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STATE OF NEVADA
DEPARTMENT OF WATER RESOURCES
PROPOSED DESIGNATION ORDER
FOR THE DIAMOND VALLEY HYDROGRAPHIC BASIN
WEDNESDAY, JANUARY 23, 2013
EUREKA, NEVADA

APPEARANCES: SUSAN JOSEPH-TAYLOR, Deputy Administrator
JASON KING, State Engineer
KELVIN HICKENBOTTOM, Deputy State Engineer
RICH PERRY, Water Resource Specialist II
REPORTED BY: DONNA PRATHER, COURT REPORTER #372

EUREKA, NEVADA, WEDNESDAY, JANUARY 23, 2013, 1:01 P.M.

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THE HEARING OFFICER: Good afternoon. This is the time and place set forth for a hearing before the State Engineer in the matter of the Proposed Order to further designate the Diamond Valley Hydrographic Basin.

Are you having trouble hearing me, sir?

THE AUDIENCE: You're doing fine.

THE HEARING OFFICER: My name is Susan Joseph-Taylor and I am the Deputy Administrator with the Nevada Division of Water Resources. To my left is State Engineer, Jason King, and to my right is Deputy Administrator Kelvin Hickenbottom, and to his right -- wait if I turn, it fades -- to his right is Rich Perry with our Elko office.

There's a sign-in sheet in back, I hope you all signed in, and I appreciate you signing in, and indicate whether or not you'd like to make a statement.

The purpose of this hearing is to provide you the opportunity to provide comments on the Proposed Order. I would ask if you come up to testify that you first start by saying whether you're for or against the Order and then present us your comments or testimony or evidence why.

I'm going to begin by marking a few exhibits -- two exhibits into evidence. One is the Proposed Order. And

the -- I just lost my place. One is the Proposed Order and the second one is a letter dated December 18th, 2012, to Eureka County Commission enclosing a copy of Proposed Order.

After I get through a little bit of introduction, I'm just going to open up the floor for you to provide your comments. I'm just going to go through the sheet in the order you signed in. If you put a question mark, I'll call your name because there was a lady I spoke to who wasn't sure. So I want to make sure if she changes her mind that you're provided that opportunity.

I'm going to ask in advance that you please turn off your cell phones, your beepers, your pagers.

Thank you, Mr. Thiel.

If you need to talk or use your cell phone, I'm going to ask you to step outside so that the meeting -- the hearing is not interrupted.

I'm going to keep the hearing focused on the Proposed Order. I know there's some other things people would like to talk to the State Engineer about, so, please, don't think that I'm rude if I focus you back on the hearing. I am going to close the hearing and, if we have time, I'm going to stay and open a more informal hearing that I'm going to have the court reporter take minutes to. But since we came this far, we're certainly going to give you the opportunity to talk to us if you need to.

In addition to the two exhibits I introduced, I'm going to take administrative notice of other relevant publications and information in the office of the State Engineer pertaining to the Diamond Valley Hydrographic Basin.

At this time I'll give a short summation of the Proposed Order. I'll note that the final Order may have some changes based on the public comment here today. It's no secret that the Diamond Valley Basin is considered to be over appropriated on paper, and that pumping during the irrigation season has caused annual declines in the water table that our office monitors. The goal here today is to put forth an Order that disallows new appropriations of water with a few exceptions.

Now, our office has not issued permits for major uses of water in a long time. In 1978, Order 717 cut off new appropriations for irrigation purposes but still allows appropriations for other small uses to be considered.

The last permit issued in Diamond Valley was in 2005, and that was a new appropriation for stock watering for .58 acre-feet annually.

This Order basically puts in writing the way the State Engineer's been managing the basin for some time. We feel it's better to have this in a written format available to the public.

A quick review of the Order, it just sets forth the

1 of Orders that have been issued in Diamond Valley since 1964.
2 And it says, no -- "The following exceptions: "No new
3 appropriations will be granted. Applications for
4 environmental permits will be considered, for geothermal, to
5 increase diversion rate with no corresponding increase in
6 duty, and applications filed to mitigate surface water rights
7 where the State Engineer has determined that unreasonable
8 adverse impacts have occurred at the surface water source."

9 At this time I want to proceed with the public
10 comments. I'm going to start at the top of the sign-in sheet.
11 Mr. George Thiel, T-h-i-e-l, is the first person who's
12 indicated he'd like to give public comment.

13 Please proceed, Mr. Thiel.

14 GEORGE THIEL: Thank you.

15 For the record, my name is George Thiel, T-h-i-e-l.
16 I'm a consulting Engineer located out of Reno, Nevada. I'm
17 also state water rights surveyor. The testimony I'll be
18 providing today is in the form of an expert, and I don't know
19 if we need to go through any qualifications associated with
20 that?

21 THE HEARING OFFICER: No, Mr. Thiel, I'm not going
22 to qualify expert witnesses in this. But I'd like you to just
23 start by indicating whether you're for or against the Proposed
24 Order.

25 GEORGE THIEL: I will do that. I'm representing

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1 Mr. Daniel Venturacci, and we're in favor of this Order.
2 Obviously, we've had to suffer a deterioration in the
3 discharge of the springs associated with the Thompson Ranch.
4 THE HEARING OFFICER: Mr. Thiel, I'm having a little
5 problem hearing you.

6 How about the back of the room, can you hear him?

7 Looks like you're fine. If you could maybe tilt
8 that up just a little for you, you're tall.

9 Sorry to interrupt you.

10 GEORGE THIEL: No problem.

11 THE HEARING OFFICER: That's much better.

12 GEORGE THIEL: Is that better?

13 THE HEARING OFFICER: Yes, thank you.

14 GEORGE THIEL: So anyhow, what I've done is I've
15 prepared some exhibits that were marked into the record ahead
16 of time and I'll be referring to those exhibits. My purpose
17 here today is to provide testimony in support of the proposed
18 action by the State Engineer, and basically illustrate some
19 records that you're probably already aware of. But I think
20 I'll be able to illustrate to the State Engineer the crucial
21 aspect of this.

22 Obviously, I've done a lot of work to date with
23 regard to this subject. I first started working on water
24 rights issues in 1980-81 when I worked for Mr. Pete Morros,
25 who was State Engineer at the time. At that time, as a matter

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1 of background, I was doing LANDSAT imagery with cooperation
2 with USGS, plus doing ground truthing associated trying to
3 review the pixillation of the infrared photogrammetry,
4 basically satellite imagery, and determining consumptive use
5 associated with correlations of well pumping data in the
6 basin.

7 We were successful in going through and coming up
8 with a pretty good record of consumptive use within the basin
9 by the use of imagery. Unfortunately, that was stopped prior
10 to my leaving the State, but I have a lot of time on the
11 ground truthing, plus looking at it from the air, if you will.
12 So that's how I started. I worked with Mr. Morros on
13 preparation for the 1982 hearing, I believe it was. So I
14 prepared a lot of documentation in support of that hearing.

15 I don't know how you want to handle this. I can
16 detach the microphone to go over the exhibits and put them up
17 and come back.

18 THE HEARING OFFICER: I think maybe you want to pull
19 the exhibits a little bit closer, Mr. Thiel, because I know
20 the audience wants to see them. Whatever works for you,
21 Mr. Thiel.

22 Do you have Exhibit 6 up there? Is that what we're
23 looking at?

24 GEORGE THIEL: What I'm doing, the first exhibit is
25 just for reference. I didn't mark it as an exhibit, but it's

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1 basically a recent aerial photograph showing irrigation in
2 Eureka and Diamond Valley. It's an oblique image.

3 THE HEARING OFFICER: It's a what image?

4 GEORGE THIEL: Oblique. That's a side view aerial
5 photograph. Basically it shows the concentrated use in the
6 southern part of the basin, and it shows the location of
7 Shipley Springs and the location of Thompson Spring.

8 THE HEARING OFFICER: Can you turn that and point to
9 that for me?

10 GEORGE THIEL: I will.

11 THE HEARING OFFICER: Thank you.

12 GEORGE THIEL: Can you see that okay?

13 THE HEARING OFFICER: Yes, thank you.

14 GEORGE THIEL: If you look at the image, you can see
15 the agriculture areas, the center pivots, and previously
16 irrigated ground that may have been laid fallow or currently
17 not being used in that photograph.

18 Basically, on the east side of the basin you have
19 the Diamond Mountains and you have the playa to the north.
20 Thompson Springs itself is based upon a discharge area that is
21 partially under the influence of carbonate flow. Now that
22 could be either through regional flow system, which so far the
23 USGS reports generally do not support that, or it could be
24 localized just due to the carbonate rock found in the Diamond
25 Mountain Range.

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1 I have had an opportunity to go back through and do
2 a record research, as we often do, looking at the historic
3 cultivation of that ranch. The earliest evidence I have on
4 use of that water right or diversion of water to beneficial
5 use is 1858. I will supply that information later as we go
6 through the process, but not today because that's not the
7 purpose of this hearing. I'm giving this to you because of
8 the reference on what has occurred.

9 I have an 1879 GLO plat, plus survey notes that show
10 extensive cultivation within that area that's a lot larger
11 than what's depicted there now.

12 Looking at the illustration on the right-hand corner
13 where it says Thompson Springs, you can see the area of
14 discharge is relatively small and it's basically, based upon
15 field observation recently, nothing. Looking at the spring
16 itself, it's been dug out and it probably produces less than
17 two gallons per minute, in my estimate.

18 In 1879 it covered probably 2000 acres at that time.
19 And since I wasn't obviously there at that time, I went back
20 and did some research through DRI and was able to obtain 1950
21 aerial photographs of the area, 1953 and 1954 aerial
22 photographs, and aerial photographs from 1967.

23 THE HEARING OFFICER: I'm sorry. You said in 1879
24 it covered 2000 acres. What document gave you that
25 information?

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1 GEORGE THIEL: That's based upon research and
2 records of the BLM, the GL office.

3 THE HEARING OFFICER: I didn't get that word for the
4 record. BLM, what?

5 GEORGE THIEL: Bureau of Land Management, Government
6 Land Office records.

7 THE HEARING OFFICER: Thank you.

8 GEORGE THIEL: Plus reviewing survey notes that went
9 with the dependent survey of 1879, which estimates the limit
10 and extent of the use of those springs. And on that map it
11 shows, like, the Taft house and originally this was called
12 Taft Springs. So there was actually a ranch that was
13 occurring at that point in time.

14 Historically, these springs have declined over the
15 years. Obviously, the flow system in 1879 was substantial
16 prior to the well development out in that area. By reviewing
17 the records of the State Engineer, pumping initially started I
18 would say in the 1950s and escalated in '60s and took off in
19 the '70s, if you will. As stated earlier, the amount of
20 pumpage which is occurring in the basin is probably three
21 times the yield, perennial yield within the basin.

22 Based upon that, I've got an aerial view I want to
23 refer to, and I believe its Exhibit No. 6, Venturacci No. 6.

24 THE HEARING OFFICER: And for the record, I skipped
25 Exhibits 3, 4, and 5, not knowing if something else might

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1 appear.

2 GEORGE THIEL: What I put up on the easel is an
3 aerial view from 1973 that illustrates the spring discharge
4 line associated with the private ownership of what was the
5 Thompson Ranch at that time. As you can see, my
6 interpretation there of the aerial photograph is there is a
7 fault line that's been fairly well identified at the foot of
8 the Diamond Mountain Range that runs for about 40 miles.
9 East -- I'm sorry, west of that fault line there's a spring
10 discharge area, and it's pretty predominant in the aerial
11 photographs and it's even more predominant in the older
12 photographs that I have of this area.

