OF
DNRPCA INTERVENORS' MOTION FOR
STAY OF ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW OF STATE
ENGINEER ORDER 1302 PENDING
APPEAL ON ORDER SHORTENING TIME**

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I, Martin L. Plaskett, do hereby swear under penalty of perjury that the assertions of this declaration are true and correct.

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

2. This declaration is offered in support of the DNRPCA Intervenors' Motion for Stay of Order Granting Petitions for Judicial Review of State Engineer Order 1302 Pending Appeal on Order Shortening Time ("Motion"). Concurrently with the Motion, the DNRPCA Intervenors are filing a notice of appeal of the Court's Order Granting Petitions for Judicial Review of State Engineer Order 1302 ("Order").

3. I am the President of Diamond Valley Hay Company, Inc., which holds certain permits and certificates of appropriation of water issued by the Nevada State Engineer for the Diamond Valley Hydrographic Basin No. 153. I am also on the Diamond Valley Groundwater Management Plan ("GMP") Advisory Board. I have personal knowledge of the investments made by Diamond Valley irrigators in compliance with the GMP and in furtherance of conservation practices that have been developed to reduce water pumping.

4. For the past few years, irrigators in Diamond Valley have been investing in water-saving equipment. Those investments intensified in anticipation of the GMP's implementation. Over 90% of Diamond Valley irrigators have installed the type of meters specified in the GMP. Approximately 35% of Diamond Valley irrigators have purchased a new pivot or converted to the most efficient spray application systems to conserve water.

5. I estimate that the following investments have occurred in furtherance of the GMP and its goals:

- a. Purchase and installation of 178 totalizing meters, as required by the GMP, at an approximate cost of \$3,000/each for a total community investment of approximately \$534,000 in meters.

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- b. Purchase and installation of 58 Low Elevation Spray Application (“LESA”) Systems, at an approximate cost of \$9,000 each for a total community investment of approximately \$522,000. Due to being low to the ground in the crop canopy, LESA Systems are the most efficient application systems available.
- c. Purchase and installation of 10 new pivots equipped with LESA systems at an approximate cost of \$75,000/each for a total community investment of approximately \$750,000.
- d. Purchase and installation of 127 Medium Elevation Spray Application (“MESA”) Systems at an approximate cost of \$3,500 each for a total community investment of approximately \$444,500. Although some irrigators installed MESA prior to when the groundwater management planning process began in earnest, some have done so only recently in anticipation of the GMP.
- e. Purchase and installation of 40 Ag Sense and Field Net Smart pivot controllers and soil moisture field monitoring systems and subscriptions at an approximate cost of \$1,700/each for total community investment of approximately \$68,000.
- f. Based on these equipment upgrades, the total estimated financial investment in water-efficiency measures by stakeholders who are participating in the GMP is approximately \$2,318,500.

6. My company, Diamond Valley Hay, is one of the stakeholders who made significant financial investments in water-conserving technologies to meet the reductions in annual allocations that the GMP requires.

7. I made these investments with the good-faith belief that the GMP complied with NRS 534.037 and was what the Nevada Legislature intended in authorizing the GMP process.

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8. I would not have made these investments if the only possible groundwater management plan that could be upheld in court involved curtailment by priority.

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

DATED: this ___ day of May, 2020.


MARTIN L. PLASKETT

EXHIBIT 5

EXHIBIT 5

Specific Instructions for Siemens MAGFLO Meter

DO NOT:

- * Reset totalizer #1—this will be password protected in 2020 with a NDWR password.

DO:

- * Use totalizer #2 for personal accounting, crop totals, annual totals, etc.
- * Enter numbers exactly as displayed on the meter when you input **monthly** readings in the MD.
- * Note the beginning and ending readings in the remarks for each irrigation season in the MD.
- * Enter detailed notes in the remarks section of the MD.
- * Make sure the empty pipe detect setting is turned on.
- * Make sure the meter is adequately protected from the environment—NDWR recommends a full enclosure be installed around the meter (photo below).
- * Make sure the meter is reporting in GPM and total gallons or acre-feet.



ALL GMP PARTICIPANTS:

- * Enter **monthly** totalizer readings in the MD (See State Engineer's Order 1292).
- * Enter numbers exactly as displayed on the meter when you input monthly readings in the MD.
- * Note the beginning and end readings in the remarks for each irrigation season in the MD.
- * Enter detailed notes in the remarks in the MD.
- * Make sure the meter is adequately protected from the environment.
- * Notify NDWR if a meter is down and needs to be replaced. There is a short 7-day window to get the meter repaired or a new meter installed (GMP Sec. 15.10).

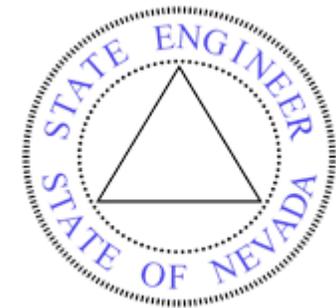
ADDITIONAL INFORMATION:

- * The GMP does not replace water right permits and certificates. The terms and conditions of each permit and certificate remain in effect.
- * 2019 was the introductory year for the Diamond Valley GMP. No penalties will be assessed if a well was pumped over the 2019 allocation. However, unused 2019 allocations will remain in the groundwater account if meter data are complete and accurate.
- * 2020 is the first year the GMP will be fully implemented. Pumping must be limited to allocations within a groundwater account, or transferred from another account to prevent penalties.
- * NDWR will have an office location in Eureka to assist with any needs the GMP participants may have. The Diamond Valley Water Resource Specialist in Carson City is also available for assistance.
- * Our contact information is located on the reverse side of this pamphlet.

Nevada Division of Water Resources

Conserving, protecting, managing, and enhancing the State's water resources.

Diamond Valley Groundwater Management Plan Implementation: Key Information



Groundwater Management Plan

For more than 40 years, annual groundwater pumping in Diamond Valley has exceeded the perennial yield of the basin, resulting in severe water level declines. In 2015, the Nevada State Engineer designated Diamond Valley a Critical Management Area, which required groundwater

Diamond Valley Groundwater Management Plan

rights holders in the basin develop a Groundwater Management Plan (GMP) within 10 years. If the plan was not developed, the State

Engineer would be required by law to regulate the basin strictly by priority date. Under this scenario, junior water rights and domestic wells would be entirely or severely restricted from pumping.

The Diamond Valley GMP, approved by the State Engineer in January 2019, aims to reduce groundwater pumping over time in an effort to stabilize water levels and manage the existing groundwater resource in a sustainable manner. The Plan provides an alternative approach to curtailment by priority date by using a system of groundwater accounts administered through shares that are based on the total duty and seniority of existing water rights. Annual allocations (acre-feet per share) for each groundwater account are reduced each year to meet the goals of the GMP.

Groundwater Management Plan

The GMP establishes a process to track groundwater allocations and pumpage. The Plan is administered and enforced by the State Engineer, in cooperation with the local Diamond Valley GMP Advisory Board. The State Engineer is authorized to and has hired a Water Manager to assist with management and implementation of the GMP. The key to understanding and reducing the amount of water used over time is collection and analysis of accurate pumping data. Pumping data are recorded using specified flow meters, verified by the Water Manager, and stored in a Meters Database (MD) maintained by the Office of the State Engineer. These components are described in more detail in the following sections.

Meters

The meter approved for use under the GMP is the Siemens SITRANS F MAGFLO MAG 5100W; however, variances may be granted by the State Engineer on a case-by-case basis. The approved flow meter is required to be installed at or near the point of diversion in accordance with manufacturer specifications, and maintained in proper operating condition within measurement guidelines set forth by the GMP Sec. 15.4. If a groundwater user is aware (or is notified) the meter system is not oper-



ating correctly, the user has seven calendar days to replace the meter or faulty meter system component. Failure to do so may result in a cease and desist order from the State Engineer.

NDWR Meters Database

The MD is a specialized database application designed to store pumping data, where monthly data are required to be submitted by groundwater users through online accounts, by calling State Engineer's staff, or by sending a hardcopy pumpage reporting form to the Nevada Division of Water Resources (NDWR). The MD tracks usage by meter and by permit, and cross-references water rights when they are part of a total combined duty group. For questions regarding the MD, or assistance with account access or data entry, please visit our MD webpage online at :

<https://meters.water.nv.gov/Login.aspx>, or contact our staff using the information below.

State of Nevada Department of Conservation and Natural Resources Division of Water Resources

901 S. Stewart St.
Ste. 2002
Carson City, NV 89701
P: (775) 684-2800 F: (775) 684-2810
www.water.nv.gov

GMP Water Manager

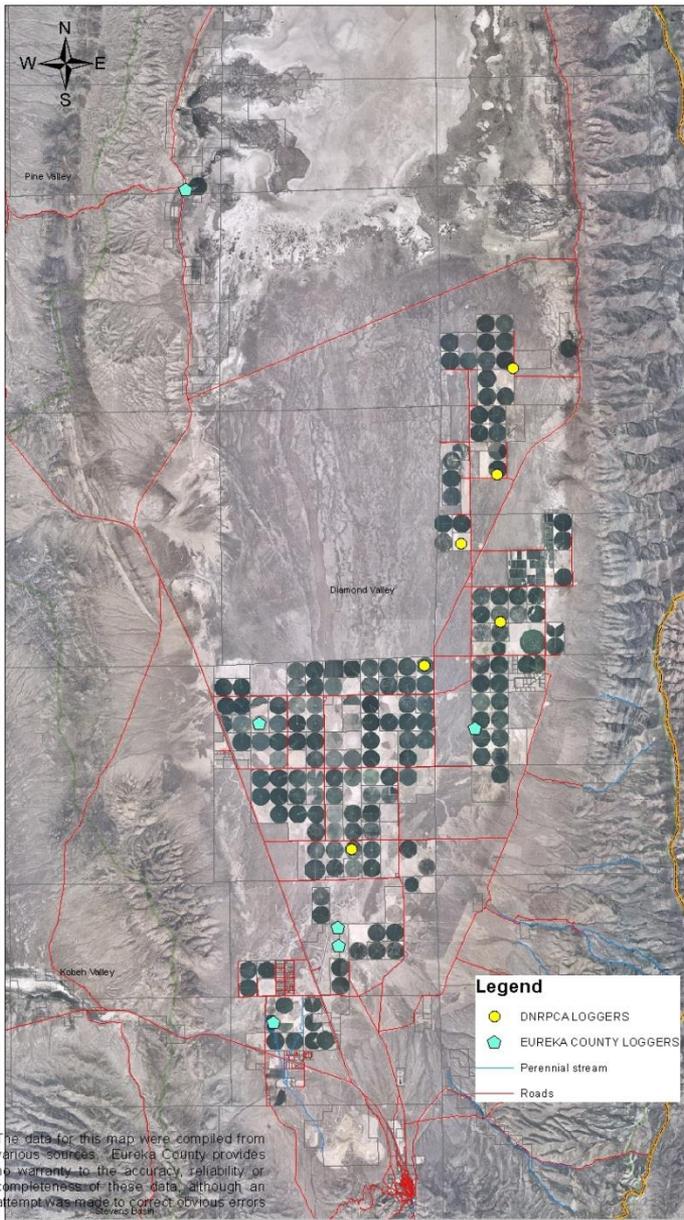
Bryce Vorwaller
775-431-9007
bvorwaller@water.nv.gov

Water Resource Specialist

Jared McCrum
775-684-2801
jmccrum@water.nv.gov

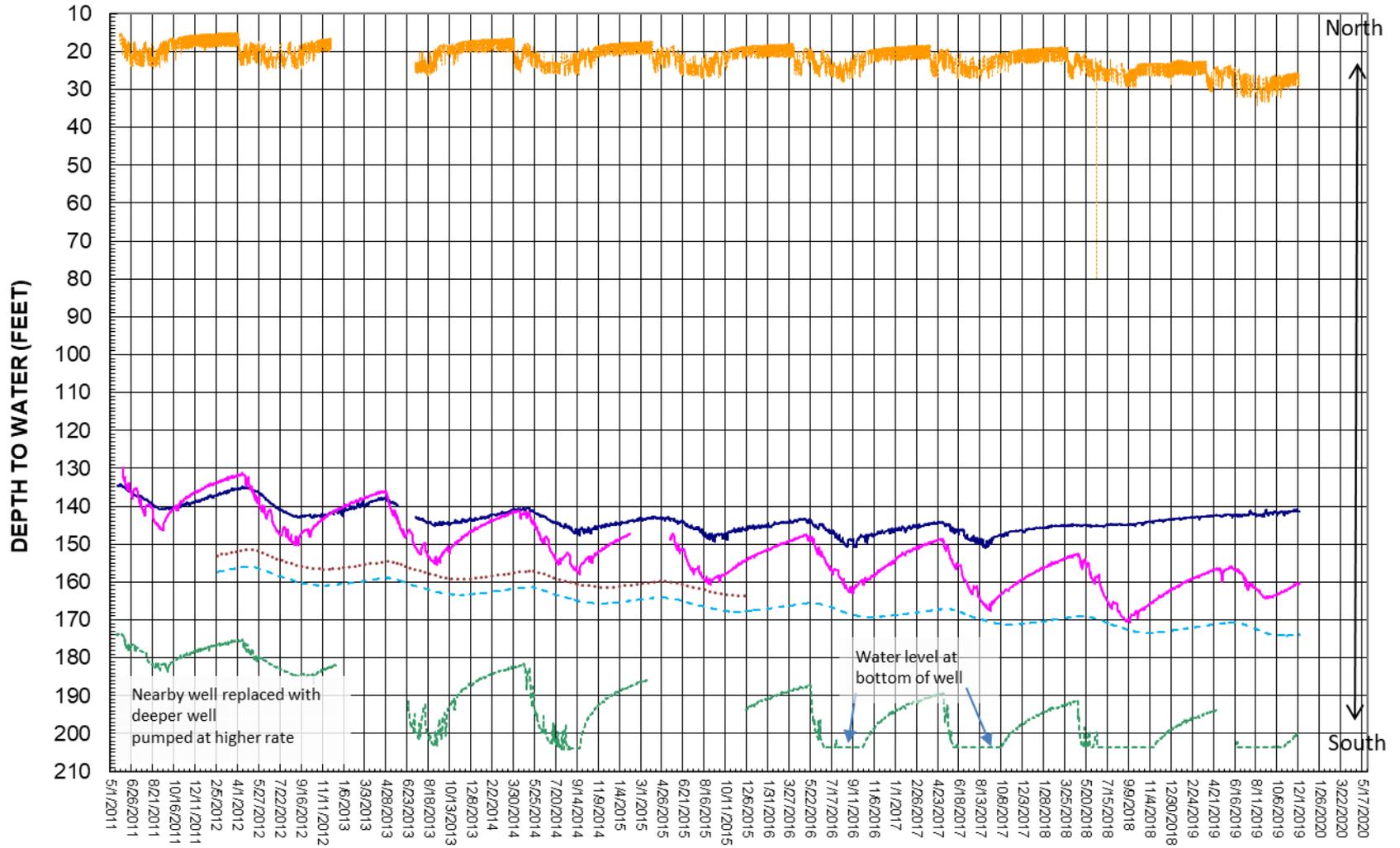
EXHIBIT 6

EXHIBIT 6

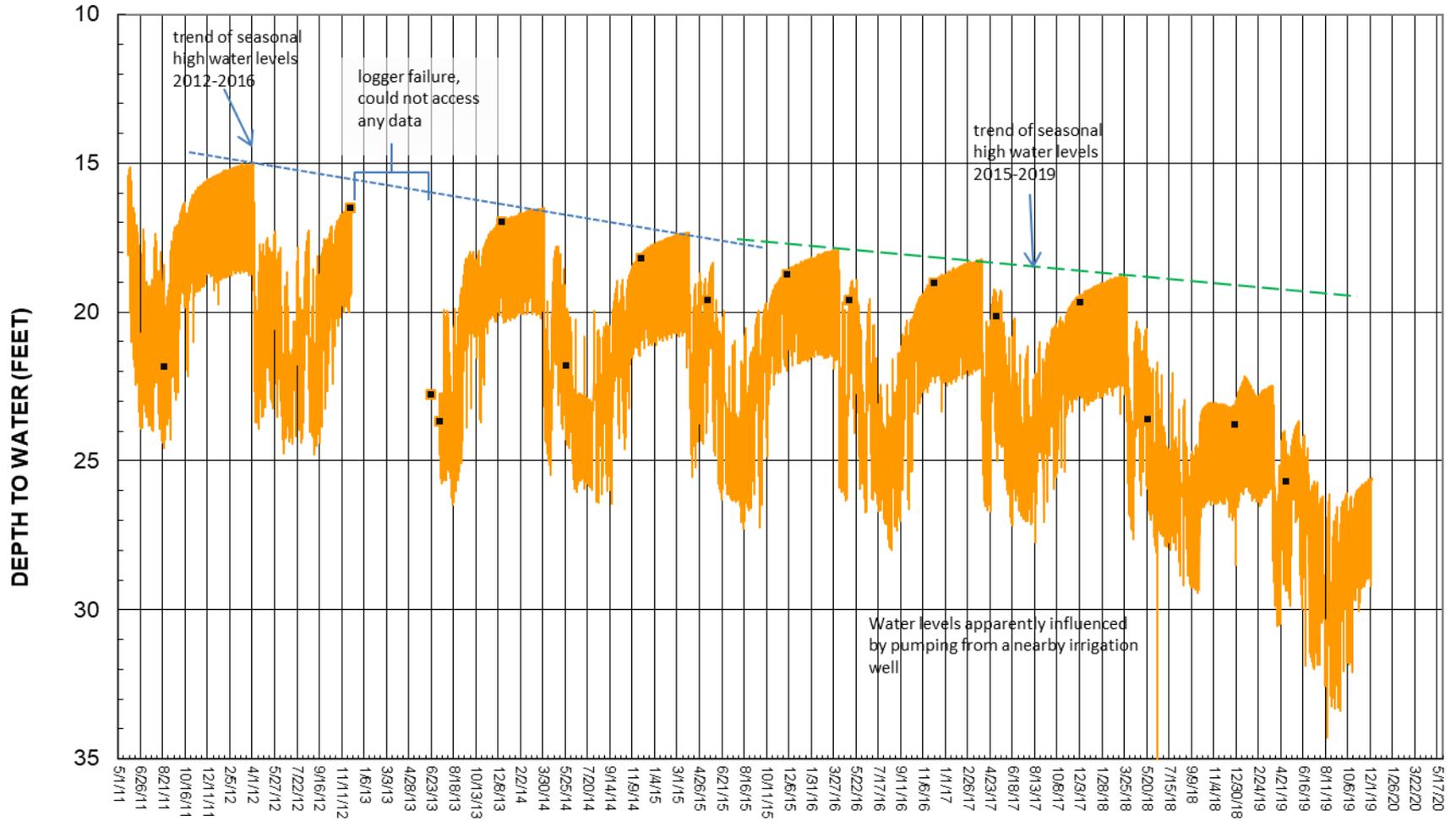


Eureka County & DNRPCA Monitoring Wells.

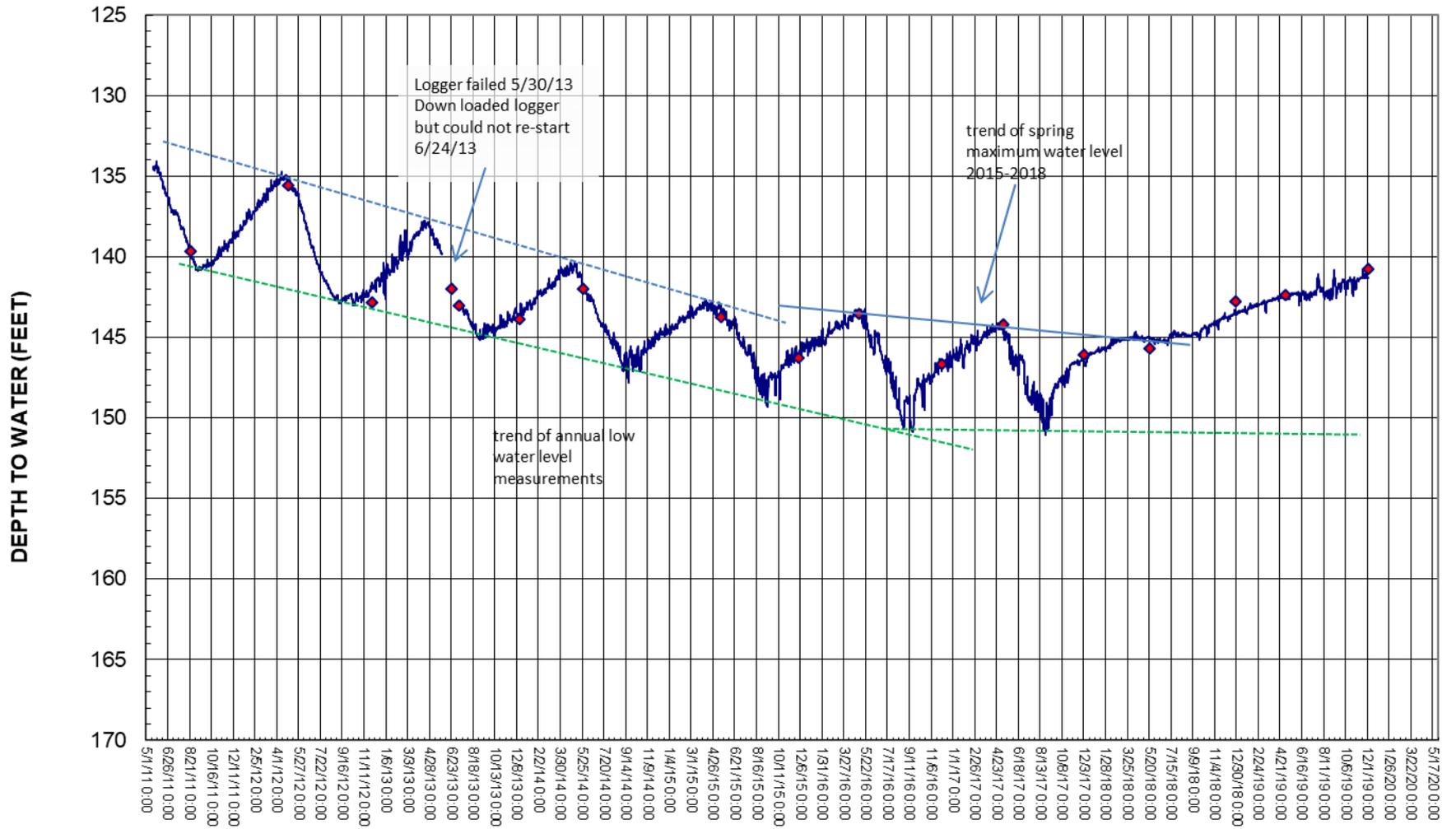
EUREKA COUNTY DATA LOGGERS



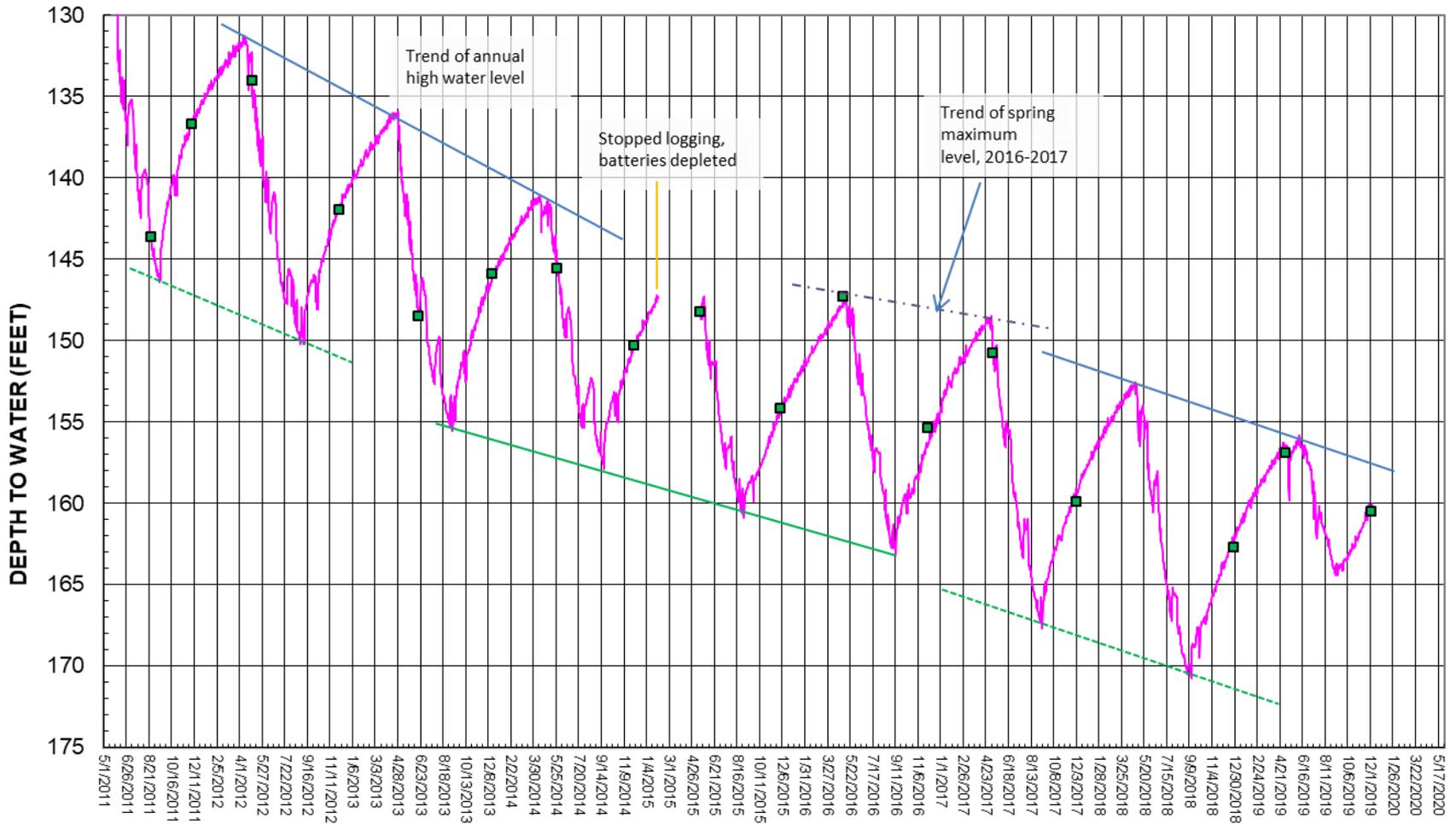
EUREKA COUNTY DATA LOGGERS Bailey Monitoring Well



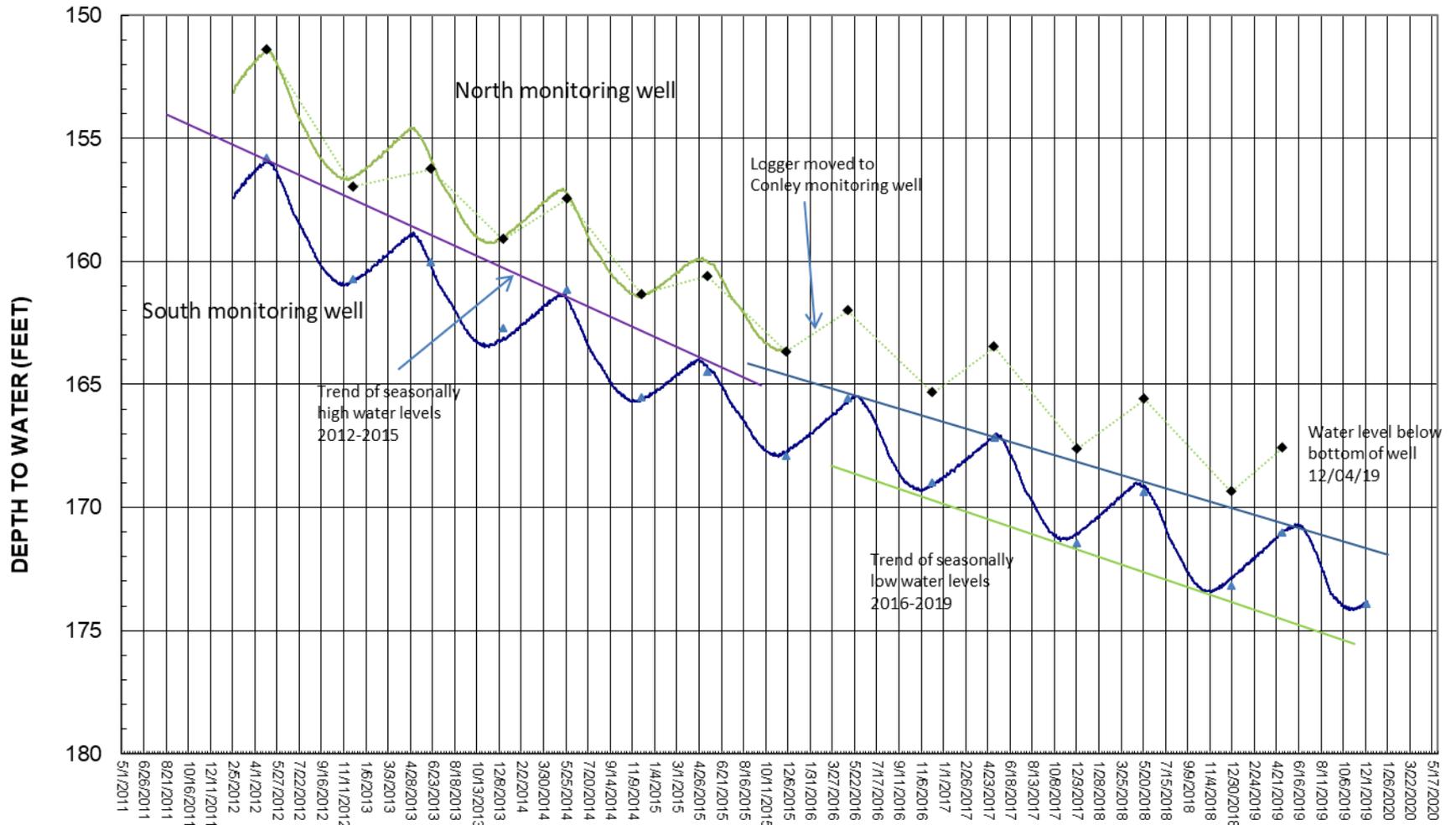
EUREKA COUNTY DATA LOGGERS Morrison Monitoring Well



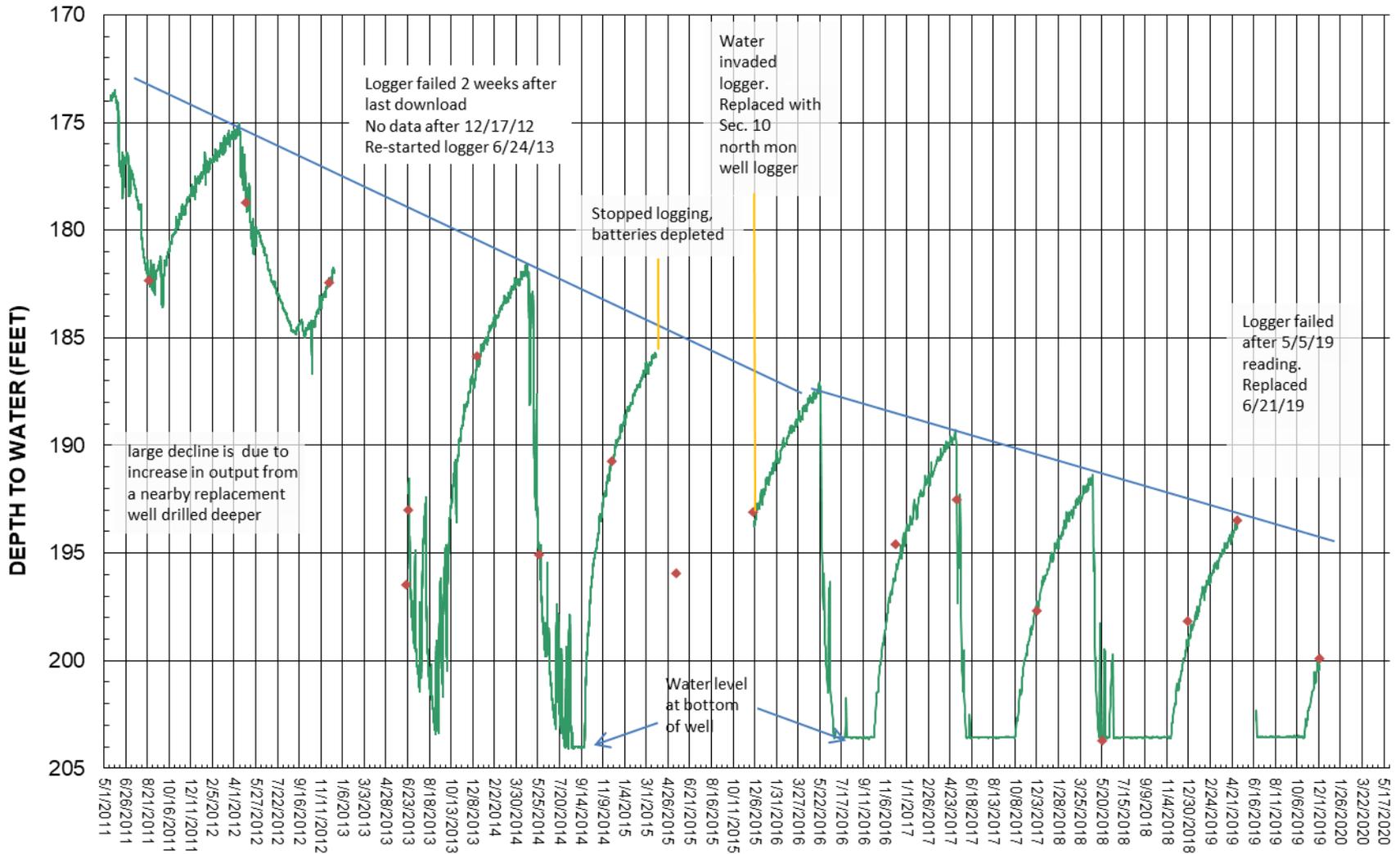
EUREKA COUNTY DATA LOGGERS Burnham (Sec. 8) Monitoring Well

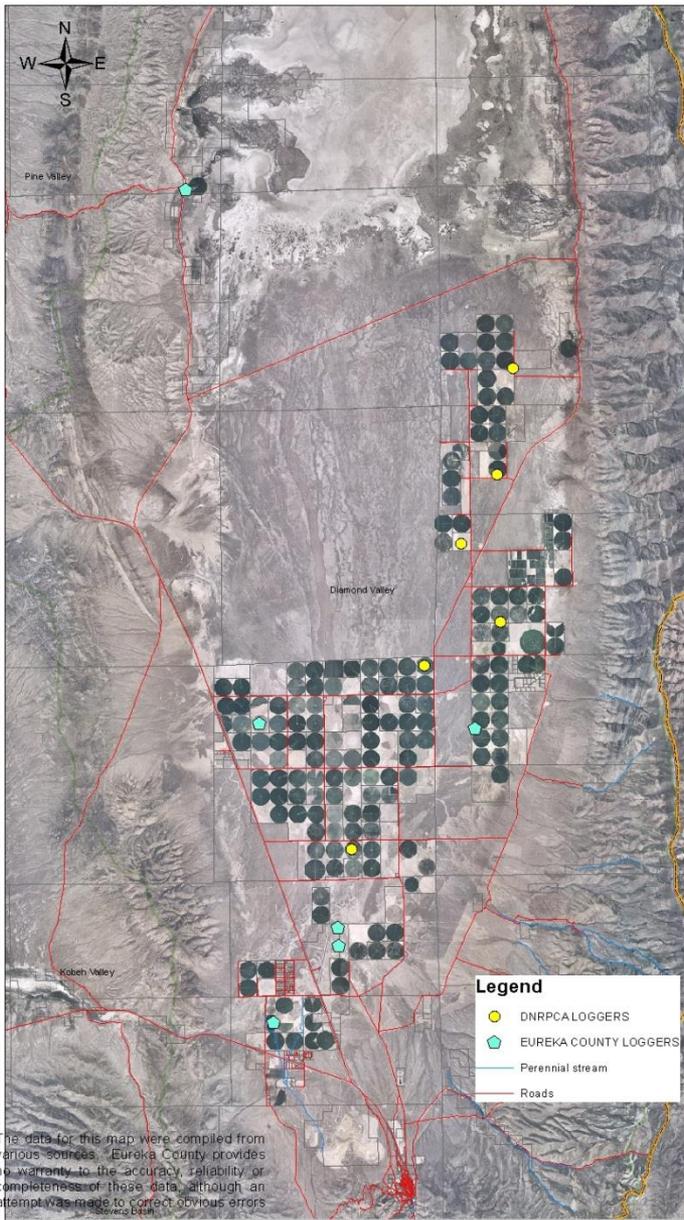


EUREKA COUNTY DATA LOGGERS Section 10 Monitoring Wells



EUREKA COUNTY DATA LOGGERS Conley Monitoring Well

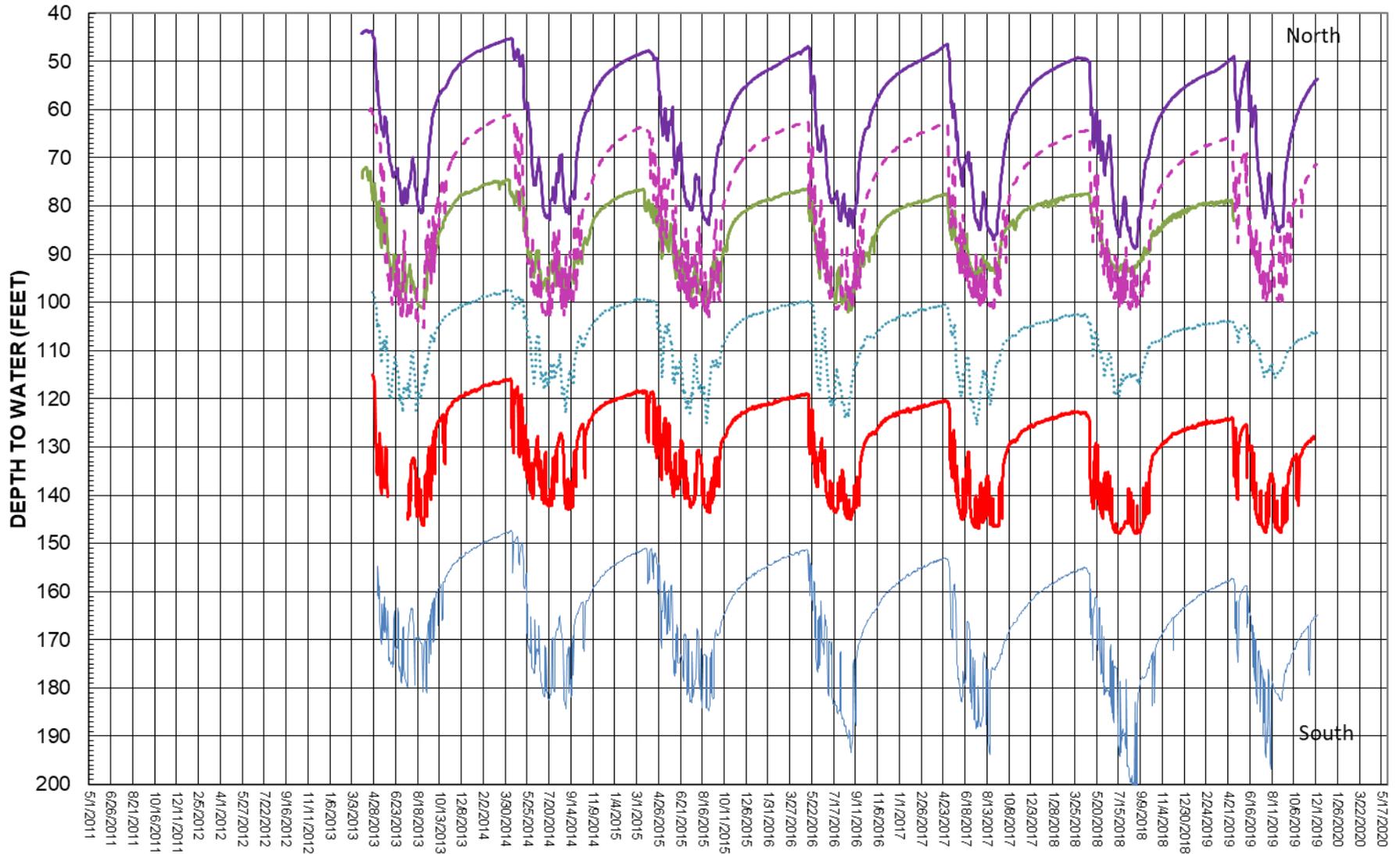




The data for this map were compiled from various sources. Eureka County provides no warranty to the accuracy, reliability or completeness of these data, although an attempt was made to correct obvious errors.

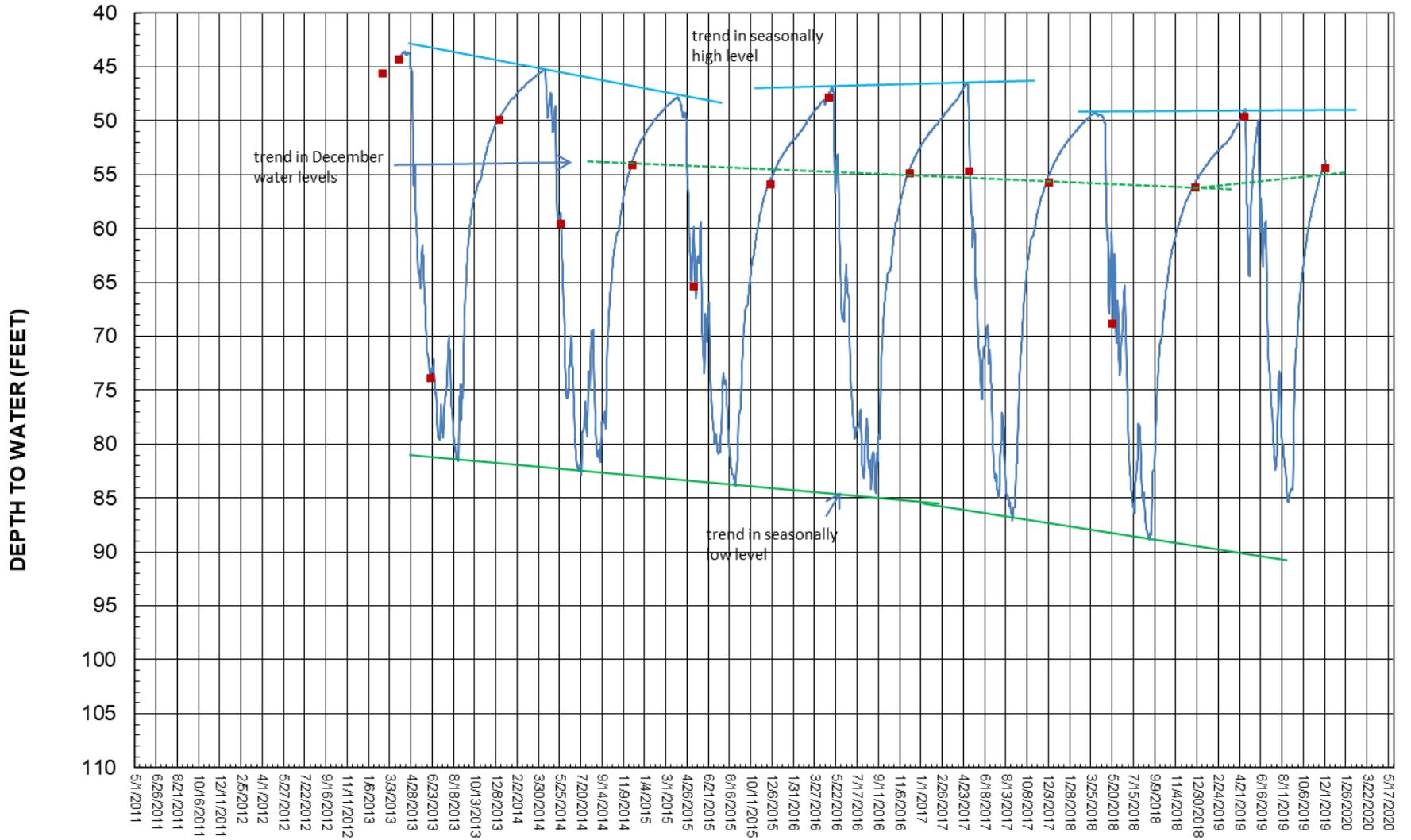
Eureka County & DNRPCA Monitoring Wells.

