

APN: 007-210-28 & 007-330-02



KATHERINE J. BOWLING, CLERK RECORDER

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Nevada Department of Conservation
and Natural Resources
Conserve Nevada Program Manager
Director's Office
901 S. Stewart St., Ste. 1003
Carson City, NV 89701

**DECLARATION OF RESTRICTIVE COVENANTS
FOR NEVADA WATER CONSERVATION AND INFRASTRUCTURE INITIATIVE**

This Declaration of Restrictive Covenants ("Declaration") is made by J.W.L. Properties LLC, a Nevada limited liability company ("Owner") for the benefit of the State of Nevada Department of Conservation and Natural Resources ("Department") pursuant to the Nevada Water Conservation and Infrastructure Initiative ("NWCII"), as facilitated by the Central Nevada Regional Water Authority ("Facilitator"). The State of Nevada is the direct beneficiary of the Restrictive Covenants in this Declaration, and no third-party beneficiaries exist. For the purpose of enforcing this Declaration, the Department may act through any authorized designee.

RECITALS

- A. Owner is the owner of certain real property located in the County of Eureka, State of Nevada, which is more fully described on Exhibit A hereto (the "Land").
- B. Appurtenant to the Land were certain groundwater rights described in the following permits and certificates issued by the Nevada Division of Water Resources ("DWR"), a division of the Department, which are collectively referred to in this Declaration as "the Water Rights":

PERMIT	CERTIFICATE	DUTY (AFA)	DIVERSION RATE (CFS)	HYDROGRAPHIC BASIN
20487	7352	510.8	2.16	Diamond Valley - 153
78771		362.4	2.3376	Diamond Valley - 153
78772		128	0.541	Diamond Valley - 153

78773		398.4	1.53	Diamond Valley - 153
78774		52	0.3354	Diamond Valley - 153
78775		88	0.338	Diamond Valley - 153

- C. Owner is a voluntary participant in the NWCII Groundwater Rights Retirement Program.
- D. Using funds from the Department, Facilitator has paid Owner or Owner's Designee **\$1,226,880.00** ("the Compensation") for the permanent retirement of an **1,533.6** acre-feet-annually portion of the Water Rights (the "Retired Water Rights").
- E. As consideration for receiving the Compensation and Mitigation Payment (defined in ¶2a), or benefit thereof, Owner has voluntarily agreed to permanently retire the Retired Water Rights in perpetuity, disclaim and forever relinquish any claim of right to the Retired Water Rights, and establish and comply with certain permanent restrictions with respect to the use of the Land ("the Restrictive Covenants") that are intended to run with the land, as more fully set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner declares and agrees to the following Restrictive Covenants on the Land:

1. Permanent Retirement of Water Rights. Except as otherwise stated in this Declaration, Owner hereby agrees to permanently retire the Retired Water Rights in perpetuity and disclaim and forever relinquish any claim of right to the Retired Water Rights. Owner represents and warrants that it has signed the Retirement Letter required to be submitted to DWR to permanently retire the Retired Water Rights, a signed and notarized copy of which is attached hereto and incorporated herein as Exhibit B. After September 30, 2024, Owner shall have no right to use the Retired Water Rights for any purpose.
2. Mitigation.
 - a. Mitigation and Reclamation Plan. Owner has executed, and shall implement and comply with a mitigation and reclamation plan developed by the Facilitator, or an alternative site-specific plan developed by Owner and approved by the Facilitator, that will guide the transition away from cultivated agriculture to a non-irrigated vegetated state or other approved use of the Land ("Plan"), a signed and notarized copy of which is attached hereto and incorporated herein as Exhibit C. Owner has received \$50 per acre-foot of Retired Water Rights, for a total of **\$76,680.00** to assist Owner to implement and comply with the Plan ("Mitigation Payment").
 - b. Retained Mitigation Water. Owner may retain the right to pump up to 2 acre-feet annually of the Water Rights for every 160-acre parcel encompassed by this Declaration, for a total of **6.00** acre feet annually ("Retained Water Rights") for the following limited purposes: (a) in furtherance of, and compliance with, the Plan); (b) domestic use; (c) stockwater use; or (d) any other use approved by DWR. Owner is responsible, at its cost, for preparing and filing an application with DWR, including any required map, to change

the place and manner of use, and the point of diversion of the Retained Water Rights (“the Change Application”). Owner may not exercise the Retained Water Rights unless and until DWR approves the Change Application. Owner agrees that the Retained Water Rights shall be deemed abandoned and become Retired Water Rights: (a) should Seller fail to submit the Change Application within 90 days of Closing; (b) if DWR denies the Change Application, and Owner fails to submit a second change application within 90 days of the date of the denial of the first Change Application; or (c) DWR denies the second change application. Under any of the foregoing circumstances, Owner (a) shall have no further interest in or right to claim any interest in or right to convey the Retained Water Rights; (b) acknowledges and agrees that the Retained Water Rights shall become Retired Water Rights without any further payments to Owner; and (c) hereby waives any defense to any of the foregoing circumstances constituting an intent to abandon the Retained Water Rights. Nothing in this document shall be construed to limit DWR’s discretion in considering the Change Application or DWR’s right to deny the Change Application. DWR’s failure to act on or approve a change application for the Retained Rights has no effect on Owner’s obligations and commitments in this Declaration or on the Restrictive Covenants placed upon the Land. Owner shall install a totalizing meter on any well(s) from which the Retained Water Rights are withdrawn.

- c. Nuisances. Owner shall take reasonable steps to prevent nuisances from arising as a result of the cessation of irrigation on the Land, including but not limited to the proliferation of noxious or invasive species, rodents, erosion, dust, and fire hazards. Any future use of the Land shall be in conformance with the Plan attached hereto as Exhibit C, and also, for Land located in Basin 153 (Diamond Valley), in conformance with the Diamond Valley Groundwater Management Plan, attached hereto as Exhibit D. Owner must comply with all applicable state and local laws and regulations pertaining to the control of noxious weeds and rodents, including but not limited to NRS 555.150.
3. Other Water Rights. Other than the Retained Water Rights, no groundwater rights may remain appurtenant to the Land. No application may be filed to make a new groundwater appropriation for use on the Land. Except for Land located in the Diamond Valley Hydrographic Basin and so long as the Owner complies with all provisions of the Diamond Groundwater Management Plan, no other groundwater right may be moved from another piece of land to be used on the Land unless: (a) the right to be moved has been exercised for five consecutive years prior to any change application being filed; (b) prior to filing any such change application, the Owner first notifies the Department and the Facilitator and receives approval from the Department; (c) any such change application is approved by DWR; (d) the duty of the changed water right does not exceed the net irrigation water requirement for the proposed crop type for the area; and (e) approval of any such change application will not result in a net increase in the amount of water pumped in the hydrographic basin. Any transfer of water rights made without complying with this section of this Agreement is void. Nothing in this Declaration shall be construed to limit DWR’s or the Department’s discretion in considering an application pursuant to this section or the right to deny any application under this section or to impose any conditions on such applications. Conditions may include repayment of some or all funds received by the Owner in conjunction with this

Declaration. Unless approved as part of a water rights change application or authorized under the Diamond Valley Groundwater Management Plan, no new wells may be drilled on the Land; however, any well that is being used for the purpose of exercising the Retained Water Rights may be replaced or reconditioned.

4. Future Subdivision. Future subdividing or parceling of the Land shall be subject to the requirement currently found in NRS 534.120(3)(e) that sufficient water rights in good standing (i.e., not the Retired Water Rights retired by Owner or the Retained Water Rights) be dedicated to the county, local municipality or water purveyor, according to local ordinance, or relinquished to the Nevada State Engineer in order to ensure sufficient supply of water for each future parcel.
5. Verification of Compliance. Owner irrevocably grants the Department and its designees the right to verify compliance with the Plan and the Restrictive Covenants set forth in this Declaration. The method and methodology of this review may include, among other methods, satellite and/or airplane or drone observations, on-site inspections, and additional or different metering. Owner shall maintain and, upon request, make available to the Department and/or its designees, pumping data associated with all wells on the Land. Owner agrees that the Department and its designees (including their employees and authorized representatives) have the right to enter the Land upon 3- days' notice to inspect the Land, wells and associated infrastructure. The Department's and its designees' ability to enter upon the Land and monitor and verify compliance with the Plan and the Restrictive Covenants set forth in this Declaration shall constitute an irrevocable license that runs with and burdens the Land. Nothing in this section or this Declaration restricts diminishes or in any way impairs DWR's statutory rights of inspection under Nevada Law, including but not limited to NRS 534.130.
6. Runs with the Land. This Declaration and the Restrictive Covenants set forth herein restricting the use of the Land are covenants running with, touching, and encumbering the Land, are binding upon the Owner and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns, and are not merely personal obligations and promises of the Owner.
7. Requirements of State Law. Any and all requirements of the laws of Nevada that must be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternative, an equitable servitude has been created to ensure that these restrictions run with the land. Each and every contract, deed, or other instrument hereafter executed conveying the Land or portion thereof shall expressly provide that such conveyance is subject to this Declaration. Provided, however, that failure of any such contract, deed or instrument to so state shall have no effect on the applicability and enforceability of this Declaration and the Restrictive Covenants stated herein.
8. Enforcement. In the event of a breach or threatened breach of this Declaration and its Restrictive Covenants, the Department and/or its designees, after providing notice and a reasonable opportunity to cure, shall be entitled to institute proceedings at law or in equity for relief from the consequences of said breach including seeking injunctive relief to prevent a violation thereof.

The cure period shall not exceed thirty (30) days. The prevailing party in any such action shall be awarded its costs and expenses, including reasonable attorneys' fees, which shall be deemed to have accrued on the commencement of such action and shall be awarded whether or not such action is prosecuted to judgment. Failure to comply with the Plan or the Restrictive Covenants shall be deemed prima facie evidence of a nuisance.

9. Penalties. In addition to other remedies available in law or equity, the Department or its designees, after providing notice and a reasonable opportunity to cure, may impose civil penalties for failure to comply with the Plan, the Restrictive Covenants, or any other obligation in this Declaration. The cure period shall not exceed thirty (30) days. In the Department's sole discretion, penalties may be up to the sum of the following: (a) the Compensation and Mitigation Payment, adjusted for inflation from the Effective Date to the time of infraction; (b) \$5,000 per day for each day for which the violation persists, and (c) reasonable attorney fees and other costs of enforcement.
10. Superiority to Subsequent Liens. The obligations of this Declaration are, and shall at all times be, superior to the lien of any mortgage or deed of trust hereafter made affecting the Land or any part thereof, including any improvements now or hereafter placed on the Land. Notwithstanding a foreclosure or other voluntary or involuntary transfer of title, the obligations of this Declaration shall remain in full force and effect but are subordinate to the security interests of record on the Effective Date.
11. Notices. All notices and required written communications shall be by email and either personal delivery or certified mail to the persons and addresses identified below.

