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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE SUSAN JOSEPH-TAYLOR, HEARING OFFICER

IN THE MATTER OF APPLICATIONS
81719, 81720, 81825, 82268,
82570, 82571, 82572 and 82573

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING
VOLUME IV
THURSDAY, NOVEMBER 21, 2013

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1 **APPEARANCES:**

2 **Jason King, State Engineer**

3 **Susan Joseph-Taylor, Deputy Administrator**

4 **Malcolm Wilson, Assistant Hearing Officer**

5 **Rick Felling, Chief Hydrologist**

6 **Kristen Gaddes, Hearing Officer**
7 **Section of the Division of Water Resources**

8 **Steve Walmsley, Water Resource Specialist**

9

10 **For Sadler Ranch, LLC:**

Taggart & Taggart, Ltd.
By: Paul G. Taggart, Esq.
Thorndal, Armstrong, Delk
Balkenbush & Eisinger
By: Brent Kolvet, Esq.

11 **For Daniel Venturacci:**

12

13 **For Kenneth Benson,**
14 **Diamond Cattle Company**
15 **And Etcheverry Family**
16 **Limited Partnership:**

Schroeder Law Offices P.C.
By: Therese A. Ure, Esq.

17 **For Diamond Natural**
18 **Resources Protection and**
19 **Conservation Association:**

Bob Burnham

20 **For James Gallagher:**

James Gallagher

21 **For Mark Moyle Farms:**

Mark Moyle

22 **For Eureka County:**

Allison MacKenzie, et al.
By: Karen A. Peterson, Esq.

23

24 **Also present:**

Theodore Beutel, Esq.
Chairman Ithurralde
Vice Chairman Goicoechea
Dale Bugenig
Jake Tibbitts

25

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3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS	PAGE
JED ROBINSON	
Direct Examination by Mr. Kolvet	896
Cross-Examination by Ms. Peterson	900
Cross-Examination by Ms. Ure	905
EILEEN PENROD	
Direct Examination by Ms. Peterson	907
Cross-Examination by Mr. Kolvet	934
Redirect Examination by Ms. Peterson	940
Examination by The State Engineer	941
Examination by Mr. Felling	945
Examination by Mr. Walmsley	946
WILFRED BAILEY	
Direct Examination by Ms. Peterson	950
Cross-Examination by Mr. Taggart	982
Redirect Examination by Ms. Peterson	1011
Examination by Mr. Felling	1014
Examination by The State Engineer	1016
Examination by Mr. Walmsley	1019
JJ GOICOECHEA	
Direct Examination by Ms. Peterson	1025
Cross-Examination by Mr. Taggart	1050
Cross-Examination by Mr. Kolvet	1080

CAPITOL REPORTERS (775) 882-5322

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS	PAGE
JAMES GALLAGHER	
Direct Examination by Ms. Peterson	1099
Cross-Examination by Mr. Taggart	1102
ROBERT BURNHAM	
Direct Examination by Ms. Peterson	1109
Cross-Examination by Mr. Taggart	1115
Examination by The State Engineer	1118
MARK MOYLE	
Direct Examination by Ms. Peterson	1119
Cross-Examination by Mr. Kolvet	1124
Cross-Examination by Mr. Taggart	1126
JAMES MOYLE	
Direct Examination by Ms. Peterson	1129
Cross-Examination by Mr. Kolvet	1141
Cross-Examination by Mr. Taggart	1147

CAPITOL REPORTERS (775) 882-5322

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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HEARING OFFICER JOSEPH-TAYLOR: Welcome,
Mr. Bailey. I'm going to let the court reporter swear you in
while we're -- while Ms. Peterson is getting ready.

(The witness was sworn in)

WILFRED BAILEY

Called as a witness on behalf of the
Protestant, having been first duly sworn,
Was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Peterson:

Q. Mr. Bailey, could you please state your name for
the record.

A. My name is Wilfred Bailey. And almost everybody
knows me by Wids Bailey.

Q. And could you please spell Wids for the court
reporter?

A. Well, it's spelled different ways, but W-i-d-s, I
guess.

Q. Thank you. Do you live in Diamond Valley?

A. Yes.

Q. How long have you lived in Diamond Valley?

A. I've been there all my life except when I was in
the service. I was in the service for two years. But I

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1 spent my whole life in Diamond Valley.

