### Case No. 84275

### IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS BOTH SURFACE AND UNDERGROUND LOCATED WITHIN THE DIAMOND VALLEY, HYDROGRAPHIC BASIN 10-153, EUREKA AND ELKO COUNTIES, NEVADA.

THE **STATE** OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES. DIVISION OF WATER RESOURCES; and SULLIVAN, ADAM P.E., STATE ENGINEER.

Appellants,

vs.

S. SOLARLJOS. LLC; DANIEL VENTURACCI: AMANDA L. VENTURACCI; CHAD D. BLISS; ROSIE J. BLISS; WILFRED BAILEY AND CAROLYN BAILEY, TRUSTEES OF THE WILFRED AND CAROLYN BAILEY FAMILY TRUST DATED FEBRUARY 20, 2018; EUREKA COUNTY; JAMES E. **BAUMANN: BAUMANN:** VERA L. NORMAN C. FITZWATER; KINDY L. FITZWATER; ARC DOME PARTNERS, LLC; ROBERT F. BECK AND KAREN A. BECK. TRUSTEES OF THE BECK FAMILY TRUST DATED APRIL 1, 2005; IRA R. RENNER; MONTIRA RENNER SADLER RANCH, LLC; MW CATTLE, LLC; UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT; PETER GOICOECHEA; and GLADY GOICOECHEA.

Respondents.

Electronically Filed Mar 04 2022 03:04 p.m. Elizabeth A. Brown Clerk of Supreme Court

## SADLER RANCH, LLC'S RESPONSE TO STATE ENGINEER'S EMERGENCY MOTION FOR STAY

Respondent SADLER RANCH, LLC (hereinafter "Sadler Ranch"), by and through their counsel of record, DAVID H. RIGDON, ESQ. and PAUL G. TAGGART, ESQ., of the law firm TAGGART & TAGGART, LTD., hereby files this Response to the State Engineer's NRAP 27(e) Emergency Motion for Stay ("Motion for Stay") requesting that the Stay be denied. This Response is based on the following Memorandum of Points and Authorities, all pleadings and papers submitted by the parties in this matter, and any oral argument the Court may choose to entertain.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The State Engineer's Motion for Stay fails to identify either a cognizable emergency or a coherent justification to support the request. In its own review of the stay request, the District Court correctly found the State Engineer's attempt to bring an immediate halt to that court's ongoing adjudication proceeding, after failing to participate in or file an objection to those proceedings for more than a year, was "unconscionable."<sup>1</sup> This Court should affirm that determination and deny the requested stay.

#### **STANDARD OF REVIEW**

The Court considers four factors when presented with a request for a stay: (1) whether the object of the appeal will be defeated if the stay is denied, (2) whether the appellant (the State Engineer) will suffer injury if the stay is denied, (3) whether the respondent will suffer injury if the Stay is granted, and (4) whether the appellant

<sup>&</sup>lt;sup>1</sup> Ex. 1 at 7:11-15.

is likely to prevail on the merits.<sup>2</sup> None of these considerations warrant issuance of the requested stay.

#### ARGUMENT

## I. <u>The Object Of This Appeal Is Limited And Will Not Be Defeated If The</u> <u>Stay Is Denied.</u>

The State Engineer did not oppose Solarljos LLC's ("Solarljos") Motion for Summary Judgment, but now appeals the decision granting that motion. However, it is well-established that a failure to file an opposition to a motion "may be construed as an admission that the motion is meritorious and a consent to granting the same."<sup>3</sup> This Court has repeatedly held that "point[s] not urged in the trial court . . . are deemed to have been waived and will not be considered on appeal."<sup>4</sup> Accordingly, nothing in the Order Granting Summary Judgment to Solarljos (the "Solarljos Order"), or in the procedural processes leading to the issuance of that order are proper objects of this appeal. The only thing the State Engineer objected to in the proceedings below was the District Court's certification of the Solarljos Order as a final judgment under NRCP 54(b). Accordingly, that is the only issue ripe for appellate review.

The State Engineer requests: (1) a stay of the Solarljos Order, and (2) a stay of the ongoing adjudication proceedings before the District Court related to other claimants that have nothing to do with the Solarljos Order. The second of these requests is merely an attempt by the State Engineer to smuggle an improper

<sup>&</sup>lt;sup>2</sup> NRAP 8(c); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

<sup>&</sup>lt;sup>3</sup> DCR 13(3).

<sup>&</sup>lt;sup>4</sup> Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981)

interlocutory appeal of ongoing trial court proceedings into an appeal whose only proper scope is determining whether NRCP 54(b) applies to adjudication proceedings. Denying the stay request will not frustrate or moot this Court's determination of that narrow question.

As the District Court correctly noted, if the State Engineer wished to bring an interlocutory challenge to his other procedural orders governing the ongoing adjudication proceedings, the proper way to do so was to file a writ petition at the time those orders were issued (more than a year ago),<sup>5</sup> not to wait until after the other parties have expended significant time and expense conducting discovery, retaining experts, preparing for and holding hearings on their individual claims.

Because the object of this appeal – a narrow determination of whether NRCP 54(b) is applicable to adjudication proceedings – will remain ripe and ready for determination without a stay, this Court should reject the State Engineer's Motion.

### II. <u>The State Engineer Will Not Suffer Harm If The Stay Is Denied.</u>

The State Engineer filed his request for stay as an "emergency" motion under NRAP 27(e). But no actual emergency exists. The State Engineer alleges three distinct harms if a stay is not issued, none of which constitute emergencies: (1) Solarljos may start pumping the quantity of water the District Court ruled they were legally entitled to use, (2) the remaining hearings on the claimants' exceptions threaten to compound vaguely alleged procedural errors, and (3) absent a stay, the State Engineer is unsure of what role he should play in the remaining hearings. To

<sup>&</sup>lt;sup>5</sup> Ex. 1 at 6:8-7:16.

bolster this last claim the State Engineer filed a "Supplement" indicating that Eureka County issued subpoenas to compel the testimony of NDWR staff at the March 3, 2022 hearing on the Bailey exceptions. However, the State Engineer has failed to inform this Court that: (1) at the same time he filed the Supplement, he also filed a motion to quash the subpoenas, and (2) the motion to quash was speedily granted by the District Court thereby mooting the Supplement.

Sadler Ranch's only concern is with the portion of the State Engineer's request that would bring a halt to the ongoing trial court proceedings that are unrelated to the Solarljos Order. Sadler Ranch leaves to Solarljos the question of whether it even has the ability or desire to fully use its water during the course of this appeal and will only address the second and third alleged harms.

No significant procedural errors have occurred below that would be "compounded" by allowing the trial court proceedings to continue. NRS 533.170(5) clearly and unambiguously requires a district court to apply "the Nevada Rules of Civil Procedure" ("NRCP") in "[a]ll proceedings" related to an adjudication. This is precisely what the District Court did, and what the State Engineer now complains of. Because the District Court is properly following the clear and unambiguous direction of the Legislature to utilize the NRCP in this adjudication, the State Engineer will not suffer any harm from the hearings contining apace.

Nor should the State Engineer be confused about his role in those hearings. By his own choice, he has none. As noted below,<sup>6</sup> the State Engineer made a

<sup>&</sup>lt;sup>6</sup> See Section IV(B) infra.

conscious and deliberate choice not to actively defend his Order of Determination to shield himself from being compelled to be examined, under oath, about its numerous errors and inconsistencies. The State Engineer could have been an active participant and defend his Order of Determination if he wanted to do so. He did not, and therefore has no right to complain about any "uncertainty" regarding his role.<sup>7</sup> The State Engineer has stated that the Order of Determination "stands on its own." If so, then there is no need for his participation in the District Court hearings.

Because no emergency exists, and the State Engineer will suffer no serious or irreparable injury from the continuation of the hearings below, the requested stay should be denied.

### III. Sadler Ranch Will Be Irreparably Harmed By The Requested Stay.

The hearing on Sadler Ranch's exceptions has already been held. Both Sadler Ranch and Eureka County actively participated in that hearing. Sadler Ranch expended significant sums on trial preparation, expert witness fees, and post-trial briefing and is now eagerly awaiting the District Court's determination.

The State Engineer appears to be asking for a do-over of the hearings that have already taken place on the basis that the District Court followed an erroneous procedure. Such a request would nullify the significant time and expense Sadler Ranch has already put into this effort and delay the issuance of a final decree. This will cause serious injury since Sadler Ranch is currently limited in the use of its water by the State Engineer's Order of Determination. Any further delay will only

<sup>&</sup>lt;sup>7</sup> State Engineer Mot., Ex. 3 at 18-19.

exacerbate these injuries, which are irremediable since Sadler Ranch cannot receive monetary compensation for them. Accordingly, the stay should be denied.

### IV. The State Engineer Is Unlikely To Succeed On The Merits.

### A. <u>The District Court has followed proper procedure below.</u>

The State Engineer's claim that the District Court was wrong to apply the regular provisions of NRCP, including NRCP 54(b), in the adjudication hearings is without merit. While water rights proceedings are indeed "special in character"<sup>8</sup> the Legislature has specifically mandated "the method of procedure"<sup>9</sup> that the district courts must follow – the NRCP.<sup>10</sup>

The history of the water law elucidates the fact that district courts, not the State Engineer, determine and control judicial procedure in adjudication cases. Nevada enacted its first comprehensive water law in 1913.<sup>11</sup> Section 44 of that law transferred to the State Engineer the power to adjudicate the water rights of claimants.<sup>12</sup> This provision was challenged as a violation of Article 6, section 6 of the Nevada Constitution which vests such power exclusively in the judiciary.<sup>13</sup> A majority of the justices held that Section 44 did, in fact, violate Article 6, section 6

<sup>&</sup>lt;sup>8</sup> State Engineer Mot. at 3 (citing *Application of Fillipinni*, 66 Nev. 17, 27, 202 P.2d 535, 540 (1949).

<sup>&</sup>lt;sup>9</sup> Id.

<sup>&</sup>lt;sup>10</sup> NRS 533.170(5).

<sup>&</sup>lt;sup>11</sup> 1913 STATUTES OF NEVADA 192.

<sup>&</sup>lt;sup>12</sup> Sec. 44, 1913 STATUTES OF NEVADA 192.

<sup>&</sup>lt;sup>13</sup> JAMES H. DAVENPORT, NEVADA WATER LAW 14 (2003).

of the Nevada Constitution by "conferring judicial power upon [the State Engineer], something the Constitution does not permit."<sup>14</sup>

The problem was fixed by the Legislature in 1915.<sup>15</sup> Section 44 of the 1913 law was repealed.<sup>16</sup> With Section 44 repealed, the courts retained power to adjudicate water rights claims in accordance with their ordinary rules of practice. The basic scheme of the 1915 law, where the State Engineer *administratively* reviews pre-statutory claims and then submits his findings to the District Court for *de novo* review has consistently been upheld.<sup>17</sup>

The Legislature has also been specific in directing courts to use the regular rules of court procedure these cases. Prior to the 1952 adoption of the NRCP, the statutes provided that district court adjudication proceedings shall be held "in accordance with the rules governing civil actions . . ."<sup>18</sup> However, after the adoption of the NRCP, to clear up any confusion as to what "the rules governing civil actions" meant, NRS 533.170(5) was amended to specifically direct courts to use the NRCP. Accordingly, the State Engineer's complaints about the District Court applying the NRCP in this case are meritless and the stay should be denied.

<sup>&</sup>lt;sup>14</sup> Ormsby v. Kearney, 37 Nev. 314, 142 P. 803, 811 (J. Talbot concurrence).

<sup>&</sup>lt;sup>15</sup> 1915 Statutes of Nevada 378.

<sup>&</sup>lt;sup>16</sup> Sec. 10, 1915 STATUTES OF NEVADA 378.

<sup>&</sup>lt;sup>17</sup> See Bergman v. Kearney, 241 F. 884, 885 (D.Nev. 1917); Vineyard Land & Stock Company v. Dist. Ct., 42 Nev. 1, 20, 171 P. 166, 170 (1918) ("There is a wide difference between having authority to supervise and administer and having authority to determine questions involving vested rights. The former may . . . be left to an administrative officer, while the latter is properly a question for the courts."). <sup>18</sup> Sec. 1, 1927 STATUTES OF NEVADA 334.

# B. <u>The State Engineer is, and always has been, an adverse party to the claimants in this adjudication.</u>

The State Engineer's claim that he is not an adverse party to the pre-statutory water-right holders in these proceedings, but only a disinterested "special master or referee" is belied by the long history of the State Engineer's mistreatment of pre-statutory water right holders in Diamond Valley.

The State Engineer has been an active and aggressive party opponent to prestatutory right holders in numerous other cases. In the 1950s and 60s, the State Engineer issued groundwater permits that severely over-appropriated the basin despite warnings from USGS scientists that the approved pumping would cause the naturally flowing springs to dry up.<sup>19</sup> In the thirty-year period between 1982 and 2012, after the USGS predictions came true, the State Engineer stood by and took no effective action to stop the over-pumping and protect the senior users.<sup>20</sup> And when those senior users sought mitigation water to make up for the lost spring flows, the State Engineer provided them with only a fraction of the water they were entitled to, and then actively litigated against their efforts to get judicial relief.<sup>21</sup> Finally, the State Engineer refused to curtail the junior-priority pumping<sup>22</sup> and instead approved a groundwater management plan that authorizes such pumping to continue indefinitely while forcing senior-priority users to "share" their water with the

<sup>&</sup>lt;sup>19</sup> Sadler Ranch Answering Br. at 7, *Eureka Cnty. v. Sadler Ranch, LLC*, NV S.Ct. Case No. 75736.

<sup>&</sup>lt;sup>20</sup> *Id*. at 7-8.

<sup>&</sup>lt;sup>21</sup> *Id*. at 8-18.

<sup>&</sup>lt;sup>22</sup> Sadler Ranch Answering Br. at 12-17, *Eureka Cnty. v. Dist. Ct.*, NV S.Ct. Case No. 72317.

juniors.<sup>23</sup> In all of these instances the State Engineer, joined by Eureka County, has actively worked to promote the interests of junior-priority pumpers over those of the senior-priority, pre-statutory right holders.

This adjudication proceeding has been no different. During the administrative proceeding, the State Engineer actively worked to limit the rights of the pre-statutory holders, especially those who had opposed him in previous litigation, even though it resulted in an Order of Determination that contains numerous unreconcilable inconsistencies and erroneous factual interpretations. For example, the State Engineer relied on spring flow reports from a 1937 USGS publication to determine the amount of water recognized in some claims, while wholly ignoring this same data when determining other claims.<sup>24</sup>

Once the judicial portion of this adjudication was initiated, the State Engineer made a conscious and deliberate choice to not actively defend his Order of Determination as to shield himself and his staff from being compelled to be examined, under oath, about these inconsistencies. As the District Court correctly noted, "[t]hat choice was his, and his election not to defend his order of determination was his alone."<sup>25</sup> Because of this, Eureka County has taken up the job of trying to defend the Order of Determination and stated that its sole purpose in doing so is to protect the interest of the junior-priority pumpers.<sup>26</sup>

<sup>&</sup>lt;sup>23</sup> See Diamond Natural Resources Protection & Conservation Association v. Diamond Valley Ranch, LLC, NV S.Ct. Case No. 81224.

<sup>&</sup>lt;sup>24</sup> Ex. 2 at 418:14-423:18.

<sup>&</sup>lt;sup>25</sup> Ex. 1 at 10:20-11:1.

<sup>&</sup>lt;sup>26</sup> Ex. 3 at 2:15-18, 19-21.

As the District Court correctly held, it cannot force the State Engineer to defend his order.<sup>27</sup> However, if the State Engineer chooses not to, he forfeits the right to complain to this Court about the consequences of that decision.

### **CONCLUSION**

Based on the forgoing, Sadler Ranch respectfully requests the Court deny the State Engineer's requested stay with respect to the ongoing district court adjudication proceeding.

Respectfully submitted this 4th day of March 2022. TAGGART & TAGGART, LTD.

By: /s/ David H. Rigdon

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<sup>&</sup>lt;sup>27</sup> Ex. 1 at 10:15-18.

### **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(b), I certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of the foregoing OPPOSITION TO STATE ENGINEER'S EMERGECY MOTION FOR STAY using the Nevada Supreme Court's E-Flex electronic filing system to the following parties:

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DATED this 4th day of March, 2022.

*/s/ Chloe Gouldman-Gainey* Employee of TAGGART & TAGGART, LTD.

# Index of Exhibits

Exhibit	Exhibit Description	Number
No.		of Pages
1	District Court Order Denying State Engineer's	16
	Motion for Stay	
2	Transcript of September 30, 2021 Hearing on	100
	Sadler Ranch Exceptions	
3	Eureka County's Motion to Intervene	14

# Exhibit 1

# Exhibit 1

Docket 84275 Document 2022-07053

	1	Case No. CV-2002009 Dept No. 2	N.O
	2		FEB 2 4 2022
	4		3. ForMahony
	6	IN THE SEVENTH JUDICIAL DIST	RICT COURT OF THE STATE OF
	7	NEVADA, IN AND FOR TH	E COUNTY OF EUREKA
	8	****	* * *
JUDICIAL DISTRICT COURT GARY D. FAIRMAN BISTRICT JUDGE BISTRICT JUDGE BISTRICT JUDGE BISTRICT JUDGE BISTRICT JUDGE BISTRICT SURVIX COUNTIES	9 10 11 12 13	IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS, BOTH SURFACE AND UNDERGROUND, LOCATED WITHIN THE DIAMOND VALLEY HYDROGRAPHIC BASIN NO. 10-153, EUREKA AND ELKO COUNTIES, NEVADA	<u>CERTIFICATE OF SERVICE</u>
SEVENTIA WHITE FINE	15	The undersigned being an employee of	the Europe County Obstate Office
	16	certifies that on the 24 th tax of 54	ule Eureka County Clerk's Office, hereby
	17	correct copy of the following:	y, 2022, I personally delivered a true and
	19	Order Denving State Engineerin 14- (1	
	20 21	Solarijos, LLC's Motion For Partial Summ Denying Motion For Stay of The Entirety of The Appeal	on For Stay of Corrected Order Granting ary Judgment Pending Appeal; Order hese Adjudication Proceedings Pending
	22	Paul Tangart Esg	Devid News' Fire
	23	David H. Rigdon, Esq.	David Negri, Esq. David.negri@usdoj.gov
•	24	Tamara Thiel, Esq.	James N. Bolotin, Esg.
	25 26	Tim@legaltnt.com David@legaltnt.com	lan Carr, Esq. jbolotin@ag.nv.gov icarr@ag.nv.gov
		<u>lammy@legaltht.com</u>	

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SEVENTH JUDICIAL DISTRICT COURT

Case No. CV-2002009 1 Dept No. 2 2 NO \_ = .ED 3 FEB 2 4 2022 4 BIYELON !! 5 6 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF 7 8 NEVADA, IN AND FOR THE COUNTY OF EUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 9 \*\*\*\* 10 ORDER DENYING STATE IN THE MATTER OF THE DEPARTMENT 2 LINCOLN AND EUREKA ENGINEER'S MOTION FOR STA GARY D. FAIRMAN DETERMINATION OF THE RELATIVE YOF CORRECTED ORDER GRANTING SOLARLJOS, LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT PENDING APPEAL: ORDER DENYING MOTION FOR STAY OF THE ENTIRETY OF THESE ADJUDICATION STATE OF NEVADA 11 **RIGHTS IN AND TO ALL WATERS** DISTRICT JUDGE BOTH SURFACE AND UNDERGROUND, 12 LOCATED WITHIN THE DIAMOND VALLEY HYDROGRAPHIC BASIN NO 13 10-153, EUREKA AND ELKO COUNTIES, **NEVADA** WHITE FINE. 14 PROCEEDINGS PENDING APPEAL 15 On February 9, 2022, the State of Nevada, Department of Conservation and 16 Natural Resources, Division of Water resources, and Adam Sullivan, P.E., in his capacity 17 as the Nevada state Engineer (hereafter "State Engineer") filed a motion for stay of 18 corrected order granting Solarljos, LLC's motion for partial summary judgment and for 19 stay of the entirety of these adjudication proceedings pending appeal. On February 10, 20 2022, the court entered an order setting hearing for oral arguments and an order 21 shortening time to 5:00 p.m. on February 17, 2022 to file responses to the motion for stay. 22 On February 17, 2022, the following responses were timely filed: (1) Venturacci's Eureka County Clerk 23 opposition to State Engineer's motion for stay of corrected order granting Solarljos, LLC's FEB 2 4 202 24 motion for partial summary judgment and for stay of the entirety of these adjudication

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proceedings pending appeal; (2) Baumann, Beck Entities, and Fizwater's opposition to

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SEVENTH JUDICIAL DISTRICT COURT GARY D. FAIRMAN DISTRICT JUDGE DEPARTMENT DEPARTMENT STRE OF NEVADA STATE OF NEVADA



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motion for stay of corrected order and stay of the entirety of adjudication proceedings 1 pending appeal; (3) United States' response to Nevada State Engineer's motion in 2 support of a stay; (4) Eureka County's joinder to motion for stay of corrected order 3 granting Solarljos, LLC's motion for partial summary judgment and for stay of the entirety 4 of these adjudication proceedings pending appeal; (5) Solarljos, LLC's opposition to the 5 State Engineer's motion for stay of corrected order granting Solarljos, LLC's motion for 6 partial summary judgment and for stay of the entirety of these adjudication proceedings 7 pending appeal; (6) opposition of Wildred and Carolyn Bailey Family Trust to motion for 8 stay of corrected order granting Solarljos, LLC's motion for partial summary judgment and 9 for stay of the entirety of these adjudication proceedings pending appeal; (7) Sadler 10 Ranch, LLC's and MW Cattle, LLC's joinder to opposition of Wilfred and Carolyn Bailey 11 Family Trust to motion for stay of corrected order granting Solarljos, LLC's motion for 12 partial summary judgment and for stay of the entirety of these adjudication proceedings 13 pending appeal; (8) Ira R. Renner and Montira Renner's opposition to State Engineer's 14 motion for stay of corrected order granting Solarljos, LLC's motion for partial summary 15 judgment and for stay of the entirety of these adjudication proceedings pending appeal; 16 (9) United States' response to Nevada State Engineer's motion in support of a stay. On 17 February 18, 2022, after reviewing all timely filed responses, the court entered an order 18 vacating the oral arguments hearing.

### RELEVANT PROCEDURAL BACKGROUND

On November 10, 2020, a hearing was held to consider the notices of exceptions filed by the parties in interest. The parties and/or their counsel appeared and provided input to the court regarding case procedure, including discovery and motion practice.<sup>1</sup> On December 10, 2020, the court entered an order setting hearings for notices of

<sup>1</sup> JAVS recorded hearing held via Zoom on November 10, 2020.

exceptions filed on order of determination to determine relative water rights; order establishing case procedure ("order establishing case procedure"). No motion for reconsideration of the court's order establishing case procedure was filed by any claimant nor the State Engineer. Throughout the entirety of almost all, if not all, of the individual claimants' cases discovery has occurred and a variety of motion practice has been engaged by various claimants, including the proceedings involving Sadler Ranch, LLC, MW Cattle, LLC, and Daniel S. Venturacci and Amanda L. Venturacci, all of which had their evidentiary hearings in 2021.<sup>2</sup> The USA and the Venturaccis currently have pending before the court motions for summary judgment.<sup>3</sup>

The State Engineer's motion for stay: (1) generally objects to the court allowing discovery and dispositive motions in this adjudication; (2) objects to the fact that the effect of this Court's corrected order granting Solarljos, LLC's motion for partial summary judgment violated NRS 533.170(3) and (4) which he argues required that a hearing be held even if no exceptions are filed<sup>4</sup>; and (3) challenges whether the court's NRCP 54(b) certification of the corrected order granting Solarljos, LLC's motion for partial summary judgment was proper.

<sup>4</sup> Motion for stay at pg. 3; case appeal statement filed February 9, 2022, at pg. 5.

COUNTIES SEVENTH JUDICIAL DISTRICT COURT PINE, LINCOLN AND EUREKA GARY D. FAIRMAN BTATE OF NEVADA DISTRICT JUDGE 13 14 15 WHITE 16

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<sup>&</sup>lt;sup>2</sup> Motion practice concerning various requests to the court has also been engaged in the cases involving the USA, Eureka County, Arc Dome Partners, LLC, Robert F. Beck and Karen A. Beck, Trustees of the Beck Family Trust dated 4-9-2005 and Beck Properties.

<sup>&</sup>lt;sup>3</sup> Eureka County has filed an opposition to the USA's motion for partial summary judgment. Its opposition does not object that the procedure of engaging in summary judgment practice is prohibited under NRS 533.170. The USA has opposed Venturacci's motion for summary judgment and likewise does not object to the use of summary judgment as a procedure in these proceedings.

**DISCUSSION** 

### WHETHER ENTIRETY OF THE PROCEEDING SHOULD BE STAYED

NRS 533.170(2) reads as follows:

The order of determination by the State Engineer and the statements or claims of claimants and exceptions made to the order of determination shall constitute the pleadings, and there shall be no other pleadings in the cause.

NRCP 7(a) sets forth pleadings allowed in civil actions consisting of a complaint, answer, answer to a counterclaim, answer to a cross-claim, third-party complaint, answer to a third-party complaint and if ordered by the court, a reply to an answer. NRS 533.170(2) describes the only pleadings allowed in an adjudication as the (1) order of determination; and (2) the statements or claims of claimants and exceptions made to the order of determination. The court agrees with the State Engineer that the pleadings in water rights adjudication proceedings are defined by NRS 533.170. But, the State Engineer then argues that it was error for the court to permit discovery and dispositive motions premising his rationale on NRS 533.170(2) which he reads as prohibiting any further documents to be filed in the case beyond the order of determination and the claimants' statements or claims and exceptions to the order of determination. The State Engineer's argument is without merit. The State Engineer confuses pleadings with motion practice. NRS 533.170(5) reads in relevant part, "All proceedings thereunder, including the taking of testimony, shall be as nearly as may be in accordance with the Nevada Rules of Civil Procedure . . .". Pursuant to NRCP 7(b), a request for a court order must be made by a motion. Nothing in NRS 533.170 prohibits parties from requesting the court for an order by motion practice.

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DEPARTMENT 2 LINCOLN AND EUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 GARY D. FAIRMAN 11 STATE OF NEVADA DISTRICT JUDGE 12 13 14 WHITE PINE, 15 16

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OEPARTMENT 2 White Fine, Lincoln and Eureka Counties SEVENTH JUDICIAL DISTRICT COURT 9 10 GARY D. FAIRMAN STATE OF NEVADA 11 DISTRICT JUDGE 12 13 14 15

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This adjudication has been replete with requests for orders seeking various relief, which if the State Engineer's interpretation was sound would have been prohibited. Case management chaos would occur if the State Engineer's skewed analysis was followed by the court. Using the State Engineer's rationale, if a filed notice of exception was facially defective, no other interested party, including the State Engineer, could challenge the defect by way of a case dispositive motion to dismiss, but the interested parties would instead be compelled to prepare for an adjudication hearing consuming enormous time, expense, and judicial resources. Certainly this cannot be the demise of an adjudication case. If the effect of granting a dispositive motion renders a hearing on an exception unnecessary such a result is proper. Motions for summary judgment and discovery have been allowed in Nevada's adjudication cases.<sup>5</sup> In Solarljos's motion for partial summary judgment the court reviewed the record before the State Engineer in order to determine the merits of Solarljos's notice of exceptions and motion. No other interested parties were involved in Solarljos's case. The State Engineer unilaterally decided early on in this adjudication that it would not participate to defend his order of determination.<sup>6</sup> A hearing under NRS 533.170 was not necessary or required.

Regarding discovery, if the court in an adjudication case were limited solely to the record before the State Engineer, there would be no need for the presentation of any evidence to the district court in an adjudication case. The court has found no such

<sup>&</sup>lt;sup>5</sup> In Re Determination of Relative Rights In and To Waters of Frankton Creek, Washoe Cty., 77 Nev. 348, 355, 364 P.2d 1069, 1072-73 (1961). The Nevada Supreme Court affirmed a District Court order granting summary judgment. <sup>6</sup> This was an important fact this Court considered in granting Eureka County's motion to intervene on

March 16, 2021.

COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 DEPARTMENT 2 WHITE PINE, LINCOLN AND EUREKA GARY D. FAIRMAN 11 STATE OF NEVADA DISTRICT JUDGE 12 13 14 15

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7 See NRS 48.025(1)(c).

limitation under Nevada law. In fact, NRS 533.170(3) and (5) allow, but do not compel, the court to take testimony. Admissible testimony is evidence. Nowhere under NRS 533.170 is the court's review limited to that of administrative determination record below and only to evidence offered before the State Engineer or his hearing officer.<sup>7</sup> Simply put, if no discovery were allowed, the evidentiary hearing under NRS 533.170 would be relegated to trial by ambush. The court rejects the State Engineer's position, it being frivolous.

#### The State Engineer's failure to challenge the court's order setting hearings for notices of exceptions filed on order of determination to determine relative water rights: order establishing case procedure constitutes a waiver

On December 10, 2020, the court entered its order establishing case procedure providing for discovery and dispositive motions. The State Engineer failed to challenge this order until February 8, 2022, when it filed a notice of appeal and his motion for stay. For over a year discovery as ensured by most, if not all, claimants and numerous motions have been filed and ruled upon by this Court. During this time the State Engineer has sat on his hands to the clear detriment of all parties. Needless to say, during this year the parties have incurred enormous time and expense as earlier noted. But, the State Engineer had a remedy if he believed that this Court was acting in excess of its statutory authority under NRS 533.170, that being to challenge the court's order establishing case procedure by a writ of prohibition. A writ of prohibition is the remedy to prevent the discovery and motion practice ordered as being in excess of the court's statutory

COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 LINCOLN AND EUREKA GARY D. FAIRMAN 11 STATE OF NEVADA DISTRICT JUDGE 12 13 14 WHITE PINE, 15

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<sup>8</sup> See Wardleigh v. District Court, 111 Nev. 345, 351, 891 P.2d 1180 (1995).

9 Cotter v. Eighth Judicial Dist. Court of Nev. 134 Nev. 247, 249, 416 P.3d 228 (2018). 26 7

The Nevada Supreme court has considered a writ of prohibition in cases jurisdiction.8 where the district court exceeded its jurisdiction in ordering the production and disclosure of privileged information. The Nevada Supreme Court has stated, "Although this court rarely entertains writ petitions challenging pretrial discovery, 'there are occasions where, in the absence of writ relief, resulting prejudice would not only be irreparable, but of a magnitude that could require the imposition of such drastic remedies as dismissal with prejudice or other similar sanctions.""9 The argument the State Engineer makes is that this Court has exceeded its statutory jurisdiction under NRS 533.170 by allowing discovery, and motion practice, including dispositive motions in the adjudication proceedings. For the State Engineer to wait over a year and allow discovery, motion practice and two lengthy adjudication hearings to take place without a challenge in any way to this Court's December 10, 2020, order establishing case procedure is unconscionable. The court finds that the State Engineer has waived any objection that he may have to the discovery and motion practice used in this adjudication.

A single decree involving all other claimants' cases either affirming or modifying the State Engineer's order of determination was not required in Solarlios LLC's notice of exceptions

Solarljos's argument is that the record before the State Engineer, made part of the record

in the district court and reviewed by this Court, was void of any evidence to support the

State Engineer's factual finding, conclusions and order of determination.

agreed with Solarljos and entered partial summary judgment in its favor.

No parties in interest, other than Solarljos, participated in its adjudication.

The court

The State

PINE, LINCOLN AND EUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 GARY D. FAIRMAN 11 STATE OF NEVADA DIBTRICT JUDG DEFARTMENT 12 13 14 15 WHITE 16

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Engineer and Eureka County disagreed and have appealed. The issues in Solarljos's case are unlike the other claimants' issues who have filed notices of exceptions, where there have been either competing notices of exceptions filed or there have been intervening parties who challenge the notices of exceptions. Several of the cases involving Sadler Ranch LLC, MW Cattle, LLC and Daniel S. Venturacci and Amanda L. Venturacci have already proceeded through evidentiary hearings and post-trial briefing. All of the remaining cases are set for adjudication hearings in March and April, 2022. Other than the Solarljos case involving a decreed amount of water in Diamond Valley, there is nothing else factually similar in the Solarljos case and the cases previously heard by the court or in those that will be heard in March and April.<sup>10</sup> With Solarljos LLC's motion for partial summary judgment being unopposed, an order granting its motion and certification was appropriate under NRCP 54(b).

The court finds a stay of any of the remaining proceedings scheduled to be heard March and April, 2022, is not supported by the State Engineer's motion for stay and issues noted in his case appeal statement. Further, the State Engineer's concern that multiple decrees will be potentially entered by the court contrary to NRS 533.185(1) which he alleges requires a single decree, although not supported by Nevada Law, is moot, assuming, arguendo, this legal argument has merit. Provided the remainder of the evidentiary hearings take place as scheduled in March and April, 2022, this Court will be entering a single decree encompassing the Sadler Ranch, LLC, MW Cattle LLC and

<sup>&</sup>lt;sup>10</sup> See this Court's order granting Solarljos LLC's motion for certification of judgment on Solarljos LLC's exceptions in this adjudication proceeding entered January 21, 2022 at pg. 4-5.

PERATMENT 2 FINE, LINCOLN AND GUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 GARY D. FAIRMAN 11 NEVADA DISTRICT JUDGE 12 STATE OF 13 14 15 WHITE

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Venturacci hearings together with the upcoming scheduled hearings. This Court's future case docket will not allow this Court time to enter individual decrees and the court's judicial time will best be used to address all cases in one decree.

Whether a stay should be granted pending the appeal by the State Engineer and Eureka County of the certification of the corrected order granting Solarlios LLC's motion for partial summary judgment

In deciding whether to grant a motion to stay pending appeal the Nevada Supreme Court considers four factors which this Court must also consider, they being: (1) whether the object of the appeal will be defeated if the stay if denied; (2) whether appellants will suffer irreparable or serious injury if the stay is denied; (3) whether respondents will suffer irreparable harm or serious injury if the stay is granted; and (4) whether appellants are likely to prevail on the merits in the appeal.<sup>11</sup> A movant does not always have to show a probability of success on the merits, but the movant must present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.<sup>12</sup>

### The Object Of The Appeal

The object of the appeal will not be defeated if the stay is denied. The State Engineer argues that his interest in preserving the status quo is to not have any decree entered by the district court providing for the vested rights of Solarljos until the issues raised in the State Engineer's appeal have been decided.<sup>13</sup> The State Engineer relies

<sup>&</sup>lt;sup>11</sup> Fritz Hansen A/S V. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982 (2000).

<sup>12</sup> Id., at 659, citing Ruiz v. Estelle. 650 F.2d 535, 565 (5th Cir, 1981).

<sup>&</sup>lt;sup>13</sup> Eureka County joined the State Engineer's position on this issue as well as all issues raised in the State Engineer's motion for stay. On September 23, 2021, Eureka County filed an opposition to the USA's 25 motion for summary judgment filed September 3, 2021. Eureka's opposition does not raise the issue that

COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 PINE, LINCOLN AND EUREKA GARY D. FAIRMAN 11 STATE OF NEVADA DISTRICT JUDGE 12 13 14 15 WHITE

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excess of 40 years has allowed egregious over pumping in Diamond Valley by junior pumpers, whereby the Diamond Valley aquifer is being over pumped by in excess of 30,000 afa, the difference in the amount of water allocated to Solarljos from the State Engineer's preliminary order to his final order of determination of approximately 329 afa is insignificant. None of the other vested rights claimants, except Eureka County, have appealed the court's corrected order granting Solarijos LLC's motion for partial summary judgment or otherwise challenged Solarljos's notice of exceptions. Consistent with the State Engineer's decision not to participate in any of the notices

on his position that this Court impermissibly allowed discovery and motion practice,

including motions for summary judgment, as part of the case procedure.<sup>14</sup> As stated

earlier, this argument is clearly misplaced. Further, given that the State Engineer for in

of exceptions he did not file an opposition to Solarljos's motion for partial summary judgment. The State Engineer's failure to oppose a dispositive motion precludes the State Engineer from challenging the court's order granting relief to Solarljos.<sup>15</sup> This Court cannot compel any individual or entity, including the State Engineer, to be a litigant party to an adjudication proceeding. It is the parties' "right to enforce the claim and who has a significant interest in the litigation."16 It would have been inappropriate for the court to compel the State Engineer to defend his order of determination. That choice

this Court exceeded its jurisdiction by allowing motion practice in an adjudication proceeding under NRS 533.170. 14 Mot for stay at 8

<sup>&</sup>lt;sup>15</sup> See Renown Reg'l Med. Ctr. v. Second Judicial District Court, 130 Nev. 834, 828, 335 P.3d 199, 202 (2014); 7JDCR7(7). <sup>16</sup> Pointer v. Anderson, 96 Nev. 941, 943, 620 P.2d 1254, 1255 (1980); NRCP 17.

DEPARTNENT 2 LINCOLM AND EUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 GARY D. FAIRMAN 11 STATE OF NEVADA DISTRICT JUDGI 12 13 14 FINE. 15 WHITE

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was his, and his election not to defend his order of determination was his alone. Additionally, the State Engineer's case appeal statement cites that he will pursue on appeal the issue of propriety of discovery and use of dispositive motions in adjudication proceedings under NRS 533.170 and whether NRCP 54(b) certification was appropriate. No apparent challenge is being made by the State Engineer regarding the substantive merits of Solarljos LLC's motion for partial summary judgment or the court's order granting the same.17

Finally, none of the other vested rights claimants, nor any other interested party participated in Solarljos's case for the reason that the claims and substantive issues in Solarljos case were unrelated to those of the other vested rights claimants or to anyone Had there been any interested party, they had the intervention procedure else. available, as others in this adjudication pursued.

## No Irreparable Harm or Injury Will Occur to the State Engineer or to the People of Nevada

No irreparable injury will occur to the Diamond Valley water users, the State Engineer or to Nevada if the stay is denied. Should the Nevada Supreme Court reverse this Court's corrected order granting partial summary judgment and it be determined that pending the Supreme Court's decision, Solarljos used water in excess of its right, the excess use can be repaired by reducing future allocation of the amount of water that Solarljos is ultimately found to be entitled until the excess amount used was replaced.18

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<sup>23</sup> 

<sup>17</sup> See case appeal statement, paragraph I, pg 4-5.

<sup>18</sup> See United States v. Truckee-Carson Irregation District 882 F.2d 364, 368 (9th Cir. 1989) ("stay of order releasing water to Newlands Project denied because if Pyramid Tribe prevailed in overturning the order, an amount of water equal to the amount released could be accumulated . . . out of future

DEPARTMENT & LINCOLN AND EUREKA COUNTIES SEVENTH JUDICIAL DISTRICT COURT 10 GARY D. FAIRMAN STATE OF NEVADA 11 DISTRICT JUDGE 12 13 WHITE PINE. 14 15 16

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19 Mot. for stay at 8-9. 20 Corrected order granting Solarijos LLC's partial motion for summary judgment at 6-6.

allotments to the District and allowed to flow to Pyramid Lake ....").

Engineer couches his position that the State of Nevada "potentially" will suffer irreparable injury because water "might" be distributed incorrectly.<sup>19</sup> Speculation does not equate to irreparable harm. Irreparable harm or injury to Solarljos or other claimants will occur if these proceedings are stayed in their entirety. Staying the entirety of the proceedings while the appeal is pending, will result in a substantial delay in a decision on the water to which the claimants are entitled and if they are found to be entitled to more water than is allowed by the order of determination, the delay will result in the permanent loss of an additional water to which they may be found entitled. That loss cannot be made up by providing them additional water to make up for the delay because they can only irrigate the land which they own or regularly farm.

Should the court grant a stay Solarljos will not be able to pursue the development

of its mining operations as previously found by this Court. Such a delay will obviously

impact its business operations. This Court has previously held that the prejudice to

Solarljos outweighs the prejudice to the remaining parties to this adjudication.<sup>20</sup> This

adjudication case involves more than litigation costs and delay of litigation as the sole

harm. Any delay to Solarljos or to any of the other claimants should a stay be entered

as to the entirety of this proceeding would cause the claimants to have even more years

of unsurety as to the vested rights they claim and an interference with their business

operations. The balance of the equities lies against granting a stay, not only to Solarljos,

The State Engineer's position is exaggerated and premised on speculation. The State

but as well to the remaining claimants whose cases have been heard or will be heard in March and April, 2022.

### Likelihood of Success on the Merits

Other than challenging the court's use discovery and motion practice, the State Engineer's case appeal statement fails to cite any other substantive issue(s) he seeks to challenge on appeal. As previously discussed by this Court, the State Engineer has not shown that he will prevail on appeal that this Court improperly allowed discovery or the use of motion practice, including summary judgment. The State Engineer failed to oppose Solarijos's motion for partial summary judgment. No court order or other impediment existed precluding the State Engineer from opposing Solarijos's motion.

Good cause appearing

IT IS HEREBY ORDERED that the State Engineer's motion for stay of corrected order granting Solarljos, LLC's motion for partial summary judgment pending appeal is DENIED.

IT IS HEREBY FURTHER ORDERED that the State Engineer's motion for stay of the entirety of these adjudication proceedings pending appeal is DENIED.

DATED this <u>24</u><sup>th</sup> day of February, 2022.