13 At the south end of this Exhibit, No. 6 I think it
14 is, shows the Taft and Thompson Springs as they are referred
15 to. Historically, estimates on the springs have ranged from
16 4500 gallons per minute. There was some measurements done by
17 USGS in 1965 and 1966, if I recall correctly, that during that
18 period of time there was four measurements taken which
19 averaged about 2.1 CFS.

20 There was another report that we found in a data
21 search that illustrated that the spring discharge was
22 1942 gallons per minute.

23 Now, what's interesting about this is the vested
24 rights that have been filed, I believe in 1912 and again in
25 1975 basically concentrated on the southern large piece of

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1 property. Based upon our research and evidence of
2 cultivation, we planned on filing additional vested right
3 applications to those properties to the north, plus amending
4 for the third time the claim on the property to the south.
5 And, again, we're not here to discuss that matter
6 specifically, but I'm going to get to the overview on what
7 we're doing.

8 THE HEARING OFFICER: Mr. Thiel, I'm going to
9 interrupt you again and ask you some questions. When you look
10 in the original 1912 vested right files, it talks about
11 several ranches. Is this south piece in red on Exhibit 6 the
12 only thing called the Taft Ranch?

13 GEORGE THIEL: I believe it is. From the vested
14 right application, it was filed in 1912.

15 THE HEARING OFFICER: Vested right claim?

16 GEORGE THIEL: Oh, I'm sorry.

17 THE HEARING OFFICER: So that south piece is the
18 Taft Ranch?

19 GEORGE THIEL: Yes.

20 THE HEARING OFFICER: Do you know the names of these
21 other ranches, just so we can get a record?

22 GEORGE THIEL: I don't. I believe -- I mean, I
23 haven't gone back all the way with it, but I know there was
24 holdings by Milt Thompson and his family. Milt is an older
25 gentleman and he moved on to the property when he was five

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1 years old, and he's doing an affidavit for us on history and
2 chronology of the ranch which we will enter into the record
3 at -- not at this hearing, but at some time in the future.

4 THE HEARING OFFICER: I would appreciate it if you
5 could try and get the names of those ranches, because when you
6 look at these records and you read the transcripts from 1982,
7 they mention some other ranch names and then the better
8 picture we can paint.

9 GEORGE THIEL: From my knowledge, this property was
10 consistent with what I reviewed in 1982 and 1980 with regard
11 to the preparation for the hearing.

12 THE HEARING OFFICER: I'm just going to take the
13 opportunity to build the best record I can. So, thank you.

14 GEORGE THIEL: I realize that, and I'll make sure I
15 supplement it that way.

16 What I've provided is the next exhibit, which I
17 refer to as Venturacci Exhibit No. 7. It came from the USGS
18 report that I think was prepared in 19 -- or 2004, to my
19 recollection. I'm not exact on the date. But the purpose of
20 this exhibit is USGS came in and looked at the ground water
21 profiles as it existed in 1950, and this is basically prior to
22 the development of the basin.

23 What's interesting about this is -- and I think it's
24 important to our discussion here today -- it shows going
25 through the center of the valley, groundwater contours, some

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1 influence from Kobeh Valley coming into the basin, and then it
2 shows a groundwater gradient that starts at the southern end
3 of the valley and goes to the north. Basically, it comes from
4 an area of recharge to an area of discharge is how this works.

5 So from that standpoint we have two sources out
6 there, Shipley Springs and also Thompson Springs. Thompson
7 Springs is more of an area of discharge. And if you looked at
8 all the references on here, it's shown as an area of
9 phreatophytic consumption. Basically, its grass areas used
10 for grazing and it's been cultivated in the past.

11 In contrast, I've got another exhibit, which I
12 believe is No. 8 -- let me make sure I'm on the same exhibit.
13 Yes, No. 8, which I admitted into evidence only for reference
14 purposes only, that comes from Plate 1 of the 2011 report, I
15 think it is, that looks at the surrounding valleys in the
16 area. And basically what I did was use that as reference for
17 that Plate 1 to highlight that area in the upper, right-hand
18 corner of your exhibit of Diamond Valley. And that was
19 Exhibit No. 9.

20 THE HEARING OFFICER: Hold on, Mr. Thiel. What was
21 the purpose of this Exhibit 8?

22 GEORGE THIEL: It's an index. In other words,
23 Exhibit No. 9 that I have up there is a blowup of that.

24 Yes.

25 THE HEARING OFFICER: So we have this big map and

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1 this blowup is that corner?

2 GEORGE THIEL: Yes. And I wanted to do it that way
3 mainly because the one you have in your right hand illustrates
4 the overall view and all the reference information for it,
5 where the one in your left hand, Exhibit No. 9, doesn't have
6 that descriptive information.

7 THE HEARING OFFICER: Thank you.

8 GEORGE THIEL: Basically what this map illustrates,
9 it shows a change in the ground water contours. If you refer
10 to the previous exhibit, which I believe is No. 7, it shows
11 groundwater profile flowing from the north -- or from the
12 south to the north.

13 You can tell by looking at this exhibit, which is
14 the groundwater profile as it exists, I believe in 2004, if
15 I'm not mistaken, it shows a -- a groundwater decline in the
16 area of concentration associated with groundwater withdrawals.
17 Basically what this indicates is there has been a change in
18 gradient discharge into the northern end of the valley.

19 So approaching the exhibit, you see declines within
20 this area somewhere around 120 feet on the average. So
21 basically the arrows show --

22 THE HEARING OFFICER: Hold on, Mr. Thiel. "This
23 area" is not going to come across on the record.

24 GEORGE THIEL: I'm sorry. In the lower, right,
25 center part of the exhibit it shows a number of dots with

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1 groundwater isopleths, groundwater contours. Those
2 groundwater contours are gradients of over-pumping in the
3 valley that's occurring.

4 Basically what's occurred, as I stated previously,
5 the arrows illustrated on the map have changed in direction
6 where it's flowing to the area of demand versus the area of
7 natural discharge. So what we have is -- you can see by the
8 direction of the arrows that the -- the southern end of the
9 basin is taking the water that was normally used in the area
10 associated with the Thompson Ranch.

11 So based upon that, we believe that there's issues
12 associated with the over pumping of the basin that has
13 affected the vested rights of, in my opinion, go back to 1858.
14 And hence, which is why we're here in support of this Order,
15 because it is our intent under 81825, which is the application
16 we filed, supplemental to a ground water right, we're looking
17 for that to be a mitigation right associated with the lack
18 of -- or the removal of the cultivated land within this area.

19 There's been various reports that have come out that
20 segregated the basin by USGS from a northern portion and
21 southern portion. And if you look on this Exhibit No. 9, it
22 illustrates a dash line in the upper, right-hand corner of the
23 map with a bunch of dots that represent wells in that area.
24 Basically what that represents is an area that's undefined, as
25 far as the groundwater contour. And if you look at the

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1 groundwater contours associated with the playa to the north,
2 that's designated on the map as Diamond Valley, just south of
3 that on the map, you'll see that there's a split in the
4 groundwater contours there. Well, basically, that's based
5 upon two wells that are out in that area that have water
6 levels that are somewhat higher within that area.

7 It's my opinion that there's a couple things
8 happening in this area: One, is that this groundwater system
9 is flowing historically to the north and it's going from an
10 area of higher permeability to the lower -- area of low
11 permeability that acts somewhat as a dam. With the lowering
12 of the ground water table, I think that gradient will start,
13 as implied by this map, will flow from the north to the south,
14 which is in reverse gradient.

15 THE HEARING OFFICER: Let's do that again,
16 Mr. Thiel. I want to make sure that's clear and I'm going to
17 ask you to -- on your diagram, to put this sort of area from
18 low permeability to high permeability. So would you do that
19 explanation again, please?

20 GEORGE THIEL: I will. Within -- looking at
21 Exhibit 9, and labeling on the map that says "Diamond Valley,"
22 that is the location of the playa, the lake area. So
23 basically what you have is you have valley fill in the
24 southern part. You have this lake playa in the northern part.
25 Generally, lake playas are more dense and lack permeability.

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1 In other words, water will not migrate at the same right as it
2 does in valley fill material, which is more coarse sand and
3 gravels.

4 So from my aspect of what's occurred in the past,
5 looking at Exhibit 7, is based on 1950, the groundwater system
6 and groundwater profile flowed from the south to the north,
7 until such time as it hit this playa, then it would change the
8 groundwater contours within that area and probably create the
9 discharge within the Thompson Springs ranch area.

10 Shipley Springs, which I'm not here to give
11 testimony on, may be a little different because water
12 temperature and maybe the geothermal source associated with
13 that, but with regard to the water out of Thompson Springs and
14 stuff.

15 THE HEARING OFFICER: I'm going to make the record a
16 little clearer. On Exhibit 9 there is a large oval area
17 surrounding the words "Diamond Valley." There is a southern
18 circle area with lots of wells. And you're indicating the
19 area between those two circles is where the permeability
20 changed?

21 GEORGE THIEL: Yeah, somewhere in between that. I
22 won't say it's exactly there, but just looking at the well
23 logs, there's valley fill with silts and some fine sand. So
24 maybe the edge of the playa or typical around Nevada playas
25 you'll find this new formation that exists from prevailing

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1 winds. So it could be associated with that. What is not
2 consistent after reviewing some of the other well logs that
3 exist in the area, and I'm finding wells that, you know,
4 static water level is 200 feet below these wells in certain
5 parts of this area, which shows a change in the strata and the
6 ground water profile within that area.

7 So, again, on that northern edge of this basin, it's
8 somewhat undefined, but by looking at the Hydrographic area
9 and the decline within the source, it's very clear that as
10 pumping escalated within Diamond Valley the springs associated
11 with Thompson Ranch continuing to dry up.

12 THE HEARING OFFICER: Thank you.

13 GEORGE THIEL: Unless have you some questions, I
14 will conclude my testimony at that point.

15 THE HEARING OFFICER: I was just going to ask the
16 State Engineer, Mr. Hickenbottom, if he had any questions, or
17 Mr. Perry, any of you?

18 MR. KING: No.

19 MR. HICKENBOTTOM: No.

20 MR. PERRY: No.

21 THE HEARING OFFICER: Thank you very much.

22 MR. PERRY: The two wells that you're basing that in
23 the center valley, are those the two USGS wells out there that
24 we measure every year?

25 GEORGE THIEL: Yes.

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1 MR. PERRY: Did you ever find any well logs on
2 those?

3 GEORGE THIEL: I thought I did. When I looked at
4 the State Engineer's website, I started pulling up well log
5 data. So it could have been well logs surrounding that, but
6 I'm pretty sure -- pretty certain it was this area.

7 MR. PERRY: I never found that. I just note that
8 they're really shallow; 20-foot, 2-inch pieces of steel that
9 have been jammed in the ground. I'm not sure how much
10 credence I'd put in those numbers because they're just in the
11 very shallow silt out there.

12 GEORGE THIEL: I agree with you at that standpoint.
13 That is why my testimony was to the point that I don't give
14 much value to those groundwater contours. I believe that the
15 groundwater contours continue north rather than stopping at a
16 geological divide that doesn't exist, other than at the playa.

17 THE HEARING OFFICER: Mr. Thiel, I have a question.
18 When you read the 1982 transcript, Mr. Thompson talked about
19 those -- Thompson Spring being a warm water spring.

20 GEORGE THIEL: Yes.

21 THE HEARING OFFICER: Why would it be warm water if
22 it was coming from the southern valley, end of the valley and
23 hitting this permeability change?

