

Gordon H. DePaoli, NSB #195  
Dale E. Ferguson, NSB #4986  
Woodburn and Wedge  
6100 Neil Road, Suite 500  
Reno, Nevada 89511  
Attorneys for Wilfred Bailey and Carolyn Bailey,  
Trustees of the Wilfred and Carolyn Bailey Family Trust  
Dated February 20, 2018

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

IN THE MATTER OF THE  
DETERMINATION OF THE RELATIVE  
RIGHTS IN AND TO ALL WATERS OF  
DIAMOND VALLEY, HYDROGRAPHIC  
BASIN NO. 10-153, ELKO AND EUREKA  
COUNTIES, NEVADA

**OBJECTIONS OF WILFRED AND  
CAROLYN BAILEY FAMILY TRUST  
DATED FEBRUARY 20, 2018 TO  
PRELIMINARY ORDER OF  
DETERMINATION**

Wilfred Bailey and Carolyn Bailey, Trustees of the Wilfred and Carolyn Bailey Family Trust dated February 20, 2018, hereinafter the “Wilfred and Carolyn Bailey Family Trust,” are the successors in interest to the Bailey Family Trust and Marietta Bailey, and are the owners of record of claims of vested rights for irrigation, stock water and domestic uses referenced in the State Engineer’s Preliminary Order of Determination and in the Abstract of Claims, both entered herein on August 30, 2018. Pursuant to the provisions of N.R.S. 533.145, the Wilfred and Carolyn Bailey Family Trust files the following Objections to the August 30, 2018 Preliminary Order of Determination (the “Preliminary Order”):

**Objections With Reference to Claim V-01104**

As amended in 2016, Proof of Appropriation V-01104 claims 2.0 cfs of water from Bailey Spring to irrigate 363.25 acres from January 1 through December 31 with a priority date of 1863. In the Preliminary Order, the State Engineer allowed a vested right to divert 0.75 cfs of water from

April 1 to September 30 of each year (183 days) from Bailey Spring to irrigate 105 acres of meadow with a priority date of 1880 and 21 acres of harvest with a priority date of 1901, for a total duty of 273 afs, and year-round use of water for domestic purposes, when it is available, and for the needs of 500 cattle and 20 horses with a priority date of 1863. In effect, the State Engineer disallowed the claim for irrigation of approximately 237.25 acres of land, restricted the duty of water based upon crops being grown at a particular time, and limited the season of use. The Wilfred and Carolyn Bailey Family Trust objects to those determinations. The grounds for those objections include, but are not necessarily limited to, the following:

1. Proof V-01104 as amended in 2016 should have been allowed as filed because, regardless of when all work was completed for the irrigation of the entire 363.25 acres, work had been commenced before 1905 and was completed with reasonable diligence;

2. Diversion facilities are not required to establish a water right, and land of an owner which receives water by way of run-off from the irrigation of other land of that same owner is in fact and law entitled to a water right and a water duty.

3. Historic evidence shows that the Bailey predecessors in interest appropriated and intended to appropriate the entire flow of Bailey Spring and, to that end, sometime prior to 1905 and perhaps as early as 1879, constructed a reservoir for the storage and later beneficial use of water from Bailey Spring. The construction and use of a reservoir for the storage and later use of water established a vested right to utilize water from that reservoir for the irrigation of all 363.25 acres of land.

4. Under applicable law, beneficial use is the basis, measure and limit of a water right, and its measure is that amount of water which is reasonably required to be applied to any given tract of land as may be adequate to produce therefrom a maximum amount of such crops as are

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ordinarily grown thereon. The water duty of all land should be based upon the needed water duty for alfalfa which has been ordinarily and historically grown in Diamond Valley, regardless of whether it was the first crop grown thereon.

5. Evidence establishes that all 363.25 acres of land were in irrigation at least by 1946, and pursuant to applicable law, the Wilfred and Carolyn Bailey Family Trust and their predecessors in interest have a prescriptive right to the water needed to irrigate all such land.

6. Consistent with beneficial use as the basis and limit of the water right and with the State Engineer's consistent approval of a year-round season of use in Diamond Valley, the season of use should be January 1 to December 31.

#### **Objections With Respect to Claim V-10868**

Proof of Appropriation V-10868 was filed by the Bailey Family Trust on May 26, 2016, claiming water from the Bull Field Spring Complex to sub-irrigate 9.09 acres of native hay and garden from January 1 through December 31 with a priority date of 1897. Stock water was stated as a secondary use and was first used in 1863. In the Preliminary Order, the State Engineer concluded there was no evidence of a former garden as claimed in the proof, and if the claimed pasture or harvest did exist, there was no evidence of developed points of diversion or relic diversion structures in the area other than a hand driven well. The State Engineer disallowed the claim of a vested right for any water from January 1 through December 31 of each year from Bull Field Spring Complex to irrigate 9.09 acres of native hay and garden.

The Wilfred and Carolyn Bailey Family Trust objects to those determinations, and the grounds for those objections include, but are not necessarily limited to the following:

1. The Proof of Appropriation expressly states that the property was used for a garden and pasture.

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2. Nevada law does not require a diversion of water to establish beneficial use, and vested water rights may be and have been established by subirrigation.

**Prayer for Relief**

WHEREFORE, the Wilfred and Carolyn Bailey Family Trust prays:

1. That the State Engineer enter a Final Order of Determination approving Amended Proof of Appropriation V-01104 as filed, with a water duty of 4 acre feet per acre for all such lands and a season of use from January 1 to December 31;

2. That the State Engineer enter a Final Order of Determination approving Proof of Appropriation V-10868 as filed; and

3. For such other and further relief as the State Engineer deems just and proper.

Dated this 2<sup>nd</sup> of November, 2018.

WOODBURN AND WEDGE



By: Gordon H. DePaoli  
6100 Neil Road, Suite 500  
Reno, Nevada 89511

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VERIFICATION

Under penalty of perjury, the undersigned, Wilfred and Carolyn Bailey, Trustees of the Wilfred and Carolyn Bailey Family Trust dated February 20, 2018, each state:

1. We have read the foregoing Objections to Preliminary Order of Determination.
2. Based upon the historical research we have done and based upon information passed on to the members of the Bailey family since the Bailey Ranch was established in 1863, including each of us, to the best of our knowledge, information and belief, the factual matters set forth in the foregoing Objections are true, and we believe them to be true.

WILFRED AND CAROLYN BAILEY FAMILY TRUST  
DATED FEBRUARY 20, 2018

By: Wilfred Bailey  
Wilfred Bailey, Trustee

By: Carolyn Bailey  
Carolyn Bailey, Trustee

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