OWNER	DEPARTMENT	FACILITATOR
J.W.L. Properties LLC PO Box 231 Smith, NV 89430 dirtandpots@gmail.com Office: 775-465-9553 Cell: 775-721-8873	Nevada Department of Conservation and Natural Resources Director's Office, Attn NWCII 901 S. Stewart St., Ste 1003 Carson City, NV 89701-5249 NWCII@dnr.nv.gov 775-684-2707	Central Nevada Regional Water Authority c/o Churchill County, Nevada 155 N. Taylor Street Suite 153 Fallon, NV info@cnrwa.com

12. Miscellaneous.

- (a) Headings. The headings in this Declaration are for convenience only and do not in any way limit or affect the terms and provisions hereof.
- (b) Unenforceability. If any provision of this Declaration is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

- (c) Singular/Plural. Wherever appropriate in this Declaration, the singular shall be deemed to refer to the plural and the plural to the singular.
- (d) Governing Law. The rights and obligations of the parties under this Declaration shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Declaration and consent to personal jurisdiction in such court for any action or proceeding arising out of this Declaration
- (e) Amendments. This Declaration may not be revoked or modified without express written and recorded consent of the Director of the Department.
- (f) Recordation. Upon execution of this Declaration, this Declaration shall be recorded in the official records of the office of the County Recorder in the county in which the Land is located.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be signed by its duly authorized representatives as of the date written below (“Effective Date”).

**OWNER
J.W.L. PROPERTIES LLC**

Signature: *Jeffrey J. Lummer*
 Printed Name: Jeffrey J. Lummer
 Title: owner
 Date: 10/24/2024

**NEVADA DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES**

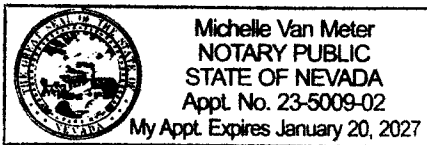
Signature: *James A. Settelmeier*
 By: James A. Settelmeier
 Title: Director
 Date: 10/22/24

STATE OF NEVADA)

) ss.

COUNTY OF Washoe)

On this 28th day of October 2024, Jeffery John Lammari personally appeared before me and acknowledged this instrument on behalf of J.W.L. PROPERTIES LLC.



Michelle Van Meter

Notary Public

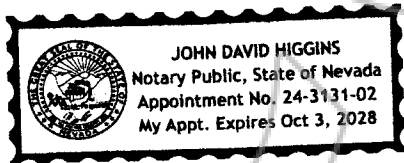
My Commission expires: Jan. 20, 2027

STATE OF NEVADA)

) ss.

COUNTY OF Carson City)

On this 22nd day of October 2024, JAMES SETTELMEYER, personally appeared before me as DIRECTOR and on behalf of the Nevada Department of Conservation and Natural Resources and acknowledged this instrument.



John David Higgins

Notary Public

My Commission expires: OCT. 3 2028

EXHIBIT A

APN: 007-210-28

The land referred to herein is situated in the State of Nevada, County of Eureka, and more particularly described as follows:

TOWNSHIP 21 NORTH, RANGE 53 EAST, M.D.M.

SECTION 22: NW1/4

Further described under Document No. 229574, filed in the office of the County Recorder of Eureka County, State of Nevada, on June 16, 2015, Official Records.

APN: 007-330-02

The land referred to herein is situated in the State of Nevada, County of Eureka, and more particularly described as follows:

TOWNSHIP 20 NORTH, RANGE 53 EAST, M.D.M.

SECTION 4: Lots 15 and 16; S1/2 NE1/4; SE1/4

Further described under Document No. 227343, filed in the office of the County Recorder of Eureka County, State of Nevada, on May 23, 2014, Official Records.

EXHIBIT B

(signed and notarized copy of Retirement Letter)

COPY

State Engineer
 Nevada Division of Water Resources
 901 S. Stewart St., Suite 2002
 Carson City, NV 89701

Re: Retirement of Water Rights

PERMIT	CERTIFICATE	DUTY (AFA)	DIVERSION RATE (CFS)	HYDROGRAPHIC BASIN
20487	7352	510.8	2.16	Diamond Valley - 153
78771		362.4	2.3376	Diamond Valley - 153
78772		128	0.541	Diamond Valley - 153
78773		398.4	1.53	Diamond Valley - 153
78774		52	0.3354	Diamond Valley - 153
78775		88	0.338	Diamond Valley - 153

Owner(s) of Record	J.W.L. Properties LLC
Address	PO Box 231 Smith, NV 89430
Email Address	dirtandpots@gmail.com
Phone Number	Office: 775-465-9553 Cell: 775-721-8873

Dear State Engineer:

I am the owner of record of the foregoing water rights.

I wish to retire a portion of the foregoing water rights in the amount of:

PERMIT	DUTY (AFA) RETIRED	DIVERSION RATE (CFS) RETIRED
20487	510.8	2.16
78771	356.4	0.0
78772	128	0.541
78773	398.4	1.53

78774	52	0.3354
78775	88	0.338

The water right or portion of water right I wish to retire is appurtenant to the land more particularly described as follows:

COUNTY	APN	TOWNSHIP	RANGE	SECTION	QUARTER/ QUARTER
Eureka	007-210-28	21N	53E	22	NW ¹ / ₄ NW ¹ / ₄
					NE ¹ / ₄ NW ¹ / ₄
					SW ¹ / ₄ NW ¹ / ₄
					SE ¹ / ₄ NW ¹ / ₄
	007-330-02	20N	53E	4	Lot 15
					Lot 16
					SW ¹ / ₄ NE ¹ / ₄
					SE ¹ / ₄ NE ¹ / ₄
					NW ¹ / ₄ SE ¹ / ₄
					NE ¹ / ₄ SE ¹ / ₄
					SW ¹ / ₄ SE ¹ / ₄
					SE ¹ / ₄ SE ¹ / ₄

Through this letter, I retire to the Nevada State Engineer, forever disclaim any interest in, and withdraw for the purpose of retirement any claim of right in the foregoing water rights. I understand and agree that the water rights being retired will permanently revert to the source and will not be available for future appropriation or use; that the retirement cannot be reversed; I will have no right to use the water rights for any purpose; and I and my successors, assigns, and heirs shall have no further rights or interests, and are forever barred from claiming any further rights or interests, in the water rights.

Effective date of retirement	September 30, 2024
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OWNER OF RECORD:

J.W.L. PROPERTIES LLC

Signature: 

Printed Name: Jeffrey J. Lammie

Title: owner

Date: 10/28/2024

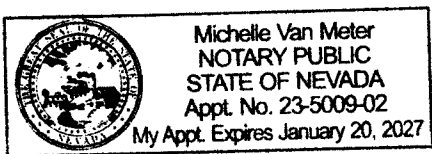
STATE OF NEVADA)

) ss.

COUNTY OF Washoe)

28th

On this 28th day of October 2024, Jeffery John Lemmo personally appeared before me and acknowledged the foregoing document on behalf of J.W.L. PROPERTIES LLC.



Michelle Van Meter

Notary Public

My Commission expires: Jan 20, 2027

EXHIBIT C

(signed and notarized copy of Mitigation and Reclamation Plan)

COPY

**Mitigation and Reclamation Plan for Water Rights Retirement
Pursuant to the Nevada Water Conservation Infrastructure Initiative
Funded by: Central Nevada Regional Water Authority**

Background:

The groundwater rights retirement program being implemented pursuant to the Nevada Water Conservation Infrastructure Initiative offers funding to implement mitigation practices up to \$50 per acre-foot of water retired. The purpose of this funding is to assist in the conversion from an irrigated crop to an unirrigated condition that does not result in:

1. Areas dominated by invasive or noxious weeds that create a fire hazard or other adverse condition;
2. Areas of bare soils that have potential for soil loss through water or wind erosion;
3. Any condition that constitutes a nuisance, including impairment of adjacent lands; and,
4. Other negative short- and long-term effects specific to air, soil, and vegetation.

The guidelines in this Mitigation and Reclamation Plan (Plan) constitute minimum compliance requirements as well as conditions for receiving mitigation funds of \$50 per acre-foot of water retired. Additional mitigation measures or variations may be desired by some land and water right owners or required by state or local authorities (such as weed, rodent, or public nuisance abatement); however, additional mitigation funding will not be provided for these additional measures. It is the responsibility of the property owner to comply with all applicable state and local laws and regulations pertaining to the control of noxious weeds and rodents, including but not limited to NRS 555.150.

If a landowner desires a mitigation approach that differs from this Plan, then it is the responsibility of the landowner to develop a property-specific plan for submittal and approval by the appropriate funding entity prior to, and as a condition of, the closing on the purchase of the landowner's water rights.

Certain mitigation reporting requirements are also required (see "Reporting" Section below) for any recipient of mitigation funding.

Vegetation Conversion Mitigation:

The conversion from irrigated crops to non-irrigated upland vegetation can be challenging depending on the timing and amount of precipitation received. Once irrigation water is removed, the unirrigated crops can persist to some extent, minimize stormwater or wind erosion of soils, and suppress noxious and invasive species for several seasons. Eventually, a harsher conversion to bare soils and non-desirable vegetation will occur without additional management efforts. This Plan provides a minimum recommended approach for a more long-term stable transition based on previous experiences in both Boulder Valley and Diamond Valley, Nevada with input from the USDA – Agricultural Research Service Great Basin Rangelands Research Unit in Reno, Nevada.

**Mitigation and Reclamation Plan for Water Rights Retirement
Pursuant to the Nevada Water Conservation Infrastructure Initiative
Funded by: Central Nevada Regional Water Authority**

Standard Approach for Transitioning from Irrigated Crops to Non-irrigated Upland Vegetation:

- For seedbed preparation, disk irrigated crop(s) following removal of irrigation and final harvest (or grazing). Recommendation is for fall disking prior to planting a new dry-land mix of perennial grasses.
- For seeding, drill seed Siberian wheatgrass at 8 pounds per acre with a properly calibrated standard grain drill or rangeland drill not to exceed 2" depth. Recommendation is for fall seeding prior to soil conditions (mud or freeze) that can negatively impact or limit proper seed placement.
- If a more diverse seed mix is desired:
 - Reduce Siberian wheatgrass rate to 6 pounds per acre;
 - Add Sandberg's bluegrass at 2 pounds per acre rate; and,
 - Add 'Immigrant' or 'Snowstorm' kochia at 2 pounds per acre.
- Monitor spring germination and precipitation. A simple rain gauge is helpful to ensure adequate moisture.
 - Supplemental irrigation may be needed to establish the crop, particularly in May - June, if the spring and early summer is dry or windy. Recommend ¼" irrigation every 7 - 10 days in the absence of similar natural precipitation. **See Water Mitigation Section for administrative considerations.**
- Avoid grazing for 18 - 24 months following germination to allow for proper plant establishment and strong roots. If the applicant plans to utilize the land for grazing once plants are established, then grazing needs to be managed in a way to ensure persistence of desirable vegetative cover to compete against noxious weeds and bare soils.