2 Q. And you were born in 1930?

3 A. Yes, uh-huh.

4 Q. And do you live on the Bailey Ranch?

5 A. No. We would -- there was five of us born and
6 raised -- Well, I was born in Elko. But we were raised on
7 the ranch. But then in 1948 my folks moved to Pine Valley
8 and I -- actually my younger brother and I lived on the ranch
9 in '48. Nobody had lived on that old ranch right now for
10 probably 35 years. Because we moved up in the farming area.
11 But we go down there every single day, sometimes four or five
12 times a day for hauling cattle. But we've always been around
13 there some place, you know.

14 Q. Yes. And is the Bailey Ranch the first ranch
15 south of the Sadler Ranch?

16 A. Going south. Yeah, going south it's the first
17 ranch next to the end.

18 Q. And did you know Reinhold Sadler and Floyd
19 Sadler?

20 A. Yes, I did.

21 Q. And do you call Reinhold Sadler Reiny?

22 A. Yes, I knew him as Reiny.

23 Q. And do you know Floyd Sadler as Tiny?

24 A. Yes. And their nickname for each other, Reiny's
25 name, Tiny would call his have him Merv. And Reiny would

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1 call Tiny Shrimp. He was not a small man though.

2 Q. And so if you are referring in your testimony to
3 Reiny you are referring to Reinhold Sadler; is that correct?

4 A. That's true.

5 Q. And if you are referring in your testimony to
6 Tiny, you are referring to Floyd Sadler?

7 A. Yes, that's right.

8 Q. And when did Reiny and Tiny Sadler own the Sadler
9 Ranch?

10 A. As far as I know in my lifetime they were there
11 all my life. Reiny went -- spent his whole life right there.
12 Tiny was away at school for a while. He graduated -- He was
13 an engineer.

14 Q. Did -- Was there a time when Reiny and Tiny
15 actually owned the ranch?

16 A. They had a lawsuit that went on for 18 years, so
17 I'm told. And at the end of that 18 years, the way I
18 understood, they lost the lawsuit. But the way they
19 described it to me, Tiny always told me that losing that
20 lawsuit did not hurt us. What hurt us was all them years of
21 fighting that lawsuit. And once it was -- they bought the
22 ranch, literally bought the ranch after that, after the
23 lawsuit.

24 And leading up to the lawsuit they was down to a
25 hundred head of cattle and no bulls. And the year of the
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1 don't April Loudy and they were in Salmon, Idaho and we
2 talked about this. And he said yes, that it took a big hit
3 on that pond, that's when we decided to move out of there.
4 They weren't saying that real loud when they put the place up
5 for sale because you don't run out and say we're losing our
6 water so I'm selling out to you. But that's what they told
7 us. And we never talked to him before this or after this.
8 But that could be verified. That's what they told me.

9 Q. And do you have any knowledge of what the flow
10 was at Shipley Hot Spring?

11 A. You know, that -- many, many different -- There
12 was a weir put in there. The Weatherlys had a weir put in
13 there. But the rest of the -- all of these other
14 measurements and whatever you want to call them, I'm going to
15 have to say they were guesses. Tiny always told me they
16 always treated it at 3200 gallons a minute. That's what I
17 always understood them -- for Tiny to tell me. That's a lot
18 of water. But that's what I always understood. There was
19 other estimates and guesses and all of that made. But that's
20 the one I believe right there and that's what I'm testifying
21 about.

22 Q. Were you aware of the Romano artesian flowing
23 wells?

24 A. The Romano?

25 Q. Romano. Sorry.
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1 MS. PETERSON: Do you -- Could we ask you to read
2 it?

3 (The question was read back)

4 THE WITNESS: And my question was are you talking
5 flood irrigating?

6 Q. (By Ms. Peterson) Yeah, flood irrigating.

7 A. No, you could not do that.

8 Q. And then directing your attention to the Thompson
9 Ranch on the other side of the valley, are you aware of that
10 ranch?

11 A. Yes.

12 Q. And are you familiar with that ranch?

13 A. I'm not going to say I'm familiar with irrigation
14 and that end of it, no, I am not. No.

15 Q. But living in Diamond Valley did you observe what
16 was happening on that ranch?

17 A. Yes.

18 Q. And after Ted Thompson died --

19 A. Yes.

20 Q. -- did you observe any activity on that ranch,
21 any irrigation activity on that ranch?

22 A. I never seen any action.

23 Q. And then the last thing I'm going to ask you
24 about was your rights that you hold on the Bailey Ranch. Did
25 your -- Who first put that water to use on your ranch?