24 GEORGE THIEL: Basically the spring is under
25 carbonate influence that everybody refers to on this,

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1 generally carbonate water, associated with the regional flow
2 system are somewhat warmer than perennial waters. So with the
3 lower temperature associated with the springs, there's --
4 that's why USGS has come back and said, these springs are
5 under the influence of carbonate system. But they're hesitant
6 to find whether it's a regional carbonate flow system or based
7 upon recharge or discharge correlations with the Diamond
8 Mountains versus the Thompson Spring.

9 THE HEARING OFFICER: So you're not saying the
10 springs are influenced by the mountain flow, you think the
11 springs are influenced by the groundwater gradient from south
12 to north?

13 GEORGE THIEL: I believe its both.

14 THE HEARING OFFICER: Thank you, Mr. Thiel. We
15 appreciate your time.

16 GEORGE THIEL: Thank you.

17 THE HEARING OFFICER: I'm going to admit Exhibit 1,
18 2 --

19 You didn't talk about Exhibit 10, Mr. Thiel, that
20 you gave me. So I'm only going to admit Exhibit 6, 7, 8, and
21 9.

22 GEORGE THIEL: That's fine.

23 THE HEARING OFFICER: Okay.

24 (Exhibits 1, 2, 6, 7, 8, and 9 received.)

25 THE HEARING OFFICER: Okay. Let's see who next

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1 wanted to speak. I have a question mark next to Jerry

2 Machick. Did you want to testify? No, sir?

3 JERRY MACHICK: (Nods.)

4 THE HEARING OFFICER: Thank you.

5 Marty Plaskett. I'm not very good at handwriting.

6 I'm going to ask you to state your name and spell it, please.

7 MARTY PLASKETT: Marty Plaskett, P-l-a-s-k-e-t-t.

8 THE HEARING OFFICER: Oh, yeah, I can see it.

9 MARTY PLASKETT: Farmer in Diamond Valley for 47plus
10 years, all by choice.

11 THE HEARING OFFICER: I'm going to ask you to start
12 by if you're for or against, please.

13 MARTY PLASKETT: I oppose.

14 THE HEARING OFFICER: And can you tell us why?

15 MARTY PLASKETT: Yes. I have no technical
16 experience, so I fully support the County's position, which
17 makes -- I'll let them tell you why, but I support all the
18 County's position on this. And my only addition to it is that
19 if we don't address temporary permits, that the basin will
20 never heal one bit.

21 THE HEARING OFFICER: I don't know what you mean by
22 that, Mr. Plaskett, so elaborate, please.

23 MARTY PLASKETT: Well, there's a lot of mining
24 pressure and a lot of temporary permits will be issued, have
25 been issued. And there's no way to balance the basin with

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1 those external pressures that keep -- will continue to negate
2 everything we're going to try to do on our own.

3 THE HEARING OFFICER: Okay. Thank you very much.
4 Appreciate you coming.

5 Ken Vincent.

6 Hi, Mr. Vincent.

7 KEN VINCENT: Hi there.

8 THE HEARING OFFICER: How are you?

9 KEN VINCENT: For the record, Ken Vincent.

10 For purposes of today, I'm a Diamond Valley
11 irrigator. I don't mean to be ambiguous, but my position is I
12 am against the Order. But I could be persuaded that the Order
13 would have some redeeming social value if it was modified in
14 its scope. And I'm going to elaborate briefly on that.

15 It appears to me that since 1978 to the present
16 date, 2013, reasonable attitudes of compromise of future
17 expectations have been expressed both by the State Engineer
18 and the Diamond Valley irrigators as to a reasonable and
19 amicable resolution of the overdraft in Diamond Valley
20 precipitated by the over appropriation of the resources in
21 Diamond Valley by the office of the State Engineer.

22 You'll have to excuse me, Jason, but at some point
23 in recent history I really have come to believe the State
24 Engineer's office has declared war on the irrigators of
25 Diamond Valley, and I think that was a precipitous event in

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1 that it will affect my future and the future of my children
2 and grandchildren going forward.

3 Now, with respect to what is not in evidence today
4 of which Mr. Thiel spoke to very eloquently, was the
5 disposition of vested rights on the Shipley Hot Springs and
6 Thompson Springs. I have some comments on that. First of
7 which is a comment I had that precipitated in drafts today,
8 that is Mr. Thiel's reference to discharges of Kobeh Valley
9 and Diamond Valley. I'm sure that Jason King has some
10 reservations about.

11 THE HEARING OFFICER: Mr. Vincent, I'm going to try
12 to keep you focused here.

13 KEN VINCENT: Okay.

14 THE HEARING OFFICER: Hold on, please. The court
15 reporter is going to take it. I'd really like to hear what
16 you -- what modifications you think the Order should have.

17 KEN VINCENT: Okay. I'm prepared to speak to that.

18 THE HEARING OFFICER: Thank you.

19 KEN VINCENT: The applications essentially are to
20 file a remedy of surface water deficiency by means of access
21 to a groundwater permit. Several things come to mind with
22 respect to contemplation of that scenario.

23 Number one is --

24 THE HEARING OFFICER: Hold on, Mr. Vincent. I can't
25 hear you over the phone.

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1 Anybody else who has a phone on turn it off, please.
2 I'm sorry, Mr. Vincent.
3 KEN VINCENT: Okay. The first of my concerns is
4 indeed that the anticipation and subsequent rights would be
5 supplementary in nature. And in that regard, are we talking a
6 scenario that the applicants forthcoming with respect to those
7 two affected springs want the best of both worlds? They want
8 to continue to use the spring, if in fact it exists, and have
9 supplemental groundwater right as well. That's a bridge that
10 I would like with every determination that's forthcoming from
11 the State Engineer's office to be very definitive. I don't
12 care which way it goes, but I want you to tell us which way it
13 goes.

14 The next consideration I have there is priority
15 dates. I don't know that it goes without saying that a
16 priority date on a surface right carries forward to a
17 supplementary application for a groundwater right. And that I
18 want very specific definition made and in that regard as well.

19 Then with respect to a supplementary irrigation
20 water right from a groundwater source, I want to introduce
21 into the conversation a concept that is universal throughout
22 the State Engineer jurisdiction in the state of Nevada
23 regardless of surface rights. I'll refer to a corollary
24 example in the Carson Valley-Dayton Valley area where a large
25 portion of surface rights associated with Carson River have

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1 been transferred to municipal and quasi-municipal uses from
2 the groundwater sources. And in contemplation of most of
3 those transfers, a haircut concept has been adhered to by the
4 State Engineer's office.

5 THE HEARING OFFICER: A what concept?

6 KEN VINCENT: A haircut concept.

7 In that if not every case, in fact, the majority of
8 the cases there has not been a quid pro co transfer of duty or
9 a allocation in the transfer process from the surface rights
10 to the water right.

11 THE HEARING OFFICER: Do you realize that the Carson
12 River Decree provides for that haircut?

13 KEN VINCENT: Well, I'm suggesting that a haircut is
14 appropriate in this instance as well.

15 THE HEARING OFFICER: Oh, okay.

16 KEN VINCENT: And the reason I -- by everybody's
17 admission, whether you're a farmer on this side of the podium
18 or the State Engineer's office on that side of the desk, we
19 all realize that the underlying problem here that we're all
20 talking about is over allocation. And my suggestion is, if
21 the State Engineer feels that Diamond Valley is over
22 appropriated by some quantitative figure; 50 percent,
23 30 percent, 45 percent that a new supplemental right takes the
24 same kind of haircut that everybody else is talking about.

25 Okay. That's all I've got today.

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1 THE HEARING OFFICER: Thank you, Mr. Vincent.
2 I believe Mr. King has a question.
3 JASON KING: First, Mr. Vincent, thank you very much
4 for your testimony.

5 KEN VINCENT: Yeah.

6 JASON KING: I do want to get on the record, though,
7 that I do respectfully disagree with your opinion that we're
8 declaring war on the irrigators of Diamond Valley. The State
9 Engineer's office has been in Diamond Valley a handful of
10 times over the past four or five decades, I believe, trying to
11 work with the stakeholders, the irrigators in this valley, to
12 see what is best for the valley. And being very blunt, I
13 believe that the State Engineer's office has been told, you
14 know what, you don't need to be here in Diamond Valley. We're
15 still making a living. We're willing to share in the
16 declining water table. Why don't you just go away and leave
17 us alone.

18 Certainly that was the feeling that I came away with
19 in 2009, and I think our office has honored those wishes of
20 the stakeholders here. So I respectfully disagree with that
21 assertion.

22 Having said that, we have a job to do. We have
23 132,000 acre-feet of water committed in the basin. We're
24 probably consuming close to 80,000 acre-feet every year and
25 every perennial 30,000 acre-feet.

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1 When we were here in 2009, again, it was made clear
2 to me that everyone, it seemed, was happy with where they were
3 in terms of their crops and the declining water table. And
4 when we gave our presentation, we said, that's fine. But, I
5 said that it's a real game changer. It's an absolute game
6 changer when we get a senior water right holder asserting
7 impairment. And I made that clear in 2009 that that changes
8 everything. And we're starting to see some of that. And just
9 to be very candid, we're starting to see that with Shipley
10 Springs. We're starting to see that with Thompson Springs.

11 Okay. Trying to bring the focus back to this Order,
12 and I know there's a lot of other things to talk about outside
13 this Order, again, this Order is really just memorializing
14 what our office has been doing for the last couple decades.
15 We've issued nine new appropriations since the year 2000, all
16 of them for stock water, for de minimus amounts of water, in
17 my opinion. We've only issued three permits since 2003.

18 So what we're doing here in this draft Order is
19 really just getting it down on paper the way we've been
20 managing this basin.

21 Having said that, we are saying there are no more
22 new appropriations in Diamond Valley. None. So, any future
23 growth in this valley is going to be -- excuse me, is going to
24 be based on the transfer of existing rights.

25 Mr. Vincent, back to your point, I am in complete

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1 agreement with you that any changes of ag rights, to some
2 other mineral use like municipal, QM, commercial, there will
3 be a consumptive use haircut associated with the transfer of
4 that. I agree with you completely on that.

5 Another point, Mr. Vincent, you brought up the idea
6 of priority date associated with -- I'll call it a mitigation
7 groundwater right that's going to mitigate a senior surface
8 water right. There's no latitude within our statute to give
9 an equal priority to that new groundwater right.

10 In other words, I'm sure two attorneys could argue
11 that the priority date should be the same as a vested surface
12 water right. It's my opinion that the law doesn't allow for
13 that. So that is an issue that I think is, you know, going to
14 be kicked down the road.

15 I think that's all I have to say in response. But I
16 do appreciate your testimony, Ken.

17 KEN VINCENT: Thank you. I particularly like the
18 last part of your statement.

19 THE HEARING OFFICER: Did the court reporter get
20 that on the record; Mr. Vincent's last statement?

21 Thank you. I always have to remember that she's the
22 most important person in the room.

23 James Moyle.

24 Welcome, Mr. Moyle. Thank you for coming.

25 State your name and whether --

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1 JAMES MOYLE: My hearing is really bad. So can I --
2 if everybody else's hearing is like me, it's pretty poor. So
3 I'm going to step up here.