Alternate Approach:

- Landowners may desire to use portions of land abandoned from irrigation for other uses that do not warrant establishment of non-irrigated vegetation. These lands will need to be stabilized in a manner that prevents wind and water erosion of soil and establishment of noxious weeds. Depending on the desired use, this may include application of a gravel cap, application of soil palliative, and/or other means of stabilizing the soil and preventing weeds.
 - Under this scenario, prior to and as a condition of closing on the purchase of landowner's water rights, the landowner will be required to submit a site-specific plan that identifies any lands that will not be revegetated, along with an estimated area (acreage), and specific steps that will be taken to minimize soil erosion and prevent the establishment of noxious or invasive weeds.

**Mitigation and Reclamation Plan for Water Rights Retirement
Pursuant to the Nevada Water Conservation Infrastructure Initiative
Funded by: Central Nevada Regional Water Authority**

Contingencies:

Landowners receiving funding are required to implement contingencies if seedings fail and/or noxious weeds establish. Application of integrated weed management and best management practices are encouraged.

Targeted spot-application of herbicide or other integrated weed management practices may be necessary for non-desirable annual broad-leaf weeds or noxious weeds. The specific timing and treatment method will need to be specific to the weed species.

- Reference and follow the Nevada Nuisance Weed Field Guide published by the University of Nevada Cooperative Extension (2018).
- Available online at: https://naes.agnt.unr.edu/PMS/Pubs/1399_2019_01.pdf.

The below guidelines are based on existing best management practices and prior experience with similar projects; however, application of herbicide is not required if other integrated weed management approaches are implemented.

- If annual invasive grasses such as cheatgrass establish after seeding, consider:
 - If adequate perennial species are present (at least 1 perennial wheatgrass per square foot is a good reference point for proper annual grass suppression):
 - Spray area with a targeted pre-emergent herbicide in September to allow release of perennial species in the next growing season:
 - Apply Indaziflam at a 5 ounce per acre rate to effectively reduce annual grass germination and competition for 36-48 months. This will allow existing perennial grasses to improve vigor. Over-seeding existing perennial grass following 36-month fallow would increase perennial grass densities.
 - If adequate perennial species are NOT present (less than 1 perennial wheatgrass per square foot):
 - Spray area with a targeted pre-emergent herbicide in September. Drill seed as listed under the "Standard Approach" the following fall.
 - Apply Imazapic at a 6 ounce per acre rate in September and allow a 1-year chemical fallow.
- If annual broad-leaf weeds such as Russian thistle or mustard species establish, consider:
 - A summer application of 2,4-D at 2 pounds per acre applied during initial emergence of the weeds to effectively control broadleaf weeds.
 - If there is positive sign of perennial grass seedlings, reduce the 2,4-D rate to 1 pound per acre rate. Applying it in late May will reduce broadleaf weeds while not injuring perennial grass seedlings.
 - If continued problems with broadleaf weeds persist, apply Aminopyralid-tripromine at 7 ounces per acre in April prior to broadleaf weed emergence, which performs as a pre-emergent broadleaf weed control, followed by seeding applications in the fall of the year to recommended species.

**Mitigation and Reclamation Plan for Water Rights Retirement
Pursuant to the Nevada Water Conservation Infrastructure Initiative
Funded by: Central Nevada Regional Water Authority**

Water Use for Mitigation:

Water may be available for mitigation and reclamation (i.e., retention of 2 acre-feet of water rights per quarter section) conditioned upon compliance with the terms of the Declaration of Restrictive Covenants that funding recipients must sign and pursuant to state law and regulatory requirements. Mitigation funding may be used for well abandonment in compliance with state law and regulatory requirements.

In Diamond Valley Hydrographic Basin, the transfer of an annual water allocation from an active groundwater account to the lands from which water rights have been retired is authorized for continued irrigation as long as all of the provisions of the Diamond Valley Groundwater Management Plan are met, and the terms of the Declaration of Restrictive Covenants are satisfied. Under that circumstance, continued irrigation of the land must occur at a frequency to ensure establishment of desirable vegetation, suppression of invasive species, and avoidance of a bare soil condition.

Technical Assistance:

- There are many scientists and professionals able to assist in the planning and implementation of reseeded efforts or other mitigation measures on previously irrigated farmland. This includes:
 - The University of Nevada Extension;
 - extension.unr.edu
 - The University of Nevada Agricultural Experiment Station;
 - naes.unr.edu
 - USDA Agricultural Research Service, including the Great Basin Rangelands Research Unit (Reno);
 - www.ars.usda.gov
 - www.ars.usda.gov/pacific-west-area/reno-nv/great-basin-rangelands
 - USDA Natural Resources Conservation Service;
 - www.nrcs.usda.gov/conservation-basics/conservation-by-state/nevada
 - Conservation Districts; and,
 - www.dcnr.nv.gov/divisions-boards/conservation-districts-program
 - www.nvacd.org
 - Non-governmental entities, private agronomy and natural resources consulting firms.
 - Either the Central Nevada Regional Water Authority or the Humboldt River Basin Water Authority may be able to provide a reference per specific request.

**Mitigation and Reclamation Plan for Water Rights Retirement
Pursuant to the Nevada Water Conservation Infrastructure Initiative
Funded by: Central Nevada Regional Water Authority**

Alternative Site-Specific Mitigation and Reclamation Plan:

A landowner who does not wish to follow the recommendations outlined in this Plan must submit and obtain approval from the finding authority as a condition of purchasing the water rights for retirement of a site-specific mitigation and reclamation plan that is similar in format and detail to this Plan and that includes, at a minimum:

1. Alternative seedbed preparation approach (if disking is not implemented).
2. Alternative seeding approach (if drill seeding is not implemented).
3. Alternative seed mix and application rate (if the seed mixes and application rates in this Plan are not used).
4. Identification of any lands that will not be revegetated along with an estimated area (acreage) and written summary of how soil erosion or establishment of noxious or invasive weeds will be minimized.
5. Contingency actions for managing invasive or noxious weeds (if different than described in this Plan).

Reporting:

Landowners must provide reporting of key mitigation milestones, as follows:

1. Photo documentation, including completion dates:
 - a. Immediately following seedbed preparation;
 - b. Immediately following seeding;
 - c. Following seeding at approximately 3, 6 and 12 months; and,
 - d. Immediately after completion of any soil stabilization of any areas that are not reseeded.
2. Receipts or other documentation for:
 - a. Purchase of seed (including seed tags);
 - b. Any soil stabilization products for areas that are not reseeded; and,
 - c. Any other receipts for materials or expenses incurred or contracted for specific mitigation.
 - i. Including well abandonment if completed.

SIGNATURE PAGE FOLLOWS

EXHIBIT D

(Copy of Diamond Valley Groundwater Management Plan)

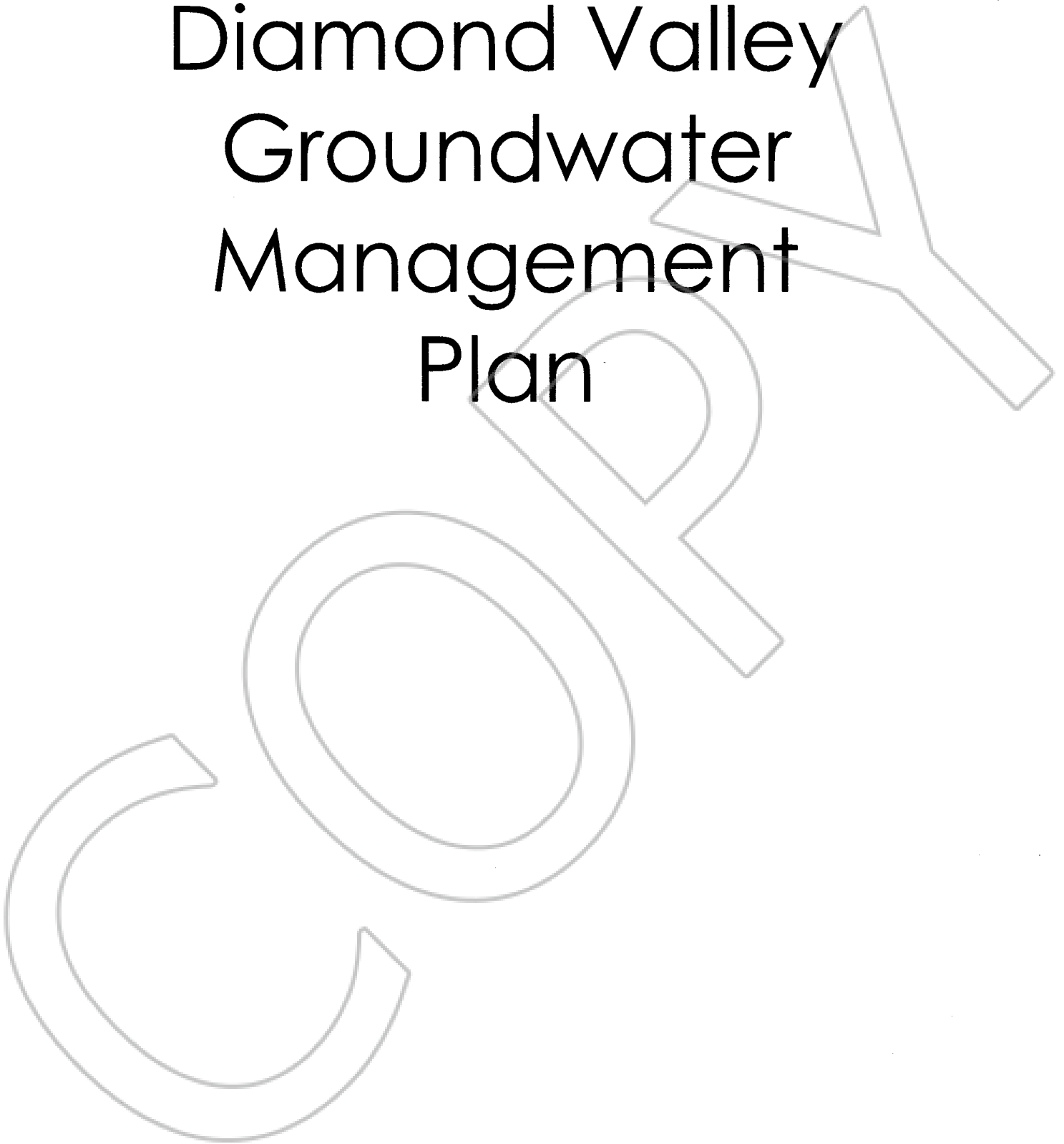
(for retirement of rights in Basin 153 only)

Appendices omitted for convenience – complete document available at
<http://water.nv.gov/news.aspx?news=Diamond%20Valley%20GMP>

Owner must comply with complete document



Diamond Valley Groundwater Management Plan



Executive Summary

For over 40 years, annual groundwater pumping has exceeded the perennial yield of Diamond Valley, located in southern Eureka County, Nevada. Groundwater levels since 1960 have declined on average two feet per year. In 2015, the State Engineer designated Diamond Valley as a Critical Management Area (CMA). By law, this designation provides 10 years for groundwater rights holders to develop a Groundwater Management Plan (GMP) to remove the basin from CMA designation.