DNRPCA MONITORING WELLS

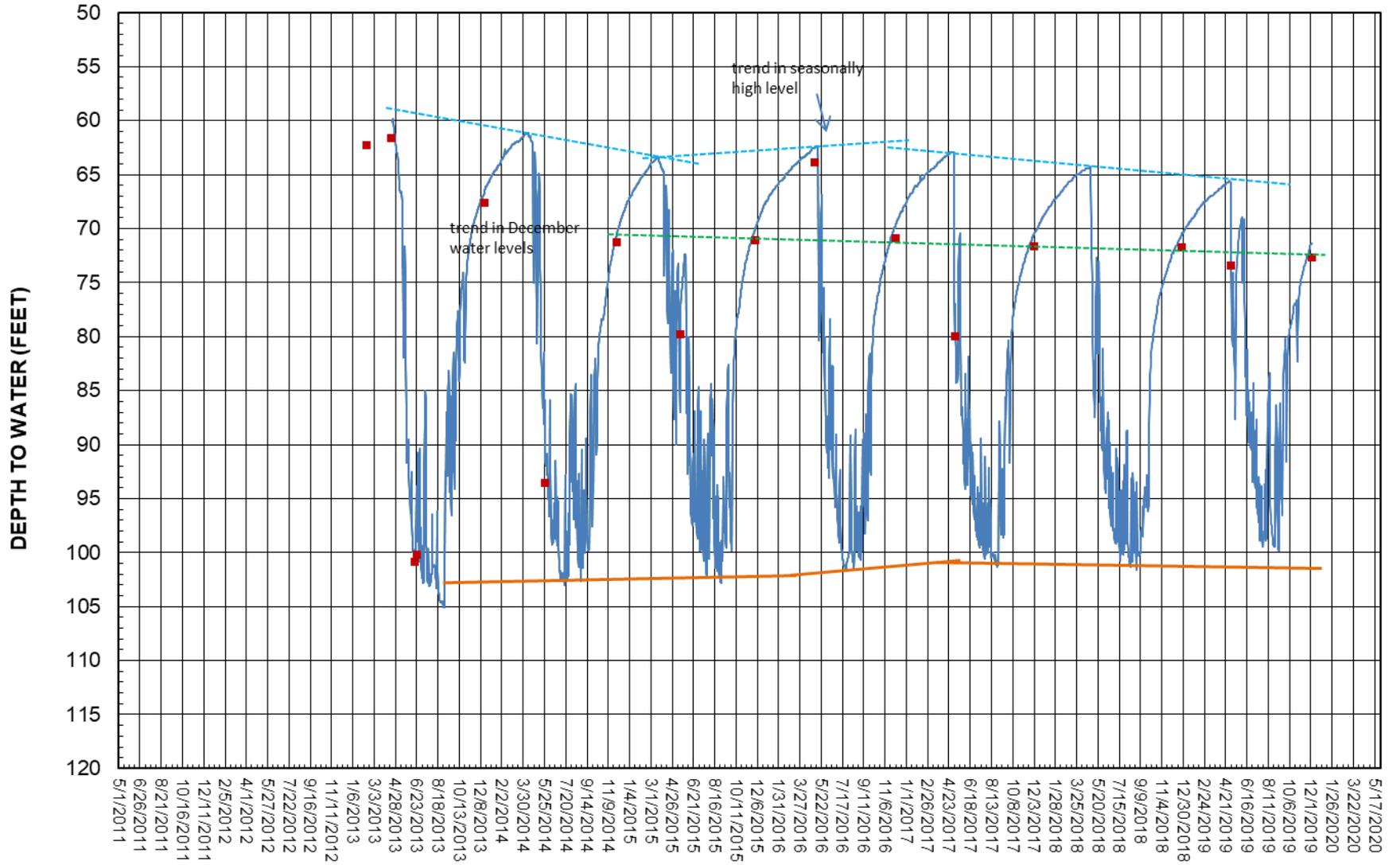


— Moyle Sec 34 (7th St) — Plaskett Sec 01 — Moyle Nuttle — Burhnam Sec 32 - - Etchegaray — Moyle Sec 29

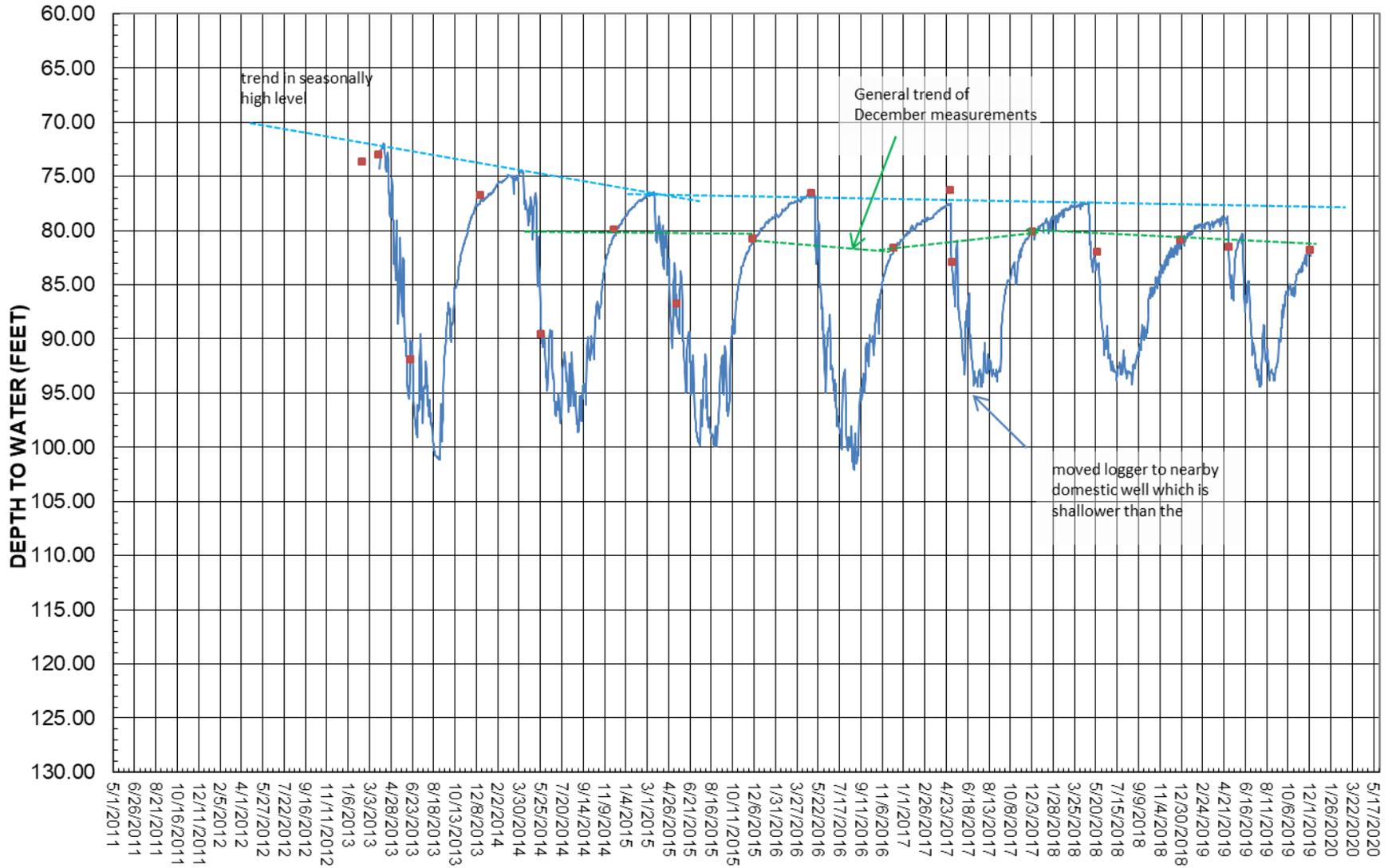
DNRPCA DATA LOGGERS Moyle North Well



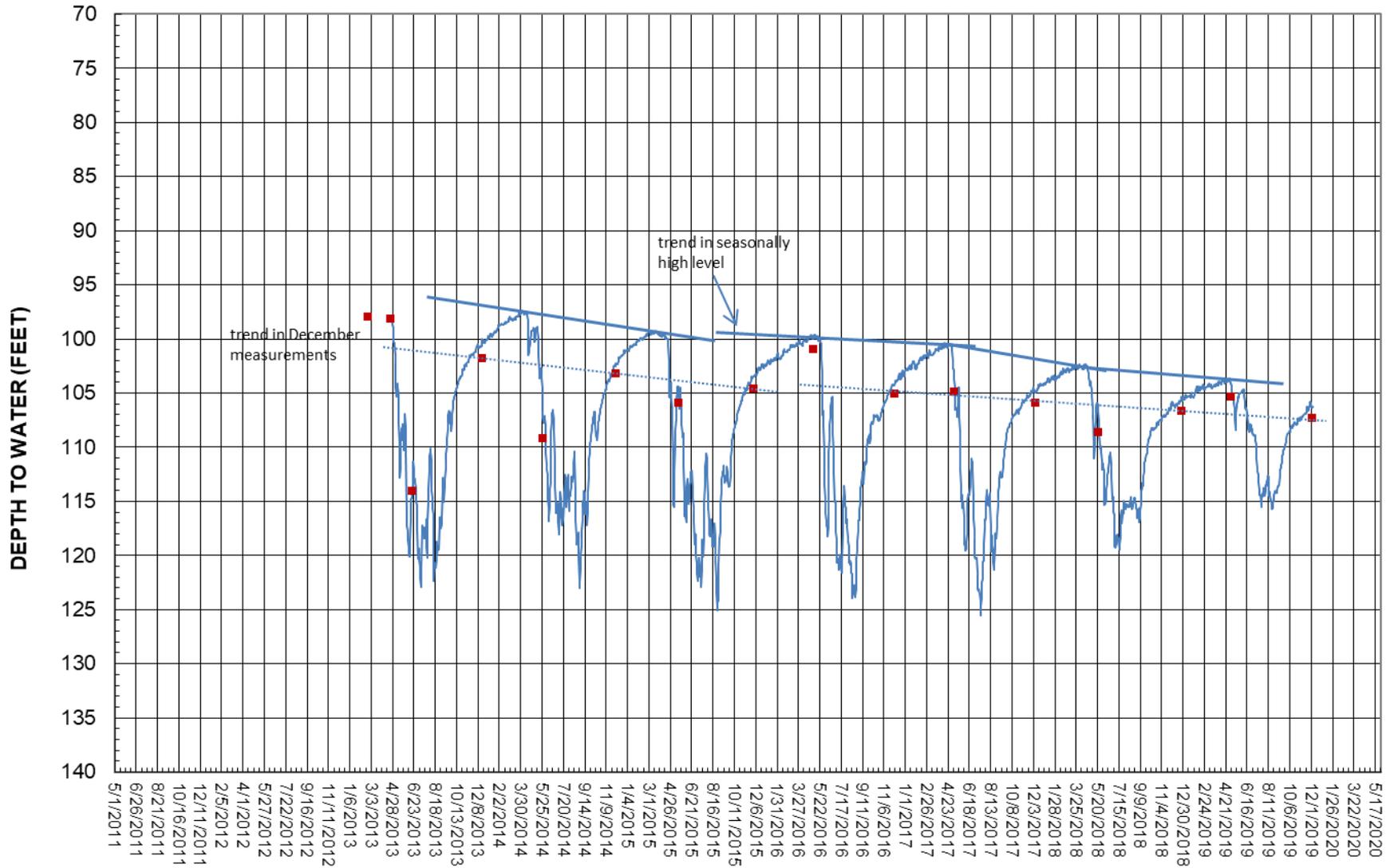
DNRPCA DATA LOGGERS Etchegaray Well



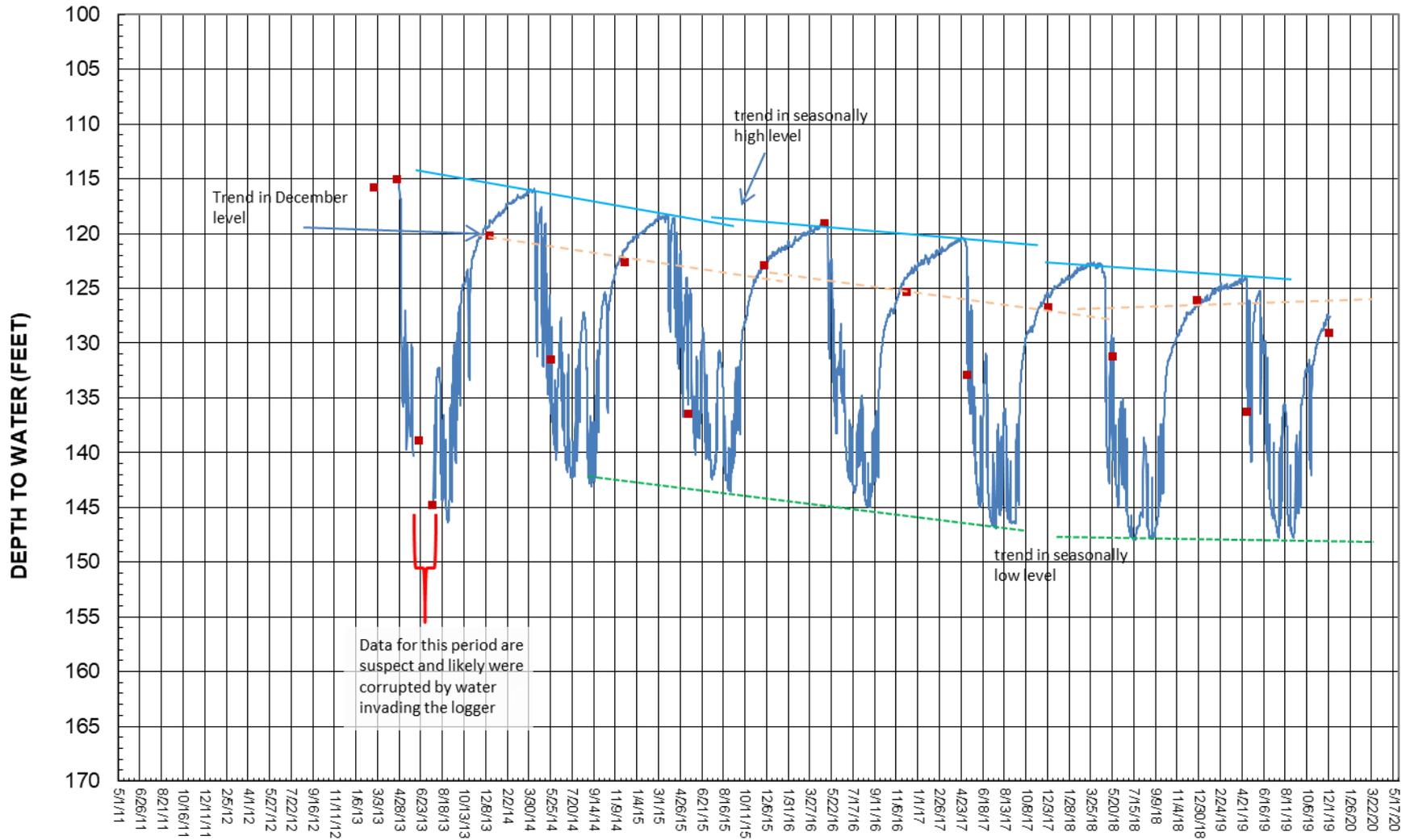
DNRPCA DATA LOGGERS Moyle Nuttle Well



DNRPCA DATA LOGGERS Burnham Sec 32 Well



DNRPCA DATA LOGGERS Plaskett Section 01 Well



DNRPCA DATA LOGGERS Moyle Section 34 Well

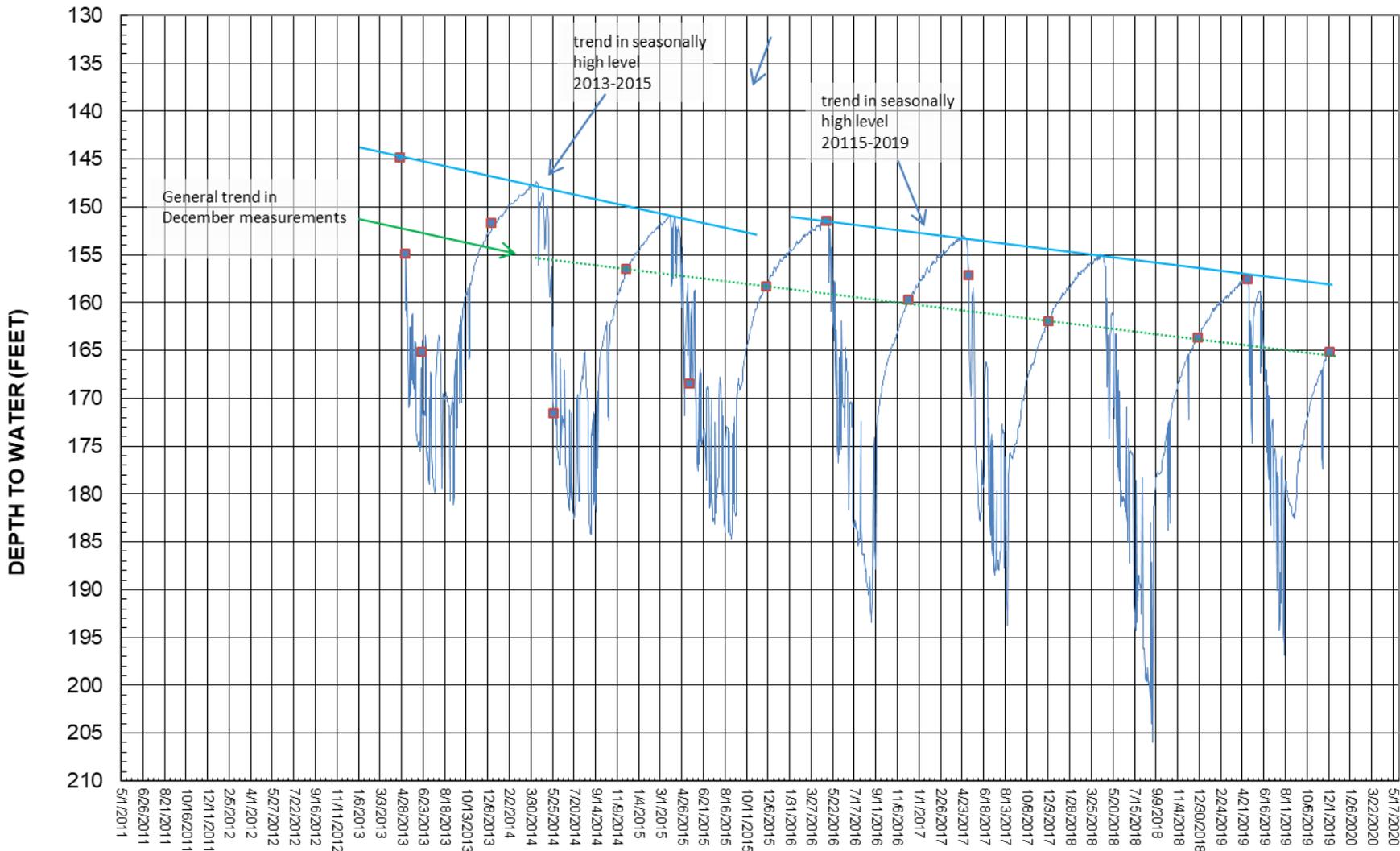


EXHIBIT 7

EXHIBIT 7



NDWR Meters Database

Department of Conservation and Natural Resources
Division of Water Resources

Jared McCrum
December 12, 2019

Using the Online Meters Database Application

- ▶ *“Report of Installation of Totalizing Meter”*
- ▶ *Public User Interface*
- ▶ *Common Mistakes*
- ▶ *FAQs*



Accuracy is Essential

Submit a Report of Installation Form for EVERY new meter or replacement meter

Submit to: metersupport@water.nv.gov
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

REPORT OF INSTALLATION OF TOTALIZING METER

Permit (water right) No(s): _____ (one form per meter)

Well Name, if applicable: _____ Well Log No.: _____

In accordance with State Engineer's requirement for the installation and maintenance of a totalizing meter, the following information is being submitted as notice that the required totalizing meter has been properly installed:

METER LOCATION: Address: _____
Assessor's Parcel Number (APN): _____ County, Nevada
or in the _____ Quarter of the _____ Quarter of Section _____ Township _____ N./S., Range _____ E.
circle one

1. Meter Serial No.: _____ Date Installed: _____
month day year
2. Manufacturer of Meter: _____ 3. Meter Model No.: _____
4. Meter Units: Gallons Acre-feet Cubic Feet Other: _____
5. Multiplier: None (x1) x1000 x100 x10 x.01 x.001 Other: _____
6. Meter Type: Analog Digital ♦ Total number of digits (including "fixed" zeros, if present): _____
7. Meter Reading on Date Installed: _____ Date: _____
8. Current meter reading: _____ Date: _____
9. This meter is: Existing New Replacement
♦ If this is a replacement meter, answer items 10 and 11 for retired meter.
10. Retired Meter Serial No.: _____ Date Removed: _____
month day year
11. Meter Reading on Date Removed: _____
month day year

Additional Notes (e.g., which gauge should be read for electronic meters, instructions for access to meter):

OWNERSHIP INFORMATION

Please Print or Type Date: _____

Owner Tenant Agent Correspondent Name: _____

Address: _____ City, State, ZIP: _____

Telephone: _____ Cell Phone: _____ Email: _____

CONTACT FOR WELL/METER

Name: _____ Email: _____

Telephone: _____ Cell Phone: _____

Go to: <http://meters.water.nv.gov> to report monthly meter readings

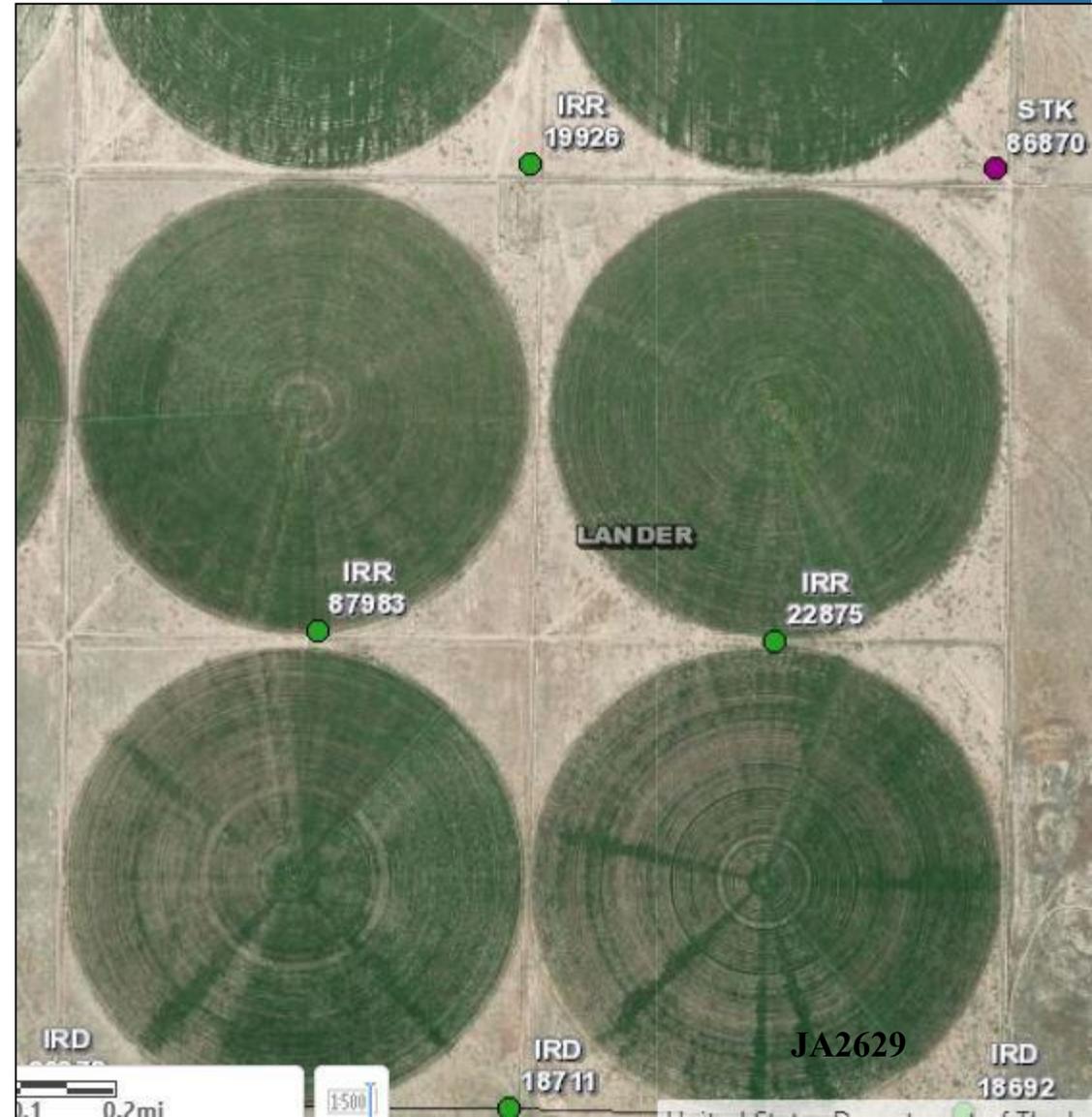
Key Components of the Meter Form

-
1. Meter Serial No.: _____ Date Installed: _____
month day year
2. Manufacturer of Meter: _____ 3. Meter Model No.: _____
4. Meter Units: Gallons Acre-feet Cubic Feet Other: _____
5. Multiplier: None (x1) x1000 x100 x10 x.01 x.001 Other: _____
6. Meter Type: Analog Digital ♦ Total number of digits (including "fixed" zeros, if present): _____
7. Meter Reading on Date Installed: _____ Date: _____
8. Current meter reading: _____ Date: _____
9. This meter is: Existing New Replacement
♦ If this is a replacement meter, answer items 10 and 11 for retired meter.
10. Retired Meter Serial No.: _____ Date Removed: _____
month day year
11. Meter Reading on Date Removed: _____
-

Additional Notes (e.g., which gauge should be read for electronic meters, instructions for access to meter):

Most Common Mistakes When Submitting Meter Forms

- ▶ Unknown/ inaccurate Permit numbers
- ▶ Inaccurate meter units or multiplier
- ▶ Mixed up serial numbers
- ▶ No install date reported
- ▶ No reading at date of installation (new and/or replacement)



Login Credentials Email

NV Division of Water Resources Meters Account Created Inbox x



metersupport@water.nv.gov

to me ▾



Hello wyatt.fereday,

Below is your account information necessary to log into the [NV Division of Water Resources Meters](#) website.

Username: wyatt.fereday

Password: hd202p97PB

You will be prompted to change your password at your next logon. If you are not prompted to do so please change your password once you've successfully logged into the application.

Please enter monthly meter readings and the dates read for each meter in your account. Readings should be entered directly, without applying any multipliers.

If you install a new totalizing meter, please fill out the [Meter Installation Report](#) form and send to the address below.

Thank you,
Nevada Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, NV 89701
[NV Division of Water Resources Meters](#)

← Reply

➔ Forward

Login Page

Nevada Division of Water

Secure | https://staging.websoftdev.com/NDWRMeters_2017/Login.aspx?ReturnUrl=%2fNDWRMeters_2017%2fMeters%2fMeterDetails.aspx%3fMeterID%3d4356

Bookmarks | Sign in/out | Maps | Hydro | PubSite | Neats | Meters | MD Staging | Permits | Well Logs | HydAbst | Contacts | Gmail | NPR | Maps | Dams | NWIS | CoorConv



State of Nevada
Department of Conservation & Natural Resources
Division of Water Resources
Meters Database

Username:

Password:

[Lost Password / Locked Out](#)

[View FAQs](#)

[Email Meter Support](#)

STATE ENGINEER
STATE OF NEVADA

Public User Interface



State of Nevada
Department of Conservation & Natural Resources
Division of Water Resources

username: test1
[change password](#) | [logout](#)

Meter Management

My Meters

- A&L FARMS, LLC (Meters: 1)
- J3-A (Meter ID: 5736)**
- American First Federal, Inc. (Meters: 1)
- ANGLOGOLD ASHANTI (NEVADA) CORP (Meters: 1)
- BAUM, JOSEPH GENE & LOIS C. (Meters: 1)
- ELKO-CITY (Meters: 1)
- GOLD COUNTRY WATER COMPANY, INC. (Meters: 2)
- Kenneth F. and Patti E. Benson (Meters: 1)
- Lyon County (Meters: 1)
- Nevada Environmental Response Trust (Meters: 2)
- NEWMONT EXPLORATION LTD. (Meters: 1)
- TAKACS, GARY R AND BARBARA F (Meters: 1)
- The Louise S. Griggs Family Trust and The Joseph D (Meters: 1)
- Truckee Meadows Water Authority (Meters: 1)
- WELLS-CITY (Meters: 2)

Owner name with well name & (Meter IDs)

Manage Meter Readings: J3-A (Meter ID: 5736)

Meter Details

Serial # 52016000779
Multiplier 1
Meter Type Digital
No. of Digits
Make SEAMETRICS
Model AG2000-800-178
Units Acre-feet
Deactivated No
Status Active
Well Name J3-A

[View Meter Photo\(s\)](#)

Add Meter Reading

Enter Meter Reading Enter Total Usage for Year

Reading Date

Meter Reading x 1

Calculated Reading Acre-feet

Remarks

Input readings here

Enter direct reading without applying Meter multiplier.
Include any 'fixed' zeros, if present.

Submit

Site Info

Site Name	County	Site Status	Well Log #
057 N24 E41 03CBBB1	LANDER		46171

[View Site Photo\(s\)](#)

Permit Info

Permit Number	Duty Balance	Status	MOU	TWN	RNG	SEC	Q	QQ
56717	212.68	CER	IRR	24N	41E	03	SW	NW
85936	108.2	PER	IRR	24N	41E	03	SW	NW

Customer Info

Customer Name

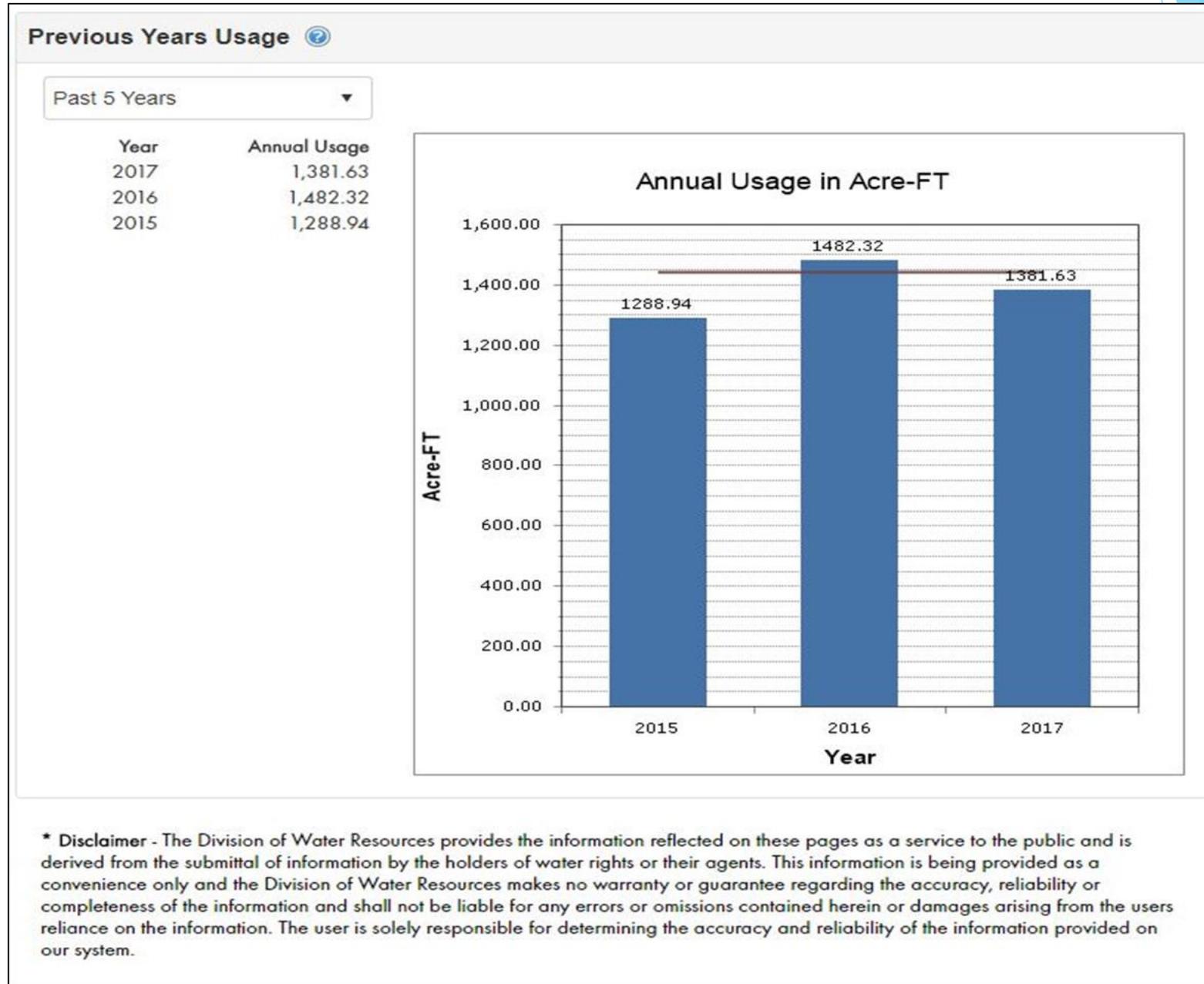
[My Profile](#)

[Help/FAQs](#)

Questions/comments? Contact: metersupport@water.nv.gov

JA2632

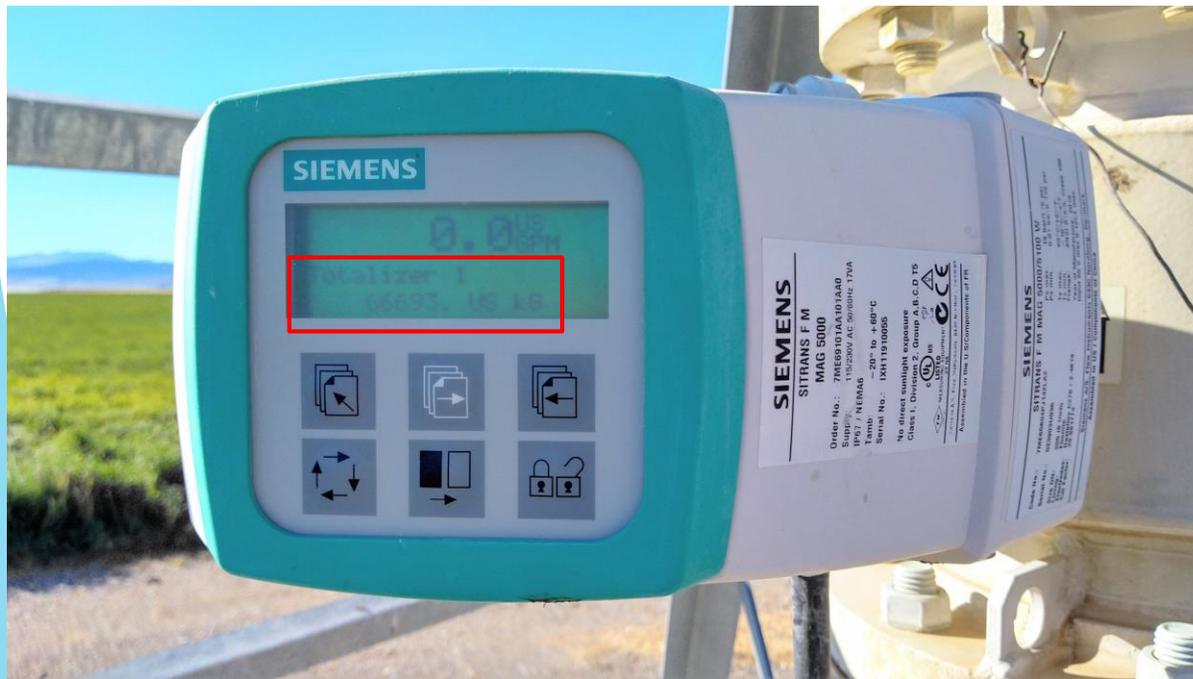
Public User Interface



Reading the Meter

- ▶ Enter direct monthly readings and dates read, without applying meter multipliers.

Meters database will directly calculate your total usage accounting for the multiplier.



Most Common Mistakes When Reporting

- ▶ Entering readings from a replacement meter before the database is updated with a new Meter Installation Form
- ▶ Entering usage instead of direct meter reading
- ▶ Mixing up permit number with well name or well number
- ▶ Entering flow rate instead of totalizer
- ▶ Mixing up meters on wells



Quarterly Reminder Emails

To: all public users in database

From: metersupport@water.nv.gov

“Please continue to enter direct monthly readings and dates read, without applying meter multipliers, even if the well is not currently in use.”

Links to totalizing meter form, meter readings form, and State Engineer’s orders



FAQs

- ▶ *How can I edit an incorrect reading?*
 - ▶ Email metersupport@water.nv.gov to correct the reading.
- ▶ *What if my meter information is incorrect or I install a new meter?*
 - ▶ Fill out totalizing meter form and send to metersupport@water.nv.gov.
- ▶ *What if I forgot my username/password?*
 - ▶ Use “Lost Password/Locked Out” link to reset.
- ▶ Meters database FAQ’s link on login page.
- ▶ What if my meter is malfunctioning?
 - ▶ GMP allows 7 days to fix it. Contact GMP Manager Bryce Vorwaller.



JA2637

Questions?

- ▶ Contact NDWR staff at metersupport@water.nv.gov
 - ▶ Contact 775-684-2800
- ▶ GMP Water Manager
Bryce Vorwaller
775-431-9007
bvorwaller@water.nv.gov
- ▶ Water Resource Specialist
Jared McCrum
775-684-2801
jmccrum@water.nv.gov

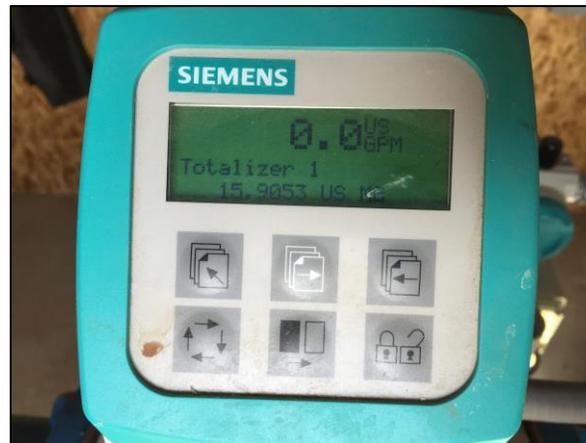
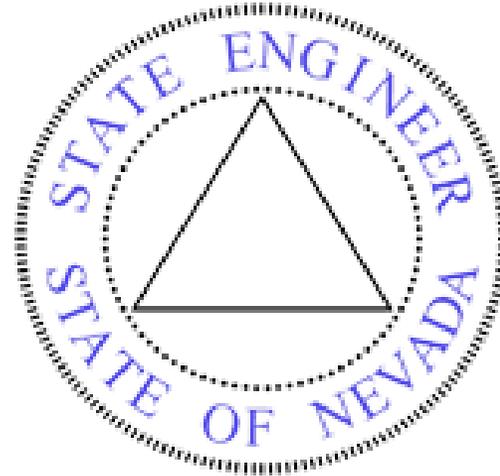


EXHIBIT 8

EXHIBIT 8

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

ORDER

#1305

TEMPORARILY SUSPENDING THE REQUIREMENT FOR THE SUBMISSION OF
EXTENSIONS OF TIME TO PROVE BENEFICIAL USE WHILE THE
GROUNDWATER MANAGEMENT PLAN IS IN EFFECT FOR THE DIAMOND
VALLEY HYDROGRAPHIC BASIN (153)

WHEREAS, on January 11, 2019, by Order 1302, the State Engineer approved the Diamond Valley Groundwater Management Plan (GMP) pursuant to Nevada Revised Statute (NRS) § 534.037, setting forth the necessary steps to remove the basin's designation as a critical management area.

WHEREAS, as set forth in the GMP, the goals of the plan include stabilizing groundwater levels in Diamond Valley within 35 years and reducing the consumptive use to not exceed the perennial yield.¹

WHEREAS, the goals set out within the GMP will be achieved through a process of issuing shares based on groundwater rights, and then limiting groundwater pumping under each share to annual allocations that are reduced each year until the GMP goals are met. Pursuant to the terms of the GMP, unused allocations are banked and may be pumped in a successive year after subtracting annual depreciation amounts to account for natural losses.²

WHEREAS, shares in the GMP are issued based upon groundwater rights that were in good standing at the time of the approval of the GMP.³

WHEREAS, the GMP only applies to the following permitted and certificated groundwater rights that existed at the time the GMP was approved by the State Engineer:

- 1) groundwater rights that serve irrigation purposes,
- 2) groundwater rights that serve mining and milling purposes if they have irrigation base rights, and
- 3) groundwater that is imported to Diamond Valley only if it is injected or infiltrated into the Diamond Valley aquifer.⁴

¹ GMP, Section 6, p. 11.

² GMP, Sections 12 and 13, pp. 15-19.

³ GMP, Section 12.1, p. 15; see also Section 12.7, 12.13 (limitation on new shares), and Section 13.12, n.17, at p.18.

⁴ GMP, Section 8, p. 11.

I. AUTHORITY AND NECESSITY

WHEREAS, the GMP represents a collective effort by the water right holders to reduce groundwater pumping in order to avoid curtailment by priority, and to save their community and the established agricultural way of life in Diamond Valley.

WHEREAS, the State Engineer is empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.⁵

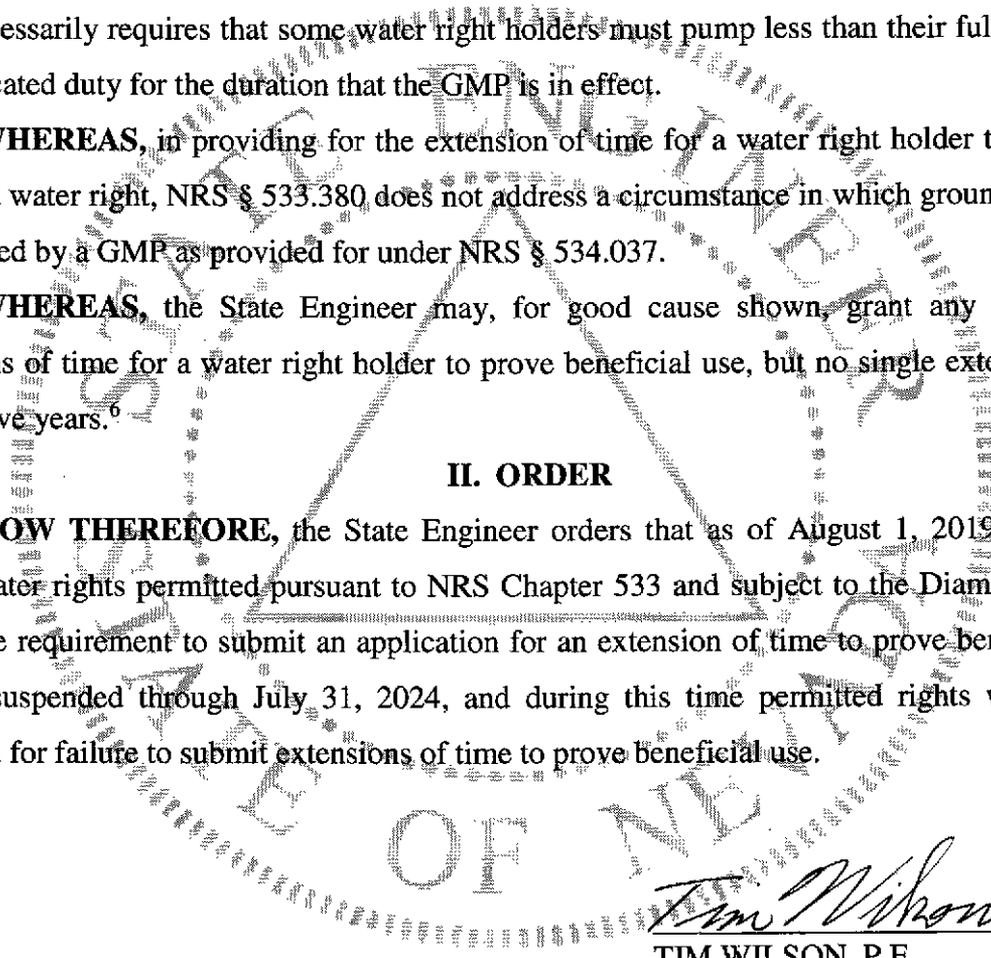
WHEREAS, the conservation of water and reduction of groundwater pumping under the GMP necessarily requires that some water right holders must pump less than their full permitted or certificated duty for the duration that the GMP is in effect.

WHEREAS, in providing for the extension of time for a water right holder to perfect a permitted water right, NRS § 533.380 does not address a circumstance in which groundwater use is restricted by a GMP as provided for under NRS § 534.037.

WHEREAS, the State Engineer may, for good cause shown, grant any number of extensions of time for a water right holder to prove beneficial use, but no single extension may exceed five years.⁶

II. ORDER

NOW THEREFORE, the State Engineer orders that as of August 1, 2019, for those groundwater rights permitted pursuant to NRS Chapter 533 and subject to the Diamond Valley GMP, the requirement to submit an application for an extension of time to prove beneficial use will be suspended through July 31, 2024, and during this time permitted rights will not be cancelled for failure to submit extensions of time to prove beneficial use.


Tim Wilson, P.E.
TIM WILSON, P.E.
Acting State Engineer

Dated at Carson City, Nevada this

31st day of July, 2019.

⁵ NRS § 532.120.

⁶ NRS § 533.380(3).

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

AMENDED ORDER

#1305A

**TEMPORARILY SUSPENDING THE REQUIREMENT FOR THE SUBMISSION
OF EXTENSIONS OF TIME TO PROVE BENEFICIAL USE OR TO PREVENT
FORFEITURE WHILE THE GROUNDWATER MANAGEMENT PLAN IS IN
EFFECT FOR THE DIAMOND VALLEY HYDROGRAPHIC BASIN (153)**

WHEREAS, on January 11, 2019, by Order #1302, the State Engineer approved the Diamond Valley Groundwater Management Plan (GMP) pursuant to Nevada Revised Statute (NRS) 534.037, setting forth the necessary steps to remove the basin's designation as a critical management area.

WHEREAS, as set forth in the GMP, the goals of the plan include stabilizing groundwater levels in Diamond Valley within 35 years and reducing the consumptive use to not exceed the perennial yield.¹

WHEREAS, the goals set out within the GMP will be achieved through a process of issuing shares based on groundwater rights, and then limiting groundwater pumping under each share to annual allocations that are reduced each year until the GMP goals are met. Pursuant to the terms of the GMP, unused allocations are banked and may be pumped in a successive year after subtracting annual depreciation amounts to account for natural losses.²

WHEREAS, shares in the GMP are issued based upon groundwater rights that were in good standing at the time of the approval of the GMP.³

WHEREAS, the GMP only applies to the following permitted and certificated groundwater rights that existed at the time the GMP was approved by the State Engineer:

- 1) groundwater rights that serve irrigation purposes,
- 2) groundwater rights that serve mining and milling purposes if they have irrigation base rights, and
- 3) groundwater that is imported to Diamond Valley only if it is injected or infiltrated into the Diamond Valley aquifer.⁴

¹ GMP, Section 6, p. 11.

² GMP, Sections 12 and 13, pp. 15-19.

³ GMP, Section 12.1, p. 15; see also Section 12.7, 12.13 (limitation on new shares), and Section 13.12, n.17, at p.18.

⁴ GMP, Section 8, p. 11.