4 THE HEARING OFFICER: That's fantastic.

5 JAMES MOYLE: I'm James Moyle, and I'm a farmer in
6 Diamond Valley, have been since 1977.

7 THE HEARING OFFICER: Spell your last name, please.

8 JAMES MOYLE: M-o-y-l-e.

9 THE HEARING OFFICER: And are you for or against the
10 Order?

11 JAMES MOYLE: Pardon me?

12 THE HEARING OFFICER: Are you for or against the
13 Order?

14 JAMES MOYLE: I'm against the resolution as written;
15 specifically, the exceptions. I feel that the allocation is
16 whatever is there is there. The recharge is there. If the
17 exception has listed the water rights of purchaser, they can
18 purchase it or do something else in Nevada. But to leave an
19 exception to continue to over allocate the basin, I am
20 against.

21 Thank you.

22 THE HEARING OFFICER: Thank you, Mr. Moyle.

23 JASON KING: Thank you, Mr. Moyle.

24 And I want to get this on the record. Again,
25 it's -- to me it's the 900-pound gorilla in the room. I

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1 understand that there are water right holders in the basin
2 that have protested some of these two mitigation groundwater
3 rights. But I want to be crystal clear about what we're
4 talking about here. We're talking about a senior surface
5 water right holder that -- and again, I go back to the 2000
6 one -- are saying that they're aren't able to get to their
7 surface water any more as a result of groundwater pumping in
8 the basin.

9 Now, a couple things can happen. They can come to
10 our office, they can petition our office to -- to fix that
11 impairment. And what does that mean? We've talked about
12 regulation by priority. We've talked about critical
13 imaginaries. We've talked about a lot of things. Or we can,
14 we being the State Engineer's office, can entertain a
15 mitigation groundwater right to that surface water right.
16 That's what we're up against. They're on opposite ends of the
17 spectrum. Thank you.

18 THE HEARING OFFICER: Mark Moyle.

19 Welcome, Mr. Moyle.

20 MARK MOYLE: How are you this afternoon?

21 THE HEARING OFFICER: And you're going to have to --
22 need to move that microphone closer, please.

23 MARK MOYLE: For the record, my name is Mark Moyle.
24 I'm a farmer/irrigator in Diamond Valley. I've got a couple
25 quick questions I'd like to ask.

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1 THE HEARING OFFICER: I first want you to state
2 whether you're for or against.

3 MARK MOYLE: I am against the Order as its written,
4 mostly the exceptions. And I'd like to go through the
5 exception one at a time.

6 THE HEARING OFFICER: Thank you. I think you need
7 to pull your microphone -- bend it down a little towards you.
8 There you go.

9 MARK MOYLE: Is that better?

10 THE HEARING OFFICER: Much. Thank you.

11 MARK MOYLE: Okay. I've got a couple questions.
12 Most of the people -- my first question is: Will this Board,
13 or will you grant a 30-day time period for written input after
14 today? Because I -- I'll speak for myself and I'll speak for
15 a lot of the people that I've talked to, lots of people are
16 here today to try to gather information as to what the State
17 Engineer is trying to accomplish with these exceptions, and a
18 lot of people here are trying to figure that out. So, based
19 on the interaction we're going to have today, I think a lot of
20 people have a lot clearer idea. And so if they're allowed
21 30 days to make a comment based on more knowledge, it would be
22 helpful.

23 THE HEARING OFFICER: The State Engineer is going to
24 grant that, Mr. Moyle. So February 23rd, I don't know if
25 that's a Friday, a Monday -- anybody got a calendar?

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1 RICH PERRY: That is a Saturday.
2 THE HEARING OFFICER: So Friday the February 22nd,
3 by 5 o'clock, time stamped in our office. It can be the Elko
4 office, Carson City office, Las Vegas office.

5 MARK MOYLE: Okay. My second question would be:
6 Because there's so much misunderstanding or not sure of what
7 these exceptions -- or the intent is, I was hoping that the
8 State Engineer could go through these exceptions and be more
9 clear; maybe explain them to what he's trying to accomplish,
10 and perhaps if that happens it will open up a lot clearer
11 dialogue.

12 I think everybody is here, most everybody is here to
13 find out what the State Engineer's office is trying to
14 accomplish. Without a clear explanation, and maybe with a
15 clear explanation, that will help a lot of -- a lot of things.

16 I don't know if you would like to do that now or if
17 you'd like to let me go through my presentation and address
18 that.

19 THE HEARING OFFICER: If you'd like to do it now,
20 we'll do it now. Is that your preference?

21 MARK MOYLE: It would be.

22 THE HEARING OFFICER: Okay. Mr. King.

23 JASON KING: Thanks, Mark.

24 So, on the second page of the draft Order there are
25 four exceptions. The first one is, "Those applications for

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1 environmental permits filed pursuant to NRS 533.437 to
2 533.4377."

3 And all that is, Mr. Moyle, we issue environment --
4 our office, the State Engineer's office, issues environmental
5 permits when there needs to be some kind of cleanup of
6 contamination. The way it works is our sister agency,
7 Environmental Protection, will be notified of, say, a gas
8 spill or some other contaminant spill in the basin, and a
9 company will have to come in, they'll have to put down wells.
10 They actually pump that contamination to the surface. They
11 treat it and discharge it. In order for them to actually
12 withdraw that contamination to the surface before discharge,
13 there has to be an environmental permit from our office. So
14 that's what exception one is all about.

15 Exception 2. "Those applications filed for water
16 from a geothermal aquifer."

17 You've heard me say this many times, I believe it is
18 our job at the State Engineer's office to maximize the
19 beneficial use of every single drop of water in the state, as
20 long as it's within the statutory criteria. Geothermal, in
21 many instances geothermal sources can be disconnected from
22 alluvial aquifers. And if -- if an application was filed for
23 appropriated geothermal water that would not impact existing
24 rights and that water could be put to a beneficial use, we
25 feel that we should be able to issue a permit for that.

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1 However, any permit that we did issue for a
2 geothermal source, if it did prove to impact the existing
3 rights, to conflict with them, then that water right could be
4 regulated as well.

5 The third exception: "Those applications filed to
6 increase diversion rate only, with no corresponding increase
7 in duty of water."

8 A simple example of that is when perhaps one of you
9 irrigators have a well that doesn't produce as much water as
10 it used to and you need more diversion rate in order to run
11 your pivot. As an example, instead of filing a change
12 application to change a portion of your existing right to
13 another point of diversion, you could actually file a new
14 appropriation for diversion rate only, is what we call it, and
15 we advertise it in the newspaper as such, where we say this
16 application is being filed just -- just to get you some more
17 diversion rate. If it's issued, we have a total combined duty
18 attached to your other water right. So you're not getting any
19 additional volume of water, but it allows you to have more
20 diversion rate to run your pumps, your pivots, et cetera. So
21 that's the diversion rate only.

22 MARK MOYLE: I'm a little unclear on that. Can I
23 ask a question?

24 JASON KING: Sure.

25 MARK MOYLE: It would seem if you have a well that's

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1 deficient. Maybe it's the way it's worded, it's the
2 terminology that's confusing. Because it says you wanted to
3 increase the duty; correct?

4 JASON KING: No. It's --

5 THE HEARING OFFICER: No.

6 JASON KING: No. It reads, "With no corresponding
7 increase in duty of water."

8 MARK MOYLE: I stated that wrong.

9 But you can change -- so you're saying basically
10 you'll have the same water, only out of two wells?

11 JASON KING: That's exactly right.

12 MARK MOYLE: Okay.

13 JASON KING: And then the fourth exception, the one
14 that it appears a lot of people are concerned about, and I
15 anticipated that, "Those applications filed to mitigate
16 surface water rights, where the State Engineer has determined
17 that unreasonable adverse impacts have occurred at the surface
18 water source."

19 And that's what we're talking in the two
20 applications or however many that are being filed right now,
21 and the two that come to mind are the one on Shipley Springs
22 and at Thompson Springs to supplement, if you want to use the
23 word "supplement," I like the word "mitigate," those flows.

24 MARK MOYLE: Okay. That's very helpful and it
25 clears up some things.

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1 I'll go back to the environmental one. My concern
2 with that was that that environmental would not only be --
3 could also apply to an industrial situation. Is that
4 possible?

5 JASON KING: No, it is not. It is for cleanup only.

6 MARK MOYLE: Okay. No. 2, "Those applications filed
7 for water for geothermal aquifer." I strongly disagree with
8 your statement -- your stance on that, in particular with
9 Diamond Valley. Diamond Valley is over drafted. And the fact
10 the last four years I've worked tremendous amount of time with
11 the irrigators and the growers in the valley to try to bring
12 this basin back in balance some way on their own. And so any,
13 anything -- one of the things that comes to my attention all
14 the time when we're working with the county or the mine or
15 anybody else to set aside water, the question always comes up,
16 well, what if we set aside this water and the State Engineer
17 allocates more water or allows more water to be pumped
18 somewhere else? We're wasting our time and money.

19 So we need a very clear and concise position from
20 the State Engineer's office that -- that proves to people that
21 that's not going to happen. And when we start talking about
22 geothermal water, it's my opinion that geothermal water
23 rather -- obviously is coming out of the carbonate, but it
24 could be supplemented from the surface of the alluvial, and
25 any geothermal applications in the future of Diamond Valley

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1 should be treated as any other water. They should have to buy
2 water rights to do that.

3 And I think that if we don't do that, we always get
4 back to mitigation and then you have to prove that it happens.
5 We already have a certain situation here. So allowing
6 geothermal of any kind -- if they want -- if there's a source
7 there and it can be beneficial, then that geothermal source or
8 company should purchase water. That's my opinion on the
9 matter. I would change that. I would take that completely
10 out.

11 JASON KING: And I really appreciate that comment
12 and I hear what you're saying.

13 I want to back up for a moment on environmental
14 permit because I want to read to you what the definition of
15 environmental permit, just to get it on the record.

16 NRS 533.437. "'Environmental permit' defined.
17 'Environmental permit' means a temporary permit to appropriate
18 water to avoid the pollution or contamination of a water
19 source."

20 So it, again, is for the cleanup of a contamination.
21 It's not related to an industrial project, et cetera.

22 MARK MOYLE: Okay.

23 THE HEARING OFFICER: And let me clarify that. It's
24 NRS 533.437.

25 MARK MOYLE: I think you've answered my question on

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1 No. 3.

2 On No.4, "Those applications filed to mitigate
3 surface water rights, where the State Engineer has determined
4 that unreasonable adverse impacts have occurred at the
5 surface."

6 I believe that this is written in there basically to
7 deal with the Shipley Springs and Thompson Springs Ranch. I
8 don't think there's very many people in this room that would
9 argue or be against making a vested water right whole. The
10 challenge comes in in two different ways. Both of the
11 applications and both of the processes of mitigating those two
12 sources of water, and the applications that have been filed
13 today, are asking for a phenomenal amount of water. They've
14 asked for a full duty of water, 14.5, and I think the other
15 one, 4.0. Don't hold me to that, but it's a full duty.

16 State Engineer has already indicated that the water
17 used for irrigation on alfalfa in Diamond Valley is around, I
18 think, 3.2. The danger of restoration average is 2.9. But
19 it's not four acre-feet. I -- in both of these ranch
20 situations, those water uses in the past have not been used at
21 that same rate it would take to do alfalfa. Most of them are
22 metal situations and some of those metals in the past probably
23 harvested hay. But the duty to those would be a lot less if
24 you could -- if those vested rights in the past had used four
25 acre-feet and, and it can be proven that they used four

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1 acre-feet, and that they put that four acre-feet on the total
2 amount of acres that they're indicating, I don't think there
3 would be a question.

4 But that's not the case. And it -- and so the
5 opposition is not -- not against making those vested rights
6 whole. My opposition is if those vested rights are going to
7 be made whole, they should be made whole to a reasonable
8 standard.