If the GMP is not developed, supported by a majority of water right holders, approved by the State Engineer, and implemented in that timeframe, the State Engineer is mandated to regulate the groundwater basin by strict priority. Junior groundwater rights and domestic wells (after about May 1960) would be prohibited entirely or severely restricted from pumping.

The Diamond Valley Groundwater Management Plan applies to groundwater rights that serve an irrigation purpose and mining or milling rights that have an irrigation base water right. Priority (seniority) is factored into these rights using a formula which converts the rights to a set amount of shares. The shares are used on a year-to-year basis for calculating the volume of water (annual allocation in acre-feet of water per share) allowed to be used, sold, traded and banked. The GMP does not apply to vested water rights (including mitigation rights), municipal, industrial, stockwater, or existing domestic wells.

The GMP provides an alternative approach to ensure that over time groundwater levels stabilize. Existing water users may continue to use water in proportion to their water rights and seniority. The GMP requires reductions in pumping over time. This is accomplished by a system of shares with annual allocations (acre-feet of water per share) of water being available based on a formula.

$$WR * PF = SA$$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

Using the formula, shares are set for each water right and do not change. However, annual allocations (acre-feet of water per share) are reduced each year under the GMP to meet the required pumping reductions. Water rights holders and users can use the table in Appendix F and cross reference to the pumping reduction table in Appendix G to calculate the water allocation for any given year under the Plan.

Share calculation example using 160 acres with a duty of 4 acre-feet per acre:

Most senior water right: 640 acre-feet x 1.0 PF = 640 shares

Mid senior water right: 640 acre- feet x 0.90 PF = 576 shares

Least senior water right: 640 acre-feet x 0.80 PF = 512 shares

Year of GMP	Allocation in acre-feet per share (Appendix G)	Most Senior (water in acre-feet)	Mid-senior (water in acre-feet)	Least Senior (water in acre-feet)
1	0.670	428.495	385.645	342.796
5	0.569	364.221	327.798	291.376
10	0.469	299.946	269.952	239.957
15	0.435	278.522	250.669	222.817
20	0.402	257.097	231.387	205.677
25	0.368	235.672	212.105	188.538
30	0.335	214.247	192.823	171.398
35	0.301	192.823	173.540	154.258

The Plan creates a system to track water allocations and use. The State Engineer will administer and manage the Plan while being advised by a locally elected Advisory Board. The State Engineer is authorized to hire a Water Manager to assist.

The approval of the GMP by the State Engineer requires that a majority of the groundwater rights holders sign a petition requesting approval.

This Executive Summary provides a reference to the most important aspects of the plan but it is highly encouraged that all affected water right holders read and understand the entire document.

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The GMP Advisory Board has seven members, elected by the Shareholders subject to the GMP. The AB may make specific recommendations to the State Engineer to address any issue or concern. This section describes the composition, election, and replacement of Advisory Board members.

Section 12. Groundwater Shares and Share Register

All groundwater rights within the scope of the GMP receive groundwater Shares according to the formula. The formula takes into account the priority date or seniority of the permit or certificate.

The formula is: $WR * PF = SA$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

The shares are recorded in the Share Register by owner. The registry is maintained by the State Engineer. Appendix F is a preliminary table/spreadsheet of the groundwater rights and corresponding Shares projected.

Section 13. Annual Groundwater Allocations and Groundwater Account

An Annual Groundwater Allocation is the amount of groundwater allocated to each Share each year in acre-feet per Share. Each Allocation is placed into a Groundwater Account or Accounts as determined by the base water rights holder and linked to the Share Register. The State Engineer makes Annual Allocation assignments to each Groundwater Account in February. Groundwater subject to this GMP may be withdrawn from Diamond Valley for any beneficial purpose under Nevada law as long as the groundwater use is linked to and withdrawn from a Groundwater Account with a positive balance and consistent with all of the provisions of the GMP. Water Allocations can be used, traded or sold, or banked for future use. Banked water carried over to the next year will be reduced to account for natural losses based on location within the basin. Year 1 is introductory to allow water users a better understanding of how their groundwater use and management coordinates with the GMP. Section 13.15 provides information on how new and previously existing mining pit lakes are considered.

Section 14. Well Use Approvals

This section explains how existent and future wells in the planning area will be approved and managed including exemption from NRS required abandonment procedures if the well is used to pump water from the Annual Allocation. This does not apply to water uses separate from the GMP. (See Section 8.2)

Section 15. Groundwater Use Metering and Reporting

All groundwater pumped under the GMP shall be metered using an approved Smart-capable flow meter or equivalent, for uniformity, standardization, and to ensure high quality data and accurate reporting.

Section 16. Overdrawing a Groundwater Account

If a Groundwater Account is overdrawn, the water user is responsible for transferring groundwater Allocations from another account. After 30 calendar days, the overdrawn Groundwater Account is subject to penalty.

Section 17. Other Penalties

Penalties may apply for violations of any provision of the GMP. Fines and fees are appealable to the State Engineer through a petition process, and are subject to judicial review.

Section 18. Groundwater Uses Without Allocations.

Groundwater uses within Diamond Valley not expressly included within this GMP remain under the provisions of Title 48 of the Nevada Revised Statutes. Water conservation best management practices by these water users could reduce use of groundwater.

Section 19. Non-Consumptive Groundwater Uses

Some groundwater withdrawals, such as mine pit dewatering, are non-consumptive because much of the groundwater is returned to the Diamond Valley aquifer through injection or infiltration. Non-consumptive groundwater withdrawals remain under the authority of the State Engineer.

Section 20. Funding of GMP

Implementation, management and administration of the GMP will be primarily funded through the State Engineer special annual assessment authority where groundwater rights in Diamond Valley are assessed to cover expense in management of groundwater used. The base right receiving Shares will continue to be the avenue for levying of the assessment through the County tax roll.

Section 21. Relinquishment of Groundwater Rights or Allocations

Groundwater rights may be relinquished with the written consent of all parties with an interest in the right of Allocation.

Section 22. Lands Retired from Irrigation

Funds raised through the special annual assessment may be used for land stabilization and weed and rodent control on lands retired from irrigation (permanently and temporarily) in order to prevent land degradation and detrimental impacts on neighboring lands.

Section 23. Other Land Management

The State Engineer shall work with land management agencies to enhance groundwater recharge.

Section 24. Annual Meeting

The State Engineer and AB shall hold a joint annual public meeting between November 1 and December 15.

Section 25. GMP Publically Accessible

The approved GMP shall be posted on the State Engineer's website and any other website that may be developed for the GMP.

Section 26. GMP Review, Modification or Discontinuation

Amendment or discontinuance of the GMP must be done by following state law. In Year 6, the State Engineer and the AB must review the Plan. Section 26.5 states that many appendices to the GMP are living documents that will change as the Plan progresses. Updates to any appendix are not amendments to the GMP.

Appendices and Footnotes

The appendices and the footnotes provide detailed information and background, and are useful to a full understanding of the GMP.

Appendix A is the petition signed by a majority of water holders, for submission to the State Engineer.

Appendix B is the GMP Scoping Report by Walker and Associates.

Appendix C outlines the GMP process.

Appendix D covers the hydrologic setting of Diamond Valley.
Appendix E contains a basic model of the job description for the Water Manager.
Appendix F is a table of groundwater rights and shares included in the GMP.
Appendix G contains the groundwater allocation and pumping reduction tables.
Appendix H is flow meter water testing results.
Appendix I is the groundwater flow modeling report supporting banking depreciation.

1. Defined Terms

Acre-foot: The amount of water it takes to cover an acre of land with water to a depth of 1 foot. It is equivalent to 325,900 gallons of water. The annual duty of a water right is commonly defined in terms of acre-feet per year.

Agricultural Positions: the Groundwater Management Plan Advisory Board (AB) Members who represent groundwater rights holders whose water rights are used for irrigation purposes

Annual Groundwater Allocation (Allocation): the amount of groundwater allocated to each Share each year (measured in acre feet) in accordance with Section 13

Aquifer: An underground layer of porous rock, sand, or gravel containing amounts of water in sufficient quantity to constitute a usable supply for wells and springs.

At-Large Positions: the positions on the AB that may be held by any Shareholder after Year 8 in accordance with Section 11.4

Allocation and Benchmark Reduction Table: the table of preliminary annual groundwater Allocations and benchmark pumping reductions contained in Appendix G.

Base Water Right: The original groundwater right in good standing according to the records of the State Engineer converted to Shares in this GMP.

Critical Management Area (CMA): Critical Management Area within the meaning of NRS 534.037 and NRS 534.110.

Eureka Conservation District (ECD): Eureka Conservation District

ET Depreciation: the rate of annual depreciation of a banked Allocation (expressed in a percentage) to account for evapotranspiration.

Evapotranspiration: The combined processes by which water is transferred from the earth surface to the atmosphere; evaporation of liquid or solid water plus transpiration from plants. Evapotranspiration occurs through evaporation of water from the surface, evaporation from the capillary fringe of the groundwater table, and the transpiration of groundwater by plants whose roots tap the capillary fringe (phreatophytes) of the groundwater table.