I. AUTHORITY AND NECESSITY

WHEREAS, the GMP represents a collective effort by the water right holders to reduce groundwater pumping in order to avoid curtailment by priority, and to save their community and the established agricultural way of life in Diamond Valley.

WHEREAS, the State Engineer is empowered to make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.⁵

WHEREAS, the conservation of water and reduction of groundwater pumping under the GMP necessarily requires that some water right holders must pump less than their full permitted or certificated duty for the duration that the GMP is in effect.

WHEREAS, in providing for the extension of time for a water right holder to perfect a permitted water right, NRS 533.380 does not address a circumstance in which groundwater use is restricted by a GMP as provided for under NRS 534.037.

WHEREAS, in providing for the extension of time for a water right holder to prevent forfeiture of a water right, NRS 534.090 does not address a circumstance in which groundwater use is restricted by a GMP as provided for under NRS 534.037.

WHEREAS, the State Engineer may, for good cause shown, grant any number of extensions of time for a water right holder to prove beneficial use or to prevent forfeiture.^{6,7}

II. ORDER

NOW THEREFORE, the State Engineer orders that as of August 1, 2019, for those groundwater rights permitted pursuant to NRS Chapter 533 and subject to the Diamond Valley GMP, the requirement to submit an application for an extension of time to prove beneficial use or to prevent forfeiture will be suspended through July 31, 2024, and during this time permitted rights will not be cancelled for failure to submit extensions of time to prove beneficial use and certificated water rights will not be subject to forfeiture for failure to beneficially use all or a portion of the water right.


TIM WILSON, P.E.
Acting State Engineer

Dated at Carson City, Nevada this
6th day of September, 2019.

⁵ NRS 532.120.

⁶ NRS 533.380(3).

⁷ NRS 533.090(3).

EXHIBIT 9

EXHIBIT 9

METER VARIANCE REQUEST UNDER THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN

The following information is being submitted as a request for a variance from the approved Smart meter pursuant to §15.5 of the Diamond Valley Groundwater Management Plan.

1. Account Number(s): _____
2. Base Permit Number(s): _____
3. Name of Owner: _____
4. Manufacturer: _____
5. Model: _____
6. Meter Specifications (provide a copy of information source):

Operational flow range in feet per second (fps)	
Accuracy of flow rate for operational range (in ±%)	
Repeatability of reading (in ±%)	
Register or display has the following (mark all features of the meter):	
<input type="checkbox"/> Waterproof and Tamperproof seal. <input type="checkbox"/> LCD backlit display. <input type="checkbox"/> Display shows instantaneous flow rate with a minimum of six digits. <input type="checkbox"/> Display shows totalized volume with a minimum of eight digits. <input type="checkbox"/> Password protection. <input type="checkbox"/> Non-volatile memory and back-up battery. <input type="checkbox"/> Selectable flow rate units for gallons per minute (gpm) and 0.001 cubic feet per second (cfs) <input type="checkbox"/> Selectable volumetric units for gallons and acre-feet with multipliers from 0.0001 to 10,000.	

7. If any criteria above do not meet the specifications in Appendix H of the Diamond Valley Groundwater Management Plan, explain why this meter can be accepted at the location where it will be installed. _____

METER VARIANCE REQUEST UNDER THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN

8. Please provide any other helpful information as to why this variance is being sought and why it should be approved. _____

Type or print applicant or agent name clearly.

Signed

Signature of Applicant or Agent

Address

Street No. or PO Box

City, State, and ZIP Code

Phone

E-mail

Office Use Only

Review Date: _____ Reviewed by: _____

Denied. Reason for denial: _____

Approved. Approval conditions: _____

TEMPORARY CHANGE TO NEW WELL UNDER THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN

The Applicant, _____,
hereby makes application for temporary assignment of a Groundwater Allocation Account to a
new well pursuant to §14.8 of the Diamond Valley Groundwater Management Plan.

1. Account Number: _____
2. Base Permit Number: _____
3. The maximum rate of diversion sought (cubic feet per second): _____
4. The maximum annual duty sought (acre-feet): _____
5. The proposed point of diversion is located within _____

6. The existing point of diversion is located within _____

7. A map depicting the location of the new well is
 submitted with this application (must meet the same requirements as for an application for
temporary change of an existing water right)
 in the files of the State Engineer under Application Number _____
8. Description of the new well (include well log number if known): _____

Office Use Only
Date Received: _____
Decision Due Date: _____
Review Date: _____
<input type="checkbox"/> Approved until _____
<input type="checkbox"/> Application to change required pursuant to §14.9 of the Diamond Valley Groundwater Management Plan.

Type or print applicant or agent name clearly.

Signed _____

Signature of Applicant or Agent

Address _____

Street No. or PO Box

City, State, and ZIP Code

Phone _____

E-mail _____

TRANSFER OF WATER ALLOCATION UNDER THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN

Date _____

Mail to:

State of Nevada Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, NV 89701

I, _____,
declare that I am the owner or authorized agent
for the account identified below and that I
hereby authorize the transfer of _____
acre-feet of water allocated under the Diamond
Valley Groundwater Management Plan from
this account to the account identified on the
right.

From

Account Number: _____

Name on Account: _____

Signed _____
Signature of Owner

Address _____
Street No. or PO Box

City, State, and ZIP Code

Phone _____

I, _____,
declare that I am the owner or authorized agent
for the account identified below and that I
hereby acknowledge the receipt of the water
allocation being transferred.

This is also a request for approval for
additional withdrawal from the well associated
with the account identified below pursuant to
§14.8 of the Diamond Valley Groundwater
Management Plan.

To

Account Number: _____

Name on Account: _____

Signed _____
Signature of Owner

Address _____
Street No. or PO Box

City, State, and ZIP Code

Phone _____

Office Use Only

Additional withdrawal from well approved or denied on _____ by _____.

Accounts updated on _____ by _____.

Office Review Notes: _____

Transaction No. _____

EXHIBIT 10

EXHIBIT 10

**APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF NEVADA**

Date of filing in State Engineer's Office OCT 10 1997

Returned to applicant for correction _____

Corrected application filed _____

Map filed OCT 10 1997

The applicant **Wilfred R. Bailey, Barbara Bailey and Fred Bailey**, hereby make application for permission to appropriate the public waters of the State of Nevada, as hereinafter stated.

1. The source of the proposed appropriation is **Underground**
2. The amount of water applied for is **2.0 cfs. second-feet**
 - (a) If stored in reservoir give number of acre-feet
3. The water to be used for **Irrigation**
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated **130 acres**
 - (b) Stockwater, state number and kinds of animals to be watered
 - (c) Other use (describe fully under No. 12. "Remarks")
 - (d) Power:
 - (1) Horsepower developed
 - (2) Point of return of water to stream
5. The water is to be diverted from its source at the following point **SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T24N - R52E, MDB&M, at a point from which the Southwest corner of Section 36, T24N - R52E' bears S 61° 42' 35" W, 2246.79 feet.**
6. Place of Use Portions of the **NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and all of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 36, T24N - R52E, M.D.B.&M., and portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 1, T23N - R52E, M.D.B.&M.**
7. Use will begin about **January 1** and end about **December 31** of each year.
8. Description of proposed works **Well, pipelines, and sprinkler system**
9. Estimated cost of works **\$10,000**
10. Estimated time required to construct works **3 years**
11. Estimated time required to complete the application of water to beneficial use **5 years**
12. Remarks:

HIGH DESERT Engineering, Agent
By s/Robert E. Morley
640 Idaho Street
Elko, NV 89803

Compared my/CMS lw/cms

Protested _____

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit is issued subject to existing rights. It is understood that the amount of water herein granted is only a temporary allowance and that the final water right obtained under this permit will be dependent upon the amount of water actually placed to beneficial use. It is also understood that this right must allow for a reasonable lowering of the static water level. This well shall be equipped with a two (2) inch opening for measuring depth to water. If the well is flowing, a valve must be installed and maintained to prevent waste. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins, or before the Proof of Completion of Work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

This permit is issued for the express purpose of allowing this permit to replace the water historically placed to beneficial use under Proof 01104, Certificates 140 and 147 and with the understanding that this right cannot be moved to outside of the spring discharge area as determined by the State Engineer. The period of use of this permit is limited to April 1st through September 30th of each year.

This permit is issued supplemental to Proof 01104 and with the understanding that irrigation is limited to a maximum of 126.0 acres at a seasonal duty of 4.0 acre-feet per acre.

(CONTINUED ON PAGE 2)

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 2.0 cubic feet per second, but not to exceed 504.0 acre-feet seasonally, and not to exceed a seasonal duty of 4.0 acre-feet per acre of land irrigated from any and/or all sources.

Work must be prosecuted with reasonable diligence and be completed on or before:

March 27, 2000

Proof of completion of work shall be filed before:

April 27, 2000

Application of water to beneficial use shall be filed on or before:

March 27, 2003

Proof of the application of water to beneficial use shall be filed on or before:

April 27, 2003

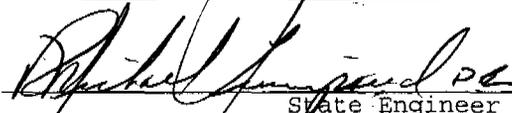
Map in support of proof of beneficial use shall be filed on or before:

April 27, 2003

IN TESTIMONY WHEREOF, I, R. MICHAEL TURNIPSEED, P.E.,

State Engineer of Nevada, have hereunto set
my hand and the seal of my office,

this 21st day of December, A.D. 1998



State Engineer

MAR 01 1999

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

SEE CORRECTED PERMIT

**APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF NEVADA**

Date of filing in State Engineer's Office OCT 10 1997

Returned to applicant for correction _____

Corrected application filed _____

Map filed OCT 10 1997

The applicant Wilfred R. Bailey, Barbara Bailey and Fred Bailey, hereby make application for permission to appropriate the public waters of the State of Nevada, as hereinafter stated.

1. The source of the proposed appropriation is Underground
2. The amount of water applied for is 2.0 cfs. second-feet
 - (a) If stored in reservoir give number of acre-feet
3. The water to be used for Irrigation
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated 130 acres
 - (b) Stockwater, state number and kinds of animals to be watered
 - (c) Other use (describe fully under No. 12. "Remarks")
 - (d) Power:
 - (1) Horsepower developed
 - (2) Point of return of water to stream
5. The water is to be diverted from its source at the following point SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, T23N - R52E, MDB&M, at a point from which the Southwest corner of Section 36, T24N - R52E' bears S 61° 42' 35" W, 2246.79 feet.
6. Place of Use Portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and all of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 36, T24N - R52E, M.D.B.&M., and portions of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 1, T23N - R52E, M.D.B.&M.
7. Use will begin about January 1 and end about December 31 of each year.
8. Description of proposed works Well, pipelines, and sprinkler system
9. Estimated cost of works \$10,000
10. Estimated time required to construct works 3 years
11. Estimated time required to complete the application of water to beneficial use 5 years
12. Remarks:

HIGH DESERT Engineering, Agent
By s/Robert E. Morley
640 Idaho Street
Elko, NV 89803

Compared my/CMS lw/cms

Protested _____

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions.

This permit is issued subject to existing rights. It is understood that the amount of water herein granted is only a temporary allowance and that the final water right obtained under this permit will be dependent upon the amount of water actually placed to beneficial use. It is also understood that this right must allow for a reasonable lowering of the static water level. This well shall be equipped with a two (2) inch opening for measuring depth to water. If the well is flowing, a valve must be installed and maintained to prevent waste. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins, or before the Proof of Completion of Work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

This permit is issued for the express purpose of allowing this permit to replace the water historically placed to beneficial use under Proof 01104, Certificates 140 and 147 and with the understanding that this right can not be moved to outside of the spring discharge area as determined by the State Engineer. This period of use of this permit is limited to April 1st through September 30th of each year.

This permit is issued supplemental to Proof 01104 and with the understanding that irrigation is limited to a maximum of 126.0 acres at a seasonal duty of acre 4.0 acre-feet per acre.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 2.0 cubic feet per second, but not to exceed 504.0 acre-feet seasonally, and not to exceed a seasonal duty of 4.0 acre-feet per acre of land irrigated from any and/or all sources.

Work must be prosecuted with reasonable diligence and be completed on or before:

March 27, 2000

Proof of completion of work shall be filed before:

April 27, 2000

Application of water to beneficial use shall be filed on or before:

March 27, 2003

Proof of the application of water to beneficial use shall be filed on or before:

April 27, 2003

Map in support of proof of beneficial use shall be filed on or before:

April 27, 2003

IN TESTIMONY WHEREOF, I, R. MICHAEL TURNIPSEED, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office,

this 27th day of March, A.D. 1998

[Signature] State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

EXHIBIT 11

EXHIBIT 11



THE STATE OF NEVADA

PERMIT TO CHANGE THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of Permittee: SADLER RANCH, LLC
Source: SPRING (BIG SHIPLEY SPRINGS
AND TRIBUTARIES COMPLEX)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 01/01/1873

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit is issued by; and subject to the order of the Findings of Fact, Conclusions of Law; Order Partially Granting Supplemental Petition for Judicial Review; Order for Issuance of Mitigation Rights Permit; Order Partially Denying Supplemental Petition for Judicial Review; Case No. CV-1409-204; in the Seventh Judicial District Court of the State of Nevada, in and for the County of Eureka; dated March 21, 2018.

This permit to change the point of diversion of the waters of Big Shipley Springs and Tributaries heretofore appropriated under Claim of Vested Right V03289 is issued with the understanding that no other rights on the source will be affected by the change proposed herein. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins, or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times. This permit is issued pending any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

(Continued on Page 2)

The total combined duty of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 5,100 acre-feet annually for the irrigation of the described place of use.

The total combined rate of diversion of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 7.02 cubic feet per second.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

This permit totally abrogates Claim of Vested Right V03289, which has a priority date of 1873 for a 4,397.4 acre-feet annually portion and a priority date of January 1, 1892, for the remaining 702.6 acre-feet per season portion; and retains the priority dates of Claim of Vested Right V03289.

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 7.02 cubic feet per second or 5,100 acre-feet annually.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

Filed on January 29, 2016

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

August 22 2022

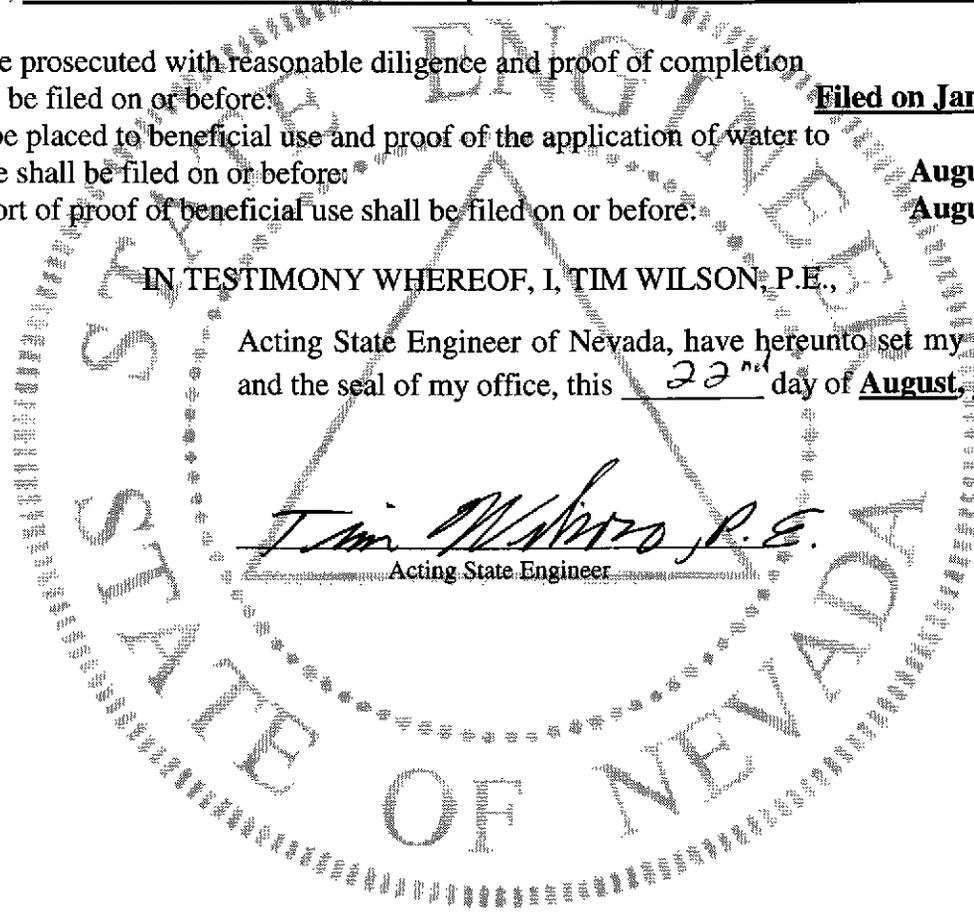
Map in support of proof of beneficial use shall be filed on or before:

August 22 2022

IN TESTIMONY WHEREOF, I, TIM WILSON, P.E.,

Acting State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 22nd day of August, 2019

Tim Wilson, P.E.
Acting State Engineer





AMENDED PERMIT
THE STATE OF NEVADA

**PERMIT TO CHANGE THE PUBLIC WATERS OF THE
STATE OF NEVADA HERETOFORE APPROPRIATED**

Name of Permittee: SADLER RANCH, LLC
Source: SPRING (WELL A-BIG SHIPLEY SPRINGS
AND TRIBUTARIES COMPLEX)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 01/01/1873

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion of the waters of Big Shipley Springs and Tributaries heretofore appropriated under Claim of Vested Right V03289, is issued with the understanding that no other rights on the source will be affected by the change proposed herein. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins, or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times. This permit is issued subject to any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320.

This permit is issued subject to State Engineer Ruling No. 6371, dated November 1, 2016.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

The total combined duty of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 2,918.7 acre-feet annually for the irrigation of the described place of use.

This permit totally abrogates Claim of Vested Right V03289, which has a priority date of 1873 for a 2,216.1 afa portion and a priority date of January 1, 1892 for the remaining 702.6 afs portion and retains the priority dates of Claim of Vested Right V03289.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

(Continued on Page 2)

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 7.02 cubic feet per second or 2,918.7 acre-feet annually.**

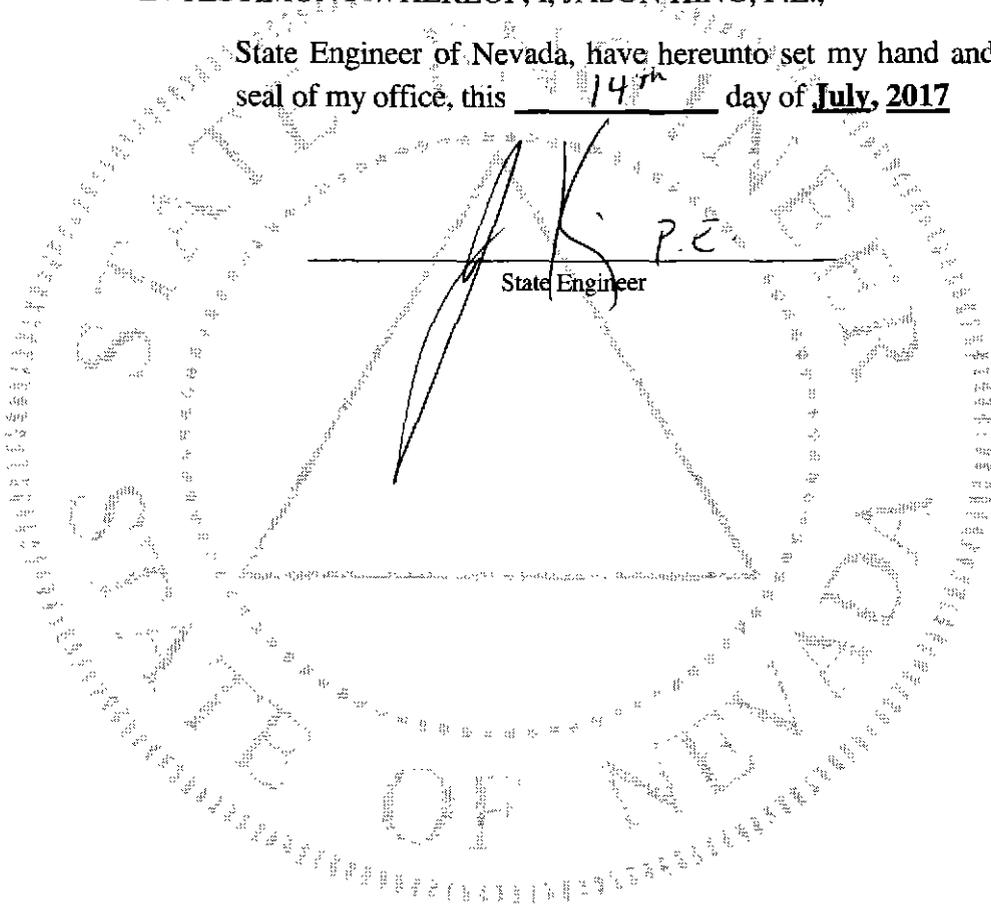
Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before: **Filed Under 82268 on January 29, 2016**

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before: **January 29, 2020**

Map in support of proof of beneficial use shall be filed on or before: **January 29, 2020**

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 14th day of July, 2017



State Engineer

*See Amended Permit***THE STATE OF NEVADA****PERMIT TO CHANGE THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

Name of Permittee: SADLER RANCH, LLC
Source: SPRING (WELL A-BIG SHIPLEY SPRINGS AND TRIBUTARIES COMPLEX)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 11/02/2012

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit, to change the point of diversion of the waters of Big Shipley Springs and Tributaries heretofore appropriated under Claim of Vested Right V03289, is issued with the understanding that no other rights on the source will be affected by the change proposed herein. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins, or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times. This permit is issued subject to any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320.

This permit is issued subject to State Engineer Ruling No. 6290, dated August 15, 2014.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The total combined duty of water under Permits 81720 and 82268 shall not exceed 975 acre-feet annually.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

This permit totally abrogates Claim of Vested Right V03289 which has a priority date of 1879 or earlier. Additionally, this permit cannot be severed from Claim of Vested Right V03289.

(Continued on Page 2)

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 3.0 cubic feet per second or 975.0 acre-feet annually.

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

January 29 2016

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

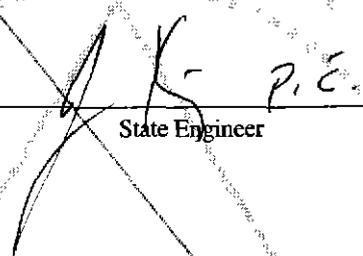
January 29 2018

Map in support of proof of beneficial use shall be filed on or before:

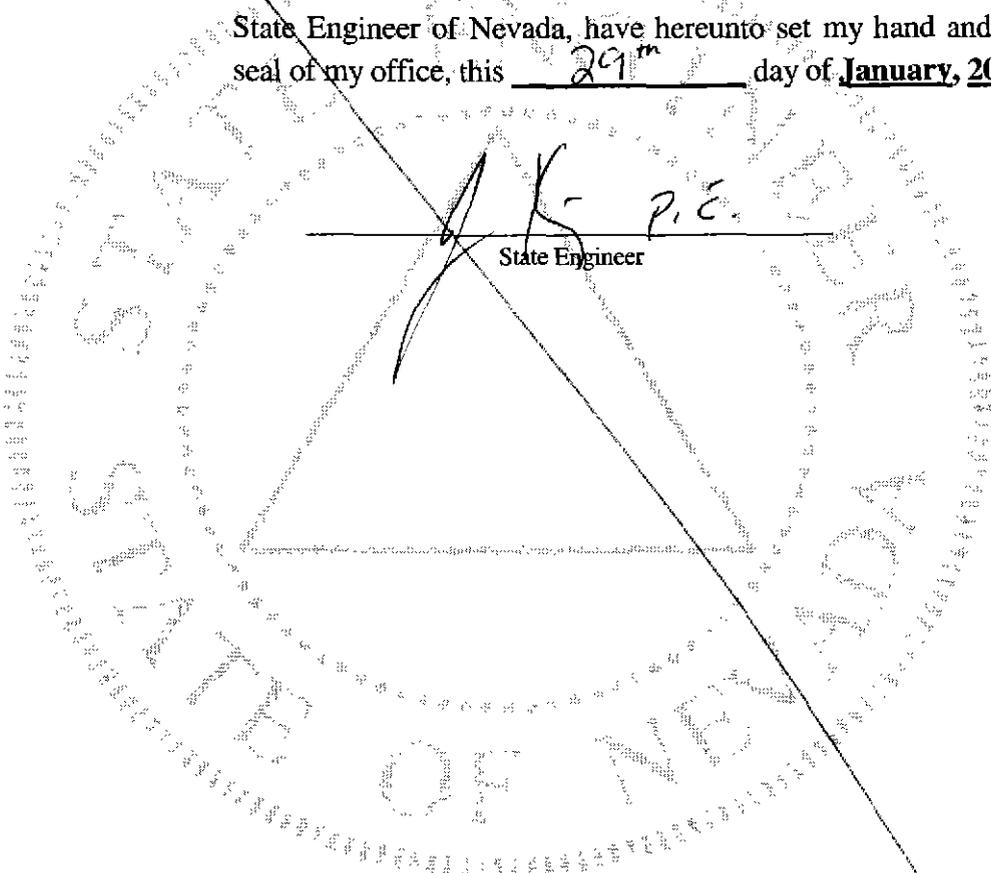
January 29 2018

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 29th day of January, 2015



State Engineer



APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office NOV 02 2012

Returned to applicant for correction _____

Corrected application filed _____ Map filed FEB 24 2012 UNDER 81585T

The applicant Sadler Ranch, LLC c/o Doug Frazer
Post Office Box 831 of Forest Knolls
Street Address or PO Box City or Town
California 94933 hereby make(s) application for permission to change the
State and ZIP Code

- Point of diversion Place of use Manner of use of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Proof of Appropriation No. V03289

1. The source of water is Big Shipley Springs and Tributaries Complex
Name of stream, lake, underground, spring or other sources.
2. The amount of water to be changed Maximum flow of Big Shipley Springs Complex - not to exceed 7,457.76 afa
Second feet, acre-feet. One second foot equals 448.83 gallons per minute.
3. The water to be used for Irrigation and Stock Water Purposes
Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use
4. The water heretofore used for Irrigation and Stock Water Purposes
If for stock, state number and kind of animals.
5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)
NW1/4 SE1/4 Section 23 T24N, R52E, MDM or at a point from which the NW corner of Section 13 T24N, R52E, MDM bears North 09 degrees 34 minutes 59 seconds East, a distance of 9,129.70 feet. Refer to map filed in support of this application, also known as Induction Well No. A. Refer to supporting map filed under Permit No. 81585.7
6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)
Please see attached Exhibit "A" -- Refer to supporting map filed under Proof No. V03289.

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7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

Proposed place of use is the same as the existing place of use -- Refer to culture map filed under Proof No. V03289. Please see attached Exhibit "A"

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

Refer to Item No. 7

9. Proposed use will be from January 1st to December 31st of each year.
Month and Day Month and Day

10. Existing use permitted from January 1st to December 31st of each year.
Month and Day Month and Day

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

Drilled and cased induction well designed to pump water from the Big Shipley Spring and Tributaries Complex, equipped with motor, pump, totalizing meter, pipeline, holding pond and ditch system to place of use.

12. Estimated cost of works \$125,000.00

13. Estimated time required to construct works two (2) years

If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use five (5) years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

A well designed to intercept the Big Shipley Springs Complex has been completed and tested pumped. This well is in direct communication with the geologic features that provide water to the Big Shipley Springs Complex as shown by the reduction in flows from the spring when the well is pumping and the recovery of the spring flows when the well pump is shut off. Geophysical studies were completed prior to the deign of the production well in an effort to target the Big Shipley Springs Complex. Test pumping confirms the water pumped by the well is from the Big Shipley Spring Complex. Please see attached Exhibit "A".

16. Miscellaneous remarks:

The induction well will be pumped and Big Shipley Springs water will be piped into an existing historical holding pond for distribution into existing ditch systems providing delivery to the historical place of use. Refer to the culture map filed under Proof No. V03289 for an illustration of the historical place of use. Please see attached Exhibit "A".

mike@mbuschelman.com
E-mail Address
775-355-9628
Phone No. Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Michael D. Buschelman

Michael D. Buschelman
Type or print name clearly
Signature, applicant or agent

Michael D. Buschelman Consulting, Inc.
Company Name

Post Office Box 51371
Street Address or PO Box

Sparks, Nevada 89435
City, State, ZIP Code

Item No. 6 – Existing Point of Diversion

The points of diversion as described on Proof of Appropriation No. V03289 are as follows:

Point of Diversion No. 1 (Ditch No. 1) NE1/4 SE1/4 of Section 23, T24N, R52E, MDM, at a point from which the NE corner of said Section 23 bears North 10 degrees 49 minutes 41 seconds East, a distance of 3,516.39 feet.

Point of Diversion No. 2 (Ditch No. 2) NE1/4 SE1/4 of Section 23, T24N, R52E, MDM, at a point from which the NE corner of said Section 23 bears North 10 degrees 54 minutes 23 seconds East, a distance of 3,557.39 feet.

Point of Diversion No. 3 (Ditch No. 3) NE1/4 SE1/4 of Section 23, T24N, R52E, MDM, at a point from which the NE corner of said Section 23 bears North 12 degrees 58 minutes 54 seconds East, a distance of 4,039.74 feet.

Item Nos. 15 & 16 – Detailed description of proposed project and remarks:

Proof of Appropriation No. V03289 was filed affirming the diversion of all the flow of water from Big Shipley Springs and Tributaries for the irrigation of 1,657.28 acres of land. The flow of Big Shipley Springs has declined over the years based on impacts from ground water pumping within the Diamond Valley Basin.

Proof No. V03289 does not specify a rate of flow but did stipulate a duty of 4.5 acre feet per annum per acre are required for the irrigation of crops within the place of use. Based on the total irrigated acres and the 4.5 acre feet per annum duty, 7,457.76 acre feet per annum (afa) are to be changed to the proposed induction well point of diversion. The rate of flow to be changed is the maximum historical flow required to provide Big Shipley Springs water as historically placed to beneficial use for the irrigation of the 1,657.28 acres.

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Exhibit "A" - Sadler Ranch, LLC

Serial No.

Item Nos. 7 & 8 - Proposed Place of Use same as Existing Place of Use

Refer to culture map filed under Proof Nos. V-03289

Acres Quarter Quarter Section Township Range Page 1 of 4

0.66	NW	NE	13	24	52
12.97	NE	NE	13		
19.15	SW	NE	13		
15.03	SE	NE	13		
6.20	NW	SW	13		
26.17	NE	SW	13		
19.64	SW	SW	13		
39.53	SE	SW	13		
27.55	NW	SE	13		
32.64	SW	SE	13		
30.35	SE	SE	13		

21.42	SW	SW	18	24	53
2.84	NW	SW	18		
21.38	NE	SW	18		
27.71	SE	SW	18		
12.75	NW	SE	18		
13.80	SW	SE	18		
10.81	SE	SE	18		

7.88	SW	SW	17	24	53
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9.78	SW	SW	19	24	53
8.26	SE	SW	19		
5.63	SW	SE	19		
21.60	NW	NW	19		
30.63	NE	NW	19		
6.69	NW	NE	19		
2.66	SW	NW	19		
1.69	SE	NW	19		
13.19	SW	NE	19		

6.49	SE	NE	23	24	52
10.05	NE	SE	23		
16.71	SE	SE	23		

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Exhibit "A" - Sadler Ranch, LLC

Serial No. 82268TM

Acres	Quarter	Quarter	Section	Township	Range
31.33	NW	NW	24	24	52
39.41	NE	NW	24		
30.79	SE	NW	24		
39.55	SW	NW	24		
29.91	NW	SW	24		
38.08	SW	SW	24		
28.64	NE	SW	24		
37.18	SE	SW	24		
38.52	NW	NE	24		
39.61	NE	NE	24		
18.14	SW	NE	24		
12.37	SE	NE	24		
5.83	NW	SE	24		
0.99	NE	SE	24		
30.52	SW	SE	24		
21.97	SE	SE	24		

39.84	NW	NW	25	24	52
39.84	NE	NW	25		
1.13	SW	NW	25		
26.38	SE	NW	25		
36.65	NW	NE	25		
24.85	NE	NE	25		
34.29	SW	NE	25		
40.00	SE	NE	25		

10.99	NE	NE	26	24	52
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11.10	NW	NW	29	24	53
18.55	NE	NW	29		
26.46	SE	NW	29		
30.37	SW	NW	29		
14.73	NW	SW	29		
0.52	NE	SW	29		
0.93	SW	NE	29		
11.73	NW	SE	29		
37.16	SW	SE	29		
37.39	SE	SE	29		

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 STATE ENGINEERS OFFICE

Exhibit "A" - Sadler Ranch, LLC

Serial No. 82268

Acres	Quarter	Quarter	Section	Township	Range
18.52	NW	NW	30	24	53
10.76	NE	NW	30		
37.65	SW	NW	30		
33.63	SE	NW	30		
23.09	NW	NE	30		
9.88	NE	NE	30		
21.17	SW	NE	30		
28.83	SE	NE	30		
11.83	NW	SE	30		
17.94	NE	SE	30		
36.72	NE	NE	32	24	53
39.65	NW	NE	32		

● Sub Total 1657.28

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See Third Amended Permit

Permit No. 81720

SECOND AMENDED PERMIT

THE STATE OF NEVADA

PERMIT TO APPROPRIATE WATER

Name of Permittee: SADLER RANCH, LLC
Source: UNDERGROUND (WELL D)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 03/30/2012

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit is issued subject to existing rights. It is understood that the amount of water herein granted is only a temporary allowance and that the final water right obtained under this permit will be dependent upon the amount of water actually placed to beneficial use. It is also understood that this right must allow for a reasonable lowering of the static water level. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water granted herein at any and all times.

This permit is issued subject to State Engineer Ruling No. 6371, dated November 1, 2016.

This permit is issued subject to any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320. The quantification of this mitigation right is not an adjudication of Claim of Vested Right V03289.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

The total combined duty of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 2,918.7 acre-feet annually for the irrigation of the described place of use.

This right is issued to mitigate the loss of discharge from the spring source under Claim of Vested Right V03289, which has a priority date of 1873 for a 2,216.1 afa portion and a priority date of January 1, 1892 for the remaining 702.6 afs portion; thus, this permit cannot be severed from Claim of Vested Right V03289. Additionally, Permit 81720 may be exercised in conformity with the priority dates of Claim of Vested Right V03289 during the periods the basin is regulated.

(Continued on Page 2)

The point of diversion of this permit shall not be moved outside of the spring discharge area as determined by the State Engineer.

This permit is totally supplemental to Permit 82268, which changed the point of diversion of Claim of Vested Right V03289, and serves as an additional point of diversion for Permit 82268 whenever Permit 82268 is in priority.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 6.0 cubic feet per second or 2,918.7 acre-feet annually.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

January 29, 2018

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

January 29, 2020

Map in support of proof of beneficial use shall be filed on or before:

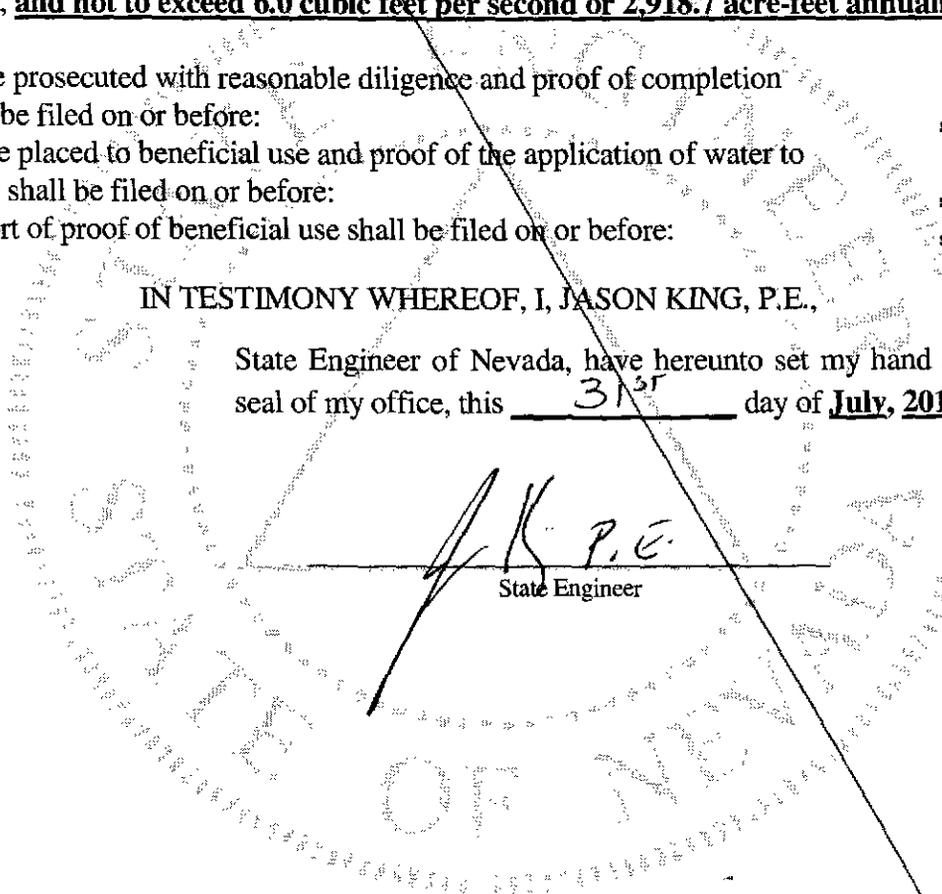
January 29, 2020

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 31st day of **July, 2017**

J. King P.E.

State Engineer





THIRD AMENDED PERMIT

THE STATE OF NEVADA

PERMIT TO APPROPRIATE WATER

Name of Permittee: SADLER RANCH LLC
Source: UNDERGROUND (WELL D)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 03/30/2012

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit issued for diversion rate only is issued subject to existing rights. It is understood that the amount of water herein granted is only a temporary allowance and that the final water right obtained under this permit will be dependent upon the amount of water actually placed to beneficial use. It is also understood that this right must allow for a reasonable lowering of the static water level. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water granted herein at any and all times. This permit is issued pending any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320.

This permit is issued by and subject to the order of the Findings of Fact, Conclusions of Law; Order Partially Granting Supplemental Petition for Judicial Review; Order for Issuance of Mitigation Rights Permit; Order Partially Denying Supplemental Petition for Judicial Review; Case No. CV-1409-204; in the Seventh Judicial District Court of the State of Nevada, in and for the County of Eureka; dated March 21, 2018.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

This right is issued to mitigate the loss of discharge from the spring source under Permit 82268, a change of Claim of Vested Right V03289, a portion of which has a priority date of 1873 for 4,397.4 acre-feet annually; and a priority date of January 1, 1892 for the remaining 702.6 acre-feet per season portion; thus, this permit cannot be severed from Permit 82268, a change of Claim of Vested Right V03289.

Additionally, Permit 81720 may be exercised in conformity with the priority dates of Claim of Vested Right V03289 during the periods that the basin is regulated.

(Continued on Page 2)

The point of diversion of this permit shall not be moved outside of the spring discharge area as determined by the State Engineer.

The total combined duty of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 5,100 acre-feet annually for the irrigation of the described place of use.

This permit is totally supplemental to Permit 82268, which changed the point of diversion of Claim of Vested Right V03289, and may be exercised as an alternate point of diversion whenever Permit 82268 is in priority.

The total combined rate of diversion for Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 7.02 cubic feet per second.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 7.02 cubic feet per second or 5,100 acre-feet annually.

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

January 29, 2018

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

January 29, 2020

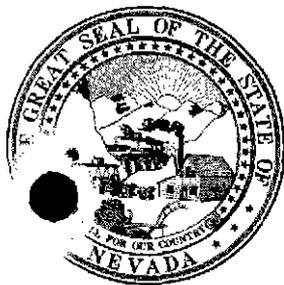
Map in support of proof of beneficial use shall be filed on or before:

January 29, 2020

IN TESTIMONY WHEREOF, I, TIM WILSON, P.E.,

Acting State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 6th day of March, 2019

Tim Wilson, P.E.
Acting State Engineer

**SECOND AMENDED PERMIT****THE STATE OF NEVADA****PERMIT TO APPROPRIATE WATER**

Name of Permittee: SADLER RANCH, LLC
Source: UNDERGROUND (WELL D)
Basin: DIAMOND VALLEY
Manner of Use: IRRIGATION
Period of Use: JANUARY 1ST THROUGH DECEMBER 31ST
Priority Date: 03/30/2012

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit is issued subject to existing rights. It is understood that the amount of water herein granted is only a temporary allowance and that the final water right obtained under this permit will be dependent upon the amount of water actually placed to beneficial use. It is also understood that this right must allow for a reasonable lowering of the static water level. This well shall be equipped with a two (2) inch opening for measuring depth to water. A totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of water begins or before the proof of completion of work is filed. This source is located within an area designated by the State Engineer, pursuant to NRS 534.030. The State retains the right to regulate the use of the water granted herein at any and all times.

This permit is issued subject to State Engineer Ruling No. 6371, dated November 1, 2016.

This permit is issued subject to any determination of the waters of Big Shipley Springs and Tributaries that may be made under adjudication proceedings under NRS 533.090 through 533.320. The quantification of this mitigation right is not an adjudication of Claim of Vested Right V03289.

The permittee shall keep monthly records of the amount of water pumped from this well and the records must be submitted to the State Engineer on an annual basis within 30 days after the end of each calendar year.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

The total combined duty of water under Permit 4273, Certificate 964 and Permits 81720 and 82268 shall not exceed 2,918.7 acre-feet annually for the irrigation of the described place of use.

This right is issued to mitigate the loss of discharge from the spring source under Claim of Vested Right V03289, which has a priority date of 1873 for a 2,216.1 afa portion and a priority date of January 1, 1892 for the remaining 702.6 afs portion; thus, this permit cannot be severed from Claim of Vested Right V03289. Additionally, Permit 81720 may be exercised in conformity with the priority dates of Claim of Vested Right V03289 during the periods the basin is regulated.

(Continued on Page 2)

The point of diversion of this permit shall not be moved outside of the spring discharge area as determined by the State Engineer.

This permit is totally supplemental to Permit 82268, which changed the point of diversion of Claim of Vested Right V03289, and serves as an additional point of diversion for Permit 82268 whenever Permit 82268 is in priority.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The point of diversion and place of use are as described on the submitted application to support this permit.

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 6.0 cubic feet per second or 2,918.7 acre-feet annually.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

January 29, 2018

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

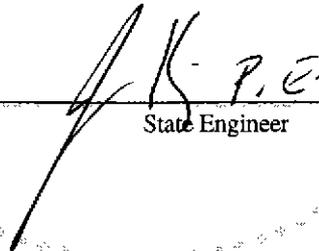
January 29, 2020

Map in support of proof of beneficial use shall be filed on or before:

January 29, 2020

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 31st day of July, 2017



State Engineer

Application No. 81720

APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE FOR OFFICE USE ONLY	
Date of Filing in State Engineer's Office	<u>MAR 30 2012</u>
Returned to applicant for correction	_____
Corrected Application filed	_____ Map filed <u>FEB 24 2012</u> under <u>81585T</u>

The applicant Sadler Ranch, LLC c/o Doug Frazer

 Post Office Box 831 _____ of Forest Knolls

Street Address or P.O. Box City or Town
California 94933 _____
State and ZIP Code hereby make(s) application for permission to appropriate the

public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation, give date and place of incorporation; if a copartnership or association, give names of members.)
Sadler Ranch, LLC is a domestic limited liability company filed in the State of Nevada on July 18, 2011

1. The source of water is Underground Sources (Well "D")
Name of the stream, lake, underground, spring or other sources.
2. The amount of water applied for is 6.00 cubic feet per second - not to exceed 3,462.38 acre feet annually
One second foot equals 448.83 gallons per minute.
 (a) If stored in a reservoir give the number of acre-feet _____
3. The water is to be used for Irrigation Purposes (Supplemental)
Irrigation, power, mining, commercial, domestic or other use. Must be limited to one major use.
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated See Attached Exhibit "A"
 - (b) Stockwater, state number and kind of animals _____
 - (c) Other use (describe fully in No. 12) _____
 - (d) Power:
 - (1) Horsepower developed _____
 - (2) Point of return of water to stream _____

5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a found section corner. If on unsurveyed land, it should be so stated.)
w/in the NW1/4 SE1/4 Section 23T24N, R52E, MDM or at a point from which the NW corner of Section 13 T24N, R52E, MDM bears North 09 degrees, 04 minutes 11 seconds East, a distance of 8,987.78 feet - Well "D" Refer to map filed under Permit No. 81585.

6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated)
See Attached Exhibit "A"

7. Use will begin about January 1st and end about December 31st of each year.
Month and Day Month and Day

8. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e. diversion structure, ditches and flumes, drilled well with a pump and motor, etc.)

Drilled and cased well, equipped with motor, pump, totalizing meter, pipeline and ditch systems to place of use

9. Estimated cost of works: \$125,000

10. Estimated time required to construct works: 2 years

(If the well is complete, describe works.)

11. Estimated time required to complete the application of water to beneficial use: 5 years

12. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

A ground water well will be drilled and utilized to provide supplemental resources when water from Big Shipley Springs & tributaries and Indian Camp Springs and tributaries under Proof Nos. V-03289 and V-03290, respectfully, are not capable of providing sufficient water to irrigate the place of use under Proof Nos. V-03289 and V-03290.

13. Miscellaneous remarks:

Refer to map under Proof Nos. V-03289 and V-03290 to support the proposed place of use. Refer to map under Permit No. 81585 to support the proposed point of diversion. The total combined duty under proposed Well "A" and Well "D" is 1,731.19 acres times a duty of 4.0 acre feet per acre totalling 6,924.76 acre feet annually.

mike@mbuschelman.com

E-mail Address

775-355-9628

Phone No.

Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Michael D. Buschelman

Michael D. Buschelman
Type or print name clearly
Signature, applicant or agent

Michael D. Buschelman Consulting, Inc.