9 First, just because it's a vested water right does
10 not mean that they don't -- there's not some -- has to be some
11 record of the flow of the past and how it was put to use. And
12 if you've got -- if you've got -- and both of these
13 applications are asking for the total amount of acres that
14 were out there on the first appropriation and for the full
15 duty of water. So we have, how does the State Engineer deal
16 with that? That's the challenge. And I would leave it at
17 that.

18 I would -- I would hope that in both of these
19 instances that the same treatment that is given to well
20 pumping in Diamond Valley is given to these two vested water
21 rights.

22 THE HEARING OFFICER: I don't --

23 MARK MOYLE: Meaning that, they're not given full
24 appropriation for every acre that is out there and there is
25 evidence to prove otherwise.

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1 JASON KING: Mr. Moyle, we're in agreement. The
2 law -- the law guides us. If a mitigation groundwater right
3 is issued to mitigate the surface water, it can only be to the
4 extent to how much water was put to beneficial use. We're not
5 going to expand any beneficial use. And you're right, that's
6 one of the hard things is quantifying that. And I was asked
7 whether or not I had any questions of Mr. Thiel's testimony,
8 and I didn't as it relates to this Order; what we're here to
9 talk about.

10 When the time comes, I probably will have many
11 questions about the vested claim and the application that's
12 being filed. But absolutely, that's foremost in our minds
13 when we look at these applications is what was -- what can be
14 shown was historical put to beneficial use?

15 MARK MOYLE: Okay. I apologize, I didn't write it
16 down. But in regards to the Shipley Springs, you have used a
17 new term in the process of them drawing water out of the
18 existing -- the existing spring flow. They've drilled a well
19 into the existing spring flow. I'd like to know what the
20 State Engineer's reasoning for that new term is.

21 JASON KING: We have described it, just for the
22 people here today, we have in discussions with the engineer
23 for the applicant on Shipley Springs, at least it's been
24 represented to us that they had drilled a well right adjacent
25 to the historical spring. And as soon as they started pumping

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1 that well, they saw a decrease in the spring flow. They felt
2 that that connection was so positive that, in fact -- and
3 we've called it an induction well -- that, in fact, it's not a
4 mitigating groundwater well, and I'm not trying to split hairs
5 here, it actually is a way to develop that spring. So it
6 still could be considered a spring or surface water source,
7 it's just being developed through that induction well. And
8 if -- Rick Felling, our Chief of Hydrology were here today,
9 I'd let him expand more on it. It's my understanding that
10 over on Thompson Spring, that's not the same formation of the
11 same geology and induction probably will not work.

12 So you are exactly right, Mr. Moyle, there are --
13 there's a few moving parts here. On the west side, Shipley
14 Springs might be able to be mitigated through an induction
15 well, which is just developing the surface water source. The
16 same may not be able to be accomplished over on the east side.

17 MARK MOYLE: I have one further remark in regards to
18 Thompson Spring. If the State Engineer decides in the near
19 future to mitigate these two and give a supplemental water
20 permit to these two springs, is that going to be the final
21 decree and the final action on that?

22 Because in the -- in the early '80s there was a
23 hearing, it was a mitigation hearing, and with Thompson
24 Spring. And the irrigators in the valley offered to drill a
25 well and pay for the pumping of that well for time. And

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1 that -- at that point that -- that was rejected by the current
2 owner of that property. And so there's a lot of concern about
3 that. So, should that at that time ended the mitigation of
4 that well it was refused, or will that be open, or will we go
5 ahead and make another determination and give them a
6 supplemental well and then at some point in the future we have
7 to do with this again?

8 JASON KING: You're asking really good questions,
9 Mr. Moyle. I will tell you if, again, that permit is issued,
10 it's going to be issued for an amount that is -- our best
11 analysis shows how much volume they actually use.

12 However, that's if it's not done in the context of a
13 full adjudication. So if and when Diamond Valley goes through
14 a complete adjudication of both surface water and groundwater,
15 you know, everybody will be offering whatever information they
16 have for all of these water sources that could potentially
17 change because all the information would really be out on the
18 table, whereas that's not the case right now.

19 So, again, not trying to be evasive, if and when we
20 issue this mitigation right, we're going to do our best to
21 quantify the vested claim. But it's not done in the context
22 of adjudication, which could change things.

23 MARK MOYLE: Okay. One more comment, due to the
24 overdraft problem, we've talked in the past of creating a
25 water management plan agreement with the State Engineer's

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1 office and we're still looking forward to do that. One of the
2 issues that Mr. Plaskett alluded to is that there is a vehicle
3 by which more water can be drawn out of this valley, and it's
4 a temporary mining permit. Temporary can go on forever. If
5 the mine is going to go on 20 years, 30 years, 40 years, it
6 can be an issue. And I would be very much in favor of somehow
7 the State Engineer at this point forward, if there's going to
8 be any temporary water permits issued for mining purposes,
9 that they not really be temporary, not even be granted. The
10 mine should need to purchase the water to offset the use
11 because a temporary water use is basically another water
12 application that draws water out of an over appropriated
13 basin.

14 JASON KING: It is not one of the exceptions listed
15 in this Order.

16 MARK MOYLE: Okay. It should be, for the record.

17 JASON KING: No. You're saying you don't want it to
18 be. You don't want us to issue any temporary permits in
19 mining.

20 MARK MOYLE: Correct.

21 JASON KING: And we are not. It is not one of the
22 exceptions in this Order.

23 So as it stands, you will not issue a temporary
24 mining permit?

25 JASON KING: That's correct.

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1 MARK MOYLE: Okay. That's all I have. Thank you.
2 THE HEARING OFFICER: Thank you, Mr. Moyle. Really
3 good points. Good discussion.
4 I'm going to have Rich get the last sign-in sheet
5 back here.
6 Mr. Bob Burnham. B-u-r-n-h-a-m?
7 BOB BURNHAM: Yes.
8 Bob Burnham, I'm a farmer in Diamond Valley. I'm in
9 the general agreement with Mr. Moyle as regards my opposition
10 to the Order, particularly as regards exceptions. Mr. Thiel
11 proposed a connection between carbonate layers and alluvial
12 layer as regards Thompson Spring. I also know that there's
13 carbonate originating water coming out of Shipley Spring, and
14 I believe the irrigation well belongs to Halpin. At least one
15 of those wells also is warm water.
16 THE HEARING OFFICER: Halpin? H-a-l --
17 BOB BURNHAM: H-a-l-p-i-n, I believe.
18 THE HEARING OFFICER: Thank you.
19 BOB BURNHAM: And I am extremely opposed to granting
20 geothermal rights because there is tremendous pressure on us
21 already in this valley. The over appropriation is not our
22 fault. The irrigators out there are extremely efficient. We
23 use much less than half of what is appropriated to us, much
24 more efficient probably than most irrigation areas in the
25 nation.

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1 The overdraft situation there is entirely due to the
2 carelessness of your predecessors. I do not blame you folks
3 for that, but your predecessors in this state office created
4 this. And for that reason, I hope you will be extremely
5 judicious when it comes to creating any new consumption in
6 this valley.
7 In agreement with Mr. Moyle, I understand that
8 vested water rights do have priority and rights. If given --
9 given the situation that exists, I think we -- it would be
10 extremely judicious, extremely conservative, and extremely
11 demanding as far as proofs regarding past use in both these
12 applications.
13 Thank you.
14 THE HEARING OFFICER: Thank you, Mr. Burnham.
15 BOB BURNHAM: If I could make one more comment.
16 THE HEARING OFFICER: Sure.
17 BOB BURNHAM: The irrigation in this valley has been
18 going on in excess of 50 years. A lot of these farms are on
19 the second and even third generations, and the situation as
20 exists, once again I would reiterate, is not our fault. It's
21 the fault of the -- you folks' predecessors in that office.
22 And I hope you will be very, very cautious about putting
23 anything to add to the damage that's already been done. Thank
24 you.
25 THE HEARING OFFICER: Thank you, Mr. Burnham.

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1 Andrew Marshall.
2 ANDREW MARSHALL: Thank you.
3 THE HEARING OFFICER: Good morning -- or good
4 afternoon.
5 ANDREW MARSHALL: Andrew Marshall, farmer, Diamond
6 Valley.
7 Again, as written, the resolution, the Order, I
8 would oppose. And I would try to reiterate generally how I
9 see that.
10 My first comment, because I have written -- I read
11 that, I am not even completely sure what this Order is doing
12 except creating more exceptions than the previous Orders, in
13 714 or 541, uphold closed basin previously and stated over
14 appropriations previously. I support completely otherwise
15 have said the exceptions seem out of order, unless you're just
16 trying to create more exceptions. The temporary permit I'm
17 really concerned about. You said that it's not going to be
18 allowed as part of the exceptions. Environmental permit,
19 number one, is a temporary permit, so there is an avenue for a
20 temporary permit, if it's in a defined space can be still
21 allowed.
22 You don't have to address that, but I have a couple
23 other points.
24 First exhibit by Mr. Thiel is very good. He already
25 claimed that part of the spring carbonate in place showed

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1 geothermal connections because they talk about accelerated
2 temperatures in the water. So your point on No. 2 was there
3 can be no specific -- they must be disconnected with the
4 alluvial. And your statement, Mr. King, was they can be
5 disconnected. Well, I'm not sure exactly where the exception
6 ruled -- then rules. Because if they're claiming that they
7 already have interplay and there's partly geothermal.
8 So let me step back there. Too, I don't want to --
9 it seems this hearing is more on the Proposed Order, than
10 surface right issue versus groundwater, and I think that's a
11 little off center of where we are today. It seems like that's
12 where the real focus is. So, again, I don't really understand
13 what this Order is doing, except creating more exceptions.
14 We've already defined and closed and over appropriated.
15 We've already seen where certain people contending
16 that they have a geothermal alluvial connection, both on the
17 Shipley and on the Thompson.
18 No. 3; that changing of appropriations within the
19 duty. It seems like it's a new water right that can probably
20 vested and separated -- not vested, separated out where you're
21 combining a duty or combining multiple appropriation points
22 within the duty total. Well, if you're going to create a new
23 temporary -- or a new permit for that, that is a separate
24 permit that maybe could be divested from the property or
25 somewhere else. It seems like it's a standalone, whole new

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1 permit, which again would be contrary to what the Order is
2 proposing.

3 And --

4 THE HEARING OFFICER: Let's explore that, because I
5 don't understand why you think that.

6 JASON KING: I do.

7 ANDREW MARSHALL: We're all saying like Mr. Vincent,
8 a haircut. We're appropriating much less water than we
9 obviously need. Then we come to consideration where we have
10 diminished well or secondary well, or something, to extend
11 back to that where we might be allowed to go toward complete
12 duty. We've already stated and seen it 2.3, but if we go to
13 secondary to get our allotted four-foot acre, four-foot duty
14 and you allow it through a secondary diversion of a new
15 permit, then that permit itself is a total water right, kind
16 of two joined together, easily separated, and I don't know
17 where that helps the basin.

18 JASON KING: And I really appreciate that comment
19 and I understand it. All I can tell you is it cannot be
20 separated from the water right that it's being tied together
21 with. There is a total -- a perfect example is 125-acre pivot
22 and four-acre-foot per acre. Let's say you have a water right
23 for 500 acre-feet. Your one well alone puts up to 500
24 acre-feet. So you apply for a diversion rate only permit to
25 drill another well so you can get that 500 acre-feet. It is

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1 tied. When that permit is issued, it is tied to that other
2 right, and nothing happens to that one without happening to
3 the other one. So you're not increasing the duty.