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# Exhibit 2

# Exhibit 2

	Do Not Copy In The Matter Of:
IN THE	MATTER OF THE DETERMINATION OF
INE KEL	LATIVE RIGHTS IN AND TO ALL WATERS
	September 30, 2021
	Capitol Reporters
	028 E. John St # 3 Carson City Nevada 89706
	775 882-5322
	Original File 9-30-21sadlone1_scoped_1.txt

# IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS

	Page 266	6	Page 268
	1 Case No. CV2002009	1	FUREKA NEVADA TUURSDAY SERTEMPER 10 2021 A M CROSSER
	2 Dept. No. 2		-offo-
	3	3	-000-
	4 IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA		THE COURT: Court is in session Places be
	5 IN AND FOR THE COUNTY OF EURERA		is seated Good morning everyone. This is the continuation of
	6 BEFORE THE HONORABLE GARY D. FARIMAN	6	our hearing. We have the presence of the partice. Sodier
	7	7	Ranch, MW Cattle their coursel Mr. Rigdon
1	8	8	Eureka County, their counsel Miss Peterson
	9 IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL	9	Mr. Tibbitts representing Fureka County today
1	0 WATERS BOTH SURFACE AND UNDERGROUND LOCATED WITHIN THE DIAMOND VALLEY	10	Mr. Bolotin from the Attorney General's office
1	1 HYDROGRAPHIC BASIN NO. 10-153, ELKO AND BUREKA COUNTIES, NEVADA.	11	Mr. Carr is present. And is it Mr. or Miss Parker present as
1:	2/	12	well?
1:	3	13	MR. BOLOTIN: Yes Your Honor Bill Parker from
14	TRANSCRIPT OF PROCEEDINGS	14	the Division of Water Resources adjudication section
1!	VOLUME II	15	THE COURT: Very well. If any other parties if
10	5 PUBLIC HEARING	16	I fail to recognize them, any other representatives from the
17	SEPTEMBER 30, 2021	17	Division of Water Resources appear, if you'll just let the
18	3	18	Court know, Mr. Bolotin, and we'll make note for the record
19		19	today.
20	)	20	MR. BOLOTIN: Thank you. Thank you.
21		21	THE COURT: We were (indiscernible)
22		22	cross-examination with respect to the witness Mr. Buschelman.
23		23	Mr. Buschelman, I'll remind you that you're still
24	Transcribed by: Shellie Loomis, RPR	24	under oath and we can continue with cross-examination.
-	the second se		and the product of the
	Page 267		Page 269
1	APPEARANCES :	1	MC DETERSON, TI I V V
2	For Renner, Venturacci, and MW Cattle: Taggart 5 Taggart 144	2	BY MS DETERSON: Thank you, Your Honor.
3	By: David Rigdon, Esq.	3	O Mr. Buschelman, good marrier, Karry Bata
4	Carson City, NV 89703	4	c. Mi. Duschennan, good morning. Karen Peterson
5	divider gartat.com	5	A Good morning
6	For Eureka County: Allison MacKenzie, Ltd.	6	0 And I heard testimony from you vostorday that
7	402 N. Division Street Carson City, NV 89703	7	your one of the things that was a little different about
8	kpeterson@allisonmackenzie.com	8	this adjudication and the springs that you investigated the
9	For the Division of Water Resources: James Bolotin	9	Romano Ranch springs and the Sadler springs was that they had
10	Sr. Deputy Attorney General Carson City, NV 89703	10	constant flow.
11		11	Do you recall that testimony?
12	(INDEX LOCATED AT THE END OF THE TRANSCRIPT.)	12	A. Yes, I do.
13		13	Q. And you indicated vesterday that the Romano Ranch
14		14	complex of springs was about 15 springs?
15		15	A. I know it was numerous springs. I don't know the
16		16	exact number. I just knew it was more than eight eight and
17		17	less than 20, something like that.
18		18	Q. And what's the basis for your statement that
19		19	those springs, those between eight and 20 springs, are
20		20	constant flow?
21		21	A. I believe the basis is information of
22		22	observations of people such as Mr. Payne that were out there
23		23	the field, other testimony from adjoining ranches such as the
24		24	Sadler, and interactions I mean on their particular spring

# IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS

T	HE RELATIVE RIGHTS IN AND TO ALL WATERS	September 30, 2021	
	Page 270	)	Page 272
	source, the adjoining ranchers.	1	$\mathbf{O}$ And did that jurat swear under ooth that the man
	2 Most of this spring complex, if you want to call	2	was an accurate plat of the lands irrigated by Mr. Romano?
	it, it's the northern end of Diamond Valley, predominantly	3	A It was an accurate man of what that surveyor
4	must have been fairly constant or those ranches would never	4	surveyed and what he illustrated is what he surveyed
1 5	have developed to the extent that they did.	5	O. Did you sorry
6	So through other information that I've seen in	6	A. Yes. And I prepared these same jurats when I do
7	the record, the aerial photos that would support a reasonably	7	a map as well and I'm familiar with the language in those
ε	constant source of water to support the cultures that we've	8	jurats. And the surveyor os saving I went in the field I
9	seen on the photos, even in 1946 would lead me to believe that	9	conducted a survey, this is what I observed and this is what
10	those springs flowed some form of constantly at some rate.	10	I'm mapping.
11	It may vary a little bit, and what I mean by a	11	And that's what he's illustrating on the map
12	little bit, it's not as if you would see a stream system that	12	is what he observed on the map. It has no bearing on what was
13	will increase its flow 20, 30 times during spring runoff and	13	outside of that area. And it is not all inclusive of what
14	then drop to a smaller amount during the rest of the year.	14	was what may have been the place of use. It is what he did
15	These sources varied a little bit from seasonal fluctuations,	15	on that map I'm sorry, in that survey at that location.
16	but nothing as drastic as we see in our stream system.	16	That's what he's attesting to.
17	So those sources of information lead me to	17	Q. Did you read the jurats?
18	believe that it was a fairly constant (indiscernible) flow.	18	A. Yes.
19	Q. And then do you still have that Exhibit book in	19	Q. On both of the maps?
20	rront of you?	20	A. I did.
21	A. $1 \text{ d}0.$	21	Q. And is it possible that they're different?
22	Q. The Eureka County Exhibit book?	22	A. There's a little bit of language difference, but
23	A. res, Exhibit EE. $\Omega$	23	the intent is very much the same.
41	Q. Could you go to FF?	24	Q. Do you know if the language is exactly the same?
	Page 271		Page 273
1	A. Yes.	1	A. I would have to read it. I would have to get a
2	Q. And at the end of Exhibit FF are some maps.	2	copy big enough so that I could see it and read it, but I
3	There's three pages of maps. Do you see that?	3	could do that if it was provided.
4	A. I see two maps at the end of it.	4	Q. Do you have any evidence that
5	Q. Do you see the Romano map? It might be on the	5	THE COURT: Just one moment. This is something
6	back of one of the pages?	6	that I meant to bring today, but I didn't either. I'm just
7	A. Oh, three maps. It's small enough I can't quite	7	going to ask a question of our clerk.
8	read.	8	Do we have a magnifying glass?
9	Q. Do you know if that's the Romano map?	9	THE CLERK: No (indiscernible).
10	A. I'm sorry, it's small enough that I can't quite	10	THE COURT: Okay. All right.
12	I'm sorry. Light contract the sorry distance and the sorry distance of the sorry distanc	11	THE CLERK: I'll check.
12	speaking to	12	THE COURT: Let's just do that. That would help
14	O You testified vesterday that when you more set	13	us. I had that on my notes but I didn't look at my notes so I
15	WW Cattle ranch that you had the Remand men with you were out on	14	didn't bring mine.
16	1946 aerial and then the Boyak man that was filed with the	15	MS. PETERSON: For this one you may need more
17	original proofs	10	than a magnifying glass, Your Honor.
18	Do you remember that testimony?	10	might need a microscore
19	A. I do. And I did have those maps with me then	10	THE WITNESS, Voch
20	yes, that's correct.	20	THE COURT It's protection to a start
21	Q. Did you study the Romano man?	21	light you know without the light vorter day is the set
22	A. I did.	22	having the light come on was better but this is shallon-in-
23	Q. And was there an oath, a jurat on the Romano man?	23	Okay. Very good. We'll continue on
24	A. There was.	24	Go ahead, go ahead, Sorry to interrupt Miss
			, go more sony to monupt, miss

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS

	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 27	4	Page 276
	1 Peterson.		MR RIGDON: Okoy Derfect They
	2 BY MS. PETERSON:		THE WITNESS: I believe I'm there. And this is
	Q. Do you have any evidence that the sworn statemen	it 3	for proof 04476?
	that's on this 1913 map was not accurate?	4	BY MS PETERSON
4	A. Oh, I believe it to be accurate, yes, I really	5	0 Yes
	do. Accurate again, accuracy to the fact that what he	6	A Thank you
	attested to is that I surveyed these lands and I am visually	7	0 So you have your amended proof and Luce as in
8	representing what I saw in the field and identified on these	- 8	to go to the third page of that which is question 25
9	lands, yes, I believe that to be true.	9	A I'm there
10	Q. And then directing your attention to Exhibit GG.	10	$\Omega$ Do you see that?
11	MR. RIGDON: I'm sorry, clarification?	11	A. I do
12	MS. PETERSON: GG.	12	MS_PETERSON: And just for the Court's
13	MR. RIGDON: GG. Okay.	13	reference, this is for the Romano Spring Number 2 and
14	THE WITNESS: (Complies.)	14	tributaries
15	BY MS. PETERSON:	15	Is that correct, the proof for that?
16	Q. So towards the back of that Exhibit sorry,	16	THE COURT: And if you could direct the Court to
17	Mr. Buschelman, these pages aren't Bates stamped. I'll	17	the page that you're referring to Vou said that they ware the
18	represent that this is the proof of claim filed for proof 4476	18	I guess paginated
19	for MW Cattle. And your 2016 amended proof of claim is in	19	Do you so I can turn it and muddle along
20	here about halfway through.	20	MS PETERSON: So Your Honor, it is proof of
21	Would you possibly be able to find that?	21	appropriation that was filed in May, on May 31st of 2016
22	A. (Complies.)	22	THE COURT: Okay, I do have obviously I have
23	Could you restate that? What am I looking for	23	GG in front of me, but Liust didn't know where where
24	again, please?	24	within that GG Exhibit to turn to
2	Page 275		Page 277
1	O. Your amended proof of claim		MS DETERSON Diter
2	A. And the man for that	1	MS. PETERSON: Right. I'm sorry. And the pages
3	O. Just your amended proof of claim	4	are not Bates stamped. So I apologize.
4	A. Okav.	3	THE COURT: Our
5	THE COURT: Mr. Buschelman	1	MS DETERSON IL A STATE AND A
6	THE WITNESS: Oh	2	MS. PETERSON: I'm trying to get a point of
7	THE COURT: That may assist with small print	7	THE COURT AND
8	THE WITNESS: Yes That will help. Thank you		THE COURT: And you may approach the bench if you
9	BY MS. PETERSON:	0	it and I'll be used and here the page, and I can maybe turn to
10	Q. Are we going to go back to the jurat for the	10	for you. Ma Deterrary lives up or however it works
11	Romano map?	11	MS_PETERSON, Just get on the bench there.
12	MR. RIGDON: Your Honor while he's looking can	12	THE COURT: Therefore a the second sec
13	I have a question. I've noticed on the microphone they keep	13	BV MS DETERSON.
14	blinking green which means mute and then back to red. Liust	14	O Mr Buschelmen that C D C i be t
15	want to make sure we're getting the full record and that the	15	2: is that correct? This proof?
16	State Engineer's office can hear us	16	A That's correct
17	Is it going in and out or are we getting a	17	A. That's correct.
18	constant record?	/ 19	v. And number 25 there and you prepared this
19	THE CLERK; Mr. Bolotin, can you hear everybody	10	A That's correct
20	in the courtroom right now?	20	And this was an organized to the state of the
21	MR. BOLOTIN: Yes. I can (indiscernible)	21	of appropriation that had here file if a state of the previous proof
22	THE CLERK: Great. Thank you	4⊥ 22	correct?
23	THE COURT: And is your JAVS working?	22	A That's correct
24	THE CLERK: Yes.	24	0 And in paragraph 25 years in the stand state
			<ul> <li>And in paragraph 25 you indicate that the minimum</li> </ul>

	IE RELATIVE RIGHTS IN AND TO ALL WATERS	-	September 30, 2021
	Page 27	8	Page 280
1	flow needed to push the diverted water over the claimed place	e   :	Q. And separate proofs were filed for each spring;
2	of use in an average year is 1.5 CFS. Do you see that?		2 is that correct?
3	A. I do.	3	A. That's correct. And just to clarify too, this is
4	Q. How did you determine that 1.5 CFS?	4	what you would call a spring complex, meaning based on what I
5	A. I would have to go back to my files and determin	e 5	could identify in aerial photos, again there was no springs
0	what I did to calculate that number.	e	flowing at this point in time, 2016.
	Again, we're speaking to somewhere in the	7	So part of what I was doing was identifying the
8	neignborhood of 15 springs and 15 different filings that I	8	springs associated with the mapping that we spoke of that was
10	made at a minimum. I cannot give you that answer today	9	associated with the Romano Ranch, and then the aerial photos
11	without doing a lot of going back five years ago minimum to	10	that we were able to obtain.
10	get my information to answer that question specifically.	11	There could have been many, many more springs or
12	And I ald not receive any questions from the	12	seats or areas that collected into a or I say that had a
14	State Engineer regarding that number in the process of filing	13	confluence into what you could actually measure.
15	and reasonsing through review, so I didn't have a reason to go back	14	So these filings would represent our best
12	that today	15	assessment of what was being developed by that spring complex,
17	And when you filed this must filed this	16	so there could have been many more sources that we could have
18	Q. And when you med this proof that spring was not	17	identified if this was still an active source today, active
19	A No it was not	18	spring complex.
20	$\Omega$ And then directing your attention a forward of	19	Q. Well, I'm just wondering if you calculated the
21	in this Exhibit there's your attackment a neurotic that	20	it looks like the total duty that's requested here is
22	dated again May 16th 2016: do you and that?	21	basically the acreage times 4.5?
23	A I see the attachment ves	22	A. That's exactly right.
24	O. And directing your attention to page 10 of that	23	Q. So did you back into the 1.5 CFS number for
	Page 279	-	
1	attachment?	1	Page 281
2		1	calculated?
2	$\Omega$ You indicate in the ten bullet the second second	2	A. Again, I'd have to go back through my notes and
4	do you see that?	3	see how that was how that was calculated and I cannot
5	A I do	4	answer that today.
6	$\Omega$ That there's a total of 1 406 10 of water minister i	5	Q. And then directing your attention to the Siri
7	acres that have been historically irrigated by the Demonstra	6	Affidavit which is about three more pages on in this exhibit.
8	Ranch spring complex?	7	A. Okay.
9	A. Can you say that number again please	8	Q. Are you there?
0	O. About half way through that paragraph?	9	A. Iam.
1	A. Okay I'm there now Thank you	10	Q. Are you familiar with this affidavit?
2	O. Yes.	11	A. Yes.
	A 1496 12	12	Q. And this was, let's see, signed by Mr. Siri
3		1.1.3	November /th it looks like in 1983; is that correct?
3	0. Yes.	14	A
- 3 4 5	Q. Yes. A. That's your number? Okay Thank you	14	A. Yes.
- 3 4 5 6	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed</li> </ul>	14 15	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in</li> </ul>
- 3 4 5 6 7	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed basically an aggregate of all the springs?</li> </ul>	14 15 16	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in</li> <li>1922 his family purchased the ranching property known as the</li> </ul>
	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed basically an aggregate of all the springs?</li> <li>A. Yes.</li> </ul>	14 15 16 17	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> </ul>
- 3 4 5 6 7 8 9	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed</li> <li>basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with</li> </ul>	14 15 16 17 18	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry. I'm looking at the first several of the fi</li></ul>
	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with regard to your calculation here of what the total duty</li> </ul>	14 15 16 17 18 19 20	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry, I'm looking at the first paragraph of the first full paragraph</li> </ul>
- 3 4 5 6 7 8 9 ) L	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed</li> <li>basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with</li> <li>regard to your calculation here of what the total duty</li> <li>calculated I guess for the spring complex: there's nothing</li> </ul>	14 15 16 17 18 19 20 21	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry, I'm looking at the first paragraph of the first full paragraph</li> <li>A. You go</li> </ul>
- 3 4 5 6 7 8 9 9 0 L 2	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with regard to your calculation here of what the total duty calculated I guess for the spring complex; there's nothing specific as to each claim or as to each spring; is that</li> </ul>	14 15 16 17 18 19 20 21 22	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry, I'm looking at the first paragraph of the first full paragraph</li> <li>A. You go.</li> <li>Q. Of the affidavit?</li> </ul>
3 4 5 6 7 8 9 0 1 2 3	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed</li> <li>basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with</li> <li>regard to your calculation here of what the total duty</li> <li>calculated I guess for the spring complex; there's nothing</li> <li>specific as to each claim or as to each spring; is that</li> </ul>	14 15 16 17 18 19 20 21 22 22 23	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry, I'm looking at the first paragraph of the first full paragraph</li> <li>A. You go.</li> <li>Q. Of the affidavit?</li> <li>A. Thank you</li> </ul>
- 3 4 5 6 7 8 9 0 1 2 3 1	<ul> <li>Q. Yes.</li> <li>A. That's your number? Okay. Thank you.</li> <li>Q. So was the proof filed proof that you filed basically an aggregate of all the springs?</li> <li>A. Yes.</li> <li>Q. And so there isn't any information specific with regard to your calculation here of what the total duty calculated I guess for the spring complex; there's nothing specific as to each claim or as to each spring; is that correct?</li> <li>A. That's correct.</li> </ul>	14 15 16 17 18 19 20 21 22 23 23	<ul> <li>A. Yes.</li> <li>Q. And he indicates that he was born in 1910 and in 1922 his family purchased the ranching property known as the Romano Ranch; is that correct?</li> <li>A. Say that again, please. I'm sorry?</li> <li>Q. I'm sorry, I'm looking at the first paragraph of the first full paragraph</li> <li>A. You go.</li> <li>Q. Of the affidavit?</li> <li>A. Thank you.</li> <li>Q. And he Mr. Siri indicates that he was here in</li> </ul>
T	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
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	Page 28	2	Page 284
	1 1910 and that in 1922 his family nurchased the ranching	-	A . ¥
	2 property known as Romano Ranch: is that correct?	1	A. Yes.
	A. That's correct	2	Q. And were you present when the State Engineer's
	4 O. And he started working on the ranch at that time?	3	A No
	5 A. Yes.	4	A. NO.
	6 O. And then he goes through and he lists he lists		Q. Directing your attention to page 6.
	7 springs number 1 through 10: do you see that?	7	A. Thi ulere.
8	A. I see 1, 2, 4, 5, 6, 7, 9, 10, but there's a few		Q. Okay. And you had some testimony about this map
9	missing in there. It's not inclusive. There's a counter of	0	A I do
10	springs that are not noted.	10	A. $100$ .
11	0. For the springs that he lists in his affidavit he	11	y. And this is the map where and this is prepared
12	2 also has acreage that he claims was irrigated by that spring:	12	the federal ground the proof and account that a local state of the federal ground the proof and account that a local state of the state
13	do you see that?	13	and then the proof and accesses that Pougla had filed
14	A. Yes.	14	Romano Ranch claims: is that correct?
15	Q. And would you would you if I represented to	15	A That's my understanding of what this man is
16	you that adding up all that acreage listed in his affidavit	16	illustrating ves
17	totalled 780 acres, would would you agree with that subject	17	And you indicated in your testimony vesterday
18	to check?	18	that the Boyak man for the Romano Boreh did not include
19	A. I would have to do the math, but I would be	19	federal lands: do you recall that testimony?
20	willing to accept that. Say the number again, please.	20	A I do
21	700 what?	21	0 And if you look at this man and Boyak's his
22	Q. 780 acres?	22	harvest is outlined in red: do you agree with that based on
23	A. Thank you.	23	the legend?
24	Q. And again, that's different from the 1,400 acres	24	A. Yes.
	Page 283		Page 285
1	that you claimed in your amended proof; is that correct?	1	$\Omega$ And the blue represented on this map is the
2	A. It is correct.	2	federal ground: is that correct?
3	Q. And do you know how many acres were claimed in	3	A. Yes
4	the 1913 Romano map?	4	O. And do you see in section on how I think it's
5	A. I would have to review that map to give that you	5	Section 13?
6	answer.	6	A. Yes.
7	Q. It was less than 1,400; would you agree?	7	O. That Boyak has mapped land on the federal ground?
8	A. Yes.	8	A. Yes.
9	Q. And the Boyak map that was filed for this spring,	9	Q. And also then in Section 12 up to the north there
10	the acreage claimed was less than 1,400; would you agree with	10	in Section 12?
11	that?	11	A. Yes.
12	A. That's correct.	12	Q. So you would agree then that the Boyak map does
13	Q. Then directing your attention to Exhibit HH.	13	include land federal ground in the Boyak map?
14	MR. RIGDON: Is that H as in Howard?	14	A. Yes.
15	MS. PETERSON: H as in Helen.	15	Q. And then have you read this report?
16	MR. RIGDON: Helen. Okay.	16	A. Which report?
17	THE WITNESS: I'm there.	17	Q. This is the investigative report by the State
18	BY MS. PETERSON:	18	Engineer's office?
19	Q. And this is the field investigation report	19	A. Yes.
20	prepared by the State Engineer's office for the Romano Ranch	20	Q. And directing your attention to page 14.
21	springs?	21	A. I'm there.
22	A. Yes.	22	Q. Do you see a heading that says "meadow"?
23	Q. And that indicates that the State Engineer's	23	A. I do.
24	ornee was out there for two weeks in June of 2017?	24	Q. And then do you see a second full paragraph under

l T	N THE MATTER OF THE DETERMINATION OF HE RELATIVE RIGHTS IN AND TO ALL WATERS			
Γ	Page 28	6	September 30, 20	21
	1 that heading?		Page 28	8
	2 A Yes		1 A. Correct.	
1	3 O. Do you agree with the statements and the		2 Q. In 2017 the State Engineer's office went out and	
	4 conclusions that the State Engineer's office made in the		investigated the claims; is that correct?	1
	5 paragraph?		A. Based on this report, yes.	
	6 A. No.		Q. And then in 2019 there was a hearing on the	
	7 O. Did you present any evidence to the State		objections to the State Engineer's Preliminary Order of	
	8 Engineer or in this proceeding that would refute that claim?		Determination; is that correct?	
	9 A. None was requested		A. Yes.	
1	Q. None was requested by whom?	10	the State Engineer issued ratio to the State	· ]
1:	A. The State.	111	is that correct?	
1:	2 Q. And I guess just to back up a minute, just so the	12	A That's correct	
1:	Court understands, the investigative report prepared by the	13	And so no evidence was present 1	
14	State Engineer for the Romano Ranch, you've read it: correct?	14	wasn't an objection hearing right for MWC while for	
1:	5 A. I did.	15	the State Engineer: correct?	
16	Q. And is it fair to say that the State Engineer's	16	A The client that hired mate do this was 1 in	
17	office had the Romano map, they had the Boyak map, they had	17	the client that owns it today. That align that all and all	
18	your map, and they tried to see if there was consistency	18	and request an effort on my part to respond to the State	
19	between all those documents and if there wasn't consistency	19	preliminary findings	
20	document, you know, what was inconsistent; would you agree	20	O. And as we're sitting here today in court no	
21	with that in general?	21	evidence has been presented by current owner to rafite only of	
22	A. I don't know what their process is. I'm not sure	22	these conclusions made by the State Engineer in his	
23	if they did all those things that you just described so I	23	investigation?	
24	can't say yes or no on that.	24	MR. RIGDON: Objection When she said no	
-				
1	Page 287		Page 289	t
1	MS. PETERSON: Did we lose the (indiscernible).	1	evidence has been presented, we filed notices of excertion	
2	THE COURT: Let's just be at ease for a moment.	2	objections were filed for the preliminary order and	
3	THE CLERK: Mr. Bolotin, can you hear us?	3	Mr. Buschelman testified a long time vesterday and aroutide t	
4	MR. BOLOTIN: I can. The picture went off and	4	evidence to this Court about differences with the State	
5	the sound went out but now it's back thank you.	5	Engineer. So I'm not sure the context of the question source	
6	THE CLERK: It looks like we got bumped offline.	6	there's no evidence been presented; it just refutes what we've	
7	Thank you.	7	been through for the last day	
8	BY MS. PETERSON:	8	THE COURT: Okay Well for the record the	ŀ.
9	Q. So would it be fair to say in this report, this	9	filings aren't evidence. Mr. Buschelman's testimony is	6
10	again is the State Engineer's investigation for the Romano	10	evidence that the Court's taking and so it's whatever he had	
11	Ranch, if did you or MW Cattle present any information to	11	testified to. And, I mean, can you question him with respect	
12	the State Engineer that would contradict any of the findings	12	to his prior testimony.	
13	that were made in this report?	13	That's appropriate from yesterday as to whether	
14	A. None that I'm aware of. Let me back up. The map	14	or not he, he considers what he testified to evidence	
15	that I provided is in contrary to what this report says, but	15	contradicting the State Engineer's report. I mean, that's an	
16	that was prior to this report being put together.	16	appropriate question.	
17	So in a sense, yes, what I found, what I showed	17	MS. PETERSON: Okay. And I was trying to move	
10	on my map conflicts with what they find in their field	18	things along, Your Honor.	
7.7 7.2	investigation or their findings.	19	THE COURT: Okay. Yeah.	
∡∪ วา	So I guess that would be my but after that,	20	BY MS. PETERSON:	
41 22	O Right light as we have a light for the second sec	21	Q. Let's direct your attention to the conclusions of	
~~ ??	v. Right. Just so we know the process and the Court	22	the State Engineer's report on pages 31 and 32.	
د ته	knows the process, you submitted your claim in 2016; is that	23	THE COURT: And what name were you on again?	
24	correct?		and the state function of a gain?	

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	Page 29	0	Page 292
	1 THE COURT: Thank you.	1	meadowland in the amended submittal that has no means of
	2 THE WITNESS: I'm there.	2	receiving water: do you remember that? We just talked about
	3 BY MS. PETERSON:	3	that?
	4 Q. Are you familiar with these?	4	A. Yes.
	5 A. Yes.	5	Q. And you said that was contradicted by the 1946
	Q. So for example, let's go on page 32 and the	6	aerial?
	7 conclusion under VO4479, 10916 and 10917. It's about in the	7   7	A. When I read through the State's findings in
	B middle of the page; do you see that?	8	particular to not their conclusions but how they obtained
1	A. I'm sorry, can you say that again.	9	it repeatedly through their findings they said that certain
10	Q. In about the middle of the page there's	10	things were illustrated on the photo, certain things were
11	conclusions that the State Engineer has with regard to VO4479?	11	illustrated on the Boyak map or not illustrated on the photo,
12	A. This is on page 32?	12	or not illustrated on the map, but consistently through that
13	Q, 32,	13	they said it was shown on the 1913 map.
14	A. On, okay.	14	I went through and highlighted all of those. And
14	A Yes I do And services in 2	15	consistently through their field report they say it may not
17	$\Omega$ So the last finding that the State Funding	16	have been shown here, but it was shown on the 1913 map.
1.8	the last conclusion the State Engineer	17	So there was a ton of I'm sorry, there were
19	isolated piece of meadowland claimed in the arrended submitted	18	many references even in their own field report that may not
20	has no means of receiving water	19	have shown up on some of these other sources, but it did show
21	Do you see that?	20	up on this 1913 map.
22	A. I do.	22	that it's incomplusive because there are a it and
23	Q. So has any information been submitted to this	23	recognized that may not be shown on some of the shown of
24	Court in this proceeding that would contradict that finding by	24	mapping but however it was shown on this one
		1	shown on this one.
	Page 291		Page 293
1	the State Engineer's office?	1	So that's a part of the havin f
2	A. The 1946 aerial photo and also the 1913 man would	2	I don't agree with that finding
3	conflict with that finding.	3	O Right But they were on the ground during their
4	Q. So is it I guess your testimony that you disagree	4	investigation: is that right?
5	with all these findings made by the State Engineer's office?	5	A. On ground that hasn't been irrigated in three
6	A. When you say all of them, what do you mean?	6	decades, four decades.
7	Q. All of them on pages 31, 32 and 33?	7	Q. And how far how far up is that aerial map?
8	A. No, I would never say all. Never.	8	A. Up
9	Q. You testified yesterday about abandonment. Do	9	Q. 1946. How high up in the sky is it?
10	you recall that testimony?	10	A. I have no idea. I don't know what elevation they
11	A. Did you say abandonment?	11	fly those planes to take those pictures.
12	Q. Abandonment, yes.	12	Q. All right. Let's go to abandonment. This is
13	A. Yes.	13	the State Engineer discussed this. It's Exhibit 180 on
14	Q. And do you have your Exhibit binder in front of	14	pages 138 to 141?
15	you from your counsel from yesterday?	15	A. Is that Exhibit 180?
10	A. Can I fold this back up or do you want to keep	16	Q. 180, yes.
10		17	A. And pages again, please.
10	v. 1 whatever you want. I'll probably go back to	18	Q. 138 to 141.
20	A The same page or?	19	A. I'm on page 138.
21	O. Prohably not Prohably a different nose A-J	20	Q. Have you read this portion of the Order of
22	guess just following up on that last question with record to	21	Determination?
23	that one finding in the State Engineer's report that there was	22	A. I have read the Order of Determination, so yeah,
24	no means to get the water there was an isolated niece of	24	And my understanding of the State Engine
			<ul> <li>And my understanding of the State Engineer's</li> </ul>

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	Page 29	4	Page 296
	determination with regard to the abandonment, and again this	1	I'm sorry from public to private but never anything in the
	2 is for MW Cattle, is that the original homestead entry and	2	local records here or others
	3 desert land entry claimants, their contracts had been	3	So you'd have to go to the department of archives
	4 cancelled by the federal government between 1913 and 1919; do	4	at a minimum and so that's why I said I don't know what
1	5 you recall that?	5	efforts they went to to make that conclusion
ł.	6 A. Yes.	6	There could have been efforts to try to do that
	7 Q. In the Order of Determination?	7	but they don't say that they tried to get it from anywhere
	A. Yes.	8	else to verify that (indiscernible).
1 :	Q. And there had been no intent by anyone since then	9	Q. Has MW Cattle presented any information in this
1	to obtain title to that land private title to that land.	10	proceeding that would show that there was any private
1:	L Is that a fair assessment of State Engineer's determination?	11	ownership of that ground?
1:	MR. RIGDON: Objection, no intent that's	12	A. Any private ownership?
13	vague. No intent to what? I'm not sure I understand that	13	Q. Right.
14	question.	14	A. Is that your question?
15	MS. PETERSON: Okay.	15	Q. Yes.
16	THE COURT: Okay. Well, so you're saying that	16	A. Well, there's not I mean, it's obvious even
17	it's vague.	17	today that in order to get private ownership and lose it, that
18	MS. PETERSON: I'll	18	would be of record. One, it would have to have a record to go
19	MR. RIGDON: Vagueness, yes. Objection is	19	from public to private, and then there would have to be
20	vagueness.	20	another record that went from private to public. So no, I
21	THE COURT: Okay, all right.	21	have not seen anything like that.
22	MS. PETERSON: I'll rephrase.	22	But attempts an attempt to go from public to
23	THE COURT: If you want to clarify it.	23	private, those records could still be out there and not
24	MS. PETERSON: Sure. Okay.	24	discovered.
<u> </u>			
	Page 295		B 007
	1 490 200		Page 297
1	BY MS. PETERSON:	1	Page 297 Q. Okay. But MW Cattle hasn't presented any of that
1 2	BY MS. PETERSON: Q. So you recall you recall the language in the	1 2	Q. Okay. But MW Cattle hasn't presented any of that information in this proceeding; is that correct?
1 2 3	BY MS. PETERSON: Q. So you recall you recall the language in the Order of Determination that the State Engineer found that	1 2 3	Q. Okay. But MW Cattle hasn't presented any of that information in this proceeding; is that correct? A. It was never requested.
1 2 3 4	BY MS. PETERSON: Q. So you recall you recall the language in the Order of Determination that the State Engineer found that those homestead entries and the desert land entries for that	1 2 3 4	Q. Okay. But MW Cattle hasn't presented any of that information in this proceeding; is that correct? A. It was never requested. Q. Is the State Engineer required to prove the proof
1 2 3 4 5	BY MS. PETERSON: Q. So you recall you recall the language in the Order of Determination that the State Engineer found that those homestead entries and the desert land entries for that federal ground, those had been cancelled between 1913 and	1 2 3 4 5	Q. Okay. But MW Cattle hasn't presented any of that information in this proceeding; is that correct? A. It was never requested. Q. Is the State Engineer required to prove the proof of appropriation for the Claimant?
1 2 3 4 5 6	BY MS. PETERSON: Q. So you recall you recall the language in the Order of Determination that the State Engineer found that those homestead entries and the desert land entries for that federal ground, those had been cancelled between 1913 and 1919; do you remember that in the Order of Determination?	1 2 3 4 5 6	Q. Okay. But MW Cattle hasn't presented any of that information in this proceeding; is that correct? A. It was never requested. Q. Is the State Engineer required to prove the proof of appropriation for the Claimant? A. No.
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Ê	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 20
	Page 29	8	Page 30
1	private lands.	:	So I don't understand your question.
2	Again, land ownership has no bearing on water	1	2 Q. The question was what evidence do you have that
3	title nor vested rights owned by an individual. So the title	:   3	the federal land that you added in 2016 to the amended proof
4	to the land had no bearing in my research because it does not	4	of claim was actually utilized your priority for that proo
5	play into the you can irrigate public lands and get a water	5	is 1861; is that correct?
6	right on that and obtain a water right to that.	e	A. That's correct.
7	Q. Do you have any evidence that Romano or anybody	7	Q. The Pony Express?
8	that had possession of the private ground for Romano in all	8	A. That's correct.
9	that period of time that the federal land you claim that	9	Q. What evidence is there for the 15 springs that
10	the federal land had water put on it, did anybody use what was	10	you claim with a 1861 priority based on the Pony Express
11	ever grown on that federal land?	11	Station at Sulfur Spring that there was any use of that
12	A. Yeah. We have the at a minimum we have the	12	federal land that you added to the amended proof?
13	1913 map and the Boyak map which show culture on public lands	13	A. The Pony well, one, that the Pony Express
14	and testimony that they that supports those that yeah, they	14	existed; that that function or that commercial enterprise
15	use for harvest meadow, diversified pasture, which would all	15	existed on that ranch. It doesn't take a lot of thought
16	lead itself to the point that they are putting cattle out	16	process to go to the point where in order to support that
17	there otherwise they wouldn't be irrigating it and causing	17	commercial process, you had to have animals.
18	growth I mean, cultures to grow.	18	The animals have to have feed. Animals have to
19	Q. Well, the Romano map had fences all around where	19	have water. People have to have food and water and so and
20	the private ground stopped or they had fences on the federal	20	there's cattle. It's our history of our state tells us that
21	land; would you agree with that?	21	they put cattle all over this state.
2	A. I agree that fences make no determination of	22	And so to say that it wasn't used you would have
23	private versus public. You can put a fence anywhere; it	23	to say there were no cattle here, that there was no
24	doesn't mean that you own on one side and don't own on	24	mechanism there was no reason for someone to go out there
	Page 299	1	Page 301
1	another.	1	and establish even a residence or a house or anything if they
2	Q. But	2	couldn't feed the cows or the horses
3	A. Fencing is I'm sorry fencing is not a	3	So that's evidence in my mind. It's just prime
4	criteria for ownership.	4	facie, it's there
5	Q. But you claim land in addition to the federal	5	O. But vesterday you testified that you didn't even
6	land that was you claim federal land in addition to the	6	know how often the Pony Express station was used in 1861. Do
7	federal land that was claimed by Romano in the Romano map; is	7	Vou agree with that testimony vesterday?
8	that correct?	8	A. I didn't say that. I didn't say how often it was
9	A. I claimed water was being applied to federal	9	used; I said it existed.
0	land, yes.	10	Q. But you didn't know how often was it used in
1	Q. And so in that land that you added to the proof	11	1861?
2	for federal land, what evidence you have that anybody actually	12	A. You would have to go back to the history of the
3	used what was or harvested what was grown on that federal	13	Pony Express. I don't know what routes they were delivering
4	land?	14	mail on or how they worked. I can't answer that
5	A. Cattle. Cattle can be used to harvest. You	15	Q. With regard to the Sadler Ranch, the extra
6	can a cow can be evidence of harvest culture or meadow	16	federal land that you added to the proof of claim that you
7	culture or diversified culture.	17	filed in 2016, do you have any evidence that that shows that
8	We know that they had cattle, we know they had	18	that federal land that was added, whatever culture you contend
•	horses because they say that. So just because I don't go out	19	was there was actually used or harvested
9	there with a piece of machinery in 1880, which there was very	20	A. Yes.
9	little if any machinery that would do that I and I	21	Q by Sadler?
9 0 1	intrie, if any, machinery that would do that, I could send my		-
9 0 1 2	cows out and my horses, they would harvest that land in the	22	A. Yes.
9 0 1 2 3	cows out and my horses, they would harvest that land in the form of eating it, digesting it, and creating more revenue	22 23	<ul><li>A. Yes.</li><li>Q. Is it is your answer the same as you just</li></ul>

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	A. Well, in addition to that, we were able to	1	A Again I remind you most if not all of the water	
	2 identify haystack yards that were on the perimeter of what you	2	in all of these springs had been dry for decades three	
3	would consider both public and private lands, and through	3	decades, four decades, 40 years. So to do what you're asking	
4	aerial photography and other mechanisms you can see that the	4	no. no one could do that in today in today's world no	'
5	fields just didn't stop at private land, they continued on to	5	Q. But water was used on the Sadler Ranch in 2016	
e	public.	6	when you filed your amended proof: isn't that correct?	1
7	So if you're gathering hay you're going to gather	7	A. That is correct.	
8	hay and put it in that stack yard irrespective of whatever	8	Q. And the ditches were being used; is that correct?	
9	line would distinguish between public and private. So yes,	9	A. A very small portion of the ditches next to the	
10	that evidence is pretty clear, especially on the Sadler.	10	source, but beyond that those the spring had dried up in	
11	Q. And you're relying on the 1946 aerial?	11	such away that you couldn't even get close to going out into	
12	A. And other documentation. We had the 30 circa	12	the farther reaches, I mean, even within a short distance in a	1
13	photo that we took and we identify stack yards haystack	13	sense, beyond what was satisfied by that reduced	
14	yards out in that photo, and we have other testimony that says	14	(indiscernible) spring to even understand ditch losses into	
15	the same thing on the Sadler from diaries. They had a 70-man	15	the other portions of the ranch.	
10	hay crew on the Sadler to do just that.	16	So even if I was to try to attempt to do it under	
1/	So again they're not going to take some line in	17	what you're saying in the short distances, it would have no	1
10	not going to harvost. They harvost d	18	relevance on what was actually transported to the further	
20	And they go back to the fact that it was all	19	reaches of the ranch so it wouldn't be an accurate figure.	ł
21	federal land before it ended up into private. So the	20	Q. So you used the information that's in your	
22	distinction between public and private as far as the water	21	Exhibit 110 to come up with your ditch efficiencies; is that	
23	rights is concerned is a nonissue	22	A Lutilized and Lucius 1 of all the	
24	O. And then I'm going to direct your attention to	23	A. I utilized yes, I ference what I utilized in there to come up with those officiencies. I did the	
			there to come up with those efficiencies. I didn't create	ł
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1	conveyance losses. You talked about that yesterday, and	1	those efficiencies. Those efficiencies were established by	
2	ditches; do you remember that testimony?	2	the Department of Ag and the Natural Resource and Conservation	
3	A. Yes.	3	Service.	
4	Q. And I believe you testified when you worked for	4	So those efficiencies were identified as	
5	the U.S. water master that you would test the ditch	5	examples, not precise, but examples of efficiencies that they	
6	efficiencies by putting water in the ditches and seeing if the	6	found in their studies on flood irrigation systems throughout	
7	efficiencies in the decree were upheld based upon your	7	the west, not just in Nevada, but in other other systems.	
8	testing.	8	And they also go on to explain a lot more that	
9	Do you remember that testimony?	9	even the 40 percent efficiency in some cases was a high	
10	A. I didn't test whether it was being upheld. We	10	efficiency based on other parameters that would affect it. So	
12	ditch system. We didn't personally a line by the system we have been by the system.	11	you'd have to read the report to understand what it was.	
12	they were violating some some particular line is	12	I just used these general three that they had in	
14	decree	13	those reports to establish an idea here that I laid out on my	
15	O Okay But you had a method where you could test	14	draft to see if the 4.5-acre-feet per acre as identified by $M_{\rm e}$ Densities 1 in the 4.5-acre-feet per acre as identified by	
16	the ditches, the efficiencies: is that correct?	15	Mr. Boyak in his original filings was a reasonable amount.	
17	A. That's correct	17	Q. And the efficiencies that you used that you took	
18	O. And did you attempt that with Sadler in this	10	A That is based on a department of a via the l	
19	case	19	findings that was used to support a United Netions and	
20	A. Again	20	• And that had no relation to the MW Coult	
21	Q today?	21	property or the Sadler property: is that correct?	
22	A. I'm sorry, go ahead.	22	A. Oh. absolutely. It was a general western states	
23	Q. Did you attempt to do any kind of testing for the	23	arid conditions type of study. And they used in that study	
24	efficiencies on the ditches on the Sadler property?	24	they actually looked at conditions that would be similar if	

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 306 Page 308 not very similar, to what we see in Diamond Valley, the 1 the first column there of your chart; is that correct? 1 2 northern end of Diamond Valley in the flood irrigation system. 2 A. No. 3 So that system, whether it was in 1850 or in 3 Q. Oh, okay. Tell me how you got to 4.97? 2050, is still the same types of soil. It wasn't time 4 A. I took the highest efficiency of -- and that was 4 certain. It was a condition of what was in the -- the source 5 for a highly managed -- let's see -- low managed pasture grass 5 of water, the types of ditches, the types of improvements to 6 at 3.33-acre-feet per acre. And I went to the lowest 6 make those ditches more efficient. The study went on to 7 7 efficiency for -- under 40 percent for alfalfa. explain a lot of different parameters that would affect 8 I was looking for extremes. I was looking for 8 9 efficiency. 9 the highest efficiency and the lowest efficiency figures, and And then they came up with three different 10 I averaged those to come up with that number. Simple. Add 10 11 scenarios, 40, 50, and 60 percent, indicating 40 percent was 11 the two together, divide by two, and that's your average. you know, that's a low efficiency, not necessarily the lowest, 12 Q. So you didn't do an average based on the 12 but it is the low efficiency and the medium efficiency and the 13 13 information contained in your chart here for the three 14 high efficiency that would be for a flood irrigation system. specific crop cultures that the State Engineer had listed in 14 15 Q. But I thought your testimony yesterday was that 15 the Order of Determination? all the duties for all these specific properties in this 16 A. I'm sorry, can you say that again, please? 16 17 Diamond Valley adjudication needed their own specific duty 17 Q. You didn't -- you didn't take an average for each 18 calculation? crop that was listed in the State Engineer's Order of 18 A. I didn't. The State doesn't. I think --19 Determination based on the information contained in your 19 Q. But you used a general efficiency publication and 20 20 Exhibit 110? 21 not specific information regarding MW Cattle ranch and Sadler 21 A. No. It would have increased it beyond 4.97; it 22 Ranch for your opinion as to duty; is that correct? 22 would have made it a higher number. I was looking at the 23 A. You would have to conduct a study on that 23 max -- I was looking at the extremes, high and lowest. That particular ranch with water, which we don't have, to come up 24 24 was my goal. Page 307 Page 309 to that conclusion, which we can't because we don't have the 1 1 And again, my effort in this was to see if the water source act. So no, no, you can't do it, even if you 2 2 4.5-acre-feet per acre that was defined by Allen Boyak when he 3 wanted to today. submitted the original proof, if that was a reasonable number 3 4 Q. How much is being irrigated right now on the 4 or if it was something that I needed to go in possibly and 5 Sadler Ranch? 5 document a higher number through other research. 6 A. I have no idea. 6 So I felt that the 4.5 was a reasonable request 7 Q. Have you been there since 2016? by Mr. Boyak on his original -- or a reasonable request. It's 7 8 A. Yes. 8 not that. It's a reasonable number that reflected historical Q. You read the State Engineer's investigation for 9 use on that parcel at 4.5-acre-feet per acre consumption of 9 the Sadler Ranch field investigation? 10 10 water at the source. You divert the water from the source, 11 A. Yes. 11 that's where you're measuring the 4.5. 12 Q. Do you agree with the information presented in 12 THE COURT: Ms. Peterson, let me interrupt just that investigation as to what was currently in production in 13 so that I have the figure. I have the lowest figure from your 13 the Sadler Ranch? 14 testimony of 3.33. What was the highest figure you used on 14 A. I don't know. I'd have to look at it. I'm not 15 15 this Exhibit? 16 sure. And I don't know what time frame they made that 16 THE WITNESS: 6.25. determination and what sources of information they used to 17 17 THE COURT: Very well. Thank you. determine that. I'd have to see all that information before I 18 18 MR. RIGDON: And Your Honor, it was represented 19 could answer your question. to Mr. Buschelman that the number yesterday that he testified 19 20 Q. And then just getting back to Exhibit 110, you, 20 to was 4.97. Just to clarify, I believe what he testified to you came up with your average -- I believe it was 4.97; do you 21 yesterday was 4.79. I just want to make sure that's accurate. 21 remember that testimony yesterday? 22 22 THE COURT: Oh thank you. 23 A. Yes. 23 THE WITNESS: Thank you. 24 Q. And that -- that was adding all the numbers in 24 MS. PETERSON: Thank you, thank you.