Company Name

Post Office Box 51371

Street Address or PO Box

Sparks, Nevada 89435

City, State, ZIP Code

Revised 07/09 \$300 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

JA2675

Exhibit "A" - Sadler Ranch, LLC**Serial No.****Item Nos. 4 and 6 - Acres to be Irrigated and Proposed Place of Use**

Refer to culture map filed under Proof Nos. V-03289 and V-03290

Acres Quarter Quarter Section Township Range

0.66	NW	NE	13	24	52
12.97	NE	NE	13		
19.15	SW	NE	13		
15.03	SE	NE	13		
6.20	NW	SW	13		
26.17	NE	SW	13		
19.64	SW	SW	13		
39.53	SE	SW	13		
27.55	NW	SE	13		
32.64	SW	SE	13		
30.35	SE	SE	13		

21.42	SW	SW	18	24	53
2.84	NW	SW	18		
21.38	NE	SW	18		
27.71	SE	SW	18		
12.75	NW	SE	18		
13.80	SW	SE	18		
10.81	SE	SE	18		

7.88	SW	SW	17	24	53
------	----	----	----	----	----

9.78	SW	SW	19	24	53
8.26	SE	SW	19		
5.63	SW	SE	19		
21.60	NW	NW	19		
30.63	NE	NW	19		
6.69	NW	NE	19		
2.66	SW	NW	19		
1.69	SE	NW	19		
13.19	SW	NE	19		

6.49	SE	NE	23	24	52
10.05	NE	SE	23		
16.71	SE	SE	23		

PROOF MAP
 2012 MAR 20 PM 4:00
 THE COMMISSIONER OF THE
 STATE OF MONTANA

Exhibit "A" - Sadler Ranch, LLC

Serial No.

Acres	Quarter	Quarter	Section	Township	Range
31.33	NW	NW	24	24	52
39.41	NE	NW	24		
30.79	SE	NW	24		
39.55	SW	NW	24		
29.91	NW	SW	24		
38.08	SW	SW	24		
28.64	NE	SW	24		
37.18	SE	SW	24		
38.52	NW	NE	24		
39.61	NE	NE	24		
18.14	SW	NE	24		
12.37	SE	NE	24		
5.83	NW	SE	24		
0.99	NE	SE	24		
30.52	SW	SE	24		
21.97	SE	SE	24		

39.84	NW	NW	25	24	52
39.84	NE	NW	25		
1.13	SW	NW	25		
26.38	SE	NW	25		
36.65	NW	NE	25		
24.85	NE	NE	25		
34.29	SW	NE	25		
40.00	SE	NE	25		

10.99	NE	NE	26	24	52
-------	----	----	----	----	----

11.10	NW	NW	29	24	53
18.55	NE	NW	29		
26.46	SE	NW	29		
30.37	SW	NW	29		
14.73	NW	SW	29		
0.52	NE	SW	29		
0.93	SW	NE	29		
11.73	NW	SE	29		
37.16	SW	SE	29		
37.39	SE	SE	29		

2012 MAR 30 PM 4:00
 STATE OF MISSISSIPPI
 JOHN W. LEE, JR., CLERK

Exhibit "A" - Sadler Ranch, LLC

Serial No.

Acres	Quarter	Quarter	Section	Township	Range
18.52	NW	NW	30	24	53
10.76	NE	NW	30		
37.65	SW	NW	30		
33.63	SE	NW	30		
23.09	NW	NE	30		
9.88	NE	NE	30		
21.17	SW	NE	30		
28.83	SE	NE	30		
11.83	NW	SE	30		
17.94	NE	SE	30		

36.72	NE	NE	32	24	53
39.65	NW	NE	32		

Sub Total 1657.28

32.49	NW	SW	25	24	52
33.19	NE	SW	25		
8.23	NW	SE	25		

Sub Total 73.91

Grand Total 1731.19

2012 NOV 30 PM 4:00
 STATE OF MISSOURI
 DEPT. OF REVENUE

EXHIBIT 12

EXHIBIT 12

89295

Application No. _____

APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE FOR OFFICE USE ONLY	
Date of Filing in State Engineer's Office	<u>OCT 30 2019</u>
Returned to applicant for correction	_____
Corrected Application filed	Map filed <u>April 30, 2015 Under 85131</u>

The applicant Ira and Montira Renner

 HC 30 Box 343 _____ of Spring Creek

Street Address or P.O. Box City or Town
 Nevada 89815 _____

State and ZIP Code E-mail Address

hereby make(s) application for permission to appropriate the public waters of the State of Nevada, as hereinafter stated.
 (If applicant is a corporation, give date and place of incorporation; if a copartnership or association, give names of members.)

RECEIVED
 2019 OCT 30 PM 12:12
 STATE ENGINEER'S OFFICE

- The source of water is Underground in Compliance with Order #1226 (4)
Name of the stream, lake, underground, spring or other sources.
- The amount of water applied for is 2.5 cfs not to exceed TCD of 932.25 acre feet per annum
Give diversion rate in cubic feet per second (CFS) AND duty in acre-feet annually (AFA).
 (a) If stored in a reservoir give the number of acre-feet _____
- The water is to be used for Irrigation and Domestic
Irrigation, power, mining, commercial, domestic or other use. Must be limited to one major use.
- If use is for:
 - Irrigation, state number of acres to be irrigated Total Combined Acreage NTE 320.27 acres
 - Stockwater, state number and kind of animals _____
 - Other use (describe fully in No. 12) _____
 - Power:
 - Horsepower developed _____
 - Point of return of water to stream _____

JA2680 10-153
 EV

5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a found section corner. If on unsurveyed land, it should be so stated.)

SE1/4NW1/4 of Section 5, T.25N., R.53E., M.B.D.&M or at a point from which the Southwest Corner of Section 32 T.26N., R.53E., M.D.B.&M bears N.49 degrees 38'08"W., a distance of 3,000.16 feet (Use map filed under permit 85131)

6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated)

SW1/4, S1/2NW1/4 and SW1/4SE1.4 of Section 32, T.26N., R.53E., M.B.D.&M and portions of the W1/2 and the W1/2E1/2 of Section 5, T.25N., R.53E., M.D.B.&M. (Use map filed under permit 85131)

7. Use will begin about January 1 and end about December 31 of each year.
Month and Day Month and Day

8. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e. diversion structure, ditches and flumes, drilled well with a pump and motor, etc.)

Drilled well, Pump and Motor, meter and distribution to a center pivot within the described Place of Use

9. Estimated cost of works: \$30,000

10. Estimated time required to construct works: 1 years
(If the well is complete, describe works.)

11. Estimated time required to complete the application of water to beneficial use: 5 years

12. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

Due to declining water tables created by overpumping within Diamond Valley, this water right is filed to mitigate the senior surface water rights of the applicant

13. Miscellaneous remarks:

V02432, V10883, V10884, V10885, V10886-Spring and Lake mitigation filings, date of priority is maintained

RECEIVED
2019 OCT 30 PM 12:12
STATE ENGINEERS OFFICE

GeorgeT@water4NV.com
E-mail Address
775-722-5380
Phone No. Ext.

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

George M. Thiel, P.E., S.W.R.S
George M. Thiel
Signature, applicant or agent
Thiel Engineering Associates, Inc.
Company Name
3130 Old US Highway 395 North
Street Address or PO Box
Washoe Valley, NV 89704
City, State, ZIP Code

89296

Application No. _____

APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE FOR OFFICE USE ONLY	
Date of Filing in State Engineer's Office _____	OCT 30 2019
Returned to applicant for correction _____	
Corrected Application filed _____	Map filed April 30, 2015 Under 85131

The applicant Ira and Montira Renner

 HC 30 Box 343 _____ of Spring Creek

Street Address or P.O. Box City or Town
 Nevada 89815 _____
State and ZIP Code E-mail Address

hereby make(s) application for permission to appropriate the public waters of the State of Nevada, as hereinafter stated.
 (If applicant is a corporation, give date and place of incorporation; if a copartnership or association, give names of members.)

RECEIVED
 2019 OCT 30 PM 12:12
 STATE ENGINEERS OFFICE

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Name of the stream, lake, underground, spring or other sources.
2. The amount of water applied for is 2.5 cfs not to exceed TCD 932.25 acre feet per annum
Give diversion rate in cubic feet per second (CFS) AND duty in acre-feet annually (AFA).
 - (a) If stored in a reservoir give the number of acre-feet _____
3. The water is to be used for Irrigation and Domestic
Irrigation, power, mining, commercial, domestic or other use. Must be limited to one major use.
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated Total Combined Acreage NTE 320.27 acres
 - (b) Stockwater, state number and kind of animals _____
 - (c) Other use (describe fully in No. 12) _____
 - (d) Power:
 - (1) Horsepower developed _____
 - (2) Point of return of water to stream _____

JA2682 10-153
 EU

5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a found section corner. If on unsurveyed land, it should be so stated.)

NE1/4SW1/4 of Section 5, T.25N., R.53E., M.D.B.&M or at a point from which the Southwest Corner of said Section 5 bears S.39 degrees 22'02"W., a distance of 2,786.99 feet (Use map filed under permit 85131)

6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated)

SW1/4, S1/2NW1/4 and SW1/4SE14 of Section 32, T.26N., R.53E., M.D.B.&M and portions of the W1/2 and the W1/2E1/2 of Section 5, T.25N., R.53E., M.D.B.&M. (Use map filed under permit 85131)

7. Use will begin about January 1 and end about December 31 of each year.
Month and Day Month and Day

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RECEIVED
OCT 30 PM 12:12
STATE ENGINEER OFFICE

GeorgeT@water4NV.com

E-mail Address

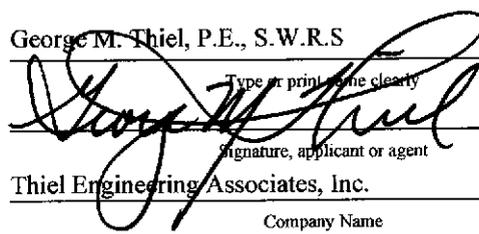
775-722-5380

Phone No.

Ext.

George M. Thiel, P.E., S.W.R.S

Type or print name clearly



Signature, applicant or agent

Thiel Engineering Associates, Inc.

Company Name

3130 Old Highway 395 North

Street Address or PO Box

Washoe Valley, NV 89704

City, State, ZIP Code

APPLICATION MUST BE SIGNED BY THE APPLICANT OR AGENT

EXHIBIT 13

EXHIBIT 13

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2019		Allocation Per Share /AF:			0.6696		
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
14948-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	615.1632	-	411.941	-	-	411.941
18242-1	B.G. ANDERSEN FAMILY TRUST DATED AUGUST 3, 2016	635.5200	-	425.573	-	-	425.573
18621-1	RUBY HILL MINING COMPANY, LLC	44.4724	-	29.781	-	-	29.781
18622-1	RUBY HILL MINING COMPANY, LLC	0.6703	-	0.449	-	-	0.449
18623-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	362.8533	-	242.983	-	-	242.983
18786-1	RUTH MARTIN RANCHES, LLC	267.1215	-	178.877	-	-	178.877
18787-1	RUTH MARTIN RANCHES, LLC	267.1215	-	178.877	-	-	178.877
18788-1	RUTH MARTIN RANCHES, LLC	616.0640	-	412.544	-	-	412.544
18789-1	RUTH MARTIN RANCHES, LLC	616.0640	-	412.544	-	-	412.544
18794-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	462.0480	-	309.408	-	-	309.408
18796-1	SMITH, CRAIG ALLAN & SHELBA KAY	616.0640	-	412.544	-	-	412.544
18797-1	SMITH, CRAIG ALLAN & SHELBA KAY	616.0640	-	412.544	-	-	412.544
18802-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	612.8000	-	410.358	-	-	410.358
18834-1	NEWTON, DEBRA L.	1,218.1615	-	815.736	-	-	815.736
18835-1	NEWTON, DEBRA L.	1,219.6601	-	816.739	-	-	816.739
18851-1	EUREKA COUNTY	3.0735	-	2.058	-	-	2.058
18851-2	GALLAGHER FARMS, LLC	488.6807	-	327.243	-	-	327.243
18911-1	HILL, HOWARD SR.,HILL, KATHY	1,104.0288	-	739.307	-	-	739.307
18927-1	A.G. FARM COMMODITIES, INC.	299.9360	-	200.851	-	-	200.851
18927-2	HOVIOUS, JOHN R.	299.9360	-	200.851	-	-	200.851
18928-1	A.G. FARM COMMODITIES, INC.	299.9360	-	200.851	-	-	200.851
18928-2	HOVIOUS, JOHN R.	299.9360	-	200.851	-	-	200.851
18975-1	SESTANOVICH HAY & CATTLE, LLC	680.1523	-	455.461	-	-	455.461
18978-1	BENSON, CRAIG AND KATHRYN	688.0804	-	460.770	-	-	460.770
18981-1	BENSON, CRAIG AND KATHRYN	75.4137	-	50.500	-	-	50.500
18988-1	SESTANOVICH HAY & CATTLE, LLC	594.2332	-	397.925	-	-	397.925
18988-2	EUREKA COUNTY	1.8628	-	1.247	-	-	1.247
18989-1	SESTANOVICH HAY & CATTLE, LLC	596.0960	-	399.173	-	-	399.173
18999-1	COOPER, CHARLES E.	84.6154	-	56.662	-	-	56.662
19014-1	J & T FARMS, LLC	591.0400	-	395.787	-	-	395.787
19052-1	NEWTON, DEBRA L.	-	-	-	-	-	-
19053-1	NEWTON, DEBRA L.	0.0074	-	0.005	-	-	0.005
19110-1	MARK MOYLE FARMS, LLC	589.6960	-	394.887	-	-	394.887
19111-1	MILES, HAROLD R. & MURIEL M.	573.1108	-	383.781	-	-	383.781
19145-1	MOYLE, JAMES L. & NANCY JANE	587.3280	-	393.301	-	-	393.301
19191-1	ANDERSON, JERRY LEE	479.4199	-	321.041	-	-	321.041
19192-1	HALPIN FAMILY TRUST	545.5310	-	365.312	-	-	365.312
19218-1	EUREKA MOLY, LLC	330.8712	-	221.566	-	-	221.566
19218-2	MILLER, OWEN J. AND CHERYL	318.2353	-	213.105	-	-	213.105
19218-3	WALTER, NORBERT AND EILEEN B.	22.5694	-	15.113	-	-	15.113
19279-1	DUBRAY, FERNO L. & CARRIE M.	164.6190	-	110.236	-	-	110.236
19279-2	GENERAL MOLY, INC.	135.6750	-	90.854	-	-	90.854

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2019		Allocation Per Share /AF:			0.6696		
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
19292-1	DAMELE FARMS, INC.	504.6221	-	337.918	-	-	337.918
19293-1	DAMELE FARMS, INC.	477.9110	-	320.031	-	-	320.031
19324-1	SESTANOVICH HAY & CATTLE, LLC	568.4840	-	380.682	-	-	380.682
19360-1	ETCHEGARAY FAMILY TRUST	556.7600	-	372.832	-	-	372.832
19361-1	ETCHEGARAY FAMILY TRUST	556.7600	-	372.832	-	-	372.832
19378-1	MOYLE, DUSTY L.	848.6253	-	568.278	-	-	568.278
19379-1	MOYLE, DUSTY L.	564.8184	-	378.228	-	-	378.228
19381-1	MOYLE, DUSTY L.	857.9520	-	574.523	-	-	574.523
19411-1	RUBY HILL MINING COMPANY, LLC	342.3744	-	229.269	-	-	229.269
19490-1	SOLARLJOS LLC	-	-	-	-	-	-
19492-1	CONLEY, BEVERLY A. AND CONLEY, KENNETH E.	553.9872	-	370.975	-	-	370.975
19492-2	MOYLE, DUSTY L.	561.0896	-	375.731	-	-	375.731
19500-1	CONLEY LAND & LIVESTOCK, LLC	589.8543	-	394.993	-	-	394.993
19501-1	CONLEY LAND & LIVESTOCK, LLC	584.1014	-	391.141	-	-	391.141
19502-1	CONLEY LAND & LIVESTOCK, LLC	540.7412	-	362.105	-	-	362.105
19526-1	BAUMANN, JAMES E. AND BAUMANN, VERA L.	1,063.6136	-	712.244	-	-	712.244
19541-1	DIAMOND VALLEY RANCH, LLC	498.6760	-	333.936	-	-	333.936
19542-1	DIAMOND VALLEY RANCH, LLC	412.9164	-	276.507	-	-	276.507
19563-1	PLASKETT, TOMMYE J. & WALTER L.	1,125.5586	-	753.725	-	-	753.725
19760-1	REINFORD, CHUCK D. AND HEIDI N.	1,118.6692	-	749.111	-	-	749.111
19904-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-	-	-
19965-1	BAR D LAND & LIVESTOCK, LLC	551.9256	-	369.594	-	-	369.594
19966-1	BAR D LAND & LIVESTOCK, LLC	190.5541	-	127.604	-	-	127.604
19971-1	PLASKETT, TOMMYE J. & WALTER L.	-	-	-	-	-	-
19972-1	PLASKETT, TOMMYE J. & WALTER L.	330.1947	-	221.113	-	-	221.113
19973-1	PLASKETT, TOMMYE J. & WALTER L.	338.7181	-	226.821	-	-	226.821
20000-1	MOYLE, DUSTY L.	-	-	-	-	-	-
20015-1	MOYLE, DUSTY L.	-	-	-	-	-	-
20046-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	557.1840	-	373.115	-	-	373.115
20087-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-	-	-
20088-1	DIAMOND VALLEY RANCH, LLC	13.9296	-	9.328	-	-	9.328
20366-1	MARK MOYLE FARMS, LLC	555.0744	-	371.703	-	-	371.703
20487-1	J.W.L. PROPERTIES, LLC	443.4766	-	296.972	-	-	296.972
20565-1	MINOLETTI, JOHN B. AND NANCY M	202.6745	-	135.720	-	-	135.720
20565-2	EUREKA COUNTY	19.4567	-	13.029	-	-	13.029
20694-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	-	-	-	-	-	-
21085-1	MILLER, ANTHONY	541.2066	-	362.416	-	-	362.416
21399-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	917.2210	-	614.212	-	-	614.212
21426-1	MORRISON, LLOYD & BELINDA FAYE	593.7920	-	397.630	-	-	397.630
21428-1	BENSON, PATTI E. AND KENNETH F.	428.1240	-	286.691	-	-	286.691
21561-1	EUREKA MOLY, LLC	93.3558	-	62.515	-	-	62.515
21561-2	MILLER, OWEN J. AND CHERYL	34.1484	-	22.867	-	-	22.867

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2019		Allocation Per Share /AF:			0.6696		
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
21561-3	WALTER, NORBERT AND EILEEN B.	6.3680	-	4.264	-	-	4.264
21839-1	BERGENER, LINDA AND DON	586.3696	-	392.659	-	-	392.659
21841-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	586.3696	-	392.659	-	-	392.659
21843-1	MORRISON, LLOYD & BELINDA FAYE	578.9472	-	387.689	-	-	387.689
21844-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	586.3696	-	392.659	-	-	392.659
21929-1	DIAMOND VALLEY RANCH, LLC	572.5923	-	383.434	-	-	383.434
21930-1	AMERICAN FIRST FEDERAL	576.9522	-	386.353	-	-	386.353
22194-1	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	528.3888	-	353.833	-	-	353.833
22195-1	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	613.1676	-	410.605	-	-	410.605
22217-1	CONLEY LAND & LIVESTOCK, LLC	571.9918	-	383.031	-	-	383.031
22217-2	EUREKA COUNTY	8.8780	-	5.945	-	-	5.945
22316-1	AMERICAN FIRST FEDERAL	571.1390	-	382.460	-	-	382.460
22352-1	MARK MOYLE FARMS, LLC	126.4229	-	84.658	-	-	84.658
22353-1	MARK MOYLE FARMS, LLC	618.0328	-	413.863	-	-	413.863
22566-1	MILLER, LAVON AND KRISTI	454.1472	-	304.117	-	-	304.117
22567-1	MILLER, LAVON AND KRISTI	454.1472	-	304.117	-	-	304.117
22648-1	BENSON, PATTI E. AND KENNETH F.	562.0637	-	376.383	-	-	376.383
22921-1	BENSON, PATTI E. AND KENNETH F.	562.0637	-	376.383	-	-	376.383
22922-1	BENSON, PATTI E. AND KENNETH F.	402.8028	-	269.735	-	-	269.735
22982-1	AMERICAN FIRST FEDERAL	1,236.5926	-	828.078	-	-	828.078
23272-1	L K FARM LLC	621.0560	-	415.887	-	-	415.887
23462-1	MILLER, ANTHONY	-	-	-	-	-	-
23462-2	EUREKA COUNTY	-	-	-	-	-	-
23711-1	EUREKA MOLY, LLC	-	-	-	-	-	-
23711-2	MILLER, OWEN J. AND CHERYL	-	-	-	-	-	-
23738-1	EUREKA MOLY, LLC	-	-	-	-	-	-
23738-2	MILLER, OWEN J. AND CHERYL	-	-	-	-	-	-
23739-1	EUREKA MOLY, LLC	8.1216	-	5.439	-	-	5.439
23739-2	MILLER, OWEN J. AND CHERYL	806.5290	-	540.088	-	-	540.088
23803-1	MILLER, ANTHONY	667.8854	-	447.246	-	-	447.246
23893-1	MILES, HAROLD R. & MURIEL M.	-	-	-	-	-	-
23918-1	NORTON, WILLIAM H. JR.	38.0330	-	25.469	-	-	25.469
24127-1	CONAWAY, DALE R.,CONAWAY, ELMA G.	607.4240	-	406.758	-	-	406.758
24128-1	CONAWAY, DALE R.,CONAWAY, ELMA G.	607.4240	-	406.758	-	-	406.758
24129-1	MORRISON, ALBERTA J.,MORRISON, DONALD E.	588.8216	-	394.301	-	-	394.301
24130-1	MORRISON, ALBERTA J.,MORRISON, DONALD E.	588.8216	-	394.301	-	-	394.301
24214-1	ANDERSON, EDWARD B.,ANDERSON, JERRY LEE	513.5137	-	343.872	-	-	343.872
24262-1	DIAMOND VALLEY HAY CO., INC.	6.5643	-	4.396	-	-	4.396
24263-1	DIAMOND VALLEY HAY CO., INC.	6.5643	-	4.396	-	-	4.396
24264-1	DIAMOND VALLEY HAY CO., INC.	877.4578	-	587.585	-	-	587.585
24265-1	DIAMOND VALLEY HAY CO., INC.	891.7024	-	597.124	-	-	597.124
24272-1	REINFORD, CHUCK D. AND HEIDI N.	561.0880	-	375.730	-	-	375.730

Diamond Valley Groundwater Management Plan
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CY 2019		Allocation Per Share /AF:		0.6696			
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
24378-1	EUREKA MOLY, LLC	-	-	-	-	-	-
24378-2	COUNTY OF EUREKA	-	-	-	-	-	-
24378-3	RUBY HILL RANCH, INC.	-	-	-	-	-	-
24378-4	SEAN PECK	-	-	-	-	-	-
24574-1	MORRISON, D. LLOYD	660.5319	-	442.322	-	-	442.322
24605-1	MOYLE, DUSTY L.	273.8619	-	183.390	-	-	183.390
24606-1	DIAMOND VALLEY RANCH, LLC	1,128.1424	-	755.455	-	-	755.455
24607-1	DIAMOND VALLEY RANCH, LLC	1,122.1056	-	751.412	-	-	751.412
24609-1	DIAMOND VALLEY RANCH, LLC	1,084.9799	-	726.551	-	-	726.551
26437-1	MOYLE, DUSTY L.	432.4291	-	289.574	-	-	289.574
26664-1	KEPHART, MARI ALICE & RICHARD E.	135.8560	-	90.975	-	-	90.975
27976-1	MARSHALL FAMILY TRUST	497.3164	-	333.025	-	-	333.025
28035-1	BAILEY, FRED AND CAROLYN	171.0640	-	114.552	-	-	114.552
28036-1	BAILEY, FRED AND CAROLYN	265.6153	-	177.868	-	-	177.868
28061-1	REINFORD, CHUCK D. AND HEIDI N.	-	-	-	-	-	-
28160-1	PLASKETT, TOMMYE J. & WALTER L.	-	-	-	-	-	-
28561-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	440.8560	-	295.217	-	-	295.217
28641-1	L K FARM LLC	621.0560	-	415.887	-	-	415.887
29278-1	L K FARM LLC	-	-	-	-	-	-
29405-1	MORRISON, D. LLOYD	573.8169	-	384.254	-	-	384.254
29557-1	MOYLE, JAMES L. & NANCY JANE	410.6495	-	274.989	-	-	274.989
29765-1	HALPIN FAMILY TRUST	562.2322	-	376.496	-	-	376.496
29873-1	MOYLE, JAMES L. & NANCY JANE	163.6087	-	109.560	-	-	109.560
29895-1	OLIVEIRA, EGIDIO	421.2123	-	282.063	-	-	282.063
30102-1	MOYLE, JAMES L. & NANCY JANE	759.4003	-	508.529	-	-	508.529
30913-1	MOYLE, DUSTY L.	399.0586	-	267.228	-	-	267.228
30927-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	69.0993	-	46.272	-	-	46.272
30928-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	363.2898	-	243.275	-	-	243.275
31062-1	BAR D LAND & LIVESTOCK, LLC	460.3849	-	308.294	-	-	308.294
31063-1	BAR D LAND & LIVESTOCK, LLC	435.0408	-	291.323	-	-	291.323
31108-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	447.9875	-	299.993	-	-	299.993
31110-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	447.9875	-	299.993	-	-	299.993
31111-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	130.7292	-	87.542	-	-	87.542
31113-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	441.5006	-	295.649	-	-	295.649
31114-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	444.8102	-	297.865	-	-	297.865
31454-1	HALPIN, JAYME L.	428.1160	-	286.686	-	-	286.686
31455-1	HALPIN, JAYME L.	421.6284	-	282.341	-	-	282.341
33018-1	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JENNIFER	394.2240	-	263.990	-	-	263.990
33019-1	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JENNIFER	394.2240	-	263.990	-	-	263.990
33668-1	WISEHART, LARRY	500.7544	-	335.328	-	-	335.328
33669-1	WISEHART, LARRY	500.7544	-	335.328	-	-	335.328
33670-1	WISEHART, LARRY	517.5152	-	346.551	-	-	346.551

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CY 2019		Allocation Per Share /AF:			0.6696		
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
33671-1	WISEHART, LARRY	517.5152	-	346.551	-	-	346.551
33817-1	BELL, SCOTT THOMAS AND KRISTINE LOUISE	417.1586	-	279.348	-	-	279.348
33818-1	BELL, SCOTT THOMAS AND KRISTINE LOUISE	416.5063	-	278.911	-	-	278.911
34561-1	MARK MOYLE FARMS, LLC	419.9289	-	281.203	-	-	281.203
34562-1	MARK MOYLE FARMS, LLC	406.4768	-	272.195	-	-	272.195
34596-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	268.6683	-	179.912	-	-	179.912
34939-1	MARK MOYLE FARMS, LLC	421.4600	-	282.229	-	-	282.229
34948-1	PLASKETT, TOMMYE J. & WALTER L.	220.7702	-	147.838	-	-	147.838
34950-1	SESTANOVICH HAY & CATTLE, LLC	470.1437	-	314.829	-	-	314.829
35009-1	BENSON, PATTI E. AND KENNETH F.	394.1435	-	263.936	-	-	263.936
35012-1	ETCHEVERRY, JAMES F.	413.5774	-	276.950	-	-	276.950
35013-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	441.9038	-	295.919	-	-	295.919
35374-1	DUBRAY, FERNO L. & CARRIE M.	87.2291	-	58.413	-	-	58.413
35375-1	DUBRAY, FERNO L. & CARRIE M.	311.3350	-	208.484	-	-	208.484
35418-1	RUBIO, DAVID M.,RUBIO, SALLY R.	3.6032	-	2.413	-	-	2.413
36070-1	MOYLE, JAMES L. & NANCY JANE	-	-	-	-	-	-
36321-1	BENSON, PATTI E. AND KENNETH F.	103.5958	-	69.372	-	-	69.372
36322-1	BENSON, PATTI E. AND KENNETH F.	130.7831	-	87.578	-	-	87.578
39156-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	749.5149	-	501.909	-	-	501.909
39552-1	BENSON, CRAIG AND KATHRYN	515.5697	-	345.249	-	-	345.249
39553-1	BENSON, CRAIG AND KATHRYN	507.2775	-	339.696	-	-	339.696
39554-1	BENSON, CRAIG AND KATHRYN	-	-	-	-	-	-
40010-1	LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	395.3477	-	264.743	-	-	264.743
40011-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	93.6046	-	62.682	-	-	62.682
40013-1	LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	35.2440	-	23.601	-	-	23.601
40014-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	314.7930	-	210.800	-	-	210.800
40402-1	MOYLE, DUSTY L.	425.3568	-	284.838	-	-	284.838
41883-1	MILLER, OWEN J. AND CHERYL	62.9160	-	42.131	-	-	42.131
41884-1	MILLER, OWEN J. AND CHERYL	62.9160	-	42.131	-	-	42.131
42019-1	BENSON, CRAIG AND KATHRYN	306.0911	-	204.972	-	-	204.972
42020-1	BENSON, CRAIG AND KATHRYN	-	-	-	-	-	-
42021-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	509.1766	-	340.968	-	-	340.968
42367-1	KEPHART, MARI ALICE & RICHARD E.	32.8520	-	21.999	-	-	21.999
42368-1	KEPHART, MARI ALICE & RICHARD E.	32.8520	-	21.999	-	-	21.999
42369-1	KEPHART, MARI ALICE & RICHARD E.	98.5560	-	65.998	-	-	65.998
42370-1	KEPHART, MARI ALICE & RICHARD E.	98.5560	-	65.998	-	-	65.998
42891-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	76.0693	-	50.939	-	-	50.939
43268-1	MARK MOYLE FARMS, LLC	719.2192	-	481.622	-	-	481.622
43269-1	BLANCO RANCH, LLC	63.1910	-	42.316	-	-	42.316
43270-1	MARK MOYLE FARMS, LLC	188.4399	-	126.188	-	-	126.188
43271-1	BERG PROPERTIES CALIFORNIA, LLC	444.0921	-	297.384	-	-	297.384
43272-1	BERG PROPERTIES CALIFORNIA, LLC	444.0921	-	297.384	-	-	297.384

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CY 2019		Allocation Per Share /AF:			0.6696		
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
43273-1	BERG PROPERTIES CALIFORNIA, LLC	434.6039	-	291.030	-	-	291.030
43274-1	BERG PROPERTIES CALIFORNIA, LLC	434.6039	-	291.030	-	-	291.030
43397-1	MOYLE, JAMES L. & NANCY JANE	539.2640	-	361.115	-	-	361.115
43836-1	MARK MOYLE FARMS, LLC	-	-	-	-	-	-
43837-1	BLANCO RANCH, LLC	94.6161	-	63.359	-	-	63.359
43838-1	BLANCO RANCH, LLC	94.6161	-	63.359	-	-	63.359
43839-1	BLANCO RANCH, LLC	92.6137	-	62.018	-	-	62.018
43840-1	BLANCO RANCH, LLC	92.6137	-	62.018	-	-	62.018
44451-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	574.6773	-	384.830	-	-	384.830
44452-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	549.8120	-	368.179	-	-	368.179
44604-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	115.1077	-	77.081	-	-	77.081
44605-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	91.9789	-	61.593	-	-	61.593
44606-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	18.8743	-	12.639	-	-	12.639
44607-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	-	-	-	-	-	-
44609-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	236.7290	-	158.524	-	-	158.524
44610-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	-	-	-	-	-	-
44621-1	RUBY HILL MINING COMPANY, LLC	-	-	-	-	-	-
46287-1	GROTH, DANIEL E.	538.2112	-	360.410	-	-	360.410
46348-1	PLASKETT, TOMMYE J. & WALTER L.	229.2936	-	153.545	-	-	153.545
46461-1	MOYLE, DUSTY L.	464.1984	-	310.848	-	-	310.848
46505-1	REINFORD, CHUCK D. AND HEIDI N.	447.4677	-	299.644	-	-	299.644
47518-1	ANDERSON, EDWARD B.	372.1349	-	249.198	-	-	249.198
47519-1	ANDERSON, EDWARD B.	-	-	-	-	-	-
47520-1	ANDERSON, EDWARD B.	546.3611	-	365.868	-	-	365.868
47521-1	ANDERSON, EDWARD B.	151.5506	-	101.485	-	-	101.485
47591-1	MOYLE, DUSTY L.	432.4291	-	289.574	-	-	289.574
48225-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	258.2183	-	172.915	-	-	172.915
48226-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	271.3500	-	181.708	-	-	181.708
48437-1	MARK MOYLE FARMS, LLC	-	-	-	-	-	-
48871-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	296.1392	-	198.308	-	-	198.308
48872-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	176.4081	-	118.131	-	-	118.131
48948-1	BAILEY, FRED AND CAROLYN	458.8912	-	307.294	-	-	307.294
49185-1	MOYLE, DUSTY L.	420.6761	-	281.704	-	-	281.704
49188-1	MOYLE, DUSTY L.	405.1420	-	271.301	-	-	271.301
49853-1	DUBRAY, FERNO L. & CARRIE M.	47.6687	-	31.921	-	-	31.921
49854-1	DUBRAY, FERNO L. & CARRIE M.	47.6687	-	31.921	-	-	31.921
50095-1	MOYLE, DUSTY L.	410.0419	-	274.583	-	-	274.583
50581-1	SADLER RANCH, LLC	214.6826	-	143.761	-	-	143.761
50582-1	EZRA C. LUNDAHL, INC.,SADLER RANCH, LLC	708.6217	-	474.525	-	-	474.525
50650-1	MOYLE, JAMES L. & NANCY JANE	549.2480	-	367.801	-	-	367.801
50962-1	KOBEH VALLEY RANCH LLC	112.1714	-	75.115	-	-	75.115
50963-1	KOBEH VALLEY RANCH LLC	166.9088	-	111.770	-	-	111.770

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CY 2019		Allocation Per Share /AF:		0.6696			
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51647-1	GROTH, DANIEL E.	492.9061	-	330.072	-	-	330.072
53872-1	PALMORE FAMILY TRUST	615.1632	-	411.941	-	-	411.941
55535-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	301.1868	-	201.688	-	-	201.688
55727-1	BAILEY, FRED AND CAROLYN	20.2641	-	13.570	-	-	13.570
56652-1	KEPHART, MARI ALICE & RICHARD E.	135.8560	-	90.975	-	-	90.975
57835-1	KOBEH VALLEY RANCH LLC	-	-	-	-	-	-
57836-1	KOBEH VALLEY RANCH LLC	-	-	-	-	-	-
57838-1	KOBEH VALLEY RANCH LLC	166.9088	-	111.770	-	-	111.770
57839-1	KOBEH VALLEY RANCH LLC	147.7921	-	98.968	-	-	98.968
57840-1	KOBEH VALLEY RANCH LLC	147.7921	-	98.968	-	-	98.968
64630-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	154.8909	-	103.722	-	-	103.722
64631-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	154.8909	-	103.722	-	-	103.722
64632-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	38.4768	-	25.766	-	-	25.766
64633-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	-	-	-	-	-	-
66062-1	KOBEH VALLEY RANCH LLC	286.2894	-	191.712	-	-	191.712
67172-1	MARK MOYLE FARMS, LLC	429.0772	-	287.329	-	-	287.329
68923-1	RUBY HILL MINING COMPANY, LLC	203.2904	-	136.132	-	-	136.132
68923-2	EUREKA COUNTY	5.1684	-	3.461	-	-	3.461
70249-1	L K FARM LLC	1,233.1843	-	825.796	-	-	825.796
70587-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	117.6538	-	78.786	-	-	78.786
70588-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	228.8301	-	153.235	-	-	153.235
70940-1	MARK MOYLE FARMS, LLC	491.6099	-	329.204	-	-	329.204
71748-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	504.2660	-	337.679	-	-	337.679
72370-1	ANDERSEN, HARLOW B. & BONNIE G.	635.5200	-	425.573	-	-	425.573
73204-1	RUBY HILL MINING COMPANY, LLC	14.2656	-	9.553	-	-	9.553
73899-1	WEST, DENNIS L. & KIM KENNEDY	412.8717	-	276.477	-	-	276.477
76358-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	451.2971	-	302.209	-	-	302.209
77447-1	RUBY HILL MINING COMPANY, LLC	52.1223	-	34.903	-	-	34.903
77449-1	RUBY HILL MINING COMPANY, LLC	79.5760	-	53.288	-	-	53.288
77569-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	270.0468	-	180.835	-	-	180.835
77646-1	NORTON, WILLIAM H.	105.8758	-	70.899	-	-	70.899
77666-1	BAR D LAND & LIVESTOCK, LLC	338.2338	-	226.497	-	-	226.497
77695-1	NORTON, WILLIAM H.	376.4059	-	252.058	-	-	252.058
77696-1	NORTON, WILLIAM H.	236.3911	-	158.298	-	-	158.298
78062-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	519.6072	-	347.952	-	-	347.952
78358-1	WEST, DENNIS L. & KIM KENNEDY	99.3276	-	66.514	-	-	66.514
78447-1	BAR D LAND & LIVESTOCK, LLC	-	-	-	-	-	-
78568-1	MARK MOYLE FARMS, LLC	284.1043	-	190.249	-	-	190.249
78771-1	J.W.L. PROPERTIES, LLC	325.0366	-	217.659	-	-	217.659
78772-1	J.W.L. PROPERTIES, LLC	111.5776	-	74.717	-	-	74.717
78773-1	J.W.L. PROPERTIES, LLC	319.7957	-	214.150	-	-	214.150
78774-1	J.W.L. PROPERTIES, LLC	46.6388	-	31.231	-	-	31.231

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CY 2019		Allocation Per Share /AF:		0.6696			
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78775-1	J.W.L. PROPERTIES, LLC	70.6376	-	47.302	-	-	47.302
78905-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-	-	-
78906-1	DIAMOND VALLEY RANCH, LLC	530.8105	-	355.455	-	-	355.455
79705-1	RUBY HILL MINING COMPANY, LLC	100.7508	-	67.467	-	-	67.467
79706-1	RUBY HILL MINING COMPANY, LLC	42.7968	-	28.659	-	-	28.659
79707-1	RUBY HILL MINING COMPANY, LLC	2.5842	-	1.730	-	-	1.730
79707-2	EUREKA COUNTY	3.4456	-	2.307	-	-	2.307
80581-1	BAR D LAND & LIVESTOCK, LLC	354.3851	-	237.312	-	-	237.312
80717-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	108.9360	-	72.948	-	-	72.948
80718-1	NORTON, WILLIAM H. JR.	108.6156	-	72.734	-	-	72.734
80780-1	SESTANOVICH HAY & CATTLE, LLC	-	-	-	-	-	-
80781-1	SESTANOVICH HAY & CATTLE, LLC	-	-	-	-	-	-
80797-1	BLISS, CHAD D. & ROSIE J.	116.1173	-	77.757	-	-	77.757
80799-1	BLISS, CHAD D. & ROSIE J.	116.1173	-	77.757	-	-	77.757
80879-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	215.0862	-	144.031	-	-	144.031
80880-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	75.2354	-	50.381	-	-	50.381
80881-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	35.2440	-	23.601	-	-	23.601
80926-1	NORTON, WILLIAM H. JR.	88.4011	-	59.197	-	-	59.197
81004-1	HALPIN, JAYME L.	42.0542	-	28.161	-	-	28.161
81229-1	BLISS, CHAD D. & ROSIE J.	36.9146	-	24.720	-	-	24.720
81230-1	BLISS, CHAD D. & ROSIE J.	-	-	-	-	-	-
81268-1	MOYLE, JAMES L. & NANCY JANE	163.6087	-	109.560	-	-	109.560
81269-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	171.4538	-	114.813	-	-	114.813
81612-1	GARAVENTA, GARY G AND MELODY I	209.5283	-	140.310	-	-	140.310
81650-1	EUREKA MOLY, LLC	92.5352	-	61.966	-	-	61.966
81653-1	GARAVENTA, GARY G AND MELODY I	209.5283	-	140.310	-	-	140.310
83501-1	RUBY HILL MINING COMPANY, LLC	8.6140	-	5.768	-	-	5.768
83502-1	RUBY HILL MINING COMPANY, LLC	47.5493	-	31.841	-	-	31.841
83503-1	BLISS, CHAD D. & ROSIE J.	-	-	-	-	-	-
83504-1	BLISS, CHAD D. & ROSIE J.	94.1700	-	63.060	-	-	63.060
83505-1	RUBY HILL MINING COMPANY, LLC	90.7537	-	60.773	-	-	60.773
83506-1	RUBY HILL MINING COMPANY, LLC	184.6163	-	123.627	-	-	123.627
83507-1	RUBY HILL MINING COMPANY, LLC	116.1167	-	77.757	-	-	77.757
83567-1	BAR D LAND & LIVESTOCK, LLC	128.1121	-	85.790	-	-	85.790
83615-1	J & T FARMS, LLC	174.8740	-	117.103	-	-	117.103
83616-1	J & T FARMS, LLC	517.9968	-	346.874	-	-	346.874
83617-1	J & T FARMS, LLC	408.7780	-	273.736	-	-	273.736
83622-1	LC PROPERTIES	815.3508	-	545.996	-	-	545.996
83623-1	LC PROPERTIES	347.3682	-	232.613	-	-	232.613
85131-1	RENNER, IRA R. AND MONTIRA	27.0713	-	18.128	-	-	18.128
85132-1	RENNER, IRA R. AND MONTIRA	104.6974	-	70.110	-	-	70.110
85133-1	RENNER, IRA R. AND MONTIRA	103.7986	-	69.508	-	-	69.508

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Share Register and Ledger

CY 2019		Allocation Per Share /AF:					
Account No.	Owner of Record	Shares	Carryover	Allocation	Transferred	Utilized	Remaining
85134-1	RENNER, IRA R. AND MONTIRA	216.1920		144.772	-		144.772
85145-1	SADLER RANCH, LLC	581.0934		389.126	-		389.126
85645-1	RUBY HILL MINING COMPANY, LLC	177.3989		118.794	-		118.794
85646-1	RUBY HILL MINING COMPANY, LLC	57.9540		38.809	-		38.809
85647-1	RUBY HILL MINING COMPANY, LLC	30.1490		20.189	-		20.189
86032-1	BENSON, PATTI E. AND KENNETH F.	34.8185		23.316	-		23.316
86033-1	BENSON, PATTI E. AND KENNETH F.	116.7653		78.191	-		78.191
86035-1	BENSON, PATTI E. AND KENNETH F.	130.5064		87.393	-		87.393
86037-1	BENSON, PATTI E. AND KENNETH F.	157.5308		105.490	-		105.490
86252-1	RUTH MARTIN RANCHES, LLC	348.9425		233.668	-		233.668
86253-1	RUTH MARTIN RANCHES, LLC	348.9425		233.668	-		233.668
86600-1	SADLER RANCH, LLC	176.0559		117.895	-		117.895
86794-1	RUBY HILL MINING COMPANY, LLC	734.2238	-	491.669	-	-	491.669
87223-1	RUBY HILL MINING COMPANY, LLC	237.9002		159.309	-		159.309
87224-1	RUBY HILL MINING COMPANY, LLC	281.7022		188.640	-		188.640
87225-1	RUBY HILL MINING COMPANY, LLC	248.6976	-	166.539	-	-	166.539
Total		113,492.9732		75,999.990			

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CY 2020		Allocation Per Share /AF:			0.6496	Last Updated	1/30/2020
Account No.	Owner of Record	Shares	2019 Banked	2020 Allocation	Transferred	Utilized	Remaining
14948-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	615.1632	131.8338	399.610	-		531.444
18242-1	B.G. ANDERSEN FAMILY TRUST DATED AUGUST 3, 2016	635.5200	310.3746	412.834	-		723.209
18621-1	RUBY HILL MINING COMPANY, LLC	44.4724	-	28.889	-		28.889
18622-1	RUBY HILL MINING COMPANY, LLC	0.6703	-	0.435	-		0.435
18623-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	362.8533	-	235.710	-		235.710
18786-1	RUTH MARTIN RANCHES, LLC	267.1215	-	173.522	-		173.522
18787-1	RUTH MARTIN RANCHES, LLC	267.1215	-	173.522	-		173.522
18788-1	RUTH MARTIN RANCHES, LLC	616.0640	408.4186	400.195	-		808.614
18789-1	RUTH MARTIN RANCHES, LLC	616.0640	250.0742	400.195	-		650.269
18794-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	462.0480	123.3013	300.146	-		423.447
18796-1	SMITH, CRAIG ALLAN & SHELBA KAY	616.0640	408.4186	400.195	-		808.614
18797-1	SMITH, CRAIG ALLAN & SHELBA KAY	616.0640	46.7192	400.195	-		446.914
18802-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	612.8000	171.8183	398.075	-		569.893
18834-1	NEWTON, DEBRA L.	1,218.1615	404.7345	791.318	-		1,196.053
18835-1	NEWTON, DEBRA L.	1,219.6601	442.8539	792.291	-		1,235.145
18851-1	EUREKA COUNTY	-	-	-	-		-
18851-2	GALLAGHER FARMS, LLC	488.6807	98.1568	317.447	-		415.604
18911-1	HILL, HOWARD SR.,HILL, KATHY	1,104.0288	731.9139	717.177	-		1,449.091
18927-1	A.G. FARM COMMODITIES, INC.	299.9360	12.9845	194.838	-		207.823
18927-2	HOVIOUS, JOHN R.	299.9360	12.9845	194.838	-		207.823
18928-1	A.G. FARM COMMODITIES, INC.	299.9360	18.5751	194.838	-		213.413
18928-2	HOVIOUS, JOHN R.	299.9360	18.5751	194.838	-		213.413
18975-1	SESTANOVICH HAY & CATTLE, LLC	680.1523	120.5480	441.827	-		562.375
18978-1	BENSON, CRAIG AND KATHRYN	688.0804	52.2678	446.977	-		499.245
18981-1	BENSON, CRAIG AND KATHRYN	75.4137	25.4973	48.989	-		74.486
18988-1	SESTANOVICH HAY & CATTLE, LLC	594.2332	110.3111	386.014	-		496.325
18988-2	EUREKA COUNTY	-	-	-	-		-
18989-1	SESTANOVICH HAY & CATTLE, LLC	596.0960	131.6963	387.224	-		518.920
18999-1	COOPER, CHARLES E.	84.6154	56.0954	54.966	-		111.061
19014-1	J & T FARMS, LLC	591.0400	168.1846	383.940	-		552.125
19052-1	NEWTON, DEBRA L.	-	-	-	-		-
19053-1	NEWTON, DEBRA L.	0.0074	0.0050	0.005	-		0.010
19110-1	MARK MOYLE FARMS, LLC	589.6960	129.4620	383.067	-		512.529
19111-1	MILES, HAROLD R. & MURIEL M.	573.1108	284.3470	372.293	-		656.640
19145-1	MOYLE, JAMES L. & NANCY JANE	587.3280	-	381.528	-		381.528
19191-1	ANDERSON, JERRY LEE	479.4199	148.8735	311.431	-		460.305
19192-1	HALPIN FAMILY TRUST	545.5310	-	354.377	-		354.377
19218-1	EUREKA MOLY, LLC	330.8712	-	214.934	-		214.934
19218-2	MILLER, OWEN J. AND CHERYL	318.2353	9.9742	206.726	-		216.700