4 And I also want to make it clear, if you apply for a
5 diversion rate only permit to drill for another well, you're
6 going to have to submit a map and you're going to have to show
7 us where you're going to drill that well. And we're going to
8 look at where you're going to drill that well and we're going
9 to see what other wells are in that vicinity, and if it looks
10 like the drilling of that diversion rate only well could
11 impact the surrounding use, you're not going to get that
12 permit.

13 All the remaining statutory requirements still apply
14 to this diversion rate only. So it's not a slam dunk
15 necessarily. And all I can tell you is it is tied tight in
16 the permit terms, that cannot be carved out and moved
17 somewhere else and increase the duty of the base.

18 ANDREW MARSHALL: Given the over appropriations,
19 given the closeness of the basin, it would seem that exception
20 would be really scrutinized, especially from a -- exception
21 permit that you would try to haircut on to more of a growing
22 season permit as well. If the duty is 365-day duty and you
23 were allowed to then take those partial that you could then
24 say would fill that duty, I'm still concerned on that, if you
25 understand what I mean by that.

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1 JASON KING: So I think if I understand you --

2 ANDREW MARSHALL: I'm playing devil's advocate here.
3 I'm trying to understand that these exceptions seem a little
4 loose and unwarranted.

5 JASON KING: Okay. Mr. Marshall, if I can take this
6 opportunity to respond to the comment you made about, "It's
7 already a closed basin." Based on the ac -- or seven previous
8 Orders that our office has issued, all we have curtailed is
9 irrigation. No new irrigation rights. It is silent when it
10 comes to QM, municipal, industrial, and these other uses. We
11 get applications for those uses and we have denied them, but
12 we end up writing a ruling. People protest them, they spend
13 the money, and at the end of the day they go away, but not
14 without a lot of effort on a number of people's part.

15 By issuing this Order, again, memorializing what
16 we're doing, that takes care of a lot of those situations --
17 all of those situations, frankly.

18 ANDREW MARSHALL: Very good. Thank you.

19 THE HEARING OFFICER: Thank you, Mr. Marshall.

20 Do we want to take a break?

21 Let's be off the record for about five minutes,
22 everybody stretch your legs.

23 (WHEREUPON, a recess was had.)

24 THE HEARING OFFICER: Let's be on the record. Let's
25 get started. I'm going to call Vickie Buchanan.

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1 Please state your name and spell it, and whether
2 you're opposed or for the Order.

3 VICKIE BUCHANAN: It's Vickie Buchanan. It's an
4 i-e, and B-u-c-h-a-n-a-n.

5 I'm opposed to the Order the way it's written. My
6 biggest concern, again, is the exceptions. But mine, as
7 opposed -- is differently than everybody else's, is No. 3.
8 And I'm wondering if -- I'm a -- I'm a life-long farmer in
9 Diamond Valley. And my concern is if you allow people to come
10 in and drill another well to try and get their full duty,
11 where we're already struggling, would that be on priority
12 date? Would it be based on that?

13 Because I have really old water rights as far as the
14 valley itself goes. But say someone came in with a whole lot
15 more money than I do and buys a place, and they decide that
16 their wells aren't good enough and they come and they drill
17 all these other wells to get up to their duty, what's to
18 protect me as a senior water right holder in that -- in that
19 exception?

20 JASON KING: Thanks, Miss Buchanan. Priority date
21 of that diversion rate only permit would be the date that it
22 was filed. So it would be 2013, 2014, whatever. It would be
23 the junior priority rate in the basin.

24 Again, because we have it here as an exception
25 doesn't mean when that application comes in we say it's one of

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1 the exceptions and we issue it. It still has to meet all the
2 other statutory requirements. If it was going to have a total
3 combined duty tied with another permit for 2000 acre-feet, and
4 where this diversion rate well was going to be located is
5 adjacent to other pumping wells, we would analyze that as
6 pumping 2000 acre-feet out of it. And if it was going to
7 conflict with those adjacent existing rights, that permit is
8 not going to be issued. I understand your concern, all I can
9 tell you is it has to go through the same statutory drill as
10 everything else.

11 To be very blunt with everybody here, we thought
12 exception three -- well, Exception 3 was in there because I
13 thought that all of you would actually want it. Instead of
14 having to change -- file a change application of an existing
15 right, you would not have to do that. You would have the
16 flexibility of pumping from either well. You could file a no
17 appropriation for diversion rate only without any additional
18 draw on the basin.

19 So we have done this in many basins and, again, it's
20 been at the request of the water users in the basin. It made
21 it easier for them, made it more flexible for them to operate
22 their system. If that is the will of everybody in the basin
23 that there is no diversion rate only applications we do not
24 have to include it.

25 VICKIE BUCHANAN: Okay. I guess just living in the

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1 valley, going through all the ways, I think it just leaves
2 open another angle for somebody to weasel in, get some more
3 water coming out. I guess that's my main concern on it. And
4 a lot of people that have been here for a long time, we
5 probably can't afford to do a lot of the things that maybe
6 people coming in, you know, to this area would have the money
7 to do. And I am just afraid that leaving things like that
8 open would possibly hurt the older priority water holders.

9 And the other question would be -- was if they could
10 file those new applications, would those be open to protest?

11 JASON KING: Absolutely.

12 VICKIE BUCHANAN: Okay. Thank you.

13 THE HEARING OFFICER: Thank you, Miss Buchanan.

14 Dale Bugenig, you're up next, please.

15 DALE BUGENIG: For the record -- is that too loud?

16 Typically I can talk without one of these things, so I have to
17 sort of modulate myself.

18 THE HEARING OFFICER: But now we're losing you, so.

19 DALE BUGENIG: For the record, my name is Dale

20 Bugenig, and --

21 THE HEARING OFFICER: Spell it for the record.

22 DALE BUGENIG: B-u-g-e-n-i-g.

23 THE HEARING OFFICER: Okay. Are you for or against?

24 DALE BUGENIG: I would say I am for the concept of
25 the Order, and that is to deny any new groundwater

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1 appropriations.

2 I do have some issues with the exception, and I
3 appreciate some of the comments from Mr. King today because
4 he's sort of given us insight into some of the details and
5 thought processes behind these exceptions. But I think what
6 worries me a lot is that I know that Mr. King is a real
7 honorable person and I know that hopefully, like me, he's
8 going to retire soon.

9 THE HEARING OFFICER: Rub it in.

10 DALE BUGENIG: And so I think it's important that
11 the Order be fleshed out some so -- so that your successors
12 understand the thought process about that, because --

13 THE HEARING OFFICER: Mr. Bugenig, that's the
14 purpose of this record. Because this becomes a record of the
15 office of the State Engineer and it puts his intent behind
16 these exceptions on -- in a transcript.

17 DALE BUGENIG: Okay. But I think -- I have a hard
18 time getting the -- finding the transcript to the -- let's
19 call it the Milt Thompson hearing back in the '80s. I'm not
20 very -- I have a hard time finding stuff.

21 THE HEARING OFFICER: I can put my hands on it in
22 30 seconds for you.

23 DALE BUGENIG: Okay. Well, I can't. I'm sure
24 you're smarter than me.

25 THE HEARING OFFICER: No, I'm just an organization

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1 hound.

2 DALE BUGENIG: So I think it would benefit everybody
3 in this room, and everybody -- not just in this valley, but
4 other people who are interested in what happens here, just
5 kind of flesh these exceptions out. But, you know, you'll do
6 what you do.

7 Okay. So I think I'm going to go back on script. I
8 had some -- I had some remarks prepared and I'd like to read
9 them out, and I don't think very well on my feet. So, that I
10 had to make some changes because, again, Mr. King has
11 illuminated me a little bit today behind this. But I'm going
12 to stick with my script, if that's alright.

13 JASON KING: Mr. Bugenig, can I ask who you're
14 representing today, maybe you'll get into that?

15 THE HEARING OFFICER: And I'm going to ask you to
16 make sure you read slowly for the court reporter. Readers
17 tend to go a little fast.

18 DALE BUGENIG: Yeah, I've been told that I -- yeah,
19 the last transcript that I'm a fast talker. So I am going to
20 endeavor to talk slowly and clearly today.

21 THE HEARING OFFICER: Thank you.

22 DALE BUGENIG: My name is Dale Bugenig. I am a
23 hydrogeologist in private practice with a residence and office
24 in the town of Eureka. For the record, my comments represent
25 my personal viewpoint and may not represent the views of my

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1 clients here in Eureka County. I am a Eureka County taxpayer,
2 and the source of water supply to my residence comes from the
3 Diamond Valley aquifer. As such, I am a stakeholder in the
4 proper management of the water resources of the basin.

5 For the past several years, my practice has focused
6 on management of water resources of Eureka County, including
7 Diamond Valley, and includes work related to the preparation
8 of Eureka County water resources master plan.

9 My reviewing evaluations of many published and
10 unpublished reports, data, and information, plus my own
11 investigations, provides me with increments for professional
12 knowledge of the basin's water resources.

13 This local knowledge is complimented by more than
14 35 years as a consulting hydrogeologist. Because I have a
15 personal stake in a sustainable water supply to my Eureka
16 residence, and because my professional ethos demands
17 sustainable water resource development, I feel compelled to
18 comment on the Proposed Order, in particular, the exception
19 related to appropriations from the geothermal aquifer.

20 My professional experience includes firsthand
21 involvement with the exploitation of low to moderate
22 temperature geothermal aquifers, and these are aquifers that
23 have temperatures of 68 to 302 degrees Fahrenheit. That's a
24 definition that's out there in the literature. This work has
25 been completed in Montana, Oregon, California, and Nevada,

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1 going back more than 30 years.

2 In my experience, there is continuity between
3 non-thermal and geothermal aquifers. In fact, it is often
4 difficult to show any distinction, other than temperature,
5 because it may simply represent a different facies,
6 f-a-c-i-e-s, of a single flow system. As a result,
7 exploitation of a geothermal resource has a real potential to
8 impair a non-thermal resource and vice versa.

9 The geothermal industry often downplays this reality
10 to their advantage, so I presented a paper at an international
11 geothermal energy symposium in 1990 in an attempt to shed
12 light on certain impediments to resource development arising
13 from the interconnections of geothermal and non-thermal
14 aquifers. The problem, as I see it, with the proposed
15 geothermal exemption to do groundwater appropriations in
16 Diamond Valley arises from the fact that some of the ag wells
17 already exploit what is correctly defined as a low to moderate
18 temperature geothermal aquifer.

19 These geothermal ag wells in virtually every well
20 west, east, and south of the playa are part of a hydrogeologic
21 continuum and are clearly being influenced by the grossly over
22 appropriated resource and the historical absence of serious
23 efforts to promote a sustainable use of groundwater resources
24 in the basin. The most obvious and negative impact is the
25 observed water level decline. Wells in the basin are

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1 progressively being deepened at alarming cost to the
2 appropriators. Unfortunately, many of the newer, deeper wells
3 seem to indicate the effective bottom of the aquifer is
4 shallower than many people had hoped.

5 A primary tenant of Nevada water law is the concept
6 of perennial yield, and a sustainable water supply in the
7 basin cannot consume more than the perennial yield. Numerous
8 rulings by the Nevada State Engineer and opinions by the
9 courts in Nevada describe the perennial yield of the basin as
10 the amount of groundwater discharge that can effectively be
11 captured by wells.

12 Unfortunately, the predecessors to the current State
13 Engineer allowed the appropriation of vastly more groundwater
14 rights in the valley than the estimate of perennial yield no
15 more than 50 years ago. In effect, the Division of Water
16 Resources facilitated the appropriation of the transitional
17 storage of the basin without regard to the perennial yield.
18 Perhaps this was a practical, good, short-term strategy
19 because it accelerated the capture of the natural discharge
20 from the groundwater flow system, which is the goal and end
21 result of groundwater resource exploitation.