Division of Water Resources (DWR): the Nevada Division of Water Resources, a division of the Nevada Department of Conservation and Natural Resources

Groundwater Management Plan (GMP): this Groundwater Management Plan

Groundwater Account: the account tied to the Share Register held by a groundwater user for all of that groundwater user's Allocations, as described in Section 13.2

Groundwater Management Plan Advisory Board (AB): the Advisory Board initially elected by the participants in the GMP development as described in Section 4 and that shall thereafter be elected and serve in accordance with Section 11

Mining Position: the AB Member who represents groundwater rights holders whose water rights are used for mining and milling purposes

MOU: Memorandum of Understanding; the to-be-drafted document that may be executed between the DWR and the Advisory Board in accordance with Section 10

Perennial Yield: The maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for perennial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less. If the perennial yield is exceeded, groundwater levels will [continue to] decline and steady state conditions will not be achieved, a situation commonly referred to as groundwater mining.

Phreatophyte: Plants whose roots tap the capillary fringe of the groundwater table.

Priority Factor (PF): the percentage that is used to convert a groundwater right to a Share, in accordance with Section 12.4

Recharge: The process by which water is added to an aquifer, including natural recharge by which precipitation or stream flow makes its way into the groundwater supplies, secondary recharge by which water used for irrigation or other purposes infiltrates the ground and adds to the groundwater supplies, or artificial recharge which includes actions specifically designed to increase groundwater supplies.

Senior Positions: the AB Members who represent groundwater rights holders who hold water rights with a priority date within the first 30,000 acre feet appropriated in Diamond Valley

Share: the product of multiplying the groundwater right volume (measured in acre feet) by the Priority Factor, in accordance with Section 12.3, resulting in the number of Shares a groundwater right holder receives under this GMP. This results in the unit used to calculate an amount of groundwater received under this GMP

Share Register: the database of all Shares that shall be maintained by DWR in accordance with Section 12.8

Shareholder: a person or entity who holds one or more Shares of groundwater that is subject to the GMP

Smart meter: an electronic flow meter that has the capability to record water pumping in desired intervals (including near-real-time) and to communicate that information back to an entity (user or regulatory agency) for monitoring, billing, and administration. Smart meters may enable two-way communication between the meter and the central system.

State Engineer: the Nevada State Engineer

Vested Position: the AB Member who represents groundwater rights holders claiming vested rights to springs in Diamond Valley

Vested Water Right: The water right to use either surface or groundwater acquired through water put to beneficial use prior to the enactment of water law pertaining to the source of the water (i.e., prior to 1905 for surface water)

Water Manager: the employee or independent contractor of the DWR whose role and responsibilities are specified in Section 10

Year X: The word "Year" followed by a number refers to the year following GMP approval, starting on January 1.

2. Diamond Valley Background

Diamond Valley is a major groundwater-reliant farming area in the Diamond Valley Hydrographic Basin, Basin 153 and collectively referred to as “Diamond Valley” in this Groundwater Management Plan (GMP). There are about 26,000 acres of irrigated land, which primarily produce premium-quality alfalfa and grass hay. In 2013, it was estimated that approximately 110,000 tons of hay are produced annually for a total farming income of approximately \$22.4 million¹.

About 126,000 acre-feet of irrigation groundwater rights are appropriated in Diamond Valley while the perennial yield recognized by the State Engineer is 30,000 acre-feet per year.² Groundwater pumping as of 2016, was about 76,000 acre-feet per year. While the primary groundwater usage is irrigation, nearly two-thirds of Eureka County’s residents receive their domestic water needs from groundwater in Diamond Valley, including most of the water needed by the Town of Eureka (which serves numerous businesses and the Eureka County schools), two General Improvement Districts, and domestic wells. Groundwater in Diamond Valley also supplies water needs for mines and other commercial and industrial uses. There are also multiple stockwatering wells that supply the water for many livestock production operations.

For over 40 years, annual groundwater pumping has exceeded the perennial yield of Diamond Valley, and groundwater levels since 1960 have declined at an average rate of approximately two feet per year.

3. Need for a Groundwater Management Plan (GMP)

Recognizing the continuing decline of the groundwater resource in Diamond Valley, on August 25, 2015, the State Engineer used his authority³ to designate Diamond Valley a Critical Management Area (CMA) through Order #1264. By statute, this designation provides a ten-year period in which the groundwater rights holders may come together to develop a Groundwater Management Plan (GMP) to remove the basin from CMA designation. If a GMP is not developed, approved by the State Engineer, and implemented by the end of ten years, the State Engineer is mandated by law to regulate by strict priority. At the expiration of this 10-year period following CMA designation, the law does not provide the State Engineer with any discretion or flexibility other than to regulate by priority⁴. In this case, NRS 534.110(7)(b) would require prohibiting the pumping of junior groundwater rights and domestic wells that were appropriated more recently than a date determined by the State Engineer to bring the withdrawals below the perennial yield. State water law allows

¹ Hansford Economic Consulting, June 2013.

² This perennial yield is based on Harrill (1968). The recent 2016 U.S. Geological Survey Scientific Investigations Report on the Diamond Valley Flow System (Berger et al. 2016) defines the pre-development groundwater discharge, often used by the State Engineer to establish perennial yield, to be 35,000 acre-feet annually.
<http://dx.doi.org/10.3133/sir20165055>.

³ NRS 534.110(7)(a)

⁴ NRS 534.110(7)(b)

development of a GMP in a hydrographic basin designated as a CMA and defers to the GMP on the processes needed to remove the basin from the CMA designation. With or without the CMA designation, the drafters of this GMP recognize that a concerted effort to reduce pumping in Diamond Valley to sustainable levels is needed for protection of the resource itself.

4. GMP Process

Well before CMA designation, many groundwater rights holders, primarily irrigators, came together to start making progress towards a GMP in anticipation that the State Engineer would designate Diamond Valley as the State's first CMA⁵. In March 2014, this group held a meeting and decided to request that the Eureka Conservation District (ECD), a locally elected, third-party, local government entity⁶, take the lead role in facilitating development of a GMP. At its meeting in March 2014, the ECD officially accepted the role of facilitating the development of a GMP.

ECD contracted with Walker & Associates (Walker) in May 2014 to assist in scoping the GMP. ECD sent a letter to every groundwater right holder and all known domestic well holders in Diamond Valley to inform them that Walker would be hosting facilitated workshops and private meetings (if requested) to scope the issues, hurdles, and opportunities that stakeholders believed were relevant to development of a GMP, including potential strategies to reduce pumping. Walker held many facilitated public workshops and private meetings. The results of Walker's work are in Appendix B.

Nevada Revised Statute 534.037(1) requires that a GMP must receive the signatures (through petition) of a majority of groundwater rights holders before it can be officially submitted to the State Engineer for approval⁷. ECD and the groundwater rights holders who attended the various meetings chose to involve everybody who might be affected by a GMP and to build consensus on its content. In April 2015, ECD approached a respected facilitator with the University of Nevada Cooperative Extension, Dr. Steve Lewis, along with Mr. Steve Walker of Walker & Associates and ECD leadership, to assist ECD leadership in this process. Many efforts were made to ensure all groundwater right holders in Diamond Valley were informed of meetings and opportunities to engage in the process. Certified letters were sent to every groundwater right holder in the Diamond Valley hydrographic basin on record with the State Engineer and every documented domestic well owner. An article was also published in the local newspaper, the Eureka Sentinel, about the GMP meetings, encouraging interested and affected persons to attend. Over the course of ten months

⁵ AB 419, which passed in the 2011 Nevada legislative session, created the CMA and GMP statutes. Much of the testimony received during the session on AB 419 was how this could be a tool applied in Diamond Valley. Additionally, the State Engineer held a workshop in Eureka on February 25, 2014 outlining his desire that local solutions be developed through a GMP, regardless of CMA designation. Groundwater rights holders were well aware that CMA designation was likely.

⁶ See NRS 548 for more information on the duties and powers of a conservation district.

⁷ NRS 534.037

between April 2015 and February 2016, seven facilitated workshops were held, at which major portions of the GMP were developed.

In February 2016, participants in these GMP development meetings elected a Groundwater Management Plan Advisory Board (AB) by nomination and majority vote. Thereafter, the AB took over much of the responsibility for facilitating GMP development from the professional facilitators. The AB made recommendations for consideration to the entire group of groundwater rights holders who were participating in the GMP process. From February 2016 until submittal of the GMP to the State Engineer, there were an additional twenty-three formal Advisory Board meetings and twenty formal full-group meetings.

During this process, the groundwater rights holders received presentations on the potential development and implementation of a water market-based system meant to provide ultimate flexibility in using water, while incentivizing conservation and allowing willing participants' quick sale, lease, trade, etc. of water in times when needed⁸. This GMP was developed adapting these concepts to local needs, desires, and constraints.

All meeting reminders, sign-in sheets, meeting notes, outlines, etc. developed at these meetings are included in Appendix C.

5. Nevada Statutory Criteria for GMP Approval

NRS 534.037(1) requires that a GMP submitted for approval to the State Engineer must be accompanied by a petition for approval signed by a "majority of the holders of permits or certificates to appropriate groundwater in the basin that are on file in the Office of the State Engineer..." This GMP is submitted to the State Engineer for approval, accompanied by the required petition, included as Appendix A.

The only statutory requirement for a GMP is that it "must set forth the necessary steps for removal of the basin's designation as a critical management area."⁹ Only basins where "withdrawals of groundwater consistently exceed the perennial yield of the basin" may be designated as a critical management area,¹⁰ as has occurred in Diamond Valley.

NRS 534.037(2) further identifies, without limitation, elements the State Engineer "shall consider" when "determining whether to approve a groundwater management plan submitted pursuant [NRS 534.037(1)]..." These include:

⁸ See Young, M. (2015) *Unbundling Water Rights: A Blueprint for development of robust water allocation systems in the western United States*. NI R 15-01 Durham, NC. Duke University. <http://nicholasinstitute.duke.edu/publications>.

⁹ NRS 534.037(1)

¹⁰ NRS 534.110(7)(a)

- (a) The hydrology of the basin;
- (b) The physical characteristics of the basin;
- (c) The geographic spacing and location of the withdrawals of groundwater in the basin;
- (d) The quality of the groundwater in the basin;
- (e) The wells located in the basin, including, without limitation, domestic wells;
- (f) Whether a groundwater management plan already exists for the basin; and
- (g) Any other factor deemed relevant by the State Engineer.

Appendix D was developed and included to assist the State Engineer's consideration of these required considerations.