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1	BY MS. PETERSON:	1	to sit down and heat up the technical stuff and you're going
12	Q. So not to belabor this too much, Mr. Buschelman,	2	to sit across from each other and go it could be there it
3	but you took the highest efficiency, that 6.25, from the,	3	could be this. These numbers are widely apart. These duties
4	like, the alfalfa column; correct?	4	in most cases are agreed to and not necessarily supported
5	A. I'm sorry, could you say that again, please?	5	totally by data.
e	Q. You took the 6.25?	6	But both sides finally say well, we can beat you
7	A. Yes.	7	up if it's a high number, and we can beat you up if it's a low
8	Q. Right? And that's in the first column; right?	8	number, but we're going to sit here all day and debate it.
9	A. Correct.	9	Let's just get a number out there that we can work with. Both
10	Q. And that's the alfalfa column?	10	of us kind of say yeah, that's reasonable, and move on.
11	A. It is.	11	And that's essentially what's happened in other
12	Q. And then you combined that with the third column;	12	decrees that have gone through preliminary order of
13	correct, the lowest number in the third sorry, the 3.333 in	13	determinations and then finally get to a point where it works
14	the third column; is that correct?	14	into a final decree.
15	A. It's a tongue twister, yes.	15	Most of those decrees that I'm speaking of had
16	Q. Okay. What's the third column? What crop does	16	30 years from the preliminary from the start through the
17	that represent?	17	preliminary to the final. So they had an opportunity to take
18	A. Low managed pasture grass.	18	that preliminary order, go out under a water master or
19	Q. So you didn't calculate based specifically on the	19	guidance from some Commissioner and see if it worked.
20	specific crop culture; is that correct, in determining your	20	If it didn't work, then they could come in, amend
21	4.5?	21	the preliminary and say wait a minute, we may have said 4.5,
22	A. No. Again my exercise was to determine if	22	but you know, really it should be 5. Or wait a minute, that
23	Wir. Boyak's 4.5-acre-reet per acre was a reasonable request,	23	might have been a little generous, let's knock it down to 4.
27	Recping in mind that that particular duty would apply I	24	So what was reflected in the preliminary had
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1	mean, we have a when you divert water out of that source	1	time, decades to work with it and then finally get to the
2	you're applying it to multiple cultures below that.	2	final where they could come and say yeah 4 works we didn't
3	So you've got ditch losses that are going to be	3	need (indiscernible).
4	going from the source to all of these different sources, hay,	4	So that's how those numbers were generated. We
5	harvest crop, which is defined in here as both mechanical	5	don't have that here. One, we don't have 30 years to make
6	harvest and nonmechanical harvest which is still harvest crop	6	this thing work, and two, we don't even have the water if we
7	of the highest duty, high managed meadow which is one-tenth of	7	could. So 4.5 in my mind was a reasonable number.
8	an acre-foot less.	8	Q. And then I'm going to move on to another subject.
9	And then at the very, very end I'm sorry, I'm	9	You used a lot of aerial photography in your analysis; is that
10	blending two things. I don't even know at this point, I'd	10	correct?
11	have to look if there was any diversified pasture in Sadler.	11	A. Yes.
12	I don't believe there was.	12	Q. And are there any photos going back prior to
13	So anyway, I took those two just to see what it	13	1946?
14	would be. My goal was here to say if we deliver 4.5 acre-feet	14	A. Yes. Not aerial.
1.5	on this irrigation system is that in a ditch and cast if out	15	Q. Aerial photography?
17	on this inigation system, is that a reasonable amount to	16	A. Aerial photography, no, not that I'm aware of.
18	And my answer was ves based on what Mr. Devel	17	And I sat with the State Engineer's office during this process
19	(indiscernible) I could have gone in and done extensive	10	of the State didn't have around a first the State didn't have around a first the State didn't have around a first the state didn't have a state of the state of t
20	work based on historical and these studies and some up with	77 77	at the State, didn't have any other information. I even
21	duties that were considerably different or a range of duties	2U 21	There's kind of a closering account of the state of the s
22	but I didn't. I was there only to see if the 4.5 was	4⊥ 22	for aerial photography work historical University SNL
23	reasonable.	23	is really good at some of that stuff. And this was the same
24	And again, in many cases such as these, you have	24	that we (indiscernible)

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:	Q. Do you know that photography is approximately	:	the Information that I found supported the fact that these	
1	2 80 years past the claimed priority dates for these water		2 waters were put to beneficial use prior to 1905	
3	3 rights; is that correct?	3	And again, a basis of that is these are springs	
4	A. Beyond the claimed title or priority?	4	that service one ownership that flow year round and there's no	
5	Q. Past the claimed priority dates for these water	5	stopping it; it continues to flow. It's not like can you cut	
6	5 rights?	e	a ditch off and return the water to another main system. This	
7	A. It's many, many years. I can't give you an exact	7	flows onto your ranch 24/7 365 days a year. That water is	
8	number. But yeah, it's in that magnitude.	8	going to be put to beneficial use there all that time.	
9	Q. Do you know pre-1905 how many cuttings MW Cattle	9	So if these springs are flowing well before we	
10	had on their ranch?	10	even showed up in 20 or in 1860, they're going to continue	
11	A. The diary that we were able	11	to irrigate and put water to beneficial use after 1860 until	
12	Q. MW Cattle?	12	they are dried up.	
13	A. Oh, MW Cattle. No.	13	Q. But do you have if I'm understanding your	
14	Q. So now I'm going to direct your attention to the	14	testimony today correctly, you don't have any figure, acreage	
15	doctrine of relation back.	15	figure as to how much water may be claimed under the MW Cattle	
16	A. May I expound on that?	16	claim based on the doctrine of relation back; is that correct?	
17	Q. Oh, absolutely. Of course.	17	A. It was never requested by the State Engineer,	
18	A. Do you mean cuttings where a mechanical device	18	never sorry by the State Engineer's office nor required it.	
19	would go out and cut the hay and stack it and then feed it	19	Q. And would your answer be the same for Sadler	
20	later, or defined in the final as whether you take a cow out	20	Ranch?	
21	there, harvest it, take a cow off, let it grow, put the cow	21	A. Yes.	
22	back on and harvest it again.	22	Q. And then I want to direct your attention to you	
23	Can I have you clarify that, please.	23	had had testimony yesterday about the net irrigation water	
24	Q. Well, pre-1905 what do you know about how many	24	requirement publication by the State Engineer's office.	
-		-	I Carlos Bracio II	
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1	cuttings in however manner there were on the MW Cattle ranch?	1	You're familiar with that?	
2	A. No.	2	A. I am.	
3	Q. Now, I'm going to direct your attention to the	3	Q. And I don't know if you'll need it for these	
4	doctrine of relation back. Do you remember you had some	4	questions, but it's in the binder our binder as Exhibit AA.	
5	testimony about that yesterday?	5	MR. RIGDON: Is that AA?	
6	A. Yes.	6	MS. PETERSON: AA, alpha, alpha.	
7	Q. And how how long can that apply, the doctrine	7	THE WITNESS: I'm there.	
8	of relation back?	8	BY MS. PETERSON:	
9	A. That would be a determination on the part of the	9	Q. Okay. And you're familiar with that publication?	
10	court. And that's that was reinforced by the State, the	10	A. I am.	
11	adjudication department. In certain instances the doctrine of	11	Q. And do you know if the characteristics of the	
12	relation back actually extended beyond 1905. In other cases,	12	soil was examined in Diamond Valley for purposes of the	
13	it didn't. So I can't answer that question as a definitive	13	consumptive use figures put in that report for Diamond Valley?	
14	Unit.	14	A. Say again.	
15	Q. In this adjudication, I believe you've claimed	15	Q. Do you know if the soil characteristics of	
17	some of the acreage based on the doctrine of relation back; is	16	Diamond Valley were analyzed in determining the consumptive	
10	A No not have d on the A Miller II. I all II.	17	use figures made in that publication for Diamond Valley?	
10	said that prior - that my research and the ' C	18	A. I know the premise for what this was put together	
20	I've shown convinces mo that this material the information that	19	and I know that there was a different net irrigation water	
21	use well in advance of 1005	20	requirement for each basin.	
22	But I don't know if there was find in	21	I don't think and I don't believe that the State	
22	developed in 1800, 1800, 1000, 1001, 1002, total and	22	Engineer's office or whoever puts this together for the State	
24	that kind of a detail But based upon what I found all af	23	Engineer's office went out there and did a soil sample of each	
	all of a dotain. Dut based upon what I tound all of	<b>4</b>	basin in the state to come up with a determination of how it	
L				

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 318 Page 320 1 would affect net irrigation water requirement. A. You'll have to define the difference between the 1 2 It would be an extensive undertaking to go to 2 two of those every basin, even using the information we have through 3 3 Q. Well, the consumptive use is the water that natural resource conservation service and others. That data 4 that's actual consumed by the plan? 4 5 may have been used, which I can see. They would have used 5 A. Okay. that as a reference. But I have no idea if they went out 6 6 Q. Would you agree? 7 there and somehow personally or effectively for this study did A. The net irrigation water requirement, that's what 7 that type of an analysis. 8 you're referring to. Versus what it takes to deliver that to 8 9 Q. Do you know if flood irrigation versus wheel line 9 that plant? 10 irrigation made a difference for the consumptive use figures 10 Q. Correct? 11 that the State Engineer -- or that publication, I'm sorry, A. Those are two different things. 11 came up with for the consumptive use figures in the basins? 12 12 Q. Right. So do you have any -- I know you just 13 A. The net irrigation water requirement? 13 referenced certificates? 14 Q. Yes. A. Right. 14 15 A. I don't. Q. But do you have any different consumptive use 15 16 Q. And you said yesterday that the net irrigation 16 data for Diamond Valley for those three crops? Net irrigation water requirement was a water requirement of the plant, right? 17 water requirement if that's how you want to refer to it? 17 18 Do you remember that? 18 A. My chart that I used in my exercise is all based A. That's what I read and what I've been told by the 19 19 on this report, on the report that was prepared by the State, State Engineer's staff, yes. 20 20 which was I utilized the net irrigation water requirement and O. Okay. 21 21 applied the efficiencies to the net, not the gross, but the 22 A. Let me qualify that. That's the net, not the 22 net irrigation water requirement to come up with my two -- the 23 total, because you still have -- they subtract out the high low number and then the average of 4.7 acre-feet per acre 23 effective precipitation to get to the net. So there is an 24 24 as a consumptive use. Page 319 Page 321 actual figure for what the plant requires to grow which is 1 Q. Are you aware of the 9th Circuit case that 1 2 less -- I'm sorry -- more than the net. The net figure is determined for the Walker River that vested rights under the 2 less than what the plant actually needs. 3 3 Walker River Decree that the consumptive use figures in the Q. And kind of to use your terminology for at the 4 4 net irrigation water requirement publication issued by the 5 field, the head of the field, I kind of look at this as State Engineer -- well, and that was for Mason and Smith 5 consumptive use at the plant; would you agree with that? 6 6 Valleys, that those consumptive use figures were accepted by 7 A. Yes. 7 the 9th Circuit? Are you aware of that case? 8 Q. Do you have any different consumptive use data --8 MR. RIGDON: Objection, calls for a legal consumptive use data for Diamond Valley for these three types 9 9 conclusion. of crops that are referenced in the State Engineer's Order of 10 10 MS. PETERSON: I'm just asking if he's aware of 11 Determination? 11 the case, Your Honor. A. Well, the State Engineer does through 12 12 THE COURT: The objection is overruled. We'll go certificated groundwater rights and metered rates that have 13 13 to that. Go ahead. been applied to a number of cultures that are being grown in 14 14 BY MS. PETERSON: 15 Diamond Valley. 15 Q. Are you aware of that case? 16 So yeah, yeah, there's other data out there. A. Can you further describe that, because I'm very 16 17 Q. Well, consumptive use? 17 aware of what the Federal Court did when it came to finalizing 18 A. Yes. the Walker River Decree and there were no duties specified in 18 19 Q. But not beneficial use, consumptive use? that decree, only flow rates. 19 A. Yes, this would be -- I'm sorry. I'm sorry to 20 20 The Walker River Decree C-125 did not go in and 21 interrupt you. Go ahead. 21 specify a duty. There was no duty found in that decree at 22 Q. And again there's a distinction, not beneficial all. However, there were flow rates assigned to the heads of 22 23 use and what's applied under a certificate, but consumptive ditches. As a result of that, if you expand it out, there's a 23 24 use? variety of duties that can be calculated from that. But the 24

	N THE MATTER OF THE DETERMINATION OF TE RELATIVE RIGHTS IN AND TO ALL WATERS			
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	C Dight Dut in the last for successful to the	1	regard to the MW Cattle Ranch or the Saddler Ranch?	
	Q. Right. But in the last five years there's been a	2	A. He did not describe anything in his account of	
	figures for the pet irrigation water requirements the	3	really any irrigation methods other than he did say there was	
	consumptive use figures for Mason and Smith valley for	4	some ditches and he did say there was some acreage irrigated.	
6	purposes of the decree: are you aware of that case?	5	He didn't go any depth any more depth than that.	
7	A. No. And again I go back, this is pre-1905 not		Q. How about for MW Cattle in the 1913 Romano map,	
8	20 five years ago you said. 2011 or 2018 2017 This is	9	A No description of how they emplied the set of the	
9	again our exercise is prior to 1905. So any of those duties	0	other than they have ditches. No, that was it	
10	that would come up in that court would have the benefit of all	10	O How about in the Boyak man for MW Cottle?	
11	our modern technology, delivery systems, lined ditches, all of	11	A. The Boyak man actually illustrated impoundments	
12	that that would have gone to establish those duties that we	12	on the fields. He actually showed water features on the	
13	would have shown or seen in a court ruling or a decision or a	13	fields in his in his man. So in that case, it supports	
14	measurement done today.	14	fill and spill and as a method of applying water to for	
15	This is pre-1905 under rudimentary irrigation	15	irrigation purposes.	
16	systems. No equipment. Very little I mean, very little	16	Q. And how about for the Sadler, the Boyak map, any	
17	ability to have more than a few people to dig a ditch. And so	17	indication of fill and spill?	
18	the duty calculation, if you were to do it in 1860 versus	18	A. On the Sadler?	
19	2016, it's a whole different duty calculation. So I don't	19	Q. Yes.	
20	know how relevant it would be even if it was today.	20	A. I'm sorry, what was your I thought your first	
21	Q. Well, I just asked you if you knew if there was a	21	question was did I see evidence by Boyak on the Sadler.	
22	in that report by the State Engineer (1)	22	Q. Oh, I thought the first one was MW Cattle.	
23	difference based on flood imigation years wheat i	23	A. Oh no, I did not see any impoundments on water on	
~ 1	unreferee based on nood infigation versus wheel line	24	the maps done by Boyak on Romano. We keep switching names	
	Page 323		Page 325	
1	Page 323 irrigation and you said you didn't know?	1	Page 325 here.	
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### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 326 Page 328 A. It showed the impoundments. It wouldn't have 1 and not Sadler; is that correct? 1 2 shown the spill, but it would have definitely showed the fill. 2 A. Yes. And the extents of how far they went out into the ranch, it 3 Q. So what -- what evidence do you have that Romano 3 4 did illustrate that, that it wasn't just something up close to using that field had a priority of using that field of 1863? 4 the source, it extended to the extreme or to the outside 5 A. He -- he basically sued Sadler for not allowing 5 6 perimeter of the ranch. the water to continue onto his field. The field existed. He 6 Q. So how tall are these berms that are part of the 7 just was not getting water to continue to support it. That's 7 8 fill and spill? why he went to court is he said I'm not getting the water I'm 8 A. In my field observations, they range from a few 9 due to irrigate my field that's been here. He wasn't creating 9 10 inches, say 8, 10 inches, to maybe 18 to 24 inches. 10 the field. Q. And you saw those in the 1946 aerial photo? 11 11 Even in the testimony he said the field's here 12 A. I saw -- well, I could correlate what I saw when and actually gave acreage as to what he was irrigating. So 12 I surveyed, when I was out in the field was locations on the 13 13 that irrigation had to start well before 1913 for him to 1946 road, yes, I could correlate those locations and I could 14 complain and say I've been getting this water, I'm not getting 14 15 see water impoundments as well. 15 it any more, so what's the deal. 16 Q. And so from that aerial photo that you don't have 16 Q. Right. But the stipulation specifically said -any idea how high it was, you can see something that's 17 the 1913 stipulation -- that he had been getting the water for 17 18 18 inches tall? about 30 years; is that correct? 18 A. You don't get height from those kind of things, 19 19 A. Yes. 20 but in stereo, if you have the right proper high altitude 20 Q. Okay. So 1913 minus 30 does not equal 1863? aerial photography which is used by the USGS to develop maps, 21 MR. RIGDON: Objection, because I believe the 21 22 they do create contours and everything else. So the accuracy 22 testimony yesterday was that the stipulation said at least of contouring can be -- you can see relief. To get down to 23 23 30 years, not about 30 years. that level, no, you couldn't get down to that level. 24 24 MS. PETERSON: At least --Page 327 Page 329 But what I did is I took that aerial photo and 1 THE COURT: Well, the stipulation speaks for 1 went out in the field and ground truthed it, and yes, I found 2 itself. 2 3 those features there. 3 MR. RIGDON: Okay. 4 Q. Would you say the 1946 photo is a high resolution 4 THE COURT: It was. 5 photo? MR. RIGDON: But her question is characterizing 5 A. I'd have to see the reference to it. I'm not 6 6 it in a certain way to make it a hard and fast date and that's quite sure what it -- normally that's what they have and 7 7 not what the stipulation says. 8 published was national high altitude resolution photos. 8 MS. PETERSON: I'll rephrase. 9 Q. In 1946? 9 THE COURT: Go ahead. 10 A. Yes. 10 BY MS. PETERSON: 11 Q. Now I want to direct your attention to you had Q. The stipulation uses the figure 30 years; is that 11 some testimony yesterday about the priority of the field; not 12 12 correct? the Romano ranches, the Romano field that's on the Sadler 13 13 A. It uses 30 years, yes. 14 Ranch? 14 Q. And so the parties -- the parties use that figure 15 A. Thank you. Yes. 15 for some reason; correct, you would agree? 16 Q. Do you remember that testimony? 16 A. We use about figures all the time, yes. 17 A. I do. 17 Q. Right. But 1913 minus 30 does not equal 1863; is Q. And you were claiming the same date as Sadler for 18 18 that correct? 19 that Romano field; is that correct? 19 A. Well, if it was about 35, about 40, yeah, it 20 A. Yes. 20 would get back there. 21 Q. The same priority date? Q. Well, I believe it's about 1880s. 1930 minus 21 22 A. Yes. 22 30 years would be in the 1880s; isn't that correct? 23 And that was -- well, what evidence is there that Q. A. If you do the math simply on just 30 and not 23 24 Romano was using -- because in 1913, Romano owned that field 24 consider that it could have been different than 30, yeah, you

	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 3	30	Page 332
	come up with 1880s. But again, it said about	1.	1 water in 10302
	2 Q. Is that Romano and I couldn't quite understat	d i	2 A Yes based on this photo yes
3	from your testimony vesterday is the priority for that		$\Omega$ Do you have personal knowledge of any
4	1 Romano field, is that claimed under the relation back		4 distribution of this water in 19302
5	5 doctrine?		5 A No
e	A. No. I never stipulated it was.	e	5 O And then directing your attention to page 16
7	Q. I just didn't understand. I was just trying to	7	this is your report that you put - this is Exhibit 155 is
8	make sure I understood your testimony.	8	YOUR report that you put together for Sadler Panch; is that
9	A. Okay.	9	correct? History of land and water use?
10	Q. So Exhibit 155 in your book from your counsel.	10	A. This was a collaborative effort, so were Liver
11	you testified about that yesterday on page 10?	11	involved in this
12	A. 155?	12	0. You worked on it And you testified about this
13	Q. Exhibit 155, page 10?	13	vesterday: correct?
14	A. Thank you. Okay.	14	A. I did
15	Q. That's the ice photo from 1930?	15	0. And you testified vesterday about - under the
16	A. No, it's a photo, but it's not the ice photo.	16	entry for Mr. Slegkowski from 1937 to 1940; do you remember
17	I'm sorry, yes, it is. I'm sorry. I see the capsulation now	. 17	that?
18	I was just looking at just the photo and not the	18	A. Yes.
19	(indiscernible), yes, it is.	19	Q. And you indicated under the fourth bullet down
20	Q. So was that I mean, if you know, it's a photo	20	there under Mr. Slegkowski that there were two mowing machines
21	from 1930 and you weren't there in 1930; correct?	21	and two buck rakes?
22	A. Correct.	22	A. Yes, I see that.
23	Q. Do you know if there was any specific applicatio	n 23	Q. Okay. Was that pre-1905 technology?
24	of that water in 1930 so that we get this depiction, or wa	5 24	A. No. I mean, it was not available in 1905 so
		1	C manage
	Page 33	1	Page 333
1	that just letting the water naturally flow?	1	these these mechanisms that you soo here are definited
2	A. I think the photo speaks for itself.	2	mechanism that would have been later in time
3	Q. And does it show natural flow?	3	And even if that technology was available, to get
4	A. What would you determine as natural flow, please	4	the over it that technology was available, to get
			It from the failfoad, which would be your mechanism of travel
5	Q. Well, I thought your testimony was that the water	5	for such a thing, which is to this location and then to pay
5 6	Q. Well, I thought your testimony was that the water just ran in the winter?	5	for such a thing, which is to this location and then to pay for something like that and get it there that's a whole
5 6 7	<ul><li>Q. Well, I thought your testimony was that the water just ran in the winter?</li><li>A. It does. But I'm still needing clarification.</li></ul>	5	for such a thing, which is to this location and then to pay for something like that and get it there, that's a whole different issue.
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II Tl	N THE MATTER OF THE DETERMINATION OF HE RELATIVE RIGHTS IN AND TO ALL WATERS		Santambar 20, 202	1
	Page 334	1	September 50, 202	) II 
	for this alaim?		1 age 550	'
	$\Delta$ L was L halped collect the decomposite but L	1	evidence.	
	A. I was. I helped collect the documents, but I	2	MS. PETERSON: Thank you.	
	$\Omega$ Okay So you spoke with rome of these mouth is	3	THE COURT: The Court's in recess.	
	the chain including Lindols who owned the Sodier Breach before	4	Kecess.	
e	the present owners in 20112	5	THE COURT: We're in the continuation of our	
	A No I did not sneak with them	0	hearings. We have the presence of the parties, their counsel,	
8	0. Did you did you you attended the hearing in		the witness stand the witness is on the witness stand under	Í
9	front of the State Engineer in 2013 on the mitigation rights?		MS RETERSON: Our Time	
10	Did vou attend that hearing?	10	RV MS PETERSON: Okay. Thank you, Your Honor.	
11	A. I have attended several hearings related to this	11	O Mr. Buschelman again we're still er	
12	matter, but I'm sorry, I don't know if that particular one	12	Exhibit 155: do you have that in front of you? Dogo 212	
13	Q. Okay. Do you do you ever recall being at a	13	A 16 is I thought where we left off	Í
14	hearing in front of the State Engineer where Witts Bailey	14	O. Yes. I'm moving to have 21	
15	testified?	15	A. Okay. Thank you I'm there	
16	A. Yes, I do.	16	O. Okay. And you had some testimony on this	
17	Q. Did you ever talk to Mr. Bailey?	17	yesterday with regard to this document that was sent to the	1
18	A. Did not.	18	Division of Water Resources in 1969: do you remember that?	1
19	Q. And Mr. Bailey worked on the Sadler Ranch when he	19	A. Yes.	
20	was young, I believe?	20	Q. And was that document intended to prove up	
21	A. I believe that was his testimony. I remember	21	beneficial use for a vested claim?	1
22	some, maybe him or others, testifying being there when they	22	MR. RIGDON: Objection. Mr. Buschelman can't	
23	were	23	know what the document was intended to do.	ł
24	MR. RIGDON: Objection, Your Honor. Mr. Bailey	24	THE COURT: I think it's the form of the	
	Page 335		Page 337	ł
1	has not been put on the witness list. Any testimony he gave	1	question. The objection is quotained. Borkers was and	ľ
2	at a State Engineering hearing back then would be hearsay and	2	change the form of the question	
3	we would object to it.	3	MS_PETERSON: Okay	
4	MS. PETERSON: Well, sorry, I just asked if he	4	BY MS. PETERSON.	
5	talked to him. I didn't ask him and actually Mr. Bailey's	5	O. So you had some testimony vesterday	ľ
6	testimony is in the record here because that hearing is in	6	Mr. Buschelman, about this document that's blown up on the	
7	this part of the record.	7	bottom of the page here on page 21?	
8	My question was did you talk to Mr. Bailey, that	8	A. Yes.	
9	was my question. There's no hearsay involved in that	9	Q. And what was your testimony yesterday with regard	
10	question.	10	to this document?	
11	THE WITNESS: I just I may have said hi but I	11	A. I'm going back to the document and I'm just going	
12	didn't speak to him other than that, no.	12	to read what it's entitled. It says "water division	
13	BY MS. PETERSON:	13	Document 1969, Reinhold Sadler submits a deed for the ranch to	
14	Q. Okay. Any of his historical knowledge of work on	14	the State Division, water division that he is about to	
15	the Sadler Ranch when he was young?	15	transfer to Sadler Brothers Inc."	
16	A. NO. We did not discuss that.	16	So this would tell me it was a legal description	
17	THE COURT: Miss Peterson.	17	attached to a deed. This map includes or he indicates that	
10	MD. PETERSUN: Yes.	18	about 2,000 acres of the ranch is irrigated. That's what I	
19	take a break. We've been entire that is an appropriate time. Let's	19	understand this document to be. Nothing more than that.	
20	are a oreak. we've been going about an hour and 40 minutes	20	Q. Okay. That's the extent of your knowledge of	
22	MS DETERSONI OF A	21	this document?	
	MIS. I LIERSON, OKAY.	22	A. Well, it's the document. What the document does	
23	THE COURT: So we'll take our morning brock for	22	when we are the state of the st	
23 24	THE COURT: So we'll take our morning break for about 10 or 15 minutes and then we'll resume with our	23	when you compare it to other documents and other testimony	

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 338 Page 340 useful tool to help with getting a better picture of how this 1 day. 1 2 ranch operated. 2 Q. Okay. So the ponds that are on the Boyak map, There was some discussion of what land was 3 it's your testimony that those are the 18-inch to -- I forget 3 4 irrigated, how much; this helps us go down that path. There's what the other range of your -- the berms that would be used 4 a number of things. Especially when this is stated in a deed, 5 5 for the fill and spill; is that correct? there's about 2,000 acres irrigated. And that is what this 6 6 A. Some of them, yes. There are -- there are a few 7 title is indicating to me because this came from that deed. 7 structures that are much larger than that, but for the most 8 And we see this a lot when you're doing title 8 part, other than those one or two structures that were larger research. You'll see in some deeds that they reference 9 and impounded much more water, these were actually just 9 features of the place of use, especially in a ranching type of 10 10 basically fields that these little 8 inches to 18 inches, transfer of ownership they will try somehow describe some of 11 20 inches in height would then be held for a period of time to 11 the assets that the ranch provides. And so this is -- this is 12 12 get them to fill, and then they would either overflow or spill normal I would say when you're looking at documents and how 13 13 onto the next pasture and then be allowed to continue growing 14 you would trace those. a crop underneath those inundated areas. They weren't 14 15 Q. Right. But it's not a culture map that's 15 continually storing water is what (indiscernible). submitted in support of a proof of appropriation of a vested 16 16 Q. The ponds, the bigger ponds, you said there were 17 claim; is that correct? 17 a couple bigger ponds on the Boyak culture map? 18 A. No, no, it is not. 18 A. Yeah. I would term them more almost reservoirs. Q. And then directing your attention to Exhibit 25? 19 They were bigger than what you would define as a pond in my 19 20 A. Okay. 20 mind. They were substantial sizes and they stored more water 21 Q. And this is the original -- the first few pages 21 than just a few acre-feet. 22 are the original proof that was filed for Shipley Hot Springs 22 Q. Okay. And you -- Boyak didn't include those or Big Shipley Spring in 1980 by the Lowdies; is that correct? 23 because they were reservoirs, but you put them on your -- part 23 24 A. Correct. 24 of your culture map for your 2016 amended proof; is that Page 339 Page 341 Q. And then it's your understanding that there was a 1 correct? 1 2 call for proof by the State -- proofs by the State Engineer in 2 A. No. Diamond Valley around 1985? 3 3 Q. Oh, I thought that was your testimony. A. I'm not sure of the date, but I know it was in 4 A. No. You have to listen to what I'm saying, 4 the 80s. 5 5 please. I'm not trying to browbeat you. But there's two 6 Q. It was subsequent to the filing of this proof; is 6 different types. One are these low fill and spills which are, 7 that correct? 7 you know, 8 inches, 10 inches, 12 inches in depth, but then 8 A. Again, I don't know the exact dates. 8 what I'm speaking is also in addition to that there are larger 9 Q. Would you agree that this proof had not been 9 reservoirs. 10 amended by the Lowdies or any successor water right holder or 10 Two that I can remember in particular, that were 11 land holder until your amendment in 2016? 11 reservoirs; they were not fill and spill. They -- well, I'm A. I found no other amendments until mine that I 12 sorry, they practice fill and spill, but they didn't have a 12 13 provided. 13 culture underneath that could still be grown into meadow or Q. And I believe you indicated yesterday in your 14 14 harvest. 15 testimony that you added -- for the Big Shipley Spring, the 15 They had -- the bottom of their reservoir was --16 amendment, you added lands irrigated outside the private 16 it was water. It didn't have a culture in the bottom. It 17 ground; correct? would actually fill and retain the water either over to the 17 A. Yes. 18 18 next season, which would be carryover storage versus fill and Q. And you also added the acreage for ponds that 19 19 spill. 20 Boyak had shown on his cultural map; is that correct? 20 It was not a -- it would have some 21 A. He showed them as ponds on the dates that he characteristics of filling and then spilling, but it also 21 22 surveyed. We subsequently have seen where those ponds of 22 carried over to the next year. So it's completely course were spilled and that area that was inundated on one 23 different -- different type of storage in that reservoir 23 24 day actually turned into culture that was utilized on another 24 versus the smaller ones.

	HE RELATIVE RIGHTS IN AND TO ALL WATERS	_	September 30, 2021
	Page 34	2	Page 344
1	1 And Boyak showed in his map some of these fill		L it.
	2 and spill features because on the dates that he was out there.		So and the aerial photo that we had in 1046
	3 there was water in those fill and spills, but there was also		shows that it was in the direct path of these flow lines and
	4 reservoirs that he showed that were storage reservoirs that		cultural lines and ditch lines that you would have to build a
	5 had carryover.	5	berm completely around it to keep water off of it. It's going
	I kept those as carryover storage reservoirs, not	6	5 to recede.
- I ·	7 fill and spill. So hopefully that	7	And the priority is established based again as
1	B Q. Clarifies?	ε	we've said in the past because it's on the date that the water
1 !	A gives you a definition of how I approached it.	9	is diverted, not when it's put to beneficial use
10	Q. Thank you. And then the third aspect that you	10	Q. So you tied the Sadler priority date to this
13	I included to amend the acreage on the amended proof was another	11	possessory claim that's Exhibit 57: is that correct?
12	2 parcel that was now owned by Sadler.	12	A. I'd have to look to verify my recollection, but
13	B Do you remember that testimony?	13	my duty is based on information that also is supported by the
14	A. Yes, I think I know the parcel you're speaking	14	GLO plats, not just this document here. This document gives
15	of, yes.	15	me a date, but the date that I finally finalized, as I said in
16	Q. Okay. And how big is that parcel?	16	my amendment, was based on the earliest date that I could find
17	A. 40 acres as I recall. It was illustrated a	17	that I could see that there was occupancy there for diversion,
18	40-acre subdivision. I'm not quite sure of the exact acreage	18	and I believe that was the 1861 GLO plat which showed
19	but it was a quarter-quarter of a section.	19	occupancy and use of that location.
20	Q. And that was owned by somebody else pre-1905?	20	And again, I'd have to look, but that's my
21	A. I'd have to look at the chain of title. It was	21	recollection at this point.
22	owned by someone else later, but I'm not sure who owned it in	22	Q. Okay. I thought your testimony yesterday was
23	1905. It could have been the same party at that time. The	23	that this Exhibit 57 was the reason that you were claiming a
44	Sadler Rallen is you know, originally there were more than	24	1863 priority date for the Sadler Ranch?
-	Page 3/3	+	
			Page 345
11	just one ranch owner. There was other other occupancies	1	A. This along with other documents, not just this
2	out there, not just one, and Sadler and his predecessor helped	2	document. There's other documents that support that date too.
3	pull all those together into one ranch.	3	And I'd have to look and see how many of those contribute to
4	Q. But what specific information do you have with	4	that conclusion, but to say this is the only one, I can't tell
	beneficial use on it that must be used to the second secon	5	you that right now. I'd have to look and see what other
7	as you're claiming for Section	6	documents I took into consideration. I don't have that answer
	A Are you soving that the have 6 in the inst	7	right now.
	A. All you saying that the beneficial use is the	8	Q. Was this the only one your counsel asked you
10	O I I'm asking you what handfield use there are	9	about yesterday?
11	of that narcel pre-1905 that associates it with a 1962	10	A. No, no, he asked me about the GLO plats. He
12	priority?	11	asked me about other documents. This was one of them, but not
13	A. Well that's two questions in my mind. Which	12	the sole document. Especially in determination of priority
14	question do you want me to answer beneficial use or priority?	13	On If we are instant and a statistical
15	O. Beneficial use.	15	Exhibit 57 door door it contains document
16	A. Beneficial use could happen after a priority is	16	You added into the amendment in 20169
17	established. So in that case, this 40-acre subdivision that	17	A I don't know that answer right 1111
18	was owned by someone else was completely surrounded by the	18	do a review to see if that correlates to that around 1.1.1.
19	Sadler Ranch ownership. It was an island, to speak, of a	19	know
20	different ownership surrounded by someone else.	20	Again you can see the volume of documents
21	So it was surrounded by land that was irrigated	21	went through to support this adjudication. I'd have to mand
22	both on all four sides or at least enough on all four sides	22	some time.
23	that you couldn't dry this piece up and keep it dry and not	23	Q. And then directing your attention to Indian Camp
24	irrigate it if you were going to irrigate everything around	24	Spring, you had some testimony about that vesterday: correct?
J.			

- é	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 34	6	Page 348
	1 A. Yes.	J.	1 reasons he wasn't granting any water rights on the line of
	2 Q. And I believe that you testified that there was a		2 Spring or a vested claim on Indian Comp Spring or a vested claim on Indian Comp
	3 GLO map that mentioned a cabin and that's the reason that you	1	the deposition testimony of Reinhold Sodler?
	4 believe there was an earlier early priority date for Indian		A I'd have to look at that deposition. I'm some
	5 Camp Spring; is that your testimony?		5 Without looking at it I can't really on you are to that
-	6 A. Yes.		answer. Or that question
1	7 Q. Did you look at the notes for that GLO man?		0 And then directing your attention to Each it is 100
	B A. Yes.		and that's the Order of Determination And and and
1 2	9 Q. And is there any mention of any garden or		move to Eva Spring
10	irrigation with regard to the cabin that you say is shown on	10	MR RIGDON: I'm sorry, what mage?
1:	L the map?	11	MS. PETERSON: Exhibit 180
12	2 A. No.	12	MR RIGDON: 180. What mage though?
13	Q. Are there any tax records that show that there	13	MS. PETERSON: It's page 177
14	was any livestock or any grain that was taxed with regard to	14	MR RIGDON: 177
19	5 the Indian Camp Spring property?	15	BY MS. PETERSON
16	A. Not that I recall.	16	0. Do you remember the testimony vesterday shout Fur
17	Q. And I believe you testified yesterday that if	17	Springs?
18	there was water in this part of Nevada, Diamond Valley, that	18	A. I remember testifying about it yes
19	this would be used; is that correct?	19	O. And you had some questions from your councel with
20	A. I did, and also this is very, very close, I mean,	20	regard to Eva Spring about 250 215 acre-feet running to
21	it's within a very small distance from the Sadler Ranch which	21	waste. Do you remember
22	was extremely active in all of these aspects of irrigation,	22	A. I know based on some calculations we came up with
23	water use, priority determination.	23	a number similar to that as an amount of water, but $I'_{m-1}$
24	So it wouldn't be that it's an isolated source	24	can't tell you exactly what we were speaking of at that time
+			A Charles and a second s
	Page 347		Page 349
1	out away from any other activity other human activity.	1	O. Right But I think the general theme of the
2	This is adjacent to a ranch that we have documentation.	2	questioning was that the Browns made a claim for X amount and
3	Q. Right. But again Payne Payne the State	3	the State Engineer only allowed Y. Y. you know a V amount
4	Engineer, indicated that Payne didn't see anything in 1912	4	and there were what I wrote down was that there were
5	with regard to Indian Camp Spring and didn't mention it in his	5	250 acre-feet that went to waste and why would the Browns
6	notes.	6	allow that. Do you remember that questioning?
7	Do you recall that from the Order of	7	A. Well, based on what I know about it the Browns
8	Determination?	8	didn't allow anything. They made a claim of so many acres
9	A. I recall it from Payne's notes but not from the	9	being irrigated. And the State came in with a determination
10	Order of Determination. Reading through his notes is what	10	of what they felt the flow was, and through their calculations
11	told me that.	11	came up with a figure, and based on that figure, that would
12	Q. Okay. That Payne makes no mention of Indian Camp	12	say that there's a component of water that was not applied
13	Spring in his notes?	13	But again, the Browns didn't give up anything
14	A. Correct. He makes no mention of it.	14	The Browns said we're irrigating this much land. Whatever
15	Q. And are you familiar with deposition of Reinhold	15	water we need, that's what we're using.
16	Sadler that's mentioned in the State Engineer's Order of	16	Q. Right. But have you contacted the Browns to get
17	Determination with regard to Indian Camp Spring?	17	any information to support your contention that this
18	A. The definition of Reinhold Sadler?	18	determination made by the State Engineer was wrong?
19	Q. I am sorry. Deposition, are you familiar with	19	A. I found nothing in the record to support that,
20	the deposition?	20	and I don't even know if the Browns were alive when I was
21	A. I'm familiar with it, but right now I'd have to	21	involved in this project. I have no idea.
22	look at it to basically well, look at it to understand.	22	Q. So you don't know today as we sit here today
23	Q. And are you aware or do you remember in the Order	23	whether Mr. Brown, Mr. George Brown, is still alive or not?
64	or Determination that the State Engineer said that one of the	24	A. I have no idea.
I			

	Page 35		Page 352
	Q. Did you attempt to find out?	1	L document.
	A. No.	2	2 O. And did you make your claim for the priority for
:	Q. And then directing your attention to Exhibit 24.	3	Eva Spring based on the 1946 aerial?
4	That's the	4	A. No.
1	MR. RIGDON: Which Exhibit again?	5	0. What did you what did you hase your priority
6	MS. PETERSON: 24.	6	5 date on?
7	MR. RIGDON: 24.	7	A. I would have to look at my file or look at the
8	BY MS. PETERSON:	8	supporting information for this to determine what Lused
9	Q. That's the proof that was filed by Mr. and	9	because at this point I can't recall exactly what I used But
10	Mrs. Brown for Eva Spring; would you agree? The first few	10	I know I had other supporting data that I provided to the
11	pages?	11	State Engineer's office that indicated to them a date
12	A. Yes, I see those. And I see on the second page	12	And I'm I'd have to look at the final order
13	George W. Brown and Rita I. Brown as the claimants on this	13	I don't know if they stipulated 1893 as the priority or the
14	document.	14	priority that I did, so I'd have to look at that order, that
15	Q. And then two pages past that, it's on the	15	final order to see what they said. Because the State's
16	bottom it's Bates stamped it looks like Sadler 00383.	16	reviewed all my documentation and whatever they said in the
17	Do you see that page?	17	order, I don't know if it agrees with this 1893 or not.
18	A. Which is the last page of the document? Of the	18	Q. And kind of just getting into some general
19	proof of	19	concepts here. Do you agree that, like, flow in a ditch or
20	Q. Right. There are signature lines there by Mr.	20	flow from a water source doesn't necessarily mean that that
21	and Mrs. Brown. Do you see that?	21	source or all the water in that ditch is all being
22	A. Yes, I do.	22	beneficially used. Do you agree with that, that flow doesn't
23	Q. I assume they're Mr. and Mrs. Brown.	23	necessarily mean beneficial use?
24	Anyways, under the note, the comment there for	24	A. It has no bearing on beneficial use. Flow is
-	Page 351	-	Page 353
1	Page 351 21, the question on 21, it's remarks?	1	Page 353
1 2	Page 351 21, the question on 21, it's remarks? A. I see that.	1	Page 353 flow. No, I wouldn't say flow has anything to do with that
1 2 3	Page 351 21, the question on 21, it's remarks? A. I see that. O. Do you see that?	1 2 3	Page 353 flow. No, I wouldn't say flow has anything to do with that beneficial use. It is a component, but it is not a definitive of beneficial use
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1 2 3 4 5 6	Page 351 21, the question on 21, it's remarks? A. I see that. Q. Do you see that? And Sadler's claiming priority date that's different than 1893 for this right; isn't that correct? A. They state that they've interviewed people and	1 2 3 4 5 6	Page 353 flow. No, I wouldn't say flow has anything to do with that beneficial use. It is a component, but it is not a definitive of beneficial use. Q. And then do you I don't know if you know this or not, but at the Romano Ranch property A. This is the MW Cattle
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	<ul> <li>Page 351</li> <li>21, the question on 21, it's remarks?</li> <li>A. I see that.</li> <li>Q. Do you see that? And Sadler's claiming priority date that's</li> <li>different than 1893 for this right; isn't that correct?</li> <li>A. They state that they've interviewed people and the water has been in continuous use since 1893, but it doesn't necessarily indicate that it wasn't used before that.</li> <li>Q. But Sadler is claiming a priority earlier under your amended claim, the current owners of Sadler are claiming a priority that's prior to 1893; isn't that correct?</li> <li>A. Yes, perfectly allowed if you find more documentation to support that.</li> <li>Q. Do you have any reason to believe that the Browns would not have put the earliest priority date possible that they felt that they could support in their proof?</li> <li>A. I feel that they talked to a number of people and put that date down. But it says it doesn't preclude from finding additional information besides what they reported and definitely indicate an earlier priority. That's that's why we're allowed to amend proofs is that we find additional documentation, additional</li> </ul>	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Page 353 flow. No, I wouldn't say flow has anything to do with that beneficial use. It is a component, but it is not a definitive of beneficial use. Q. And then do you I don't know if you know this or not, but at the Romano Ranch property A. This is the MW Cattle Q. MW Cattle. A. Thank you. Q. Thank you. Do you know if there's any current irrigation by groundwater wells? A. My understanding there is. THE COURT: Which property, Miss Peterson? MS. PETERSON: The Romano Ranch's property, the MW Cattle. THE COURT: Thank you. BY MS. PETERSON: Q. And I believe you testified that you haven't gone there since your amended proof of claim was filed or prior to your amended proof of claim? A. Well, I haven't been actively investigating, but I definitely met John and been at his place. But beyond that, no, I haven't conducted any field investigations to the same

24 these parameters on a proof of appropriation if we can

24

Q. Okay.

September 30, 2021

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 354 Page 356 A. To support the 2016. 1 A. And which page, please? 1 2 Q. So when you did your field investigation for MW 2 On the bottom it's Bates stamped VENT 05288. **O**. Cattle, were they -- was MW Cattle irrigating with 3 3 A. Thank you. 4 groundwater? Q. Do you see those acreages of irrigated land that 4 A. Well, the predecessor owner was, yes. 5 Payne observed or wrote down in his notes? 5 6 Q. Oh, okay. Sorry, yeah, I forgot about that. 6 A. I see those numbers, yes. 7 A. Yeah, I understand. 7 Q. Okay. One's 40 and one is 35? Q. That would have been like General Moly? 8 8 A. Well, there's one that's 40 for -- it's for the 9 A. Yes, that would have been it. Sulphur Ranch, and then there's 35 for I think what they would 9 10 Q. All right. And so did you -- any -- did you in call home ranch or the home Romano. Okay, I see those 10 your investigation separate anything on the ground for this 11 11 numbers, yes. 12 change in the manner -- the change in the type of irrigation 12 Q. Okay. So that equals 75. And that's -- just to groundwater, groundwater -- underground water irrigation 13 orient everybody, that's the MW Cattle property; correct? 13 versus surface water irrigation? 14 14 A. That's correct. 15 A. Again, I have -- I took nothing into account as 15 Q. And you claim about I wrote down 1,496 acres for 16 it related to permitted rights post-1905. MW Cattle now? 16 I took -- except for my field investigation to 17 17 A. Can you say that number again, please. 18 try to figure out if there were ditches and evidence of 18 Q. 1,496? ditches that supported that based on the photo. My focus was 19 19 A. Thank you. 20 prior to 1905, that is what this is about. That's what I 20 Q. Does that sound about right? 21 focused on. 21 A. Yes. 22 So if that was irrigated with a center pivot 22 Q. And I know you testified yesterday that there --23 system, flood irrigation system, wheel system, it had no or Payne had observed this in November so you thought that 23 24 bearing on what I was trying to accomplish as part of this 24 that may impact the quantities or the acreage that he noted in Page 355 Page 357 1 process, this adjudication. 1 his report; is that correct? Q. So if there were any changes on the ground 2 2 A. Well, I testified that -- that Payne, it was at related to this underground water right irrigation, you didn't 3 the time of year November, two, that he spent one day 3 4 take those into account? traveling 20 miles, maybe even more, because he says he left 4 5 A. There's -- no. No. 5 Eureka. Q. And then there was some testimony yesterday with 6 6 So it takes a bit of distance between the town of regard to MW Cattle again where Payne -- Payne said that there 7 Eureka and that ranch to travel in one day. And then he 7 were 40 acres and 35 acres. His notes show that there was 8 8 looked at, I believe, oh, let's see, 1, 2, 3, 4, 5, 6, 7, 75 acres irrigated for that Romano Ranch MW Cattle property; 9 different specific locations he calls out in that one day and 9 10 correct? 10 then came up with numbers such as 40, 35 and others that in 11 Do you remember that? 11 that day. A. I would have to look at it to make sure those 12 12 So I did some math and I come up with in order to 13 numbers are accurate, but yeah, I remember him speaking to travel at least the 20 miles from the first entry he had on a 13 14 some acreage being irrigated. 14 spring and this finding we're speaking of now to the other Q. Okay. It was under a hundred; would you agree 15 spring or the upper northern well spring, which is the Flynn I 15 16 with that? 16 believe is the name of it, Flynn ranch -- Scott ranch, Flynn 17 A. I'd have to look at his report before I could 17 property, he only had about nine hours of daylight. 18 say. 18 So he had to somehow get from Eureka to the 19 Q. Do you want to look at his report? furthest ranch on this in daylight, which is only about nine 19 20 A. Yes. 20 hours at that time of the year, and he had maybe, maybe an 21 O. It's EE? hour at each one of these locations, plus he had to travel 21 A. Yes, please, I would. Would you refresh my 22 22 between the two. memory on --23 23 So for him to come up with these numbers, he 24 Q. It's EE? 24 wasn't doing any measurement, he was either guesstimating or

	E ALLATIVE NIGHTS IN AND TO ALL WATERS		September 30, 202
	Page 358	8	Page 360
1	getting, I don't it doesn't say that he even met with the	1	the calculation, it's based on what the plant needs, the exact
2	people at these sources.	1	2 plant. That's the net irrigation water requirement. That was
3	So that's why when I look at this report, I take	3	the basis of my number that I started with. And I applied
4	it in context with other information that we have available to	4	deficiencies to that number, 40 percent, 50 percent
5	us. And this is only one piece of the pie, and I measured it	5	60 percent, to come up with a range of efficiencies based on
6	against all the other information we have and it did not give	6	the plant what the exact plant needs
7	me a definitive number of acres.	7	It those efficiencies were based on an
8	It said something was irrigated, but that's	8	irrigation method. There are many different methods that
9	that's about it. It doesn't include the amount or the total.	9	would deliver the water from the source to the plant. That's
10	So that's why when we spoke yesterday about how much weight I	10	how I came up with that calculation. It does not counte to
L1	gave this, I gave it weight.	11	what I would actually see in the field because we don't have
L2	I didn't discount it, but I weighed it against	12	that ability today. Not at this location. There are surface
13	all the other information we have and made a judgment on	13	today. Hagn't been for 40 years
4	which which was a bit stronger, which collaborated with	14	So it's a way to come up with a dute an et l
.5	others in order to come up with my numbers.	15	a reasonable duty that we can to device a line of the
.6	And the reason for the other I'm sorry to	16	work where in reality it could be mathematically in the state
7	continue, the 1,496 is also land outside of his fee title	17	But we don't have that ability to date another number altogether.
8	land. So this is inclusive of the land that I saw based on	10	Dut we don't have that ability to determine that.
9	the information I received and the 1946 aerial photos is one	10	Q. Right. But we don't even know what the Romano
0	of our strongest evidences of what was irrigated; not who	19	spring complex, what the flow rate was; right?
1	owned what but what was irrigated. So that's what I used as	20	A. Nobody does. But we have evidence based on the
2	nart of my determination process	21	1946 photo that would give us a clue in 1946. It could be
3	O So is it your testimony that - I mean that's a	22	more before that.
4	pretty hig discrepancy it's 1 400 acros correct between	23	Q. But we don't know. We don't know what the flow
-	prendy ong aborepanoy, it's 1,400 acres, confect, between	24	was of the Romano springs?
	Page 359		Page 361
1	what Payne says is irrigated in 1912 and what you've claimed	1	A. No No we don't But we have evidence to get
2	as pre-1905; correct?	2	us that it existed that it flowed and that it movided
3	A. Payne didn't have the 1946 photos. He had no	3	enough water to develop the range and output. We to the
4	photo to even get an idea of what it looked like. If he was		that
5	wading on top of a horse through grass and brush he's only		
5	going to see, you know, grasslands and brush lands. He's not		Q. This which ing gears now, okay.
,	going to be able to say 40 acres was irrigated sitting on top		A. Okay.
3	of a horse.		Q. Just changing subjects, sorry. I'm getting
	He may came up with that number as a guagatimete	8	towards the end so that's a good thing for you.
)	or heard that number from maybe the resident there, but we	9	when we were talking about the fill and spill,
L	don't he doesn't say how he came up with that number. So	10	directing your attention to that area, did you account for
2	that's the weight I give to this. It does toll mo that some	11	runoff and return flow for calculating the downstream crop
	of it was irrigated which is helpful but it describes 1	12	needs?
	much	13	A. When you're saying runoff and return flow, is
	And again just so Lunderstenderstenderstender	14	that the same water or is it different water?
,	for what was for what's claimed for MW G with	15	Q. It's the same water. I thought your testimony
	Your 1 406 some and multiplicated for MW Cattle, you took	16	yesterday was that there was this spill and fill method of
	A That's correct	17	irrigation where it would irrigate the, you know, the area,
	A. That's correct.	18	because you're saying it's not a pond, would be filled; right?
	Q. That s okay. And so that calculation is based	19	A. Right.
	A Place 1. C 1. 1	20	Q. This 18 to 20-inch area would be filled, and then
	A. Please define needed duty.	21	that let's say it was a berm would be breached, right, and
	Q. Well, that calculation is not based on a showing	22	it would go ahead and spill over into the land and then the
(	Q. Well, that calculation is not based on a showing of actual beneficial use; would you agree with that?	22 23	it would go ahead and spill over into the land and then the water would be continually used down field. I thought that