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CY 2020		Allocation Per Share /AF:			0.6496	Last Updated	1/30/2020
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19218-3	WALTER, NORBERT AND EILEEN B.	22.5694	14.9619	14.661	-		29.623
19279-1	DUBRAY, FERNO L. & CARRIE M.	164.6190	-	106.937	-		106.937
19279-2	GENERAL MOLY, INC.	135.6750	89.9455	88.134	-		178.080
19292-1	DAMELE FARMS, INC.	504.6221	11.4481	327.803	-		339.251
19293-1	DAMELE FARMS, INC.	477.9110	60.8294	310.451	-		371.280
19324-1	SESTANOVICH HAY & CATTLE, LLC	568.4840	34.9872	369.287	-		404.274
19360-1	ETCHEGARAY FAMILY TRUST	556.7600	114.4391	361.671	-		476.110
19361-1	ETCHEGARAY FAMILY TRUST	556.7600	38.2534	361.671	-		399.924
19378-1	MOYLE, DUSTY L.	848.6253	300.3726	551.267	-		851.640
19379-1	MOYLE, DUSTY L.	564.8184	91.5473	366.906	-		458.453
19381-1	MOYLE, DUSTY L.	857.9520	265.3399	557.326	-		822.666
19411-1	RUBY HILL MINING COMPANY, LLC	342.3744	154.0064	222.406	-		376.412
19490-1	SOLARLJOS LLC	-	-	-	-		-
19492-1	CONLEY, BEVERLY A. AND CONLEY, KENNETH E.	553.9872	79.2539	359.870	-		439.124
19492-2	MOYLE, DUSTY L.	561.0896	350.7510	364.484	-		715.235
19500-1	CONLEY LAND & LIVESTOCK, LLC	589.8543	155.0568	383.169	-		538.226
19501-1	CONLEY LAND & LIVESTOCK, LLC	584.1014	223.5627	379.432	-		602.995
19502-1	CONLEY LAND & LIVESTOCK, LLC	540.7412	63.0937	351.266	-		414.360
19526-1	BAUMANN, JAMES E. AND BAUMANN, VERA L.	1,063.6136	291.1828	690.924	-		982.107
19541-1	DIAMOND VALLEY RANCH, LLC	498.6760	48.6097	323.940	-		372.550
19542-1	DIAMOND VALLEY RANCH, LLC	412.9164	1.4316	268.231	-		269.663
19563-1	PLASKETT, TOMMYE J. & WALTER L.	1,125.5586	219.5319	731.163	-		950.695
19760-1	REINFORD, CHUCK D. AND HEIDI N.	1,118.6692	173.9559	726.688	-		900.644
19904-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-		-
19965-1	BAR D LAND & LIVESTOCK, LLC	551.9256	295.0647	358.531	-		653.596
19966-1	BAR D LAND & LIVESTOCK, LLC	190.5541	-	123.784	-		123.784
19971-1	PLASKETT, TOMMYE J. & WALTER L.	-	-	-	-		-
19972-1	PLASKETT, TOMMYE J. & WALTER L.	330.1947	75.0892	214.495	-		289.584
19973-1	PLASKETT, TOMMYE J. & WALTER L.	338.7181	224.5528	220.031	-		444.584
20000-1	MOYLE, DUSTY L.	-	-	-	-		-
20015-1	MOYLE, DUSTY L.	-	-	-	-		-
20046-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	557.1840	119.0172	361.947	-		480.964
20087-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-		-
20088-1	DIAMOND VALLEY RANCH, LLC	13.9296	-	9.049	-		9.049
20366-1	MARK MOYLE FARMS, LLC	555.0744	116.1075	360.576	-		476.684
20487-1	J.W.L. PROPERTIES, LLC	443.4766	66.0265	288.082	-		354.109
20565-1	MINOLETTI, JOHN B. AND NANCY M	202.6745	58.9190	131.657	-		190.576
20565-2	EUREKA COUNTY	-	-	-	-		-
20694-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	-	-	-	-		-

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21085-1	MILLER, ANTHONY	539.4872	101.9946	350.451	-		452.446
21399-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	917.2210	391.6240	595.827	-		987.451
21426-1	MORRISON, LLOYD & BELINDA FAYE	593.7920	144.5369	385.727	-		530.264
21428-1	BENSON, PATTI E. AND KENNETH F.	428.1240	4.1876	278.109	-		282.297
21561-1	EUREKA MOLY, LLC	93.3558	-	60.644	-		60.644
21561-2	MILLER, OWEN J. AND CHERYL	34.1484	22.6383	22.183	-		44.821
21561-3	WALTER, NORBERT AND EILEEN B.	6.3680	4.2214	4.137	-		8.358
21839-1	BERGENER, LINDA AND DON	586.3696	178.4534	380.906	-		559.359
21841-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	586.3696	159.6282	380.906	-		540.534
21843-1	MORRISON, LLOYD & BELINDA FAYE	578.9472	134.2488	376.084	-		510.333
21844-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	586.3696	26.5380	380.906	-		407.444
21929-1	DIAMOND VALLEY RANCH, LLC	572.5923	179.3978	371.956	-		551.354
21930-1	AMERICAN FIRST FEDERAL	576.9522	184.2716	374.788	-		559.060
22194-1	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	528.3888	69.5822	343.241	-		412.823
22195-1	BAILEY, TIMOTHY LEE AND CONSTANCE MARIE	613.1676	167.1833	398.314	-		565.497
22217-1	CONLEY LAND & LIVESTOCK, LLC	571.9918	258.8238	371.566	-		630.390
22217-2	EUREKA COUNTY	-	-	-	-		-
22316-1	AMERICAN FIRST FEDERAL	571.1390	183.5134	371.012	-		554.525
22352-1	MARK MOYLE FARMS, LLC	126.4229	-	82.124	-		82.124
22353-1	MARK MOYLE FARMS, LLC	618.0328	166.3316	401.474	-		567.806
22566-1	MILLER, LAVON AND KRISTI	454.1472	46.7753	295.014	-		341.789
22567-1	MILLER, LAVON AND KRISTI	454.1472	-	295.014	-		295.014
22648-1	BENSON, PATTI E. AND KENNETH F.	562.0637	-	365.117	-		365.117
22921-1	BENSON, PATTI E. AND KENNETH F.	562.0637	-	365.117	-		365.117
22922-1	BENSON, PATTI E. AND KENNETH F.	402.8028	-	261.661	-		261.661
22982-1	AMERICAN FIRST FEDERAL	1,236.5926	398.8797	803.291	-		1,202.171
23272-1	L K FARM LLC	621.0560	160.6529	403.438	-		564.091
23462-1	MILLER, ANTHONY	-	-	-	-		-
23462-2	EUREKA COUNTY	-	-	-	-		-
23711-1	EUREKA MOLY, LLC	-	-	-	-		-
23711-2	MILLER, OWEN J. AND CHERYL	-	-	-	-		-
23738-1	EUREKA MOLY, LLC	-	-	-	-		-
23738-2	MILLER, OWEN J. AND CHERYL	-	-	-	-		-
23739-1	EUREKA MOLY, LLC	8.1216	5.3846	5.276	-		10.661
23739-2	MILLER, OWEN J. AND CHERYL	806.5290	142.9407	523.921	-		666.862
23803-1	MILLER, ANTHONY	667.8854	201.4042	433.858	-		635.262
23893-1	MILES, HAROLD R. & MURIEL M.	-	-	-	-		-
23918-1	NORTON, WILLIAM H. JR.	38.0330	25.2143	24.706	-		49.920
24127-1	CONAWAY, DALE R.,CONAWAY, ELMA G.	607.4240	158.5256	394.583	-		553.109

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24128-1	CONAWAY, DALE R.,CONAWAY, ELMA G.	607.4240	177.8826	394.583	-		572.466
24129-1	MORRISON, ALBERTA J.,MORRISON, DONALD E.	588.8216	131.1942	382.499	-		513.693
24130-1	MORRISON, ALBERTA J.,MORRISON, DONALD E.	588.8216	139.7830	382.499	-		522.282
24214-1	ANDERSON, EDWARD B.,ANDERSON, JERRY LEE	513.5137	260.1338	333.579	-		593.713
24262-1	DIAMOND VALLEY HAY CO., INC.	6.5643	-	4.264	-		4.264
24263-1	DIAMOND VALLEY HAY CO., INC.	6.5643	-	4.264	-		4.264
24264-1	DIAMOND VALLEY HAY CO., INC.	877.4578	-	569.997	-		569.997
24265-1	DIAMOND VALLEY HAY CO., INC.	891.7024	134.6648	579.250	-		713.915
24272-1	REINFORD, CHUCK D. AND HEIDI N.	561.0880	-	364.483	-		364.483
24378-1	EUREKA MOLY, LLC	-	-	-	-		-
24378-2	COUNTY OF EUREKA	-	-	-	-		-
24378-3	RUBY HILL RANCH, INC.	-	-	-	-		-
24378-4	SEAN PECK	-	-	-	-		-
24574-1	MORRISON, D. LLOYD	660.5319	158.9190	429.082	-		588.001
24605-1	MOYLE, DUSTY L.	273.8619	57.9407	177.901	-		235.842
24606-1	DIAMOND VALLEY RANCH, LLC	1,128.1424	193.1734	732.841	-		926.014
24607-1	DIAMOND VALLEY RANCH, LLC	1,122.1056	186.0458	728.920	-		914.966
24609-1	DIAMOND VALLEY RANCH, LLC	1,084.9799	258.9747	704.803	-		963.778
26437-1	MOYLE, DUSTY L.	432.4291	177.5827	280.906	-		458.489
26664-1	KEPHART, MARI ALICE & RICHARD E.	135.8560	9.7077	88.252	-		97.960
27976-1	MARSHALL FAMILY TRUST	497.3164	-	323.057	-		323.057
28035-1	BAILEY, FRED AND CAROLYN	171.0640	9.1486	111.123	-		120.272
28036-1	BAILEY, FRED AND CAROLYN	265.6153	-	172.544	-		172.544
28061-1	REINFORD, CHUCK D. AND HEIDI N.	-	-	-	-		-
28160-1	PLASKETT, TOMMYE J. & WALTER L.	-	-	-	-		-
28561-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	440.8560	46.2076	286.380	-		332.588
28641-1	L K FARM LLC	621.0560	104.3123	403.438	-		507.750
29278-1	L K FARM LLC	-	-	-	-		-
29405-1	MORRISON, D. LLOYD	573.8169	79.4069	372.752	-		452.159
29557-1	MOYLE, JAMES L. & NANCY JANE	410.6495	53.8017	266.758	-		320.560
29765-1	HALPIN FAMILY TRUST	562.2322	175.5717	365.226	-		540.798
29873-1	MOYLE, JAMES L. & NANCY JANE	163.6087	108.4644	106.280	-		214.744
29895-1	OLIVEIRA, EGIDIO	421.2123	-	273.620	-		273.620
30102-1	MOYLE, JAMES L. & NANCY JANE	759.4003	183.4807	493.307	-		676.788
30913-1	MOYLE, DUSTY L.	399.0586	52.3020	259.229	-		311.531
30927-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	69.0993	-	44.887	-		44.887
30928-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	363.2898	185.7762	235.993	-		421.769
31062-1	BAR D LAND & LIVESTOCK, LLC	460.3849	305.2111	299.066	-		604.277
31063-1	BAR D LAND & LIVESTOCK, LLC	435.0408	-	282.603	-		282.603

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31108-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	447.9875	105.3416	291.013	-		396.355
31110-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	447.9875	101.9674	291.013	-		392.980
31111-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	130.7292	86.6666	84.922	-		171.589
31113-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	441.5006	72.7847	286.799	-		359.584
31114-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	444.8102	77.5482	288.949	-		366.497
31454-1	HALPIN, JAYME L.	428.1160	30.2393	278.104	-		308.343
31455-1	HALPIN, JAYME L.	421.6284	23.4889	273.890	-		297.379
33018-1	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JI	394.2240	-	256.088	-		256.088
33019-1	MARTIN P. & KATHLEEN A. ETCHEVERRY TRUST & ETCHEVERRY, MARK T. & JI	394.2240	-	256.088	-		256.088
33668-1	WISEHART, LARRY	500.7544	85.0836	325.290	-		410.374
33669-1	WISEHART, LARRY	500.7544	331.9747	325.290	-		657.265
33670-1	WISEHART, LARRY	517.5152	343.0855	336.178	-		679.264
33671-1	WISEHART, LARRY	517.5152	98.7179	336.178	-		434.896
33817-1	BELL, SCOTT THOMAS AND KRISTINE LOUISE	417.1586	52.2839	270.986	-		323.270
33818-1	BELL, SCOTT THOMAS AND KRISTINE LOUISE	416.5063	59.1951	270.563	-		329.758
34561-1	MARK MOYLE FARMS, LLC	419.9289	10.3797	272.786	-		283.166
34562-1	MARK MOYLE FARMS, LLC	406.4768	-	264.047	-		264.047
34596-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	268.6683	-	174.527	-		174.527
34939-1	MARK MOYLE FARMS, LLC	421.4600	53.0339	273.780	-		326.814
34948-1	PLASKETT, TOMMYE J. & WALTER L.	220.7702	-	143.412	-		143.412
34950-1	SESTANOVICH HAY & CATTLE, LLC	470.1437	156.9874	305.405	-		462.392
35009-1	BENSON, PATTI E. AND KENNETH F.	394.1435	-	256.036	-		256.036
35012-1	ETCHEVERRY, JAMES F.	413.5774	23.9823	268.660	-		292.642
35013-1	MICHEL & MARGARET ETCHEVERRY FAMILY LP	441.9038	21.5524	287.061	-		308.613
35374-1	DUBRAY, FERNO L. & CARRIE M.	87.2291	-	56.664	-		56.664
35375-1	DUBRAY, FERNO L. & CARRIE M.	311.3350	34.1847	202.243	-		236.428
35418-1	RUBIO, DAVID M.,RUBIO, SALLY R.	3.6032	2.3889	2.341	-		4.730
36070-1	MOYLE, JAMES L. & NANCY JANE	-	-	-	-		-
36321-1	BENSON, PATTI E. AND KENNETH F.	103.5958	-	67.296	-		67.296
36322-1	BENSON, PATTI E. AND KENNETH F.	130.7831	23.4190	84.957	-		108.376
39156-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	749.5149	268.0875	486.885	-		754.973
39552-1	BENSON, CRAIG AND KATHRYN	515.5697	-	334.914	-		334.914
39553-1	BENSON, CRAIG AND KATHRYN	507.2775	-	329.528	-		329.528
39554-1	BENSON, CRAIG AND KATHRYN	-	-	-	-		-
40010-1	LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	395.3477	125.2516	256.818	-		382.070
40011-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	93.6046	-	60.806	-		60.806
40013-1	LYNFORD AND SUSAN MILLER REVOCABLE FAMILY TRUST DATED DEC.9,2013	35.2440	23.3650	22.895	-		46.260
40014-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	314.7930	61.8874	204.490	-		266.377
40402-1	MOYLE, DUSTY L.	425.3568	78.8663	276.312	-		355.178

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2020		Allocation Per Share /AF:			0.6496	Last Updated	1/30/2020
Account No.	Owner of Record	Shares	2019 Banked	2020 Allocation	Transferred	Utilized	Remaining
41883-1	MILLER, OWEN J. AND CHERYL	62.9160	-	40.870	-		40.870
41884-1	MILLER, OWEN J. AND CHERYL	62.9160	-	40.870	-		40.870
42019-1	BENSON, CRAIG AND KATHRYN	306.0911	-	198.837	-		198.837
42020-1	BENSON, CRAIG AND KATHRYN	-	-	-	-		-
42021-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	509.1766	50.3821	330.761	-		381.143
42367-1	KEPHART, MARI ALICE & RICHARD E.	32.8520	-	21.341	-		21.341
42368-1	KEPHART, MARI ALICE & RICHARD E.	32.8520	-	21.341	-		21.341
42369-1	KEPHART, MARI ALICE & RICHARD E.	98.5560	6.2948	64.022	-		70.317
42370-1	KEPHART, MARI ALICE & RICHARD E.	98.5560	65.3380	64.022	-		129.360
42891-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	76.0693	-	49.415	-		49.415
43268-1	MARK MOYLE FARMS, LLC	719.2192	197.4971	467.205	-		664.702
43269-1	BLANCO RANCH, LLC	63.1910	39.9288	41.049	-		80.978
43270-1	MARK MOYLE FARMS, LLC	188.4399	-	122.411	-		122.411
43271-1	BERG PROPERTIES CALIFORNIA, LLC	444.0921	75.7969	288.482	-		364.279
43272-1	BERG PROPERTIES CALIFORNIA, LLC	444.0921	91.1762	288.482	-		379.658
43273-1	BERG PROPERTIES CALIFORNIA, LLC	434.6039	73.2738	282.319	-		355.593
43274-1	BERG PROPERTIES CALIFORNIA, LLC	434.6039	68.6618	282.319	-		350.981
43397-1	MOYLE, JAMES L. & NANCY JANE	539.2640	177.0069	350.306	-		527.313
43836-1	MARK MOYLE FARMS, LLC	-	-	-	-		-
43837-1	BLANCO RANCH, LLC	94.6161	-	61.463	-		61.463
43838-1	BLANCO RANCH, LLC	94.6161	-	61.463	-		61.463
43839-1	BLANCO RANCH, LLC	92.6137	-	60.162	-		60.162
43840-1	BLANCO RANCH, LLC	92.6137	-	60.162	-		60.162
44451-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	574.6773	256.2106	373.310	-		629.521
44452-1	DONALD F. & ELIZA M. PALMORE FAMILY TRUST	549.8120	33.9803	357.158	-		391.138
44604-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	115.1077	-	74.774	-		74.774
44605-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	91.9789	40.5408	59.750	-		100.291
44606-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	18.8743	-	12.261	-		12.261
44607-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	-	-	-	-		-
44609-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	236.7290	-	153.779	-		153.779
44610-1	LYNFORD & SUSAN MILLER REVOCABLE FAMILY TRUST	-	-	-	-		-
44621-1	RUBY HILL MINING COMPANY, LLC	-	-	-	-		-
46287-1	GROTH, DANIEL E.	538.2112	-	349.622	-		349.622
46348-1	PLASKETT, TOMMYE J. & WALTER L.	229.2936	-	148.949	-		148.949
46461-1	MOYLE, DUSTY L.	464.1984	131.2136	301.543	-		432.757
46505-1	REINFORD, CHUCK D. AND HEIDI N.	447.4677	-	290.675	-		290.675
47518-1	ANDERSON, EDWARD B.	372.1349	246.7060	241.739	-		488.445
47519-1	ANDERSON, EDWARD B.	-	-	-	-		-
47520-1	ANDERSON, EDWARD B.	546.3611	305.5592	354.916	-		660.475

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2020		Allocation Per Share /AF:			0.6496	Last Updated	1/30/2020
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47521-1	ANDERSON, EDWARD B.	151.5506	-	98.447	-	-	98.447
47591-1	MOYLE, DUSTY L.	432.4291	139.1961	280.906	-	-	420.102
48225-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	258.2183	15.4826	167.739	-	-	183.222
48226-1	M & C HAY MORRISON FAMILY TRUST DATED MARCH 26, 2016	271.3500	-	176.269	-	-	176.269
48437-1	MARK MOYLE FARMS, LLC	-	-	-	-	-	-
48871-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	296.1392	49.4829	192.372	-	-	241.855
48872-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	176.4081	116.9497	114.595	-	-	231.545
48948-1	BAILEY, FRED AND CAROLYN	458.8912	34.5005	298.096	-	-	332.597
49185-1	MOYLE, DUSTY L.	420.6761	109.2663	273.271	-	-	382.537
49188-1	MOYLE, DUSTY L.	405.1420	113.6735	263.180	-	-	376.854
49853-1	DUBRAY, FERNO L. & CARRIE M.	47.6687	-	30.966	-	-	30.966
49854-1	DUBRAY, FERNO L. & CARRIE M.	47.6687	-	30.966	-	-	30.966
50095-1	MOYLE, DUSTY L.	410.0419	53.4224	266.363	-	-	319.785
50581-1	SADLER RANCH, LLC	214.6826	-	139.458	-	-	139.458
50582-1	EZRA C. LUNDAHL, INC.,SADLER RANCH, LLC	708.6217	-	460.321	-	-	460.321
50650-1	MOYLE, JAMES L. & NANCY JANE	549.2480	364.1230	356.792	-	-	720.915
50962-1	KOBEH VALLEY RANCH LLC	112.1714	62.3455	72.867	-	-	135.213
50963-1	KOBEH VALLEY RANCH LLC	166.9088	92.7691	108.424	-	-	201.193
51647-1	GROTH, DANIEL E.	492.9061	-	320.192	-	-	320.192
53872-1	PALMORE FAMILY TRUST	615.1632	105.8797	399.610	-	-	505.490
55535-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	301.1868	-	195.651	-	-	195.651
55727-1	BAILEY, FRED AND CAROLYN	20.2641	-	13.164	-	-	13.164
56652-1	KEPHART, MARI ALICE & RICHARD E.	135.8560	-	88.252	-	-	88.252
57835-1	KOBEH VALLEY RANCH LLC	-	-	-	-	-	-
57836-1	KOBEH VALLEY RANCH LLC	-	-	-	-	-	-
57838-1	KOBEH VALLEY RANCH LLC	166.9088	92.7691	108.424	-	-	201.193
57839-1	KOBEH VALLEY RANCH LLC	147.7921	97.9783	96.006	-	-	193.984
57840-1	KOBEH VALLEY RANCH LLC	147.7921	97.9783	96.006	-	-	193.984
64630-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	154.8909	-	100.617	-	-	100.617
64631-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	154.8909	-	100.617	-	-	100.617
64632-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	38.4768	25.5083	24.995	-	-	50.503
64633-1	ERICKSON, TY AND MICHELLE R.; AND ARI AND ALISHA	-	-	-	-	-	-
66062-1	KOBEH VALLEY RANCH LLC	286.2894	189.7949	185.974	-	-	375.769
67172-1	MARK MOYLE FARMS, LLC	429.0772	36.1380	278.729	-	-	314.867
68923-1	RUBY HILL MINING COMPANY, LLC	203.2904	132.5390	132.057	-	-	264.596
68923-2	EUREKA COUNTY	5.1684	3.4264	3.357	-	-	6.783
70249-1	L K FARM LLC	1,233.1843	329.4284	801.077	-	-	1,130.505
70587-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	117.6538	18.1270	76.428	-	-	94.555
70588-1	GALLAGHER FARMS, LLC; A NEVADA LIMITED LIABILITY COMPANY	228.8301	-	148.648	-	-	148.648

Diamond Valley Groundwater Management Plan
Share Register and Ledger

CY 2020		Allocation Per Share /AF:			0.6496	Last Updated	1/30/2020
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70940-1	MARK MOYLE FARMS, LLC	491.6099	325.9120	319.350	-		645.262
71748-1	FRED L. ETCHEGARAY AND JOHN J. ETCHEGARAY, A NEVADA PARTNERSHIP	504.2660	-	327.571	-		327.571
72370-1	ANDERSEN, HARLOW B. & BONNIE G.	635.5200	256.3816	412.834	-		669.216
73204-1	RUBY HILL MINING COMPANY, LLC	14.2656	8.6634	9.267	-		17.930
73899-1	WEST, DENNIS L. & KIM KENNEDY	412.8717	45.2070	268.202	-		313.409
76358-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	451.2971	92.6137	293.163	-		385.777
77447-1	RUBY HILL MINING COMPANY, LLC	52.1223	-	33.859	-		33.859
77449-1	RUBY HILL MINING COMPANY, LLC	79.5760	0.0594	51.693	-		51.752
77569-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	270.0468	85.7885	175.422	-		261.211
77646-1	NORTON, WILLIAM H.	105.8758	-	68.777	-		68.777
77666-1	BAR D LAND & LIVESTOCK, LLC	338.2338	-	219.717	-		219.717
77695-1	NORTON, WILLIAM H.	376.4059	-	244.513	-		244.513
77696-1	NORTON, WILLIAM H.	236.3911	98.9452	153.560	-		252.505
78062-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	519.6072	128.8901	337.537	-		466.427
78358-1	WEST, DENNIS L. & KIM KENNEDY	99.3276	65.8489	64.523	-		130.372
78447-1	BAR D LAND & LIVESTOCK, LLC	-	-	-	-		-
78568-1	MARK MOYLE FARMS, LLC	284.1043	-	184.554	-		184.554
78771-1	J.W.L. PROPERTIES, LLC	325.0366	-	211.144	-		211.144
78772-1	J.W.L. PROPERTIES, LLC	111.5776	-	72.481	-		72.481
78773-1	J.W.L. PROPERTIES, LLC	319.7957	121.5380	207.739	-		329.277
78774-1	J.W.L. PROPERTIES, LLC	46.6388	-	30.297	-		30.297
78775-1	J.W.L. PROPERTIES, LLC	70.6376	46.8290	45.886	-		92.715
78905-1	DIAMOND VALLEY RANCH, LLC	-	-	-	-		-
78906-1	DIAMOND VALLEY RANCH, LLC	530.8105	98.8948	344.815	-		443.710
79705-1	RUBY HILL MINING COMPANY, LLC	100.7508	-	65.448	-		65.448
79706-1	RUBY HILL MINING COMPANY, LLC	42.7968	28.3714	27.801	-		56.172
79707-1	RUBY HILL MINING COMPANY, LLC	2.5842	-	1.679	-		1.679
79707-2	EUREKA COUNTY	3.4456	2.2839	2.238	-		4.522
80581-1	BAR D LAND & LIVESTOCK, LLC	354.3851	-	230.209	-		230.209
80717-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	108.9360	36.2277	70.765	-		106.993
80718-1	NORTON, WILLIAM H. JR.	108.6156	-	70.557	-		70.557
80780-1	SESTANOVICH HAY & CATTLE, LLC	-	-	-	-		-
80781-1	SESTANOVICH HAY & CATTLE, LLC	-	-	-	-		-
80797-1	BLISS, CHAD D. & ROSIE J.	116.1173	-	75.430	-		75.430
80799-1	BLISS, CHAD D. & ROSIE J.	116.1173	-	75.430	-		75.430
80879-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	215.0862	-	139.720	-		139.720
80880-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	75.2354	-	48.873	-		48.873
80881-1	NORTON, WILLIAM H. JR. AND PATRICIA A.	35.2440	23.365	22.895	-		46.260
80926-1	NORTON, WILLIAM H. JR.	88.4011	-	57.425	-		57.425

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81004-1	HALPIN, JAYME L.	42.0542	27.8794	27.318	-		55.197
81229-1	BLISS, CHAD D. & ROSIE J.	36.9146		23.980	-		23.980
81230-1	BLISS, CHAD D. & ROSIE J.	-		-	-		-
81268-1	MOYLE, JAMES L. & NANCY JANE	163.6087		106.280	-		106.280
81269-1	MOYLE, DENISE L. AND HICKS, DEANNE M.	171.4538	113.6649	111.376	-		225.041
81612-1	GARAVENTA, GARY G AND MELODY I	209.5283	24.6789	136.110	-		160.789
81650-1	EUREKA MOLY, LLC	92.5352	61.3463	60.111	-		121.457
81653-1	GARAVENTA, GARY G AND MELODY I	209.5283	138.9069	136.110	-		275.017
83501-1	RUBY HILL MINING COMPANY, LLC	8.6140	5.7103	5.596	-		11.306
83502-1	RUBY HILL MINING COMPANY, LLC	47.5493	31.5226	30.888	-		62.411
83503-1	BLISS, CHAD D. & ROSIE J.	-		-	-		-
83504-1	BLISS, CHAD D. & ROSIE J.	94.1700	62.4294	61.173	-		123.602
83505-1	RUBY HILL MINING COMPANY, LLC	90.7537	60.1653	58.954	-		119.119
83506-1	RUBY HILL MINING COMPANY, LLC	184.6163		119.927	-		119.927
83507-1	RUBY HILL MINING COMPANY, LLC	116.1167	76.9794	75.429	-		152.408
83567-1	BAR D LAND & LIVESTOCK, LLC	128.1121	13.1541	83.222	-		96.376
83615-1	J & T FARMS, LLC	174.8740	115.932	113.598	-		229.530
83616-1	J & T FARMS, LLC	517.9968	54.9143	336.491	-		391.405
83617-1	J & T FARMS, LLC	408.7780		265.542	-		265.542
83622-1	LC PROPERTIES	815.3508	538.1601	529.652	-		1,067.812
83623-1	LC PROPERTIES	347.3682	230.2869	225.650	-		455.937
85131-1	RENNER, IRA R. AND MONTIRA	27.0713		17.586	-		17.586
85132-1	RENNER, IRA R. AND MONTIRA	104.6974		68.011	-		68.011
85133-1	RENNER, IRA R. AND MONTIRA	103.7986		67.428	-		67.428
85134-1	RENNER, IRA R. AND MONTIRA	216.1920		140.438	-		140.438
85145-1	SADLER RANCH, LLC	581.0934		377.478	-		377.478
85645-1	RUBY HILL MINING COMPANY, LLC	177.3989	117.6061	115.238	-		232.844
85646-1	RUBY HILL MINING COMPANY, LLC	57.9540	36.1883	37.647	-		73.835
85647-1	RUBY HILL MINING COMPANY, LLC	30.1490	19.9871	19.585	-		39.572
86032-1	BENSON, PATTI E. AND KENNETH F.	34.8185		22.618	-		22.618
86033-1	BENSON, PATTI E. AND KENNETH F.	116.7653		75.851	-		75.851
86035-1	BENSON, PATTI E. AND KENNETH F.	130.5064		84.777	-		84.777
86037-1	BENSON, PATTI E. AND KENNETH F.	157.5308		102.332	-		102.332
86252-1	RUTH MARTIN RANCHES, LLC	348.9425	148.8575	226.673	-		375.531
86253-1	RUTH MARTIN RANCHES, LLC	348.9425	216.983	226.673	-		443.656
86600-1	SADLER RANCH, LLC	176.0559		114.366	-		114.366
86794-1	RUBY HILL MINING COMPANY, LLC	734.2238	259.3210	476.952	-		736.273
87223-1	RUBY HILL MINING COMPANY, LLC	237.9002		154.540	-		154.540
87224-1	RUBY HILL MINING COMPANY, LLC	281.7022	51.9218	182.994	-		234.916

Diamond Valley Groundwater Management Plan
Share Register and Ledger

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87225-1	RUBY HILL MINING COMPANY, LLC	248.6976	138.1416	161.554	-		299.696
Total		113,457.9828		73,702.332			

NO. 81224

ORIGINAL

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

NO. _____ FILED

Dept. No. 2

MAY 15 2020

By Eureka County Clerk

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

FILED

JUN 08 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

TIMOTHY LEE & CONSTANCE MARIE
BAILEY; FRED & CAROLYN BAILEY;
IRA R. & MONTIRA RENNER; and
SADLER RANCH, LLC,

Petitioners,

NOTICE OF APPEAL

vs.

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

Respondent,

EUREKA COUNTY; and DIAMOND
NATURAL RESOURCES PROTECTION
AND CONSERVATION ASSOCIATION,
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, and
BILL AND DARLA BAUMANN,

Intervenors.

NOTICE IS HEREBY GIVEN that Tim Wilson, P.E., in his capacity as the Nevada
State Engineer, Department of Conservation and Natural Resources, Division of Water
Resources, (hereafter "State Engineer"), by and through counsel, Nevada Attorney

JUN 01 2020
CLERK OF DISTRICT COURT
EUREKA COUNTY

RECEIVED

MAY 15 2020

JA2704

Eureka County Clerk

20-21351

1 General Aaron D. Ford and Senior Deputy Attorney General James N. Bolotin, hereby
2 appeals to the Nevada Supreme Court from this Court's Findings of Fact, Conclusions of
3 Law, Order Granting Petitions for Judicial Review, filed by this Court on April 27, 2020.
4 Notices of Entry of Order were served on April 29, 2020. Copies of said Notices of Entry
5 of Order are attached hereto as Exhibit 1 and Exhibit 2.

6 **AFFIRMATION**

7 The undersigned does hereby affirm that the preceding Notice of Appeal does not
8 contain the social security number of any person.

9 DATED this 15th day of May, 2020.

10 AARON D. FORD
11 Attorney General

12 By:


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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 15th day of May, 2020, I served a true and correct copy of the
4 foregoing NOTICE OF APPEAL, said document applies to Case Nos. CV-1902-348, -349
5 and -350, electronically to:

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Hay Co.; Mark Moyle Farms, LLC; D.F. & E.M. Palmore Family Trust; Bill &
Patricia Norton; Sestanovich Hay & Cattle, LLC; Jerry Anderson; and Bill & Darla
Baumann ("DNRPCA")*

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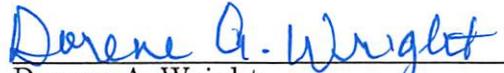
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Marshall Family Trust
HC 62, Box 62138
Eureka, Nevada 89316
Trustee of the Marshall Family Trust in Propria Persona

Courtesy Copy to Chambers:
The Honorable Gary D. Fairman
Post Office Box 151629
Ely, Nevada 89315


Dorene A. Wright

INDEX OF EXHIBITS

EXHIBIT No.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
1.	Notice of Entry of Findings of Fact, Conclusion of Law, Order Granting Petitions for Judicial Review, served on April 29, 2020, by Attorneys for Bailey Petitioners	43
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EXHIBIT 1

EXHIBIT 1

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

10 TIMOTHY LEE BAILEY &
CONSTANCE MARIE BAILEY, FRED
11 BAILEY & CAROLYN BAILEY, IRA R.
RENNER & MONTIRA RENNER, and
12 SADLER RANCH, LLC,

13 Petitioners,

14 vs.

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

18 Respondent.

19 EUREKA COUNTY, NEVADA,
20 DNRPCA INTERVENORS, et al.,

21 Intervenors.

Case No. CV1902-348

(Consolidated with Case Nos. CV1902-349
and CV-1902-350)

**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSION OF LAW,
ORDER GRANTING PETITIONS FOR
JUDICIAL REVIEW**

22
23 NOTICE IS HEREBY GIVEN that the **FINDINGS OF FACT, CONCLUSION OF**
24 **LAW, ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW** was entered in
25 the above-captioned matter on the 27th day of April, 2020. A true and correct copy is attached
26 hereto.
27
28

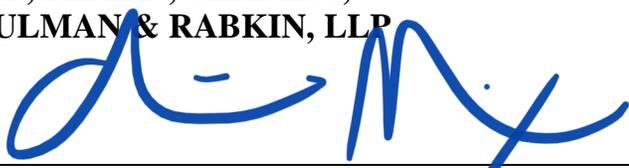
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Affirmation Pursuant to NRS 239B.030(4)

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

DATED April 21, 2020.

**WOLF, RIFKIN, SHAPIRO,
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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on April 29th, 2020, pursuant to the Court’s April 25, 2109 Order, a true and correct copy of **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW, ORDER GRANTING PETITIONS FOR JUDICIAL REVIEW** was sent via electronic mail to the following:

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/s/ Christie Rehfeld
Christie Rehfeld, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

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RELEVANT PROCEDURAL HISTORY

On January 11, 2019, Jason King, P.E., Nevada State Engineer¹ ("State Engineer"), entered Order #1302 ("Order 1302"). On February 11, 2019, Timothy Lee Bailey and Constance Marie Bailey, husband and wife, and Fred Bailey and Carolyn Bailey, husband and wife ("Bailey" or "Baileys" or "petitioners" where referenced collectively with the Sadler Ranch and Renner petitioners) filed a notice of appeal and petition for review of Nevada State Engineer Order no. 1302 in case no. CV-1902-350. On February 11, 2019, Sadler Ranch, LLC, a Nevada limited liability company, and Daniel S. Venturacci,² an individual ("Sadler Ranch" or "petitioners" when used collectively with the Bailey and Renner petitioners) filed a petition for judicial review in case no. CV-1902-349. On February 11, 2019, Ira R. Renner, an individual, and Montira Renner, an individual, ("Renner" or "Renners" or "petitioners" when used collectively with Sadler Ranch and Bailey petitioners) filed a petition for judicial review in case no. CV-1902-348. On February 25, 2019, the State Engineer filed a notice of appearance in the three cases. On March 27, 2019, petitioners and respondent, Tim Wilson, P.E., acting State Engineer, Division of Water Resources, Department of Conservation and Natural Resources ("State Engineer") filed a stipulation and order to consolidate cases whereby case no. CV-1902-348 (Renner) was consolidated with case no. CV-1902-349 (Sadler Ranch) and with case no. CV-1902-350 (Bailey). On June 7, 2019, the State Engineer filed a summary of record on appeal ("SE ROA"). On September 16, 2019, Sadler Ranch and Renners filed opening brief of petitioners' Sadler Ranch, LLC and Ira R. and Montira Renner ("Sadler Ranch opening brief"). On September 4, 2019, the court entered an order granting motion in limine limiting

¹Subsequent to issuing order no. 1302, Mr. King retired from this position, and Timothy Wilson, P.E. became the acting Nevada State Engineer and the State Engineer.

²Daniel S. Venturacci filed a notice of withdrawal of petition on June 14, 2019.

SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA





1 the record on appeal in the district court to the State Engineer's record on appeal filed June
2 7, 2019. On September 16, 2019, the Baileys filed opening brief of Bailey petitioners
3 ("Bailey opening brief"). On October 23, 2019, the State Engineer filed respondent State
4 Engineer's answering brief ("State Engineer's answering brief"). On October 23, 2019,
5 Diamond Natural Resource Protection and Conservation Association ("DNRPCA") filed
6 DNRPCA intervenors' answering brief ("DNRPCA answering brief") and DNRPCA
7 intervenors' addendum to answering brief ("DNRPCA addendum"). Intervenor, Eureka
8 County filed answering brief of Eureka County ("Eureka County's answering brief") on
9 October 23, 2019.³ DNRPCA and Eureka County are collectively referred to a
10 "intervenors". On November 29, 2019, Sadler Ranch filed reply brief of petitioners' Sadler
11 Ranch, LLC and Ira R. and Montira Renner ("Sadler Ranch reply brief") and Sadler Ranch,
12 LLC and Ira R. and Montira Renner's addendum to reply brief ("Sadler Ranch reply
13 addendum"). On November 26, 2019, the Baileys filed reply brief of Bailey petitioners,
14 ("Bailey reply brief").

15 On December 10-11, 2019, oral arguments were held at the Eureka Opera House,
16 Eureka, Nevada. Sadler Ranch and the Renners were represented by David H. Rigdon,
17 Esq., the Baileys were represented by Christopher W. Mixon, Esq., the State Engineer was
18 represented by Deputy Attorney General, James Bolotin, Esq., Eureka County was
19 represented by Karen Peterson, Esq., and the DNRPCA intervenors were represented by
20 Debbie Leonard, Esq. The court has reviewed the SEROA, the parties' briefs, all papers
21 and pleadings on file in these consolidated cases, the applicable law and facts, and makes

22 _____
23 ³On September 6, 2019, the court entered an order granting motion to intervene to
24 Diamond Valley Ranch, LLC, a Nevada limited liability company, American First
25 Federal, Inc., a Nevada Corporation, Berg Properties California, LLC, a Nevada limited
26 liability company, and Blanco Ranch, LLC., a Nevada limited liability company. On July
3, 2019, Beth Mills, trustee of the Marshall Family Trust, filed a motion to intervene.
The court never entered an order egranting her motion to intervene. The motion was
timely filed without opposition. The court thus grants Beth Mills' motion to intervene.
None of these intervenors filed briefs in this case.



1 the following findings of fact and conclusions of law.

2 II

3 FACTUAL HISTORY

4 It is a matter of accepted knowledge that Nevada currently has and at all relevant
5 times has always had an arid climate. Its also undisputed that the Diamond Valley aquifer
6 has been severely depleted through over appropriation of underground water for irrigation
7 which the State Engineer has allowed to occur for over 40 years without any cessation or
8 reduction. The State Engineer has issued permits and certificates that have allowed
9 irrigators the right to pump approximately 126,000 acre feet ("af") of water per year from
10 the Diamond Valley aquifer in Eureka County and Elko County which has an estimated
11 perennial yield of only 30,000 af of water that can be safely pumped each year.⁴ The
12 126,000 af exclude other groundwater rights such as domestic use, stock water, and
13 mining.⁵ The total duty of ground water rights that impact the acquifer is close to 130,265
14 af.⁶ Of the 126,000 af approved for irrigation pumping, the State Engineer estimates
15 approximately 76,000 af were pumped in 2016, with the annual Diamond Valley pumping
16 exceeding 30,000 af for over of 40 years.⁷

17 The unbridled pumping in Diamond Valley has caused the groundwater level to
18 decline approximately 2 feet annually since 1960.⁸ The over pumping by junior irrigators
19 has caused senior claimed vested water rights holders' naturally flowing springs to dry up
20 in northern DiamondValley. Big Shipley Springs, to which Sadler Ranch has a claim of

21 _____
22 ⁴SEROA 3.

23 ⁵*Id.*

24 ⁶*Id.*

25 ⁷*Id.*; State Engineer's answering brief 4-5.

26 ⁸SEROA 59, Water Resource Bulletin no. 35 at 26.



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vested rights, Thompson Springs and other springs in northern Diamond Valley have either ceased flowing, as is the case of the Bailey Ranch Spring, or have suffered greatly diminished flow.⁹ In Ruling 6290, State Engineer King extensively discussed diminished spring flow in Diamond Valley concluding that “ground water pumping in southern Diamond Valley is the main cause of stress on groundwater levels in the valley.”¹⁰

To address statewide over appropriation issues, the Nevada Legislature passed Assembly Bill (“AB”) 419 in 2011, which established a critical management area (“CMA”) designation process. Changes to NRS 534.110 allowed the State Engineer to designate CMA basins where withdrawals of groundwater had consistently exceeded the perennial yield of the basin.¹¹ The Legislature also enacted NRS 534.037 in 2011, establishing a procedure for the holders of permits and certificates in a basin to create a groundwater management plan (“GMP”) setting forth the necessary steps to resolve the conditions causing the groundwater basin’s CMA designation and remove the basin as a CMA.¹² On August 25, 2015, the State Engineer issued Order no. 1264 designating the Diamond Valley hydrologic basin (“Diamond Valley”) as the Nevada’s first CMA.¹³ As a result of the CMA designation, if Diamond Valley remains a CMA for 10 consecutive years, the State Engineer shall order that withdrawals of water, “including, without limitation, withdrawals from domestic wells,¹⁴ be restricted in that basin to conform to priority rights, unless a

⁹SEROA 328.

¹⁰State Engineer ruling 6290, 23-31.

¹¹NRS 534.110(7).

¹²NRS 534.037.

¹³SEROA 3, 134-138, 226.

¹⁴The 2019 Nevada Legislature granted relief to domestic wells to withdraw up to 0.5 af of water annually where withdrawals are restricted to conform to priority rights by either court order or the State Engineer. Assembly Bill, 95; NRS 534.110(9).



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groundwater management plan has been approved for the basin pursuant to NRS 534.037.”¹⁵ This process is curtailment.

Groundwater right holders and vested water right holders began to meet in March, 2014, regarding the creation of a Diamond Valley GMP (“DVGMP”).¹⁶ The intent of the meetings and any plan was to reduce pumping and stabilize groundwater levels in Diamond Valley to avoid curtailment of water by priority.¹⁷ Although many options were considered, ultimately the DVGMP was in large part “influenced significantly by a water allocation system using a market based approach similar to that authored by professor Michael Young.”¹⁸ Professor Young’s report, *Unbundling Water Rights: A Blueprint for Development of Robust Allocation Systems in the Western United States* (2015) was described by Young as “a blueprint ready for pilot testing in Nevada’s Diamond Valley and Humboldt Basins.”¹⁹ The Young report was “developed in consultation with water users, administrators, and community leaders in Diamond Valley and Humboldt Basin.”²⁰ The Young report describes itself as a “blueprint ready for testing in Diamond Valley” and “if implemented, the blueprint’s reforms would convert prior appropriation water rights into systems that stabilize water withdrawals to sustainable limits, allow rapid adjustment to changing water supply conditions, generate diverse income systems, and improve environmental outcomes.”²¹ “If implemented properly, no taking of property rights

¹⁵NRS 534.110(7), SEROA 225.

¹⁶SEROA 226.

¹⁷SEROA 226, 277-475.

¹⁸SEROA 227 N8, 294.

¹⁹Bailey reply addendum 2, SEROA 294.

²⁰Bailey reply addendum 3.

²¹*Id.* at 1.



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occurs."²²

The DVGMP, a hybrid²³ of Professor Young's blueprint, excludes and does not apply to vested water rights, including spring vested rights, that have been mitigated with groundwater rights by the State Engineer, court order, ruling or decree.²⁴ Also excluded from the DVGMP are domestic wells, stock water, municipal, commercial groundwater rights and mining groundwater rights without an irrigation source permit.²⁵ The DVGMP applies to permit or certificated underground irrigation permits and underground irrigation rights that have an agricultural base right in Diamond Valley.²⁶

The DVGMP water share formula factors a priority to the permit/certificate underground irrigation rights and converts the rights into a fixed number of shares.²⁷ The spread between the most senior and junior groundwater rights is 20 %.²⁸ The shares are used on a year-to-year basis and groundwater is allocated to each share annually in a measurement of acre-feet per share. Existing shares for each water right are fixed and water rights users may continue to use water in proportion to their water rights and seniority.²⁹ The conversion of water rights to shares under the DVGMP formula does not provide for each acre-foot of water under a permit/certificate to be converted to one

²²*Id.*

²³SEROA 313.