6. GMP Goals

- A. Remove the basin's CMA designation within 35 years by stabilizing groundwater levels in Diamond Valley
- B. Reduce consumptive use to not exceed perennial yield
- C. Increase groundwater supply
- D. Maximize the number of groundwater users committed to achieving GMP goals
- E. Preserve economic outputs from Diamond Valley
- F. Maximize viable land-uses of private land
- G. Avoid impairment of vested groundwater rights
- H. Preserve the socio-economic structure of Diamond Valley and southern Eureka County

7. GMP Boundary and Out-of-Basin Transfers

- 7.1 The GMP shall apply to those groundwater uses within the Diamond Valley Hydrographic Basin that come within the scope of the GMP, as discussed in Section 8.1.
- 7.2 Out-of-basin transfers of groundwater that is subject to the GMP are prohibited¹¹.

8. Scope of Groundwater Included in the GMP

- 8.1 The GMP applies only to the following groundwater rights that exist at the time the GMP is approved by the State Engineer:
 - 1) Groundwater rights that serve irrigation purposes;
 - 2) Groundwater rights that serve mining and milling purposes if they have irrigation base rights; and
 - 3) Groundwater that is imported to Diamond Valley only if it is injected or infiltrated into the Diamond Valley aquifer.

¹¹ Out-of-basin groundwater transfers may be considered by the State Engineer in the future should (1) a majority of groundwater rights holders petition the State Engineer under the provisions of NRS 534.037(1) to approve an amendment to the GMP that authorizes out-of-basin transfers and (2) only when groundwater levels have reached some threshold of stabilization, as determined under the provisions of this GMP.

8.2 The following are not subject to the requirements of the GMP and will remain within the purview of the State Engineer's administrative jurisdiction and standard regulatory scheme:

- 1) Vested water rights, including spring vested rights that have been mitigated with groundwater rights through State Engineer or court order, ruling, decree or other legal decision;
- 2) Groundwater rights that exist at the time of GMP approval that are not irrigation groundwater rights (including stockwater, municipal, commercial, and mining groundwater rights without an irrigation source permit); and
- 3) Domestic wells, as defined by NRS 534.013.

9. Authority of State Engineer to Analyze Potential for Conflicts

9.1 Nothing in this GMP shall impair or supersede the authority of the State Engineer to analyze or take appropriate actions regarding groundwater withdrawals that may conflict with existing rights or domestic wells or impacts to vested rights (or claims).

9.2 The well-use approval process in Section 14 of this GMP is the mechanism for the State Engineer to complete conflict analyses for new wells or increases in diversion rate in existing wells higher than permitted under the base right.

10. Diamond Valley Groundwater Management Plan Administration and Enforcement

10.1 This GMP will be administered and enforced by the State Engineer, who will consider the recommendations of the AB.

10.2 The shareholders agree that a Water Manager employed or contracted by the State Engineer may be charged with managing the terms and conditions of the GMP. If a Water Manager is necessary, the Water Manager shall be employed or contracted by the DWR with job role and responsibilities, funding, administration of penalty provisions, etc. clearly spelled out in a to-be-drafted Memorandum of Understanding (MOU) executed between the AB and DWR. A proposed job description of the Water Manager is included in Appendix E. Whenever this GMP references "State Engineer" this may include the Water Manager or State Engineer designee, as determined through State Engineer discretion.

10.3 The State Engineer in coordination with the AB will conduct annual meetings as set forth in Section 24. In addition to the annual meeting, the State Engineer may meet with the AB as often as deemed necessary and appropriate, within the State Engineer's discretion and, except as otherwise stated herein, shall conduct GMP meetings and business in an open forum with advance notice provided of these meetings but not less than three business days before the meeting.

- 10.4 The State Engineer may task the Water Manager with preparing agendas, taking notes, and preparing meeting minutes or may hire a secretary for these duties, depending on funding availability.
- 10.5 All decisions by the State Engineer shall be in accordance with this GMP and the State Engineer retains ultimate decision making authority over the GMP.
- 10.6 Any person aggrieved by a final decision of the State Engineer under this GMP, which includes any penalties imposed, may appeal the decision to the State Engineer within 30 calendar days after the final decision. The appeal must be in writing and must outline the specific actions requested to be taken by the State Engineer. The State Engineer shall provide detailed, documented reasoning regarding any appealed decision the State Engineer modifies or supersedes. This provision does not waive the judicial review process established in NRS 533.450.

11. GMP Advisory Board

- 11.1 The Advisory Board (AB) shall consist of seven members elected by the Shareholders subject to this GMP.
- 11.2 In addition to other duties specifically outlined in the GMP, the AB is tasked with keeping apprised of local issues and concerns related to the GMP and communicating these issues and concerns to the State Engineer. The AB may make specific recommendations to the State Engineer to address any issue or concern.
- 11.3 The AB in place at the time of the GMP submittal to the State Engineer for approval consisted of eight (8) seats as follows¹²:
- Seat 1; One person representing mining groundwater rights holders (Mining Position)
 - Seat 2; One person representing groundwater rights holders with primary interests in ranching in Diamond Valley and representing claimants with vested spring rights claims on the valley floor (Vested Position)
 - Seats 3 through 6; Four farmers with both senior and junior rights (Agriculture Positions)
 - Seats 7 and 8; Two farmers with all of their groundwater rights being within the first 30,000 acre-foot to have been appropriated in Diamond Valley (Senior Positions)

Except for one of the Senior Positions, Seat 8 which shall expire upon GMP approval, AB members in place at the time shall maintain their positions on the AB for the first two (2) years following GMP approval. After GMP approval, the AB shall consist of the seven remaining seats - Seats 1 through 7.

¹² The specific AB members at GMP submittal: Ari Erickson (Seat 1), Ira Renner (Seat 2), Mark Moyle (Seat 3), Bob Burnham (Seat 4), Russell Conley (Seat 5), Marty Plaskett (Seat 6), Jim Gallagher (Seat 7), and Vickie Buchanan (Seat 8).

- 11.4 After the end of Year 8 of the GMP,¹³ the AB shall consist of the Mining Position, two Agriculture Positions, and four open seats (i.e., groundwater allocation used for any use) (At-Large Positions) according to the following step-wise progression:
- 1) At the end of Year 2, Seats 3, 4, and 5 shall be open for election to a four-year term and shall be filled by individuals representing agriculture (i.e., groundwater allocation used for agriculture).
 - 2) At the end of Year 4, Seats 1, 2, 6, and 7 shall be open for election to a four-year term. Seat 1 shall be filled by an individual representing mining (i.e., groundwater allocation used for mining) and Seats 2, 6 and 7 representing agriculture (i.e., groundwater allocation used for agriculture).
 - 3) At the end of Year 6, Seats 3, 4, and 5 shall be open for election to a four-year term. Seats 3 and 4 shall be filled by an individual representing agriculture (i.e., groundwater allocation used for agriculture) and Seat 5 shall be filled with any groundwater right holder (i.e., groundwater allocation used for any use).
 - 4) At the end of Year 8, Seats 1, 2, 6, and 7 shall be up for election to a four-year term. Seat 1 shall be filled by an individual representing mining (i.e., groundwater allocation used for mining) and Seats 2, 6, and 7 filled with any groundwater right holder (i.e., groundwater allocation used for any use).
- 11.5 Elections occurring after the eighth year of the implementation of this GMP shall be held every two years for each position in which the four-year term has expired.
- 11.6 All AB elections shall be held at the annual meeting described in Section 24 at which all groundwater rights holders under this GMP may attend, make nominations, and cast their vote in-person¹⁴. Nominations shall be made from the floor, and votes shall be weighted according to number of Shares held by a voting water rights holder. Counting of the votes shall be open to view by all attending the meeting and recorded in the minutes.
- 11.7 Any AB seat that becomes vacant before the expiration of a term shall be filled by appointment by the remaining AB members. The term of the appointment expires at the end of the term of the vacant seat.
- 11.8 The AB may meet as often as it deems necessary and appropriate, within its discretion, and meetings shall be in an open forum with advance notice provided of these meetings but not less than three business days before the meeting.
- 11.9 A secretary may be hired to assist with preparing agendas, taking notes, and preparing meeting minutes on behalf of the AB.

¹³ References to events that occur following GMP approval are designated Year 1, Year 2, Year 3, etc., with the year commencing on January 1 following approval by the State Engineer.

¹⁴ No votes by proxy allowed

12. Groundwater Shares and Share Register

- 12.1 All groundwater rights within the scope of this GMP as set forth in Section 8.1 and that are in good standing according to the records of the State Engineer, upon approval of this GMP, shall receive groundwater Shares according to the formula specified in this Section. Calculation of the number of Shares issued for a mining groundwater right with an irrigation base permit shall be established by the volume of the irrigation base permit, not the volume of the mining permit.
- 12.2 The base right receiving the Shares shall continue to be tied to the specific land and well(s) described in the respective permits or certificate at the time of GMP approval. Shares shall not be severable from the base permit or certificate they are attached to.
- 12.3 The State Engineer shall record the number of Shares for each permit or certificate number (and associated owner of record) and link this information to a Share register that shall be established according to the provisions of this GMP.
- 12.4 The formula used to calculate the number of Shares for each groundwater permit or certificate under the GMP shall take into account the priority date (i.e., seniority) of the permit or certificate. The formula being:

$$1) \text{ WR} * \text{PF} = \text{SA}$$

Where:

WR = Total groundwater right volume as recognized by DWR, accounting for total combined duty¹⁵ (i.e., overlapping places of use) (measured in acre feet)

PF = Priority Factor based on seniority

SA = Total groundwater Shares

- 12.5 The Priority Factor (PF) for the Share formula shall be determined by seniority of any given groundwater right, where the spread between the most senior groundwater right and the most junior groundwater right shall be 20%. All irrigation groundwater rights and mining groundwater rights with an irrigation base permit and that are in good standing according to the records of the State Engineer, shall be sorted according to seniority, and each total groundwater right multiplied by its relative senior percentage, resulting in the most senior right receiving a PF of 1.0 and the most junior right receiving a PF of 0.80. The most senior water right under rights consolidated under a total combined duty shall receive the shares.
- 12.6 Some separate groundwater rights in Diamond Valley share the same priority date. Rights sharing the same priority date will have their PF averaged and this average PF applied to each right with the same date.
- 12.7 A preliminary table/spreadsheet of the groundwater rights and the corresponding number of Shares projected at the time of GMP submittal to the State Engineer is included in Appendix

¹⁵ The most senior water right under total combined duty rights shall receive the shares.