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 362 Page 364 A. Correct. It can cascade too. It can go from one 1 that number is a good number, just as we talked about in the 1 spill and fill system through some fields, collected again in 2 Humboldt River Decree and the Palisade Canyons. 2 3 another fill and spill system, and breached and -- or So the Humboldt River the Court said 3 acre-feet 3 4 overflow, breach, whatever, and then go down to the next was a reasonable amount for harvest. And it didn't take into 4 system. So it could be repeated over and over and over again. 5 5 account whether you had a 2-inch ditch or a ten-mile ditch, it 6 Q. Right. So did you account for any of that runoff 6 said that was a reasonable amount. 7 or return flow when calculating your downstream crop needs? 7 So in the same spirit of coming up with an agreed A. I accounted it -- I don't mean to be evasive, but 8 8 amount, I mean, 3 acre-feet was an agreed amount there, that 9 accounted for it in which way? was -- 4.5 was a reasonable amount to expect here. 9 Q. So you're not double counting the water? 10 10 If you wanted to go in and really try to pick A. No. I didn't double count the water. The duty 11 each location in the Humboldt River system and each location 11 12 of 4.5 acre-feet per acre was at the source. Assuming that 12 on this ranch, you would have a list of duties that you would we've put 4. acre-feet per acre at the source analysis and 13 13 have to spell out. 14 allowed it to flow through the ranch, whether we use that duty Q. Right. 14 over and over and over again, the consumption, at least based 15 A. It would be impossible to manage. 15 on the definition of duty that I provided, it would consume 16 16 Q. Right. But the Humboldt River Decree said the 4.5-acre-feet per acre by the time you got to the end of the 17 duty was determined at the head of the field; correct? 17 system, whether you used it once or used it over and over and 18 A. Head of the field, correct. 18 19 over and over again. 19 Q. So do you have Exhibit 570 in front of you? It 20 And again runoff and overflow, whatever, you're 20 was one of your exhibits, your --21 diverting water to a field and you collect that water again 21 A. Oh, one of the --22 and put it on another field, that practice is repeated all 22 Q. It was one of the new exhibits introduced 23 over the state. It's not running off into a ditch system that 23 yesterday. would service somebody below or downstream. 24 24 MR. RIGDON: He doesn't have a copy of it. Would Page 363 Page 365 This is only one owner, it satisfies that one 1 1 you like me to hand him a copy? 2 owner and is used by that one owner. It's not like it has to 2 MS. PETERSON: Yes. Do you mind? I can do it. runoff or contribute to another water right below that or 3 3 MR. RIGDON: Oh, okay. I don't know if the Court downstream. That's why when you say runoff and overflow it 4 4 got a copy. 5 has some meaning as to what (indiscernible). 5 MS. PETERSON: Oh, okay. Q. Right. But in your calculation of duty of 6 MR. RIGDON: Here's another one. Here you go. 6 4.5 acre-feet per acre, you have 4.5 acre-feet per acre for 7 7 The new Exhibit number is? 8 every single acre, say, it's 1,496 acres coming off -- coming MS. PETERSON: It's 570. It was introduced 8 9 off the source; is that correct? 9 yesterday. 10 A. Yes. 10 THE COURT: Thank you. 11 Q. And so the acre that's a mile away, let's say, I 11 THE WITNESS: Thank you. 12 don't know if that's true for MW Cattle ranch because I'm 12 BY MS. PETERSON: 13 using the 1,496 number, but the farthest parcel away from the 13 Q. Do you see that Exhibit 570, Mr. Buschelman? 14 source for the MW Cattle property, it still -- it gets 14 A. I see the first page. 4.5 acre-feet per duty even though there's been runoff and 15 15 Q. Are you familiar with this document? 16 return flow in the system before it gets to that last parcel; 16 A. Familiar with what, I'm sorry? 17 isn't that correct? 17 This document, Exhibit 570? **O**. 18 A. Well, again if you up look at the definition we 18 Α. I'll need a moment to go over it. gave of duty, there's multiple components. What you're 19 Q. Sure. 19 20 accomplishing and what you're trying to accomplish is to get 20 A. I recognize some of the documents in here, but sufficient amount of water to that plant so it will grow. 21 21 it's -- but I can't say that I recognize or have seen the 22 And so it may take -- I mean, on the project as a whole document before so I'm not quite sure where we're going. 22 23 whole, on average based on my calculations to see if that's a 23 Q. All right. And of course these aren't Bates 24 reasonable amount, if you apply it as a project as a whole, stamped. And I can't remember, I'm sorry, if I'm asking this 24

TH	THE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 366	3	Page 368
1	again, did you help prepare put this prepare to put this	1	$\Omega$ I'm just asking if the horses in that area and
2	document together?	2	the cattle and the livestock in that area could have grazed on
3	A. I don't know.	3	natural forage. That's what I'm asking
4	Q. You don't know. Okay.	4	A. The answer
5	A. I may have or components of this possibly but I	5	O. And you said yes?
6	don't know what that answer is.	6	A. Yes, they could They could
7	Q. Okay. All right. And then there was some	7	MS. PETERSON: I think that's all I have Thank
8	testimony yesterday about Sulphur station and the Pony	8	vou. Your Honor
9	Express; do you remember that?	9	THE COURT' Redirect Mr Rigdon
10	A. What was that again?	10	MR. RIGDON: Yes. Thank you Your Honor
11	Q. There was some testimony about Sulphur station	11	Mr. Buschelman, there's been a lot of talk in
12	and the Pony Express; do you remember that?	12	your cross-examination about Mr. Payne and we didn't get a
13	A. I remember the discussion, yes.	13	chance to talk about that in our direct so I want to talk
14	Q. And the claiming of a 1861 priority date for MW	14	about that right now.
15	Cattle based upon that Pony Express station; right?	15	But I was going to use another witness to do it
16	A. Based upon a diversion, not just based on the	16	so I'm going to hand out some witness binders that are going
17	Pony Express station. But the concept of priority is again	17	to be used for Mr. Smith, but they have in exhibits that I now
18	established by when a diversion is made, not the presence of a	18	need to ask Mr. Buschelman about if that's okay
19	Pony Express station.	19	THE COURT: Go ahead
20	Q. Is there anything in the GLO maps that indicates	20	REDIRECT EXAMINATION
21	there was a diversion at that Pony Express station?	21	BY MR. RIGDON:
22	A. I don't believe the GLO maps even noted a Pony	22	O. Do vou remember. Mr. Buschelman when Miss
23	Express station at that location.	23	Peterson asked you whether Mr. Payne was an employee of the
24	Q. Is it possible that horses could feed off native	24	State Engineer's office?
	Page 367		Page 369
1	forage in the area of the Pony Express station?	1	A. Yes, I remember that conversation
2	A. It's possible. I would like to add though, if	2	O. Okay. So in this this binder I just gave you
3	you look at the State Engineer's determination, they showed a	3	could vou turn to if Exhibit 171, nlease
4	thousand head of cattle and I forget how many horses and other	4	A. (Complies.)
5	animals with a 1861 priority under stock water and the State's	5	O. What does this cover sheet identify 171 as being?
6	accepted that.	6	A. The title of this is the biennial report of the
7	So beyond that I don't know why we would be	7	State Engineer, dated 1913/1914
8	debating priority if the State Engineer in their final order	8	O. Okay. And if you'll turn to the page the very
9	has already accepted that.	9	next page?
10	Q. Right. But that was just for the stock water	10	A. (Complies.)
L1	component; isn't that correct?	11	Q. Does this list all the employees of the State
L2	A. Well, with a thousand head of cattle and more, I	12	Engineer's office in 1913 and 1914?
13	can't remember the other category of animals, it would take	13	A. Yes.
L4	more I would think than just native especially in the	14	Q. And does it give their titles?
L5	wintertime, you're going to have to support those cattle	15	A. Yes.
L6	during the wintertime, that's going to require a harvest event	16	Q. Okay. And what does it give as the title for
L <b>7</b>	or effort to keep those cattle alive when all that native and	17	Mr. Payne?
18	natural grass is dormant or under snow or ice or whatever.	18	A. It says Harvey M. Payne, assistant field
L <b>9</b>	So to me that means that if the State accepted	19	engineer.
20	it, that there shouldn't be a debate on the priority. And	20	Q. So there's a State Engineer, an assistant State
21	there's other collaborating evidence, the thousand cattle,	21	Engineer, five field engineers, and then one assistant field
2	other animals that would also collaborate an event that would	22	engineer?
3	constitute a diversion. So I they haven't they haven't	23	A. Yes.
:4	contested that so I'm confused as to why we're doing it now.	24	Q. And Mr. Payne is the low man on the totem pole.

TI	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
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1	He's just an assistant at this point?	1	Scott ranch 19 and a half miles all in one day on a short
2	A. He's the only assistant on this list.	2	winter day: correct?
3	Q. Okay. Can you turn to the next page excuse	3	A. Correct
4	me, the last page in the binder in that Exhibit. And that	4	O. And in that time, would be have had any time to
5	should be page 29 of that report; is that correct?	5	do a proper survey like what's described in this biennial
6	A. Correct.	6	report?
7	Q. Okay. Can you read to me the second and third	7	A. Well, what he reported to do in one day I could
8	full paragraph there?	8	only visit and compile information on two ranches in
9	A. The second paragraph starts off as Mr. Z.	9	approximately 12 days, and have supporting evidence of aerial
10	C. Smith	10	photographs and a lot more tools and information before I went
11	Q. No, no, the second full paragraph where it starts	11	into the field to make any kind of field investigation that
12	"in the tabulation"?	12	would meet that standard.
13	A. Oh thank you. In the tabulation on page 00 will	13	So I don't believe he had time.
14	be found the list of surveyors made I'm sorry, list of	14	Q. And is there anything indication in Payne's note
15	surveys made and checked by this office.	15	that he did any of the stuff which was required to do a proper
16	Q. And the next paragraph?	16	survey by the State Engineer's office?
17	A. When it is considered that each property listed	17	A. I could find nothing in his notes to say such an
18	must be surveyed, the legal subdivisions of land properly	18	effort was made.
19	noted, the ditches traversed, the cross-sections and grades	19	Q. Okay. So what we have is an assistant field
20	taken, then platted, the areas figured in each character or	20	engineer just going out looking at things and writing notes?
21	crop and segregated so as to assign definite areas to each	21	A. That's my impression, yes.
22	ditch, the magnitude of the work can be realized.	22	Q. We have no idea why he was doing it, if it was
23	Q. Does this describe what the standards were for	23	just the State Engineer telling him hey, you're the green guy,
24	the State Engineer's office in 1913 for conducting surveys on	24	go out and get familiar with things?
-		-	
1	Fage 57 I		Page 373
1	property?	1	A. That could very well be the scenario, yes.
2	MS. PETERSON: I object, Your Honor. That's	2	Q. Okay. If you can turn back to your Exhibit
3	misleading as to what the State's the document can speak	3	binder, the one I gave you. And if you could turn to
4	for itself. And we don't even have the complete document so I	4	Exhibit 180, which is the State Engineer's Order of
5	have no idea it jumps from	5	Determination, if you could turn to page 146 of that.
6	MR. RIGDON: The complete document is in the	6	You were just having a conversation with Miss
/	file. We just excerpted it for the witness binder. If you'd	7	Peterson about the animals that the State Engineer recognized
8	like to see the complete document in the file we can certainly	8	as in the priority date, the State Engineer recognized on
10	MS DETERSON, Ohm	9	the Romano Ranch; is that correct?
11	THE COURT: With reference of the line in the	10	A. That's correct.
12	objection is overruled	11	Q. Okay. And this this is the start of the
13	MR RIGDON: Okay	12	discussion of proof VO4479; is that correct?
14	BV MR RIGDON:	13	A. Yes, it is.
15	0 So can you answer the question Mr. Buschelmen	14	Q. And that was one of the proofs for Romano spring?
16	Does that in fact describe the standards for conducting a	15	A. Yes, It is.
17	survey the standards the State Engineer's office had in	17	Q. Okay. And if you turn to page 148 where it's the
18	1913 for conducting a survey?	10	
19	A. That's what it appears to be, ves	10	$\Omega$ And does that indicate a number of lineate shift in
20	Q. Okay. And so you indicated in one of your	20	were part of that proof?
21	responses to Miss Peterson that Pavne started at Sulphur	21	A Yes it does
22	Springs, traveled three miles to Romano. traveled three more	22	O. And what does that indicate?
23	miles to Bailey, traveled two and a half miles to Sadler.	23	A. Can I read the last (indiscernible)
24	traveled four miles to Siri, traveled seven miles to Flynn	24	Q. Sure.
	2		

E RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 20
Page 374	4	Page 37
A. The State Engineer also finds a basis for a	1	
year-round use of water for domestic purposes and for the		A Based on the historical data available and find a
needs of 1,000 cattle and 30 horses and 1,000 sheep the total		investigations, the State Engineer finds a basis f
number of animals on this ranch watering at all sources when	4	right to divert 0.67 CES of water from Lawson 1 to
it is available and with a priority date of 1861	5	December 21st of each year from January 1st to
O. Okay. In your opinion, is there enough natural	5	85.4 acres of harvest and 18.2 acres of diversify the
forage on the Romano Ranch to support 1,000 cattle 30 horses	7	for a total duty of 260.02 core fact non accessing the
and 1.000 sheep?		acre feet per appum with a migrity data of 1071
MS. PETERSON: Objection Your Honor based on		$\Omega$ So the State Engineer has already date of 18/1.
the time frame no time frame.	10	the priority date in 1817, correct?
MR. RIGDON: There is no I the State	11	A Correct
Engineer has determined that there with that many there prior	12	A. Conten.
to 1905, and so that's what I'm asking him. You you asked	13	Q. Not the 1695 that Miss Peterson was talking to
him questions on whether there was natural forage	14	A Correct
We're showing the total amount of animals that	1 =	And the State Engineer has looked at 11 st
were out there and I'm asking him whether that number of	16	Q. And the State Engineer has looked at all the
animals could naturally forage out there	17	the date that the doctrine of relation has been that that was
MS. PETERSON: Right, But there was no time	10	priority date of that water right?
frame in the question. Your Honor, about whether he was	10	A Correct
talking about currently the question was currently is there	20	A. Collect.
that amount of forage out there or was it pre-1905 that's	21	Were talking to Miss Paterson shout the NUWP month of the
what I'm objecting to.	22	report in - that she had as the Exhibit that import and that
THE COURT: Mr. Rigdon.	23	that they did on NIWP membersy do you remember that
MR. RIGDON: Pre-1905, Mr. Buschelman, which is	24	A. NIWR is net irrigation water requirement?
no bla		ganon water requirement:
Page 375		Page 377
what the State Engineer found, pre-1905 there was a thousand	1	Q. Net irrigation water requirement, yes.
cattle, 30 horses, and a thousand sheep out there on the	2	A. Yes, I recall it.
Romano Ranch.	3	Q. Okay. Remember she asked you if in studying the
In your opinion, is it possible that there's	4	net irrigation water requirement if they took into account
enough natural forage on the Romano Ranch to support those	5	different types of irrigation methods?
large of herds.	6	A. I remember that.
THE WITNESS: No. You would have to have	7	Q. Okay. If the idea is to find out what the
sometning else in order to feed that size of an animal a	8	crop what the plant needs, why would different types of
collection of animals for in that one ranch. You would	9	irrigation even factor into the equation?
nave to have some other source of food and water to do that.	10	A. It wouldn't. That report identified the need of
BY MK. RIGDON:	11	a plant. It didn't speak to how you can get the water to that
Q. Ukay.	12	plant, it's just the plant needs this much water to grow.
A. You couldn't just support it on natural	13	Q. Okay. So they wouldn't even need to talk about
	14	whether it was flood irrigation or center pivot irrigation or
Q. Ukay. Now, let's turn to page 177 in that same	15	wheel irrigation at all, that's the method to get the water to
	16	the plant; all they were looking at is what the plant needs?
A. (Complies.)	17	A. My review of that report doesn't go into any of
Q. You remember Miss Peterson was asking you about	18	that discussion, only what the plant needs.
A Nor	19	Q. Okay. And Miss Peterson asked you a lot about
A. Yes.	20	what types of evidence you had that water was being placed to
11 0 0 0 10 10 0 0 11 10 00 00 10 000 1 170 - 111 1 1	21	heneficial use on the Romano Ranch as early as 1961, do you
Q. And, in fact, if you go to page 1/8 which is the	~ 1	contentent use on the Romano Ranch as carry as 1801, uo you
conclusion on that proof, in fact, what is the priority date	22	remember those questions?
conclusion on that proof, in fact, what is the priority date that the State Engineer recognize?	22 23	remember those questions? A. I do.
	A. The State Engineer also finds a basis for a year-round use of water for domestic purposes and for the needs of 1,000 cattle and 30 horses and 1,000 sheep, the total number of animals on this ranch watering at all sources when it is available and with a priority date of 1861. Q. Okay. In your opinion, is there enough natural forage on the Romano Ranch to support 1,000 cattle, 30 horses, and 1,000 sheep? MS. PETERSON: Objection, Your Honor, based on the time frame no time frame. MR. RIGDON: There is no I the State Engineer has determined that there with that many there prior to 1905, and so that's what I'm asking him. You you asked him questions on whether there was natural forage. We're showing the total amount of animals that were out there and I'm asking him whether that number of animals could naturally forage out there. MS. PETERSON: Right. But there was no time frame in the question, Your Honor, about whether he was talking about currently the question was currently is there that amount of forage out there or was it pre-1905, that's what I'm objecting to. THE COURT: Mr. Rigdon. MR. RIGDON: Pre-1905, Mr. Buschelman, which is Page 375 what the State Engineer found, pre-1905 there was a thousand cattle, 30 horses, and a thousand sheep out there on the Romano Ranch. In your opinion, is it possible that there's enough natural forage on the Romano Ranch to support those large of herds. THE WITNESS: No. You would have to have something else in order to feed that size of an animal a collection of animals for in that one ranch. You would have to have some other source of food and water to do that. BY MR. RIGDON: Q. Okay. A. You couldn't just support it on natural vegetation. Q. Okay. Now, let's turn to page 177 in that same document. A. (Complies.) Q. You remember Miss Peterson was asking you about the priority date for the Brown Ranch2	A. The State Engineer also finds a basis for a year-round use of water for domestic purposes and for the needs of 1,000 cattle and 30 horses and 1,000 sheep, the total number of animals on this ranch watering at all sources when it is available and with a priority date of 1861. Q. Okay. In your opinion, is there enough natural forage on the Romano Ranch to support 1,000 cattle, 30 horses, and 1,000 sheep? MS. PETERSON: Objection, Your Honor, based on the time frame - no time frame. MR. RIGDON: There is no I the State Engineer has determined that there with that many there prior to 1905, and so that's what I'm asking him. You you asked him questions on whether there was natural forage. We're showing the total amount of animals that were out there and I'm asking him whether that number of animals could naturally forage out there. MS. PETERSON: Right. But there was no time frame in the question, Your Honor, about whether he was talking about currently the question was currently is there that amount of forage out there or was it pre-1905, that's what I'm objecting to. THE COURT: Mr. Rigdon. MR. RIGDON: Pre-1905, Mr. Buschelman, which is and cattle, 30 horses, and a thousand sheep out there on the Romano Ranch. In your opinion, is it possible that there's enough natural forage on the Romano Ranch to support those large of herds. THE WITNESS: No. You would have to have something else in order to feed that size of an animal a collection of animals for in that one ranch. You would have to have some other source of food and water to do that. BY MR. RIGDON: Q. Okay. A. You couldn't just support it on natural vegetation. Q. Okay. Now, let's turn to page 177 in that same document. A. (Complies.) Q. You remember Miss Peterson was asking you about the priority date for the Browm Ranch?

TH	E RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
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1	beneficial use relate to priority dates?	1	work experience of Mr. Payne?
2	A. It does not.	2	A. No. I don't
3	Q. What is the basis for determining a priority	3	O. And then directing your attention to the next two
4	date?	4	pages, you were asked some questions under the heading "Field
5	A. Point of diversion of that water.	5	Operations"?
6	Q. So you divert just the diversion of the water.	6	A. I see that
7	You don't have to have the full fields irrigated and culture	7	O. And if you read the first full paragraph
8	shown on the date that the priority is set?	8	discussing the surveys that were made the field operations in
9	A. No, you do not.	9	that biennium?
10	Q. Okay.	10	A. The first sentence of the paragraph says
11	MR. RIGDON: That's all I have on redirect.	11	"probably the most important branch of our field operation
12	THE COURT: Recross on that.	12	consists of making surveys of irrigated grass irrigating
13	MS. PETERSON: Thank you, Your Honor	13	ditches stream flow and irrigable londs "
14	RECROSS-EXAMINATION	14	$\cap$ And then the next the next performance indicates
15	BY MS. PETERSON	15	that they tay to make these surrous. I more within 1
16	O. Mr. Buschelman, turning to Exhibit 180 Sorry	16	error but that's not always possible?
17	the Eve Brown or Eva Springs the Brown proof I know the	17	A I see that contained and
18	Order of Determination indicated that the priority was 18712	10	A. I see that sentence, and
19	A Can you point me to the page	10	Q. Okay. And then directing your attention to the
20	O Oh veah I'm sorry It's page 178	19	Measure C. C. Smith For 18
21	A Okay I'm there	20	Messrs. C. C. Smith, Fred Stewart, do you see that paragraph?
22	$\Omega$ I thought that Sadler Panch was alaiming a	21	A. 1 do.
23	priority prior to 1871 for the Eva Spring: do you know?	22	Q. Mr. Payne is listed in there also; right?
24	A I would have to look at the proof but in	23	A. He is.
	A. I would have to look at the proof, but in	24	Q. And that paragraph indicates that for this
	Page 379		Page 381
1	general, yes, I believe we were earlier than the State	1	biennium, that those field engineers or assistant, whatever
2	identified here.	2	their title was, assistant field engineers were making surveys
3	Q. Okay.	3	in the Humboldt River system; is that correct?
4	A. In the final order.	4	A. Yes.
5	Q. And then directing your attention to Exhibit 171.	5	Q. I don't see anything in this paragraph or under
6	That's in the new binder we just had.	6	this section having to do with Diamond Valley do you?
7	A. The Dwight Smith binder?	7	A. In that particular paragraph?
8	Q. 171, yes.	8	
9		<b>Y</b>	U. In this particular section under field field
	A. I'm there.	9	Q. In this particular section under field field operations?
10	<ul><li>A. I'm there.</li><li>Q. And this is the biennium report for 1913 to 1914?</li></ul>	9 10	Q. In this particular section under field field operations? A. I need a minute to read it. I see no reference
10 11	<ul><li>A. I'm there.</li><li>Q. And this is the biennium report for 1913 to 1914?</li><li>A. Yes.</li></ul>	9 10 11	Q. In this particular section under field field operations? A. I need a minute to read it. I see no reference to Diamond Valley.
10 11 12	<ul> <li>A. I'm there.</li> <li>Q. And this is the biennium report for 1913 to 1914?</li> <li>A. Yes.</li> <li>Q. For the State Engineer. And Mr. Payne's visit to</li> </ul>	9 10 11 12	<ul> <li>Q. In this particular section under field field</li> <li>operations?</li> <li>A. I need a minute to read it. I see no reference</li> <li>to Diamond Valley.</li> <li>Q. Right.</li> </ul>
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Ē	THE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 38	2	Page 384
	1 MR. BOLOTIN: (Indiscernible) just say that		l spell your name
	2 (indiscernible) Crumb and Dan Taylor once again joined the		A Dwight Smith D WIGHT SMITH
	3 hearing at some point. I didn't want to interrupt the	3	$\begin{array}{c} \text{And what's your profession}  Mr  Smith 2 \end{array}$
1	testimony, but they're on right now.	4	A I'm a hydrogeologist
1	5 THE COURT: Thank you, Mr. Bolotin. And their	. 5	0. Okay And what does a hydrogeologist do?
	appearance is noted for the record.	6	A I work in just about all different times of water
	7 MR. BOLOTIN: Thank you.	7	resource management, water resource exclusions and studies
1	THE COURT: And we'll take about an hour and	8	O Okay And can you describe the education and studies.
9	ten-minute break and we'll continue on with testimony at 1:30.	9	training you have for that
10	0 (Lunch recess.)	10	A Yes My hachelor's degree is in geological
11	L	11	engineering My master's degree is in hydrogoology from UDD
12	2	12	O. And if you will turn to the Exhibit binder I have
13	3	13	in front of you there. If you turn to page 18 aways me
14	L	14	Exhibit 183
15	5	15	A. (Complies)
16	i	16	O. Do you recognize that?
17	,	17	A. I do.
18		18	O. And what is that?
19		19	A. This is my professional resume I will note that
20		20	this is a couple years dated because it says Interflow
21		21	Hydrology. I'm the former owner of Interflow Hydrology I'm
22		22	now with McGinley & Associates.
23		23	Q. All right. But does this adequately describe
24		24	your experience and education?
		1	1
	Page 383		Page 385
1	EUREKA, NEVADA, THURSDAY, SEPTEMBER 30, 2021, P.M. SESSION	1	A Vas it dass
2	-000-	2	A. 1 cs, it does.
3		3	THE COUPT: Excuse me Mr. Smith II
4	THE COURT: Let the record reflect we're in the	4	have you turn your cent just a little bit towards
5	continuation of our case and we have the presence of the	5	Okay Great thank you
6	parties and their counsel. At this time you can go ahead and	6	BY MR RIGDON
7	call your next witness.	7	O Okay So let's turn to Exhibit 184 It's the
8	MR. RIGDON: Thank you, Your Honor. We will call	8	next one in the binder
9	Mr. Dwight Smith.	9	A. (Complies)
10	THE COURT: Okay. Please come forward, sir.	10	O. And do you recognize this Exhibit?
11	I'll have you raise your right hand. The clerk will	11	A. I do.
12	administer you an oath.	12	O. And what is this?
13	DWIGHT SMITH,	13	A. This is a report that I prepared for a water
14	called as a witness in this matter,	14	right hearing in the year 2013
15	having been first duly sworn,	15	O. Okay. And did that hearing involve Sadler Ranch?
16	testified as follows:	16	A. It did.
17	THE COURT: Please take the witness chair to my	17	Q. And then if you could turn to 185
18	left. Okay, Mr. Rigdon, proceed with direct.	18	A. (Complies.)
19	MR. RIGDON: Thank you.	19	Q. And do you recognize this Exhibit?
20	DIRECT EXAMINATION	20	A. Yes, I do.
21	BY MR. RIGDON:	21	Q. And what is this one?
22	Q. Good afternoon, Mr. Smith.	22	A. So this is a report that I prepared in 2019 for
23	A. Good afternoon.	23	the hearing before the State Engineer for this adjudication
24	Q. Could you just please for the record state and	24	process.

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	IE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 202	1
	Page 38	6	Page 388	7
1	Q. Okay. So that was for this case, this was the	1	0. And in your investigations do you also use other	
2	report you did?	2	records and notes historic records and notes that you find to	
3	A. That's correct.	3	make determinations with regards to those springs?	
4	Q. Okay. And did it use information from the	4	A. Yes.	
5	previous report from 2013?	5	Q. Okay. Have you ever testified as expert before	
6	A. It did.	6	the State Engineer's proceedings?	
7	Q. Okay. And you relied on you relied on that	7	A. I have.	ł
8	information from that previous report in 2013; correct?	8	Q. Including in this one?	
9	A. That is correct.	9	A. That's correct.	
10	Q. Okay. So let's turn to 186 now.	10	Q. But have there been other ones?	
11	A. (Complies.)	11	A. I've testified as a qualified expert on	
12	Q. And you recognize what 186 is?	12	17 occasions before the Nevada State Engineer. I've also	Ê
13	A. Yes. This is another report that I prepared in	13	testified in civil proceedings, one of which was related to	l
14	February of 2020, and it's supplemental information related to	14	the State Engineer.	Į
15	this adjudication proceeding for the Sadler Ranch.	15	Q. Okay. And have you ever then testified in court	
16	Q. Okay. And is there a cover letter with that?	16	as well about similar types of issues?	
17	A. Yes.	17	A. I have.	ľ
18	Q. Okay. And does that does that cover letter	18	Q. About how many times?	
19	state that your CV, prior reports, and the transcripts of your	19	A. Just a few times. I've testified in California	
20	prior testimony are the basis of your opinions?	20	courts twice and in the Nevada courts twice also.	
21	A. Inat's correct.	21	MR. RIGDON: So at this time, Your Honor, if	
22	Q. Okay. And they re the basis of what you'll be	22	there's no objection, I'd offer Mr. Smith as an expert in	ľ
23	A Ves	23	hydrogeology and spring flow measurements.	
4.1	A. 105.	24	THE COURT: Miss Peterson.	
-		1		
	Page 387	1		
	Page 387		Page 389	
1	Page 387 MR. RIGDON: So, Your Honor, I'd like to move	1	Page 389 MS. PETERSON: Your Honor, could I just a	
1 2	Page 387 MR. RIGDON: So, Your Honor, I'd like to move Exhibits 183 through 186 into the record.	1 2	Page 389 MS. PETERSON: Your Honor, could I just a couple questions.	
1 2 3	Page 387 MR. RIGDON: So, Your Honor, I'd like to move Exhibits 183 through 186 into the record. THE COURT: Counsel?	1 2 3	Page 389 MS. PETERSON: Your Honor, could I just a couple questions. THE COURT: Yes, you may.	
1 2 3 4	Page 387 MR. RIGDON: So, Your Honor, I'd like to move Exhibits 183 through 186 into the record. THE COURT: Counsel? MS. PETERSON: No objection, Your Honor.	1 2 3 4	Page 389 MS. PETERSON: Your Honor, could I just a couple questions. THE COURT: Yes, you may. MS. PETERSON: Okay. Thank you.	
1 2 3 4 5	Page 387 MR. RIGDON: So, Your Honor, I'd like to move Exhibits 183 through 186 into the record. THE COURT: Counsel? MS. PETERSON: No objection, Your Honor. THE COURT: Exhibits 183, 4, 5 and 6 are admitted	1 2 3 4 5	Page 389 MS. PETERSON: Your Honor, could I just a couple questions. THE COURT: Yes, you may. MS. PETERSON: Okay. Thank you. VOIR DIRE EXAMINATION	
1 2 3 4 5 6	Page 387 MR. RIGDON: So, Your Honor, I'd like to move Exhibits 183 through 186 into the record. THE COURT: Counsel? MS. PETERSON: No objection, Your Honor. THE COURT: Exhibits 183, 4, 5 and 6 are admitted without objection.	1 2 3 4 5 6	Page 389 MS. PETERSON: Your Honor, could I just a couple questions. THE COURT: Yes, you may. MS. PETERSON: Okay. Thank you. VOIR DIRE EXAMINATION BY MS. PETERSON:	
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TH	IE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
	Page 390	)	Page 392
1	is covered under a hydrogeologist.	1	filed for the Big Shipley Springs?
2	MR. RIGDON: Okay. Then we're good.	2	A. Yes
3	THE COURT: Then the witness will be admitted	3	O. And it starts on 179 and continues to 181; is
4	under Nevada case law, there's a statute to provide his	4	that correct?
5	professional opinion in those areas.	5	A. Continues to page 183 I believe
6	MR. RIGDON: Great. Thank you, Your Honor.	6	O. Well is 181
7	BY MR. RIGDON:	7	A. Yes my correction 181
8	Q. So Mr. Smith, have you reviewed the evidence	8	O. 181. Okay All right
9	submitted by Sadler Ranch in this case in general?	9	And in this section of the Order of Determination
10	A. I've reviewed selected pieces of evidence that I	10	does the State Engineer arrive at any determination with
11	thought were pertinent to what I was trying to understand and	11	respect to the pre-1905 flow rate to the Big Shipley Spring?
12	issue an opinion on.	12	A Ves
13	O. Okay. And have you also reviewed the final Order	13	$\Omega$ And what does does he say it was?
14	of Determination issued by the State Engineer?	14	A Lam going to make sure L get the exact number
15	A. I have.	15	here for the record If I may can I read the contance?
16	O. Okay. And you drafted those expert reports we	16	O Sure
17	iust talked about?	17	A So in the last paragraph partaining to the costs d
18	A. I did.	1.9	claim the 03280 it's concluded based on the orthibits
19	O. Okay. So let's start with the hig one Big	10	presented in the begring chiestions, data abtained from the
20	Shipley Springs. So can you give us kind of a general	20	public domain and information contained with in the files of
21	overview. location and description of the Big Shipley Springs?	21	the State Engineer's office, the State Engineer finds the
22	A. Yes. Big Shipley Spring hot spring is on the	22	has a f claim V03289 to divert 7.02 CES of water from Shirley
23	west edge of the valley, about in the central part of the	23	Springs to irrigate 1.064.43 acres of hervest 226.7 acres of
24	valley to the west of the playa and to the east of the Sulphur	24	meadow for a total duty of 3 027 61 acros fact across with
			include with a total duty of 5,927.01 acte-feet per season with
	Page 391		Page 393
1	Ranch Spring ranch. It occurs along the toe of the alluvial	1	a priority date of 1873.
2	fan or near the toe and it is one of a series of springs that	2	O. Okay. So the State Engineer found a historic
3	historically has existed along the western edge of the playa	3	spring flow rate of 7.02 CFS?
4	and the alluvial fan.	4	A. That's correct.
5	Q. Is it a warm spring?	5	O. Okay. And in the discussion prior to that
6	A. It is warm. It naturally produces water with	6	conclusion, does the State Engineer identify how he arrived at
7	temperatures of about 106 degrees Fahrenheit.	7	that number?
8	Q. And is it relative to the other springs in	8	A. Yes.
9	Diamond Valley a large spring?	9	Q. And could you tell us what that is?
10	A. It is it was the largest discharging spring in	10	A. Yes. Just in a simple summary, the State
11	Diamond Valley.	11	Engineer and staff utilized three measurements made by a U.S.
12	Q. Okay. I'm going to have you turn to Exhibit 180	12	geological survey scientist, Jim Harrill. These measurements
13	in your Exhibit binder.	13	were made in 1965 and 1966.
14	A. (Complies.)	14	My recollection is the State Engineer averaged
15	Q. And this is excerpts from the Order of	15	those three and then added in a small amount of 22 CFS for
16	Determination that you said you reviewed earlier; is that	16	potential effects, as they interpreted them, that may have
17	correct?	17	diminished the flow by the time Harrill had made measurements
18	A. That's correct.	18	So summing those numbers together 6.8 CFS as an
19	Q. All right. So let's turn to page 179.	19	average of those three measurements plus 0.2 CFS as a
20	A. (Complies.)	20	potential effect at the time Harrill made those measurements
21	MS. PETERSON: 171?	21	O. Okay. So he relied on the Harrill measurement to
22	MR. RIGDON: 179.	22	make his determination. Did he mention in this Order of
23	BY MR. RIGDON:	23	Determination other measurements, other estimates of spring
24	Q. And is this a discussion of the proof that was	24	flow?
	•		

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1	A. There is very little reference to other	1	MR RIGDON: Ves
2	2 observations, reports or data that were produced in the in	2	THE COURT: Oh I have it thank you. Co sheed
3	the hearing. So there's very little reference to any other	3	MR. RIGDON: Thank you
4	data or information.	4	BY MR. RIGDON
5	Q. Okay. Turn to page 179, that first page.	5	0. On the second page does he state what his
6	A. (Complies.)	6	estimate is about the flow of the spring?
7	Q. In that last paragraph on that first page, does	7	A. Yes, he does, in his field notes "By an
8	he make reference to Mr. Payne?	8	estimate I should place the flow of this spring at about 8
9	A. Yes, he does.	9	second feet or a little more."
10	Q. And what does he say about Mr. Payne here?	10	Q. Okay. So he says 8 second feet or more: right?
11	A. In the last paragraph of page 179, the area was	11	A. Or a little more, correct.
12	visited by H. M. Payne on November 18th, 1912, but he was	12	Q. He doesn't say 8 second feet more or less?
13	unable to make an accurate measurement of Big Shipley Spring	13	A. Correct.
14	as there was a break in the dam. He estimated the flow at	14	Q. So it's 8 second feet or it could be more but not
15	approximately 8 CFS.	15	less?
16	Q. Okay.	16	A. What the way that this is written, this field
17	A. That's	17	note, he has placed an assessment of his error to be that it
18	Q. So the word that the State Engineer uses in the	18	could be a little low.
19	order is he estimated the flow at approximately 8 CFS; is that	19	Q. Okay. So when we when the State Engineer
20	correct?	20	represented it as an approximately 8 CFS, and you said that
21	A. That's correct.	21	that meant it could be more or less, was that a reliable or
22	Q. What what do you take to mean by	22	accurate determination accurate representation of what
23	approximately?	23	Payne actually said?
24	A. As a scientist, approximately means there's an	24	A. It's not accurate with the actual statement in
	Page 395		Page 397
1	error bar plus or minus on that particular reported data or	1	Mr. Paymola field notes
2	piece of information.	2	O Okay Lat's so book to Endibit 180
3	Q. So when it says approximately in a report like	3	A (Complies)
4	this, it would be reasonable to take them to mean more or	4	O So other than Harrill and Pourse does the State
5	less; is that correct?	5	Engineer mention any other spring flow measurements
6	A. That's correct.	6	estimates, or anything else in there about spring flowe?
7	Q. Okay. So let's turn to do you have that other	7	A. I'm not seeing that he has
8	big binder well, actually we'll use your binder.	8	O. Okay. And I was going to ask you shout Mr. Payme
9	Let's turn to Exhibit 50 in your binder.	9	and who he was. I believe you heard Mr. Ruschelman's
10	A. (Complies.)	10	testimony; I think you were in the courtroom
11	Q. Are these the notes from Payne that are relevant	11	Do you agree with Mr. Buschelman that the
12	to the his visit to the springs on the west side out in	12	evidence seems to be that Mr. Payne was just an assistant
13	the west side of Vendor (phonetic) valley?	13	field engineer?
14	A. Yes, this is the two pages of notes, field notes	14	A. The evidence we have is that was his title as of
15	made by H. M. Payne on November 18th, 1912.	15	1913 and 1914, one year after he made this inspection.
16	Q. Ukay. And does he start talking about the Big	16	Q. Is it likely that he would have been had a
17	Snipley Spring at the bottom of that page?	17	had a more senior title before that report?
18	A. That's correct.	18	A. It's not likely.
19	Q. UKAY.	19	Q. Okay. So we can deduce from that report that he
20	THE COURT: Counsel, what Exhibit are you	20	probably had a title similar to assistant State Engineer I
22	MP PICDON: OF Eachthree Minister	21	mean assistant field engineer?
23	Very first one	22	A. That seems reasonable.
24	THE COURT: Oh the years first and	23	Q. Okay. In your experience in looking at springs
	The cook i. on, the very first one.	24	and spring flows, does the level of experience a person has

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IN TH	THE MATTER OF THE DETERMINATION OF E RELATIVE RIGHTS IN AND TO ALL WATERS		Sentember 30, 2021
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1	affect their ability to estimate spring flows?	1.	
2	A. Very much so.	2	A. The title of the plot is Figure 1, Big Shipley
3	Q. How?	3	2013
4	A. So I'm going to turn the clock back to when I was	4	O. Okay. So this is all the different measurements
5	a young hydrogeologist learning (indiscernible) spring flow	5	you found between 19 is it 1910 and 2010?
6	and engaging measurement, like, the methods, curiously enough,	6	A. I'm sorry. 1912.
7	are the same today pretty much as they were a hundred years	7	Q. Oh, 1912. So
8	ago.	8	MS. PETERSON: I'm going to object to that, Your
9	So we do it with a current velocity meter. We do	9	Honor, just because it's not only measurements, it's reported
10	transects across the stream channel. How I was taught, which	10	discharge is the title.
11	was by some of my mentors which were former U.S. geological	11	MR. RIGDON: Thank you. I'll clarify that.
13	surveyors and hydrologists, is that you first when you walk	12	BY MR. RIGDON:
14	you're doing this is because you're trying to train your avo	13	Q. So this is all reported discharges and
15	to make accurate visual estimates	14	A That's correct
16	So this is pretty common, because we do have	15	A. That's correct.
17	you know, it's fairly frequent we have conditions in the field	17	that there's a point in time at which well no let me
18	where we can't make an accurate measurement, but it is common	18	scratch that. Strike that from the record
19	that we still report a visual estimate as Payne did.	19	So the State Engineer relied on Mr. Harrill
20	So one thing you do find is if you're routinely	20	correct?
21	doing this over time, you will I'll say calibrate your eye to	21	A. That's correct.
22	where you can do a pretty good job estimating the flows.	22	Q. And are Mr. Harrill's measurements shown on here?
23	There's always an error bar and it's always	23	A. They are.
24	greater than if you were to actually take a measurement.	24	Q. And would that be the three red boxes between
	Page 399		Page 401
1	Actual measurements have error bars, by the way, also. But as	1	1960 and 1970?
2	time goes on, if you're doing that routinely, consistently	2	A. That's correct And with the date being on the
3	enough in the field, you will develop a pretty a pretty	3	bottom Y axis and the discharge in cubic feet per second CFS
4	keen eye to be able to make reasonably accurate estimates	4	being on the Y axis, they plot between 6 to approximately
5	visually.	5	7.2 CFS.
6	Q. Okay. So would you say that the margin of error	6	Q. Okay. And did these come from a report that
7	for an estimate is larger with the less experience an engineer	7	Mr. Harrill produced?
8	has and it's the margin of error is less with the greater	8	A. That's correct.
9	A That's what you would expect	9	Q. Okay. Can you turn to Exhibit 449.
11	$\Omega$ Okay So in preparing your your separate and	10	THE COURT: Could you (indiscernible) again,
12	your investigations as we said the State Engineer only	11	Mr. Smith.
13	identified two. Did you identify other data points find	12	MR. RIGDON: I'm sorry.
14	other records about spring flows and spring flow measurements?	14	THE WITNESS: Ob. The actual and have
15	A. Yes, we did.	15	THE COURT: Yes you see to should use at
16	Q. Okay. And if you'll turn to, yeah, Exhibit I	16	testimony
17	believe it's 185.	17	THE WITNESS: Yes, for clarity I'm going to get
18	A. (Complies.)	18	the exact values for the discharge measurements
19	Q. And page 11 of that Exhibit. And this is your	19	THE COURT: Very well.
20	expert report; right?	20	MR. RIGDON: Yeah, we're about to look at that
21			
	A. That's correct.	21	Your Honor, the exact values.
22	<ul><li>A. That's correct.</li><li>Q. Is there a graph on page 11?</li></ul>	21 22	Your Honor, the exact values. BY MR. RIGDON:
22	<ul><li>A. That's correct.</li><li>Q. Is there a graph on page 11?</li><li>A. There is a plot, that's correct.</li></ul>	21 22 23	Your Honor, the exact values.         BY MR. RIGDON:         Q. Okay. So Exhibit 449. I'll represent that the

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	Page 40	2	Page 404
:	exhibits here and that this is just excerpts of that full	1	So if you'll turn to page 1 of that report where
	2 Exhibit for the witness binder to keep the page count down		it says "abstract" at the top, the first sentence of the last
	But is this excerpts from that report by		line could you read what that cave?
4	Mr. Harrill?	4	A The first sentence of the last normanal 0
5	5 A. Yes.	5	O Last paragraph yeah
6	0. Do you know who Mr. Harrill was?	6	A Dumping during the 16 years against 1050 years
7	A. Yes. Jim Harrill was a well regarded	7	resulted in an estimated groundwater stores deal the
8	hydrogeologist that worked for the US Geological Survey He		60 000 ages fort which is reaching sould water storage depiction of
9	authored a lot of the recognizance reports which were		for the period
10	basin-scale water resource studies in the 1960s and into the	10	O Okay So there's already significant must i
11	. '70s.	11	going on at this time?
12	Q. So he was a pretty well-respected professional?	12	
13	A. Very much so.	13	$\Omega$ And so then if you'll turn to what's maps 21
14	Q. And we have no reason to doubt anything	14	It's actually like the fourth page in the avecant?
15	Mr. Harrill would say; right?	15	A (Complies)
16	A. Oh, absolutely not.	16	O Does this in fact show what the management of
17	Q. Okay. So what was the purpose for Mr Harrill	17	took are at Big Shinley?
18	doing this report?	18	A Ves this is Table 0 from his report man 21
19	A. This was actually a follow-up study nublished in	19	And if you go three down - three lines down with the
20	1968, a follow up to the original recognizance-level water	20	subheading "west side " you'll see the section. Township
21	resource report authored by Tom Eakin in 1962. So this	21	range the location and then Shipley Hot Spring
22	follow-up report, and it's reflected in the title of the	22	And then continuing on to the right hand columns
23	the report, it's hydrologic response to irrigation pumping in	23	vou'll see the date and the discharge measurement that he made
24	Diamond Valley, Eureka county, Nevada, 1950 to 1965.	24	coming out of the Big Shipley Hot Spring pond
		1	and a signification of the spring pond.
	Page 403		Page 405
1	So this was a I will say this is the USCS in		
2	concration with the Department of Division of Water Berger		Q. Okay. And so the first measurement was on
3	doing a more in-depth study of Diamond Valley than they had		
4	from the 1962 recognizance-level investigation by Tom Faltin	1	A. Inars correct.
5	O. And so just by the title does this indicate that	4	Q. And that was 7.1 7.19 CFS?
6	irrigation numping had begun as had already begun in Diamond		A. Yes.
7	Valley?	0	Q. And then the second one was April of the
8	A. That's correct		A That's water August to 1 and a state
9	O. Okay. And as early as 1950 according to the	0	A. That's right. April it looks like April 1st,
10	title of this?	10	O Okay And then the third are on the other
11	A. That's correct	11	Ves October 10th 1066 620 CES
12	Q. Okay. And so he was just trying to figure out	12	Ω. 1 cs, Ottober 19th, 1900, 0.20 CFS.
13	what's happening to the aquifer in response to that numping?	12	spring flow measurement dealined have a year the
14	A. Yes. There is a tremendous amount of growth and	14	that correct?
15	development of agriculture in the valley	15	A That's correct
16	So yes, this was an effort to understand the	16	O Okay Is there any indication that his first
17	hydrologic responses that the system was under and also made	17	weasurement was the exact time when some a former of the
18	projections about the future of the Diamond Valley under those	1.2	declining?
19	pumping stresses.	19	A No
20	Q. Okay. I'm not I don't want to get into what	20	0 Would that he reasonable to accuracy
21	he was talking about in the future.	21	A Not in my opinion
22	A. Right.	22	0 Okay So spring flows would have started
23	Q. I'm more interested in his looking back at the	23	declining before that?
24	past, because that's what we're here to do.	24	A. Yes. I believe so because the history of well