²⁴SEROA 5, 220, 229, 240-241.

²⁵SEROA 240-241.

²⁶SEROA 11-12, 218, 220, 228-229.

²⁷SEROA 5, 218, 232.

²⁸SEROA 232.

²⁹SEROA 218, 234-235.



1 share.³⁰ Using a “priority factor” applied to each acre foot of a water right in a permit or
2 certificate, the most senior water right receives a priority factor of 1.0 and the most junior
3 right receives a priority factor of 0.80. This formula results in a reduction in the ultimate
4 shares allocated based on an arbitrary range of a 1% reduction for the most senior water
5 right to a 20% reduction for the most junior water right.³¹ With the “priority factor” always
6 being less than 1, the share conversion always results in less than 1 share for each former
7 acre foot of water as illustrated in Appendix F to the DVGMP.³² The priority factor causes
8 junior water rights to be converted to fewer shares per acre-foot than senior water rights’
9 holders. Significantly, the formula of taking priority as a basis to reduce the shares
10 awarded to senior rights’ holders by using a designated percentage less than the shares
11 granted to the junior rights’ holders does not give the senior rights’ holders all of the water
12 to which their priority permit/certificate entitles the holders to use for irrigation purposes.
13 The result of the DVGMP formula is that senior water rights’ holders receive fewer shares
14 than one per acre foot. Thus, senior water rights’ holders cannot beneficially use all of the
15 water which their permit/certificate entitles them to use. The DVGMP reduces the senior
16 water rights by annually reducing their allocation of water for each share.³³ Ultimately, for
17 the most senior user, the acre-feet per share allocations are reduced from 67 acre-feet per
18 share in year 1 to 30 acre feet per share in year 35 of the DVGMP³⁴ and for the most junior
19 user, allocations are reduced from 54 acre feet in year 1 to 24 acre feet in year 35 of the

20 ³⁰SEROA 232.

21 ³¹*Id.*; The DVGMP formula is: total volume of water right X priority factor = total
22 groundwater shares.

23 ³²SEROA 499-509.

24 ³³SEROA 234-236, 510 (appendix G to DVGMP).

25 ³⁴*Id.* For example, in the Bailey’s case, their 5 senior groundwater rights entitle them to
26 use 1,934.116 af. In the first year of the DVGMP they are reduced to 1,250.4969 af,
and by year 35, the Baileys are reduced to 467.7960 af.



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DVGMP.³⁵ The DVGMP proposes a gradual reduction in pumping to a level of 34,200 af at the end of 35 years. For 35 years the pumping in Diamond Valley will exceed the 30,000 af perennial yield.³⁶

The DVGMP provides that all annual allocations of water be placed in to an account for each water user and allows the “banking” of unused water in future years, subject to the annual Evapotranspiration “(ET)” depreciation of the banked water which accounts for natural losses of water while the water is stored in an underground aquifer.³⁷ The DVGMP allows the current water allocations and the banked allocations of the water shares to be used, sold, or traded among the water share holders in Diamond Valley for purposes other than irrigation so long as the base right is tied to irrigation.³⁸ The DVGMP authorizes the State Engineer to review a share transfer among holders or an allocation to a new well or place or manner of use if the transfer would cause the new well to exceed the pumping volume of the original water right permitted for the well or if the excess of water pumped beyond the original amount of volume allowed for the well conflicted with existing rights.³⁹

Sadler Ranch claims pre-statutory vested rights to the waters flowing from springs that are senior in priority to all permits/certificates issued by the State Engineer.⁴⁰ It is undisputed by the State Engineer that Sadler Ranch’s spring flows have diminished as a

³⁵*Id.*, SEROA 5, 218.

³⁶SEROA 510. See State Engineer’s oral argument hearing transcript pg. 152.

³⁷*Id.*

³⁸SEROA 5, 218, 234-235.

³⁹*Id.*

⁴⁰Sadler Ranch opening brief 4, Order of Determination at 164-175, In the Matter of the Determination of the Relative Rights in and to all Waters of Diamond Valley, Hydrographic Basin no. 10-153, Elko and Eureka Counties, Nevada (January 31, 2020).



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result of over-pumping by junior irrigators in southern Diamond Valley. The Renners, who also have a senior priority date, are experiencing impacts to their springs due to continual groundwater declines.⁴¹ The Baileys hold senior irrigation groundwater rights consisting of Permit no. 22194 (cert. 6182) for 537.04 afa with a March 7, 1960 priority; Permit 22194 (cert. 6183) for 622.0 afa with a March 7, 1960 priority; Permit 55727 (cert. 15957) for 20.556 afa with a March 7, 1960 priority; Permit 28036 (cert. 8415) for 244.0 afa with a May 3, 1960 priority; Permit 48948 (cert. 13361) for 478.56 afa with a May 3, 1960 priority; and Permit 28035 (cert. 8414) for 201.56 afa with a January 23, 1974 priority.⁴² The Baileys also claim vested and/or permitted water rights and stock water rights.⁴³

All permits/certificates issued by the State Engineer have the cautionary language, "this permit is issued subject to all existing rights on the source."⁴⁴ In Nevada, all appropriations of groundwater are "subject to existing rights to the use thereof."⁴⁵

After a public hearing held on October 30, 2018, the State Engineer issued Order 1302. Order 1302 states, "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."⁴⁶ The State Engineer and all intervenors who filed briefs and orally argued this

⁴¹Sadler Ranch opening brief 4, *Id.* 152-164; SEROA 593.

⁴²Bailey opening brief 4, SEROA 500,506.

⁴³Bailey opening brief 4, SEROA 536-538.

⁴⁴Sadler Ranch opening brief 4; see certificates/permits listed in SEROA 499-509.

⁴⁵NRS 534.020.

⁴⁶SEROA 6.

1 case agree that the DVGMP deviates from the prior appropriation doctrine.⁴⁷

2 III

3 DISCUSSION

4 STANDARD OF REVIEW

5 A party aggrieved by any order or decision of the State Engineer may have
6 the order or decision reviewed in a proceeding for that purpose in the nature of an
7 appeal.⁴⁸ The proceedings must be informal and summary.⁴⁹ On appeal, the State
8 Engineer's decision or ruling is prima facie correct, and the burden of proof is upon the
9 person challenging the decision.⁵⁰ The court will not pass upon the credibility of witnesses
10 or reweigh the evidence, nor substitute its judgment for that of the State Engineer.⁵¹ With
11 respect to questions of fact, the reviewing court must limit its determination to whether
12 substantial evidence in the record supports the State Engineer's decision.⁵² When
13 reviewing the State Engineer's findings, factual determinations will not be disturbed on
14 appeal if supported by substantial evidence.⁵³ Substantial evidence has been defined as
15 "that which a reasonable mind might accept as adequate to support a conclusion."⁵⁴ With

16 _____
17 ⁴⁷State Engineer's answering brief 26, DNRPCA intervenors' answering brief 11-13,
18 Eureka County's answering brief 5, 11.

19 ⁴⁸ NRS 533.450(1).

20 ⁴⁹ NRS 533.450(2).

21 ⁵⁰ NRS 533.450(10).

22 ⁵¹ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1974) (citing *N. Las Vegas v.*
23 *Pub. Serv. Comm'n*, 83 Nev. 279, 429 P.2d 66 (1967)).

24 ⁵² *Town of Eureka v. State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1997)
25 (citing *Revert* at 786).

26 ⁵³ *State Engineer v. Morris*, 107 Nev. 694, 701, 819 P.2d 203, 205 (1991).

⁵⁴ *Bacher v. State Engineer*, 122, Nev. 1110, 1121, 146 P.3d 793, 800 (2006). (internal
citations omitted).





1 regard to purely legal questions, the standard of review is de novo.⁵⁵ Findings of an
2 administrative agency will not be set aside unless they are arbitrary and capricious.⁵⁶ The
3 court must review the evidence in order to determine whether the agency's decision was
4 arbitrary or capricious and was thus an abuse of the agency's discretion.⁵⁷ A finding is
5 arbitrary if "it is made without consideration of or regard for facts, circumstances fixed by
6 rules or procedure."⁵⁸ A decision is capricious if it is "contrary to the evidence or
7 established rules of law."⁵⁹

8 "The State Engineer's ruling on questions of law is persuasive, but not entitled to
9 deference."⁶⁰ The presumption of correctness accorded to a State Engineer's decision
10 "does not extend to 'purely legal questions, such as 'the construction of a statute, as to
11 which the reviewing court may undertake independent review."⁶¹

12 A. THE STATE ENGINEER'S PUBLIC HEARING AFFORDED PETITIONERS DUE
13 PROCESS

14 On October 30, 2018, the State Engineer, after giving notice required by statute,⁶²
15 held a public hearing in Eureka, Nevada. The public hearing was followed by a written
16 public comment period ending November 2, 2018. On June 11, 2019, the State Engineer
17 filed a motion in limine which was briefed by all parties. Sadler Ranch, the Renners, and

18 ⁵⁵ *In re Nevada State Engineer Ruling No. 5823*, 128 Nev. 232, 238, 277 P.3d 449
(2012.)

19 ⁵⁶ *Pyramid Lake Paiute Tribe v. Washoe County*, 112 Nev. 743, 751, 918 P.2d 697, 702
20 (1991).

21 ⁵⁷ *Shetakis v. State, Dep't Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992).

22 ⁵⁸ Black's Law Dictionary, Arbitrary (10th ed. 2014).

23 ⁵⁹ Black's Law Dictionary, Capricious (10th ed 2014).

24 ⁶⁰ *Sierra Pac. Indus. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3d 37, 40 (2019)

25 ⁶¹ *In Re State Engineer Ruling no. 5823 at 239*, (internal citations omitted).

26 ⁶²NRS 534.037(3).



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the Baileys argued that their due process rights were violated, alleging the State Engineer failed to hold a proper evidentiary hearing where witnesses could be subject to cross-examination and evidence challenged.⁶³ This Court entered an order granting motion in limine on September 4, 2019. In its order, the court specifically found that “the public hearing process to consider the GMP under NRS 534.035 provided notice and the opportunity for anyone to be heard and to offer evidence, thus satisfying due process standards.”⁶⁴ The court’s position has not changed. The court incorporates the entirety of the order granting motion in limine in these findings of fact and conclusions of law. The court finds that petitioners were afforded due process in the public hearing held on October 18, 2018, pursuant to NRS 534.037(3).

B. THE STATE ENGINEER CONSIDERED APPLICABLE NRS 534.037(2) FACTORS PRIOR TO APPROVING THE DVGMP

In determining whether to approve a GMP, NRS 534.037(2) requires the State Engineer to 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 domestic wells; (f) whether a groundwater management plan already exists to the basin; (g) any other factors deemed relevant by the State Engineer. The State Engineer must ultimately decide whether a proposed GMP “sets forth the necessary steps for removal of the basin’s designation as a CMA.”⁶⁵ Petitioners argue that (1) the State Engineer failed to consider the NRS 534.037(2) factors, and (2) that the DVGMP failed to demonstrate that decreased pumping over the 35 year life of the plan will result in “stabilized groundwater

⁶³Sadler Ranch opening brief 34; Sadler Ranch opposition to motion in limine filed June 24, 2019; Bailey opposition to motion in limine filed June 24, 2019.

⁶⁴Order granting motion in limine 10.

⁶⁵NRS 534.037(1).



1 levels⁶⁶ based on the evidence presented at and after the public hearing. Petitioners
2 submit that the DVGMP fails to bring the Diamond Valley basin into equilibrium within 10
3 years and over pumping will continue even at the 35th year of the plan.⁶⁷ Order 1302,
4 describes the State Engineer's review of the NRS 534.037(2) factors in relation to the
5 DVGMP.⁶⁸ The DVGMP's review of the factors is in Appendices D-I.

6 The State Engineer specifically rejected petitioners' arguments that the DVGMP
7 failed to reach an equilibrium, that groundwater modeling and hydro geologic analysis must
8 be the basis for the DVGMP's determination of pumping reduction rates and pumping
9 totals at the plan's end date, and that the DVGMP pumping reductions would not bring
10 withdrawals to the perennial yield.⁶⁹ The record shows that the State Engineer considered
11 evidence of the NRS 534.037(2) factors as set forth in appendix D to the DVGMP.⁷⁰ Sadler
12 Ranch's assertion that their expert, David Hillis' report questioning DVGMP's viability
13 should be accepted by the State Engineer does not require the State Engineer to accept
14 Mr. Hillis' findings and conclusions. The State Engineer was satisfied that the DVGMP
15 would cause the Diamond Valley basin to be removed as a CMA at the end of 35 years.
16 The State Engineer is not required to undertake an extensive factor analysis in his order
17 if he is otherwise satisfied that sufficient facts and analysis are presented in the petition
18 and the proposed DVGMP from which he could make a determination whether to approve
19 or reject the DVGMP.

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21 _____
22 ⁶⁶Sadler Ranch opening brief 9-18, Bailey opening brief 30-33, Sadler Ranch reply brief
15-20.

23 ⁶⁷*Id.*

24 ⁶⁸SEROA 14-17.

25 ⁶⁹SEROA 17-18.

26 ⁷⁰SEROA 17-18, 223, 227-28, 476-496.



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Petitioners' contention that "the Legislature determined that a GMP should accomplish its goals within ten years, not thirty-five" is misplaced.⁷¹ First, NRS 534.110(7) states that if a basin has been designated as a CMA for 10 consecutive years, the State Engineer shall order withdrawals based on priority, **unless** a GMP has been approved pursuant to NRS 534.037 (emphasis added). NRS 534.110(7) does not state a GMP must accomplish the goal of equilibrium in a CMA basin within 10 years from the GMP approval. An undertaking as immense as bringing a depleted aquifer into balance could easily surpass 10 years depending on the extent of harm to the aquifer. Sadler Ranch misconstrues Assemblyman Goicoechea's statement to the Legislature that, "[again] you have ten years to accomplish your road to recovery."⁷² The court views Assemblyman Goicoechea's words as meaning that once a basin is designated as a CMA, a 10 year clock starts wherein a GMP must be approved within the 10 year period, and if not, curtailment by priority must be initiated by the State Engineer. A GMP "must set forth the necessary steps for removal of the basin's designation as a critical management area"⁷³ not that equilibrium in the CMA basin must be accomplished within 10 years. If the State Engineer finds, which he did here, that the DVGMP sets forth the necessary steps for removal of the basin as a CMA, he may approve a GMP even if the DVGMP exceeds a 10 year period.

Petitioners claim the DVGMP will allow for continued depletion of the Diamond Valley aquifer.⁷⁴ The court agrees with petitioners. However, the State Engineer, using his knowledge and experience, and based on the evidence presented at the public hearing,

⁷¹Sadler Ranch opening brief 13.

⁷²Minutes of Assmb. Comm. on Gov't Affairs, 69 (March 30, 2011).

⁷³NRS 534.037(1).

⁷⁴Sadler Ranch opening brief 9-18, Bailey opening brief 30-33, Sadler Ranch reply brief 15-20.



1 including the DVGMP and appendices, rejected petitioners' arguments that the DVGMP
 2 would not enable the basin to be removed as a CMA. Again, this Court will not reweigh
 3 the evidence presented nor substitute its judgment for that of the State Engineer. The
 4 court finds that there is substantial evidence in the record to support the State Engineer's
 5 approval of the DVGMP as achieving the goal of removing the Diamond Valley basin from
 6 CMA status. The court finds that there is substantial evidence in the record to support the
 7 State Engineer's findings that the DVGMP contained the necessary relevant factors in NRS
 8 534.037(2) to approve the DVGMP.⁷⁵

9 C. THE STATE ENGINEER RETAINS HIS AUTHORITY TO MANAGE THE DIAMOND
 10 VALLEY BASIN

11 Notwithstanding his approval of the DVGMP, the State Engineer is not precluded
 12 from taking any necessary steps in his discretion to protect the Diamond Valley aquifer,
 13 including, ordering curtailment by priority, at any time during the life of the DVGMP if he
 14 finds that the aquifer is being further damaged. NRS 534.120(1) gives the State Engineer
 15 discretion to "make such rules, regulations and orders as are deemed essential for the
 16 welfare of the area involved." Order 1302 specifically found the DVGMP did not waive "any
 17 authority of the State Engineer to enforce Nevada water law."⁷⁶ It would be ludicrous to
 18 find that the State Engineer was prohibited from taking whatever action was necessary to
 19 prevent a catastrophic result in Diamond Valley during the life of the DVGMP, including
 20 curtailment, regardless of the provisions built into the DVGMP that otherwise trigger his
 21 plan review.⁷⁷ The court finds the DVGMP does not limit the State Engineer's authority to

22 _____
 23 ⁷⁵This finding is narrowly limited to the State Engineer's fact finding only in relation to
 24 the NRS 534.037(2) factors and that he found the DVGMP would allow the basin to be
 25 removed as a CMA after 35 years, not whether the DVGMP and Order 1302 violates
 26 Nevada law in other respects..

⁷⁶SEROA 18.

⁷⁷See SEROA 235, sec. 13.13; 246, sec. 26.

1 manage the Diamond Valley basin pursuant to NRS 534.120(1).

2 D. ORDER 1302 DOES NOT VIOLATE NEVADA'S AQUIFER STORAGE RECOVERY
3 ("ASR") STATUTE

4 An ASR project under Nevada law contemplates the recharge, storage, and
5 recovery of water for future use for which a permit is required.⁷⁸ The DVGMP does not
6 include a proposed source of water for recharge into the Diamond Valley aquifer, the
7 quantity of water proposed to be recharged into the aquifer, nor any stated purpose for
8 the storage of water for future use.⁷⁹ The DVGMP uses the term "banking" as meaning
9 unused shares of water in a year may be carried forward or "banked" for use in the
10 following year if appropriate. The State Engineer held that the DVGMP provision to carry
11 over water shares for use in a subsequent year was outside the scope of NRS 534.260 to
12 534.350 as not being a project involving the recharge, storage and recovery of water
13 subject to statutory regulations,⁸⁰ but "to allow flexibility by users to determine when to use
14 their limited allocation and to encourage water conservative practices."⁸¹ The State
15 Engineer's finding is supported by substantial evidence in the record. The court finds the
16 term "banked" when used in the manner as stated in the DVGMP to mean water shares
17 that are not used but saved for use in a subsequent year.⁸² The court finds the DVGMP is
18 not required to comply with and does not violate NRS 534.250 to NRS 534.340.

19
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21 _____
22 ⁷⁸NRS 534.250-534.340.

23 ⁷⁹*Id.*

24 ⁸⁰SEROA 8, 9.

25 ⁸¹*Id.*

26 ⁸²SEROA 234, sec. 13.9.



1 E. PETITIONERS FAILED TO SHOW THAT A VIOLATION OF NRS 534.037(1)
2 WHEN SEEKING PETITION APPROVAL AFFECTED THE VOTE RESULT

3 A GMP petition submitted to the State Engineer for approval “. . . must be signed
4 by a majority of the holders of permits or certificates to appropriate water in the basin that
5 are on file in the Office of the State Engineer . . .”⁸³ The DVGMP petition was thus required
6 to be signed by a majority of the holders of permits or certificates for surface rights, stock
7 water rights, and underground rights in the Diamond Valley basin.

8 Order 1302 found there were 419 water right permits or certificates in the Diamond
9 Valley basin at the time the DVGMP petition was filed.⁸⁴ By limiting the computation to
10 those signatures from a confirmed owner of record, the State Engineer found 223 of 419
11 permits or certificates,⁸⁵ or 53.2 percent, was a majority of the permits or certificates in the
12 basin.⁸⁶ The DVGMP petition was only sent to groundwater permit holders to be
13 considered and voted upon.⁸⁷ The State Engineer argues that since the procedure for
14 approving a GMP is found in Chapter 534 related to underground water that only
15 permit/certificate holders for underground irrigation were required to vote.⁸⁸ This position
16 misconstrues the clear language of NRS 534.037(1) . The Baileys assert that the DVGMP
17 petition should have been submitted to all vested and surface right or other permit and
18 certificate holders for consideration and vote.⁸⁹ The court agrees that all certificate and

19 ⁸³NRS 534.037(1).

20 ⁸⁴SEROA 3.

21 ⁸⁵Those signatures by a confirmed owner of record. *Id.*

22 ⁸⁶SEROA 3.

23 ⁸⁷SEROA 148.

24 ⁸⁸State Engineer’s answering brief 25, “. . . surface water rights and vested rights were
25 properly omitted from the State Engineer’s calculation for majority approval under NRS
26 534.037(1) . . .”

⁸⁹Bailey opening brief 33-34, Bailey reply brief 17-19.





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permit holders should have had the petition submitted to them. However, NRS 534.037(1) does not require a petition to be submitted to vested right holders. NRS 534.037(1) does not restrict petition approval to only underground permit or certificate holders. The exclusion of all surface permit and certificate holders or other certificate holders from considering whether to approve the DVGMP or not was incorrect and violated NRS 534.037(1). The court so finds. But, petitioners have not shown that they or other holders of permits or certificates to appropriate water in the basin were not included in the State Engineer's count of 419 water right permits or certificates in the Diamond Valley basin.⁹⁰

There is no evidence in the ROA that the State Engineer excluded any holders of permits or certificates in the 419 count. Although petitioners and others similarly situated may not have been presented with the petition to approve the DVGMP, the fact that they would not have signed the petition is irrelevant as a majority of the holders of permits or certificates in the basin did sign the petition. The court finds substantial evidence in the record to support the State Engineer's determination that the petition was signed by a majority of the permit or certificate holders in the Diamond Valley basin.

At the oral argument hearing, Sadler Ranch and the Renners untimely challenged the accuracy of the vote approving the DVGMP petition. First, they contend that NRS 534.037(1) requires that votes be counted by the number of people who own the permits/certificates, not the number of permits. The statute's focus is counting by the permit/certificates. The State Engineer limited his count to the permits and certificates, and compared petition signatures with the confirmed owner of record in his office files.⁹¹ Under petitioners' interpretation,⁹² if one permit or certificate was owned by 25 owners, there

⁹⁰SEROA 3.

⁹¹SEROA 3.

⁹²Sadler Ranch's example was that the Moyle Family has 5 people who own 50 permits thereafter the State Engineer should have only counted 5 votes instead of 50.



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should be 25 votes counted. This method of assigning votes improperly places the vote calculation on the number of owners of certificates or permits rather than the number of permits or certificates in the Diamond Valley basin. The court rejects Sadler Ranch's and the Renner's interpretation of the method by which votes must be counted under NRS 534.037(1). Second, they contend the record fails to support how the State Engineer verified petition signatures or what rights were counted as eligible to vote. The court is satisfied that the State Engineer reviewed his office's records, confirmed the owner(s) of record with the signatures on the petition as representing the owner(s) of record in his office, and then counted the permits or certificates, not the owners of the certificates or permits.⁹³ Third, Sadler Ranch and the Renners state some signatures were not by the owner of record. There is no requirement under the NRS 534.037(1) that an individual representing a permit or certificate holder could not sign the petition for the holder. No challenges exist in the record by any permit or certificate holders claiming that their vote was fraudulently cast by someone not authorized to vote on their behalf. Fourth, Sadler Ranch and the Renners suggest that the permit or certificate should not have been counted if only signed by 1 of the owners of record. Again, nothing in the statute requires the petition be signed by each owner of a permit or certificate. Again, there are no challenges in record from any co-owners alleging the vote of their certificate or permit was invalid because not all of the record owners signed the petition. Last, they cite that the DVGMP tally sheet had double and triple counted votes. This may be so, but the State Engineer's method of calculation represented the true count of votes. Sadler Ranch's and the Renner's objections are rejected. The court finds substantial evidence in the record to support the State Engineer.

⁹³SEROA 3-4.



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F. ORDER 1302 VIOLATES THE BENEFICIAL USE STATUTE

In Nevada, “beneficial use shall be the basis, the measure and the limit of the right to the use of the water”⁹⁴ “Beneficial use depends on a party actually using the water.”⁹⁵ The DVGMP does not require prior beneficial use of water in order for a permit holder to receive shares under the DVGMP formula.⁹⁶ Petitioners contend that any permits or certificates that are in abandonment status should not be allowed water shares. The State Engineer found that because “. . . time is of the essence for rights holders to get a GMP approved” . . . “it would be a lengthy process to pursue abandonment.”⁹⁷ The State Engineer also cites the notice of non-use provisions required by NRS 534.090 as potentially causing owners of unused water rights to resume beneficial use, and exacerbate the water conditions in Diamond Valley.⁹⁸ The court agrees such a situation could occur, however, the State Engineer’s analysis fails to address that permit holders who have done nothing to beneficially use water will receive just as many, if not more, shares of water will as holders of water rights who have placed water to beneficial use. The GMP gifts to permit holders, who have done nothing to place their water to beneficial use, valuable water shares to trade, lease, or sell to others in Diamond Valley.

Of the 126,000 af of water rights in Diamond Valley, currently there is only 76,000 af of actual beneficial use.⁹⁹ Under the DVGMP those permit holders who have never proved up their water by placing it to beneficial use could potentially receive more water

⁹⁴NRS 533.035.

⁹⁵*Bacher v. State Engineer*, 122 Nev. 1110, 1116, 146 P.3d 793 (2006).

⁹⁶SEROA 232-236, sec. 12,13

⁹⁷SEROA 9.

⁹⁸*Id.*

⁹⁹SEROA 2.



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than those holders who have placed their water to beneficial use. The DVGMP allocates the total amount of 76,000 af actually being pumped to 126,000 af of irrigation ground water rights in good standing in Diamond Valley all of which will receive shares under the DVGMP formula.¹⁰⁰ By example, a farmer with a center pivot on a 160 acre parcel at 4 af per acre would be permitted for 640 af. Upon prove up, if he actually watered less than the 160 acre parcel because watering by using a center pivot does not water the 4 corners of a parcel, he may only prove up the water right for 512 af and receives a certificate for this amount. Another farmer in Diamond Valley, who has a 160 acre parcel at 4 af per acre but who has never proved up the beneficial use of the water and stands in a forfeiture status, receives the full 640 af of water. In the 1st year of the DVGMP, the farmer who has a permit for 640 af, but never has proved it up through beneficial use, actually received 85 af more water than the farmer who proved up beneficial use on the same size parcel. When transferred into shares under the DVGMP, the farmer who has not proved up his permit receives windfall of water shares to sell or trade. The DVGMP acknowledges that some water rights in good standing have not been used and tied to corners of irrigation circles and that most, but not all, "paper water" is tied to currently used certificates or permits.¹⁰¹ Even though the DVGMP caps the amount of water the first year of the plan at the "ceiling of actual pumping (76,000 afa)",¹⁰² it remains that the 76,000 afa will be allocated to some permits who have not proved up beneficial use.

Under Nevada water law, a certificate, vested, or perfected water right holder enjoys the right to and must beneficially use all of the water it has proved up. The DVGMP rewards permit holders who have not placed water to beneficial use, of which there are

¹⁰⁰SEROA 218, 219, 221, 232-33 3m 461, 465.

¹⁰¹SEROA 467.

¹⁰²SEROA 12.

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approximately 50,000 af in Diamond Valley.¹⁰³ The DVGMP also allows the banking of unperfected paper water rights for future use which can be sold, traded or leased.¹⁰⁴ The court finds that Order 1302 violates the NRS 533.035. The court finds Order 1302 is arbitrary and capricious.

G. THE DVGMP IMPAIRS VESTED RIGHTS IN VIOLATION OF NRS 533.085(1)

It is undisputed that the Baileys and Renners have senior vested surface water rights that have been adversely impacted by the 40 years plus of overpumping¹⁰⁵. Respondent and intervenors agree that the DVGMP was not developed for mitigation purposes, but to reduce pumping, bring equilibrium to the Diamond Valley aquifer in 35 years, and cause the CMA designation to be removed.¹⁰⁶ The State Engineer's position is that the GMP "is not a mitigation plan, and NRS 534.037 does not require the proponents of a groundwater management plan or the State Engineer to consider the alleged effects on surface water rights or mitigate those alleged effects."¹⁰⁷ The State Engineer is wrong. A GMP must consider the effect it will have on surface water rights. In *Pyramid Lake Paiute Tribe v. Ricci* 126 Nev. 531.524 (2010), the Nevada Supreme Court acknowledged the State Engineer's ruling that "[t]he perennial yield of a hydrological basin is the equilibrium amount or maximum amount of water that can be safely used without depleting the source." Moreover, [t]he maximum amount of natural discharge that can be feasibly captured . . . [is the] perennial yield . . . the maximum amount of withdrawal

¹⁰³SEROA 2, 9, 10.

¹⁰⁴SEROA 234; see sec. 13.2

¹⁰⁵Sadler Ranch had impacted senior vested rights that have been mitigated by certificate.

¹⁰⁶State Engineer's answering brief, 36.

¹⁰⁷*Id.*. This position is also shared by the DNRPCA intervenors. DNRPCA answering brief, 24; and Eureka County, Eureka County answering brief, 22.





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above which over appropriation occurs.” *State Engineer v. Morris*, 107 Nev. 699 703 (1991).The DVGMP on its face fails to reduce the harm caused by overpumping and aggravates the depleted water basin.

A GMP developed under NRS 534.037 is not required to mitigate adversely affected surface water rights, but it cannot impair those rights.NRS 533.085(1) provides, “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, 2013.” NRS 534.100 reads, “Existing water rights to the use of underground water are hereby recognized. For the purpose of this chapter a vested right is a water right on underground water acquired from an artesian or definable aquifer prior to March 22, 1913.”

The DVGMP authorizes continuous pumping beginning with 76,000 af in year one, reducing pumping to 34,200 af at the end of 35 years,¹⁰⁸ clearly in excess of the 30,000 af perennial yield in the Diamond Valley aquifer.¹⁰⁹ The DVGMP and Order 1302 acknowledge that there will be ongoing additional withdrawals of water from the basin of approximately 5,000 af annually of non-irrigation permits.¹¹⁰ Venturacci, Sadler Ranch and the Bailey’s are entitled to withdraw an approximate 6,400 af annually.¹¹¹ The State Engineer admits that neither groundwater modeling nor hydro geologic analysis were the basis for the DVGMP’s “determination of pumping reduction rates and target pumping at

¹⁰⁸SEROA 510.

¹⁰⁹SEROA 3.

¹¹⁰*Id.*

¹¹¹Permits 82268, 81270, 63497, 81825, 82572, 87661.



1 the end of the plan”¹¹² but that “the pumping reduction rate was selected by agreement of
2 the GMP authors, . . .”¹¹³ The State Engineer’s reasoning that NRS 534.037 does not
3 require a GMP “to consider alleged effects on surface water rights” is a misunderstanding
4 of Nevada’s water law. The DVGMP’s annual pumping allocation will certainly cause the
5 aquifer groundwater level to decline with continuing adverse effects on vested surface
6 rights. The court finds that the DVGMP and Order 1302 impair senior vested rights. The
7 court finds that Order 1302 is arbitrary and capricious.

8 **ESTOPPEL ISSUE**

9 Contrary to the position of Eureka County, petitioners are not estopped from making
10 claims that the DVGMP impacts their vested rights.¹¹⁴ No facts are present in the ROA that
11 any respondent relied to their detriment upon representations or any petitioners or that any
12 other estoppel elements are present in the ROA.¹¹⁵

13 I. **ORDER 1302 VIOLATES NEVADA’S DOCTRINE OF PRIOR APPROPRIATION**

14 The history of prior appropriation in the Western states dates to the mid-1800’s and
15 has been well chronicled in case law. Notably, In *Re Water of Hallett Creek Stream*
16 *System*,¹¹⁶ discusses at length the development of the doctrine of prior appropriation, “first
17 in time, first in right”, with its genesis linked to the early California gold miners’ use of water
18 and a local rule of priority as to the use of water. Nevada has long recognized the law of
19 prior appropriation.¹¹⁷ The priority of a water right is the most important feature.¹¹⁸ Court’s

20 ¹¹²SEROA 16.

21 ¹¹³*Id.*

22 ¹¹⁴Eureka County answering brief 22-23.

23 ¹¹⁵*Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 539, 353 P.3d 1203 (2015). (internal
24 citations omitted).

25 ¹¹⁶749 P.2d 324, 330-34 (Cal 1988) cert. denied 488 U.S. 834 (1988).

26 ¹¹⁷*Steptoe Livestock Co. v. Gulley*, 53 Nev 163, 171-173, 205 P.772 (1931); *Jones v. Adams* 19 Nev. 78, 87, (1885).

¹¹⁸See *Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle*, 32
Envntl .L. 37(2002).

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1 have stated, “priority in a water right [as] property in itself.”¹¹⁹ Although, “. . . those holding
2 certificates, vested, or perfected water rights do not own or acquire title to the water, they
3 merely enjoy the right to beneficial use,”¹²⁰ the Nevada Supreme Court has stated, “a water
4 right ‘is regarded and protected as real property.’”¹²¹ The Nevada Supreme Court
5 recognized as well established precedent “that a loss of priority that renders rights useless
6 ‘certainly affects the rights’ value and ‘can amount to a defacto loss of rights.’”¹²² The prior
7 appropriation doctrine ensures that the senior appropriator who has put its water to
8 beneficial use has a right to put all of the water under its permit/certificate to use and that
9 right is senior to all water rights holders who are junior. This doctrine becomes critically
10 important during times of water scarcity, whether temporary, or as a result of prolonged
11 drought. This is certainly the case in Diamond Valley. With the security attached to a
12 senior priority right to beneficially use all of the water associated with the right also comes
13 obvious financial value not only to the current water right holder, but to any future owner
14 of that senior right. The loss or reduction of any water associated with the senior right can
15 significantly harm the holder.

16 The State Engineer found that, “the GMP still honors prior appropriation by
17 allocating senior rights a higher priority than junior rights.”¹²³ The court disagrees. The
18 DVGMP reduces the amount of water it allocates to senior rights’ holders in the formula
19 for shares effectively ignoring 150 years of the principle of “first in time, first in right”¹²⁴
20 which has allowed a senior right holder to beneficially use all of water allocated in its right

21 ¹¹⁹*Colo. Water Conservation Bd. v. City of Central*, 125 P.3d 424, 434 (Colo. 2005).

22 ¹²⁰*Sierra Pac. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3d 37, 40, (2019), citing *Desert*
23 *Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 994 P.2d 835, 842 (1997).

24 ¹²¹*Town of Eureka*, 167.

25 ¹²²*Wilson v. Happy Creek*, 135 Nev. Adv. Op. 41, 448 P.3d 1106, 1115 (2019) (internal
26 citations omitted).

¹²³SEROA 8.

¹²⁴*Ormsby County v. Kearny*, 37 Nev. 314, 142 P. 803, 820 (1914).

1 before any junior right holder can use its water right. The DVGMP allows the senior right
2 holder a higher priority to use less water.

3 The court finds that the DVGMP formula for water shares that reduces the amount
4 of water to which a senior water rights' holder is entitled to use violates the doctrine of prior
5 appropriation in Nevada. The court finds that Order 1302 violates the doctrine of prior
6 appropriation in Nevada. The court thus finds that Order 1302 is arbitrary and capricious.

7 H. THE LEGISLATIVE HISTORY OF NRS 534.037 and 534.110(7) DOES NOT
8 DEMONSTRATE AN INTENT TO MODIFY THE DOCTRINE OF PRIOR
9 APPROPRIATION IN NEVADA

10 As stated above, the doctrine of prior appropriation has existed in Nevada water law
11 for in excess of 150 years. The DVGMP reduces the annual allocation of water rights to
12 both junior and senior rights holders.¹²⁵ Relying on a New Mexico Supreme Court case,
13 *State Engineer v. Lewis*,¹²⁶ Order 1302 held that NRS 534.037 “demonstrates legislative
14 intent to permit action in the alternative to strict priority regulation.”¹²⁷ Order 1302 states
15 that, “. . . in enacting NRS 534.037, the Nevada legislature expressly authorized a
16 procedure to resolve a shortage problem. And, likewise, the State Engineer assumes that
17 the Legislature was aware of prior appropriation when it enacted NRS 534.037, and the
18 State Engineer interprets the statute as intending to create a solution other than a priority
19 call as the first and only response.”¹²⁸ The State Engineer further found that, “Nothing in
20 the legislative history of A.B. 419 or the text of NRS 534.037 suggests that reductions in
21 pumping have to be borne by the junior rights holders alone – if that were the case, the
22 State Engineer could simply curtail junior rights – a power already granted by pre-existing
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24 ¹²⁵SEROA 499-526, appendix F is the preliminary table of all rights subject to the
25 DVGMP and the share calculation for each right.

26 ¹²⁶150 P.3d 375 (N.M. 2006).

¹²⁷SEROA 5.

¹²⁸SEROA 6.





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water law in NRS 534.110(6).¹²⁹ The State Engineer argues the plain language of NRS 534.037 and NRS 534.110(7) “shows the legislature’s intent to allow local communities to come together and agree upon a solution for groundwater management other than strict application of prior appropriation, such as the Diamond Valley GMP.”¹³⁰ His reasoning is that since NRS 534.110(7) requires junior priority rights to be curtailed in favor of senior priority rights where a basin has been designated a CMA for at least 10 years, the legislature provided an exception to the curtailment requirement and the application of the prior appropriation doctrine where “ a groundwater management plan has been approved for the basin pursuant to NRS 534.037.”¹³¹ Order 1302 held that “NRS 534.037 illustrates the unambiguous intent of the Legislature to allow a community to find its own solution to water shortage, including “out-of-the-box solutions,” “to resolve conditions leading to a CMA designation.”¹³²

The community based solution approved by the State Engineer allows junior rights’ holders who, by over pumping for more than 40 years have created the water shortage in Diamond Valley, to be able to approve a GMP that dictates to senior rights’ holders that they can no longer use the full amount of their senior rights. This is unreasonable. Taking it a step further, using the State Engineer’s analysis, a majority vote of water permits/certificates in Diamond Valley could approve a GMP whereby the senior rights holders are subject to a formula reducing their water rights by an even greater percentage of water than in the current DVGMP.

The State Engineer’s position is shared by the intervenors. Eureka County asserts (1) NRS 534.110(6) and (7) are not ambiguous; (2)that subsection (7) is a specific, special statute authorizing CMA’s which controls over subsection (6), a general subsection for

¹²⁹SEROA 6-7.
¹³⁰State Engineer’s answering brief 25.
¹³¹*Id.* 25-26.
¹³²*Id.* 26.



1 CMA designated basins; and (3) thus regulation by priority is not required for at least 10
2 consecutive years for a CMA designated basin “unless a groundwater management plan
3 has been approved for the basin in that time frame.”¹³³ Eureka County maintains that
4 subsection NRS 534.110(7) “is a plain and clear ‘exception’ to the general discretionary
5 curtailment provision in subsection 6,”¹³⁴ concluding that “NRS 534.110(7) does not require
6 the State Engineer to order senior rights be fulfilled before junior rights in the critical
7 management area for at least 10 consecutive years after the designation.”¹³⁵ DNRPCA
8 intervenors advocate that a community based GMP deviating from water right regulation
9 contrary to the prior appropriation doctrine is authorized by NRS 534.110(7),¹³⁶ stating, “.
10 . . the Legislature deliberately enacted legislation that created **an exception** to the seniority
11 system in exactly the circumstances that exist here.”¹³⁷ (Emphasis added). The State
12 Engineer and intervenors further agree that if a GMP has been approved, that the State
13 Engineer cannot order any curtailment by priority for at least 10 years from the date the
14 basin was designated a CMA. The foregoing interpretations, if sustained, would turn 150
15 years of Nevada water law into chaos.

16 The State Engineer and intervenors have misinterpreted NRS 534.037 by using the
17 *Lewis* case as either authority for or as being “instructive” as to the legislative intent behind
18 NRS 534.037.¹³⁸ Now conceded by the State Engineer, the *Lewis* facts and holding are
19 clearly distinguishable from the present case.¹³⁹ In *Lewis*, a U.S. Supreme Court mandated
20 settlement agreement was litigated. The *Lewis* plan was presented to, and expressly

21 ¹³³Eureka County’s answering brief 12-13.

22 ¹³⁴*Id.*

23 ¹³⁵*Id.* 12.

24 ¹³⁶DNRPCA answering brief 11-12.

25 ¹³⁷*Id.* 11.

26 ¹³⁸State Engineer’s answering brief 29-3..

¹³⁹*Id.*



1 ratified by the New Mexico Legislature.¹⁴⁰ The DVGMP has never been presented to or
2 ratified by the Nevada Legislature. The State Engineer now claims the *Lewis* case is an
3 example “that shows another state has utilized an innovative solution in order to resolve
4 water shortages.” The State Engineer analyzes that, “NRS 534.037 was expressly ratified
5 by the Nevada Legislature, and has a clear intent to allow local water users to agree to a
6 solution other than curtailment by priority.”¹⁴¹ Critically, there is no language, either express
7 or implied in NRS 534.037, that allows for a GMP to be approved by a majority of right
8 holders in a CMA that reduces the amount of water to which a senior right holder is entitled
9 to beneficially use. The State Engineer amazingly argues that “Baileys, Sadler Ranch, and
10 the Renners provide no authority for someone in the minority (*i.e. someone who did not*
11 *want the GMP approved*) in a basin where a groundwater management plan is approved
12 to act outside of the plan that was agreed to, per statute, by a majority of the holders of
13 water permits and certificates, nor do they legitimately challenge the language of the
14 statute providing for a simple majority to create a basin-wide groundwater management
15 plan.”¹⁴² By the State Engineer’s analysis of the legislative intent of NRS 534.037, a
16 majority of junior right holders, who, by their collective knowing over appropriation of a
17 water basin, combined with the State Engineer’s neglectful acquiescence, can vote to
18 deprive a senior right holder’s use of all of its water, thus enabling the junior holders who
19 created the crisis to continue to irrigate by using water which they were never entitled to
20 use.¹⁴³ This is simply wrong.

21 The Nevada Supreme court has noted, “our adherence to long-statutory precedent
22 provides stability on which those subject to this State’s law are entitled to rely.”¹⁴⁴ Every

23 ¹⁴⁰*Lewis*, 376.

24 ¹⁴¹State Engineer’s answering brief 29.

25 ¹⁴²*Id.* 30.

26 ¹⁴³53.2percent of the senior priority water right owners did not support the DVGMP.

¹⁴⁴*Happy Creek*, 1116.



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water right holder under Nevada law was, and is, entitled to rely on the priority date of a valid water right they own to place all of the water under its right to beneficial use. Neither Nevada Supreme Court nor the Legislature have ever waived from this legal precedent. Nevada ranchers and farmers have always valued and defended their water right priority. Every rancher and farmer, until Order 1302, have relied on Nevada's stone etched security that their water right priority date entitled them to beneficially use the full amount of a valid water right prior to all those junior. Every Nevada rancher and farmer has known and presumably understood that if their water right was junior to others, that the senior right holder was entitled to satisfy the full amount of the senior right before the junior holder would be satisfied, even if it meant the junior holder had less water or no water at all to place to beneficial use.¹⁴⁵

Clearly, there is no express language in either NRS 534.037 or NRS 534.110(7) stating a GMP can violate the doctrine of prior appropriation or that the doctrine is somehow abrogated. Knowing the long standing legislative and judicial adherence to Nevada's prior appropriation doctrine, the drafters could have easily inserted provisions in the CMA and/or GMP legislation giving the State Engineer the unequivocal authority to deviate from Nevada's "first-in-time, first-in-right" prior appropriation law if that was their intent.

"The legislature is 'presumed not to intend to overturn long-established principles of law' when enacting a statute"¹⁴⁶ When the language of a statute is unambiguous, courts are not to look beyond the statute itself when determining meaning.¹⁴⁷ The court finds that NRS 534.037 is not ambiguous. The court finds that the express language of NRS 534.037 and NRS 534.110(7) do not allow a GMP to violate the doctrine of prior appropriation by

¹⁴⁵Sadler Ranch opening brief 4; see certificates/permits in SEROA 499-509; NRS 534.020(1).

¹⁴⁶*Happy Creek*, 1111, citing *Shadow Wood Homeowners Ass'n. v. N.Y. Cmty. Bancorp. Inc.*, 132 Nev. 49, 59, 366 P.3d 1105, 1112 (2016).

¹⁴⁷*In re Orpheaus Trust*, 124 Nev. 170, 174, 179 P.3d 562 (2008)



1 reducing the amount of water a senior right holder is entitled to put to beneficial use under
2 its permit/certificate.

3 The State Engineer and intervenors contend that once a GMP is approved, the
4 State Engineer is not required to order curtailment by priority. This is true, provided a viable
5 GMP without curtailment can be implemented in a CMA basin. However, there is no
6 language in either NRS 534.110(7) or NRS 534.037 that prohibits or restricts some
7 measure of curtailment by priority as part of a GMP. Likewise, should a GMP prove
8 ineffective, there is no statutory language prohibiting curtailment during the term of the
9 GMP or even during the 10 year period from when a basin is designated a CMA if such
10 action is necessary to prevent continuing harm to an aquifer in crisis as exists in Diamond
11 Valley. Sadler Ranch, the Renners, and the Baileys offered a number of possible plan
12 alternatives that would not violate the prior appropriation doctrine, including, but not limited
13 to, junior pumping reduction, a rotating water use schedule, cancellation of permits if calls
14 for proof of beneficial use demonstrate non-use, restriction of new well pumping, establish
15 a water market for the trade of water shares, a funded water rights purchase program,
16 implementation of best farming practices, upgrade to more efficient sprinklers, and a
17 shorter irrigation system.¹⁴⁸ Many of these alternatives were also considered by the
18 Diamond Valley water users in developing the DVGMP and are recommendations, but not
19 requirements of the DVGMP.¹⁴⁹

20 "When a statute is susceptible to more than one reasonable, but inconsistent
21 interpretation, the statute is ambiguous," requiring the court "to look to statutory
22 interpretation in order to discern the intent of the Legislature."¹⁵⁰ The court must "look to
23 legislative history for guidance."¹⁵¹ Such interpretation must be "in light of the policy and

24 ¹⁴⁸Sadler Ranch reply brief 7-9; Bailey opening brief 17-18; SEROA 252-254.

25 ¹⁴⁹SEROA 244-245.

26 ¹⁵⁰*Orpheas Trust*. 174, 175.

¹⁵¹*Id.* 175.