22 The consequence, however, is that a large number of
23 individuals were intended to invest in Diamond Valley. They
24 stake their futures and those of their children on a resource
25 that the State knew could not be sustained in perpetuity, and

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1 their life, health, property, and welfare is in serious
2 jeopardy.

3 Engineers registered by the state of Nevada are
4 required -- this is a quote from the mission statement of the
5 Board of Professional Engineers, "To safeguard the life,
6 health, property, and welfare of the public." Exempting
7 geothermal aquifers from the Proposed Order is inconsistent
8 with this mission statement because it will exacerbate, or has
9 the potential to exacerbate an already dire situation. It
10 appears to me that exempting new groundwater appropriations on
11 the basis of temperature alone is rather arbitrary, unless
12 peer-reviewed science shows no interconnection with the
13 non-thermal aquifer.

14 On the face of it, such an exemption appears to be,
15 to many of the folks in this room, to be a work around of
16 Order 717 that will result in further over appropriation of
17 the basin. And Order 717 was definitely a positive step
18 towards protecting the basin's water resources.

19 So in summary, I urge the Nevada State Engineer to
20 reconsider how the geothermal appropriation exemption is
21 written so the public will understand that the exemption will
22 be based on peer-review science.

23 Now, when I read the notice for this hearing today,
24 it said that public comment would be taken. And typically
25 when public comment is taken, people try and tether me and

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1 constrain me to three minutes. And so I want -- I thought the
2 most important comments I had related to the geothermal
3 exemption.

4 But I would like to kind of, again, go off script
5 and make a couple of other comments, if that's possible, if I
6 have time to do that?

7 THE HEARING OFFICER: You do, Mr. Bugenig.

8 Someone else asked me, and I said, as long as we're
9 moving along, I -- we are here to hear you. So I am not going
10 to cut you off unless you keep going and going and going. So
11 you can have a few more minutes.

12 DALE BUGENIG: I'll try not to be too loquacious.

13 THE HEARING OFFICER: Thank you.

14 DALE BUGENIG: I would like to correct a statement
15 Mr. King made earlier. He said that perhaps currently 8,000
16 acre-feet of ground water is being consumed in the basin. He
17 maybe meant that that's being pumped. But based on the best
18 available data that was presented in all the hearings on the
19 Mount Hope Project, that water is probably 55,000 acre-feet.
20 So it's -- we're only consuming double the perennial best
21 estimate of perennial yield.

22 You know, geology and hydrogeology are a sign of --
23 you know, they use a lot of terms. And we have very specific
24 terminology. And I -- and I'd like to address this, this
25 induction well that's on the permit for Shipley Hot Springs.

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1 THE HEARING OFFICER: And I'm going to restrain you.
2 That's not before us here. So I'll give you a minute --

3 DALE BUGENIG: Okay. Not just it, but the
4 terminology "induction well." In hydrogeology, the induction
5 well has a very, very specific meaning. In fact, it's sort of
6 a shorthand for a well that is to induce -- it's an induced
7 infiltration well. And the primary purpose of an induced
8 infiltration well is to induce infiltration of surface water
9 so that there is no -- that you can avoid treatment.

10 So, you know, it would be nice if we could be real
11 precise to call that what it is. It's -- let's talk about
12 this. It's perhaps an interceptor well. But I don't think
13 there's any reason to give them any kind of a new well,
14 because the record clearly shows that all these wells in
15 Diamond Valley, if you want to call those induction wells,
16 these are induction wells, too, because they're capturing the
17 groundwater discharge.

18 THE HEARING OFFICER: Mr. Bugenig, I am going to
19 stop you --

20 DALE BUGENIG: I'm done.

21 THE HEARING OFFICER: -- because once we're done
22 here I'm going to close the hearing and I'll open it for a
23 little while if there's some other issues people want to bring
24 up. But I'm going to keep this focused on this Proposed
25 Order.

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1 Is that all you had, Mr. Bugenig?

2 DALE BUGENIG: Yes, thank you.

3 THE HEARING OFFICER: Go ahead, Mr. King.

4 JASON KING: Mr. Bugenig, so I heard you loud and
5 clear about your concerns with geothermal. Would it be
6 your -- I guess, based on your experience and your expertise,
7 that you could not appropriate any geothermal water in Diamond
8 Valley with -- without, I guess, inducing flows from the
9 colder water source into that and having an impact on it?

10 DALE BUGENIG: Well, we're not aware of a geothermal
11 aquifer in Diamond Valley that's not connected and not part of
12 the hydrologic continuum which is the alluvial aquifer that's
13 exploited by everyone in Diamond Valley. So, you know, if
14 there were one and it could be demonstrated through
15 peer-review science that it is, in fact, different and no
16 impact to the alluvium, then, you know, like everything else,
17 if you can demonstrate it, that's okay. But my concern is,
18 is -- is that these slightly elevated temperatures here in the
19 valley constitute a geothermal aquifer that's already being
20 used by the irrigators. So, to exempt -- to exempt anyone
21 else tapping that same resource, I don't -- I think it's not
22 in the spirit of the Order.

23 JASON KING: So if I were to -- if we were to, I
24 guess, rewrite Exception No. 2, you would like to see some
25 sideboards on it in terms of demonstrated peer-reviewed

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1 studies that showed that there is no connection to these other
2 sources, something like that? Or not even have that exception
3 on there all together?

4 DALE BUGENIG: That's correct. And if you're going
5 to add a sideboard for it so that people who read the Order
6 have it at their fingertips, then perhaps you need sideboards
7 to all of these other exemptions.

8 JASON KING: What is your personal opinion on just
9 taking off an exception all together or putting the sideboards
10 on it?

11 DALE BUGENIG: I'd just a soon see it off.

12 JASON KING: That's it. Thank you, Mr. Bugenig.

13 DALE BUGENIG: Thanks for putting up with me again.

14 THE HEARING OFFICER: We don't put up with you,
15 Mr. Bugenig. We're pleased to hear what you have to say.
16 Thank you.

17 Jake Tibbitts. T-i-b-b-i-t-t-s. Hi, Jake.

18 JAKE TIBBITTS: Hi, thank you.

19 THE HEARING OFFICER: Please introduce yourself for
20 the record and then indicate whether you are for or opposed.

21 JAKE TIBBITTS: I am Jake Tibbitts. For the record,
22 I'm the Natural Resources Manager for Eureka County, so I do
23 represent Eureka County today. And I don't want to disappoint
24 you, but I'm not going to take a position on behalf of the
25 County. And the reason I am standing before you now is there

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1 is a lot of county citizens in the room that -- we heard
2 Mr. Plaskett mention earlier that he supports the County's
3 position.

4 So I do have some -- I wrote some notes down before
5 Mr. Moyle got up, so if I would have been up earlier, I would
6 also have asked for extension of time to provide comment.

7 So I do want to acknowledge that at least one of our
8 County Commissioners is here today, and Chairman J. J.
9 Goicoechea. And I knew Jim Ithurralde was here earlier but I
10 have not seen him, and then Pat Demsey, I'm not sure that he's
11 in the building.

12 THE AUDIENCE: He's still here.

13 THE HEARING OFFICER: And you need to spell that
14 name for the court reporter.

15 JAKE TIBBITTS: Okay. The important people sit up
16 top. So it's, I-t-h-u-r-a-l-d-e.

17 THE HEARING OFFICER: Thank you.

18 JAKE TIBBITTS: And so I'm speaking on behalf of
19 Eureka County and the Board of Commissioners, and we are not
20 going to take a position on the record today for or against
21 the Proposed Order.

22 We're attending today's hearing to gather
23 information, to see what the State Engineer's proposing to do
24 in Diamond Valley and to basically get a general flavor, feel
25 for what the constituency of Diamond Valley and the County

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1 feel and the concerns. So we're very grateful and we thank
2 you for extending that period to allow us to bring comments
3 forward.

4 So what we're planning on doing is after this
5 meeting, just for the people in the room to understand the
6 position of the County, that the Commissioners will take what
7 is learned today, they will want to remain open to consult
8 with the Eureka County citizens and the Diamond Valley water
9 rights holders, and then we will be submitting testimony or
10 comments later on. And the Board of Commissioners will ensure
11 this is on their future agenda items for a meeting and we will
12 get that to you before February 22nd. Thank you.

13 THE HEARING OFFICER: Thank you, Mr. Tibbitts.

14 Doug Frazer.

15 Welcome, Mr. Frazer. F-r-a-z-e-r.

16 DOUG FRAZER: Yeah. I'm Doug Frazer, from Sadler
17 Ranch, in support of the Order, the State's Order.

18 I think that the State needs the tools to mitigate
19 the effects of the over pumping in the basin, the effects on
20 the springs, on Shipley Springs in particular. I think
21 there's very few options out there. I think that the Order
22 provides them with the options that they need to support the
23 mitigation.

24 I wanted to thank the community for supporting our
25 vested rights. I think that's really important. It's very

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1 difficult. I'm familiar in a very difficult position, so we
2 really appreciate the support.

3 In our application, we put our application in, first
4 application in last spring. We didn't do a very good job of
5 supporting the amount of duty that we wanted to -- that we're
6 requesting. And then in the interim, we've been working
7 together -- working to put -- to get data to support the
8 amount of water that we're requesting. We don't intend to
9 pump more than we are -- than we should, that we need. We're
10 going to be working with the County to try to come to some
11 sort of an agreement that the water we're requesting is --
12 that we're requesting in our application is an appropriate
13 amount and -- for the ranch based on our past usage.

14 And the last thing I want to say is we realize that
15 there's still a big term -- a long-term problem with over
16 drafting the basin and we'd like to work with the County as
17 much -- the County and the community as much as possible to
18 come up with solutions to address that problem.

19 THE HEARING OFFICER: Thank you, Mr. Frazer.

20 DOUG FRAZER: Thank you.

21 THE HEARING OFFICER: I think this says Russell
22 Conley. Did I get that right, Mr. Conley?

23 RUSSELL CONLEY: Yeah. Conley is C-o-n-l-e-y.

24 THE HEARING OFFICER: Thank you. Welcome.

25 RUSSELL CONLEY: I want to start, I oppose the Order

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1 as written, specifically with respect to Exception No. 2,
2 which deals with geothermal water. I believe that this should
3 be completely removed from the Order as I cannot be convinced
4 that geothermal water is exempt from the alluvial aquifer. I
5 would like to use my experience on the last well that we
6 drilled as testimony. Last fall we drilled a replacement
7 irrigation well on our property. We used a test pump to
8 develop the well. As we went through the development process,
9 we noticed a change in water temperature several times.

10 Just to explain the development process, we used a
11 test pump. We began pumping at a low flow rate, pumped until
12 the water ran clean, surged the well. Pumped again until the
13 water ran clean, and continued that process until the water
14 ran clean immediately after surging. And then we would step
15 it up to a higher flow rate and pump again. We did this until
16 we reached the maximum capacity of the well.

17 And so I guess -- I didn't have a thermometer. I
18 know it makes my testimony completely subjective. But at the
19 lower flow rates our water was mostly cold. It began to run
20 noticeably warm in the 4 to 500 gallon-a-minute range. And
21 then when we reached full capacity of the well, it turned cold
22 again. And so I guess I'm, again -- it's completely
23 subjective -- but I completely agree with Dale Bugenig, that
24 these -- these aquifers, the geothermal aquifers are part of
25 our aquifer and I would strongly urge you to remove Exception

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1 No. 2.