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	Page 40	6	Page 40
1	development on the west side of the playa began in the early	/ 1	0. And are there, in fact plot points on this table
2	2 1940's.	2	that are before 1950?
3	Q. Okay. So you mentioned the State Engineer method	i   3	A. There are.
4	of calculating the spring flow was to take Harrill's	4	Q. Okay. How many?
5	measurement and then add some factor for to try to account	:   5	A. Six.
6	for that decline?	6	Q. Okay. So let's start with the first one.
17	A. That's correct. I believe he averaged the three	7	There's a little red X right next to the 8.0 in the 1912 time
8	values that we just cited, which I think are approximately	8	frame. What does that signify?
10	6.8 CFS, and then he added in a small contingency of .22 CFS	9	A. So that's plotting the Payne observation as a
111	O Okay So whether or not any source 1	10	visual estimate of flow that he made on November 18th, 1912.
12	With the possible the 22 for possible numerical for the	11	Q. Okay. And we've already talked about that one;
13	would be apply that to an average instead of the first	12	right?
14	measurement if the declines were happening before the first	13	A. That's correct.
15	measurement?	14	Q. And that was the 8 CFS or more?
16	A. I do not know.	15	A. I hat's correct.
17	Q. Okay. So essentially what the State Engineer was	17	Q. Okay. Then higher reported flow is by there's
18	trying to do was take something from 1965 and extrapolate back	18	the next one chronologically is that correct?
19	to try to figure out what was happening in 1905?	19	A Yes on the legend it's Romano vortius Sadler
20	A. To extrapolate back 60 years, that's correct.	20	1913.
21	Q. Okay. Is that an easy thing to do?	21	O. Okay. And what does this refer to?
22	A. It's not an easy thing to do. You know, if we	22	A. So there was litigation at the time and a
23	were lacking any other data, then that would perhaps be the	23	subsequent stipulation that related to a portion of the
24	only thing we could do if we wanted to try to understand the	24	discharge of Big Shipley Hot Springs being allocated to the
	Page 407	1	Page 409
1	flow original flow rate of the spring, but in this case.	1	lower Romano field on Sadler Panch
2	there are other pieces of data and observations that I believe	2	So this is relating to what they determined at
3	should be factored in.	3	the time to be the total discharge from Big Shipley Hot Spring
4	Q. Okay. And so ideally the data you would want to	4	and then partitioning one-third of that, or 5 CFS, for a
5	look at is before any development happened; correct?	5	period of time in the winter, January 1st through April 1st.
6	A. Ideally we're looking for something that is 1905	6	to be allocated to that lower field. I believe Mr. Buschelman
7	or earlier, but that is a possibly not does not exist,	7	has testified some on that already
9			that aneudy.
0	so	8	Q. Okay. And that's what I was just going to ask,
9	so Q. Okay. But absent an actual measurement prior to	8 9	Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the
9 10	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to 1905, would you want to look you would want to look at data points that accurred before an actual measurement with the second s</li></ul>	8 9 10	Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct?
9 10 11	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to</li> <li>1905, would you want to look you would want to look at data</li> <li>points that occurred before any effects might have occurred</li> <li>hydrologic effects might have occurred in the college for</li> </ul>	8 9 10 11	Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct? A. Yes. Yes.
9 10 11 12	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to 1905, would you want to look you would want to look at data points that occurred before any effects might have occurred hydrologic effects might have occurred in the valley from pumping?</li> </ul>	8 9 10 11 12	<ul> <li>Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct?</li> <li>A. Yes. Yes.</li> <li>Q. And so that one said that Romano got 5 CFS and</li> </ul>
9 10 11 12 13 14	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to 1905, would you want to look you would want to look at data points that occurred before any effects might have occurred hydrologic effects might have occurred in the valley from pumping?</li> <li>A. Yes, Yes, and I will say and also other physical.</li> </ul>	8 9 10 11 12 13	<ul> <li>Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct?</li> <li>A. Yes. Yes.</li> <li>Q. And so that one said that Romano got 5 CFS and identified 5 CFS as one-third the flow of the spring?</li> </ul>
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9 10 11 12 13 14 15 16 17 18	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to 1905, would you want to look you would want to look at data points that occurred before any effects might have occurred hydrologic effects might have occurred in the valley from pumping?</li> <li>A. Yes. Yes, and I will say and also other physical changes besides just that, physical changes that occurred, for example, to the spring pool or modifications to the spring, et cetera, that could have affected the discharge.</li> <li>Q. Okay.</li> </ul>	8 9 10 11 12 13 14 15 16 17 18	<ul> <li>Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct?</li> <li>A. Yes. Yes.</li> <li>Q. And so that one said that Romano got 5 CFS and identified 5 CFS as one-third the flow of the spring?</li> <li>A. That's correct. It's stated that the natural flow of Big Shipley Hot Spring was 15 CFS; one-third of it, being 5 CFS, would be allocated to Romano and the lower field on below Shipley Hot Spring and Sadler Ranch.</li> <li>Q. Okay. So in 2013, you mortioged thetema.</li> </ul>
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9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>So</li> <li>Q. Okay. But absent an actual measurement prior to 1905, would you want to look you would want to look at data points that occurred before any effects might have occurred hydrologic effects might have occurred in the valley from pumping?</li> <li>A. Yes. Yes, and I will say and also other physical changes besides just that, physical changes that occurred, for example, to the spring pool or modifications to the spring, et cetera, that could have affected the discharge.</li> <li>Q. Okay.</li> <li>A. So it's more than just the historical pumping.</li> <li>Q. All right. So let's go back to your report. I believe it was 185, Exhibit 185; right?</li> <li>A. (Complies.)</li> <li>Q. And let's go back to that table on page 11.</li> <li>A. (Complies.)</li> </ul>	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	<ul> <li>Q. Okay. And that's what I was just going to ask, if that's what Mr. Buschelman already testified to is the Romano versus Sadler stipulation; correct?</li> <li>A. Yes. Yes.</li> <li>Q. And so that one said that Romano got 5 CFS and identified 5 CFS as one-third the flow of the spring?</li> <li>A. That's correct. It's stated that the natural flow of Big Shipley Hot Spring was 15 CFS; one-third of it, being 5 CFS, would be allocated to Romano and the lower field on below Shipley Hot Spring and Sadler Ranch.</li> <li>Q. Okay. So in 2013, you mentioned that you testified at a State Engineer hearing on regarding the Sadler Ranch mitigation rights; is that correct?</li> <li>A. That's correct.</li> <li>Q. At that time in 2013, was the Romano versus Sadler stipulation available to the State Engineer?</li> <li>A. I can't recall if the stipulation was available</li> </ul>

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	1 And I think I should also note that at the time that I	1	November of 1912: is that correct?	
	2 published this 2019 plot and report. I did not understand the	2	A We're getting close to 1005	1
	3 basis for the 15 CFS at that time either.	3	O Okay And he indicated he had 25 years of	
	4 Q. Okay.	4	experience?	
	5 A. We subsequently discovered what the basis is.	5	A. Yes. He indicated that he is an irrigation	
	6 Q. Well, that's what I was trying to get at. I	6	engineer with 25 years of experience	
•	7 believe the stipulation was entered into the evidence in 2016.	7	O. And by filing this as an affidavit he's swearing	
1	8 but that it was just the stipulation. Would that accord with	8	this under penalty of neriury: correct?	
	9 your memory?	9	A. That's correct.	Ť
1	0 A. Yes.	10	O. So this is not just a note he's taking and filing	
1:	Q. And so you didn't know what that was based on?	11	away in a file cabinet at the State Engineer's office: this is	
1:	A. That's correct.	12	an actual sworn testimony before a court?	
1:	Q. And subsequent to that, did you come to learn	13	A. I take this to be true and accurate information	
14	what that reported discharge was based on?	14	Q. Okay. Does he indicate in here what the flow of	
1!	A. Yes, that's correct. We found that not	15	the Big Shipley Spring was?	
16	5 myself, but the Mr. Frazier and his team researching found	16	A. Yes. At the source, Nickerson indicated that he	
17	the document that this stipulation was based on, and it's a	17	did not take a direct measurement because of conditions. He	
18	document prepared by an irrigation engineer in March of 1912	18	didn't express what the conditions were, but he said by visual	
19	where he spent three days on the ranch mapping the flows,	19	estimate he placed the discharge at the spring at 400 to	
20	determining the flows from the point of origin, Shipley Hot	20	500 miner's inches. So he gave a range.	
21	. Spring, down to this lower field in Sadler Ranch.	21	Again you have an irrigation engineer with	1
22	Q. So if you turn to page excuse me, Exhibit 105	22	considerable experience making a visual estimate which has an	
23	in your Exhibit binder?	23	error associated with it any time do you that. He provides a	
24	A. (Complies.)	24	range of 400 to 500 miner's inches. And there's 40 miner's	l
$\vdash$				
	Page 411		Page 413	I
1	Q. Is this, in fact, the affidavit that that	1	inches per 1 cubic foot per second, so that's an old volume of	
2	engineer filed with the Court for the Romano versus Sadler	2	flow that we run across but we don't use anymore	
3	case?	3	So that places the discharge by his estimate at	Ê
4	A. Yes, it is.	4	12.5 to 15.0 CFS.	
5	Q. And does this affidavit describe what was done on	5	Q. So he actually, like a good engineer, gave	
6	the site that you just described?	6	himself an estimate range?	
7	A. Yes, it does. It describes both his	7	A. That's correct.	Ĺ
8	qualification and experience, his field work, spent what he	8	Q. Okay. And that was 12 and a half to 15 CFS?	
9	accomplished over three days, March 1st through 3rd, on the	9	A. That's correct.	
10	ranch mapping.	10	Q. And you said he spent three whole days at the	
11	It describes his also his visual estimates of	11	ranch?	
12	flow commencing at Big Shipley Hot Spring and then down	12	A. That's correct.	
13	through the system to the Romano field below Sadler Ranch.	13	Q. Not one hour?	
14	Q. And so what he this was done he indicates	14	A. That's correct.	
12	that his field investigation was done in March of 1912?	15	Q. Okay. At the 2019 hearing on the preliminary	
17	A. I es. He indicates he spent three days at the	16	order in this case, was this evidence presented to the Court	
10	drafted and signed on March 74 of 1010	17	State Engineer?	
10	O Okay And Payma was and there in New 1	18	A. Excuse me, which date? Which hearing?	
20	2. Okay, fully raylle was out there in November of	19	Q. At the hearing that you testified at on the	
21	correct?	20	objections to the preliminary order in this case in 2019 in	
22	A That's correct	21	front of the State Engineer; do you know what I'm talking	
23	O. Okay. And to nick up on something opposing	22	A Vog Immediation 1 1	
24	counsel said vesterday. March of 1912 is closer to 1005 than	23	A. res. I'm not a nundred percent sure. I think it	
		44	was available, but I noticed it's not in my written document	

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	Page 41	4	Page 416
	or report so I believe he did not have this document in the	1	O. So now let's go to the next plot on your graph
	2 2019 hearing.	2	We now know where that 15 CFS plot came from What's the next
	Q. You didn't testify to this document at the 2019	3	plot on your graph that's also a 15 CFS plot?
1	hearing?	4	A. Yes. That was also some litigation between
1	A. Going back from memory here, I I honestly	5	Eccles and Sadler in 1917 that also used the 15 CFS value as a
	can't recalled, David.	6	reported discharge for Big Shipley Hot Spring
	Q. Okay. If I represented to you that this was an	7	Q. And is it your understanding now that that value
8	Exhibit at the 2019 hearing, would you have a reason to doubt	8	like the value of the Romano Sadler litigation, came from the
2	that?	9	Nickerson field investigation?
10	MS. PETERSON: Objection, Your Honor. That's	10	A. That's my understanding. The Big Shipley Hot
11	inappropriate. He's leading the witness.	11	Spring.
12	THE COURT: Sustained.	12	THE COURT: And I was just a little bit behind
13	THE WITNESS: If I may, I'm trying to go back	13	you, catching up with that. Would you ask the question again
14	through the memory base here. Sorry. But yeah, I do believe	14	and
15	this was provided, but I did not have it at the time that I	15	MR. RIGDON: Sure.
16	issued my professional report in that hearing.	16	THE COURT: Go back to the plot.
17	BY MR. RIGDON:	17	MR. RIGDON: No problem, Your Honor.
18	Q. Okay. So	18	BY MR. RIGDON:
19	A. I believe it was something that was discovered	19	Q. So that plot for the it's the little red plus
20	between the interim period of when we filled that document and	20	sign, and the plot right before it which is the little circle,
21	when we held the hearing.	21	orange circle, those relied on the same Nickerson field
22	Q. So this document wasn't in your report; it was	22	investigation?
23	presented at the nearing?	23	A. (No audible response.)
24	A. I hat I believe is correct.	24	Q. So you wouldn't today, if you were replotting
	Page 415	-	Page 417
1	Q. Okay. And so the State Engineer had this	1	this you wouldn't count those as two senarate reports?
2	information when he at the hearing on the objections in	2	A. Yes. I think with the Nickerson field
3	2019?	3	investigation information we would put just one point in
4	A. I believe that's correct.	4	because I believe both of these represent our or just
5	Q. Okay. Is there anything in the preliminary Order	5	express the measurement made by Mr. Nickerson in 1912
6	of Determination I mean in the final Order of Determination	6	Q. Okay. So let's move on to the next the next
7	the State Engineer issued after that hearing that references	7	one of the six that we were talking about. There's a little I
8	Mr. Nickerson at all?	8	guess it's an orange triangle that's not filled in.
9	A. No reference.	9	Do you see that one?
10	Q. Okay. So the State Engineer essentially just	10	A. Yes.
11	ignored this?	11	Q. And what is that?
12	MS. PETERSON: Objection. Objection, Your Honor.	12	A. This, as I recall, was an account by Alfred
13	That is not a proper	13	Sadler, I believe, and where he placed the flow his
14	THE COURT: It's sustained.	14	estimate of the flow at 13 CFS. Now, I
15	MR. RIGDON: Okay.	15	Q. Do you know anything about who Alfred Sadler was?
17	DI MR. RIGDUN:	16	A. Not in detail. Just one of the Sadlers.
10	c. All light. Let's go back to the your expert	17	Q. Okay. Do you know if he resided on Sadler Ranch?
10	report and that graph. It was Exhibit 185, and the graph is	18	A. Yes.
10	on nage 11 Thelieve		
19	on page 11. I believe.	19	Q. And when you say this was a report, was what
19 20 21	on page 11. I believe. THE COURT: Exhibit again, counsel? MR_RIGDON: 185	19 20	Q. And when you say this was a report, was what was it from?
19 20 21 22	on page 11. I believe. THE COURT: Exhibit again, counsel? MR. RIGDON: 185. THE COURT: Thank you	19 20 21	Q. And when you say this was a report, was what was it from? A. As I recall, this was an accounting of the assets
19 20 21 22 23	on page 11. I believe. THE COURT: Exhibit again, counsel? MR. RIGDON: 185. THE COURT: Thank you. MR. RIGDON: And we're at page 11. Your Honor	19 20 21 22	Q. And when you say this was a report, was what was it from? A. As I recall, this was an accounting of the assets of the ranch at the time. So it went through just some basic
19 20 21 22 23 24	on page 11. I believe. THE COURT: Exhibit again, counsel? MR. RIGDON: 185. THE COURT: Thank you. MR. RIGDON: And we're at page 11, Your Honor. BY MR. RIGDON:	19 20 21 22 23	<ul> <li>Q. And when you say this was a report, was what was it from?</li> <li>A. As I recall, this was an accounting of the assets of the ranch at the time. So it went through just some basic descriptions of the land and the stock and the spring flow where he's expressed that the 12 CER.</li> </ul>

T	HE RELATIVE RIGHTS IN AND TO ALL WATERS	September 30, 20	)21	
	Page 41	8	Page 42	20
	1 the ranch.	1	derived. So this is a compilation of hundreds of a day	,
	2 Q. Okay. So he filed a report, was it to another	2	documents and information along with data that the USCS I.	d
	3 relative named Sadler?	3	their files at the time	'n
	A. I believe it's a letter of some sort writing to	4	The document indicates that a lot of the date and	_
	5 another relative.	5	compiled in the 1925 through 1927 time frame so subsequently	S
6	Q. Okay. So he's informing this other relative who	6	published in 1937.	1
2	doesn't live on the ranch what's happening on the ranch?	7	So there are three reference sources for	
8	A. That's my recollection.	8	information on Big Shipley Hot Spring One of them dates back	
2	Q. Okay. And he indicated that the flow was 13 CFS?	9	to 1875. And but and there's another one that was	·
10	A. Yes.	10	published about 10 or 15 years later in the 1800s. So two	
11	Q. All right. So let's go to the next one on the	11	very early publications that were producing information data	, I
12	plot. It's the filled-in orange triangle. What's that	12	on thermal springs.	•
13	reported value?	13	Both of these report temperature, they	
14	A. So this reported value, it equates to 11.1 CFS.	14	acknowledge the presence of a significant spring at Big	ľ
15	And I've placed this at 1937 because that's the date of the	15	Shipley Hot Spring, but those two earlier 1800 documents do	
16	publication, but it would have been some manner of measurement	16	not report a discharge unfortunately, just temperature and	
17	or visual estimate by a USGS scientist prior to that date.	17	some other basic maybe cultural-related information.	
18	So this is in a USGS publication on thermal	18	But the third footnote on this is expresses	
19	springs of the United States. Shipley Hot Spring was	19	explicitly data from the files of the U.S. geologic survey, so	
20	acknowledged in this document and basic information on it was	20	by default, the discharged values have a referenceable source	
21	provided in this document.	21	of data in the files of the U.S. geological survey.	
22	Q. And who published the report?	22	Q. Okay. And were you able to locate that data?	- È
23	A. It was published by Stearns, Stearns and Waring	23	A. Unfortunately we were not. The Carson City,	
41	as fast fiames.	24	Nevada office of the USGS contains data back to the 1940s. At	
-		-		
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1	Q. But who who do they work for?	1	the time I believe the nearest U.S. Geological Survey office	
2	A. The United States Geological Survey.	2	was operating in Salt Lake City.	
3	Q. Okay. So this was an official government	3	So there were efforts to to try to see if	
4	publication from the USGS?	4	there was anything archived in Salt Lake City or in	
5	A. That's correct.	5	Washington, D.C., but we could not resurrect any data the	
6	Q. And they were all employees of the USGS?	6	data that is being referenced.	
17	A. That's correct.	7	I should note that the data is the further	
8	Q. And and it reported it reported on a lot of	8	described in this report as being unpublished data. So it	
9	anterent thermal springs in the western United States?	9	wasn't published in any particular report. But which for the	
11	A. It did.	10	time I would say was fairly common.	
12	Q. And big simpley was one of those springs that it called out and reported?	11	You had geologists working throughout this region	
13	A That's correct	12	that would be making measurements. They would go on file	
14	O And what was the report?	13	all sorts of measurements. They would get produced in files	
15	A The reported flow or	14	but they weren't necessarily ever published in reports.	
16	O. Yes the reported flow	15	Q. And during your work as a hydrogeologist over the	
17	A. Yes. So there are flows reported in units of	17	years have you had the opportunity to work with USGS	
18	gallons per minute. It was reported at approximately	10		
19	5,000 gallons a minute which converts to a 11.1 cubic feet nor	10	And has that becaute and the state of the st	
20	second.	73	what they might mean when the second difference of the second differenc	
21	Q. Okay. And are there any footnotes next to the	21	A Ves The Geological Survey 1	
22	report?	22	standards - they always have for what they are it is the	
23	A. Yes. In a tabulation of the discharge data, they	23	So it is some type of measurement based	
24	also referenced the citations for where that information was	24	observation. Now, I will say that visual estimates by a	[
			and the standard and the standard by a	

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1	Page 422	2	Page 424
1	qualified hydrologist would be considered data. Visual	1	individual that worked on the ranch for three years between
2	estimates would. Secondhand reports of discharge, et cetera,	2	1937 and 1940. His name was Floyd Slegkowski, and this is in
3	are not considered data.	3	a memoir that he published and happened to mention that the
4	Q. So	4	a little bit of description about Big Shipley Hot Spring on
5	A. By their standards.	5	the Sadler Ranch, that it was a significant spring and that it
6	Q. So the Alfred Sadler report that we just	6	discharged about 12 second feet or CFS.
7	mentioned before, that wouldn't have been considered data by	7	So this is an account that was provided by an
8	the USGS?	8	individual that worked on the ranch, an account that was made
9	A. No.	9	50 years-plus after he worked on the ranch.
10	Q. They have a much more rigorous standard?	10	Q. Okay. So but he worked on the ranch for how
11	A. They do.	11	long?
12	Q. Okay. Did that same publication have any	12	A. For three years.
13	information about other springs in Diamond Valley?	13	Q. Three years. Okay. So in that time, he got
14	A. It does, and I recall that it also has a value	14	familiar with the ranch?
15	for what they called Siri spring, but the location plots to be	15	A. Yes, I assume so.
17	What we call today Eva Spring on the Brown ranch.	16	Q. Okay. And what did he report the value at?
1.0	Q. Okay. And at the time was the Brown ranch owned	17	A. His report was 12 CFS.
19	A I'm not sure	18	Q. Okay. So in total we have actually five, not
20	0 Okay But we've equated that to the Siri	19	six, reports of spring flow from Big Shipley prior to 1950; is
21	Springs: correct I mean to the Eva Spring: right?	20	that correct?
22	A. Yes, the location is described by section	22	A. That's correct.
23	Township, range. So it is in the same section. Township	23	Q. Dut the State Engineer in his final determination
24	range as Eva Spring.	24	A That's correct the Payne visual estimate of
			The Print of Control, the Payne visual estimate of
	Page 423		Page 425
1	Q. Okay. And is it your understanding that in the	1	flow
2	proof filed on Eva Spring, that was the reported value that	2	O. Okay. In your experience as a hydrogeologist in
3	the State Engineer relied on in making his determination in	3	trying to use historical records like this to determine what
4	the final Order of Determination?	4	spring flows are, what level of reliability would you attach
5	A. That's my recollection.	5	to each of these plot points, these five plot points?
6	Q. So he found the USGS report reliable with respect	6	A. So as a scientist and an engineer, I consider
7	to Eva Spring; correct?	7	three of these to be data and then the others to be accounts.
8	A. I think it's the best available estimate we have	8	So the three that I consider to be data made by
9	in a time frame near to 1905.	9	qualified individuals would be the Payne visual estimate.
10	Q. Okay. So having this reliable USGS publication,	10	THE COURT: What was the first one?
11	is there any mention of it in the final Order of Determination	11	THE WITNESS: The Payne.
12	with regards to the flow of Big Shipley Springs?	12	THE COURT: Payne, thank you.
13	A. Not for Big Shipley Hot Spring.	13	THE WITNESS: 1912 visual estimate. The Nickels
1 =	Q. Ukay. So he used it for one spring but not the other?	14	visual estimate.
16	A That's correct	15	THE COURT: Or Nickerson?
17	And he doesn't even mention it: compate	16	MR. RIGDON: Nickerson.
18	A Not mentioned it	17	I HE WIINESS: Excuse me. Nickerson. There you
19	O. Okay. So let's move forward to the last one	10	go. And then the published value in the 1937 USGS document.
20	which is a little I don't know if that's hue or green hollow	20	O Okay So late compare these three 1.1
21	circle; do you see that?	21	consider to be reliable sources. As we must be to be
22	A. I do.	22	on the ranch for maybe an hour?
23	Q. And what does that refer to?	23	A Yes hased on the ground that he servered he
24	A. So this is an account made many years later by an	24	physically would not have been able to spend much time on the
			· · · · · · · · · · · · · · · · · · ·
TH	THE MATTER OF THE DETERMINATION OF E RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
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1	ranch.	1	hundredth hut maybe a range of 12 to 15 CFS but closer in
2	Q. Okay. Whereas Nickerson was on there for three	2	time, it could be more reliable than the more accurate figure?
3	full days?	3	A. That's correct. You have a more reliable piece
4	A. That's correct.	4	of data, but it could have lower accuracy as far as its error
5	Q. And the USGS, we don't know how long they were	5	bar could be greater.
6	there or what measurements they made, but we do know that they	6	Q. Okay. Now, you mentioned that in Harrill's
7	have very rigorous data standards; correct?	7	report significant groundwater development had already begun:
8	A. Since the source is data on file with the USGS I	8	correct?
9	assume that there's some type of measurement or visual	9	A. That's correct.
10	estimate made by a geologist employed by the USGS.	10	Q. And the State Engineer actually recognized that
11	Q. So if you had to select one of those values to be	11	and that that could have had an effect on spring flows;
12	valued to find the most reasonable value for the flow of	12	correct?
13	the spring, which ones would you give the most weight to?	13	A. That's correct.
14	A. First and foremost Nickerson for several reasons,	14	Q. And was there other factors that might have made
15	one of them being the amount of time that he spent documenting	15	Harrill's Harrill's measurements are accurate; right?
16	the flows, estimating the flow from the source all the way	16	A. Yes, I agree, accurate measurements.
17	down to the terminus; but also more importantly, we know his	17	Q. And that measurement is down to a hundredth of a
18	level of experience and it was quite significant.	18	CFS; correct?
19	25 years at that time as an irrigation engineer	19	A. That's correct.
20	meant that his entire career was devoted to management of	20	Q. So a high level of accuracy. Is there another
21	surface water resources in flood irrigation settings. We had	21	factor other than the groundwater development that could have
22	no other irrigation types in 1912. We didn't have groundwater	22	affected the reliability of that estimate to try to in
23	as a source. In most areas in 1912 we didn't have it in	23	1965 or that measurement in 1965 to try to determine what
24	Diamond valley.	24	was happening in 1905?
	Page 427		Dec. (20
			Page 429
1	So if you look at the span of his career, he has	1	A. Yeah, there's one significant item and this was
1 2	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on	1	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal
1 2 3	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data.	1 2 3	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it
1 2 3 4	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy	1 2 3 4	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings.
1 2 3 4 5	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability?	1 2 3 4 5	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in
1 2 3 4 5 6	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes.	1 2 3 4 5 6	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of
1 2 3 4 5 6 7	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a	1 2 3 4 5 6 7	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason
1 2 3 4 5 6 7 8	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be	1 2 3 4 5 6 7 8	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the
1 2 3 4 5 6 7 8 9	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable?	1 2 3 4 5 6 7 8 9	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool
1 2 3 4 5 6 7 8 9 10	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable? A. Yeah, yeah, you can end up with that	1 2 3 4 5 6 7 8 9 10	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool it's what we call a submerged spring orifice the spring is
1 2 3 4 5 6 7 8 9 10 11	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable? A. Yeah, yeah, you can end up with that circumstance. You can but that just happens in science.	1 2 3 4 5 6 7 8 9 10 11	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool it's what we call a submerged spring orifice the spring is coming up through the bottom of the pool so you have the
1 2 3 4 5 6 7 8 9 10 11 12	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable? A. Yeah, yeah, you can end up with that circumstance. You can but that just happens in science. You take very, very high precision measurements, but there	1 2 3 4 5 6 7 8 9 10 11 12	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool it's what we call a submerged spring orifice the spring is coming up through the bottom of the pool so you have the weight of the water above that and that's back pressure.
1 2 3 4 5 6 7 8 9 10 11 12 13	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable? A. Yeah, yeah, you can end up with that circumstance. You can but that just happens in science. You take very, very high precision measurements, but there could be errors associated for example, even when we go out	1 2 3 4 5 6 7 8 9 10 11 12 13	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool it's what we call a submerged spring orifice the spring is coming up through the bottom of the pool so you have the weight of the water above that and that's back pressure. So and by the way, some ranches and farms
1 2 3 4 5 6 7 8 9 10 11 12 13 14	So if you look at the span of his career, he has considerable experience and I put a high degree of weight on that piece of data. Q. Okay. And is there a difference between accuracy and reliability? A. Yes. Q. Could a measurement be incredibly accurate like a measurement down to a hundredths of a CFS flow, but be unreliable? A. Yeah, yeah, you can end up with that circumstance. You can but that just happens in science. You take very, very high precision measurements, but there could be errors associated for example, even when we go out and make stream flow measurements we calculate it out to a	1 2 3 4 5 6 7 8 9 10 11 12 13 14	A. Yeah, there's one significant item and this was something that I really hadn't thought about in a great deal of detail until recently. I believe we may have touched on it briefly in prior hearings. But the stage or the water level in the pool in this particular case makes a large difference on the amount of discharge that's coming out of the spring pool, and the reason is really is just it's simple hydraulics, that because the the spring is emanating from the bottom of the spring pool it's what we call a submerged spring orifice the spring is coming up through the bottom of the pool so you have the weight of the water above that and that's back pressure. So and by the way, some ranches and farms actually acknowledge this and managed it and still purposely
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### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 430 Page 432 about what's the pool height and the pool condition the same 1 the boards might have been happening at the Big Shipley 1 in 1905 and prior to when we started to have higher accuracy 2 2 Spring? measurements in the mid-60s and onward, and I believe the -- I 3 A. Well, the evidence that I am looking at as far as 3 believe this is a significant variable in explaining some of 4 4 the spring pool stage having changed and risen is really the difference that we see between when we were out on the 5 reflected in some of what you see in the land masses that are 5 ground in 1965 and the observations made prior. 6 6 appearing in the interior of the spring pool. 7 I believe there was changes in the spring flow 7 Q. I'm going to interrupt you real quick, Mr. Smith. 8 that occurred historically. Are you looking at page 3? 8 9 Q. And why would somebody do that if it would lower 9 A. Yes, that's correct. 10 the volume of the spring? Q. Okay. I just want to make sure the Judge knows 10 A. Well, usually it relates to trying to manage the 11 what we're looking at. 11 12 water coming out. 12 THE COURT: Is that Exhibit 186? So if you're having difficulties, say, getting 13 13 THE WITNESS: That's correct. 14 water out of your spring pool into your highest elevation 14 MR. RIGDON: Exhibit 186, yeah. ditch, then you would start to try to raise the dam or the 15 15 THE COURT: Okay. 16 outlet to get higher head and push water out through your 16 MR. RIGDON: And page 3. 17 highest elevation ditch. 17 BY MR. RIGDON: 18 So that would be kind of the normal reason. You 18 Q. Okay. Go on. wouldn't, of course -- well, you might have thought you were 19 19 A. So in the bottom photograph there I've zoomed in, 20 getting some extra storage volume by raising the dam also, not and this is the picture circa 1920 of Big Shipley Hot Spring. 20 recognizing that it was going to affect your spring discharge. 21 21 And I've noted on this that, you'll see in the bottom part of 22 That's a possibility. the spring pool area there's a linear feature crossing part of 22 23 Q. So if spring flows were declining, lowering of 23 the spring pool. This I believe to be an old dam structure. the velocity of the water coming out of the spring, they might 24 We don't have any historical records or knowledge on it. 24 Page 431 Page 433 add board to try to fix the problem by creating a greater 1 1 But it is -- it still exists today, it's just 2 head? that it's submerged. It's submerged under about 1, 1 and a 2 3 A. Yeah, if you're starting to -- starting to half feet of water today. But you can see in this circa 1920 3 struggle with delivering water out to your developed pastures 4 photograph that it's emerged out of the water. And you also 4 and fields, that very well could have been the thought process 5 see land masses on the east side too that are exposed out of 5 is to let's raise the outlets so we can get that higher head 6 the spring pool which are submerged today. 6 to come out through our upper ditches. 7 7 So my premise here is that there has been a 8 Q. Okay. But it becomes a downward spiral. You try 8 historical change in the pool level. We don't know precisely 9 to raise it -- you're losing spring flow, try to raise it get 9 the reasons why, but there has been a change. And this is 10 the flow out there, but that in turn declines spring flow more also supported by Mr. Nickerson's survey versus subsequent 10 so you try to raise it more, and it becomes this battle? 11 measurements out. 11 12 A. It's a downward spiral. 12 Mr. Nickerson, when he mapped this, the spring 13 Q. Okay. 13 pool showed an A, B, C, D ditch coming out; four diversion 14 A. Yeah. ditches out of the spring pool. By the time Jim Harrill made 14 15 Q. All right. And that's what's described in your 15 his measurements there were only two outlets out of the spring report that -- in the binder, your supplemental report, 16 pool, so something had changed as far as the outlets. 16 Exhibit 186? 17 17 And those outlets today are -- still exist. A. Yes, that's correct. And in this -- in this 18 There are two primary spring outlets that we have to measure 18 19 report I describe that condition and also pointing out some if we want to determine how much discharge is coming out of 19 observations from circa 1920 photographs versus conditions we 20 the spring pool. Jim Harrill was measuring at two points and 20 observe today, conditions that were reported when Jim Harrill 21 21 adding those together to get the total discharge. began making his discharge measurements in the mid-60s. 22 22 O. Okay. 23 Q. And what evidence is in your report here to show 23 A. So what I'm seeing in this gives me a little more 24 that that response to declining spring flows by building up comfort, because honestly, over -- kind of over the years of 24

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 434 Page 436 1 having looked at this issue, it's always bothered me, it's going with and we're extrapolating back? 1 always troubled me that we have the older reported discharge 2 2 A. That's correct. measurements and there's quite a bit of disparity between what 3 Q. But as you mentioned, in the extrapolation back 3 started in 1965. We can explain some of that with some 4 process you're going through a fog of 50 years of potential 4 effects of pumping draw-down, but it doesn't seem like it's a 5 5 changes and potential effects; correct? 6 large enough effect. 6 A. Yes, that's correct. 7 This -- the hydraulics easily explains the Q. So does that -- either that fog or that 50 years 7 circumstance. So when we -- when we drilled the mitigation 8 8 of these potential effects that you talked about, does that 9 well next to the spring and we measured by using survey reduce the reliability of Mr. Harrill's measurements to 9 transit to a static water level elevation of the well right 10 10 determine what the pre-1905 spring flow were? 11 outside the spring pool, the well is drilled and taps into the 11 A. Yes, I do not feel that those 1965 and '66 12 fracture zone that (indiscernible) the pool into 12 measurements represent the original spring discharge from Big 13 (indiscernible) source. 13 Shipley Hot Spring pre-1905 measurement. It's only half a foot above the spring pool as it 14 14 Q. Okay. So given all that we've talked about here 15 was operating back in when they drilled it in 2015. What that with these different reported measurements and the weight --15 is telling us is at the time there was about 2 or 3 CFS of 16 16 the weight that should be given to the different reports and 17 natural spring discharge still occurring. It was occurring measurements, what is your ultimate opinion on what the 17 under one-half of a foot of head, only one-half a foot of head 18 18 pre-1905 flow of the Big Shipley Spring was? driving that spring flow. 19 A. Well, I'm going to approach this being a 19 20 If you take that water level down in the aquifer 20 scientist and engineer. First off, I'm going to take those half a foot, the spring flow ceased. And that was indeed what 21 three pieces of data that I have -- not just accounts by 21 22 happened, the spring flow ceased years later. 22 untrained eyes, but the three pieces of data we have. We have 23 So this is a very -- the fracture zone feeding Payne visual estimate, the Nickerson visual estimate, and the 23 this -- this spring and pool has a very high transmissivity 24 24 USGS published value. Page 435 Page 437 and it didn't have a lot of head on it, but it was producing a 1 1 So then I'm going to think about how do I 2 lot of flow because there was a really old fracture zone down 2 potentially weight the reliability of that information. I there. It didn't take much head to get a lot of discharge out 3 3 could just take a straight average at all and just say well, of it. 4 we know there's errors in techniques and measurements and 4 So when you start to mess with the back pressure 5 average and you end up at about 12 CFS. 5 on it, the weight of the water on it, and you lift it 2 or 6 6 I could also look at it and say okay, Nickerson 7 3 feet, you could very easily impact -- with all the 7 had the most experienced eye based on the information that we 8 information we have and understanding about this spring, that have, he presented an error bar, if you look at the lower end 8 9 would have significantly affected the spring discharge. of his error bar it's at 12 and a half CFS. That's very close 9 10 So I believe in my mind that closes -- that 10 to my average. I like that. closes the gap here. I have reliable estimates from close to 11 11 Then if I look at the USGS published value at 1905 and I can close the gap with spring stage pool changes to 12 12 11.1 CFS, I mean, okay, now I have another value that's pretty get me to where then we have high accuracy measurements from 13 13 near to my average value. 14 1965 and proceeding on into the future. 14 So my best available estimate of the pre-1905 15 Q. Going back to Harrill's measurements in 1965 and 15 discharge of Big Shipley Hot Spring is 12 CFS, and it's based 1966, when Harrill made those measurements and issued that 16 16 on those three pieces of information and then what we know report, did he make any opinion as to whether that represented 17 about the source and potential accuracy of those three pieces 17 the pre-1905 flow of the spring? 18 18 of information. 19 A. No, he did not. Q. Okay. And so that's the scientist, the three 19 20 Q. Did he make any attempt to extrapolate backwards 20 pieces of data. Does that also just happen to corroborate 21 himself? 21 with the reported -- the two reported plots from Alfred Sadler 22 A. No 22 and Mr. Slegkowski? 23 Q. So that didn't occur until the State Engineer A. Yes, there is a lot of consistency at that point 23 24

took it upon himself to say this is the measurement we're

24

with the reported values on the ranch.

TH	IE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
1	Page 438	3	Page 440
1	Q. So 12 CFS is pretty much in conformance with four	1	A It's dry
2	of the five pre-1950 (sic.) reports and measurements?	2	O. Okay. So turning your hinder to exhibit oh
3	A. Yes.	3	vou know, forget it. Don't do that
4	Q. Okay. The only one that is not is the one by	4	Do you have any reports regarding the flow
5	Payne who was an inexperience engineer at best.	5	historic flow rate of the Indian Camp Spring?
6	MS. PETERSON: I'm going to object, Your Honor.	6	A. Yes, both Tom Eakin in his 1962 report made a
7	That's misrepresenting the testimony.	7	couple of flow measurements, and also Jim Harrill did in
8	THE COURT: Sustained. He was an assistant	8	his reported in his 1967 report.
9	engineer. Right now at this point we don't know his	9	Q. Do we have any reported measurements or
10	background.	10	observations prior to Eakin's in 1961?
11	MR. RIGDON: Okay. We'll just leave it at that.	11	A. Not to my knowledge.
12	BY MR. RIGDON:	12	Q. Okay. So, in the case of Indian Camp Spring,
13	Q. All right. So let's finish with Big Shipley	13	there is just not that pre-1950 data that we have to look at
14	Spring and let's move on to one of the other springs on the	14	like we did with Big Shipley; right?
15	Sadler Ranch, the Indian Camp Spring.	15	A. That's correct.
16	Have you reviewed Sadler's claims with regards to	16	Q. So we don't have any other choice but to look at
17	Indian Camp?	17	Eakin and Harrill and try to determine what the flow rate
18	A. I have, but not recently.	18	try to extrapolate back from then; right?
19	Q. Okay. And did you review the final Order of	19	A. I agree.
20	Determination regarding that claim?	20	Q. Okay. Do you know what the reported estimate was
21	A. Yes.	21	from Eakin?
22	Q. All right. Can you describe the Indian Camp	22	A. I would want to look at his values.
23	A The Indian Comp Spring is leasted and the fit	23	Q. Well, let's do that. Let's go to Exhibit 448.
44	A. The indian Camp Spring is located on the fault	24	You know what, I guess my person who excerpted this excerpted
-	Page 439	-	Page 441
1	scarp. So a fault scarp is a hummock that is created by	1	out the part where he reports the surface of the
2	uplift and offset along the fault and it's a very common		don't look at that exhibit
3	place for a weakness in and an avenue for groundwater to	3	We do have it for Harrill though right? And
4	come up (indiscernible) as a spring. So this is a very common	4	that would be under Exhibit 440?
5	circumstance.	5	A Ves
6	So it occurred along a length of that fault	6	O Okay On page 31 of Exhibit 449 this is the
7	scarp; it wasn't at one point. There appears to be numerous	7	same page where Harrill reported the Big Shipley Spring
8	seeps that occurred along that fault scarp. And it's	8	measurement?
9	Q. How is it similar or different from the Big	9	A. Yes.
10	Shipley Spring in its character?	10	Q. Okay. And which of these springs represents
11	A. Well, Big Shipley Spring Number One, is it's	11	Indian Camp?
12	discharging almost at a point. There were numerous little	12	A. Yes, it's the fourth fourth row under the west
13	orifices but that's coming up right on point. The volume as	13	side category. It's titled "Unnamed," and its Township. Range
14	mentioned. So it's a much more distinct source and volume, of	14	and Section is 24, 52, 26D, "Unnamed," and that's the location
15	course, is was notably larger.	15	of Indian Camp Spring.
16	Q. And so the Indian Camp was more diffuse?	16	Q. Okay. So that's how you determined that the
17	A. That's correct.	17	Unnamed Spring was actually Indian Camp Spring was by the
18	Q. Okay. Would you describe it as more like a seep?	18	location data that he gives here?
19	A. That that is based on the information we	19	A. That's correct.
20	have, that is how I view that spring. And again, this is	20	Q. All right. And what did he report as the flow
21	based on really some of the older historical aerial	21	measurements from Indian Camp Spring?
22	photography, some of the description that Tom Eakin has in his	22	A. Yes. On December 7th, 1965, 0.66 CFS. On
23	1962 report.	23	April 1st, 1966, 0.82 CFS.
24	Q. Ukay. And what condition is the spring in today?	24	Q. Okay. And had anything that you know of

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 442 Page 444 significant happened to the Indian Camp Spring prior to 1 And I said, well, based on the information I 1 2 Harrill taking its measurement? have, my understanding of this historic conditions, that is my 2 A. Yes. This is better described in Tom Eakin's 3 best available estimate to try to project back to 1905. 3 study of 1962. When Mr. Eakin was out doing his field work, 4 4 Q. Do you think you have a good understanding of which I believe was in 1961, he observed that the Indian Camp 5 5 these flow systems? 6 Spring had a trench, what appeared to be a relatively recent 6 A. I have a pretty good understanding of these flow 7 trench excavated north to south along the spring line. systems. I have been working in the valley since 2007. I 7 8 And this was done to facilitate collection of completed the numeric flow model for the basin. We did 8 that seepage and consolidate it into one collection point fill 9 detailed geophysical surveys at Big Shipley Hot Springs to 9 10 and discharge out. 10 understand the subsurface structure, helped to then drill --Q. How would that have affected Mr. Harrill's 11 to help design and drill the mitigation well that went into 11 12 measurement? 12 the spring source, fracture zone that was the spring source. A. Yes. So I'm going to go off of memory here. I 13 There's always more to learn, but I have a pretty 13 think I remember the exact values. Tom Eakin I believe 14 14 good understanding of how these spring systems occurring. reported two measurements -- we can probably look at one of my 15 Q. And I think you just said you actually helped 15 exhibits -- at one-half and 2 CFS coming out of this ditch, 16 16 create the groundwater model for this area? but if I recall correctly, and this might be from his field 17 17 A. I -- I built, I was the primary modeler for the notes also which I had access to, is that the trenching 18 18 Diamond Valley flow model that included Kobeh Valley, portions 19 appeared to be relatively recent. of the Pine and Antelope Valley. 19 20 So Tom Eakin did observe greater discharge out at 20 Q. And so that would give you a pretty good 21 the 1961 timeframe that he made his measurements. understanding of these flow -- these flow systems? 21 22 Q. Okay. So you think Eakin's measurement was the 22 A. I've looked at the data considerably. I've tried one that was more affected by the trenching of the spring? 23 to model these spring systems. And again, we've done more 23 24 A. I do. 24 detailed on the ground work to try to understand how these Page 443 Page 445 1 Q. And that would have made it higher than what you 1 flow systems operate. believe the pre-1905 flow was? 2 2 Q. Okay. And so you believe the best estimate of A. Yes. Just like when we drill an artesian well, 3 pre-1905 flow, given all of your understanding of not just 3 initially we get a higher discharge, but once we reach a state 4 4 what occurred specifically at Indian Camp Spring, but the flow of equilibrium it usually produces less. The same thing will 5 5 system in general, is 1.1 CFS? 6 occur at the spring. A. That's my best estimate. And I will acknowledge 6 7 We originally open it up and deepen that 7 that there's a larger error bar on that estimate. I can't collection system. You would expect that initially you might 8 quantify it, but we just have less certainty with the 8 9 have higher discharge than what you might have a year or two 9 information that's available. 10 after things have equilibrated. Q. Okay. So let's move on to another spring now. 10 11 Q. Okay. So then should we just use Harrill's 11 There's a spring that's been identified in this proceeding as measurement? 12 12 Shipley Springs Number 2. 13 A. Well, my -- but the complication, again, is that 13 Are you familiar with that? we're working on a timeframe where there had been 20 years of 14 14 A. I am. 15 well drilling occurring along the west side of the playa, so I 15 Q. And what is that spring? would caution that there could be some effects of well 16 A. So Shipley Spring Number 2, as we've called it, 16 drilling and artesian flows and pumped flows at the time when 17 is actually identified on the USGS topo maps as Shipley Hot 17 Harrill made his measurements. 18 Spring. USGS topo maps to this day still have misidentified 18 19 So if I recall correctly, how I computed a 19 where Shipley Hot Spring is. possible pre-1905 discharge measurement is I took the low 20 20 So this spring is located roughly a quarter mile 21 number of Eakin, .5 CFS, and added to it the average of 21 to the south -- I think around a thousand feet or so to the Mr. Harrill's measurements, which is about .7, and I averaged 22 south. And of course it's dry today. There is evidence that 22 23 those two values together then and that arrives at about 23 it was developed; however, there's -- at least at the time 1.1 CFS, I believe, a little over 1 CFS. 24 when I was making inspections, it had a cistern collection 24