F. This table shall be considered preliminary due to the fact that groundwater rights in Diamond Valley continue to be used and managed in various ways, including potential transfer of ownership, during GMP development. The official record of groundwater rights used for the purpose of establishing Shares shall be groundwater rights as they exist at the time of GMP approval by the State Engineer. Upon approval of the GMP by the State Engineer, the final table/spreadsheets will be substituted for the preliminary version in Appendix F.

- 12.8 After Shares are issued, the State Engineer, in coordination with the AB, shall send certified letters to notify each appropriator of record of the following:
- A. That the GMP has been approved and groundwater use in Diamond Valley within the scope of the GMP must follow the GMP;
 - B. Of the status of the owner's groundwater right, the official appropriator name on record, and the number of Shares that shall be assigned to each permit or certificate;
 - C. That all appropriators of record should work with the DWR to address, clarify and correct any discrepancies asserted in groundwater rights or name of record and file any necessary documents required by NRS 533.384 and consistent with NRS 533.024(2); and
 - D. Of any other information deemed appropriate by the State Engineer, in consultation with the AB.
- 12.9 Any certified letter that is returned as undeliverable shall be reviewed by the State Engineer and AB, and every reasonable effort shall be made to contact the groundwater right holder to ensure receipt of the letter.
- 12.10 The State Engineer in coordination with the AB shall oversee creation of a Share Register and shall use all reasonably available technology in the maintenance of the Share Register. The State Engineer will make reasonable efforts to provide for the integrity of the register.
- 12.11 The Share Register shall be accessible by the groundwater right owner of record.
- 12.12 When there is a change of ownership of a base right under the scope of the GMP, the associated change shall be made in the register. The same process for change of ownership under the requirements of NRS 533.384 and consistent with NRS 533.024(2) shall be applicable to any change of ownership of a base right under the scope of the GMP.
- 12.13 New Shares shall not be issued after initial Share issuance unless physical, "new" groundwater is imported into Diamond Valley or the issuance of new Shares is legally required (i.e., ordered by a court with jurisdiction). If physical groundwater is imported into Diamond Valley, additional groundwater Shares may be issued if the imported water is injected or infiltrated into the Diamond Valley aquifer and applying the respective ET Depreciation factor. The base water right in the source basin remains under the authority of the State Engineer, not this GMP.

13. Annual Groundwater Allocations and Groundwater Account

- 13.1 An Annual Groundwater Allocation (Allocation) is defined as the amount of groundwater allocated to each Share each year in acre-feet per Share.
- 13.2 The State Engineer shall place each Allocation into a Groundwater Account or Accounts, as determined by the base water rights holder, and link it to the Share register.
- 13.3 The State Engineer shall be the custodian of documents and records for the transfer and record of groundwater Allocations as maintained by the Division of Water Resources.
- 13.4 The Division of Water Resources will manage the transfer and banking of groundwater Allocations. This management may be contracted to a third-party if it is determined that outside assistance is needed or is better suited to managing the transfer and banking.
- 13.5 Requests to access or make changes to a Groundwater Account may incur a nominal fee sufficient to recover the cost of maintaining the account. Any fee, if established, shall be set by the State Engineer through an open and transparent process in coordination with the AB.
- 13.6 The State Engineer shall determine and make Annual Allocations and assign to the appropriate Groundwater Account by January 1 each year. After January 15 and by February 1 each year, Groundwater Accounts will be reconciled to account for ET Depreciation (see Section 13.9) and any relevant overdraw penalties (Section 16) using the previous year's fourth-quarter pumping data.
- 13.7 A summary of information in the overall Groundwater Account (e.g., amount of groundwater used or unused at any given time period) may be aggregated and made available to the public provided personal identifying information is not disclosed pursuant to NRS 603A.040.
- 13.8 Groundwater subject to this GMP may be withdrawn from Diamond Valley for any beneficial purpose under Nevada law as long as the groundwater use is linked to and withdrawn from a Groundwater Account with a positive balance and consistent with all of the provisions of the GMP¹⁶.
- 13.9 Any unused Allocation shall remain as a balance in the Groundwater Account (i.e., banked) for use in a subsequent year and shall not be subject to future reduction except as otherwise provided herein. There shall be no restrictions on the volume of groundwater that can be banked. Banked groundwater Allocations for use in subsequent years shall depreciate to account for natural losses through evapotranspiration (ET Depreciation). The Diamond Valley hydrographic basin shall be divided between the main farming area and the groundwater discharge area as depicted and described in Appendix I. Banked groundwater shall be reduced at seventeen percent (17%) annually for water banked north of the dividing line and one percent (1%) annually for water banked south of the dividing line. These ET Depreciation factors are based on numerical flow modeling analysis completed to justify and support the amount. A report on this analysis is included in Appendix I.

¹⁶ Includes metering with the approved flow meter using a legal well with a well use approval as discussed in this GMP.

- 13.10 All or part of any Allocation in any individual Groundwater Account may be transferred to any other individual groundwater account through confirmed willing-party transactions in a format prescribed by the State Engineer. Notification of any transaction completed will be confirmed and provided back from the State Engineer to above said parties.
- 13.11 All liens, encumbrances, notices of pledge, other security interests, leases and sales on all or part of any Allocation shall be recorded in the register to provide a mechanism for creditor or beneficiary tracking and recording.
- 13.12 Both benchmark and most-aggressive pumping reductions and associated preliminary¹⁷ annual groundwater Allocations are outlined in the table in Appendix G. While pumping reductions are outlined in the table for 35 years for benchmark reductions, and stabilization of the water table and net-pumping in Diamond Valley reaching perennial yield are expected to be reached within 35 years¹⁸, a more, or less, aggressive reduction schedule may be followed (see Section 13.13 below). If it is determined that the most aggressive pumping reduction schedule is to be followed, net-pumping reaching perennial yield would occur around year 22 of this GMP.
- 13.13 Two goals of the GMP are to (1) stabilize groundwater levels of the aquifer and (2) reduce consumptive groundwater use to the perennial yield. To provide some certainty for water users, and since groundwater level trends may take years to determine, annual Groundwater Allocations shall be firmly set for the first ten years of the GMP. Annual Allocations after Year 10 are anticipated to follow the benchmark reductions (1% cumulative reduction per year) but may be adjusted up or down by the State Engineer, in consultation with the AB, as informed by groundwater level monitoring data multi-year trends. However, after Year 10, annual Allocations cannot exceed a cumulative adjustment of plus or minus (+/-) two (2) percent (%)¹⁹.
- 13.14 Year 1, expected to be 2019, shall be considered “introductory” to allow water users to develop a better understanding of how their groundwater use and management coordinates with the GMP and will provide opportunities to fine-tune GMP management and administration. Groundwater users who do not use a full Year 1 Allocation in any specific Groundwater Account may rollover (i.e., bank) any unused Year 1 Allocation with the respective ET Depreciation factor. No penalties shall accrue nor shall replacement water be required for any individual Groundwater Account that is overdrawn during Year 1, provided that the user does not exceed the permitted duty allowed under the base water right permit.

¹⁷ As previously noted, a preliminary table/spreadsheet of the groundwater rights and the Share projected at the time of GMP submittal to the State Engineer for approval is included in Appendix F. Groundwater rights in Diamond Valley continue to be used and managed in various ways, including potential transfer of ownership, during GMP development until GMP approval. The annual groundwater allocation table shall also be considered preliminary due to the fact that annual allocations are calculated based on the total groundwater Shares available in Diamond Valley. Groundwater rights as they exist at the time of GMP approval by the State Engineer shall be the official rights converted to groundwater Shares in which the final, official annual allocation table will be based.

¹⁸ Water table monitoring is an important component of the GMP and future studies may refine perennial yield to be different than what is known at GMP approval.

¹⁹ Reduction percentages are cumulative beginning in Year 1. Year-to-year reduction percentages may be more or less than cumulative pumping adjustments.

13.15 All mining operations and other man-made excavations extending below the groundwater table (and therefore creating a pit lake after cessation of dewatering) which did not possess a state or federally approved Plan of Operations by the date the GMP was approved by the State Engineer will be required to dedicate groundwater rights (with associated Shares and Allocations) to account for estimated evaporative losses from the surface of the water body. Groundwater rights dedicated for pit lake groundwater evaporation will be placed into special category of the Share Register and will continue to receive annual groundwater allocations. The quantification of the evaporative loss of groundwater will be determined by the State Engineer case-by-case and based upon the best available science and data. The mining operator or property owner will be invited to offer input into the evaporative loss calculation. The quantification of evaporative groundwater losses from a pit lake shall be calculated at the rate of evaporation when the lake is in equilibrium with the groundwater system. The total number of groundwater rights dedicated must have an estimated Allocation at Year 30 of the projected reduction table in Appendix F equal to or greater than the calculated evaporation rate. The dedication of groundwater rights (and associated Allocations) to account for pit lake evaporative losses must be in place when water is first present in the pit bottom after the cessation of mine dewatering activities. The liability of addressing the projected effects to water rights resulting from pit lake evaporative losses is assignable to successor operators and companies or future property owners. If the GMP be discontinued, the operator at the time of cessation will then relinquish water rights in accordance with the process outlined in the November 1, 2016 letter from the State Engineer regarding Pit Lake Evaporation. Payment of the annual assessment for Shares dedicated to evaporative losses is outlined in Section 20.7.

14. Well Use Approvals

- 14.1 Any well (and its associated meter system components) used, or anticipated to be used, to withdraw groundwater in Diamond Valley for uses required to have an Allocation under the GMP shall be linked to a specific Groundwater Allocation Account before any groundwater withdrawal occurs.
- 14.2 Wells kept active and linked to a Groundwater Allocation Account shall be exempt from well abandonment requirements pursuant to NRS 534 and NAC 534. Any well that is kept active, but unused, must have a secure cap or other covering acceptable to the State Engineer to prevent exposure to open air or sources of contamination or otherwise enable a pollutant to be carried to the waters of the State as prohibited by NRS 445A.465.
- 14.3 Wells not kept active and linked to a Groundwater Allocation Account will be subject to well abandonment pursuant to NRS 534 and NAC 534. Waivers for well abandonment requirements may be requested to allow any well not intended for use by the well owner to be used as a monitoring well, if needed, as determined by the State Engineer.
- 14.4 Any well withdrawing groundwater under the GMP must comply with the requirements of the GMP and NRS 534 and NAC 534.