1 spirit of the law, and the interpretation shall avoid absurd results.”¹⁵² “The court will resolve
2 any doubt as to the Legislature’s intent in favor of what is reasonable.”¹⁵³

3 Assuming arguendo, that NRS 534.037 and NRS 534.110(7) are ambiguous, the
4 only reasonable interpretation is that the Nevada Legislature did not intend for the two
5 statutes to allow a GMP to be implemented in that would violate Nevada’s doctrine of prior
6 appropriation. As stated earlier, a GMP may employ any number of remedies to address
7 a water crisis depending on the cause of a water basin’s decline, its hydrology, number of
8 affected rights’ holders, together with any other of factors which may be specific to a
9 particular CMA designated basin. These remedies could yield to the doctrine of prior
10 appropriation, yet be effective given the particular circumstances of a CMA basin. But in
11 some CMA basins, curtailment may be a necessary element of a GMP. Respondents
12 assert that “NRS 534.037 illustrates the unambiguous intent of the Legislature to provide
13 water users in a particular basin with the ability to come up with a community based
14 solution to address a water shortage problem.”¹⁵⁴ The court agrees. Order 1302 observes
15 that “the legislative history contains scarce direction concerning how a plan must be
16 created or what the confines of any plan must be.”¹⁵⁵ Again, the court agrees. Yet, there
17 is nothing in NRS 534.037’s legislative history that lends to an interpretation that a GMP
18 can provide for senior water rights to be abrogated by junior permit and certificate holders
19 whose conduct caused the CMA to be designated. The State Engineer’s finding that, “. . .
20 NRS 534.037(1) does not require a GMP to impose reductions solely against junior
21 rights . . .”¹⁵⁶ is a misinterpretation of the statute, not only facially, but in light of the
22 legislative history as discussed below.

23 ¹⁵²*Id.*

24 ¹⁵³*Id.*

25 ¹⁵⁴State Engineer’s answering brief 26.

26 ¹⁵⁵SEROA 7.

¹⁵⁶SEROA 8.



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The State Engineer found that the legislative enactment of NRS 537.037, “expressly authorized a procedure to resolve a shortage problem,” “the State Engineer assumes that the Legislature was aware of Nevada’s prior appropriation doctrine when it enacted NRS 534.037, and . . . interprets the statute as intending to create a solution other than a priority call as the first and only response.”¹⁵⁷ It is clear that the Legislature was aware of the prior appropriation doctrine before enacting NRS 534.037 and that the statute allows for a GMP in a particular basin that may not involve curtailment by priority as a workable solution. Yet, nowhere in the Legislative history of AB 419¹⁵⁸ is one word spoken that the proposed legislation will allow for a GMP whereby senior water right holder will have its right to use the full amount of its permit/certificate reduced or that the amount of water that shall be allocated will be on a basis other than by priority. In fact, just the opposite is true. At a Senate Committee on Government Affairs hearing held May 23, 2011, Assemblyman Pete Goicoechea stated:

“That junior users would bear the burden to develop a ‘conservation plan that actually brings that water basin back into some compliance.’”¹⁵⁹

Assemblyman Goicoechea further stated:

“This bill allows people in overappropriated basins ten years to implement a water management plan to get basins in balance. People with junior rights will try to figure out how to conserve enough water under these plans. Water management plans will also limit litigation that occurs before the State Engineer regulates by priority. When the State Engineer regulates by priority, it starts a water war and finger – pointing occurs. This bill gives water right owners ten years to work through those issues.”¹⁶⁰

Earlier, at the same committee hearing, Assemblyman Goicoechea gave examples of ways an over appropriated basin could be brought back in to balance through “planting

¹⁵⁷SEROA 7.
¹⁵⁸See DNRPCA intervenors’ addendum to answering brief 0079-0092.
¹⁵⁹Minutes of Sen. Committee on Government Affairs, May 23, 2011, at 16.
¹⁶⁰*Id.*

alternative crops, water conservation, or using different irrigation methods.”¹⁶¹

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Assemblyman Goicoechea went on to say:

“water rights in Nevada are first in time; first in right. The older the water right the higher the priority. We would address the newest permits and work backwards to get basins back into balance. The more aggressive people might be the newer right holders.”¹⁶²

No one at any Legislative subcommittee hearings stated or implied that the proposed GMP legislation was “an exception to or otherwise abrogated Nevada’s doctrine of prior appropriation.” The court finds persuasive the steadfast commitment of Nevada’s courts and legislation upholding the doctrine of prior appropriation and the absence of any legislative history to the contrary for AB419.

There is a presumption against an intention to impliedly repeal where express terms to repeal are not used.¹⁶³ “When a subsequent statute entirely revises the subject matter contained in a prior statute, and the legislature intended the prior statute to be repealed, the prior statute is considered to be repealed by implication. This practice is heavily disfavored, and we will not consider a statute to be repealed by implication unless there is no other reasonable construction of the two statutes.”¹⁶⁴ Not only did NRS 534.034 and NRS 534.110(7) not revise the doctrine of prior appropriation, the Legislature did not even mention the subject.

“When construing statutes and rules together, this court will, if possible, interpret a rule or statute in harmony with other rules and statutes.”¹⁶⁵ The doctrine of prior appropriation can logically exist in harmony with NRS 534.037 and 534.110(7) and allow

¹⁶¹ *Id.*

¹⁶² *Id.* at 13.

¹⁶³ *W. Realty Co. V City of Reno*, 63 Nev. 330, 344 (1946). citing *Ronnan v. City of Las Vegas*, 57, Nev, 332, 364-65 (1937)

¹⁶⁴ *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134 (2001) (internal citations omitted).

¹⁶⁵ *Hefetz v. Beavor*, 133 Nev. Adv. Op. 46, 197 P.3d 472, 475 (2017) citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).





1 for GMP's to address the water issues present in a particular CMA basin. The court finds
2 that neither NRS 534.037 nor NRS 534.110(7) are in conflict with the prior appropriation
3 doctrine.

4 More compelling evidence exists that the State Engineer knew that NRS 534.037
5 and NRS 534.110(7) did not abrogate or repeal the doctrine of prior appropriation. On
6 November 16, 2016, Legislative Bill S.B 73 was introduced on behalf of the State
7 Engineer.¹⁶⁶ The proposed legislation sought to modify NRS 534.037 by giving authority
8 to the State Engineer to consider a GMP, "limiting the quantity of water that may be
9 withdrawn under any permit or certificate or from a domestic well on a basis other than
10 priority, . . ." ¹⁶⁷ Although SB 73 was never passed by the Legislature, the fact that the
11 State Engineer specifically sought 2017 legislation authorizing a GMP to be approved that
12 allowed for water to be withdrawn from a CMA basin on a basis other than priority,
13 demonstrates the State Engineer's knowledge that NRS 534.037 and NRS 534.110(7) as
14 enacted did not either expressly or impliedly allow for a GMP to violate Nevada's prior
15 appropriation law.¹⁶⁸ The court finds that the AB 419's Legislative history did not intend to
16 allow either NRS 534.037 or NRS 534.110(7) to repeal, modify, or abrogate Nevada's
17 doctrine of prior appropriation.

18 I. THE DVGMP VIOLATES NRS 533.325 and NRS 533.345

19 NRS 533.325 states in pertinent part ". . . any person who wishes to appropriate any
20 of the public waters, or to change the place of diversion, manner of use, or place of use of
21 water already appropriated, shall before performing any work in connection with such
22 appropriation, change in place of diversion or change in matter or place of use, apply to the
23 State Engineer for a permit to do so." This is so because permits are tied to a single point

24 ¹⁶⁶Sadler Ranch addendum to reply brief, 001

25 ¹⁶⁷*Id.* 003.

26 ¹⁶⁸The State Engineer's knowledge that the DVGMP violated the doctrine of prior
appropriation was also evidenced by his presentation at the 2016 Western States
Engineer's Annual Conference. See Sadler Ranch opening brief, ex. 1, slide 21.



1 of diversion.¹⁶⁹ “Every application for a permit to change the place of diversion, manner of
2 use or place of use of water already appropriated must contain such information as may be
3 necessary to a full understanding of the proposed change, as may be required by the State
4 Engineer.”¹⁷⁰ The State Engineer can approve a temporary change if, among other
5 requirements, “the temporary change does not impair the water rights held by other
6 persons.”¹⁷¹ The filing of an application under NRS 533.325 allows the State Engineer to
7 determine what, if any, potential adverse impact is created by the proposed change in well
8 location, location of the use of the water or manner of the proposed use. The State
9 Engineer is required to review a temporary change application regardless of the intended
10 use of the water to determine if it is in the public interest and does not impact the water
11 rights used by others.¹⁷² If a potential negative impact is found, the application could be
12 rejected.¹⁷³ Other rights’ holders who may be affected by the temporary change could
13 protest the application if notice were given by the State Engineer.¹⁷⁴ No protest and notice
14 provisions at the administrative level exist in the DVGMP for a temporary change of use, or
15 place of use, or manner of use for less than one year.¹⁷⁵

16 Under the DVGMP, the State Engineer is not required to investigate a proposed
17 change in the place or manner of use and the transfer becomes automatic after 14 days
18 from submission.¹⁷⁶ The DVGMP provides that the groundwater withdrawn from Diamond

20 ¹⁶⁹NRS 533.330

21 ¹⁷⁰NRS 533.345(1).

22 ¹⁷¹NRS 533.345(2).

23 ¹⁷²NRS 533.345(2)(3).

24 ¹⁷³See NRS 533.370(2).

25 ¹⁷⁴NRS 533.360.

26 ¹⁷⁵ The only remedy is a petition for judicial review under NRS 534.450.

¹⁷⁶SEROA 237, sec. 14.7.



1 Valley can be used “for any beneficial purpose under Nevada law . . .”¹⁷⁷ Under NRS
2 533.330, “No application shall be for the water of more than one source to be used for more
3 than one purpose.” The only Diamond Valley water subject to the DVGMP is that which is
4 subject to permits or certificates issued for irrigation purposes.¹⁷⁸ The DVGMP allows for
5 the irrigation sourced shares to be used for “any other beneficial purpose under Nevada
6 water law”.¹⁷⁹ The DVGMP fails to take into consideration that the transferee of the shares
7 could use the water for other beneficial uses that may consume the entirety of the water
8 being transferred under the shares without any return water or recharge to the Diamond
9 Valley basin.¹⁸⁰ Water placed to beneficial use for irrigation results in some return or
10 recharge to the aquifer. There is no State Engineer oversight on the impact of the transfer
11 of water shares for the proposed new well or place or manner of use unless the new well
12 or additional withdrawals from an existing well exceeds the volume or flow rate initially
13 approved for the base permit.¹⁸¹

14 The DVGMP and Order 1302 state the DVGMP was modeled after NRS
15 533.345(2)(4).¹⁸² The State Engineer is incorrect. Under the DVGMP, the State Engineer
16 does not review a different use of the water shares transferred because the DVGMP allows
17 water shares to be used for any beneficial purpose under Nevada law, not solely for
18 irrigation purposes.¹⁸³ Under the DVGMP the State Engineer cannot deny the transfer of
19 shares to an existing well, unless the transfer would exceed the well’s flow rate and conflicts

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21 ¹⁷⁷SEROA 234, sec. 13.8.

22 ¹⁷⁸SEROA 228, sec. 8.1

23 ¹⁷⁹SEROA 234, see 13.8.

24 ¹⁸⁰Such beneficial uses could include mining and municipal uses; see NRS 533.030.

25 ¹⁸¹SEROA 237, sec. 14.7, 14.8.

26 ¹⁸²SEROA 237, n.20; SEROA 009.

¹⁸³SEROA 237, sec. 14.7.



1 with existing rights.¹⁸⁴ The State Engineer's vital statutory oversight authority to ensure the
2 temporary change is in the public interest or that the change does not impair water rights
3 held by other persons is otherwise lost. The court finds that the DVGMP and Order 1302.
4 violate NRS 533.325 and NRS 533.345, The court finds Order 1302 is arbitrary and
5 capricious.

6 CONCLUSION

7 The court has empathy for the plight of the ranchers and farmers in Diamond Valley
8 given the distressed state of the basin's aquifer. It is unfortunate that the State Engineer
9 and/or the Nevada Legislature did not vigorously intervene 40 years ago when effects of
10 over appropriation were first readily apparent.¹⁸⁵ That being said, the DVGMP is contrary
11 to Nevada water laws, laws that this Court will not change. The court is not bound by the
12 State Engineer's interpretation of Nevada water law.

13 Order 1302 is arbitrary and capricious.

14 Good cause appearing,

15 IT IS HEREBY ORDERED that the petition for review of Nevada State Engineer's
16 Order No. 1302 filed by Timothy Lee Bailey and Constance Marie Bailey and Fred Bailey
17 and Carolyn Bailey in case No. CV-1902-350, is GRANTED.

18 IT IS HEREBY FURTHER ORDERED that the petition for judicial review filed by
19 Sadler Ranch in case no. CV-1902-349, is GRANTED.

20 IT IS HEREBY FURTHER ORDERED that the petition for judicial review filed by Ira
21 R. Renner and Montira Renner in Case No. CV-1902-348, is GRANTED.

22 ¹⁸⁴SEROA 237, sec. 14.9.

23 ¹⁸⁵As noted by Sadler Ranch, in 1982, State Engineer Peter Morros recognized that
24 "what is happening right now in Diamond Valley [declining groundwater levels affecting
25 spring flows] was predicted . . . It was predicted in 1968 . . . almost to the 'T'".
26 Transcript of proceedings at 42; 17-22, In the Matter of Evidence and Testimony
Concerning Possible Curtailment of Pumpage of Groundwater in Diamond Valley,
Eureka, Nevada (May 24, 1982). Morros also stated "there was a tremendous amount
of pressure put on the State Engineer's Office to issue permits, far in excess of what we
had identified at the time was their perennial yield." *Id.* at 41, 1.6-10. Sadler Ranch
opening brief, 2-3.

DATED this 23rd day of April, 2020.


DISTRICT JUDGE

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SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



EXHIBIT 2

EXHIBIT 2

1 Case No.: CV1902-348 (consolidated with Case Nos. CV1902-349 and CV-1902-350)

2 Dept. No.: 2

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

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TIMOTHY LEE & CONSTANCE MARIE
BAILEY; FRED & CAROLYN BAILEY;
IRA R. & MONTIRA RENNER; and
SADLER RANCH, LLC;

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Petitioners,

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vs.

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

NOTICE OF ENTRY OF ORDER

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Respondent, and

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EUREKA COUNTY; and DIAMOND
NATURAL RESOURCES PROTECTION
AND CONSERVATION ASSOCIATION,
et al.,

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Intervenors.

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TO: All Parties and their Counsel.

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PLEASE TAKE NOTICE that on April 27, 2020, the above entitled court entered its Finding
of Fact, Conclusions of Law, Order Granting Petitions for Judicial Review in the above captioned
action, a copy of which is attached hereto as Exhibit 1.

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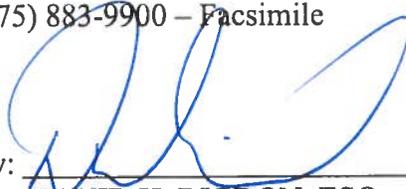
JA2754

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 29th day of April, 2020.

TAGGART & TAGGART, LTD.
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By: 

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JA2755

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, which applies to Case Nos. CV1902-348, -349, and -350, as follows:

[X] By **ELECTRONIC SERVICE**, addressed as follows:

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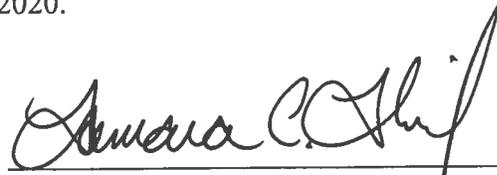
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[X] By **UNITED STATES POSTAL SERVICE**, by depositing for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

The Honorable Gary D. Fairman
801 Clark Street, Suite 7
Ely, Nevada 89301

Beth Mills, Trustee
Marshall Family Trust
HC 62 Box 62138
Eureka, NV 89316

DATED this 29th day of April, 2020.


Employee of TAGGART & TAGGART, LTD.

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EXHIBIT 1

EXHIBIT 1



RELEVANT PROCEDURAL HISTORY

1
2
3 On January 11, 2019, Jason King, P.E., Nevada State Engineer¹ ("State Engineer"),
4 entered Order #1302 ("Order 1302"). On February 11, 2019, Timothy Lee Bailey and
5 Constance Marie Bailey, husband and wife, and Fred Bailey and Carolyn Bailey, husband
6 and wife ("Bailey" or "Baileys" or "petitioners" where referenced collectively with the Sadler
7 Ranch and Renner petitioners) filed a notice of appeal and petition for review of Nevada
8 State Engineer Order no. 1302 in case no. CV-1902-350. On February 11, 2019, Sadler
9 Ranch, LLC, a Nevada limited liability company, and Daniel S. Venturacci,² an individual
10 ("Sadler Ranch" or "petitioners" when used collectively with the Bailey and Renner
11 petitioners) filed a petition for judicial review in case no. CV-1902-349. On February 11,
12 2019, Ira R. Renner, an individual, and Montira Renner, an individual, ("Renner" or
13 "Renners" or "petitioners" when used collectively with Sadler Ranch and Bailey petitioners)
14 filed a petition for judicial review in case no. CV-1902-348. On February 25, 2019, the
15 State Engineer filed a notice of appearance in the three cases. On March 27, 2019,
16 petitioners and respondent, Tim Wilson, P.E., acting State Engineer, Division of Water
17 Resources, Department of Conservation and Natural Resources ("State Engineer") filed
18 a stipulation and order to consolidate cases whereby case no. CV-1902-348 (Renner) was
19 consolidated with case no. CV-1902-349 (Sadler Ranch) and with case no. CV-1902-350
20 (Bailey). On June 7, 2019, the State Engineer filed a summary of record on appeal ("SE
21 ROA"). On September 16, 2019, Sadler Ranch and Renners filed opening brief of
22 petitioners' Sadler Ranch, LLC and Ira R. and Montira Renner ("Sadler Ranch opening
23 brief"). On September 4, 2019, the court entered an order granting motion in limine limiting

24 ¹Subsequent to issuing order no. 1302, Mr. King retired from this position, and Timothy
25 Wilson, P.E. became the acting Nevada State Engineer and the State Engineer.

26 ²Daniel S. Venturacci filed a notice of withdrawal of petition on June 14, 2019.



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the record on appeal in the district court to the State Engineer's record on appeal filed June 7, 2019. On September 16, 2019, the Baileys filed opening brief of Bailey petitioners ("Bailey opening brief"). On October 23, 2019, the State Engineer filed respondent State Engineer's answering brief ("State Engineer's answering brief"). On October 23, 2019, Diamond Natural Resource Protection and Conservation Association ("DNRPCA") filed DNRPCA intervenors' answering brief ("DNRPCA answering brief") and DNRCPA intervenors' addendum to answering brief ("DNRPCA addendum"). Intervenor, Eureka County filed answering brief of Eureka County ("Eureka County's answering brief") on October 23, 2019.³ DNRPCA and Eureka County are collectively referred to a "intervenors". On November 29, 2019, Sadler Ranch filed reply brief of petitioners' Sadler Ranch, LLC and Ira R. and Montira Renner ("Sadler Ranch reply brief") and Sadler Ranch, LLC and Ira R. and Montira Renner's addendum to reply brief ("Sadler Ranch reply addendum"). On November 26, 2019, the Baileys filed reply brief of Bailey petitioners, ("Bailey reply brief").

On December 10-11, 2019, oral arguments were held at the Eureka Opera House, Eureka, Nevada. Sadler Ranch and the Renners were represented by David H. Rigdon, Esq., the Baileys were represented by Christopher W. Mixon, Esq., the State Engineer was represented by Deputy Attorney General, James Bolotin, Esq., Eureka County was represented by Karen Peterson, Esq., and the DNRPCA intervenors were represented by Debbie Leonard, Esq. The court has reviewed the SEROA, the parties' briefs, all papers and pleadings on file in these consolidated cases, the applicable law and facts, and makes

³On September 6, 2019, the court entered an order granting motion to intervene to Diamond Valley Ranch, LLC, a Nevada limited liability company, American First Federal, Inc., a Nevada Corporation, Berg Properties California, LLC, a Nevada limited liability company, and Blanco Ranch, LLC., a Nevada limited liability company. On July 3, 2019, Beth Mills, trustee of the Marshall Family Trust, filed a motion to intervene. The court never entered an order granting her motion to intervene. The motion was timely filed without opposition. The court thus grants Beth Mills' motion to intervene. None of these intervenors filed briefs in this case.



1 the following findings of fact and conclusions of law.

2 II

3 FACTUAL HISTORY

4 It is a matter of accepted knowledge that Nevada currently has and at all relevant
5 times has always had an arid climate. Its also undisputed that the Diamond Valley aquifer
6 has been severely depleted through over appropriation of underground water for irrigation
7 which the State Engineer has allowed to occur for over 40 years without any cessation or
8 reduction. The State Engineer has issued permits and certificates that have allowed
9 irrigators the right to pump approximately 126,000 acre feet ("af") of water per year from
10 the Diamond Valley aquifer in Eureka County and Elko County which has an estimated
11 perennial yield of only 30,000 af of water that can be safely pumped each year.⁴ The
12 126,000 af exclude other groundwater rights such as domestic use, stock water, and
13 mining.⁵ The total duty of ground water rights that impact the acquifer is close to 130,265
14 af.⁶ Of the 126,000 af approved for irrigation pumping, the State Engineer estimates
15 approximately 76,000 af were pumped in 2016, with the annual Diamond Valley pumping
16 exceeding 30,000 af for over of 40 years.⁷

17 The unbridled pumping in Diamond Valley has caused the groundwater level to
18 decline approximately 2 feet annually since 1960.⁸ The over pumping by junior irrigators
19 has caused senior claimed vested water rights holders' naturally flowing springs to dry up
20 in northern Diamond Valley. Big Shipley Springs, to which Sadler Ranch has a claim of

21 _____
22 ⁴SEROA 3.

23 ⁵*Id.*

24 ⁶*Id.*

25 ⁷*Id.*; State Engineer's answering brief 4-5.

26 ⁸SEROA 59, Water Resource Bulletin no. 35 at 26.



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vested rights, Thompson Springs and other springs in northern Diamond Valley have either ceased flowing, as is the case of the Bailey Ranch Spring, or have suffered greatly diminished flow.⁹ In Ruling 6290, State Engineer King extensively discussed diminished spring flow in Diamond Valley concluding that “ground water pumping in southern Diamond Valley is the main cause of stress on groundwater levels in the valley.”¹⁰

To address statewide over appropriation issues, the Nevada Legislature passed Assembly Bill (“AB”) 419 in 2011, which established a critical management area (“CMA”) designation process. Changes to NRS 534.110 allowed the State Engineer to designate CMA basins where withdrawals of groundwater had consistently exceeded the perennial yield of the basin.¹¹ The Legislature also enacted NRS 534.037 in 2011, establishing a procedure for the holders of permits and certificates in a basin to create a groundwater management plan (“GMP”) setting forth the necessary steps to resolve the conditions causing the groundwater basin’s CMA designation and remove the basin as a CMA.¹² On August 25, 2015, the State Engineer issued Order no. 1264 designating the Diamond Valley hydrologic basin (“Diamond Valley”) as the Nevada’s first CMA.¹³ As a result of the CMA designation, if Diamond Valley remains a CMA for 10 consecutive years, the State Engineer shall order that withdrawals of water, “including, without limitation, withdrawals from domestic wells,¹⁴ be restricted in that basin to conform to priority rights, unless a

⁹SEROA 328.
¹⁰State Engineer ruling 6290, 23-31.
¹¹NRS 534.110(7).
¹²NRS 534.037.
¹³SEROA 3, 134-138, 226.
¹⁴The 2019 Nevada Legislature granted relief to domestic wells to withdraw up to 0.5 af of water annually where withdrawals are restricted to conform to priority rights by either court order or the State Engineer. Assembly Bill, 95; NRS 534.110(9).



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groundwater management plan has been approved for the basin pursuant to NRS 534.037.”¹⁵ This process is curtailment.

Groundwater right holders and vested water right holders began to meet in March, 2014, regarding the creation of a Diamond Valley GMP (“DVGMP”).¹⁶ The intent of the meetings and any plan was to reduce pumping and stabilize groundwater levels in Diamond Valley to avoid curtailment of water by priority.¹⁷ Although many options were considered, ultimately the DVGMP was in large part “influenced significantly by a water allocation system using a market based approach similar to that authored by professor Michael Young.”¹⁸ Professor Young’s report, *Unbundling Water Rights: A Blueprint for Development of Robust Allocation Systems in the Western United States* (2015) was described by Young as “a blueprint ready for pilot testing in Nevada’s Diamond Valley and Humboldt Basins.”¹⁹ The Young report was “developed in consultation with water users, administrators, and community leaders in Diamond Valley and Humboldt Basin.”²⁰ The Young report describes itself as a “blueprint ready for testing in Diamond Valley” and “if implemented, the blueprint’s reforms would convert prior appropriation water rights into systems that stabilize water withdrawals to sustainable limits, allow rapid adjustment to changing water supply conditions, generate diverse income systems, and improve environmental outcomes.”²¹ “If implemented properly, no taking of property rights

¹⁵NRS 534.110(7), SEROA 225.

¹⁶SEROA 226.

¹⁷SEROA 226, 277-475.

¹⁸SEROA 227 N8, 294.

¹⁹Bailey reply addendum 2, SEROA 294.

²⁰Bailey reply addendum 3.

²¹*Id.* at 1.



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occurs."²²

The DVGMP, a hybrid²³ of Professor Young's blueprint, excludes and does not apply to vested water rights, including spring vested rights, that have been mitigated with groundwater rights by the State Engineer, court order, ruling or decree.²⁴ Also excluded from the DVGMP are domestic wells, stock water, municipal, commercial groundwater rights and mining groundwater rights without an irrigation source permit.²⁵ The DVGMP applies to permit or certificated underground irrigation permits and underground irrigation rights that have an agricultural base right in Diamond Valley.²⁶

The DVGMP water share formula factors a priority to the permit/certificate underground irrigation rights and converts the rights into a fixed number of shares.²⁷ The spread between the most senior and junior groundwater rights is 20 %.²⁸ The shares are used on a year-to-year basis and groundwater is allocated to each share annually in a measurement of acre-feet per share. Existing shares for each water right are fixed and water rights users may continue to use water in proportion to their water rights and seniority.²⁹ The conversion of water rights to shares under the DVGMP formula does not provide for each acre-foot of water under a permit/certificate to be converted to one

²²*Id.*

²³SEROA 313.

²⁴SEROA 5, 220, 229, 240-241.

²⁵SEROA 240-241.

²⁶SEROA 11-12, 218, 220, 228-229.

²⁷SEROA 5, 218, 232.

²⁸SEROA 232.

²⁹SEROA 218, 234-235.



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share.³⁰ Using a “priority factor” applied to each acre foot of a water right in a permit or certificate, the most senior water right receives a priority factor of 1.0 and the most junior right receives a priority factor of 0.80. This formula results in a reduction in the ultimate shares allocated based on an arbitrary range of a 1% reduction for the most senior water right to a 20% reduction for the most junior water right.³¹ With the “priority factor” always being less than 1, the share conversion always results in less than 1 share for each former acre foot of water as illustrated in Appendix F to the DVGMP.³² The priority factor causes junior water rights to be converted to fewer shares per acre-foot than senior water rights’ holders. Significantly, the formula of taking priority as a basis to reduce the shares awarded to senior rights’ holders by using a designated percentage less than the shares granted to the junior rights’ holders does not give the senior rights’ holders all of the water to which their priority permit/certificate entitles the holders to use for irrigation purposes. The result of the DVGMP formula is that senior water rights’ holders receive fewer shares than one per acre foot. Thus, senior water rights’ holders cannot beneficially use all of the water which their permit/certificate entitles them to use. The DVGMP reduces the senior water rights by annually reducing their allocation of water for each share.³³ Ultimately, for the most senior user, the acre-feet per share allocations are reduced from 67 acre-feet per share in year 1 to 30 acre feet per share in year 35 of the DVGMP³⁴ and for the most junior user, allocations are reduced from 54 acre feet in year 1 to 24 acre feet in year 35 of the

³⁰SEROA 232.

³¹*Id.*; The DVGMP formula is: total volume of water right X priority factor = total groundwater shares.

³²SEROA 499-509.

³³SEROA 234-236, 510 (appendix G to DVGMP).

³⁴*Id.* For example, in the Bailey’s case, their 5 senior groundwater rights entitle them to use 1,934.116 af. In the first year of the DVGMP they are reduced to 1,250.4969 af, and by year 35, the Baileys are reduced to 467.7960 af.



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DVGMP.³⁵ The DVGMP proposes a gradual reduction in pumping to a level of 34,200 af at the end of 35 years. For 35 years the pumping in Diamond Valley will exceed the 30,000 af perennial yield.³⁶

The DVGMP provides that all annual allocations of water be placed in to an account for each water user and allows the “banking” of unused water in future years, subject to the annual Evapotranspiration “(ET)” depreciation of the banked water which accounts for natural losses of water while the water is stored in an underground aquifer.³⁷ The DVGMP allows the current water allocations and the banked allocations of the water shares to be used, sold, or traded among the water share holders in Diamond Valley for purposes other than irrigation so long as the base right is tied to irrigation.³⁸ The DVGMP authorizes the State Engineer to review a share transfer among holders or an allocation to a new well or place or manner of use if the transfer would cause the new well to exceed the pumping volume of the original water right permitted for the well or if the excess of water pumped beyond the original amount of volume allowed for the well conflicted with existing rights.³⁹

Sadler Ranch claims pre-statutory vested rights to the waters flowing from springs that are senior in priority to all permits/certificates issued by the State Engineer.⁴⁰ It is undisputed by the State Engineer that Sadler Ranch's spring flows have diminished as a

³⁵*Id.*, SEROA 5, 218.

³⁶SEROA 510. See State Engineer's oral argument hearing transcript pg. 152.

³⁷*Id.*

³⁸SEROA 5, 218, 234-235.

³⁹*Id.*

⁴⁰Sadler Ranch opening brief 4, Order of Determination at 164-175, In the Matter of the Determination of the Relative Rights in and to all Waters of Diamond Valley, Hydrographic Basin no. 10-153, Elko and Eureka Counties, Nevada (January 31, 2020).



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result of over-pumping by junior irrigators in southern Diamond Valley. The Renners, who also have a senior priority date, are experiencing impacts to their springs due to continual groundwater declines.⁴¹ The Baileys hold senior irrigation groundwater rights consisting of Permit no. 22194 (cert. 6182) for 537.04 afa with a March 7, 1960 priority; Permit 22194 (cert. 6183) for 622.0 afa with a March 7, 1960 priority; Permit 55727 (cert. 15957) for 20.556 afa with a March 7, 1960 priority; Permit 28036 (cert. 8415) for 244.0 afa with a May 3, 1960 priority; Permit 48948 (cert. 13361) for 478.56 afa with a May 3, 1960 priority; and Permit 28035 (cert. 8414) for 201.56 afa with a January 23, 1974 priority.⁴² The Baileys also claim vested and/or permitted water rights and stock water rights.⁴³

All permits/certificates issued by the State Engineer have the cautionary language, "this permit is issued subject to all existing rights on the source."⁴⁴ In Nevada, all appropriations of groundwater are "subject to existing rights to the use thereof."⁴⁵

After a public hearing held on October 30, 2018, the State Engineer issued Order 1302. Order 1302 states, "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."⁴⁶ The State Engineer and all intervenors who filed briefs and orally argued this

⁴¹Sadler Ranch opening brief 4, *Id.* 152-164; SEROA 593.

⁴²Bailey opening brief 4, SEROA 500,506.

⁴³Bailey opening brief 4, SEROA 536-538.

⁴⁴Sadler Ranch opening brief 4; see certificates/permits listed in SEROA 499-509.

⁴⁵NRS 534.020.

⁴⁶SEROA 6.

1 case agree that the DVGMP deviates from the prior appropriation doctrine.⁴⁷

2 III

3 DISCUSSION

4 STANDARD OF REVIEW

5 A party aggrieved by any order or decision of the State Engineer may have
6 the order or decision reviewed in a proceeding for that purpose in the nature of an
7 appeal.⁴⁸ The proceedings must be informal and summary.⁴⁹ On appeal, the State
8 Engineer's decision or ruling is prima facie correct, and the burden of proof is upon the
9 person challenging the decision.⁵⁰ The court will not pass upon the credibility of witnesses
10 or reweigh the evidence, nor substitute its judgment for that of the State Engineer.⁵¹ With
11 respect to questions of fact, the reviewing court must limit its determination to whether
12 substantial evidence in the record supports the State Engineer's decision.⁵² When
13 reviewing the State Engineer's findings, factual determinations will not be disturbed on
14 appeal if supported by substantial evidence.⁵³ Substantial evidence has been defined as
15 "that which a reasonable mind might accept as adequate to support a conclusion."⁵⁴ With

16 _____
17 ⁴⁷State Engineer's answering brief 26, DNRPCA intervenors' answering brief 11-13,
18 Eureka County's answering brief 5, 11.

19 ⁴⁸ NRS 533.450(1).

20 ⁴⁹ NRS 533.450(2).

21 ⁵⁰ NRS 533.450(10).

22 ⁵¹ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1974) (citing *N. Las Vegas v.*
23 *Pub. Serv. Comm'n*, 83 Nev. 279, 429 P.2d 66 (1967)).

24 ⁵² *Town of Eureka v. State Engineer*, 108 Nev. 163, 165, 826 P.2d 948, 949 (1997)
25 (citing *Revert* at 786).

26 ⁵³ *State Engineer v. Morris*, 107 Nev. 694, 701, 819 P.2d 203, 205 (1991).

⁵⁴ *Bacher v. State Engineer*, 122, Nev. 1110, 1121, 146 P.3d 793, 800 (2006). (internal
citations omitted).





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regard to purely legal questions, the standard of review is de novo.⁵⁵ Findings of an administrative agency will not be set aside unless they are arbitrary and capricious.⁵⁶ The court must review the evidence in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion.⁵⁷ A finding is arbitrary if "it is made without consideration of or regard for facts, circumstances fixed by rules or procedure."⁵⁸ A decision is capricious if it is "contrary to the evidence or established rules of law."⁵⁹

"The State Engineer's ruling on questions of law is persuasive, but not entitled to deference."⁶⁰ The presumption of correctness accorded to a State Engineer's decision "does not extend to 'purely legal questions, such as 'the construction of a statute, as to which the reviewing court may undertake independent review.'"⁶¹

A. THE STATE ENGINEER'S PUBLIC HEARING AFFORDED PETITIONERS DUE PROCESS

On October 30, 2018, the State Engineer, after giving notice required by statute,⁶² held a public hearing in Eureka, Nevada. The public hearing was followed by a written public comment period ending November 2, 2018. On June 11, 2019, the State Engineer filed a motion in limine which was briefed by all parties. Sadler Ranch, the Renners, and

⁵⁵ *In re Nevada State Engineer Ruling No. 5823*, 128 Nev. 232, 238, 277 P.3d 449 (2012.)

⁵⁶ *Pyramid Lake Paiute Tribe v. Washoe County*, 112 Nev. 743, 751, 918 P.2d 697, 702 (1991).

⁵⁷ *Shetakis v. State, Dep't Taxation*, 108 Nev. 901, 903, 839 P.2d 1315, 1317 (1992).

⁵⁸ Black's Law Dictionary, Arbitrary (10th ed. 2014).

⁵⁹ Black's Law Dictionary, Capricious (10th ed 2014).

⁶⁰ *Sierra Pac. Indus. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3d 37, 40 (2019)

⁶¹ *In Re State Engineer Ruling no. 5823 at 239*, (internal citations omitted).

⁶²NRS 534.037(3).



1 the Baileys argued that their due process rights were violated, alleging the State Engineer
2 failed to hold a proper evidentiary hearing where witnesses could be subject to cross-
3 examination and evidence challenged.⁶³ This Court entered an order granting motion in
4 limine on September 4, 2019. In its order, the court specifically found that “the public
5 hearing process to consider the GMP under NRS 534.035 provided notice and the
6 opportunity for anyone to be heard and to offer evidence, thus satisfying due process
7 standards.”⁶⁴ The court’s position has not changed. The court incorporates the entirety
8 of the order granting motion in limine in these findings of fact and conclusions of law. The
9 court finds that petitioners were afforded due process in the public hearing held on October
10 18, 2018, pursuant to NRS 534.037(3).

11 B. THE STATE ENGINEER CONSIDERED APPLICABLE NRS 534.037(2) FACTORS
12 PRIOR TO APPROVING THE DVGMP

13 In determining whether to approve a GMP, NRS 534.037(2) requires the State
14 Engineer to consider: (a) the hydrology of the basin; (b) the physical characteristics of the
15 basin; (c) the geographic spacing and location of the withdrawals of groundwater in the
16 basin; (d) the quality of the water in the basin; (e) the wells located in the basin, including
17 domestic wells; (f) whether a groundwater management plan already exists to the basin;
18 (g) any other factors deemed relevant by the State Engineer. The State Engineer must
19 ultimately decide whether a proposed GMP “sets forth the necessary steps for removal of
20 the basin’s designation as a CMA.⁶⁵ Petitioners argue that (1) the State Engineer failed to
21 consider the NRS 534.037(2) factors, and (2) that the DVGMP failed to demonstrate that
22 decreased pumping over the 35 year life of the plan will result in “stabilized groundwater

23 ⁶³Sadler Ranch opening brief 34; Sadler Ranch opposition to motion in limine filed June
24 24, 2019; Bailey opposition to motion in limine filed June 24, 2019.

25 ⁶⁴Order granting motion in limine 10.

26 ⁶⁵NRS 534.037(1).



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levels"⁶⁶ based on the evidence presented at and after the public hearing. Petitioners submit that the DVGMP fails to bring the Diamond Valley basin into equilibrium within 10 years and over pumping will continue even at the 35th year of the plan.⁶⁷ Order 1302, describes the State Engineer's review of the NRS 534.037(2) factors in relation to the DVGMP.⁶⁸ The DVGMP's review of the factors is in Appendices D-I.

The State Engineer specifically rejected petitioners' arguments that the DVGMP failed to reach an equilibrium, that groundwater modeling and hydro geologic analysis must be the basis for the DVGMP's determination of pumping reduction rates and pumping totals at the plan's end date, and that the DVGMP pumping reductions would not bring withdrawals to the perennial yield.⁶⁹ The record shows that the State Engineer considered evidence of the NRS 534.037(2) factors as set forth in appendix D to the DVGMP.⁷⁰ Sadler Ranch's assertion that their expert, David Hillis' report questioning DVGMP's viability should be accepted by the State Engineer does not require the State Engineer to accept Mr. Hillis' findings and conclusions. The State Engineer was satisfied that the DVGMP would cause the Diamond Valley basin to be removed as a CMA at the end of 35 years. The State Engineer is not required to undertake an extensive factor analysis in his order if he is otherwise satisfied that sufficient facts and analysis are presented in the petition and the proposed DVGMP from which he could make a determination whether to approve or reject the DVGMP.

⁶⁶Sadler Ranch opening brief 9-18, Bailey opening brief 30-33, Sadler Ranch reply brief 15-20.

⁶⁷*Id.*

⁶⁸SEROA 14-17.

⁶⁹SEROA 17-18.

⁷⁰SEROA 17-18, 223, 227-28, 476-496.



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Petitioners' contention that "the Legislature determined that a GMP should accomplish its goals within ten years, not thirty-five" is misplaced.⁷¹ First, NRS 534.110(7) states that if a basin has been designated as a CMA for 10 consecutive years, the State Engineer shall order withdrawals based on priority, **unless** a GMP has been approved pursuant to NRS 534.037 (emphasis added). NRS 534.110(7) does not state a GMP must accomplish the goal of equilibrium in a CMA basin within 10 years from the GMP approval. An undertaking as immense as bringing a depleted aquifer into balance could easily surpass 10 years depending on the extent of harm to the aquifer. Sadler Ranch misconstrues Assemblyman Goicoechea's statement to the Legislature that, "[again] you have ten years to accomplish your road to recovery."⁷² The court views Assemblyman Goicoechea's words as meaning that once a basin is designated as a CMA, a 10 year clock starts wherein a GMP must be approved within the 10 year period, and if not, curtailment by priority must be initiated by the State Engineer. A GMP "must set forth the necessary steps for removal of the basin's designation as a critical management area"⁷³ not that equilibrium in the CMA basin must be accomplished within 10 years. If the State Engineer finds, which he did here, that the DVGMP sets forth the necessary steps for removal of the basin as a CMA, he may approve a GMP even if the DVGMP exceeds a 10 year period.

Petitioners claim the DVGMP will allow for continued depletion of the Diamond Valley aquifer.⁷⁴ The court agrees with petitioners. However, the State Engineer, using his knowledge and experience, and based on the evidence presented at the public hearing,

⁷¹Sadler Ranch opening brief 13.

⁷²Minutes of Assmb. Comm. on Gov't Affairs, 69 (March 30, 2011).

⁷³NRS 534.037(1).

⁷⁴Sadler Ranch opening brief 9-18, Bailey opening brief 30-33, Sadler Ranch reply brief 15-20.



1 including the DVGMP and appendices, rejected petitioners' arguments that the DVGMP
2 would not enable the basin to be removed as a CMA. Again, this Court will not reweigh
3 the evidence presented nor substitute its judgment for that of the State Engineer. The
4 court finds that there is substantial evidence in the record to support the State Engineer's
5 approval of the DVGMP as achieving the goal of removing the Diamond Valley basin from
6 CMA status. The court finds that there is substantial evidence in the record to support the
7 State Engineer's findings that the DVGMP contained the necessary relevant factors in NRS
8 534.037(2) to approve the DVGMP.⁷⁵

9 C. THE STATE ENGINEER RETAINS HIS AUTHORITY TO MANAGE THE DIAMOND
10 VALLEY BASIN

11 Notwithstanding his approval of the DVGMP, the State Engineer is not precluded
12 from taking any necessary steps in his discretion to protect the Diamond Valley aquifer,
13 including, ordering curtailment by priority, at any time during the life of the DVGMP if he
14 finds that the aquifer is being further damaged. NRS 534.120(1) gives the State Engineer
15 discretion to "make such rules, regulations and orders as are deemed essential for the
16 welfare of the area involved." Order 1302 specifically found the DVGMP did not waive "any
17 authority of the State Engineer to enforce Nevada water law."⁷⁶ It would be ludicrous to
18 find that the State Engineer was prohibited from taking whatever action was necessary to
19 prevent a catastrophic result in Diamond Valley during the life of the DVGMP, including
20 curtailment, regardless of the provisions built into the DVGMP that otherwise trigger his
21 plan review.⁷⁷ The court finds the DVGMP does not limit the State Engineer's authority to

22 ⁷⁵This finding is narrowly limited to the State Engineer's fact finding only in relation to
23 the NRS 534.037(2) factors and that he found the DVGMP would allow the basin to be
24 removed as a CMA after 35 years, not whether the DVGMP and Order 1302 violates
25 Nevada law in other respects..

26 ⁷⁶SEROA 18.

⁷⁷See SEROA 235, sec. 13.13; 246, sec. 26.



1 manage the Diamond Valley basin pursuant to NRS 534.120(1).

2 D. ORDER 1302 DOES NOT VIOLATE NEVADA'S AQUIFER STORAGE RECOVERY
3 ("ASR") STATUTE

4 An ASR project under Nevada law contemplates the recharge, storage, and
5 recovery of water for future use for which a permit is required.⁷⁸ The DVGMP does not
6 include a proposed source of water for recharge into the Diamond Valley aquifer, the
7 quantity of water proposed to be recharged into the aquifer, nor any stated purpose for
8 the storage of water for future use.⁷⁹ The DVGMP uses the term "banking" as meaning
9 unused shares of water in a year may be carried forward or "banked" for use in the
10 following year if appropriate. The State Engineer held that the DVGMP provision to carry
11 over water shares for use in a subsequent year was outside the scope of NRS 534.260 to
12 534.350 as not being a project involving the recharge, storage and recovery of water
13 subject to statutory regulations,⁸⁰ but "to allow flexibility by users to determine when to use
14 their limited allocation and to encourage water conservative practices."⁸¹ The State
15 Engineer's finding is supported by substantial evidence in the record. The court finds the
16 term "banked" when used in the manner as stated in the DVGMP to mean water shares
17 that are not used but saved for use in a subsequent year.⁸² The court finds the DVGMP is
18 not required to comply with and does not violate NRS 534.250 to NRS 534.340.
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22 ⁷⁸NRS 534.250-534.340.

23 ⁷⁹*Id.*

24 ⁸⁰SEROA 8, 9.

25 ⁸¹*Id.*

26 ⁸²SEROA 234, sec. 13.9.



1 E. PETITIONERS FAILED TO SHOW THAT A VIOLATION OF NRS 534.037(1)
2 WHEN SEEKING PETITION APPROVAL AFFECTED THE VOTE RESULT

3 A GMP petition submitted to the State Engineer for approval “. . . must be signed
4 by a majority of the holders of permits or certificates to appropriate water in the basin that
5 are on file in the Office of the State Engineer . . .”⁸³ The DVGMP petition was thus required
6 to be signed by a majority of the holders of permits or certificates for surface rights, stock
7 water rights, and underground rights in the Diamond Valley basin.

8 Order 1302 found there were 419 water right permits or certificates in the Diamond
9 Valley basin at the time the DVGMP petition was filed.⁸⁴ By limiting the computation to
10 those signatures from a confirmed owner of record, the State Engineer found 223 of 419
11 permits or certificates,⁸⁵ or 53.2 percent, was a majority of the permits or certificates in the
12 basin.⁸⁶ The DVGMP petition was only sent to groundwater permit holders to be
13 considered and voted upon.⁸⁷ The State Engineer argues that since the procedure for
14 approving a GMP is found in Chapter 534 related to underground water that only
15 permit/certificate holders for underground irrigation were required to vote.⁸⁸ This position
16 misconstrues the clear language of NRS 534.037(1) . The Baileys assert that the DVGMP
17 petition should have been submitted to all vested and surface right or other permit and
18 certificate holders for consideration and vote.⁸⁹ The court agrees that all certificate and

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⁸³NRS 534.037(1).

20 ⁸⁴SEROA 3.

21 ⁸⁵Those signatures by a confirmed owner of record. *Id.*

22 ⁸⁶SEROA 3.

23 ⁸⁷SEROA 148.