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<ul> <li>pipe in it and then with two pipe laterals coming out of it, and there's evidence of a pool that approximately I think 150 feet in diameter that existed at that spring. And this spring is clearly evident on the 1946 aerial images also so it was a spring of significance.</li> <li>Q. Okay. And you described the cistern. Can you turn to Exhibit 193 in your binder.</li> <li>A. (Complies.)</li> <li>Q. Is that a photograph of the remnants of the cistern that you were just talking about?</li> <li>A. Yes, as of year 2013.</li> <li>Q. Okay. So this was taken 2013. At that time, there was no spring there?</li> <li>A. That's correct.</li> <li>Q. Okay. But this is this shows the remnants of the infrastructure that had been put in at that spring; correct?</li> <li>A. Yes, that's right. It shows the collection system and you can possibly make out the topographic depression where there was at one point a pool, a shallow pool at this location. You notice also in the upper left is a topo map where it labels this spring, Shipley Number 2, as Shipley Hot</li> </ul>	2 3 4 5 6 6 7 7 8 9 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<ul> <li>going from the northern edge of the pool on down towards the</li> <li>fields. And we know from the piping that at a minimum they</li> <li>were piping water out this spring, that there possibly could</li> <li>have been some ditch water out also.</li> <li>Q. Okay. Have you identified any reported</li> <li>measurements of flow from this spring?</li> <li>A. No.</li> <li>Q. Okay. We know it was there because the aerial</li> <li>shows it was there, but nobody ever measured it?</li> <li>A. Not to my knowledge.</li> <li>Q. Okay. With your understanding of the spring flow</li> <li>system and with the evidence that we have from the aerial and</li> <li>from the photograph that there was actual irrigation at the</li> <li>infrastructure there, what is your general estimate of how</li> <li>much water flows historically from the Shipley Spring Number</li> <li>2?</li> <li>A. I've made a just a very general and I think</li> <li>fairly conservative estimate that this spring may have</li> <li>produced about one-half CFS 0.5 CFS. And I base that based</li> <li>on the size of the pipes coming out of the collection culvert</li> <li>there and I think that's pretty conservative.</li> <li>Q. Okay. So you used the size of the pipe and they</li> <li>wouldn't have nut a pipe in that was smaller than what them</li> </ul>
Spring, but you can tell from the map where the spring pool is	23 24	wouldn't have put a pipe in that was smaller than what they needed to irrigate from?
Page 447		Page 449
to the north there; that's where Shipley Hot Spring is as we	1	A. Yes
understand it.	2	Q. Okay. All right. We're getting down. We got
Q. Was this spring significantly smaller than	3	one more to go.
A Ves as we understand it it did not discharge	4	Let's go to talk about Eva Spring. Are you
the magnitude of water as in Big Shipley Hot Spring	5	familiar with Eva Spring?
O. And does that on that same nage that we're	5	THE COURT: Before we talk about Eva Spring let's
looking at the picture, is there does it show that 1946	8	MR RIGDON: That's great
aerial also that you were referring to?	9	THE COURT: Time for a recess. Let's take about
A. That's correct.	10	10 to 15 minutes. Yes, Mr. Bolotin.
Q. And and that does that show the spring	11	MR. BOLOTIN: (Indiscernible) just for the
flowing generally in an eastward direction toward the Sadler	12	record, we have Micheline Fairbanks, Deputy Administrator for
A The tonography of the area again right at the	13	the Division of Water Resources who has appeared, and also
spring pool itself is a depression. But other than that the	14	from the Attorney General's office we have senior deputy Dan
topography is eastward sloping down towards the cultivated	16	will be belowing and assisting with these eases and heaving
fields on Sadler Ranch.	17	throughout the course of the adjudication
Q. So is it your opinion that this spring would have	18	THE COURT' Okay Thank you very much I
commingled with the waters of Big Shipley Spring to help	19	acknowledge their appearance and I acknowledge the great fish
irrigate the Sadler Ranch?	20	that Miss Fairbanks caught.
A. Yes, I believe so. It was piped out. You can	21	MR. BOLOTIN: Thank you, Your Honor.
see evidence of the pipes headed towards the east. And you	22	Recess.
that I believe you can make out an east/west linear line	23 24	THE COURT: Court's in session. Please be seated, everyone. We're back on the record in this case. We
	Ite RELATIVE RIGHTS IN AND TO ALL WATERS         Page 44         pipe in it and then with two pipe laterals coming out of it, and there's evidence of a pool that approximately I think 150 feet in diameter that existed at that spring. And this spring is clearly evident on the 1946 aerial images also so it was a spring of significance.         Q. Okay. And you described the cistern. Can you turn to Exhibit 193 in your binder.         A. (Complies.)         Q. Is that a photograph of the remnants of the cistern that you were just talking about?         A. Yes, as of year 2013.         Q. Okay. So this was taken 2013. At that time, there was no spring there?         A. That's correct.         Q. Okay. But this is this shows the remnants of the infrastructure that had been put in at that spring; correct?         A. Yes, that's right. It shows the collection system and you can possibly make out the topographic depression where there was at one point a pool, a shallow pool at this location. You notice also in the upper left is a topo map where it labels this spring, Shipley Number 2, as Shipley Hot Spring, but you can tell from the map where the spring poi is         Page 447         to the north there; that's where Shipley Hot Spring: A. Yes, as we understand it, it did not discharge the magnitude of water as in Big Shipley Hot Spring. A. Yes, as we understand it, it did not discharge the magnitude of water as in Big Shipley Hot Spring. Q. And does that - on that same page that we're looking at the picture, is there does it show that 1946 aerial also that you were referring to? A. That's correct.         Q. And and that - does that show the sprin	HE RELATIVE RIGHTS IN AND TO ALL WATERS         Page 446         pipe in it and then with two pipe laterals coming out of it, and there's evidence of a pool that approximately I think 150 feet in diameter that existed at that spring. And this spring is clearly evident on the 1946 aerial images also so it was a spring of significance. Q. Okay. And you described the cistern. Can you turn to Exhibit 193 in your binder. A. (Complies.) Q. Is that a photograph of the remnants of the cistern that you were just talking about? A. Yes, as of year 2013.       100         Q. Okay. So this was taken 2013. At that time, there was no spring there? A. That's correct.       112         Q. Okay. But this is - this shows the remnants of the infrastructure that had been put in at that spring; correct? A. Yes, that's right. It shows the collection system and you can possibly make out the topographic depression where there was at one point a pool, a shallow pool at this location. You notice also in the upper left is a topo map where it labels this spring, Shipley Number 2, as Shipley Hot Spring, but you can tell from the map where the spring pool is       22         Page 447       12         Vo the north there; that's where Shipley Hot Spring is as we understand it.       12         Q. Was this spring significantly smaller than Shipley Hot Spring — Big Shipley Spring? A. That's correct.       13         Q. And does that - on that same page that we're looking at the picture, is there - does it show that 1946 aerial also that you were referring to? A. That's correct.       14         Q. And - and that - does that show the spring flowing generally in an eastward direction toward the Sadler fields? A. The topograph

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	have the witness on the witness stand under oath We have	1	the table's on page 21
	2 counsel for the parties as well as the parties. You may		A And again I think this is a case where there a
3	continue with your direct. Mr. Rigdon	3	heen some differences in names a partice of the series of the
4	MR. RIGDON: Thank you, Your Honor	4	time because I believe this is the Serie Bench Spring at the
5	5	5	Spring
e	BY MR. RIGDON:	6	O Okay And like the Indian Comp Spring that was
7	Q. And we're almost done here with Mr. Smith.	7	listed as unnamed here, the location here motohes the location
- e	So, Mr. Smith, we're going to move on to Eva	8	of the Eva Spring?
9	Spring now. Are you familiar with the Eva Spring?	9	A. That's correct
10	A. Yes.	10	O. And what is the reported measurement on that?
11	Q. Is it located on the Sadler Ranch proper?	11	A. 0.58 CFS
12	A. No. Eva Spring was located on the Brown Ranch to	12	0. Okay. So we have two reported spring flow
13	the north about two miles to the north.	13	measurements for the Eva Spring: correct?
14	Q. Okay. So this is a completely different spring	14	A. That's correct
15	than the ones we were talking about on the Sadler Ranch?	15	O. And
16	A. Yes.	16	THE COURT: What was the USGS reported
17	Q. And have you reviewed the final Order of	17	measurement?
18	Determination regarding this spring?	18	MR. RIGDON: I should have asked you that
19	A. Yes.	19	BY MR. RIGDON:
20	Q. And can you describe this spring?	20	O. What was the USGS reported measurement?
21	A. Well, this spring like the like the others on	21	A. The Stearns, Stearns and Waring 1937 reports the
22	the west side of the valley, is situated near the toe of the	22	spring discharge at 300 gallons a minute which equates to
23	alluvial fan and west of the playa. So it's if you travel	23	0.67 CFS.
24	just north to south you have these springs that are appearing	24	THE COURT: Thank you.
			and the second sec
	Page 451		Page 453
1	and emerging all the way from Sulphur Ranch Spring to the very	1	BY MR RIGDON
2	south end of the playa and up to and ending at about Eva	2	O And what conclusions have you drawn after
3	Spring to the north.	3	investigating this and knowing everything about the flow
4	Q. And were there reported measurements on this	4	systems here with regards to what the likely pre-1905 flow of
5	spring?	5	the spring was?
6	A. There are.	6	A. Yes. I would. I would utilize the Stearns
7	Q. Okay. And were any of those pre-1950?	7	Stearns and Waring 1937 value as being the nearest to a
8	A. Pre-1950.	8	1905 pre-1905 discharge rate. By the time Harrill was
9	Q. Pre-1950?	9	making measurements there were wells on the Brown Ranch.
10	A. Yes. Yes. They're actually in the again, the	10	The first well was drilled in 1960 so there was
11	USGS publication of 1937 by Stearns, Stearns and Waring, this	11	likely some effects of pumping that influenced his discharge
12	spring is listed there with a discharge measurement. I will	12	measurement of 0.58. So I believe the 0.67 CFS discharge rate
13	note that the spring, however, is not called Eva Spring, it's	13	reported by Stearns, Stearns and Waring in 1937 is the best
14	called Serie Spring; however, the section, township, range	14	available estimate we have.
15	matches correctly to be Eva Spring.	15	Q. Okay. And is that in fact the the estimate
16	Q. Is that the only pre-1950 report of spring flow?	16	that the State Engineer used in his Order of Determination?
17	A. The only one I'm recalling.	17	A. I believe that's true.
18	Q. Okay. Was there did Harrill do a measurement	18	Q. All right. So you don't disagree with the State
19	of this spring in 1965 or whatever?	19	Engineer on that point?
20	A. Yes.	20	A. I do not.
21	Q. And what did he Harrill estimate or measure	21	Q. Just going back real quick to Big Shipley Spring
22	the flow of the spring to be?	22	before we finish up there.
23	A. Let's turn to his table, if we can, please.	23	During the break, did you have a chance to
24	Q. Okay. Yeah, so that would be in Exhibit 449 and	24	remember whether the Nickerson you testified about the

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1	Nickerson affidavit at the 2019 hearing?	1	about how we make the measurements and whether we're
12	A. It is coming back to me a bit. I apologize for	2	representing average flow in each little transect on and on
3	the memory lapse. But yes, that was discussed in the 2019	3	so there's always error.
4	hearing. And that was not included in my professional report,	4	An experienced eve though can really close the
5	my Exhibit at that hearing, because we did not have the	5	gap on between the two.
6	information at the time I issued that report. But we did have	6	Q. You would you will agree with me that Payne
7	it before the hearing and there was discussion on that issue	7	when he went out in 1912, he wanted to take a measurement, but
8	at the hearing.	8	he couldn't because the there was a breach in the dam; is
9	Q. Okay. So the State Engineer did know about the	9	that correct?
10	existence of the Nickerson affidavit?	10	A. That's what he states.
11	A. Yes.	11	Q. And what does that mean when there's a breach in
12	Q. All right.	12	the dam?
13	MR. RIGDON: That's it for direct, Your Honor.	13	A. I don't know the ground conditions he was
14	THE COURT: Cross-examination, Ms. Peterson.	14	observing, but what it suggests to me is that flow was not
15	MS. PETERSON: Thank you, Your Honor.	15	constrained to just a nice defined channel to where he could
16	CRUSS-EXAMINATION	16	go in and take a current velocity measurement.
17	BY MS. PETERSON:	17	Q. And, in fact, his notes indicate that this is
18	Q. Mr. Smith, I'm Karen Peterson representing Eureka	18	the lawyer, sorry, not your profession but water was
20	you had shout manufacture and a single and a single and a shout manufacture and a shout manufacture and a single and a sin	19	running my interpretation, you can tell me if you disagree
21	observations of flow. Do you recall that testimore 2	20	or agree, water was running kind of all over out from the
22	A Ves	21	source; would you agree with that?
23	$\Omega$ And would you agree that I would say probably in	22	A. I that's my recollection, and I will state
24	all the instances a measurement would be better than a visual	23	and it's very difficult to make visual estimates in that
	and and another a moustachient would be better than a visual	44	condition.
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	observation and a basis to report discharge? Would you agree	1	Q. And then Nickerson, who I guess he was before, he
2	A No I do not	2	was in the March of 1912, sorry, he also wanted to take a
4	$\Omega$ Okay Explain	3	measurement; correct?
5	A Vesh again it really depends on the experience	4	A. I don't know that he wanted to. He stated that
6	of the individual. When we go out and make stream flow	5	he did not make a measurement because of the conditions of the
7	measurements there's different qualities that we assign to	0	channel. So I assume that yes, had he had channel conditions
8	that measurement: good fair noor And this is standard		O And Laws
9	U.S. Geological Survey methods standard methods	9	Q. And I guess
10	So we do end up in circumstances where we are	10	hack to that question. What was the data that you referenced
11	making a physical measurement, but we are doing that at a fair	11	with Nickerson when he didn't take the measurement again?
12	or poor rating that expands the error bar for that rating, and	12	MS. PETERSON: It was March 1912
13	at that point, an experienced eye could be just as accurate as	13	THE COURT: Thank you
14	your field measurement.	14	MS. PETERSON: And we'll go to his notes. Your
15	Now, if you're in a condition to where you have	15	Honor.
16	high quality conditions, so that's stream count, channel	16	THE COURT: Thank you.
17	conditions, flow conditions, very uniform, unobstructed, on	17	BY MS. PETERSON:
18	and on, then at that point I would say your manual physical	18	Q. Before we do that though, could you give me your
19	measurement would definitely be higher than your visual	19	definition of beneficial use?
20	your visual estimate of flow. The potential accuracy would be	20	MR. RIGDON: Objection, outside the scope of
21	higher.	21	direct.
22	But even I should qualify even in a very	22	THE COURT: I will allow it. Overruled.
23	good circumstance there's still an error bar to the	23	THE WITNESS: My definition of beneficial use.
24	measurement methods. There's a lot of detailed assumptions	24	BY MS. PETERSON:

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	Page 458	5	Page 460	1
1	Q. Of water, uh-huh.	11	ves, and assuming that there was some type of control so that	
2	A. My definition might be a little broader than	2	you could board up one or two diversions and push water out a	
3	strictly water rights, but any type of any type of	3	different diversion.	
4	dependence on use or benefit from a water source I would	4	So in that context, yes. I think that applies to	
5	define as beneficial use.	5	that circumstance all the way to when it was developed	
6	And I'm taking that in context the reason I'm	6	O. And from my layman's understanding of what you're	
7	hesitating here a bit, Ms. Peterson, is, you know, in some	7	saving here, are you saving that the flow measurements may	
8	states you have beneficial uses for in-stream flows for	8	change for Shipley Hot Springs depending on how many	
9	environmental issues, for environmental purposes. That falls	9	diversions are being used at the time, because you talk about	
10	under my category of potential beneficial use.	10	the southern or the northern diversion how how a	
11	I believe here in Nevada, we really define it as	11	measurement would be made, and then what the nond level was	
12	beneficial use by humanity or humankind, even though we do	12	and you say diversion outflows are being managed; is that	
13	issue permits for wildlife purposes. But I think here in	13	correct?	
14	Nevada beneficial use is I associate with some type of a	14	A. Yes.	
15	benefit to humanity of some manner from the water.	15	O. And so all those factors and variables could	
16	Q. The use of the water?	16	affect the measurements that we've talked about today from	
17	A. Yeah.	17	Shipley Hot Spring or the reported discharges that we've heard	
18	Q. So I want to direct your attention to your	18	about today from Shipley Hot Springs; is that correct?	
19	report, your first report that that you prepared. And your	19	A. I would say this is more relevant to an	
20	counsel briefly directed you to it, Exhibit 184.	20	instantaneous measurement that one might be making at that	
21	A. (Complies).	21	snapshot in time.	ļ
22	Q. And on page 2.	22	Q. Would that include a visual observation?	1
23	MR. RIGDON: Page what? Page what?	23	A. Yes, visual observation is at one distinct point	l
24	MS. PETERSON: Two.	24	in time.	l
				ſ
				L
	Page 459		Page 461	
1	Page 459 MR. RIGDON: Two.	1	Page 461 O. So depending on what was happening in the field	
1 2	Page 459 MR. RIGDON: Two. BY MS. PETERSON:	1 2	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area	
1 2 3	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the	1 2 3	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow	
1 2 3 4	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do	1 2 3 4	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say. Payne saw or Nickerson saw or	
1 2 3 4 5	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do you see that?	1 2 3 4 5	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say, Payne saw or Nickerson saw or any of the other visual observations or actual measurements:	
1 2 3 4 5 6	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do you see that? A. Yes.	1 2 3 4 5 6	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say, Payne saw or Nickerson saw or any of the other visual observations or actual measurements; is that correct?	
1 2 4 5 6 7	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do you see that? A. Yes. Q. Okay. And number 15 there you're talking about	1 2 3 4 5 6 7	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say, Payne saw or Nickerson saw or any of the other visual observations or actual measurements; is that correct? A. Yes.	
1 2 3 4 5 6 7 8	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do you see that? A. Yes. Q. Okay. And number 15 there you're talking about measurements from Shipley Hot Spring; correct?	1 2 3 4 5 6 7 8	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say, Payne saw or Nickerson saw or any of the other visual observations or actual measurements; is that correct? A. Yes. Q. And we don't have any information in the record	
1 2 3 4 5 6 7 8 9	Page 459 MR. RIGDON: Two. BY MS. PETERSON: Q. Exhibit 184. It's page 2 of your report on the lower right-hand side, but it's Bates stamped Sadler 4697. Do you see that? A. Yes. Q. Okay. And number 15 there you're talking about measurements from Shipley Hot Spring; correct? A. Yes.	1 2 3 4 5 6 7 8 9	Page 461 Q. So depending on what was happening in the field, right, or right here at Shipley Hot Spring, the pond area where the diversion is, that may affect what the flow measurement was that, let's say, Payne saw or Nickerson saw or any of the other visual observations or actual measurements; is that correct? A. Yes. Q. And we don't have any information in the record that all the measurements in this case that you've listed out	
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	Page 46	2	Page 464
	1 Q. Right. If you go to page 16?	1	1 would be more accurate?
	2 A. (Complies). Yes, that is correct.	2	A. I think we could assume that
	Q. And now, you are because of Nickerson, you	3	And then directing your attention to page 2
	4 found the Nickerson affidavit; correct?	4	Have you read this whole affidavit?
	5 A. Yes.	5	A Ves
1.	6 Q. And you've	6	O Directing your attention to made 2 the first
	A. We did not have that available at the time of	7	three four paragraphs. He's he was bird by Date
1	B this report.	8	that correct?
1	9 Q. Yes, yes. I understand that. And if you could	9	A That's correct
10	go to the Nickerson affidavit. It's Exhibit 105.	10	• And my interpretation of what have a service have
1:	A. (Complies).	11	in the top two thirds of this affidavit is that water sink
12	2 THE COURT: The Exhibit number you were referring	12	now is not getting to Romana so that Remand and
13	to again, Miss Peterson?	13	fields: is that correct?
14	MS. PETERSON: Exhibit 105.	14	A My understanding is Romana didate fact 1'1 1
15	THE COURT: Thank you.	15	Was getting magnitude, the quantity of system have a still t
16	THE WITNESS: Yes, I'm there.	16	to irrigate with
17	MS. PETERSON: Okay. I was waiting for the	17	And you've already testified that Ni-lawson (1)
18	Judge.	1.9	that at the time there were foun dischase is the
19	THE COURT: I am too.	10	A Ver
20	MS. PETERSON: Good.	20	A. ICS.
21	BY MS. PETERSON:	21	earlier report was that there were true diversity of the
22	Q. So on the first page there of the affidavit	22	impact the measurements that use of the South State may
23	you I know in your written report you recited the	22	Springs: do you recall that testime and
24	information about the 500 to 600 miner's inches and that	23	A That would be in surrent conditions
1		41	A. That would be in current conditions.
	Page 463	1	Page 465
1	40 miner's inches was equal to 1 CES: correct?		
2	A. Yes that is correct And L. I think I should		Q. Right. And if there were four outlets, would
3	correct my earlier testimony. I believe I said 400 to 500	2	that possibly cause even more variation in measurements with
4	miner's inches instead of 500 to 600	3	regard to flow from Shipley Hot Springs?
5	0. And then you equated that to 12 to 15 CES: is	4	A. We don't know that. We don't know the elevation
6	that correct?	5	
7	A. 12.5 to 15 CES	0	Q. Okay. Of I guess how the water was managed?
8	0 So if your report your written report sour	1	A. Yes, that's correct. We don't know the
9	12 CFS you're correcting that to 12.5 right now?	8	elevations of those outlets, and if they were all equal
10	A. Which report is that?	10	vould be associated
11	0. It's your the one in front of the State	11	O All right And then the the
12	Engineer. Let's see. It's Exhibit 185 Thelieve	12	v. All right. And then directing your attention to
13	Okay. You know what Landogize. You do say	12	said March 2rd, 1012", do use and 1012
14	12.5 CFS. Sorry about that On page 1	13	Saiu Warch Sru, 1912"; do you see that?
15	So after the information about the miner's	15	A. Its.
16	inches, and this part wasn't in your report you alluded to it	12	A "That op said Merch 2nd 1010 of
17	today in your testimony, but Mr. Nickerson says "but this is	17	considerable water flowing in dia to the to the
18	only an estimate based upon personal observation " It's	10	which flowed in a northeride and the standard standa
19	really hard for me to read this "As it was not possible to	10	the said Sadler Barch and northeasterly direction across
20	make accurate measurements under existing conditions."	70	And could that he the stand on one of the stand of the st
21	Do you see that?	4U 21	A. It could be on it could be the playa?
22	A. Yes.	41 22	A. It could be, or it could be land around the
23	O. And would you agree that seems to indicate that	22	O Vacant?
24	he did want to take a measurement because he thought that that	20	Q. Vacant
	a second and that that	47 4	A. It says vacant.

T	THE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30 202	
	Page 46	6	Page 468	
	1 Q. And then could you read the next paragraph?		Again I don't know if I into I to tot	
	2 A. "That it was evident that a very large portion of		And then Lyund 1 - 1 just I don't know. I don't know.	
	3 the total flow of said big spring was flowing in ditch D in a		this Exhibit	
	4 northeasterly direction across the said" I'm having		MS DETEDSON It is Mar II and a	
	5 difficulties reading this, sorry. "Across the said Sadler	6	Fyhibit 173 that's been introduced into a 1	
	6 Ranch."	6	one page. This was presented by Sedler, June 1	
	7 THE COURT: Mr. Smith, if you're seeing it we	7	representation it was presented by Sadler I'll make a	
	8 have magnifying glass that would help	8	Engineer's hearing and it was one of Mr. On it is the	
	9 THE WITNESS: It's the document. Thank you	9	I'll show it to you	
1	• THE COURT: I have one.	10	MR RIGDON: Which Excited	
1:	1 THE WITNESS: See continue that helps. Let me	111	THE COURT: It's part of Exhibit 1722	
1:	2 continue on here. "Across the said Sadler Ranch and out onto	12	MS_PETERSON: Ver	
1:	a large alkalide flat where a large lake has been formed	13	MR RIGDON: It's Exhibit 1722	
14	4 thereby."	14	MS PETERSON: Ves It's part of Euclide 172	
19	5 BY MS. PETERSON:	15	MR RIGDON: Oh it's part of Exhibit 1/3.	
16	Q. And would that possibly indicate that the water	16	MS PETERSON: Vesh he had a lot of like	
17	was flowing out onto the playa?	17	demonstrative information	
18	A. It's possible. It also could be that it was	18	MR RIGDON: Oh okay	
19	flowing out to one of the terminal low depth basins that	19	MS. PETERSON: that he compiled and he put	
20	Mr. Buschelman described to try to store and manage water.	20	into Exhibit 173.	
21	It's not not precisely clear.	21	MR. RIGDON: Okay	
22	Q. So would you agree with me that in 1912 on	22	MS. PETERSON: May Lapproach Your Honor?	
23	March 3rd Mr. Nickerson saw out of three out of four ditches	23	THE COURT: You may	
24	that were being used, that nearly all or a very large portion	24	MS. PETERSON: I'd like to have this marked as	
1	Page 467	1	Page 469	
1	of the total flow was not being used on Sadler Ranch and was	1	the next Exhibit in order for Eureka County which I half	
2	going out onto vacant government land or a large alkalide flat	2	would be Exhibit FFF	
3	where a large lake had been formed thereby?	3	THE COURT: What was your Exhibit letter?	
4	MR. RIGDON: Objection. It doesn't say not being	4	MS. PETERSON' FFF	
5	used for Sadler Ranch's beneficial use. That's a misreading	5	THE COURT: Three E's Any objection to	
6	of the document. Nowhere in the document does he said Sadler	6	Exhibit triple E?	
7	Ranch is not using the water.	7	MR. RIGDON: Well, I don't have any objection to	
8	MS. PETERSON: I'll rephrase.	8	the Exhibit. I'm waiting for a question because I believe we	
9	THE COURT: Go ahead.	9	might be heading well outside the scope of the direct and well	
10	BY MS. PETERSON:	10	outside we called Mr. Dwight Mr. Smith to talk about	
11	Q. Do you agree with me, Mr. Smith, that these two	11	flow rates at springs, not beneficial use of water. That was	
12	paragraphs indicate that on March 3rd, 1912, three out of four	12	handled by Mr. Buschelman. And all we are asking on direct is	
13	ditches that were on the Sadler Ranch, these three ditches	13	his conclusion regarding the spring flow.	
14	were being used to convey water, and Mr. Nickerson's affidavit	14	So subject to, you know, seeing what her question	
15	indicates that the water flowed across the Sadler Ranch and	15	is, I'm I am just raising my concern.	
10	onto vacant government land in the first paragraph.	16	THE COURT: Very well.	
17	And then on that second paragraph you read,	17	Go ahead, Miss Peterson.	
10	flat where a large label is a large alkalide	18	MS. PETERSON: Okay.	
20	A That where a large take had been formed thereby?	19	BY MS. PETERSON:	
20	A. That was what Mr. Nickerson observed on that day.	20	Q. Do you have what's been marked as Exhibit EEE in	
22	any of the water in these three did 1	21	front of you, Mr. Smith?	
23	Sadler Ranch?	22	A. I do not.	
24	A. I don't know if I could answer that some her is	23	MR. RIGDON: There's a	
	a contextion in record answer that conclusively.	24	THE WITNESS: Yes.	

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1	1 BY MS. PETERSON:		1 A I did not and I do recall some discussion in
1	2 Q. Do you recognize that document?		2 prior hearings on this The the only records available at
3	A. I do believe I recognize this document as a		3 the State Engineer's office are the record of Mr. Payne which
4	4 letter from the it's the first page of a letter from the	- 6	4 we've discussed from November 18th of 1912
1 5	5 State Engineer; is that correct?	8	5 So it's my assessment that this letter was
6	5 Q. That's correct.		6 drafted based on Mr. Pavne's observation I think there's
7	MS. PETERSON: Well, I move well, I guess	it's	7 been an erosion, possibly a bit of mischaracterization of what
8	already in. Sorry.		8 Mr. Payne actually stated in his field assessment because he
9	BY MS. PETERSON:		stated 8 CFS or a little more.
10	Q. And it's a letter dated September 23rd, 1913?	10	And you'll see in various documents where all of
11	A. That's correct.	1:	a sudden that's been phrased at approximately eight CFS
12	Q. And it's in regard to application 2679?	12	2 That's not what Mr. Payne said.
13	A. Yes, I can't just for clarification, what date	13	And then you'll see in this letter from the State
14	did you say? What month?	14	Engineer's office, he's saying 7 or 8 cubic feet per second
15	Q. I thought it said September 23rd, 1913?	15	but that's not consistent with Mr. Payne's observation either.
16	THE COURT: That's what it looks like.	16	So and we did review the records on the file with
17	THE WITNESS: I couldn't quite tell if it was '	3 17	the State Engineer's office. We found only one record for Big
18	or '12. Yes, very good. Yes, 1913.	18	Shipley Hot Spring, being Mr. Payne, that predated this
19	BY MS. PETERSON:	19	letter.
20	Q. Okay. And it's regarding at application 2679?	20	So similar to the other documents where once we
21	A. Yes.	21	understood that Nickerson was the source there, we have
22	Q. Big Shipley Spring?	22	several documents that perpetuated then Nickerson's estimate.
23	A. res.	23	I view this letter as perpetuating Mr. Payne's observation but
41	Q. And there's a red a red box in the middle of	24	in a not so accurate manner.
-	Page 4	71	Page 473
1	that document that I believe you all put on this document.	. 1	O Do you have any information or lunardades that
2	that your recollection?	2	there was not another either visual observation or knowledge that
3	A. I don't recall, but that the red box on a	3	made with regard to Big Shipley Hot Springs as reflected in
4	document.	4	this letter?
5	Q. All right. And this is a letter that the State	5	A. No records at the Division of Water Resources
6	Engineer sent to Mr. H. J. Sadler who's the vice president of	f 6	that we have been able to find.
7	Huntington and Diamond Valley Land and Stock Company; correct	? 7	Q. But you don't have any evidence that this
8	A. Yes.	8	representation and this letter is based on Payne's
9	Q. And in that application Huntington and Diamon	1 9	observations; do you?
10	Valley Land and Stock Company had applied to appropriat	2 10	A. It doesn't say that, but since it's coming out of
11	45 CFS of water from Big Shipley Spring; is that correct	11	the same office and the only record is Payne's, I don't see
12	A. Yes.	12	how it could be based on anything else.
13	Q. And the State Engineer eventually denied that	13	It is possible that there's some other records
14	application; do you recall that?	14	that just aren't recorded and aren't referenced in the letter,
15	A. Yes, I recall that.	15	always that possibility, but it doesn't seem like the logical
16	Q. And in this letter here to Mr. Sadler, the State	16	conclusion.
17	Engineer is indicating, as in the red box, that Big Shipley	17	Q. And this letter was approximately a year after
18	opring is approximately 7 to 8 cubic feet per second flow	5 18	Payne's visit in November of 1912?
73	in approximately / to 8 cubic feet per second; is that	19	A. That's right. Ten months.
20	A That's what the latter states	20	Q. And then directing your attention to Exhibit 180,
22	$\Omega$ . And did you include this letter and the	21	and it's actually page 180?
23	information contained on this letter in your plat that	22	A. (Complies).
24	included in your report?	23	MR. RIGDON: Which page, excuse me?
		44	MS. PETERSON: 180

MS. PETERSON: 180.

- r	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
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	1 MR. RIGDON: Exhibit 180, right?	1	reported discharge information that you had automic to at
	2 MS. PETERSON: And page 180.		State Engineer in that proceedings is that according
	3 MR. RIGDON: Oh, page 180. Oh, I'm sorry	1	A Ves
	4 MS. PETERSON: Of Exhibit 180.		O So would you correct with me that it. Or a
	5 MR. RIGDON: Yeah. okay.	5	Engineer's Order of Determinesting in the state
	6 BY MS. PETERSON:	6	Englicer's Order of Determination indicates more evidence
	7 Q. You had some testimony in your direct examination	7	Harrill's measurements of Big Shipley Spring other than
	8 about that first full paragraph: do you recall that?		A The basis for Light Were taken in 1966?
	9 A. Yes.		A. The basis for his determination on the flow rate
1	0 O. And your testimony was that in the State	10	relies pretty much exclusively on Harrill's 1965 and 1966
1	1 Engineer's Order of Determination	110	measurements. He does in that one sentence acknowledge the
1:	2 Determination there was no other reference in the Order of	11	prior administrative hearing, but doesn't reference any of the
1	Determination to any other measurements of Dia Shinter Series	12	information. I should qualify that Nickerson wasn't available
14	4 Other than Harrill's measurements: do you recell that?	13	In the 2013 so we did haven't that document.
1!	5 A. Yes I guess that should also include Downo's	14	But other than that, no, the basis for his
16	5 observation also	115	determination was solely on Harrill; that's how he computed
12	0 Right And what does the payt sentence - for	16	the 7.02 CFS flow rate.
18	Harrill's reported discharge, what does the first state?	17	Q. Right. But he does reference all the evidence
19	A Ves Exhibits presented in the administration	18	that Sadler Ranch submitted in the 2013 proceeding regarding
20	hearing for permit	19	the flow rate of Shipley Hot Springs; correct?
21	O Wait wait We're not on the same rece	20	A. Mentions it. Gives it no weight.
22	A Oh I'm sorry	21	Q. Well, we don't know what weight he gave it,
23	O Oh okay I'm sorry. The second sentence of	22	right, because he doesn't say here what weight he gave it;
24	that paragraph	23	would you agree with that?
		24	A. There's nothing in the calculation that
	Page 475		Page 477
1	A. Eureka Moly, LLC measured the spring and reported	1	determines that any of the velves more fact 1.1.1.
2	measurements from 2008 through 2016 with measurements ranking	2	determines that any of the values were factored into his
3	from zero to 3.72 CFS.	3	calculation
4	Q. Okay. So that's a reference to a measurement of	4	O That's your percention?
5	Big Shipley Hot Springs; is that correct?	5	A That's the calculation. He didn't average in the
6	A. Yes. Recent measurements.	6	didn't you know do any - it's not in the arithmetic
7	Q. And then what's the next sentence say?	7	Now certainly they're aware of this information
8	A. "Exhibits presented in the administrative hearing	8	must have considered it, but it's not integrated at all inte
9	for permit 82668 concerning spring flow, diversion rates and	9	the determination
10	crop duties were voluminous, complete, and resulted in State	10	O Did you discuss that evidence in puling 62712
11	Engineer ruling 6371."	11	A. I'm sorry can you clarify?
12	Q. And that's the administrative hearing you	12	MR. RIGDON' Did he discuss what avidence?
13	participated in; is that correct?	13	MS. PETERSON: Pardon?
14	A. Yes, it is.	14	MR. RIGDON' What evidence? That was vacuus
15	Q. And your report that we just looked at,	15	BY MS. PETERSON:
16	Exhibit your 2003 report. 2013 report, sorry.	16	O. Did he discuss in ruling 6371 all the avidence
17	Exhibit 184, that was presented to the Court State Engineer in	17	related to the flow of Shinley Hot Spring?
18	that proceeding; is that correct?	18	A. As I recall, again and I may have to refresh an
19	A. Yes, it is.	19	the ruling, but I don't recall that he actually did diagona
20	Q. And if you look at page 1 of that report, your	20	all the evidence presented in that ruling. That making had
21	report and page 2?	21	lot of other variables and factors at stake which there was
22	A. Could you refer me back to the Exhibit number.	22	lot of discussion on, but I again that's my recollection
23	Q. Yes, it's Exhibit 184. Numbers 1 through, like.	23	It's been a while since I read that ruling
24	around 13 indicate all the measurement information that or	24	Q. If I could direct your attention to Exhibit 449

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	1 A. (Complies).		MS. PETERSON: It's your Exhibit 50
	2 Q. Are you there?	2	BY MS. PETERSON:
:	A. Yes. Harrill's 1968 report?	3	Q. And at the bottom of the first page of the notes
1	Q. Yes. So you had discussed on the last full	4	Mr. Payne is indicating where Sadler Ranch is: correct?
1	5 paragraph your the statement here about the 16-year pumping	; 5	A. Yes.
	5 period, 1950 to 1965; do you recall that testimony?	6	Q. And that he intended to take an accurate
	A. Yes.	7	measurement of the source but was unable to do so because
8	Q. But could you read the second sentence of	8	there was a break in the dam at the reservoir; right?
2	paragraph above that starting with 1965.	9	A. Correct.
10	A. Yes. In 1965, the total net pumpage was	10	Q. And the water was not confined to any one
11	12,000 acre-feet which is less than half the estimated	11	channel?
	Perennial yield of 30,000 acre-feet for Diamond Valley.	12	A. Correct.
14	Q. So at least in 1965, there had been no	13	Q. And he goes on to indicate how large the
1 1 1	A Vos the pumping or Diamond Valley; is that correct?	14	reservoir was; correct? About two acres?
16	A. I es, the pulliping was not in excess of the	15	MR. RIGDON: About what?
17	• And in fact was less than half of the manual it	16	THE WITNESS: Yes.
18	vield: is that correct?	17	BY MS. PETERSON:
19	A That's true	18	Q. And then he indicates that the acreage of land
20	O. And there has been testimony by you that you	19	under cultivation from the source is hard to determine; do you
21	believe Payne only spent one hour at Sadler Ranch in 1012; do	20	see that?
22	you recall that testimony?	21	A. Les.
23	A. Plus or minus. Would not have had a great deal	22	Q. And Mr. Edgar Sadler informed him that there was
24	of time to spend at the ranch, that's correct.	24	A Ves
			71. 103.
	Page 479		Page 481
1	Q. Do you know how much time he spent at the ranch?	1	O. And reported about 250 acres of which was an
2	A. No. All we know is it a field report from one	2	alfalfa grain and garden: right?
3	day that visited six individual ranches over a 20-mile	3	A. Correct
4	stretch. So we don't know precisely, but we do know that, as	4	O. The rest being meadowland Do you see that?
5	Mr. Buschelman testified, there's about a nine-hour window of	5	A. Yes.
6	daylight.	6	Q. Oh, I'm sorry, I didn't hear your answer I
7	So do the arithmetic there. It's just	7	apologize. And then part of which is cut for hav and the
8	impossible I'll put it this way: it's impossible that he	8	remainder having used for pasture being used for pasture?
9	spent more than a couple hours at the Sadler Ranch and have	9	A. Correct.
10	visited those other ranches on the same trip. It's	10	Q. Okay. And then was Mr how many tons of hay
11	impossible.	11	does Mr. Sadler put up?
12	Q. And you know he talked to Mr. Sadler when he was	12	A. Let me just read it for a sec.
13	at the ranch; correct? Based upon the notes?	13	Q. Okay.
14	A. Yes, he did mention speaking to Mr. Sadler about	14	A. Sadler puts up several hundred tons of hay, but
15	the reported area being cultivated or on the ranch.	15	is unable to tell how many acres is cut.
16	Q. And Mr. Sadler didn't know how much acreage was	16	Q. And then the rest of the entry regarding Sadler
17	cultivated on his ranch; would you agree?	17	Ranch goes into the dispute that's going on between Mr. Sadler
10	A. I don't know that,	18	and Mr. Romano; is that correct?
7.9	MR. RIGDON: Objection, the document speaks for	19	A. Yes.
20	The desurrent extra line uses 1	20	Q. So he appears to have spent some time talking to
22	much was being wasd	21	Mr. Sadler?
22	MC DETEDSON, W-11 Lat	22	A. He appears to have had a conversation with him,
24	THE COURT: Go should Go should be be	23	yes.
	The cooker. do anead. do anead, Miss Peterson.	24	Q. But there's no indication in the notes of how

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1	long he spent at Sadler Ranch; is that correct?	1	than it is the dam height itself	
2	A. There's not, but again it's impossible that he	2	O But when you testified before about the nicture	
3	spent very much time there given the ground he covered in the	3	the picture that you showed well I guess it's in your	
4	day. But he obviously had a conversation with Mr. Sadler and	4	report	
5	he's conveying that information that he gleaned from that	5	It's on page 3. You zoomed in on photograph A on	
6	conversation in his field notes.	6	the bottom there?	
7	Q. I wanted to direct your attention to your	7	A. Yes.	
8	testimony with regard to the dam and the dam being raised. Do	8	THE COURT: Which Exhibit again?	
9	you recall that testimony?	9	MS. PETERSON: It's Exhibit 186	
10	A. Yes.	10	THE COURT: Okay, Thanks, On page 3?	
11	Q. And I believe in your report it indicates that	11	MS. PETERSON: Page 3	1
12	you don't know when that was done; is that correct?	12	THE COURT: Thank you	
13	A. Yes, we don't know precisely. And I should	13	BY MS. PETERSON:	
14	qualify that it may not have been that the dam was raised. It	14	Q. And you zoomed in on the pond: right?	
15	could have been that the outlets were changed and the	15	A. Yes, in photograph A.	
16	elevations of the outlets were raised.	16	O. Right. And all your testimony earlier today was	1
17	We know that there's some outlet changes because	17	about the dam structure; correct?	
18	somehow we got from four to two. In the time frame between	18	A. So it's really about in this part of my	
19	Mr. Nickerson in 1912 to when Mr. Harrill was beginning to	19	testimony it was about the stage or the elevation of the nond	
20	make measurements in 1965, he was making measurements from	20	water. It's about the elevation of that pool. Not	
21	only two active diversions out of the pond.	21	necessarily elevation of dam, but the elevation of the pool	l
22	Q. Okay. So this information that you're presenting	22	was very much controlled by the elevation of the outlets.	
23	about the changes in the configuration of the pond and/or the	23	Q. I	
24	dam, that's in your report on page Exhibit 186; is that	24	A. But the dam structure, if this helps with	
-			·	l
	Page 483		Page 485	1
1	correct?	7	derification I referred to the alder to the state	
2	A. Yes.		submarged today, it still exists but the	
3	O. And you drew a schematic that's on the last page	2	older dam structure which we don't have see hit in the	1
4	of that Exhibit: is that correct?	4	on It's in the interior of that nond. It're using that for a	
5	A. That's correct.	5	reference point to say that to day we know that that is	
6	Q. And is there any indication in this schematic or	6	submerged. We also know the land theth surgered on the set	
7	in your report of any changing of the configuration or the	7	side of the pond is submerged today	ſ
8	elevation of the outlets?	8	So the pond has been operating the heat I can	
9	A. Yes, on this conceptual or schematic drawing	9	tell from 1965 forward at pond levels that are higher in	
10	you'll see I have a lower outflow or a larger outflow, so that	10	elevation than when this nicture was taken in circa 1020	
11	can be related the elevation of the outlets.	11	O. And how do you know it was 1965 forward that	1
12	Q. Okay. But that that was related to the	12	the	
13	changes change in the elevation of the dam; is that correct?	13	A. Because of	
14	That would obviously change the outlets?	14	O change was made?	
15	A. The elevation of the dam actually would not have	15	A. Yes, good question It's because of	
16	changed anything. You could have built a 50-foot dam there	16	Mr. Harrill's field notes. So I've not only looked at	
17	but if your outlets are the same elevation, it wouldn't have	17	Mr. Harrill's report, at the USGS you can access the field	
18	changed anything.	18	notes when he actually went out and made those measurements	
19	So really it's more important to understand it's	19	On those measurements you will see that he is measuring two	
20	about the outlets from the pond changing elevation. That's	20	outlets from the pond.	
21	going to which, you know, you do just by management by	21	That's actually what we have been doing when we	
22	putting boards in to board off some outflows or, you know,	22	started doing that also in 2008. Two primary outlets that's	
23	raise and operate reservoirs to release out of storage.	23	all there are from the pond is two. Harrill's notes are	
24	So it's really more about the outlet elevation	24	indicating the exact same thing.	

