

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIAMOND NATURAL RESOURCES
PROTECTION & CONSERVATION
ASSOCIATION, et al.,

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Elizabeth A. Brown
Clerk of Supreme Court
Case No. 81224

Appellants,

v.

TIM WILSON, P.E., NEVADA STATE
ENGINEER, DIVISION OF WATER
RESOURCES, DEPARTMENT OF
CONSERVATION AND NATURAL
RESOURCES, et al.,

Respondents.

**EUREKA COUNTY’S JOINDER TO DNRPCA APPELLANTS’ OPENING
BRIEF AND APPELLANT STATE ENGINEER’S OPENING BRIEF**

EUREKA COUNTY, by and through its undersigned counsel, hereby joins in the DNRPCA APPELLANTS’ OPENING BRIEF and the APPELLANT STATE ENGINEER’S OPENING BRIEF filed with this Court on September 23, 2020.

EUREKA COUNTY supports and therefore joins in the Opening Briefs of the DNRPCA Appellants and the State Engineer and provides a few additional comments regarding the Diamond Valley Groundwater Management Plan (“GMP”) and the interests of EUREKA COUNTY in Diamond Valley.

The GMP is unique to Diamond Valley and the water right holders in that basin. Joint Appendix (JA) Vol. II at JA0331. In approving Order 1302, the State Engineer found that public and local community interests had been considered, and that such interests were a cornerstone of the GMP by retaining the greatest number of farms or mines as economically viable, which will provide social, economic, and environmental benefits. JA Vol. II at JA0332. As noted by the STATE ENGINEER in Order 1302, the GMP provides flexibility offered by the expedient temporary movement process modeled after existing law regarding temporary changes while still requiring application of NRS § 533.370 to new wells or increased withdrawals exceeding 1 year. JA Vol. II at JA0321-0322. That flexibility allows water use efficiency, better management practices and water conservation that best fits the operations of the individual irrigators. JA Vol. II at JA0321. For example, one plan proponent stated at the public hearing that he appreciated the flexibility the plan provided for his farming operations. JA Vol. V at JA1046. When annual reductions are implemented, an irrigator may not have enough water for one pivot, but would have flexibility to combine allocations to water a full crop, while also allowing some irrigation on former irrigated lands to keep them viable until farming on that pivot could resume. JA Vol. V at JA1046-47. Another irrigator noted he had proven to himself, “on his own farm in the last two years that the plan will not affect my yields and ability to produce a quality product. Better efficiency and better management

along with advances in farming in the coming years will offset the pumping reductions in my operation.” JA Vol. IV at JA0905. The GMP complies with Nevada law governing temporary and permanent change applications while providing flexibility for Diamond Valley water right holders based upon their specific operations and farming conditions from year to year.

Another unique aspect of Diamond Valley is that many water rights holders individually, or as integrated family agricultural enterprise units, own both senior and junior water rights. *See* JA Vol. IV at JA0812-0822 (including but not limited to Chaney Associates, Lynford and Susan Miller Revocable Family Trust, Gallagher Farms, Donald F. and Eliza M. Palmore Family Trust, Fred L. Etchegaray and John J. Etchegaray, Ruby Hill Mining Company, Kobeh Valley Ranch, Ty and Michelle R. Erickson, Fred and Carol Bailey, Bailey Family Trust, Kenneth F. and Patti E. Benson, American First Federal, Diamond Valley Ranch, Mark Moyle Farms, James or Pamela Buffham, D. Lloyd Morrison, Alberta and Don E. Morrison, Burnham Farms)¹. There are also water right holder names that appear distinct, but are in fact the same holder or enterprise in combination with other water right holder names listed in Appendix F to the GMP, including but not necessarily limited to Kobeh Valley Ranch and General Moly; Fred and Carol Bailey and Bailey Family Trust;

¹ The current official records of the State Engineer may have different names of water rights holders than is in the record due to changes of ownership and filing of reports of conveyance with the State Engineer since the GMP was developed.

Diamond Valley Hay Co. and Walter L. and Tommye J. Plaskett; Conley Land and Livestock and Kenneth E. and Beverly A. Conley; Gallagher Farms and J&T Farms; Michel and Margaret Etcheverry Family Trust and Martin, Kathleen, Mark and Jennifer Etcheverry; M&C Hay Morrison Trust and Matthew L. and Cheryl A. Morrison; American First Federal, Berg Properties California, Blanco Ranch, and Diamond Valley Ranch. JA Vol. II at JA0462-0529, JA Vol. IV at JA0812-0822. These facts were taken into consideration in the share priority allocation methodology proposed in the GMP and approved by the State Engineer. JA Vol. IV at JA0771-0785. Thus, the effect of the GMP as a whole on a particular water right owner and their integrated agriculture operation, both farming and cattle ranching for many, may not necessarily be accurate by only reviewing one particular water right held by that water right owner.