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1 A. On the Home Ranch that she is talking about, my
2 grandparents come in there in the early day. We have proof
3 that they was in there in 1875. We're pretty near sure in
4 our own family that they was in there in the sixties. And
5 there's been six generations on that old ranch. So that's
6 the question?

7 Q. Yes, that's the question.

8 A. And we do have prior use of the pond prior to
9 1800 in the vested right. We did have a vested right.

10 Q. And you had a spring on your property, the Bailey
11 Spring?

12 A. Yes, we did have a spring.

13 Q. And the Bailey Spring went dry?

14 A. It went dry. It took 25 years to dry that spring
15 up after the electricity come in.

16 Q. And then your -- you were granted groundwater
17 rights from the State Engineer; is that correct?

18 A. Yes. He allowed us to drill a well?

19 Q. Yes.

20 A. That's true. He did, yes.

21 Q. And you're not the paperwork guy that keeps track
22 of all the paperwork associated with your water rights, are
23 you?

24 A. No, I'm not, no.

25 Q. Your son and daughter-in-law do that; is that
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1 correct?

2 A. That's correct. I'm retired myself. I don't
3 have -- The old ranch might still be in our name but it's in
4 a trust. So I actually don't have anything -- no say on the
5 old ranch anymore at all.

6 And I want to say this, when I acquired the old
7 ranch from -- after my dad had passed away in '48 and my
8 mother never turned the ranch over to me until in to the
9 sixties, I think it was. And I never, at any time did I ever
10 figure I would actually own the ranch. I figured I had the
11 use of the ranch and I had the right to pick out somebody in
12 our family to turn it over to. But to actually own it to
13 sell it, I never ever thought that. I had it to use and to
14 take care of. And I wanted my folks to be real -- I'm sorry.

15 HEARING OFFICER JOSEPH-TAYLOR: That's okay,
16 Mr. Bailey. That's okay. You wanted your folks to be proud
17 of you?

18 THE WITNESS: I wanted my folks to be proud of
19 the way we took care of it. I'm sorry.

20 HEARING OFFICER JOSEPH-TAYLOR: That is okay.
21 This is emotional and family ranches have a lot tied to them.
22 Now you got me crying.

23 THE WITNESS: And I figure we done that.

24 HEARING OFFICER JOSEPH-TAYLOR: Good.

25 THE WITNESS: So I can pass away figuring I done
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1 what I was supposed to do.

2 MS. PETERSON: Can I just take one minute?

3 HEARING OFFICER JOSEPH-TAYLOR: Uh-huh.

4 MS. PETERSON: I don't have any further questions
5 at this time.

6 HEARING OFFICER JOSEPH-TAYLOR: Thank you. I
7 know you're sharing witnesses. Ms. Ure, did you have any
8 questions or was Ms. Peterson doing all the examination?

9 MS. URE: She was doing the examination.

10 HEARING OFFICER JOSEPH-TAYLOR:
11 Cross-examination, Mr. Taggart?

12 CROSS-EXAMINATION

13 By Mr. Taggart:

14 Q. Mr. Bailey, good morning. My name is Paul
15 Taggart. I represent Sadler Ranch. I have some questions
16 for you. I'm wondering if you would rather take a break and
17 have lunch first.

18 A. No. I'm fine. Go ahead.

19 Q. I think it will go longer than five minutes, so
20 I'll start now and you let me know.

21 HEARING OFFICER JOSEPH-TAYLOR: That's okay.

22 Q. (By Mr. Taggart) First thing, Mr. Bailey, when
23 was the last time you were on the Sadler Ranch?

24 A. What do you mean? You mean --

25 Q. Physically walking on the ranch, moving around.
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1 what I'm saying.

2 Q. Okay. I have heard you say that. When we were
3 asking you about what happened to your spring, you said
4 something about a number of years after electricity came. Do
5 you remember that?

6 A. Yeah.

7 Q. What did you mean by that?

8 A. There was a lot, including us, a lot of us pumped
9 with diesel up in the farming area. And that wasn't enough
10 water being pumped that it affected anybody to my knowledge
11 because them diesels break down and different facts. But
12 once electricity came in and them pumps don't stop, that's
13 when they started depleting that water.