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1	But you turn the clock back to Nickerson, there	1	O. And you testified earlier that you believe that
2	wasn't just two; there were four outlets. So something	2	your theory with this dam structure closed the gap on the
3	physically changed with the outlets from the ponds between	3	measurements from, from I guess I wrote down post 1905
4	Nickerson and Harrill time frames, 1912 to 1965.	4	measurements to the 1960's: was that your testimony?
5	Q. And you I believe you indicate in your	5	A. Yes. If this is factored into consideration
6	testimony in your report you don't know why the change was	6	this physical mechanics of spring discharge being affected by
7	made?	7	pool height, all of a sudden all these measurements tend to
8	A. No, we don't. There's no records of exactly when	8	tend to make more sense, I'll put it that way.
9	or why that was that was done.	9	There's not as big well, you can now explain
10	Q. So did you investigate that at all, why that was	10	physically the disparity between 1965 measurements and
11	done?	11	measurements that we have from and observations from the
12	A. I have my I have my theories about why it	12	period of 1937 or '40s, from the period that we have the
13	could have been done. I will say that no renter is going to	13	earlier accounts or information on springs. So 1940s and
14	put effort in and do work to worsen his ability to irrigate	14	prior.
15	land.	15	If you understand that the dam and the pool level
16	So some type of modification was made to help him	16	changed between those two historical time periods, that
17	manage water on the ranch; he wouldn't have done it otherwise.	17	explains why in 1965 you go out and you're measuring 7 CFS
18	So at some point he was able to better manage the water, get	18	when 50 years ago they might have been measuring 12 or
19	the water deliveries into his ditches and onto the lands that	19	observing 12 as an average.
20	he was trying to irrigate.	20	So yes, this this is a physical mechanism to
21	Now, why did he make those why did he feel	21	explain that.
22	that was necessary? Probably had to do with the water	22	Q. So based upon your testimony, that that theory
23	management problem he was having.	23	doesn't explain the difference between Nickerson's visual of
24	Q. Did you did you talk to Witts Bailey about why	24	12.5 to 15 CFS versus Payne's visual of 8 CFS or a little more
	Page 487		Page 489
1	that happened?	1	in 1012: does it?
2	A. I've never talked to him no	2	A It prohably describ but again we have a
3	O. Okay.	3	reference on as you mentioned, that when Deven in direct t
4	A. By the way, we're talking about changes that were	4	the dam was breached there's no mention that the dam was
5	a hundred years ago potentially, because we know in 1920 it	5	actually breached by Nickerson who was there in Moreh prior
6	looks like conditions are lower. 1912 matches we don't	6	but without accurately knowing what the pool store was we
7	know when this happened.	7	don't know for certain. It we just don't know for certain
8	It appears in the 1946 aerial photography.	8	I think the issue back in those two 1912 time frame
9	which the resolution which we have questioned. It is what	9	measurements is really just visual estimating error
10	it is. It's what we have. It appears in the 1946 photography	10	Q. Well, or a difference in observed flows based
11	that that land mass may still be showing up. I can't conclude	11	upon what was going on in the pond at the time: right? Or the
12	that entirely. But we know that by 1965 Harrill is reporting	12	discharge at the time based upon your factors that you listed
13	the conditions that are consistent with ground conditions	13	in your first report; is that correct?
14	today.	14	A. Well, there could be some physical explanation
15	Q. So if you don't know when it occurred and it	15	also, but again I attribute it more to observation error.
16	could have occurred in the last 100 years, it could have	16	error in making a visual estimate of discharge. But there
17	possibly according to you impacted all the measurements in the	17	could have been some physical issues, changes also that
18	last 100 years; is that correct?	18	explain some of the difference, it's possible.
19	A. Not all the measurements. All the discharge.	19	Q. Right. All the information, I believe you
20	Q. All the discharge	20	testified that this would still apply in pre-1905. The
21	A. The discharge quantity from the pond, yes, could	21	discharge may differ depending upon whether well, this says
22	have been affected post-1920. Whenever this happened, all the	22	the northern or southern diversions were being used, how
23	discharge from the pond could have and I believe did affect	23	measurements are made, how the pond level and diversion
24	the discharge out of the pond.	24	outflows are being managed; correct?

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	L A. Yes.		• And that was also after the tranch had have
	2 Q. And that could affect the difference between		e excavated as I believe either Mr. Harrill or Mr. Eakin
	Payne and Nickerson; is that correct?	3	reported?
	A. Well, again I have trouble going that far with	4	A. Yes.
1	it, Miss Peterson. And the reason is is because but we	5	Q. Is that correct?
	don't we don't understand the ground conditions well	6	A. That's correct.
	enough.	7	Q. Now, you talked about the General Moly
8	A breach down, was it just that the dam was	8	groundwater flow model that you had developed for your work
9	overtopping and the pond level was still high but it was just	9	here in Diamond Valley; do you recall that testimony?
10	overtopping, or was it a deep cut breach. We just don't	10	A. I mentioned that I was the author of that and
11	understand that. If it was just overtopping, yeah, the pond	11	that was in approximately 2010.
12	could have been higher, and the discharge is less than when	12	Q. And did you use in your modeling did you input
13	Nickerson was out and the gates were all open and all the	13	values for Big Shipley Spring into your model?
14	water was discharging out the pond level was lower. That	14	A. Yes. My model time period started going off
15	Could be an explanation.	15	of memory started approximately 1964 forward. So yes, we
17	If we had more detail on what Mr. Payne observed	16	used Harrill's measurements here in the calibration of our
19	any detail to work with	17	flow model.
19	And then directing your attention to Eaclibit 4400	18	Q. And so you used based upon my reading of
20	A Ves	19	Table 4.1-2 of your model, that you used 6.02 CFS for the
21	O And page 31?	20	predevelopment flow for Big Shipley Spring in your model?
22	A. Yes.	21	MR. RIGDON: Objection.
23	O. And those are some measurements that were made	22	MB. PETERSON: Does that sound about right?
24	for Shipley Hot Springs and you testified that in a year	24	document she's referring to, whether it's an Exhibit in the
	Page 491		Page 493
1	Shipley Hot Springs had decreased 1 CES: do you recall that	1	
2	testimony?	2	MS PETERSON Mar Laborater
3	A. Yes.	2	General Moly exhibit or the General Maly we define
4	Q. And then you also noted that Indian Camp was the	4	record here
5	unnamed the spring designated "unnamed" on that chart in	5	MR RIGDON: Okay Then I would abject to her
6	the middle; is that correct?	6	using it
7	A. Yes.	7	MS. PETERSON' This is impeachment Your Honor
8	Q. And Indian Camp, just to get the Judge oriented,	8	I could ask questions to impeach the witness as to his - the
9	Indian Camp is closer to southern Diamond Valley, the farming	9	veracity of his opinion regarding the flows of Shinley Hot
10	district; is that correct?	10	Springs.
11	A. I believe it's about two miles south of Shipley	11	THE COURT: Let's introduce that into the record
12	Hot Spring. We probably have some exhibits to where that's	12	then.
13	pointed out.	13	MS. PETERSON: Okay. These are my notes. I can
14	Q. But it's closer to pumping any underground	14	get the table I could definitely get the table and we can
15	pumping that would have commenced in southern Diamond Valley;	15	introduce that if that's what counsel wants. I'm just asking
16	is that correct?	16	the witness if he remembers.
17	A. Yes.	17	He remembers he did remember that he put the
10	Q. And you will note that between '65 and '66 the	18	flows in.
120	Cro for Indian Camp actually increased in that time period; do	19	MR. RIGDON: You can ask him what he remembers,
21	A Ves Between December to A. 'I. D.	20	but without the Exhibit in the record, or offering the
22	of '65 to April of '66 there was an ingener	21	Exhibit, the entire model Exhibit, I would object.
23	About 24 percent we calculate?	22	THE COURT: Go ahead and ask your question if he
24	A. Yes Yes	23	remembers.
<u> </u>		24	MS. PETERSON: Okay.

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11	<b>HE RELATIVE RIGHTS IN AND TO ALL WATERS</b>		September 30, 2021
	Page 494		Page 496
	BY MS. PETERSON:	1	MR RIGDON. Okay
	0. Mr. Smith, do you remember putting values in for	2	BY MS PETERSON
3	Big Shipley Spring into the groundwater model?	3	0 Was the highest historic spring discharge
4	A. The model Big Shipley Spring is not input	4	measurement for Big Shipley Spring provided in your model
5	value, it's a calibration target.	5	report 8.62 CFS?
6	So Big Shipley Spring is represented by what we	6	A. That should have been data that was published by
7	call a drain in the model, and we try to calibrate that drain	7	the USGS. So the highest flow from Shipley Hot Spring was
8	to discharge at a certain volume. So that now, keep in	8	record in the 1980s and it was up around 8.2 or 8.3 CFS in the
9	mind this was work that I did in the time frame of 2008 to	9	1880s 1980s, excuse me.
10	2010 so before I really had started to do a lot of work and	10	So when we're calibrating our model I put in all
11	research on specifically Shipley Hot Spring. We were starting	11	the data that's available to us over time. So that's all the
12	to make physical measurements out there.	12	available data from the USGS that was our data calibration
13	But our assumptions in the model for Diamond	13	source for the model. Plus our measurements that we did from
14	Valley is that there was a steady state condition, and I	14	2008 forward. That's what's in the model to try to match when
15	apologize, I can't remember the exact date, 1950, 1960, we had	15	we're trying to calibrate the model.
16	some type of time frame that correlated pretty well with when	16	So yeah, I do recall there were values, actual
17	we started to get a lot of data for the valley, which was when	17	measurements from Shipley Spring at about 8.2 or 8.3 CFS made
18	the USGS was doing their studies and they really had in	18	by the USGS in the 1980s. That would have been a calibration
19	(indiscernible) '60s.	19	target for the model.
20	So from that point forward we have data to	20	Q. And are you familiar with the USGS report that
21	calibrate a model. The model doesn't run back to 1905, and	21	was prepared for Diamond Valley that came out in around 2013
22	quite honestly, back then we were just taking existing data	22	or 2014?
23	without a lot of thought and using that for calibration	23	A. Is that was that authored by Dave Berger?
24	targets.	24	Q. Yes, that was authored by David Berger.
-		-	
	Page 495	150	Page 497
1	So where I have been subsequent to that though is	1	A. I'm familiar with that report. Now, I haven't
2	we spent a lot of additional time looking at, discussing,	2	read it for several years, but I read it when it came out.
3	thinking about Shipley Hot Spring. This level of research was	3	Q. Do you recall
4	not done for development of that numerical flow model.	4	MR. RIGDON: Your Honor, could I ask if this
5	Q. Was predevelopment flow for Big Shipley Springs	5	Exhibit is in the record?
6	simulated by the model at 6.02 CFS?	6	MS. PETERSON: I believe this is in the record
7	A. That might have been the value that was coming	7	from the mitigation hearing.
8	out. Now, keep in mind also we can never exactly match what	8	MR. RIGDON: Okay. Could you give me the Exhibit
9	our targets are, but that very well could be what was	9	number?
10	simulated in the model.	10	MS. PETERSON: Do you want me to do that right
12	Q. And was the highest historic spring discharge	11	now?
12	measurement for Big Shipley Spring provided in your model	12	MR. RIGDON: Sure.
13	MP RICDON: Again Labiast If the must to	13	MS. PETERSON: Your Honor, could I have a minute.
10	mic. KIODON: Again, I object. If she wants to	14	THE COURT: You may.
16	MS_PETERSON: I'm asking if he remembers	15	MS. PETERSON: Your Honor, I don't know how much
17	MB. RIGDON: But reading off of her notes is not	10	unle you want to spend on this, but I will try to find all
18	is nutting evidence into the record. She's testifying	10	our hearing exhibits in front of the State Frank
19	nutting evidence that's not in the record and she doesn't even	10	objections to the Preliminary Order of Determineties
20	have the document here	20	The index that I have in front of me from the
21	MS. PETERSON: Your Honor I'm entitled to ack	21	State Engineer's office just gave files of even hody's
22	questions to impeach the witness.	22	listed that there was a file with Fureka Country's avhibits on
23	THE COURT: The objection is overniled I'm	23	it. So I don't have my computer so that I can open the file
24	going to allow the question to be asked.	24	you know what I mean, to get that number of our Exhibit but I
	·	1 ° -	, be be and hander of our Exhibit, out I

Page 499         Page 500           1 can come back, if you have want to give me some time to be able to do that or         a pring was based upon the size of the pipe; is that correct?           2 able to do that or         THE COURT: Here's the Court's ruing. If its in the record, the Court bill ow any testimony with respect to that document, the Court bill eves it could be reasonably on the right of the pipe; is that correct?           6 that document, the Court bill eves it could be reasonably anticipated as discovery in his case, provide it to the other it to the discharging out.         for the yot, state of the pipe; is that correct?           7 mill to doary?         MR. RIGDON: Yeah, how late are we going to go the full with the reasonable.         for the yot, state of the pipe; is that would you agree with that?           10 doary?         THE COURT: If dike to finish Mr. Smith.         THE COURT: Path (are at right. Don't want to, the revers in recent conditions.           13 THE COURT: We have all the counsel, all the sparties, the witness on the witness stand under oath.         for the yot, were inon?           14 MR. RIGDON: Yeah, how late are we going to in passibly what could have been oreveed through those two pipes cound wave the pipe, is that spart in the state or a pring with regard to patting this pipe in, is that           14 MR. FIEREXON: Thank you, Your Hono.         1           15 Data MR. RIGDON: The sort, work, which number?         2           16 Courrer: The sort, work, work it has no we don the pipe sizes and my estimate or pripasing with regard to patting his pipie in; is that <th>11</th> <th>HE RELATIVE RIGHTS IN AND TO ALL WATERS</th> <th></th> <th>September 30, 2021</th>	11	HE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 2021
1         can come back, if you have want to give me some time to be able to do that or		Page 49	в	Page 500
<ul> <li>a able to do that or 3 THE COURT: Here's the Court's ruling. If it's in the record, the Court will not allow any testimony with respect to that document, the Court believes it could be reasonably of that document, the Court believes it could be reasonably of that document, the Court believes it could be reasonably of the document, the Court's in this case, provide it to the other side. The happy to take a 5 to 10-minute recess. I'm good on time.</li> <li>M.R. RIGDON: Yeah, how late are we going to go it to dary? THE COURT: Yeah, how late are we going to go it to dary? THE COURT: Yeah, how late are we going to go it to dary? THE COURT: Yeah, how late are we going to go it to dary? A. Neal. Not all prices.</li> <li>A. Well, whether it could have been ditches, and there we spipes, by the way, in 1905, but 10 A. Well, whether it could have been ditches, and there we spipes, by the way, in 1905, but 11 COURT: Yeah, how late are we going to go M. R. RIGDON. Courts: I'll drive at night. Don't want to, M. S. PETERSON: Thank you, Your Honor. I 2 approximation on spring discharge pre-1905 on what I 3 approximation on spring discharge pre-1905 on what I 4 ocures in recent conflutions. 1 approximation on spring discharge pre-1905 on what I 5 approximation on the spring Number 2? 3 A. Yeah. 5 approximation on the spring Number 2? 4 A. Yeah. 5 approximation on the spring Number 2? 5 approximation on the spring Number 2? 5 app</li></ul>		1 can come back, if you have want to give me some time to be	.   1	spring was based upon the size of the pipe: is that correct?
3       THE COURT: Here's the Court's uning. If it's <ul> <li>in the record you can question about it. If it's not in the         <ul> <li>in the record you can question about it. If it's not in the             <ul></ul></li></ul></li></ul>		2 able to do that or	2	A. Yes, that's my recollection is and I
<ul> <li>4 in the record you can question about it. If it's not in the record, the Court will not allow any testimony with respect to that document, the Court believes it could be reasonably of anticipated as discovery in this case, provide it to the other as dock. The process of the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as to 10-minute recess. I'm good on the value as the other to could have been diches, and the was pipes, by the way, in 1905, but</li></ul>		3 THE COURT: Here's the Court's ruling. If it's	3	apologize, I can't remember the pipe diameters, but they're
5       record, the Court will not allow any testimenty with respect to that document, the Court believes it could be reasonably anticipated as discovery in this case, provide it to the other of time.       5       approximation of what might have been discharging out.         6       that document, the Court believes it could be reasonably anticipated as discovery in this case, provide it to the other other was pipes, by the way, in 1905, but -       2         10       MR. RIGDON: Yeah, how late are we going to go the wintes of the wintes stand under oath.       A. Well, whether it could have been disches, and there was pipes, by the way, in 1905, but -         12       THE COURT: I'l drive at night. Don't want to, 1's but I will.       A. Not all. Not all piping.         14       there was pipes, by the way, in 1905, but -       2         15       but I will.       A. Not all. Not all piping.         16       Court's in recess.       16         17       (Recess.)       16       basing my estimate on a spring discharge pro-1905 on what I's courd base were on a spring discharge pro-1905 on what I's courd base.         18       THE COURT: We have all the coursel, all the test was pipes, by the way, in 1905, but -       2       Q. Or What ('any, configurations were done to the 2's spring with regard to putting this pipe in, is that -         12       appreciate the indulgence.       9       9       9       Q. Would you agree with that?         2       Court's in recess.       10 </td <td></td> <td>in the record you can question about it. If it's not in the</td> <td>4</td> <td>pretty small. And so that was kind of the basis for my</td>		in the record you can question about it. If it's not in the	4	pretty small. And so that was kind of the basis for my
<ul> <li>6 that document, the Court believes it could be reasonaby</li> <li>7 anticipated as discovery in his case, provide it to the other</li> <li>9 time.</li> <li>10 MR. RIGDON: Yeah, how late are we going to go</li> <li>11 today?</li> <li>12 THE COURT: I'd like to finish Mr. Smith.</li> <li>13 MR. RIGDON: Okay. Tru ip for a break then.</li> <li>14 THE COURT: I'll drive at night. Don't want to,</li> <li>15 but I wil.</li> <li>16 Court's in recess.</li> <li>17 (Recess.)</li> <li>18 THE COURT: Sere.</li> <li>14 document so I will move on.</li> <li>15 A. Ifte COURT: Stree.</li> <li>14 document so I will move on.</li> <li>15 MR. RIGDON: I'm sorty. which number?</li> <li>16 A. I'complies).</li> <li>17 A. Yes.</li> <li>18 YMS. PETERSON:</li> <li>19 PATERSON: 153.</li> <li>14 COURT: No, 153, correet?</li> <li>14 A. RIGDON: I'm sorty. which number?</li> <li>15 A. I complies).</li> <li>16 A. I call it a cistem. It's called out as a</li> <li>17 COURT: No, 153, correet?</li> <li>18 YMS. PETERSON:</li> <li>11 BY MS. PETERSON:</li> <li>12 A. Yes.</li> <li>14 Q. And the last page is your conceptual drawing?</li> <li>A. I'complies).</li> <li>15 A. I call it a cistem. It's called out as a</li> <li>16 A. I call it a cistem. It's called out as a</li> <li>17 culvers Shipley Spring Number ??</li> <li>18 Q. Okay. And obviously they didn't have a meta</li> <li>19 prove transformed from sort.</li> <li>10 A. I'call it a cistem. It's called out as a</li> <li>11 convert?</li> <li>12 A. Yes.</li> <li>13 A. Yes.</li> <li>14 D. Ohave any indication of that there was a</li> <li>15 cistem here?</li> <li>16 A. I call it a cistem. It's called out as a</li> <li>16 Courter?</li> <li>17 Convert out as an it's a conceptual</li> <li>18 YMS. PETERSON:</li> <li>19 A. Yes.</li> <li>19 A. Yes.</li> <li>19 A. No. Thes were conceptual really to indicate it's more of a catoon to help visually depict what I'm ity my is not to scale. It's - it's a conceptual</li> <li>17 culver pipe.</li> <li>18 A. I con't know when corrugated metal pipe started to be ant</li></ul>	1	5 record, the Court will not allow any testimony with respect to	5	approximation of what might have been discharging out
7       anticipated as discovery in this case, provide it to the other       7       pre-1905, that wouldn't be a good indicator of what the flow         8       side. Tm happy to take a 5 to 10-minute recess. Tm good on       7       pre-1905, that wouldn't be a good indicator of what the flow         10       MR. RIGDON: Yeah, how late are we going to go       0       A. Well, whether it could have been ditches, and         11       there way pipes, by the way, in 1905, but -       2       0. They were wooden, weren't they?         12       THE COURT: Pd like to finish Mr. Smith.       2       0. They were wooden, weren't they?         13       MR. RIGDON: Okay. Tm up for a break then.       1       1         14       THE COURT: Pd like to finish Mr. Smith.       2       0. They were wooden, weren't they?         15       but I will.       Court's in recess.       1       1         16       basing my estimate on a spring discharge pre-1905 on what I       1         17       (Recess.)       1       1       1         18       THE COURT: We have all the counsel, all the       1       1       1         19       parties, the witness on the witness stand under oath.       1       1       1       0. Or what, if any, configurations were done to the         21       appreciate the indulgence.       2	1	that document, the Court believes it could be reasonably	6	Q. Okay. So if they did haven't any metal nines
<ul> <li>e side. Im happy to take a 5 to 10-minute recess. I'm good on 9 time.</li> <li>MR. RIGDON: Yeah, how late are we going to go</li> <li>MR. RIGDON: Okay. I'm up for a break then.</li> <li>THE COURT: I'd like to finish Mr. Smith.</li> <li>MR. RIGDON: Okay. I'm up for a break then.</li> <li>THE COURT: I'll drive at night. Don't want to,</li> <li>b tut i wil.</li> <li>Court's in recess.</li> <li>Court's in receses.</li> <li>Court's in recess.</li></ul>		7 anticipated as discovery in this case, provide it to the other	7	pre-1905, that wouldn't be a good indicator of what the flow
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10       MR. RIGDON: Yeah, how late are we going to go       10       A. Well, whether it could have been ditches, and         11       today?       11       there was pipes, by the way, in 1905, but -         12       THE COURT: I'd like to finish Mr. Smith.       13       there was pipes, by the way, in 1905, but -         13       MR. RIGDON: Okay. I'm up for a break then.       14       Q. They were wooden, weren't they?         14       THE COURT: I'd like to finish Mr. Smith.       13       A. Not all. Not all piping.         14       Courd's in recess.       14       Q. They were iron?         15       A. Iron. But so we did have piping, but again, I'm         16       Courd's in recess.       16         17       (Recess.)       17       can observe in recent conditions.         18       THE COURT: We have all the counsel, all the       10       So it's based on the pipe sizes and my estimate         19       papreciate the induigence.       12       Q. Or what, if any, configurations were done to the         12       appreciate the induigence.       12       Q. Or what, if any, configurations were done to the         14       Decument so I will move on.       1       Q. Wr. Smith, you if you could turn to Exhibit 153.         15       A. (Complies).       10       Q. And the dist page is your conc	2	9 time.	9	that?
11       today?         12       THE COURT: I'd like to finish Mr. Smith.         13       MR. RIGDON: Okay. I'm up for a break then.         14       THE COURT: I'll drive at night. Don't want to,         15       but I will.         16       Court's in recess.         17       (Recess.)         18       THE COURT: We have all the counsel, all the         19       parties, the witness on the witness stand under oath.         20       Miss Peterson.         21       appreciate the indulgence.         23       THE COURT: Sure.         24       MS. PETERSON: Thank you, Your Honor. I         23       THE COURT: Sure.         24       MS. PETERSON: I was not able to find the         Page 499         Page 499         Page 499       Page 501         1       Q. Mr. Smith, you if you could turn to Exhibit 153.         5       A. (Complies).         6       MR. RIGDON: S13, okay.         9       THE COURT: No, 153; correct?         13       A. Yes.         14       Q. Mat believe you testified that there was a         15       Soi f's not to scale. If's - 1         14       Q. Mat believe you testified that there was	10	MR. RIGDON: Yeah, how late are we going to go	10	A. Well, whether it could have been ditches, and
12       THE COURT: 1/d like to finish Mr. Smith.       12       Q. They were wooden, weren't they?         13       MR. RIGDON: Okay. I'm up for a break then.       13       A. Not all. Not all piping.         14       THE COURT: 1/d drive at night. Don't want to,       14       Q. They were wooden, weren't they?         15       but I will.       Court's in recess.       14       Q. They were wooden, weren't they?         15       but I will.       Court's in recess.       15       A. Icon. But so we did have piping, but again, I'm         16       Court's in recess.       16       basing my estimate on a spring discharge pre-1905 on what I         17       can observe in recent conditions.       16       So it's based on the pipe sizes and my estimate         18       THE COURT: Sure.       20       Or or what, if any, configurations were done to the         21       appreciate the indulgence.       20       Q. Or what, if any, configurations were done to the         23       THE COURT: Thank you.       12       Q. Would you agree with that?       2         24       MS. PETERSON: 143.       12       Q. Would you agree with that?       2         25       A. (Complies).       14       Q. Would you agree with that?       2       A. Yes.         36       MR. RIGDON: 17. sorry, which number?	11	L today?	11	there was pipes, by the way, in 1905, but
13       MR. RIGDON: Okay. I'm up for a break then.       13       A. Not all. Not all piping.         14       THE COURT: I'll drive at night. Don't want to,       14       Q. They were ion?         15       but I will.       14       Q. They were ion?         16       Clourts: in recess.       14       A. Iron. But so we did have piping, but again, I'm         17       (Recess.)       15       A. Iron. But so we did have piping, but again, I'm         18       THE COURT: We have all the counsel, all the       So it's based on the pipe sizes and my estimate         19       parties, the witness on the witness stand under oath.       20       pipes coming out. I'm not suggesting that that's how it was         21       MS. PETERSON: Thank you, Your Honor. I       28       Or what, if any, configurations were done to the         23       THE COURT: Sure.       24       A. Yeah.       24         24       MS. PETERSON: I was not able to find the       Page 499       Page 501         1       Q. Complies).       1       Q. Would you agree with that?         2       Q. Complies).       2       A. We don't know.         3       MR. RIGDON: I'm sorry, which number?       4       I's Exhibit 186.         5       A. (Complies).       6       A. Methe use of the word "conceptual drawing? <td>12</td> <td>2 THE COURT: I'd like to finish Mr. Smith.</td> <td>12</td> <td>Q. They were wooden, weren't they?</td>	12	2 THE COURT: I'd like to finish Mr. Smith.	12	Q. They were wooden, weren't they?
14       THE COURT: I'll drive at night. Don't want to,         15       but I will.         16       Court's in recess.         17       (Recess.)         18       THE COURT: We have all the counsel, all the         19       parties, the witness on the witness stand under oath.         20       Miss Peterson.         21       MS. PETERSON: Thank you, Your Honor. I         23       THE COURT: Sure.         24       MS. PETERSON: I was not able to find the         25       A. Yeah.         26       Will move on.         27       THE COURT: Thank you.         3       BY MS. PETERSON: I was not able to find the         26       M. Smith, you if you could turn to Exhibit 153.         5       A. (Complies).         6       MR. RIGDON: I'm sorry, which number?         7       MS. PETERSON: 153.         20       Ms. RECOURT: No, 153; correct?         21       BY MS. PETERSON: 153.         22       Q. And the last page is your conceptual really to indicate         27       MS. PETERSON: 153.         28       M. RIGDON: 53, okay.         9       THE COURT: No, 153; correct?         13       A. Yes.         29       That wa	13	MR. RIGDON: Okay. I'm up for a break then.	13	A. Not all. Not all piping.
15       but I will.         16       Court's in recess.         17       (Recess.)         18       THE COURT: We have all the counsel, all the         19       parties, the witness on the witness stand under oath.         20       Miss Peterson.         21       MS. PETERSON: Thank you, Your Honor. I         23       THE COURT: Sure.         24       MS. PETERSON: 1 was not able to find the         23       THE COURT: Sure.         24       MS. PETERSON: 1 was not able to find the         25       A. (Complies).         26       M. RidDON: 11 was not able to find the         27       THE COURT: Thank you.         28       Page 499         Page 499       Page 501         1       Q. Would you agree with that?         2       A. (Complies).         3       BY MS. PETERSON: 153.         4       Q. And the use of the word "conceptual" means that it's your theoretical interpretation of what could have the was a 'is' sour theoretical interpretation of what could have 'heysical process that I'm ying to controw the pipe.         18       M. PETERSON: 153.         9       THE COURT: No, 153; correct?         10       A. Teal! it a cistern. It's called out as a to cateon to help visually depict what I'm pips:cally trying to e	14	THE COURT: I'll drive at night. Don't want to,	14	Q. They were iron?
16       Court's in recess.         17       (Recess.)         18       THE COURT: We have all the counsel, all the         19       parties, the witness on the witness stand under oath.         20       Miss Peterson.         21       MS. PETERSON: Thank you, Your Honor. I         23       THE COURT: Sure.         24       MS. PETERSON: I was not able to find the         25       Page 499         26       Q. Or what, if any, configurations were done to the         27       THE COURT: Thank you.         28       Page 499         29       Page 499         20       Q. or what, if any, configurations were done to the         28       spring with regard to putting this pipe in; is that         24       MS. PETERSON: 1 was not able to find the         27       THE COURT: Thank you.         38       MR. RIGDON: 1'm sorry, which number?         4       Q. Mr. Smith, you if you could turn to Exhibit 153.         5       A. (Complies).         6       MR. RIGDON: 1'm sorry, which number?         7       MS. PETERSON: 153.         9       THE COURT: No, 153; correct?         10       MS. PETERSON: 153.         14       Q. And I believe you testified that	15	5 but I will.	15	A. Iron. But so we did have piping, but again, I'm
17       (Recess.)         18       THE COURT: We have all the counsel, all the         19       parties, the witness on the witness stand under oath.         20       Miss Peterson.         21       MS. PETERSON: Thank you, Your Honor. I         22       appreciate the indulgence.         23       THE COURT: Sure.         24       MS. PETERSON: I was not able to find the         Page 499         24       MS. PETERSON: I was not able to find the         Page 499         Page 499         24       MS. PETERSON: I was not able to find the         Page 499         Page 499         Page 499         Page 501         1       document so I will move on.         2       THE COURT: Thank you.         3       BY MS. PETERSON:         4       Q. Mr. Snith, you if you could turn to Exhibit 153.         5       A. (Complies).         6       MR. RIGDON: S3, okay.         9       THE COURT: No, 153; correct?         10       MS. PETERSON: 153.         12       Q. That was Shipley Spring Number 2?         3       A. Yes.         14       Q.	16	Court's in recess.	16	basing my estimate on a spring discharge pre-1905 on what I
16       THE COURT: We have all the counsel, all the       18       So it's based on the pipe sizes and my estimate         19       parties, the witness on the witness stand under oath.       19       on possibly what could have been conveyed through those two         20       Miss PETERSON: Thank you, Your Honor. I       12       appreciate the indulgence.       22         23       THE COURT: Sure.       22       Q. Or what, if any, configurations were done to the         23       THE COURT: Thank you.       24       A. Yeah.         24       MS. PETERSON:       2       Q. Or what, if any, configurations were done to the         23       THE COURT: Thank you.       24       A. Yeah.         24       MS. PETERSON:       2       A. We don't know.         3       Q. Mr. Smith, you if you could turn to Exhibit 153.       5       A. Yes.         4       Q. Mr. Smith, you if you could turn to Exhibit 153.       5       A. Yes.         6       MR. RIGDON: I'm sorry, which number?       7       A. Yes.       8       Q. And the alt page is your conceptual drawing?         7       MS. PETERSON: 153.       5       A. Yes.       8       Q. And the alt correct?         10       MS. PETERSON: 153.       6       Q. And the alt correct?       1       A. Yes.	17	(Recess.)	17	can observe in recent conditions.
<ul> <li>parties, the witness on the witness stand under oath. Miss Peterson.</li> <li>MS. PETERSON: Thank you, Your Honor. I appreciate the indulgence.</li> <li>THE COURT: Sure.</li> <li>MS. PETERSON: I was not able to find the</li> <li>Page 499</li> <li>Corveyed out though in 1905.</li> <li>Or what, if any, configurations were done to the spring with regard to putting this pipe in; is that</li> <li>A. Keather and the second of the provided that there was a tis spring with regard to putting this pipe in; is that</li> <li>Q. Or what, if any, configurations were done to the spring with regard to putting this pipe in; is that</li> <li>Q. Or what, if any, configurations were done to the spring with regard to putting this pipe in; is that</li> <li>Q. Mr. Smith, you if you could turn to Exhibit 153.</li> <li>A. (Complies).</li> <li>MR. RIGDON: I'm sorry, which number?</li> <li>MS. PETERSON: 153.</li> <li>MR. RIGDON: S13, okay.</li> <li>THE COURT: No, 153; correct?</li> <li>BY MS. PETERSON: 153.</li> <li>MS. PETERSON: 153.</li> <li>Q. That was Shipley Spring Number 2?</li> <li>A. Yes.</li> <li>G. A. I call it a cistern. It's called out as a</li> <li>relation to provide the spring of a cartoon to help visually depict what I'm pipe like this in pre-1905; correct?</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm sorry.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>Q. And I believe you estimate of the flow for this</li> </ul>	18	THE COURT: We have all the counsel, all the	18	So it's based on the pipe sizes and my estimate
<ul> <li>Miss Peterson.</li> <li>Miss Peterson.</li> <li>Miss Peterson.</li> <li>Miss Peterson.</li> <li>appreciate the indulgence.</li> <li>THE COURT: Sure.</li> <li>Miss PetersSON: I was not able to find the</li> <li>Page 499</li> <li>Page 499</li> <li>Conveyed out though in 1905.</li> <li>Q. Or what, if any, configurations were done to the</li> <li>spring with regard to putting this pipe in; is that</li> <li>A. Yeah.</li> <li>Page 499</li> <li>Page 501</li> <li>document so I will move on.</li> <li>THE COURT: Thank you.</li> <li>BY MS. PETERSON:</li> <li>Q. Mr. Smith, you if you could turn to Exhibit 153.</li> <li>A. (Complies).</li> <li>M. RIGDON: 17n sorry, which number?</li> <li>M. RIGDON: 133, correct?</li> <li>M. RIGDON: 133, correct?</li> <li>M. RIGDON: 153, okay.</li> <li>THE COURT: No, 153, correct?</li> <li>M. NS. PETERSON: 153.</li> <li>M. RIGDON: 153, okay.</li> <li>THE COURT: No, 153, correct?</li> <li>M. NS. PETERSON: 153.</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>Q. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>G. And the last page is your conceptual drawing?</li> <li>A. Yes.</li> <li>A. Yes.</li> <li>A. Yes.</li> <li>Culvert pipe.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm sorry.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm sorry.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm sorry.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm sorry.</li> <li>A. I don't know when corrugated metal pipe started</li> <li>to be manufactured, I'm</li></ul>	19	parties, the witness on the witness stand under oath.	19	on possibly what could have been conveyed through those two
21       MS. PETERSON: Thank you, Your Honor. I       21       conveyed out though in 1905.         22       appreciate the indulgence.       22       Q. Or whai, if any, configurations were done to the         23       THE COURT: Sure.       21       conveyed out though in 1905.         24       MS. PETERSON: I was not able to find the       23       spring with regard to putting this pipe in; is that         24       MS. PETERSON:       2       A. Yeah.         2       THE COURT: Thank you.       3       Q. Mould you agree with that?         2       THE COURT: Thank you.       3       Q. And the directing your attention to your report.         4       U. Mr. Smith, you if you could turn to Exhibit 155.       A. (Complies).       3       Q. And the directing your attention to your report.         4       It's Exhibit 186.       5       A. Yes.       6       Q. And the use of the word "conceptual drawing?         7       MS. PETERSON: 153.       8       Q. And the use of the word "conceptual drawing?       7       A. Yes.       8         9       THE COURT: No, 153; correct?       9       14       A. No. These were conceptual really to indicate         12       Q. That was Shipley Spring Number 2?       11       A. No. These were conceptual maxing.       13         14       Q	20	Miss Peterson.	20	pipes coming out. I'm not suggesting that that's how it was
22       appreciate the indulgence.       22       Q. Or what, if any, configurations were done to the         23       THE COURT: Sure.       23       spring with regard to putting this pipe in; is that         24       MS. PETERSON: I was not able to find the       Page 499       Page 501         1       document so I will move on.       1       Q. Would you agree with that?       2         2       THE COURT: Thank you.       3       Q. And then directing your attention to your report.         4       Q. Mr. Smith, you if you could turn to Exhibit 153.       A. We don't know.         5       A. (Complies).       5       A. Yes.         6       MR. RIGDON: Tm sorry, which number?       7       A. Yes.         7       MS. PETERSON: 153.       7       A. Yes.         8       MR. RIGDON: 153, okay.       8       Q. And the last page is your conceptual 'means that         9       THE COURT: No, 153; correct?       9       it's your theoretical interpretation of what could have         10       MS. PETERSON:       13.       A. No. These were conceptual really to indicate         12       Q. And thelive you testified that there was a       15       is's nort to scale. It's         14       Q. And I belive you testified that there was a       16       drawing, a schematic of a p	21	MS. PETERSON: Thank you, Your Honor. I	21	conveyed out though in 1905.
23       THE COURT: Sure.         24       MS. PETERSON: I was not able to find the         24       MS. PETERSON: I was not able to find the         24       MS. PETERSON: I was not able to find the         24       MS. PETERSON: I was not able to find the         25       THE COURT: Thank you.         3       BY MS. PETERSON:         4       Q. Mr. Smith, you if you could turn to Exhibit 153.         5       A. (Complies).         6       MR. RIGDON: 17m sorry, which number?         7       MS. PETERSON: 153.         8       MR. RIGDON: 53, okay.         9       THE COURT: No, 153; correct?         10       MS. PETERSON: 153.         11       BY MS. PETERSON: 153.         12       Q. That was Shipley Spring Number 2?         13       A. Yes.         14       Q. And I belive you testified that there was a         15       so it's really just a - has - it's a conceptual         16       A. I call it a cistern. It's called out as a         17       culvert pipe.         18       Q. Okay. And obviously they didn't have a metal         19       pipe like this in pre-1905; correct?         20       A. I don't know when corrugated metal pipe started         21 </td <td>22</td> <td>appreciate the indulgence.</td> <td>22</td> <td>Q. Or what, if any, configurations were done to the</td>	22	appreciate the indulgence.	22	Q. Or what, if any, configurations were done to the
24       MS. PETERSON: I was not able to find the       24       A. Yeah.         Page 499       Page 501         1       document so I will move on.       1       Q. Would you agree with that?         2       THE COURT: Thank you.       3       Q. And then directing your attention to your report.         4       Q. Mr. Smith, you if you could turn to Exhibit 153.       3       Q. And then directing your attention to your report.         4       It's Exhibit 186.       5       A. Yes.         6       MR. RIGDON: 17m sorry, which number?       6       Q. And the last page is your conceptual drawing?         7       MS. PETERSON: 153.       7       A. Yes.         8       MR. RIGDON: 53, okay.       8       Q. And the use of the word "conceptual" means that         9       THE COURT: No, 153; correct?       8       Q. And the use of the word "conceptual really to indicate         12       Q. That was Shipley Spring Number 2?       11       A. No. These were conceptual really to indicate         13       A. Yes.       13       physically trying to explain. So it's not to scale. It's14         14       Q. And I believe you testified that there was a       15       So it's really just a has it's a conceptual         16       A. I call it a cistern. It's called out as a       16       Grawing,	23	THE COURT: Sure.	23	spring with regard to putting this pipe in; is that
Page 499Page 5011document so I will move on.1Q. Would you agree with that?2THE COURT: Thank you.3Q. And then directing your attention to your report.4Q. Mr. Smith, you if you could turn to Exhibit 153.I's Exhibit 186.5A. (Complies).5A. Yes.6MR. RIGDON: 1'm sorry, which number?7MS. PETERSON: 153.7MS. PETERSON: 153.6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9i's your theoretical interpretation of what could have10MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.11A. No. These were conceptual really to indicate14Q. And I believe you testified that there was a15So it's really just a - has - it's a conceptual16A. I call it a cistern. It's called out as a10Conceptual metal jujes ta - has - it's a conceptual19pipe like this in pre-1905; correct?20A. I don't know when corrugated metal pipe started14to be manufactured, I'm sorry.20Q. And the way indication that it was pre-1905?24Q. And I believe you restimate of the flow for this21A. Again, it was not intended to be an accurate to24Q. And	24	MS. PETERSON: I was not able to find the	24	A. Yeah.
Page 5011document so I will move on.2THE COURT: Thank you.3BY MS. PETERSON:4Q. Mr. Smith, you if you could turn to Exhibit 153.5A. (Complies).6MR. RIGDON: I'm sorry, which number?7MS. PETERSON: 153.8MR. RIGDON: 53, okay.9THE COURT: No, 153; correct?10MS. PETERSON: 153.11BY MS. PETERSON: 153.12Q. That was Shipley Spring Number 2?13A. Yes.14Q. And I believe you testified that there was a15cistern here?16A. I call it a cistern. It's called out as a17pipe like this in pre-1905; correct?18Q. Okay. And obviously they didn't have a metal19pipe like this in pre-1905; correct?20A. I don't know when corrugated metal pipe started21to be manufactured, I'm sorry.22Q. Do you have any indication that it was pre-1905?23A. I do not.24Q. And I believe you restimate of the flow for this	-	Dage 400	-	
1document so I will move on.1Q. Would you agree with that?2THE COURT: Thank you.3Q. Mcl Smith, you if you could turn to Exhibit 153.3Q. And then directing your attention to your report.4Q. Mr. Smith, you if you could turn to Exhibit 153.4It's Exhibit 186.3Q. And then directing your attention to your report.4Q. Mr. Smith, you if you could turn to Exhibit 153.4It's Exhibit 186.5A. Yes.6MR. RIGDON: I'm sorry, which number?6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10happened; is that correct?11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a15So it's really just a has it's a conceptual15cistern here?15So it's really just a has it's a conceptual16A. I call it a cistern. It's called out as a16drawing, a schematic of a physical process that I'm trying to17culvert pipe.18Q. And there's no water level elevations on this; is19pipe like this in pre-1905; correct?19 <td< td=""><td></td><td>Fage 499</td><td></td><td>Page 501</td></td<>		Fage 499		Page 501
2THE COURT: Thank you.2A. We don't know.3BY MS. PETERSON:3Q. And then directing your attention to your report.4Q. Mr. Smith, you if you could turn to Exhibit 153.3Q. And then directing your attention to your report.5A. (Complies).4It's Exhibit 186.5A. (Complies).5A. Yes.6MR. RIGDON: I'm sorry, which number?6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10MS. PETERSON: 153.10happened; is that correct?11BY MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a16drawing, a schematic of a physical process that I'm trying to15So it's really just a has it's a conceptual16drawing, a schematic of a physical process that I'm trying to15Q. Okay. And obviously they didn't have a metal16drawing, a schematic of a physical process that I'm trying to16A. I don't know when corrugated metal pipe started18Q. And there's no water level elevations.19pipe li	1	document so I will move on.	1	Q. Would you agree with that?
3BY MS. PETERSON:3Q. And then directing your attention to your report.4Q. Mr. Smith, you if you could turn to Exhibit 153.It's Exhibit 186.5A. (Complies).5A. Yes.6MR. RIGDON: I'm sorry, which number?6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10MS. PETERSON:10happened; is that correct?11BY MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a14basically it's not to scale. That's the big thing.15cistern here?15So it's really just a has it's a conceptual16A. I call it a cistern. It's called out as a16drawing, a schematic of a physical process that I'm trying to17culvert pipe.18Q. And there's no water level elevations on this; is19pipe like this in pre-1905; correct?20A. No, it's not to scale; no elevations.20A. I don't know when corrugated metal pipe started18Q. And there's no water level elevations over time to support your22Q. Do you have any	2	THE COURT: Thank you.	2	A. We don't know.
<ul> <li>4 Q. Mr. Smith, you if you could turn to Exhibit 153.</li> <li>5 A. (Complies).</li> <li>6 MR. RIGDON: I'm sorry, which number?</li> <li>7 MS. PETERSON: 153.</li> <li>8 MR. RIGDON: 53, okay.</li> <li>9 THE COURT: No, 153; correct?</li> <li>9 MS. PETERSON: 153.</li> <li>10 MS. PETERSON: 153.</li> <li>11 BY MS. PETERSON:</li> <li>12 Q. That was Shipley Spring Number 2?</li> <li>13 A. Yes.</li> <li>14 Q. And I believe you testified that there was a</li> <li>15 cistern here?</li> <li>16 A. I call it a cistern. It's called out as a</li> <li>17 culvert pipe.</li> <li>18 Q. Okay. And obviously they didn't have a metal</li> <li>19 pipe like this in pre-1905; correct?</li> <li>10 A. I don't know when corrugated metal pipe started</li> <li>11 to be manufactured, I'm sorry.</li> <li>12 Q. Do you have any indication that it was pre-1905?</li> <li>13 A. I do not.</li> <li>24 Q. And I believe your estimate of the flow for this</li> </ul>	3	BY MS. PETERSON:	3	Q. And then directing your attention to your report.
5A. (Complies).5A. Yes.6MR. RIGDON: I'm sorry, which number?6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10MS. PETERSON: 153.10happened; is that correct?11BY MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a14basically it's not to scale. That's the big thing.15cistern here?15So it's really just a has it's a conceptual16A. I call it a cistern. It's called out as a16drawing, a schematic of a physical process that I'm trying to17culvert pipe.18Q. And there's no water level elevations on this; is19pipe like this in pre-1905; correct?10A. No, it's not to scale; no elevations.21Q. Do you have any indication that it was pre-1905?21A. No, it's not to scale; no elevations.22Q. Do you have any indication that it was pre-1905?22A. Again, it was not intended to be an accurate to23A. I do not.23A. Again, it was not intended to be an accurate to24<	4	Q. Mr. Smith, you if you could turn to Exhibit 153.	4	It's Exhibit 186.
6MR. RIGDON: 1m sorry, which number?6Q. And the last page is your conceptual drawing?7MS. PETERSON: 153.7A. Yes.8MR. RIGDON: 53, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10MS. PETERSON: 153.10happened; is that correct?11BY MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual really to indicate13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a14basically it's not to scale. That's the big thing.15cistern here?15So it's really just a has it's a conceptual16A. I call it a cistern. It's called out as a16drawing, a schematic of a physical process that I'm trying to17culvert pipe.17convey and explain.18Q. Okay. And obviously they didn't have a metal18Q. And there's no water level elevations on this; is19pipe like this in pre-1905; correct?20A. No, it's not to scale; no elevations.21Q. Do you have any indication that it was pre-1905?23A. I do not.23A. I do not.23A. Again, it was not intended to be an accurate to24Q. And I believe your estimate of the flow for this24scale drawing. It's again a cartoon representation of a <td>5</td> <td>A. (Complies).</td> <td>5</td> <td>A. Yes.</td>	5	A. (Complies).	5	A. Yes.
<ul> <li>MS. PETERSON: 153.</li> <li>MR. RIGDON: 53, okay.</li> <li>THE COURT: No, 153; correct?</li> <li>MS. PETERSON: 153.</li> <li>BY MS. PETERSON: 153.</li> <li>BY MS. PETERSON: 153.</li> <li>BY MS. PETERSON: 153.</li> <li>M. Yes.</li> <li>Q. That was Shipley Spring Number 2?</li> <li>A. Yes.</li> <li>Q. And I believe you testified that there was a</li> <li>to istern here?</li> <li>G. A. I call it a cistern. It's called out as a</li> <li>Culvert pipe.</li> <li>Q. Okay. And obviously they didn't have a metal</li> <li>Q. Okay. And obviously they didn't have a metal</li> <li>Q. Okay. And obviously they didn't have a metal</li> <li>Q. Okay. And obviously they didn't have a metal</li> <li>Q. Okay. And obviously they didn't have a metal</li> <li>Q. Do you have any indication that it was pre-1905?</li> <li>A. I do not.</li> <li>Q. And I believe your estimate of the flow for this</li> <li>Y A. Yes.</li> <li>A. Yes.</li> <li>B. Q. Okay. And obviously they didn't have a metal</li> <li>Q. And there's no water level elevations on this; is</li> <li>Pipe like this in pre-1905; correct?</li> <li>A. I do not.</li> <li>Q. And I believe your estimate of the flow for this</li> </ul>	6	MR. RIGDON: I'm sorry, which number?	6	Q. And the last page is your conceptual drawing?
8MR. RIGDON: 33, okay.8Q. And the use of the word "conceptual" means that9THE COURT: No, 153; correct?9it's your theoretical interpretation of what could have10MS. PETERSON: 153.10happened; is that correct?11BY MS. PETERSON:11A. No. These were conceptual really to indicate12Q. That was Shipley Spring Number 2?11A. No. These were conceptual value depict what I'm13A. Yes.13physically trying to explain. So it's not to scale. It's14Q. And I believe you testified that there was a14basically it's not to scale. That's the big thing.15So it's really just a has it's a conceptual16A. I call it a cistern. It's called out as a16drawing, a schematic of a physical process that I'm trying to19pipe like this in pre-1905; correct?19that correct?20A. I don't know when corrugated metal pipe started20A. No, it's not to scale; no elevations.21Q. Do you have any indication that it was pre-1905?21Q. And no water elevations over time to support your22Q. Do you have any indication that it was pre-1905?23A. I do not.2324Q. And I believe your estimate of the flow for this24scale drawing. It's again a cartoon representation of a	17	MS. PETERSON: 153.	7	A. Yes.
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	Page 502	, T	September 30, 2021
			Page 504
	• physical process that I'm trying to explain.	1	or do you have any knowledge of what the increase why there
	may have been in the alluvium is that some st	2	was that increase in the flow of Big Shipley Spring?
4	A No it does not	3	A. I don't know for certain, but there are probably
-	0 That maybe influence any of that hydroulic force	4	two mechanisms that can explain probably at least two
6	that you testified to?	5	mechanisms that could explain it.
7	A. Well I can tell you if we tried to actually to	6	The early mid-1980s we had some very wet years,
8	do a to scale drawing of the spring pool, it's a very complex	1	water years. So we're it could be that there is a bit of a
9	geologic environment	8	lagged response in spring discharge that's purely
10	The limestone rock is only a few feet below the	10	We did de serve enclusive al Addid de serve
11	spring pool itself: in fact, the spring pool is almost right	11	Exhibit and report to track one if the set
12	on the limestone outcrop because we drilled right pert to the	12	between climate and and a disclosure W
13	pool and the limestone is within 20 feet of the land surface	13	statistically significant relationship, but it still
14	outside the pool.	14	exist
15	So limestone bedrock is this flow system, and	15	It also could be that just on these instances
16	there's a very large fracture zone. It's on the actually	16	when they went out, the pond was operating at a lower lovel
17	there's several of them, but one's on the west side of the	17	This is this is a deficiency. Again the USGS measurements
18	spring pool and then there's cross-cutting fault structures.	18	they do a great job but their deficiency is they did not
19	so but in this circumstance, the carbonate limestone rock	19	record the pond height when they made their discharge
20	is right beneath the base of Shipley Hot Spring pool.	20	measurements.
21	Q. And those faults could certainly affect a flow,	21	And that was somewhat of an oversight in my mind
22	couldn't they, into the spring?	22	because if they would have recorded the nord height then we
23	A. They are the conduits through which the flow	23	would know, for example, well, was the pond just operating at
24	occurs.	24	a lower water stage, or is this an effect of wet years that
		1	
	Page 503	-	Data FOT
	Page 503		Page 505
1	Page 503 Q. Or doesn't occur; do you agree?	1	Page 505 we've had subsequently; those are certainly two possibilities
1 2 2	Page 503 Q. Or doesn't occur; do you agree? A. Or doesn't occur if there's not enough head to	1 2	Page 505 we've had subsequently; those are certainly two possibilities of it.
1 2 3	Page 503 Q. Or doesn't occur; do you agree? A. Or doesn't occur if there's not enough head to push water through those fractures.	1 2 3	Page 505 we've had subsequently; those are certainly two possibilities of it. Q. And it's just another variable that may affect
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TH	IE RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 202	1
	Page 506	6	Page 508	Ē
1	helow average			
2	Again I haven't looked in that data in quite a		marked 63 / I because it's not is this, in fact, ruling 6371?	
3	long time	2	A. Yes.	
4	$\Omega$ Are you referring to Exhibit 1842 That's your	6	Q. And if you turn to the page marked at the top	
5	first report	1 2	of puling 6271 where the State Engineer of the located	
6	A. I believe that's the Exhibit I et's see if we		rate of Dig Shipley Spring?	
7	find what I'm looking for	7	A Vec	
8	MR. RIGDON' Which exact page?		A. 165.	
9	MS. PETERSON: It's nage 4		Q. Okay. So let's walk through this. what's the	
10	MR. RIGDON: Four	10	A Section 2 articled "Die Skinlag Specifier	
11	MS. PETERSON: I'm sorry Figure 2	11	nredeveloped flow rate " The State Engineer found in a line	
12	MR. RIGDON: I'm sorry Karen I didn't hear you	12	number 6200 that the likely are ground write development 0	
13	MS. PETERSON: It's page 4	13	for Big Shipley Spring was between 7 and 8 CES "	
14	MR. RIGDON: Page 4.	14	O Okay. So he started out at the year beginning	
15	MS. PETERSON: Figure 2.	15	saving I think it's 7 to 8 CES: right?	
16	BY MS. PETERSON:	16	A Ves based on that reference	
17	Q. Is that the information that you're referring to?	17	$\Omega$ Okay. So then he talks about other springs in	
18	A. Yes, I do see some information in Exhibit 184	18	the area. When we get to page when we get to page 0 is	
19	For example, on page 4 is where we looked at the precipitation	19	when he actually gets to Big Shipley and Indian Comp Springer	
20	records versus Shiplev Hot Spring discharge and could not find	20	is that correct?	l
21	a statistical significance.	21	A Ves	ļ
22	THE COURT: I'm sorry. I didn't hear the last	22	0 Okay And he starts out by $-$ in that last	
23	part of your answer.	23	paragraph on page 9 he starts out by saving agent Payne	
24	THE WITNESS: Where we did not find a statistical	24	reported in 1912 8 CFS or more?	
	Page 507		Page 509	Ì
1	correlation between climate and discharge.	1	A. Correct	ŀ
2	THE COURT: Thank you.	2	O. Okay That's one piece of evidence he looked at:	
3	BY MS. PETERSON:	3	right?	
4	Q. Right. But your testimony was that you thought	4	A. It's one he's referenced in this ruling	ľ
5	you looked at data clear back to 1912 and this shows that the	5	Q. Okay. He next mentions Edgar Sadler, but Edgar	
6	data that you looked at was 1965 to 1994; correct?	6	Sadler didn't actually give a flow rate estimate: right?	
7	A. Yes. This analysis was using the USGS spring	7	Q. Okay. So the third one is this testimony from	
8	discharge data.	8	Bailey that is secondhand hearsay testimony; correct?	
9	MS. PETERSON: That's all we have, Your Honor.	9	MS. PETERSON: Objection, Your Honor. That	
10	Thank you.	10	improperly characterizes the statement in the State	
11	THE COURT: Redirect.	11	Engineer's	
12	MR. RIGDON: Thank you, Your Honor.	12	MR. RIGDON: I'll reword it.	
13	<b>REDIRECT EXAMINATION</b>	13	BY MR. RIGDON:	
14	BY MR. RIGDON:	14	Q. It's a secondhand account from Bailey about what	
15	Q. Mr. Smith, do you recall Mrs. Peterson asked you	15	somebody else told him; correct?	
16	about ruling 6371?	16	A. That's what it appears.	
17	A. Yes.	17	Q. Okay. And then and then he moves on to	
18	Q. Okay. And specifically she was asking you about	18	certain wells on the Siri Ranch. Is there any other mention	
19	whether the State Engineer considered all of the spring	19	in this of any other piece of evidence that the State Engineer	
20	flow all of the spring flow reports that we talked about in	20	looked at before going on to use Harrill as his measurement?	
21	ruling 6371. That's what she asked you about; correct?	21	A. There is not.	
22	A. Yes.	22	Q. Okay. And so he looked at three pieces of	
23	Q. Okay. So if you'll turn in your binder, at the	23	evidence all of which at least on their face confirm his 7 to	
24	very last end we have excerpts from ruling 6371. This is	24	8 CFS and no piece of evidence that didn't confirm his 7 to 8	