2 THE HEARING OFFICER: Thank you, Mr. Conley.

3 Appreciate your testimony.

4 I think that says Bill and Patricia Norton.

5 BILL NORTON: I'd like to pass.

6 THE HEARING OFFICER: Pass?

7 Thank you, Mr. Norton.

8 Is it Jim Gallagher?

9 JIM GALLAGHER: Yes. Good afternoon. Jim

10 Gallagher, farmer here in Diamond Valley. To make a whole of
11 vested rights, I can understand. But who do you make whole?
12 The people who have bought the property know what they bought.
13 Doug Frazer called me for four years prior to buying Sadler
14 Ranch, asking what the flow of the spring was, how much ground
15 was being covered with the water. So he knew what he bought.

16 So I -- I think to make whole, I don't know how you
17 make the whole. He knew what he bought. He bought 1500 to
18 2000 gallons of water a minute. He didn't buy 4625 gallons a
19 minute that he's asking for for 365 days a year. So I think
20 both, both the Taft Spring and the Shipley Spring purchasers
21 knew what they bought and I don't know how much you should
22 give them.

23 The Sadler Spring, easily one-third of that ground
24 has never had water on it, the same with the people who are
25 neighbors of Sadlers.

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1 To make whole 1600 acres at four and a half gallons,
2 four and a half acre-feet is probably not right.

3 JASON KING: Mr. Gallagher, I don't want to get into
4 the merits of the applications and the protest. So is it fair
5 to summarize your testimony here as it relates to this Order
6 that if a mitigation water right is going to be issued, it
7 should only be issued up to the extent of the historical
8 beneficial use and not more?

9 JIM GALLAGHER: That's right.

10 JASON KING: Thank you.

11 THE HEARING OFFICER: Thank you, Mr. King.

12 Ellen Marie Rand. She was yes, or no? Does she
13 still want to say something?

14 Welcome, Miss Rand. R-a-n-d.

15 ELLEN RAND: Hi, I'm Ellen Rand. I wanted to tell
16 you about the -- what used to be called the Diamond Springs
17 Ranch in east Diamond Valley. My dad and sister and I came
18 over to the ranch in 19 -- oh, 65, and looked at the ranch in
19 the winter and it was snowing and everything. And so we
20 purchased it in 19 -- I think I said 194 -- pardon me, I'm not
21 a good speaker.

22 THE HEARING OFFICER: That's just fine.

23 ELLEN RAND: '46. And so I was 15. I had my 16th
24 birthday the first summer we were there. My dad was a cattle
25 man and horse man. We weren't farmers. We came from

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1 California and we had summer and winter pastures there. So
2 we -- I want to say we hayed in the first summer. We had --
3 there were meadows and kind of slue gullies at the ranch, the
4 main ranch. And then the next ranch to it, which our first
5 speaker does not know the names of them, but the first one was
6 the Cox place.

7 THE HEARING OFFICER: C-o-x?

8 ELLEN RAND: Cox, C-o-x, Place is what it's called,
9 and it had springs, and water came down from the canyon to
10 irrigate it. And the springs where the water -- the Cox Place
11 and irrigated it kind of that way, as I remember.

12 And then the next uphill was the willow field. And
13 it -- it had springs in it, too, that pretty much watered -- I
14 don't remember how it was irrigated other than the springs.
15 And then there was another field called the rock field, which
16 had springs, and if there was any runoff water, it was
17 watered. And then there was some Meu Place, which is the last
18 one.

19 THE HEARING OFFICER: The what place?

20 ELLEN RAND: Meu.

21 THE HEARING OFFICER: Spell it for me.

22 ELLEN RAND: M-a-u -- e-u, yeah. And it's the
23 farthest one down. And it's -- it was watered from Davis
24 Canyon, which was -- and I don't never remember haying there,
25 but I was just there in the -- in the summers because I had to

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1 go back to school. And anyhow, we just raised wild hay from
2 the water that was there when I was a young girl, because
3 afterwards I married and went to Pine Valley to live for --
4 until 1973.

5 And then Joe and I came back and bought pump land in
6 Diamond Valley and we had eight pivots and a wonderful life.
7 And we -- Milton was nice enough for years to let us lease the
8 ranch land for our cattle. And as the years went by, the --
9 the springs just sunk. You could -- when we first went there,
10 we were riding a horse. The ground -- up near the springs it
11 was scary to have to ride. The ground was so nice and moist
12 underneath.

13 And through the years, I wasn't there for -- until
14 '73 or so. And then also we had farms up in Idaho and so we
15 were gone quite a bit. But then when we decided we needed to
16 come home, the ranch is very different than now. It's covered
17 with rabbit brush and such because there -- the, the feed used
18 to be great there. But it isn't any more. And so we -- we,
19 eventually when we came back to Diamond Valley we bought the
20 little Mageny Ranch, which is the -- this side south of the
21 Thompson Ranch. And there used to be springs in between where
22 our allotment was, and they're all dried up.

23 Anyhow, this should have been taken care of 35 or
24 40 years ago, not now. That's -- and I am on the fence about
25 it because there was water, but it was -- it was just meadow

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1 land and runoff.
2 THE HEARING OFFICER: Thank you.
3 ELLEN RAND: Thank you.
4 THE HEARING OFFICER: Very much appreciated.
5 That's -- those are all the people who signed up for
6 public comment.
7 Mr. Moyle, you wanted another shot?
8 MARK MOYLE: Yeah, I just have one question.
9 THE HEARING OFFICER: Three minutes.
10 MARK MOYLE: I'll be quicker than that.
11 There's -- I was a little bit -- I had a bit of
12 confusion.
13 THE HEARING OFFICER: Hold on. For the record,
14 that's Mark Moyle.
15 MARK MOYLE: For the record, Mark Moyle, farmer in
16 Diamond Valley, second time up. When Miss Buchanan was up,
17 she talked about No. 3 and Jason gave a description of No. 3
18 and how that would work. But then you said the new filing
19 would have a new priority. Wouldn't the priority date be tied
20 to the original app -- the original water right? Or what am I
21 missing there?
22 JASON KING: The statute is very clear that the
23 priority date of an application is the date that it is stamped
24 in the State Engineer's office. So even though this is
25 diversion rate only, they will be tied together with some

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1 other permit that's going to have a different priority.
2 There's not a mechanism in the statute for us to say, so we're
3 going to make the priority of this January 23rd, 2013 permit
4 the same as permit 10,213.
5 So now, could an attorney argue that? I'm sure they
6 probably could, but no disrespect to attorneys. That's just
7 the -- how the statutory -- statute is written. The date that
8 it is filed with our office is that priority.
9 MARK MOYLE: So currently if you have to do a point
10 of diversion and you do a point diversion, the priority date
11 goes back to the original application; correct?
12 JASON KING: Please ask that again, Mr. Moyle.
13 MARK MOYLE: If I have a well and I have to drill a
14 new well, and I do it outside of the designated area, then I
15 have to do a point of diversion, correct?
16 THE HEARING OFFICER: You mean a change application?
17 JASON KING: You mean a change app --
18 MARK MOYLE: A change app. Excuse me.
19 JASON KING: That is correct.
20 MARK MOYLE: Then the water right refers back to the
21 original, correct?
22 JASON KING: That's absolutely right.
23 So the distinction you're making in the diversion
24 rate only scenario, the new permit would have a very junior
25 water right. If you filed a change application of your

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1 existing right from your bad well of apportion, absolutely.
2 That changed permit when issued, it has the same priority date
3 of its base right. It has that senior right.
4 I guess what it comes down -- if you'll just stick
5 with me on this, is if, if you ever had a regulated basin by
6 priority, those junior diversion rate only would be cut off,
7 more than likely; right because they're the junior priority.
8 However, you're still in possession of that senior right and
9 if you had to then file a change application to move it to the
10 well that's good you still would have that opportunity.
11 I -- this provision in this Order is really
12 responding to requests from water right holders statewide who
13 want the flexibility to keep the 500 acre-feet in the one well
14 that's going bad and have the opportunity to maybe pump
15 another 500 acre-feet out of another well, as long as
16 500 acre-feet is not exceeded from the two wells, it gives
17 them maximum flexibility from each well. That's -- this is
18 what that exception is all about.
19 MARK MOYLE: Okay. I think I'm halfway clear on
20 that. Thank you.
21 THE HEARING OFFICER: Thank you, Mr. Moyle.
22 And with that, we will close --
23 JASON KING: A couple things have been brought up
24 from Kelvin and Rich on the other side. One question that
25 didn't come up, and hopefully it's because it's clear in

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1 everyone's mind, and that is the issue of domestic wells.
2 So I hope it's clear from this Order that it has
3 nothing to do with domestic wells. Obviously, the ability to
4 drill a domestic well still occurs in Diamond Valley. This
5 Order does not prevent that. So, again, no one asked
6 questions, so I assume everyone understood that. So you don't
7 have to apply that from our office.
8 The second thing I'd like to discuss just very
9 briefly is this geothermal issue, and I really appreciate the
10 two comments about not wanting it. And it was put in here,
11 probably for two reasons: I would say 99.5 percent of all the
12 geothermal permits we've issued in this state are for -- first
13 of all, we only issue them for consumptive use of geothermal
14 fluids. If there's no consumptive use, they don't even come
15 talk to us. They talk to Department of Minerals, and that
16 occurs all over the State where they have closed systems,
17 okay, and there's no consumptive use, we don't even hear about
18 them because there's not a consumptive use.
19 The geothermal permits that we have by and large
20 issued are for the consumptive use portion of those geothermal
21 operations, and typically it is a very de minimus amount of
22 water. It's blow back water that happens in those facilities.
23 That may not be any comfort whatsoever, but I wanted to give
24 you a little bit of history of what geothermal water permits
25 that we have issued.

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1 I really heard you, Mr. Bugenig, and I couldn't
2 agree with you more, that this exception for us to issue a
3 geothermal permit for just to actually extract the geothermal
4 fluids and use it beneficially for some operation, there would
5 have to be, with absolute certainty, that it's not impacting
6 the existing rights. And when we go back to Carson City and
7 we talk with our hydrologist and he listens to your testimony,
8 we're going to take a look at that and maybe geothermal is off
9 the table completely in Diamond Valley because of the
10 connectivity. So I just wanted to expand a little bit more on
11 the geothermal.

12 Kelvin and Rich, did you want to add anything to
13 those?

14 RICH PERRY: No. I'm good.

15 THE HEARING OFFICER: Thank you very much.

16 And with that, I'm going to close the hearing on the
17 Proposed Order in Diamond Valley. Let's be off the record.

18 (WHEREUPON, comments were made off the record.)

19 THE HEARING OFFICER: Thank you very much for
20 coming. We really appreciate your participation. We're done
21 for today. Thanks, folks.

22 Thank you, Opera House.

23 (WHEREUPON, the hearing concluded.)
24
25

1 STATE OF NEVADA)
2 HUMBOLDT COUNTY) ss.
3

4 I, Donna Prather, an Official Certified Court
5 Reporter in and for the State of Nevada, do hereby certify:
6 That I was present on Wednesday, January 23, 2013,
7 for the purpose of reporting and took verbatim stenotype notes
8 of the within-entitled session of the public meeting;
9 That the foregoing transcript, consisting of pages 1
10 through 78, inclusive, is a full, true and correct
11 transcription of my stenotype notes of said proceeding.
12
13

14 Dated at Winnemucca, Nevada, the 11th day of
15 February, 2013.
16
17

18 
19 DONNA J. PRATHER
20 Nevada CCR #372
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23
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