EUREKA COUNTY owns vested surface water rights and permitted or certificated groundwater rights in Diamond Valley which it uses to provide municipal water services to the citizens of Eureka County.² JA Vol. I at JA0146,

² EUREKA COUNTY owns the following or portions of the following junior groundwater rights in Diamond Valley: Permits 18851, 18988, 20565, 22217, 23462, 24378, 26542, 29603, 40393, 55660, 57856, 57857, 62929, 63052, 64117, 66207, 66208, 67902, 68923, 71843, 72936, 76526, 79707, 83241, 83243, 83245, 87437, 87716, 87717, 87718, 87719, 88191, 88192, 88193, 88194 and 88195. JA Vol. I at JA0149, JA Vol. II at JA0478.

JA Vol. II at JA0478, JA Vol. III at JA0635-0637. EUREKA COUNTY also owns certain irrigation rights dedicated pursuant to Eureka County's parcel map dedication requirements. JA Vol. I at JA0146.

The GMP approved by the State Engineer exempts vested water rights and municipal groundwater rights from the Plan. JA Vol. II at JA0318, JA Vol. III at JA0531, JA Vol. II at JA0542. Because State Engineer Order 1302 has not been approved and has been vacated, curtailment of groundwater rights by strict priority may be ordered if the GMP is not upheld by this Court or another GMP approved by the State Engineer by August 25, 2025. NRS 534.110(7)(b) and JA Vol. III at JA0531, JA Vol. III at JA0538. Only a few of EUREKA COUNTY's municipal groundwater rights (approximately 4 acre-feet) are above the 30,000 acre-foot "cut line" for curtailment by priority. JA Vol. I at JA0147, JA Vol. II at JA0317 (Order 1302 explaining cut line between junior and senior water rights), JA Vol. III at JA0531 (cut line is May 1960 priority), JA Vol. III at JA0537 (senior position defined as priority of first 30,000 acre-feet of water rights). If curtailed pumping is ordered, EUREKA COUNTY may not be able to provide municipal water service to its residents. JA Vol. I at JA0147. EUREKA COUNTY's use of its groundwater, for municipal purposes, would be curtailed and it would be extremely difficult to terminate water service for residential and commercial uses. JA Vol. I at JA0147.

EUREKA COUNTY supported Assembly Bill 419 in the 2011 Nevada Legislative Session which resulted in the statutes under which the GMP was developed. JA Vol. I at JA0147. These provisions of law now allow appropriators of the water resource to address the issues in the over-appropriated basin outside of strict curtailment by priority by developing a GMP to get the basin back on its way to recovery and to bring the basin back into balance. EUREKA COUNTY supported County Staff facilitating the GMP formation and meeting process. JA Vol. I at JA0147. The process under law was followed; a GMP was developed and approved well within the ten (10) year timeframe required and EUREKA COUNTY supports allowing the GMP to work as intended to avoid strict curtailment by priority and to bring Diamond Valley back into balance. The socioeconomic structure, viability, and stability of Diamond Valley and southern Eureka County and the associated County tax and revenue base would be severely compromised should curtailment by strict priority be mandated due to the GMP not being upheld and allowed to work. *See Mineral County v. Lyon County*, 136 Nev. Adv. Op. 58 at pages 20, 23 (September 17, 2020) (Recognizing municipal, social, and economic institutions rely on water rights for long-term planning and capital investments; agricultural and mining industries rely on water for capital and output, which derivatively impacts other businesses and influences the prosperity of the state).

EUREKA COUNTY joins in the requests of the DNRPCA Appellants and Appellant State Engineer to reverse the District Court's Order and reinstate State Engineer's Order 1302 and the Diamond Valley Groundwater Management Plan.

DATED this 23rd day of September, 2020.

/s/Karen A. Peterson

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

✓ Court's electronic notification system

as follows:

James Bolotin, Esq.
Don Springmeyer, Esq.
Debbie Leonard, Esq.
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✓ U.S. First Class Mail

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

DATED this 23rd day of September, 2020.

/s/ Sheila Contreras
SHEILA CONTRERAS