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 510 Page 512 1 CFS: correct? 1 proper scientific method and, honestly, being a consultant for 2 A. I would say that his ruling references only those 2 33 years, you know we get accused of this, and I'm very 3 three pieces of information. 3 cautious of projecting the appearance of cherry picking data. Q. Okay. And so then at the end after doing his 4 4 What we strive to do, everybody has their calculation that you describe with Harrill where he tries to 5 5 perspective here, we can ignore it, we try to be objective, I 6 extrapolate (indiscernible) from Harrill, what does he come up 6 don't know if the State Engineer would also in all of his 7 with? 7 rulings, but if you look at it just strictly objectively and 8 A. Well, again, he averages the three Harrill remove yourself from any of the other issues that are out 8 measurements from 1965, 1966. The average of which is 6.80 9 9 there in Diamond Valley and elsewhere and you would simply CFS. And then he adds to that 0.22 CFS for an adjustment 10 10 take and acknowledge, okay, I have a GS report at 11.1 CFS, related to potential well impacts to the flow at the time of 11 11 you know, you can hunt through that document and find out the 12 Harrill's measurements. 12 references and what the basis for that is. Q. Okay. So, and what did he come up with as the 13 You have these other reports and observations, 13 number? 14 and I would say that those aren't as strong of evidence in my 14 15 A. So the total is 6.8 plus 0.22 being 7.02 CFS. 15 mind because they weren't made by a scientist or an engineer. 16 Q. Okay. So he starts with saying, I believe it's 7 16 But at the time, you know, there's no recognition to 8 CFS, looks at three pieces of evidence to corroborate 17 17 of that USGS published value in 1937. I think that should that and then ends up with, see I was right it's 7.02; right? 18 have been factored into consideration. I see no reason why it 18 19 A. That's not exactly --19 should have been excluded from being factored into 20 MS. PETERSON: I just -- I just -- objection, 20 consideration certainly. Your Honor. That's not the proper characterization of the 21 21 And then clock forward to today, I think there's 22 written document another piece of critical information, that's the Nickerson 22 23 THE COURT: Objection sustained. I read it. 23 report. I think you have to factor all those in as 24 MR. RIGDON: Okay. objectively as you can, try to understand the conditions under 24 Page 511 Page 513 BY MR. RIGDON: 1 which the data is being reported and -- and then from there 1 2 Q. But he did -- he totally ignored, or he total 2 render your -- your assessment. 3 didn't mention any other estimates that fell outside of his 7 3 Generally speaking when I'm confronted with 4 to 8 CFS range that he started with? multiple values like this, if I put relatively equal weight on 4 A. He does not reference any of the other 5 5 everything, then I'll average them and say that maybe somebody 6 observations or reports of flow or data in this ruling. was estimating a little high on this day and somebody was 6 7 Q. As a scientist who does this type of work, is 7 estimating them a little low. that the proper scientific method to come up with a conclusion 8 8 Average them together, give the benefit of the 9 and then only look at evidence that supports that conclusion? 9 doubt to all these pieces of information and average them MS. PETERSON: Objection, Your Honor, that is not 10 10 together and it's likely that you are pretty close to the a proper characterization of, if that's intended to be a 11 11 actual value. That's just purely an objective way to, to 12 hypothetical, it's not the proper characterization of what 12 approach this. occurred in this proceeding by the State Engineer. 13 13 I think do you have to look at each piece of 14 THE COURT: The objection is overruled. He can data, assign some weight to it, but again, as it was described 14 15 testify from his training and experience as a professional. 15 in this ruling, there was additional information that was THE WITNESS: Well, I'd like to qualify my 16 16 presented in this hearing. 17 statement first, because this ruling was issued in November of 17 In particular, the USGS data in my mind should 18 2016. So at the time of this ruling, we did not have the have been weighted in the consideration, and if you're going 18 Nickerson evidence that we have today. And, honestly, I think 19 19 to include other apparent evidence like the Rufford Bailey 20 that's pretty significant. 20 testimony of something that he was told from Tiny Sadler, then 21 So -- so that piece of evidence just was, nobody 21 certainly he should be acknowledging all those other reports 22 was aware of it including the State Engineer at the time of 22 of discharge too. 23 this, this ruling. 23 I mean, do they not weight fully in this But otherwise I do find it, I would say that a 24 equation? Why are they absent? I just don't have an 24

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	Page 51	4	Page 516
	1 explanation for it. It just doesn't seem like an objective	1	that calibrates. So but keep in mind this model included
	2 discussion in the ruling of all the data and the evidence of	2	all of Kobeh Valley. Antelone Valley, the southern half of
	3 how to arrive at the best available value, none of us know for	3	Pine Valley and all of Diamond Valley. It's a vory regional
	4 certain trying to use fragments of data and information to	4	scale. It wasn't meant to be very specific tool at the level
2	5 project backwards in time, now almost 120 years, so anyway,	5	that we're scrutinizing Shinley Hot Spring today
	6 that's my perspective as a scientist and an engineer.	6	O. And what was the purpose of that model?
	7 BY MR. RIGDON:	7	A. That was developed for the Mount Home project
	Q. Thank you. And then Miss Peterson also asked you	8	mining project and it was to look at notential impacts forward
	9 in the Final Order of Determination, and I just want to get	9	in time of that proposed end project
10	clarification, she was asking you about the very general	10	O. So that model was trying to project impacts
1:	sentence that the State Engineer considered other data.	11	forward, it wasn't trying to determine what was in existence
1:	2 Did he include any specific analysis of that	12	prior to 1905?
1:	other data?	13	A. Right. We were trying to calibrate the model to
14	A. No specific reference of that information in the	14	current conditions to have an accurate tool to project forward
15	5 (indiscernible).	15	in time to look at potential impacts of pumping groundwater
16	Q. So we don't even know when he says, "other data"	16	for that project.
17	what he means by other data?	17	Q. So you were trying to take a snapshot in time of
18	A. Correct, all though I would caveat that, I think	18	the current conditions and then determine whether that project
19	it's the other data that was presented to him in the hearings.	19	would have any impact on what those current conditions are?
20	Q. Okay. And is it when do you a scientific	20	A. Yeah. We weren't trying to represent historical
21	analysis of, and you get different data points, even the data	21	conditions in the valley. That's part of the calibration
22	points that you're not going to use, do you at least mention	22	process to have a tool that you can then have some confidence
23	them and analyze them and say why you're not going to use	23	in projecting forward in time with continued pumping or
24	them?	24	additional pumping.
$\vdash$		-	
	Page 515	1	Page 517
1	A. Yes. There's certainly occasions where you think	1	Q. Right. But you were looking forward to see what
2	a data point is suspect for whatever reason and it is	2	would be the effects of that project?
3	certainly legitimate at that point to explain the rationale	3	A. Yes.
4	for not including that in that consideration and that happens.	4	Q. Going forward?
5	You have data that's in error. You have data you feel is not	5	A. That was the purpose of that model was to get a
6	reliable for whatever reason.	6	forward look at potential impacts.
17	Q. But you should at least address every single data	7	Q. Okay. Miss Peterson asked you about the small
8	point that you're given?	8	increase in the spring flow at Indian Camp Spring recorded by
9	A. I think in this case, yes. You know, we have a	9	Harrill over the course of four months, I believe it was, when
11	there and place indements in the idea is the intervention of the intervention of the idea indements of the idea in the idea inet inet in the idea in the idea in t	10	you made those two measurements.
12	O Okay And then Mice Between 1 all accordingly.	11	Is there are there unique qualities to Indian
13	Q. Okay. And then Miss Peterson asked you about the	12	Camp Springs, you mentioned earlier that it was different in
14	if I'm wrong, you mentioned something shout you must fur	13	character to Big Shipley Spring that would mean maybe that it
15	Harrill forward	14	would have maybe a different reaction to groundwater
16	Did you did you when you were putting to get or	15	development?
17	that model did you know about or use any information from	10	A. Well I'm sorry, you said groundwater
18	those pre-1950 reports?	10	O No What I and I
19	A. No. At the time I had no knowledge of the	10	Q. NO. what I said was, you mentioned that Indian
20	information. In fact, I wasn't really scrutinizing or	7.2	Spring: correct?
21	studying Shipley Hot Spring. It was simply a resource that	2U 21	
22	was included in a very regional scale model	22	
23	So, we, you know, for us at that time we just	23	Δ Ves
24	used the USGS published data from 1965 forward for the spring	24	O Would the would the different
	, the spining	au 76	2. would lie would the different springs react to

### IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS September 30, 2021 Page 518 Page 520 1 pumping influences in different ways? Q. What do you take to -- what does vacant mean? 1 2 A. Yes. And I would add that they will also react A. It doesn't have a trailer on it. Vacant, yeah, 2 differently to climate and that can include seasonal climate. 3 3 I'm not certain, I guess, I ---4 A lot of more local scale springs that aren't sourced into a 4 Q. Well, let me ask you this. Does -- if you have very large recharge area have very charge flows are very much 5 5 pasture land or meadow land, is that -- can that be considered 6 more sensitive to just seasonal changes in recharge. 6 vacant land? So it's very common we see seasonal highs in 7 7 A. I guess it could be, but it seems like in the 8 spring discharge in the spring and the remaining through the context of vacant would have been maybe -- maybe, you know, 8 summer and the lows in the late fall, just like you would 9 9 noncultivated, but I'm not sure. But it certainly could have surface water resources. 10 been an area of storage or an area that just wasn't, as it 10 But, again, every spring is a bit different in 11 11 wasn't developed, I'm not sure. I'm really not sure. 12 its characteristic and what it responds to. 12 Q. Okay. But there's no way to know just from what 13 Q. Miss Peterson also noted that in Harrill's 13 was in that affidavit? 14 report, he indicated that at the time he was making those 14 A. No. measurements, the pumping only equaled half the perennial 15 15 Q. Okay. 16 yield; do you remember that? MR. RIGDON: That's all I've got, Your Honor. 16 A. Yes. 17 17 THE COURT: Recross, Miss Peterson. Q. Does that have anything to do with whether that 18 MS. PETERSON: Thank you, Your Honor. 18 19 pumping is influencing springs? 19 **RECROSS-EXAMINATION** 20 A. No. The proximity of the pumping is. Proximity, 20 BY MS. PETERSON: 21 and I will also say, the geologic environment that the well is 21 Q. Directing your attention Mr. Smith to, I don't 22 tapped into. know if there's an exhibit number on it, but in my binder it 22 23 So, for example, if the spring is discharging in 23 just says 6371? Limestone rock along a fracture zone and we put a well a few 24 24 MR. RIGDON: Yeah, that's not an exhibit number. Page 519 Page 521 miles away, but right in that same fracture zone, it could 1 It's just the exhibit. 1 have a very immediate effect on that spring. We've seen that 2 2 MS. PETERSON: So this isn't an exhibit in the happen throughout the state and throughout the west. 3 record? 3 But if that same well were to have, if it would 4 MR. RIGDON: No. 6371 is not an exhibit in the 4 have been moved over a fairly short distance and was not 5 5 record. It's an official record of the State Engineer's drilled into that fracture zone, it might have had no impact 6 6 office. 7 to the spring. So it gets very complicated when you talk 7 MS. PETERSON: So we'll be using it because of about spring impacts, pumping impacts to spring discharge. 8 8 that reason? 9 So, proximity, yes, but also geologic 9 MR. RIGDON: We're using it because you brought environment, there are other considerations. As a general 10 10 it up. You opened the door. I didn't mention it at all. 11 rule, though, proximity pumping is usually a (indiscernible). MS. PETERSON: I'll note -- I'll note that it's 11 Q. So, there's no -- there's no general rule you can 12 not on the exhibit list, Your Honor, but I'll move on to my 12 13 follow, there's no reason to believe that keeping pumping 13 questions. under perennial yield is a magic bullet to keep things from 14 THE COURT: All right. Thank you. 14 15 affecting the springs? 15 BY MS. PETERSON: 16 A. Oh, no, no, that's definitely not the case. You 16 Q. So, the ruling, the excerpts that are provided 17 could have a basin that's not pumped at all, one well comes in here, the ruling jumps from page 11 to page 26; is that 17 18 next to a spring and it affects that spring severely. So 18 correct, in this excerpt? that's that is not perennial yield anchored. 19 19 A. Yes. 20 Q. Okay. And then finally, when we look at the So there's 15 pages of the ruling that we don't 20 21 affidavit from Nickerson, Miss Peterson was asking you about 21 know what it says and that you haven't had a chance to review 22 the part of the affidavit where he discusses water flowing with regard to your statements about what's contained in this 22 23 under the vacant land; do you remember that? 23 ruling; is that correct? 24 A. Yes. A. I -- I have read this ruling relatively recently, 24

_	E RELATIVE RIGHTS IN AND TO ALL WATERS		September 30, 20
	Page 52	2	Page 52
1	I haven't committed it to memory, but I I have reviewed	1 : I	A. If he's not going to accept it, please tell us
2	this ruling. But it is, yes, it's correct that it's missing a		2 why.
3	lot of pages in this excerpt that's been provided.		3 Q. You would
4	Q. And there could have been more discussion about	t   4	A because
5	the flow, the State Engineer decided on for Shipley Hot	1.5	5 Q you would have written the ruling differently
6	Springs; is that correct?	e	if you were the State Engineer; would you agree with that?
7	A. I do not recall that discussion being in this	7	A. No. I've read many, many rulings, and I think we
8	ruling.	8	all have probably disagreement. Some and I we're was
9	Q. Okay. You don't know as you sit here today, you	9	saying other aspects of this ruling some of the facts and
10	don't know?	10	interpretations that I presented were, were discussed and not
11	A. Not absolutely, but I don't recall it.	11	agreed upon in this ruling. But it was at least spelled out
12	Q. And you also had some testimony about prior, a	12	so you can understand how how the thought process was to
13	proper scientific method and some allusion to the State	13	get from A to Z, the conclusion.
14	Engineer cherry picking data; do you recall that?	14	I don't find that discussion in this ruling when
15	A. Oh, you know, I was really trying to set the	15	it comes to all the early timeframe observations, reports of
16	stage as far as what I'm always sensitive about my work being	16	discharge that could be interpreted to be pre-1905. I don't
17	criticized for.	17	find that in this ruling.
18	So maybe that was a poor use of terminology,	18	Q. Again, if you were the State Engineer, you would
19	honestly, but it really just appears that the discussion in	19	have written the ruling differently. Would you ago free with
20	the ruling was not objective in the matter of reviewing each	20	that?
21	of the pieces of information that are available and then	21	A. Sure, yes.
22	placing some judgment or weight on them.	22	Q. And do you know if this ruling was appealed by
23	So that is a criticism I have of how this ruling	23	Sadler Ranch to the District Court?
24	has been written.	24	A. I I don't know.
			and the second sec
	Page 523		Page 525
1	Q. And you are a consultant that's your profession;	1	Q. You have no idea whether this ruling was
2	correct?	2	overturned or not by the District Court?
3	A. Yes.	3	A. I don't, no.
4	Q. Have you ever been a State Engineer?	4	Q. Do you have any knowledge of any subsequent
5	A. NO.	5	proceedings, court proceedings involving Sadler Ranch and
6	Q. And the State Engineer is not a consultant, is	6	rulings by the State Engineer and the 7.02 CFS flow rate?
/		7	A. No. You know, my participation is, as I
0	A. NO.	8	testified, I read the rulings, but that's kind of the end of
9	Q. And the State Engineer doesn't write his rulings	9	my participation in the process.
1	A I don't think that's sharehead to be the little	10	So, I'm really not the right person to ask about
2	A. I don't think that's absolutely correct. I think	11	what happened afterwards, so
2	findings, but was pulings are crefted different out	12	Q. Or your your clients' legal position with
ر د. م	somewhat of a legal document and that document	13	regard to the 7.02 CFS rate?
5 (	things besides just technical arrest that and they really other	14	A. I I haven't I don't know. I haven't
ы ( 6 (	the ruling	15	discussed it.
7	But no I think a broader basis and a	16	Q. Were you here for the testimony of Mr. Buschelman
<u></u>	presenting facts and trying to support support	17	yesterday?
я ·	$\Omega$ But the State Engineer is the factor is	18	A. No.
8   9	2. Dut the state Engineer is the factfinder; is that	19	Q. Okay.
81 907	Correct in miling 62719	20	MS. PETERSON: I don't have anything else. Thank
8   9 0 ( 1	Correct, in ruling 6371?	20	,
8   9 0 ( 1 2	A. Yes.	21	you, Your Honor.
.8   9 ( 1 2	A. Yes. Q. And so he gets to decide what evidence he wants	21 22	you, Your Honor. THE COURT: Thank you. This concludes Mr.
8   9 ( 1 2 3 ta	A. Yes. Q. And so he gets to decide what evidence he wants o accept and what evidence he doesn't want to accept; would	21 22 23	you, Your Honor. THE COURT: Thank you. This concludes Mr. Smith's testimony. I didn't ask, were these witnesses

## IN THE MATTER OF THE DE

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	HE RELATIVE RIGHTS IN AND TO ALL WATERS						Septem	ber 30, 2021
	Page 520	6						Page 528
1 :	MR. RIGDON: Were what now?	1						
	2 THE COURT: Were these two witnesses Mr	3						
1 3	Buschelman and Mr. Smith subpoenaed?	4						
4	MR. RIGDON: No.	6	STATE OF NE	svada,	)			
1 5	THE COURT: Okay. So they just appeared, so we	7	CARSON CITY	ζ.	)			
e	don't have to release them from any subpoenas or anything.	8						
7	okay.	9	:	I, Shelli	ie Loomi	8. a trans	ariber in a	the Shaha of
8	MR. RIGDON: No.	10	Nevada, do	hereby	aorti 4	b, a clamp	criber in (	ne state of
9	THE COURT: Very well, so that concludes the	11		nereby	Certi	.y:		
10	testimony here today.	10	T	hat the	foregoin	ig transcri	ipt is a ful	1, true and
11	Let's plan to start at the same time in the	12	correct trans	cription	of sai	d proceed:	ings to the	best of my
12	morning. Let's start at 9:00 a.m. tomorrow morning. And then	13	ability.					
13	you, what I was going to say is I believe you have two more	14	E	ATED: A	t Carson	n City, Ne	vada, this	30th day of
14	witnesses; am I correct?	15	November, 2	021.				
15	MR. RIGDON: Correct.	16						
16	THE COURT: Okay. And, go ahead, go ahead. You	17					SHELLTE T	
17	were going to say something.	18				Sh	ellie Loo	mis, RPR
18	MR. RIGDON: Well, I was going to ask you, I know	19						
19	they haven't been subpoenaed, but are they free to go home							
20	tonight?	20						
21	THE COURT: Absolutely.	21						
22	MR. RIGDON: Okay.	22						
23	THE COURT: They haven't been subpoenaed, they're	23						
24	gone.	24						
-	Page 597							
	1 age 327	1						Page 529
1	MR. RIGDON: Okay.	1				INDE	C	
2	THE COURT: If they want to.	2						
3	MR. RIGDON: Excellent.	3	Witnesses	Di	rect	Cross	Redirect	Recross
4	THE COURT: Sure. Sure. Certainly.	5	Russhal				368	378
	MR. RIGDON: So we have two witnesses tomorrow,	5	Buscheiman					
	they if be very brief. I don't think, at least on my direct,	7	Dwight Smith		383	454	507	520
	THE COUDT: And d	9						
0	anticipating Mr. Titkiw 2. Van de this time, you're	0						
10	but that's a possibility.	10						
11	MS PETERSON: Dessibility	11	m			EXHIBI	TS	( )
12	THE COURT: Okay All sight 111 second (1.4	12	EXALDICS					Received
13	Very well. There's nothing also then the Countle in	12	103					387
14	until 9.00 a m tomorrow morning	14	104					387
15	(Proceedings concluded at 5:41 n m)	15	180					387
16	(Proceedings concluded at 5.41 p.m.)	16						
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(25) sort - steady

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(26) Stearns - test

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9 (4) 282:8;404:18; 508:18,23 9:00 (2) 526:12;527:14 9th (3) 321:1,7;322:3			

# Exhibit 3

# Exhibit 3

Docket 84275 Document 2022-07053

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	1 Case No. CV-2002009	
	$\frac{2}{2} \text{ Dept. No. 2} \qquad \frac{3}{2} \frac{1}{2} $	
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6		
7	IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF	
8	NEVADA, IN AND FOR THE COUNTY OF FUDERA	
9	, THE COUNT OF EURERA	
10	IN THE MATTER OF THE	
11	DETERMINATION OF THE RELATIVE RIGHTS IN AND TO ALL WATERS,	
12	LOCATED WITHIN THE DIAMOND	
13	10-153, EUREKA AND ELKO	
14	COUNTIES, NEVADA	
15		
16	EUREKA COUNTY'S MOTION TO INTERVENE AND NOTICE OF MOTION	
17	EUREKA COUNTY, by and through its counsel of record, ALLISON MacKENZIE, LTD.	
18	and THEODORE BEUTEL, ESQ., the EUREKA COUNTY DISTRICT ATTORNEY, files this	
19	Motion to Intervene in the above-entitled action pursuant to the Court's Order issued December 10,	
20	2020. This Motion is made and based upon Rule 24 of the Nevada Rules of Civil Procedure ("NRCP")	
21	the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.	
22	I.	
24	A bearing on this Maximum to Luce	
25	///	
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27	///	
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	-1-	

## MEMORANDUM OF POINTS AND AUTHORITIES

П.

## A. <u>Introduction.</u>

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EUREKA COUNTY files this Motion to Intervene to ensure it may participate fully in the 4 5 evidentiary hearings to be held in this adjudication on all the exceptions that have been filed in this proceeding and to support the Order of Determination entered by the State Engineer as may be 6 necessary to protect EUREKA COUNTY's interests. First, it is not clear what role the State Engineer 7 will take in this proceeding and whether the State Engineer will be actively defending his Order of 8 Determination based on the evidence presented to him in the adjudication proceedings below. Second, 9 this adjudication involves the adjudication of and will have implications on all waters, both surface 10 and underground, located in the Diamond Valley basin. Because the surface and groundwater systems 11 in Diamond Valley are hydrologically connected, the adjudication and quantification of the senior pre-12 statutory surface water rights necessarily affects junior water right holders in the basin such as 13 EUREKA COUNTY. See Order of Determination, Appendix B, Permitted and Certificated Rights, 14 Underground Rights at 519-541. Further, the judicial decree entered by the Court will subsequently 15 affect all water right holders, both senior and junior, in other matters in the Diamond Valley basin, 16 related to corresponding granting of mitigation rights, groundwater management plans and 17 curtailment. See EUREKA COUNTY's Notice of Exceptions at 13. EUREKA COUNTY's municipal 18 rights in Diamond Valley are used to provide municipal service to its citizens. Every superior priority 19 right claimed above EUREKA COUNTY's must be quantified carefully and correctly in order to 20 honor the importance and rights of the other users of water in the basin. Finally, based upon the 21 comments of the Court and others in this proceeding at the hearing held on November 10, 2020 that a 22 motion to intervene may be necessary to participate in the hearing on the exceptions of others and to 23 defend the State Engineer's Order of Determination, EUREKA COUNTY files this Motion to 24 Intervene to protect its interests. To the extent EUREKA COUNTY's Notice of Exceptions filed on 25 November 4, 2020 does not automatically allow EUREKA COUNTY's participation in the evidentiary 26 hearing on the Bureau of Land Management's ("BLM") Notice of Exceptions or the hearings on other 27

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exceptions involving the BLM's claims of Public Water Reserves ("PWRs"), EUREKA COUNTY
 specifically includes such request in this Motion to Intervene.

As James H. Davenport noted, statutory adjudications occur when the State Engineer files with
the district court a final Order of Determination as to a water system. James H. Davenport, *Nevada Water Law* (2003) at 104. The purpose of a statutory adjudication is to have water rights "adjudicated
in such a proceeding as to terminate for all time litigation between all such water users." *Ruddell v. Sixth Judicial Dist. Court*, 54 Nev. 363, 367, 17 P.2d 693, 695 (1933).

8 NRS 533.170(2) states that "[t]he order of determination by the State Engineer and the statements or claims of claimants and exceptions made to the order of determination shall constitute 9 the pleadings, and there shall be no other pleadings in the cause." "It is ... settled in this state that the 10 water law and all proceedings thereunder are special in character and the provisions of such law not 11 only lay down the method of procedure, but strictly limit it to that provided." G. & M. Props. v. Second 12 Judicial Dist. Court, 95 Nev. 301, 305, 594 P.2d 714, 716 (1979) (quotation omitted). The district 13 court has jurisdiction in a statutory adjudication to consider issues raised in the proper pleadings 14 established by statute. Bentley v. State, Office of State Eng'r, 132 Nev. 946, 2016 WL 3856572 15 (Table), Docket Nos. 64773, 66303, 66932, (July 14, 2016) (unpublished disposition cited as 16 17 persuasive authority).

Because of the objective of quieting and resolving all claims in the water system, the notion of 18 standing to appeal a final determination is broad. Davenport, supra at 110. Even parties who fail to 19 take exceptions to an adjudication when reviewed upon appeal are entitled to participation in 20 consideration of the adjudication. An adjudication is not a separable controversy between a few 21 claimants. All claimants or water users in a water rights adjudication proceeding under the water 22 statutes are essentially adverse. In re Water Rights in Silver Creek, 57 Nev. 232, 61 P.2d 987 (1936), 23 cited with approval in Bentley v. State, Office of State Eng'r, 132 Nev. 946, 2016 WL 3856572 (Table), 24 Docket Nos. 64773, 66303, 66932, (July 14, 2016) (unpublished disposition cited as persuasive 25 26 authority).

Davenport states: "Because the state engineer's process is administrative and in the nature of a judicial referee or special master, the judicial process that follows should not be thought of as a judicial review proceeding, where the 'standard of review' would ordinarily come into question. The
court is not bound by the state engineer's determination of law. United States v. Alpine Land & *Reservoir Company*, 27 F. Supp. 130 (D. Nev. 1988). Determinations of fact by the state engineer are
upheld where there is clear and convincing evidence to support them. Id. The court may go outside
the state engineer's record or determinations in order to ascertain additional information or remand
the case back to the state engineer to reestablish certain evidence or the qualifications of experts. NRS
533.175, NRS 533.180." Davenport, *supra* at 107.

The Nevada Supreme Court has noted: "While the ultimate findings of the state engineer are entitled to great respect, and in practice are not often disputed, they do not take from the court the power to grant relief to a party whose rights the state engineer may have infringed. It is just as essential for courts to make findings and draw their conclusions upon issues joined on exceptions taken to an order of the state engineer and enter a decree as final and effective as in other civil cases." *In re Waters of Barber Creek (Scossa v. Church) II*, 43 Nev. 407, at 411, 187 P. 1004 (1920); Davenport, *supra* at 111.

#### III.

## LEGAL ARGUMENT

## A. <u>Standard for Intervention.</u>

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NRCP 24(a)(1) provides that on timely motion, the court must permit anyone to intervene who is given an unconditional right to intervene by a state or federal statute. NRCP 24(a)(2) provides that a court is required to permit a party's timely intervention where a party "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

An applicant seeking to intervene must meet four requirements under NRCP 24(a)(2) as follows: "1) that it has a sufficient interest in the litigation's subject matter, 2) that it could suffer an impairment of its ability to protect that interest if it does not intervene, 3) that its interest is not adequately represented by existing parties, and 4) that its application is timely." *American Home*  Assur. Co. v. Eighth Judicial Dis. Court ex rel. County of Clark, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). "Intervention is within the district court's discretion." Id. at 1234, 1124.

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#### EUREKA COUNTY is entitled to intervene as a matter of right. **B**.

EUREKA COUNTY has a sufficient interest in the litigation's subject matter. EUREKA 4 COUNTY filed claims with the State Engineer in this adjudication in response to the State Engineer's 5 order for the filing of claims and participated in the administrative hearing proceedings leading to the 6 Order of Determination. NRS 533.087 et seq. EUREKA COUNTY has an interest in the State 7 Engineer's Order of Determination separate and apart from its exceptions. For the most part, 8 EUREKA COUNTY agrees with the findings made by the State Engineer in the Order of 9 Determination on the claims of others senior to its water rights. It has an interest that the 10 determinations made by the State Engineer on those claims in the Order of Determination be upheld. 11 It is not clear what role, if any, the State Engineer will take in these proceedings to support his findings 12 with regard to the senior rights. In addition, EUREKA COUNTY filed objections to the State 13 Engineer's Preliminary Order of Determination related to the BLM's PWRs and submitted evidence 14 to support its objections at the hearings held before the State Engineer in this adjudication. The State 15 Engineer reversed his position on certain PWRs and denied them, which the BLM seeks to uphold in 16 17 this proceeding. In addition, the State Engineer upheld certain PWRs which EUREKA COUNTY filed exceptions to on November 4, 2020. To avoid any issue that EUREKA COUNTY did not file to 18 intervene in the BLM or others' evidentiary hearings relating to the BLM's claims of PWRs, 19 notwithstanding EUREKA COUNTY's filed exceptions, EUREKA COUNTY seeks intervention to 20 participate in the evidentiary hearings on the BLM's and others' exceptions relating to the BLM's 21 claims of PWRs. For all the foregoing reasons, EUREKA COUNTY meets the first factor for 22 intervention as a matter of right relating to the notices of exception filed by others in this matter and 23 24 the issues raised by the State Engineer's Order of Determination.

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As set forth above, all claimants or water users in a water rights adjudication proceeding under the water statutes are essentially adverse. In re Water Rights in Silver Creek, 57 Nev. 232, 61 P.2d 26 987 (1936). An adjudication is not a separable controversy between a few claimants. Id. EUREKA 27 COUNTY will suffer an impairment of its ability to protect its interests if it is not allowed to participate 28

as it deems appropriate and necessary in the exception hearings of others. This is particularly true if 1 the State Engineer does not defend his Order of Determination. It is unknown precisely what position 2 the State Engineer may take in the instant matter, and failing to include EUREKA COUNTY in every 3 aspect of this litigation as it deems appropriate would mean that EUREKA COUNTY could not 4 respond to any such arguments and provide evidence against the party who is its adversary in this 5 adjudication proceeding. Additionally, the Court would be eventually entering an order affecting 6 EUREKA COUNTY's rights without any input from EUREKA COUNTY and EUREKA COUNTY's 7 interests and the public interests of its citizens would therefore be unprotected. 8

EUREKA COUNTY's interests are not adequately represented by existing parties. In Nevada, 9 water rights are regarded and protected as real property. Application of Filippini, 66 Nev. 17, 21-22, 10 202 P.2d 535, 537 (1949). The Nevada Supreme Court has concluded that real property rights, 11 including water rights, are unique forms of property and those with an ownership interest cannot be 12 adequately represented by others citing Dixon v. Thatcher, 103 Nev. 414, 416, 742 P.2d 1029, 1030 13 (1987) (holding that "real property and its attributes are considered unique"). Eureka Cty. v. Seventh 14 Judicial Dist. Court in & for Cty. of Eureka, 134 Nev. 275, 281, 417 P.3d 1121, 1125-26 (2018). 15 While other parties affected by the State Engineer's Order of Determination, may take positions that 16 are aligned with, or not necessarily adverse to EUREKA COUNTY, none of them have the same 17 interest arising out of the water rights owned by EUREKA COUNTY, and there is no reason to believe 18 that another party would be able to represent EUREKA COUNTY's interest. Thus, the third factor for 19 20 intervention of right is met by EUREKA COUNTY's intervention.

Finally, EUREKA COUNTY's application is timely. EUREKA COUNTY filed this Motion
in accordance with the Court's deadline imposed at the November 10, 2020 hearing and in its
December 10, 2020 Order. This Motion is brought well before trial and at the beginning of this
adjudication proceeding.

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## C. <u>In the alternative, EUREKA COUNTY should be granted permissive</u> intervention.

27 NRCP 24(b) provides for permissive intervention when a potential intervenor "has a claim or
28 defense that shares with the main action a common question of law or fact" and intervention will not

-6-

1	unduly delay or prejudice the adjudication of the original parties' rights. See also Dangberg Holdings				
2	v. Douglas Co., 115 Nev. 21 129, 141, 978 P .2d 311, 318 (1999). Here, the issues before the Court				
3	contain questions of law and fact which are common to EUREKA COUNTY - that is, the validity of				
4	the State Engineer's Order of Determination. EUREKA COUNTY's intervention will not delay or				
5	prejudice the adjudication of this action. Accordingly, EUREKA COUNTY should be allowed to				
6	intervene under NRCP 24(b) should the Court find it is not an intervenor as a matter of right.				
7	<sup>7</sup> IV.				
8	3 CONCLUSION				
9	As set forth above, EUREKA COUNTY meets all the factors required for the Court to grant it				
10	leave to intervene in this action. For the reasons described herein, EUREKA COUNTY respectfully				
11	requests the Court grant this Motion to Intervene and grant EUREKA COUNTY party status so it can				
12	ensure its interests are appropriately addressed arising out of the State Engineer's Order of				
13	Determination and the notices of exceptions filed by others. A proposed Order granting EUREKA				
14	COUNTY's Motion to Intervene is attached as Exhibit "1".				
15	V.				
16	AFFIRMATION				
17	The undersigned does hereby affirm that the preceding document DOES NOT contain				
18	the social security number of any person.				
19	DATED this 18 <sup>th</sup> day of December, 2020.				
20	KAREN A. PETERSON, ESQ. Nevada State Bar No. 366				
21	ALLISON MacKENZIE, LTD. 402 North Division Street				
22	Carson City, Nevada 89703 Telephone: (775) 687-0202				
23	Email: <u>kpeterson@allisonmackenzie.com</u>				
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	-7-				

EUREKA COUNTY DISTRICT ATTORNEY 701 South Main Street Post Office Box 190 Eureka, Nevada 89316 Telephone: (775) 237-5315 Email: <u>tbeutel@eurekacountynv.gov</u> BY: б THEODORE BEUTEL, ESQ. Nevada State Bar No. 5222 Attorneys for EUREKA COUNTY -8-

1	CERTIFICATE OF SERVICE
2	Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON
3	MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be
4	served on all parties to this action as follows:
5	Via Electronic Service:
6	Paul Taggart, Esq.
7 8	<u>david@legaltnt.com</u> <u>Tim@legaltnt.com</u> tammy@legaltnt.com
9	Therese Ure Stix Esc
10	therese@water-law.com
11	Alex Flangas, Esq. aflangas@kcnvlaw.com
12 13	David Negri, Esq. <u>david.negri@usdoj.gov</u>
14	James N. Bolotin, Esq. jbolotin@ag.nv.gov
15 16	Ross E. de Lipkau, Esq. <u>Ross@nvlawyers.com</u>
17	Gordon H. DePaoli, Esq. gdepaoli@woodburnwedge.com
18 19	Pete Goicoechea pgoicoechea@yahoo.com
20	Hon. Gary D. Fairman c/o Wendy Lopez WL onez@whiteninecountymy gou
21	Via First Class Maile
22	Via Mist Class Mall;
23	Department Two RO Roy 151620
24	Ely, NV 89315
25	DATED this 18 <sup>th</sup> day of December, 2020.
26	Nama tenter +
27	NANCY FONTENOT
	-9-
EL .	

1		<b>INDEX OF EXHIBITS</b>	
2	Exhibit No.	Description	Number of Pages
3 4	"["	[Proposed] Order Granting Eureka County's Motion to Intervene	03
5			
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# EXHIBIT "1"



ALLISON MacKENZIE, LTD. 402 North Division Street, P.O. Box 646, Carson City, NV 89702 Telephone: (775) 687-0202 Fax: (775) 882-7918 E-Mail Address: law@allisonmackenzie.com

1

Good cause appearing therefore,

## **IT IS HEREBY ORDERED:**

The Motion to Intervene filed by EUREKA COUNTY is GRANTED in its 1. entirety.

5 EUREKA COUNTY is granted status to participate as it deems appropriate in 2. 6 the evidentiary hearings on the notices of exceptions filed in this action as set forth in the Court's Order Setting Hearings for Notices of Exceptions Filed on Order of Determination to Determine 7 Relative Water Rights issued December 10, 2020 and is entitled to file pleadings, fully participate in the evidentiary hearings on the notices of exceptions and present evidence, cross examine witnesses, 9 present argument and legal briefs as its interests may appear on issues developed during the course 10 of the proceedings to ensure its interests are appropriately addressed in this adjudication arising out of the State Engineer's Order of Determination and all notices of exceptions filed in this action.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.

DISTRICT JUDGE

4849-5156-7060, v. 1

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402 North Division Street, P.O. Box 646, Carson City, NV 89702

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