24 ⁸⁸State Engineer’s answering brief 25, “. . . surface water rights and vested rights were
25 properly omitted from the State Engineer’s calculation for majority approval under NRS
26 534.037(1) . . .”

⁸⁹Bailey opening brief 33-34, Bailey reply brief 17-19.



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permit holders should have had the petition submitted to them. However, NRS 534.037(1) does not require a petition to be submitted to vested right holders. NRS 534.037(1) does not restrict petition approval to only underground permit or certificate holders. The exclusion of all surface permit and certificate holders or other certificate holders from considering whether to approve the DVGMP or not was incorrect and violated NRS 534.037(1). The court so finds. But, petitioners have not shown that they or other holders of permits or certificates to appropriate water in the basin were not included in the State Engineer's count of 419 water right permits or certificates in the Diamond Valley basin.⁹⁰

There is no evidence in the ROA that the State Engineer excluded any holders of permits or certificates in the 419 count. Although petitioners and others similarly situated may not have been presented with the petition to approve the DVGMP, the fact that they would not have signed the petition is irrelevant as a majority of the holders of permits or certificates in the basin did sign the petition. The court finds substantial evidence in the record to support the State Engineer's determination that the petition was signed by a majority of the permit or certificate holders in the Diamond Valley basin.

At the oral argument hearing, Sadler Ranch and the Renners untimely challenged the accuracy of the vote approving the DVGMP petition. First, they contend that NRS 534.037(1) requires that votes be counted by the number of people who own the permits/certificates, not the number of permits. The statute's focus is counting by the permit/certificates. The State Engineer limited his count to the permits and certificates, and compared petition signatures with the confirmed owner of record in his office files.⁹¹ Under petitioners' interpretation,⁹² if one permit or certificate was owned by 25 owners, there

⁹⁰SEROA 3.

⁹¹SEROA 3.

⁹²Sadler Ranch's example was that the Moyle Family has 5 people who own 50 permits thereafter the State Engineer should have only counted 5 votes instead of 50.



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should be 25 votes counted. This method of assigning votes improperly places the vote calculation on the number of owners of certificates or permits rather than the number of permits or certificates in the Diamond Valley basin. The court rejects Sadler Ranch's and the Renner's interpretation of the method by which votes must be counted under NRS 534.037(1). Second, they contend the record fails to support how the State Engineer verified petition signatures or what rights were counted as eligible to vote. The court is satisfied that the State Engineer reviewed his office's records, confirmed the owner(s) of record with the signatures on the petition as representing the owner(s) of record in his office, and then counted the permits or certificates, not the owners of the certificates or permits.⁹³ Third, Sadler Ranch and the Renners state some signatures were not by the owner of record. There is no requirement under the NRS 534.037(1) that an individual representing a permit or certificate holder could not sign the petition for the holder. No challenges exist in the record by any permit or certificate holders claiming that their vote was fraudulently cast by someone not authorized to vote on their behalf. Fourth, Sadler Ranch and the Renners suggest that the permit or certificate should not have been counted if only signed by 1 of the owners of record. Again, nothing in the statute requires the petition be signed by each owner of a permit or certificate. Again, there are no challenges in record from any co-owners alleging the vote of their certificate or permit was invalid because not all of the record owners signed the petition. Last, they cite that the DVGMP tally sheet had double and triple counted votes. This may be so, but the State Engineer's method of calculation represented the true count of votes. Sadler Ranch's and the Renner's objections are rejected. The court finds substantial evidence in the record to support the State Engineer.

⁹³SEROA 3-4.



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F. ORDER 1302 VIOLATES THE BENEFICIAL USE STATUTE

In Nevada, "beneficial use shall be the basis, the measure and the limit of the right to the use of the water"⁹⁴ "Beneficial use depends on a party actually using the water."⁹⁵ The DVGMP does not require prior beneficial use of water in order for a permit holder to receive shares under the DVGMP formula.⁹⁶ Petitioners contend that any permits or certificates that are in abandonment status should not be allowed water shares. The State Engineer found that because ". . . time is of the essence for rights holders to get a GMP approved" . . . "it would be a lengthy process to pursue abandonment."⁹⁷ The State Engineer also cites the notice of non-use provisions required by NRS 534.090 as potentially causing owners of unused water rights to resume beneficial use, and exacerbate the water conditions in Diamond Valley.⁹⁸ The court agrees such a situation could occur, however, the State Engineer's analysis fails to address that permit holders who have done nothing to beneficially use water will receive just as many, if not more, shares of water will as holders of water rights who have placed water to beneficial use. The GMP gifts to permit holders, who have done nothing to place their water to beneficial use, valuable water shares to trade, lease, or sell to others in Diamond Valley.

Of the 126,000 af of water rights in Diamond Valley, currently there is only 76,000 af of actual beneficial use.⁹⁹ Under the DVGMP those permit holders who have never proved up their water by placing it to beneficial use could potentially receive more water

⁹⁴NRS 533.035.

⁹⁵*Bacher v. State Engineer*, 122 Nev. 1110, 1116, 146 P.3d 793 (2006).

⁹⁶SEROA 232-236, sec. 12,13

⁹⁷SEROA 9.

⁹⁸*Id.*

⁹⁹SEROA 2.



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than those holders who have placed their water to beneficial use. The DVGMP allocates the total amount of 76,000 af actually being pumped to 126,000 af of irrigation ground water rights in good standing in Diamond Valley all of which will receive shares under the DVGMP formula.¹⁰⁰ By example, a farmer with a center pivot on a 160 acre parcel at 4 af per acre would be permitted for 640 af. Upon prove up, if he actually watered less than the 160 acre parcel because watering by using a center pivot does not water the 4 corners of a parcel, he may only prove up the water right for 512 af and receives a certificate for this amount. Another farmer in Diamond Valley, who has a 160 acre parcel at 4 af per acre but who has never proved up the beneficial use of the water and stands in a forfeiture status, receives the full 640 af of water. In the 1st year of the DVGMP, the farmer who has a permit for 640 af, but never has proved it up through beneficial use, actually received 85 af more water than the farmer who proved up beneficial use on the same size parcel. When transferred into shares under the DVGMP, the farmer who has not proved up his permit receives windfall of water shares to sell or trade. The DVGMP acknowledges that some water rights in good standing have not been used and tied to corners of irrigation circles and that most, but not all, "paper water" is tied to currently used certificates or permits.¹⁰¹ Even though the DVGMP caps the amount of water the first year of the plan at the "ceiling of actual pumping (76,000 afa)",¹⁰² it remains that the 76,000 afa will be allocated to some permits who have not proved up beneficial use.

Under Nevada water law, a certificate, vested, or perfected water right holder enjoys the right to and must beneficially use all of the water it has proved up. The DVGMP rewards permit holders who have not placed water to beneficial use, of which there are

¹⁰⁰SEROA 218, 219, 221, 232-33 3m 461, 465.

¹⁰¹SEROA 467.

¹⁰²SEROA 12.



1 approximately 50,000 af in Diamond Valley.¹⁰³ The DVGMP also allows the banking of
2 unperfected paper water rights for future use which can be sold, traded or leased.¹⁰⁴ The
3 court finds that Order 1302 violates the NRS 533.035. The court finds Order 1302 is
4 arbitrary and capricious.

5 G. THE DVGMP IMPAIRS VESTED RIGHTS IN VIOLATION OF NRS 533.085(1)

6 It is undisputed that the Baileys and Renners have senior vested surface water
7 rights that have been adversely impacted by the 40 years plus of overpumping¹⁰⁵.
8 Respondent and intervenors agree that the DVGMP was not developed for mitigation
9 purposes, but to reduce pumping, bring equilibrium to the Diamond Valley aquifer in 35
10 years, and cause the CMA designation to be removed.¹⁰⁶ The State Engineer's position
11 is that the GMP "is not a mitigation plan, and NRS 534.037 does not require the
12 proponents of a groundwater management plan or the State Engineer to consider the
13 alleged effects on surface water rights or mitigate those alleged effects."¹⁰⁷ The State
14 Engineer is wrong. A GMP must consider the effect it will have on surface water rights.
15 In *Pyramid Lake Paiute Tribe v. Ricci* 126 Nev. 531.524 (2010), the Nevada Supreme
16 Court acknowledged the State Engineer's ruling that "[t]he perennial yield of a hydrological
17 basin is the equilibrium amount or maximum amount of water that can be safely used
18 without depleting the source." Moreover, [t]he maximum amount of natural discharge that
19 can be feasibly captured . . . [is the] perennial yield . . . the maximum amount of withdrawal

20 _____
21 ¹⁰³SEROA 2, 9, 10.

22 ¹⁰⁴SEROA 234; see sec. 13.2

23 ¹⁰⁵Sadler Ranch had impacted senior vested rights that have been mitigated by
24 certificate.

24 ¹⁰⁶State Engineer's answering brief, 36.

25 ¹⁰⁷*Id.*. This position is also shared by the DNRPCA intervenors. DNRPCA answering
26 brief, 24; and Eureka County, Eureka County answering brief, 22.



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above which over appropriation occurs." *State Engineer v. Morris*, 107 Nev. 699 703 (1991).The DVGMP on its face fails to reduce the harm caused by overpumping and aggravates the depleted water basin.

A GMP developed under NRS 534.037 is not required to mitigate adversely affected surface water rights, but it cannot impair those rights.NRS 533.085(1) provides, "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, 2013." NRS 534.100 reads, "Existing water rights to the use of underground water are hereby recognized. For the purpose of this chapter a vested right is a water right on underground water acquired from an artesian or definable aquifer prior to March 22, 1913."

The DVGMP authorizes continuous pumping beginning with 76,000 af in year one, reducing pumping to 34,200 af at the end of 35 years,¹⁰⁸ clearly in excess of the 30,000 af perennial yield in the Diamond Valley aquifer.¹⁰⁹ The DVGMP and Order 1302 acknowledge that there will be ongoing additional withdrawals of water from the basin of approximately 5,000 af annually of non-irrigation permits.¹¹⁰ Venturacci, Sadler Ranch and the Bailey's are entitled to withdraw an approximate 6,400 af annually.¹¹¹ The State Engineer admits that neither groundwater modeling nor hydro geologic analysis were the basis for the DVGMP's "determination of pumping reduction rates and target pumping at

¹⁰⁸SEROA 510.

¹⁰⁹SEROA 3.

¹¹⁰*Id.*

¹¹¹Permits 82268, 81270, 63497, 81825, 82572, 87661.



1 the end of the plan"¹¹² but that "the pumping reduction rate was selected by agreement of
2 the GMP authors, . . ."¹¹³ The State Engineer's reasoning that NRS 534.037 does not
3 require a GMP "to consider alleged effects on surface water rights" is a misunderstanding
4 of Nevada's water law. The DVGMP's annual pumping allocation will certainly cause the
5 aquifer groundwater level to decline with continuing adverse effects on vested surface
6 rights. The court finds that the DVGMP and Order 1302 impair senior vested rights. The
7 court finds that Order 1302 is arbitrary and capricious.

8 **ESTOPPEL ISSUE**

9 Contrary to the position of Eureka County, petitioners are not estopped from making
10 claims that the DVGMP impacts their vested rights.¹¹⁴ No facts are present in the ROA that
11 any respondent relied to their detriment upon representations or any petitioners or that any
12 other estoppel elements are present in the ROA.¹¹⁵

13 I. **ORDER 1302 VIOLATES NEVADA'S DOCTRINE OF PRIOR APPROPRIATION**

14 The history of prior appropriation in the Western states dates to the mid-1800's and
15 has been well chronicled in case law. Notably, In *Re Water of Hallett Creek Stream*
16 *System*,¹¹⁶ discusses at length the development of the doctrine of prior appropriation, "first
17 in time, first in right", with its genesis linked to the early California gold miners' use of water
18 and a local rule of priority as to the use of water. Nevada has long recognized the law of
19 prior appropriation.¹¹⁷ The priority of a water right is the most important feature.¹¹⁸ Court's

20 ¹¹²SEROA 16.

21 ¹¹³*Id.*

22 ¹¹⁴Eureka County answering brief 22-23.

23 ¹¹⁵*Torres v. Nev. Direct Ins. Co.*, 131 Nev. 531, 539, 353 P.3d 1203 (2015). (internal
24 citations omitted).

25 ¹¹⁶749 P.2d 324, 330-34 (Cal 1988) cert. denied 488 U.S. 834 (1988).

26 ¹¹⁷*Steptoe Livestock Co. v. Gulley*, 53 Nev 163, 171-173, 205 P.772 (1931); *Jones v. Adams* 19 Nev. 78, 87, (1885).

¹¹⁸See *Gregory J. Hobbs, Jr., Priority: The Most Misunderstood Stick in the Bundle*, 32
Envtl .L. 37(2002).



1 have stated, "priority in a water right [as] property in itself."¹¹⁹ Although, ". . . those holding
2 certificates, vested, or perfected water rights do not own or acquire title to the water, they
3 merely enjoy the right to beneficial use,"¹²⁰ the Nevada Supreme Court has stated, "a water
4 right 'is regarded and protected as real property.'¹²¹ The Nevada Supreme Court
5 recognized as well established precedent "that a loss of priority that renders rights useless
6 'certainly affects the rights' value and 'can amount to a defacto loss of rights.'¹²² The prior
7 appropriation doctrine ensures that the senior appropriator who has put its water to
8 beneficial use has a right to put all of the water under its permit/certificate to use and that
9 right is senior to all water rights holders who are junior. This doctrine becomes critically
10 important during times of water scarcity, whether temporary, or as a result of prolonged
11 drought. This is certainly the case in Diamond Valley. With the security attached to a
12 senior priority right to beneficially use all of the water associated with the right also comes
13 obvious financial value not only to the current water right holder, but to any future owner
14 of that senior right. The loss or reduction of any water associated with the senior right can
15 significantly harm the holder.

16 The State Engineer found that, "the GMP still honors prior appropriation by
17 allocating senior rights a higher priority than junior rights."¹²³ The court disagrees. The
18 DVGMP reduces the amount of water it allocates to senior rights' holders in the formula
19 for shares effectively ignoring 150 years of the principle of "first in time, first in right"¹²⁴
20 which has allowed a senior right holder to beneficially use all of water allocated in its right

21 ¹¹⁹*Colo. Water Conservation Bd. v. City of Central*, 125 P.3d 424, 434 (Colo. 2005).

22 ¹²⁰*Sierra Pac. v. Wilson*, 135 Nev. Adv. Op. 13, 440 P.3d 37, 40, (2019), citing *Desert*
23 *Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 994 P.2d 835, 842 (1997).

24 ¹²¹*Town of Eureka*, 167.

25 ¹²²*Wilson v. Happy Creek*, 135 Nev. Adv. Op. 41, 448 P.3d 1106, 1115 (2019) (internal
26 citations omitted).

¹²³SEROA 8.

¹²⁴*Ormsby County v. Kearny*, 37 Nev. 314, 142 P. 803, 820 (1914).



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before any junior right holder can use its water right. The DVGMP allows the senior right holder a higher priority to use less water.

The court finds that the DVGMP formula for water shares that reduces the amount of water to which a senior water rights' holder is entitled to use violates the doctrine of prior appropriation in Nevada. The court finds that Order 1302 violates the doctrine of prior appropriation in Nevada. The court thus finds that Order 1302 is arbitrary and capricious.

H. THE LEGISLATIVE HISTORY OF NRS 534.037 and 534.110(7) DOES NOT DEMONSTRATE AN INTENT TO MODIFY THE DOCTRINE OF PRIOR APPROPRIATION IN NEVADA

As stated above, the doctrine of prior appropriation has existed in Nevada water law for in excess of 150 years. The DVGMP reduces the annual allocation of water rights to both junior and senior rights holders.¹²⁵ Relying on a New Mexico Supreme Court case, *State Engineer v. Lewis*,¹²⁶ Order 1302 held that NRS 534.037 "demonstrates legislative intent to permit action in the alternative to strict priority regulation."¹²⁷ Order 1302 states that, ". . . in enacting NRS 534.037, the Nevada legislature expressly authorized a procedure to resolve a shortage problem . And, likewise, the State Engineer assumes that the Legislature was aware of prior appropriation when it enacted NRS 534.037, and the State Engineer interprets the statute as intending to create a solution other than a priority call as the first and only response."¹²⁸ The State Engineer further found that, "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 the junior rights holders alone – if that were the case, the State Engineer could simply curtail junior rights – a power already granted by pre-existing

¹²⁵SEROA 499-526, appendix F is the preliminary table of all rights subject to the DVGMP and the share calculation for each right.

¹²⁶150 P.3d 375 (N.M. 2006).

¹²⁷SEROA 5.

¹²⁸SEROA 6.



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water law in NRS 534.110(6)."¹²⁹ The State Engineer argues the plain language of NRS 534.037 and NRS 534.110(7) "shows the legislature's intent to allow local communities to come together and agree upon a solution for groundwater management other than strict application of prior appropriation, such as the Diamond Valley GMP."¹³⁰ His reasoning is that since NRS 534.110(7) requires junior priority rights to be curtailed in favor of senior priority rights where a basin has been designated a CMA for at least 10 years, the legislature provided an exception to the curtailment requirement and the application of the prior appropriation doctrine where " a groundwater management plan has been approved for the basin pursuant to NRS 534.037."¹³¹ Order 1302 held that "NRS 534.037 illustrates the unambiguous intent of the Legislature to allow a community to find its own solution to water shortage, including "out-of-the-box solutions," "to resolve conditions leading to a CMA designation."¹³²

The community based solution approved by the State Engineer allows junior rights' holders who, by over pumping for more than 40 years have created the water shortage in Diamond Valley, to be able to approve a GMP that dictates to senior rights' holders that they can no longer use the full amount of their senior rights. This is unreasonable. Taking it a step further, using the State Engineer's analysis, a majority vote of water permits/certificates in Diamond Valley could approve a GMP whereby the senior rights holders are subject to a formula reducing their water rights by an even greater percentage of water than in the current DVGMP.

The State Engineer's position is shared by the intervenors. Eureka County asserts (1) NRS 534.110(6) and (7) are not ambiguous; (2) that subsection (7) is a specific, special statute authorizing CMA's which controls over subsection (6), a general subsection for

¹²⁹SEROA 6-7.

¹³⁰State Engineer's answering brief 25.

¹³¹*Id.* 25-26.

¹³²*Id.* 26.



1 CMA designated basins; and (3) thus regulation by priority is not required for at least 10
2 consecutive years for a CMA designated basin "unless a groundwater management plan
3 has been approved for the basin in that time frame."¹³³ Eureka County maintains that
4 subsection NRS 534.110(7) "is a plain and clear 'exception' to the general discretionary
5 curtailment provision in subsection 6,"¹³⁴ concluding that "NRS 534.110(7) does not require
6 the State Engineer to order senior rights be fulfilled before junior rights in the critical
7 management area for at least 10 consecutive years after the designation."¹³⁵ DNRPCA
8 intervenors advocate that a community based GMP deviating from water right regulation
9 contrary to the prior appropriation doctrine is authorized by NRS 534.110(7),¹³⁶ stating, ".
10 . . the Legislature deliberately enacted legislation that created an **exception** to the seniority
11 system in exactly the circumstances that exist here."¹³⁷ (Emphasis added). The State
12 Engineer and intervenors further agree that if a GMP has been approved, that the State
13 Engineer cannot order any curtailment by priority for at least 10 years from the date the
14 basin was designated a CMA. The foregoing interpretations, if sustained, would turn 150
15 years of Nevada water law into chaos.

16 The State Engineer and intervenors have misinterpreted NRS 534.037 by using the
17 *Lewis* case as either authority for or as being "instructive" as to the legislative intent behind
18 NRS 534.037.¹³⁸ Now conceded by the State Engineer, the *Lewis* facts and holding are
19 clearly distinguishable from the present case.¹³⁹ In *Lewis*, a U.S. Supreme Court mandated
20 settlement agreement was litigated. The *Lewis* plan was presented to, and expressly

21 ¹³³Eureka County's answering brief 12-13.

22 ¹³⁴*Id.*

23 ¹³⁵*Id.* 12.

24 ¹³⁶DNRPCA answering brief 11-12.

25 ¹³⁷*Id.* 11.

26 ¹³⁸State Engineer's answering brief 29-3..

¹³⁹*Id.*



1 ratified by the New Mexico Legislature.¹⁴⁰ The DVGMP has never been presented to or
2 ratified by the Nevada Legislature. The State Engineer now claims the *Lewis* case is an
3 example "that shows another state has utilized an innovative solution in order to resolve
4 water shortages." The State Engineer analyzes that, "NRS 534.037 was expressly ratified
5 by the Nevada Legislature, and has a clear intent to allow local water users to agree to a
6 solution other than curtailment by priority."¹⁴¹ Critically, there is no language, either express
7 or implied in NRS 534.037, that allows for a GMP to be approved by a majority of right
8 holders in a CMA that reduces the amount of water to which a senior right holder is entitled
9 to beneficially use. The State Engineer amazingly argues that "Baileys, Sadler Ranch, and
10 the Renners provide no authority for someone in the minority (*i.e. someone who did not*
11 *want the GMP approved*) in a basin where a groundwater management plan is approved
12 to act outside of the plan that was agreed to, per statute, by a majority of the holders of
13 water permits and certificates, nor do they legitimately challenge the language of the
14 statute providing for a simple majority to create a basin-wide groundwater management
15 plan."¹⁴² By the State Engineer's analysis of the legislative intent of NRS 534.037, a
16 majority of junior right holders, who, by their collective knowing over appropriation of a
17 water basin, combined with the State Engineer's neglectful acquiescence, can vote to
18 deprive a senior right holder's use of all of its water, thus enabling the junior holders who
19 created the crisis to continue to irrigate by using water which they were never entitled to
20 use.¹⁴³ This is simply wrong.

21 The Nevada Supreme court has noted, "our adherence to long-statutory precedent
22 provides stability on which those subject to this State's law are entitled to rely."¹⁴⁴ Every

23 ¹⁴⁰*Lewis*, 376.

24 ¹⁴¹State Engineer's answering brief 29.

25 ¹⁴²*Id.* 30.

26 ¹⁴³53.2percent of the senior priority water right owners did not support the DVGMP.

¹⁴⁴*Happy Creek*, 1116.



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water right holder under Nevada law was, and is, entitled to rely on the priority date of a valid water right they own to place all of the water under its right to beneficial use. Neither Nevada Supreme Court nor the Legislature have ever waived from this legal precedent. Nevada ranchers and farmers have always valued and defended their water right priority. Every rancher and farmer, until Order 1302, have relied on Nevada's stone etched security that their water right priority date entitled them to beneficially use the full amount of a valid water right prior to all those junior. Every Nevada rancher and farmer has known and presumably understood that if their water right was junior to others, that the senior right holder was entitled to satisfy the full amount of the senior right before the junior holder would be satisfied, even if it meant the junior holder had less water or no water at all to place to beneficial use.¹⁴⁵

Clearly, there is no express language in either NRS 534.037 or NRS 534.110(7) stating a GMP can violate the doctrine of prior appropriation or that the doctrine is somehow abrogated. Knowing the long standing legislative and judicial adherence to Nevada's prior appropriation doctrine, the drafters could have easily inserted provisions in the CMA and/or GMP legislation giving the State Engineer the unequivocal authority to deviate from Nevada's "first-in-time, first-in-right" prior appropriation law if that was their intent.

"The legislature is 'presumed not to intend to overturn long-established principles of law' when enacting a statute"¹⁴⁶ When the language of a statute is unambiguous, courts are not to look beyond the statute itself when determining meaning.¹⁴⁷ The court finds that NRS 534.037 is not ambiguous. The court finds that the express language of NRS 534.037 and NRS 534.110(7) do not allow a GMP to violate the doctrine of prior appropriation by

¹⁴⁵Sadler Ranch opening brief 4; see certificates/permits in SEROA 499-509; NRS 534.020(1).

¹⁴⁶*Happy Creek, 1111*, citing *Shadow Wood Homeowners Ass'n. v. N.Y. Cmty. Bancorp. Inc.*, 132 Nev. 49, 59, 366 P.3d 1105, 1112 (2016).

¹⁴⁷*In re Orpheus Trust*, 124 Nev. 170, 174, 179 P.3d 562 (2008)



1 reducing the amount of water a senior right holder is entitled to put to beneficial use under
2 its permit/certificate.

3 The State Engineer and intervenors contend that once a GMP is approved, the
4 State Engineer is not required to order curtailment by priority. This is true, provided a viable
5 GMP without curtailment can be implemented in a CMA basin. However, there is no
6 language in either NRS 534.110(7) or NRS 534.037 that prohibits or restricts some
7 measure of curtailment by priority as part of a GMP. Likewise, should a GMP prove
8 ineffective, there is no statutory language prohibiting curtailment during the term of the
9 GMP or even during the 10 year period from when a basin is designated a CMA if such
10 action is necessary to prevent continuing harm to an aquifer in crisis as exists in Diamond
11 Valley. Sadler Ranch, the Renners, and the Baileys offered a number of possible plan
12 alternatives that would not violate the prior appropriation doctrine, including, but not limited
13 to, junior pumping reduction, a rotating water use schedule, cancellation of permits if calls
14 for proof of beneficial use demonstrate non-use, restriction of new well pumping, establish
15 a water market for the trade of water shares, a funded water rights purchase program,
16 implementation of best farming practices, upgrade to more efficient sprinklers, and a
17 shorter irrigation system.¹⁴⁸ Many of these alternatives were also considered by the
18 Diamond Valley water users in developing the DVGMP and are recommendations, but not
19 requirements of the DVGMP.¹⁴⁹

20 "When a statute is susceptible to more than one reasonable, but inconsistent
21 interpretation, the statute is ambiguous," requiring the court "to look to statutory
22 interpretation in order to discern the intent of the Legislature."¹⁵⁰ The court must "look to
23 legislative history for guidance."¹⁵¹ Such interpretation must be "in light of the policy and

24 ¹⁴⁸Sadler Ranch reply brief 7-9; Bailey opening brief 17-18; SEROA 252-254.

25 ¹⁴⁹SEROA 244-245.

26 ¹⁵⁰*Orpheas Trust*. 174, 175.

¹⁵¹*Id.* 175.



1 spirit of the law, and the interpretation shall avoid absurd results."¹⁵² "The court will resolve
2 any doubt as to the Legislature's intent in favor of what is reasonable."¹⁵³

3 Assuming arguendo, that NRS 534.037 and NRS 534.110(7) are ambiguous, the
4 only reasonable interpretation is that the Nevada Legislature did not intend for the two
5 statutes to allow a GMP to be implemented in that would violate Nevada's doctrine of prior
6 appropriation. As stated earlier, a GMP may employ any number of remedies to address
7 a water crisis depending on the cause of a water basin's decline, its hydrology, number of
8 affected rights' holders, together with any other of factors which may be specific to a
9 particular CMA designated basin. These remedies could yield to the doctrine of prior
10 appropriation, yet be effective given the particular circumstances of a CMA basin. But in
11 some CMA basins, curtailment may be a necessary element of a GMP. Respondents
12 assert that "NRS 534.037 illustrates the unambiguous intent of the Legislature to provide
13 water users in a particular basin with the ability to come up with a community based
14 solution to address a water shortage problem."¹⁵⁴ The court agrees. Order 1302 observes
15 that "the legislative history contains scarce direction concerning how a plan must be
16 created or what the confines of any plan must be."¹⁵⁵ Again, the court agrees. Yet, there
17 is nothing in NRS 534.037's legislative history that lends to an interpretation that a GMP
18 can provide for senior water rights to be abrogated by junior permit and certificate holders
19 whose conduct caused the CMA to be designated. The State Engineer's finding that, ".
20 . . NRS 534.037(1) does not require a GMP to impose reductions solely against junior
21 rights . . ." ¹⁵⁶ is a misinterpretation of the statute, not only facially, but in light of the
22 legislative history as discussed below.

23 ¹⁵² *Id.*

24 ¹⁵³ *Id.*

25 ¹⁵⁴ State Engineer's answering brief 26.

26 ¹⁵⁵ SEROA 7.

¹⁵⁶ SEROA 8.



1 The State Engineer found that the legislative enactment of NRS 537.037 ,“expressly
2 authorized a procedure to resolve a shortage problem,” “the State Engineer assumes that
3 the Legislature was aware of Nevada’s prior appropriation doctrine when it enacted NRS
4 534.037, and . . . interprets the statute as intending to create a solution other than a priority
5 call as the first and only response.”¹⁵⁷ It is clear that the Legislature was aware of the prior
6 appropriation doctrine before enacting NRS 534.037 and that the statute allows for a GMP
7 in a particular basin that may not involve curtailment by priority as a workable solution. Yet,
8 nowhere in the Legislative history of AB 419¹⁵⁸ is one word spoken that the proposed
9 legislation will allow for a GMP whereby senior water right holder will have its right to use
10 the full amount of its permit/certificate reduced or that the amount of water that shall be
11 allocated will be on a basis other than by priority. In fact, just the opposite is true. At a
12 Senate Committee on Government Affairs hearing held May 23, 2011, Assemblyman Pete
13 Goicoechea stated:

14 “That junior users would bear the burden to develop a ‘conservation plan that
15 actually brings that water basin back into some compliance.”¹⁵⁹

16 Assemblyman Goicoechea further stated:

17 “This bill allows people in overappropriated basins ten years to implement a
18 water management plan to get basins in balance. People with junior rights
19 will try to figure out how to conserve enough water under these plans. Water
20 management plans will also limit litigation that occurs before the State
21 Engineer regulates by priority. When the State Engineer regulates by
22 priority, it starts a water war and finger – pointing occurs. This bill gives
23 water right owners ten years to work through those issues.”¹⁶⁰

24 Earlier, at the same committee hearing, Assemblyman Goicoechea gave examples
25 of ways an over appropriated basin could be brought back in to balance through “planting
26

24 ¹⁵⁷SEROA 7.

25 ¹⁵⁸See DNRPCA intervenors’ addendum to answering brief 0079-0092.

26 ¹⁵⁹Minutes of Sen. Committee on Government Affairs, May 23, 2011, at 16.

¹⁶⁰*Id.*



alternative crops, water conservation, or using different irrigation methods.”¹⁶¹

1 Assemblyman Goicoechea went on to say:

2 “water rights in Nevada are first in time; first in right. The older the water
3 right the higher the priority. We would address the newest permits and work
4 backwards to get basins back into balance. The more aggressive people
5 might be the newer right holders.”¹⁶²

6 No one at any Legislative subcommittee hearings stated or implied that the
7 proposed GMP legislation was “an exception to or otherwise abrogated Nevada’s doctrine
8 of prior appropriation.” The court finds persuasive the steadfast commitment of Nevada’s
9 courts and legislation upholding the doctrine of prior appropriation and the absence of any
10 legislative history to the contrary for AB419.

11 There is a presumption against an intention to impliedly repeal where express terms
12 to repeal are not used.¹⁶³ “When a subsequent statute entirely revises the subject matter
13 contained in a prior statute, and the legislature intended the prior statute to be repealed,
14 the prior statute is considered to be repealed by implication. This practice is heavily
15 disfavored, and we will not consider a statute to be repealed by implication unless there
16 is no other reasonable construction of the two statutes.¹⁶⁴ Not only did NRS 534.034 and
17 NRS 534.110(7) not revise the doctrine of prior appropriation, the Legislature did not even
18 mention the subject.

19 “When construing statutes and rules together, this court will, if possible, interpret a
20 rule or statute in harmony with other rules and statutes.”¹⁶⁵ The doctrine of prior
21 appropriation can logically exist in harmony with NRS 534.037 and 534.110(7) and allow

22 ¹⁶¹ *Id.*

23 ¹⁶² *Id.* at 13.

24 ¹⁶³ *W. Realty Co. V City of Reno*, 63 Nev. 330, 344 (1946). citing *Ronnan v. City of Las Vegas*, 57, Nev, 332, 364-65 (1937)

25 ¹⁶⁴ *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134 (2001) (internal citations omitted).

26 ¹⁶⁵ *Hefetz v. Beavor*, 133 Nev. Adv. Op. 46, 197 P.3d 472, 475 (2017) citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).



1 for GMP's to address the water issues present in a particular CMA basin. The court finds
2 that neither NRS 534.037 nor NRS 534.110(7) are in conflict with the prior appropriation
3 doctrine.

4 More compelling evidence exists that the State Engineer knew that NRS 534.037
5 and NRS 534.110(7) did not abrogate or repeal the doctrine of prior appropriation. On
6 November 16, 2016, Legislative Bill S.B 73 was introduced on behalf of the State
7 Engineer.¹⁶⁶ The proposed legislation sought to modify NRS 534.037 by giving authority
8 to the State Engineer to consider a GMP, "limiting the quantity of water that may be
9 withdrawn under any permit or certificate or from a domestic well on a basis other than
10 priority, . . ." ¹⁶⁷ Although SB 73 was never passed by the Legislature, the fact that the
11 State Engineer specifically sought 2017 legislation authorizing a GMP to be approved that
12 allowed for water to be withdrawn from a CMA basin on a basis other than priority,
13 demonstrates the State Engineer's knowledge that NRS 534.037 and NRS 534.110(7) as
14 enacted did not either expressly or impliedly allow for a GMP to violate Nevada's prior
15 appropriation law.¹⁶⁸ The court finds that the AB 419's Legislative history did not intend to
16 allow either NRS 534.037 or NRS 534.110(7) to repeal, modify, or abrogate Nevada's
17 doctrine of prior appropriation.

18 I. THE DVGMP VIOLATES NRS 533.325 and NRS 533.345

19 NRS 533.325 states in pertinent part ". . . any person who wishes to appropriate any
20 of the public waters, or to change the place of diversion, manner of use, or place of use of
21 water already appropriated, shall before performing any work in connection with such
22 appropriation, change in place of diversion or change in matter or place of use, apply to the
23 State Engineer for a permit to do so." This is so because permits are tied to a single point

24 ¹⁶⁶Sadler Ranch addendum to reply brief, 001

25 ¹⁶⁷*Id.* 003.

26 ¹⁶⁸The State Engineer's knowledge that the DVGMP violated the doctrine of prior
appropriation was also evidenced by his presentation at the 2016 Western States
Engineer's Annual Conference. See Sadler Ranch opening brief, ex. 1, slide 21.



1 of diversion.¹⁶⁹ "Every application for a permit to change the place of diversion, manner of
2 use or place of use of water already appropriated must contain such information as may be
3 necessary to a full understanding of the proposed change, as may be required by the State
4 Engineer."¹⁷⁰ The State Engineer can approve a temporary change if, among other
5 requirements, "the temporary change does not impair the water rights held by other
6 persons."¹⁷¹ The filing of an application under NRS 533.325 allows the State Engineer to
7 determine what, if any, potential adverse impact is created by the proposed change in well
8 location, location of the use of the water or manner of the proposed use. The State
9 Engineer is required to review a temporary change application regardless of the intended
10 use of the water to determine if it is in the public interest and does not impact the water
11 rights used by others.¹⁷² If a potential negative impact is found, the application could be
12 rejected.¹⁷³ Other rights' holders who may be affected by the temporary change could
13 protest the application if notice were given by the State Engineer.¹⁷⁴ No protest and notice
14 provisions at the administrative level exist in the DVGMP for a temporary change of use, or
15 place of use, or manner of use for less than one year.¹⁷⁵

16 Under the DVGMP, the State Engineer is not required to investigate a proposed
17 change in the place or manner of use and the transfer becomes automatic after 14 days
18 from submission.¹⁷⁶ The DVGMP provides that the groundwater withdrawn from Diamond

19
20 ¹⁶⁹NRS 533.330

21 ¹⁷⁰NRS 533.345(1).

22 ¹⁷¹NRS 533.345(2).

23 ¹⁷²NRS 533.345(2)(3).

24 ¹⁷³See NRS 533.370(2).

25 ¹⁷⁴NRS 533.360.

26 ¹⁷⁵ The only remedy is a petition for judicial review under NRS 534.450.

¹⁷⁶SEROA 237, sec. 14.7.



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Valley can be used “for any beneficial purpose under Nevada law . . .”¹⁷⁷ Under NRS 533.330, “No application shall be for the water of more than one source to be used for more than one purpose.” The only Diamond Valley water subject to the DVGMP is that which is subject to permits or certificates issued for irrigation purposes.¹⁷⁸ The DVGMP allows for the irrigation sourced shares to be used for “any other beneficial purpose under Nevada water law”.¹⁷⁹ The DVGMP fails to take into consideration that the transferee of the shares could use the water for other beneficial uses that may consume the entirety of the water being transferred under the shares without any return water or recharge to the Diamond Valley basin.¹⁸⁰ Water placed to beneficial use for irrigation results in some return or recharge to the aquifer. There is no State Engineer oversight on the impact of the transfer of water shares for the proposed new well or place or manner of use unless the new well or additional withdrawals from an existing well exceeds the volume or flow rate initially approved for the base permit.¹⁸¹

The DVGMP and Order 1302 state the DVGMP was modeled after NRS 533.345(2)(4).¹⁸² The State Engineer is incorrect. Under the DVGMP, the State Engineer does not review a different use of the water shares transferred because the DVGMP allows water shares to be used for any beneficial purpose under Nevada law, not solely for irrigation purposes.¹⁸³ Under the DVGMP the State Engineer cannot deny the transfer of shares to an existing well, unless the transfer would exceed the well’s flow rate and conflicts

¹⁷⁷SEROA 234, sec. 13.8.

¹⁷⁸SEROA 228, sec. 8.1

¹⁷⁹SEROA 234, see 13.8.

¹⁸⁰Such beneficial uses could include mining and municipal uses; see NRS 533.030.

¹⁸¹SEROA 237, sec. 14.7, 14.8.

¹⁸²SEROA 237, n.20; SEROA 009.

¹⁸³SEROA 237, sec. 14.7.



1 with existing rights.¹⁸⁴ The State Engineer's vital statutory oversight authority to ensure the
2 temporary change is in the public interest or that the change does not impair water rights
3 held by other persons is otherwise lost. The court finds that the DVGMP and Order 1302.
4 violate NRS 533.325 and NRS 533.345, The court finds Order 1302 is arbitrary and
5 capricious.

6 **CONCLUSION**

7 The court has empathy for the plight of the ranchers and farmers in Diamond Valley
8 given the distressed state of the basin's aquifer. It is unfortunate that the State Engineer
9 and/or the Nevada Legislature did not vigorously intervene 40 years ago when effects of
10 over appropriation were first readily apparent.¹⁸⁵ That being said, the DVGMP is contrary
11 to Nevada water laws, laws that this Court will not change. The court is not bound by the
12 State Engineer's interpretation of Nevada water law.

13 Order 1302 is arbitrary and capricious.

14 Good cause appearing,

15 IT IS HEREBY ORDERED that the petition for review of Nevada State Engineer's
16 Order No. 1302 filed by Timothy Lee Bailey and Constance Marie Bailey and Fred Bailey
17 and Carolyn Bailey in case No. CV-1902-350, is GRANTED.

18 IT IS HEREBY FURTHER ORDERED that the petition for judicial review filed by
19 Sadler Ranch in case no. CV-1902-349, is GRANTED.

20 IT IS HEREBY FURTHER ORDERED that the petition for judicial review filed by Ira
21 R. Renner and Montira Renner in Case No. CV-1902-348, is GRANTED.

22

¹⁸⁴SEROA 237, sec. 14.9.

23 ¹⁸⁵As noted by Sadler Ranch, in 1982, State Engineer Peter Morros recognized that
24 "what is happening right now in Diamond Valley [declining groundwater levels affecting
25 spring flows] was predicted . . . It was predicted in 1968 . . . almost to the 'T'".
26 Transcript of proceedings at 42; 17-22, In the Matter of Evidence and Testimony
Concerning Possible Curtailment of Pumpage of Groundwater in Diamond Valley,
Eureka, Nevada (May 24, 1982). Morros also stated "there was a tremendous amount
of pressure put on the State Engineer's Office to issue permits, far in excess of what we
had identified at the time was their perennial yield." *Id.* at 41, 1.6-10. Sadler Ranch
opening brief, 2-3.

DATED this 23rd day of April, 2020.

Gary D. Fairman
DISTRICT JUDGE

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SEVENTH JUDICIAL DISTRICT COURT
GARY D. FAIRMAN
DISTRICT JUDGE
DEPARTMENT 2
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



MAY 19 2020

1 Case No. CV-1902-348
2 (Consolidated with CV-1902-349 and CV-1902-350) By

Eureka County Clerk

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;
11 IRA R. & MONTIRA RENNER; and
12 SADLER RANCH, LLC,

Petitioners,

13 vs.

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

Respondent,

19 EUREKA COUNTY; and DIAMOND
20 NATURAL RESOURCES PROTECTION
21 AND CONSERVATION ASSOCIATION,
22 J&T FARMS, GALLAGHER FARMS,
23 JEFF LOMMORI, M&C HAY, CONLEY
24 LAND & LIVESTOCK, LLC, JIM AND
25 NICK ETCHEVERRY, TIM AND
26 SANDIE HALPIN, DIAMOND VALLEY
27 HAY CO., MARK MOYLE FARMS, LLC,
28 D.F. AND E.M. PALMORE FAMILY
29 TRUST, BILL AND PATRICIA
30 NORTON, SESTANOVICH HAY &
31 CATTLE, LLC, JERRY ANDERSON, and
32 BILL AND DARLA BAUMANN,

Intervenors.

**STATE ENGINEER'S JOINDER TO
DNRPCA INTERVENORS' MOTION
FOR STAY PENDING APPEAL OF
ORDER GRANTING PETITIONS
FOR JUDICIAL REVIEW OF
STATE ENGINEER ORDER 1302**

33 Tim Wilson, P.E., in his capacity as the Nevada State Engineer, Department of
34 Conservation and Natural Resources, Division of Water Resources (hereafter "State
35 Engineer"), by and through counsel, Nevada Attorney General Aaron D. Ford and Senior
36

RECEIVED

MAY 19 2020

Eureka County Clerk

1 Deputy Attorney General James N. Bolotin, hereby joins the Motion for Stay Pending
2 Appeal of Order Granting Petitions for Judicial Review of State Engineer Order 1302
3 filed by Intervenors Diamond Natural Resources Protection and Conservation
4 Association, J&T Farms, Gallagher Farms, Jeff Lommori, M&C Hay, Conley Land &
5 Livestock, LLC, Jim and Nick Etcheverry, Tim and Sandie Halpin, Diamond Valley Hay
6 Co., Mark Moyle Farms, LLC, D.F. and E.M. Palmore Family Trust, Bill and Patricia
7 Norton, Sestanovich Hay & Cattle, LLC, Jerry Anderson, and Bill and Darla Baumann
8 (collectively the “DNRPCA Intervenors”).

9 The State Engineer supports, and therefore joins, the bases for the requested stay
10 presented in the DNRPCA Intervenors’ Motion for Stay Pending Appeal. Should the
11 Diamond Valley Groundwater Management Plan (“DV GMP”) be disabled during the
12 pendency of the appeal, the objective of the appeal will be defeated. The State Engineer’s
13 primary interest is to ensure that his approved DV GMP improves the health of the
14 resource, the Diamond Valley groundwater basin, such that he would ultimately feel
15 comfortable lifting the critical management area (“CMA”) designation and avoid
16 curtailment by priority. *See* NRS 534.037; NRS 534.110(7).

17 As shown by the DNRPCA Intervenors, the health of the Diamond Valley
18 groundwater basin has improved significantly during the first year of the DV GMP,
19 making significant progress towards the ultimate goal of lifting the CMA designation.
20 *See* DNRPCA Intervenors’ Motion for Stay Pending Appeal, pp. 4–5. This improvement
21 includes a 26% reduction in groundwater pumping, resulting in a positive trend in
22 groundwater levels according to groundwater data. *Id.* If the DV GMP is disabled during
23 the pendency of the appeal, there will likely be a deterioration of the positive progress
24 made in Diamond Valley hindering the ability of the State Engineer to eventually lift the
25 CMA designation. Additionally, leaving the DV GMP in effect during the pendency of the
26 appeal will avoid the significant uncertainty faced by both the State Engineer, from a
27 regulatory aspect, as well as the water users, who have made significant investments and

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1 alterations to their irrigation practices, should the DV GMP ultimately be upheld by the
2 Nevada Supreme Court.

3 Lastly, the State Engineer is generally agreeable to the DNRPCA Intervenors'
4 suggestion that Petitioners may be exempted from the DV GMP during the pendency of
5 the appeal to avoid any claimed harm. See DNRPCA Intervenors' Motion for Stay
6 Pending Appeal, pp. 11–13. However, this agreement requires one important caveat:
7 should the DNRPCA Intervenors and the State Engineer prevail on appeal, and should
8 the Nevada Supreme Court ultimately uphold Order No. 1302 and the DV GMP, the
9 DV GMP would be in full force and effect as if it had been in effect since its approval.

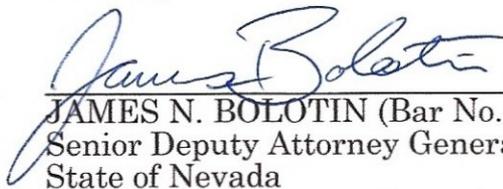
10 **AFFIRMATION**

11 The undersigned does hereby affirm that the preceding Affirmation State
12 Engineer's Joinder to DNRPCA Intervenors' Motion for Stay Pending Appeal of Order
13 Granting Petitions for Judicial Review of State Engineer Order 1302 does not contain the
14 social security number of any person.

15 DATED this 19th day of May, 2020.

16 AARON D. FORD
17 Attorney General

18 By:


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27 Attorney for State Engineer
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on this 19th day of May, 2020, I served a true and correct copy of the
4 foregoing AFFIRMATION STATE ENGINEER’S JOINDER TO DNRPCA
5 INTERVENORS’ MOTION FOR STAY PENDING APPEAL OF ORDER GRANTING
6 PETITIONS FOR JUDICIAL REVIEW OF STATE ENGINEER ORDER 1302, said
7 document applies to Case Nos. CV-1902-348, -349 and -350, electronically to:

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12 Wendy Lopez
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15 and via U.S. Mail to:

16 Beth Mills, Trustee
17 Marshall Family Trust
18 HC 62, Box 62138
19 Eureka, Nevada 89316
20 *Trustee of the Marshall Family Trust in Propria Persona*

21 *Courtesy Copy to Chambers:*
22 The Honorable Gary D. Fairman
23 Post Office Box 151629
24 Ely, Nevada 89315

25 
26 Dorene A. Wright