14 Q. What year do you think that was?

15 A. What are you talking about? Do you mean when it
16 did deplete it or when it --

17 Q. Do you have an idea of how much your spring
18 flowed when it was flowing at full?

19 A. You know, it's just a guess, okay. There was
20 around close to 800 gallons coming out of the pond but there
21 was about 300 gallons raised in the ditch below the pond.
22 And we always guessed at around 1100 gallons. That's at the
23 peak now. I mean, it never varied for all of my lifetime
24 until we started irrigating up in the valley.

25 HEARING OFFICER JOSEPH-TAYLOR: Mr. Bailey, do
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1 you remember when electricity came to the valley?

2 THE WITNESS: Absolutely. I was blessed.

3 HEARING OFFICER JOSEPH-TAYLOR: What year was
4 that? What year was that?

5 THE WITNESS: I'd have to ask my wife.

6 HEARING OFFICER JOSEPH-TAYLOR: Do you got a
7 guess, a range?

8 THE WITNESS: In the seventies, wasn't it? Some
9 of them guys back there, they ought to know.

10 HEARING OFFICER JOSEPH-TAYLOR: Well, you're the
11 witness. Thank you, Mr. Bailey.

12 Q. (By Mr. Taggart) That's all right. So how many
13 gallons did you say you thought was flowing out of it when it
14 was doing well, the spring?

15 A. The spring or the total?

16 Q. What's the difference?

17 A. Well, because I said 300 gallons about raising
18 the ditch below the spring.

19 Q. And so did it pick up water from many
20 different --

21 A. No. It raised. Water raised up. In the ditch
22 there was several places where water raised up.

23 Q. Okay.

24 A. Just like it did in the pond where it raised up
25 in to the pond. And the total flow we guessed was around

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1 1100 gallons. That is a guess. There was never ever a weir
2 or anything put in. It was just a guess.

3 Q. Some folks have made estimates. This guy
4 Harrill, do you remember Mr. Harrill from that 1982 hearing?
5 No?

6 A. No. I'm sorry.

7 Q. He was from the USGS and he made some
8 measurements and -- You don't recall that?

9 A. I don't remember anything about it, no.

10 Q. Okay. Do you know how many -- Oh, well, sorry.
11 When did the spring flow start to decline?

12 A. At what date, you mean?

13 Q. Ballpark.

14 A. It took 25 years for it to deplete -- for it to
15 completely dry up that spring.

16 Q. And you saw it?

17 A. It was a gradual. It was a gradual deal, yes.

18 Q. Over a 25-year period starting when electricity
19 came in?

20 A. Now that's right.

21 Q. Correct.

22 A. That's right.

23 Q. 1982 during that hearing was your -- the spring
24 was still flowing?

25 A. In '82 I'm going to say yes.
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1 coming in. And if it delays you a week you're going to get
2 quite a bit heavier cutting. But you would be more happier
3 if you cut it at a little lesser stage because it would make
4 a little better hay out of it. The head go in to their
5 second stage on Timothy. They'll come out and they'll have
6 the first stage and then they'll have a second stage. And
7 you'll want to cut it on that first stage if you can because
8 it makes better hay. But sometimes you can't do it because
9 the weather delays it. But usually there's two crops with
10 Timothy and your first crop is always your best crop.

11 There's two varieties that are pretty commonly used and one
12 of them is better on the second cutting than the other one.
13 But the other one is better to put more first crop off.

14 And you can get close to four tons to the acre.
15 If everything is done right, you can get pretty close to four
16 tons an acre on that one cutting. And you get around two ton
17 on the second cutting, maybe a little more than that. It
18 depends on, kind of when you got it cut and how quickly you
19 got it off and whatever.

20 MR. WALMSLEY: Thank you. You know what, I think
21 that answers my question. I don't have any further
22 questions. Thank you very much.

23 HEARING OFFICER JOSEPH-TAYLOR: Mr. Bailey, we
24 really appreciate your time. Thank you for coming in. And
25 you may be excused.

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THE WITNESS: You're welcome.

HEARING OFFICER JOSEPH-TAYLOR: Thank you. I know that was a long stretch. We'll be in recess to 2:15.

(Lunch recess was taken)

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