- 14.5 All well construction activities shall be in accordance with applicable well drilling laws and regulations pursuant to NRS 534 and NAC 534.
- 14.6 As provided in Chapters 533 and 534 of the NRS, the State Engineer may deny any application to drill a new well if the State Engineer determines that withdrawal of groundwater from the proposed well will create a conflict with existing rights or domestic wells.
- 14.7 The State Engineer may disallow additional withdrawals from an existing well that exceeds the volume and flow rate that was initially approved under the base permit if the State Engineer determines that the additional withdrawal would create a conflict with existing water rights, domestic wells, or existing uses under the GMP.
- 14.8 Before any new wells or additional withdrawals from an existing well that exceeds the volume or flow rate that was initially approved under the base permit are used, the proposed new well use or additional withdrawal shall be provided to the State Engineer for review. The State Engineer will evaluate the new well use or additional withdrawal within 14 calendar days to determine if the new use or additional withdrawal is in the public interest and would not impair the water rights held by other persons. If the new well use or additional withdrawal is not denied within this 14 calendar days, the new well use or additional withdrawal would be deemed approved by the State Engineer for a period not to exceed one (1) year.
- 14.9 For new wells or additional withdrawals proposed for periods exceeding one (1) year or which the State Engineer determined within the 14 calendar days outlined above may not be in the public interest or may impair the water rights held by other persons, the regular procedures under NRS 533 and NRS 534 for changing the point of diversion or diversion rate shall be required, including publication and protest provisions.²⁰

15. Groundwater Use Metering and Reporting

- 15.1 All groundwater pumped from Diamond Valley that is subject to this GMP shall be metered using an approved Smart²¹ flow meter. A specific, approved flow meter²² is required under this GMP for uniformity, standardization, and to ensure high quality data and accurate and reliable reporting.
- 15.2 The approved flow meter shall be properly installed, fully operational, and certified for use, as required by this GMP, before any groundwater subject to the GMP may be put to use.

²⁰ Sections 14.8 and 14.9 follow a process consistent with NRS 533.345(2) through (4).

²¹ A Smart meter is an electronic flow meter that has the capability to record water pumping in intervals that are near-real-time and communicate that information back to an entity (user or regulatory agency) for monitoring, billing, and administration. Smart meters may enable two-way communication between the meter and the central system.

²² The approved Smart meter at GMP approval is the Siemens SITRANS F MAGFLO MAG 5100W. This magnetic flow meter has been rigorously and independently tested the Utah Water Research Laboratory (UWRL), a National Institute of Standards and Technology (NIST) traceable lab in Logan, Utah. At the time of GMP development, this flow meter was a top performing meter for accuracy and reliability. The USU specifications for the testing of this and other flow meters and testing results of this specific meter is included as Appendix H.

- 15.3 Metered water use data shall be linked to the appropriate Groundwater Account using the data reporting mechanism and frequency as determined by the State Engineer in coordination with the AB²³.
- 15.4 The approved Smart meter shall be installed at or near the point of diversion and shall meet manufacturer installation specifications.
- 15.5 A variance for use of the required Smart meter may be considered on a case-by-case basis through petition to the State Engineer. The State Engineer, in consultation with the AB, may require site-specific engineering to justify consideration of any variance petition. At a minimum, the State Engineer shall require that any variance in use of the approved meter ensure an alternate Smart meter that is as accurate as, or otherwise is better suited to the application, than the meter otherwise authorized by this GMP. If a petition for variance is submitted and granted, the groundwater user bears the risk of whether the alternative meter will perform as expected. If an alternative meter approved for a variance by the State Engineer is later found by the State Engineer, in the State Engineer's discretion, to be inadequate, the variance shall be withdrawn and the water user shall install another acceptable meter at its expense within the deadline established by the State Engineer.
- 15.6 Owners or operators who are granted a variance under Section 15.5 and install the approved flow meter without the minimum straight length spacing requirements, or otherwise inconsistent with manufacturer's specifications, shall provide an adequate testing section of straight pipe located somewhere on the diversion system either upstream or downstream of the installed flow meter. This testing section may be excavated pipeline as long as the section of pipe carries all groundwater being measured through the installed flow meter. Groundwater users choosing to expose pipe must excavate the pipe at their expense.
- 15.7 After installation of any approved flow meter, the meter and installation shall be field-tested by the State Engineer, through the Water Manager or other designee (e.g., DWR staff) using the meter manufacturer's "field verifier" and a portable standard flow meter authorized by the State Engineer to ensure the meter is properly installed and functioning and accurate to within $\pm 10\%$ of the rate of flow and volume measured with a portable standard flow meter. The State Engineer, through the Water Manager or other designee, is authorized to conduct other field checks of installed meters as it deems appropriate. If a meter does not pass an initial installation test or any other field check, the State Engineer may require the groundwater user to replace the meter at the groundwater user's expense and within the deadline established by the State Engineer.
- 15.8 The State Engineer, in consultation with the AB, is authorized to adopt different approved flow meters, data transmission modules, data reporting mechanisms, or groundwater account

²³ At the inception of the GMP, State Engineer December 8, 2017 Order 1292 will be used as the mechanism to collect pumping data and manage the GMP. Order 1292 requires monthly pumping data to be reported at the end of each calendar quarter. Groundwater Accounts will be updated quarterly using this reported data and reconciling of accounts will be completed with year-end data. As the GMP progresses and penalties or other administrative actions are imposed, data reporting and GMP management may be required through automatic transmission of data (e.g., cellular or radio transmission) or a combination of methods.

linkage devices as new technologies or other alternatives become available that are as accurate as, or otherwise are better suited to accurately measure or administer groundwater use subject to this GMP.

- 15.9 Groundwater users shall maintain the installed and certified approved flow meter system (meter and data recording and transmission devices) in proper operating condition within measurement guidelines as set forth in Section 15.4.
- 15.10 If a groundwater user is aware of or is notified that its meter system is not operating correctly, the user shall have seven calendar days to remedy the issue or replace the meter or meter system component. Failure to remedy the issue within seven calendar days may result in the State Engineer requiring that all pumping through that system cease and desist until the issue is fully remedied. The State Engineer within its discretion, on a case-by-case basis, may allow for short-term remedies to extend past seven calendar days if extenuating circumstances exist (e.g., a specific part may not be available and installation may not be possible within seven calendar days). For example, a portable flow meter (e.g., clamp-on ultrasonic meter) may be installed, if appropriate, as determined by the State Engineer, until the approved flow meter system can be serviced, replaced, or otherwise becomes certified as fully operational. The State Engineer, through the Water Manager or designee, may at the groundwater user's expense, assist the groundwater user to remedy issues that arise in a metering system.
- 15.11 Within its discretion, the State Engineer may fill any pumping data gaps due to failed or faulty metering systems using power data and/or average pumping rates on that system before a meter system failure arose.

16. Procedures and Penalties for Overdrawing a Groundwater Account

- 16.1 If a Groundwater Account is overdrawn, the water user that holds the overdrawn account shall be responsible to immediately take actions so as to enable the transfer of groundwater Allocations from another account to the overdrawn account (i.e., buys or borrows water credit from someone else's account). A Groundwater Account that remains in a deficit for greater than 30 calendar days is subject to penalty.
- 16.2 At a minimum, the State Engineer shall withhold or reduce or prohibit use of the immediate next year's groundwater Allocation, if applicable, of the overdrawn Groundwater Account until any overdrawn account is fully settled as outlined in Sections 16.3 and 16.4.
- 16.3 Any water right user whose Groundwater Account becomes overdrawn shall have 30 calendar days from the time overdraw of the account occurs to transfer groundwater Allocations from another account to the overdrawn account at a 1:1 ratio. If sufficient replacement groundwater cannot be secured from another account before the end of the 30-calendar-day period, the water user may elect to replace any remaining overdraw with up to 5% of that groundwater user's immediate next year Allocation (calculated based on the Groundwater Allocation and benchmark reduction table) at a 2:1 ratio as long as this occurs within this 30-calendar-day period.

16.4 If an overdrawn groundwater account is not fully balanced within 30 calendar days from the time overdraw of the account occurs, the groundwater user shall be required to replace the overdrawn volume of groundwater at a ratio of 2:1 at least 30 calendar days prior to use of the immediate next year Allocation, or February 1, whichever is applicable. If sufficient replacement groundwater cannot be secured from another account at least 30 calendar days prior to use of the immediate next year Allocation, or February 1, the groundwater user may elect to replace any remaining overdraw with up to 5% of that groundwater user's immediate next year Allocation (calculated based on the Groundwater Allocation and Benchmark Reduction Table) at a 3:1 ratio, so long as this occurs within the 30 calendar days prior to use of the immediate next year Allocation, or February 1, whichever is applicable.

17. Other Penalties

- 17.1 Penalty provisions under NRS Chapter 534.190 through 534.195 may be applied to individuals violating any of the provisions of the GMP.²⁴ While the State Engineer holds the authority to impose penalties under NRS Chapter 534, the State Engineer will consult with the AB before imposing any penalties as set forth in the MOU. Nothing in this GMP shall be construed to alter the authority conferred on the State Engineer under NRS 534.195.
- 17.2 Tampering of a meter or meter system or bypassing or attempting to bypass groundwater use through the approved meter system is prohibited and shall be considered an egregious and purposeful violation. Such violations shall be considered for penalty at the maximum fine amount of \$10,000 per day for each violation (NRS 534.193(1)(a)).
- 17.3 Any groundwater user who is subjected to a fine or assessment of fees resulting from any violation of any provision of this GMP may petition the State Engineer for reconsideration, elimination, or reduction of the fine or fee. Before making any such recommendation, the State Engineer shall accept and consider information submitted by the petitioner and shall consult with the AB. Any order imposing a monetary penalty is subject to judicial review under NRS 533.450.

18. Groundwater Uses without Allocations

- 18.1 As set forth in Section 8.2, this GMP expressly excludes certain specified water rights within Diamond Valley. Water rights expressly excluded from this GMP include vested water rights, including spring vested rights that have been mitigated with groundwater rights²⁵, other groundwater rights existing at GMP approval that are not irrigation groundwater

²⁴ Such penalties may include the following non-exhaustive list: violators may be guilty of a misdemeanor for violating any provision of NRS Chapter 534; the State Engineer, after notice and opportunity for hearing, may impose a fine not to exceed \$10,000 per day for each violation; the State Engineer may require any violator to pay the costs of any proceeding, including investigative costs and attorney's fees; and the State Engineer may seek injunctive and other relief against violators.

²⁵ Through State Engineer or court order, ruling, decree or other legal decision.

rights, including stockwater, municipal, commercial, mining groundwater rights without an irrigation source permit, and domestic wells. These water rights expressly excluded from this GMP will not receive groundwater Shares and are not required to receive an Allocation before being used under this GMP.^{26 27}

- 18.2 Groundwater uses within Diamond Valley not expressly included within this GMP shall remain under the provisions of Title 48 of the Nevada Revised Statutes. These uses cannot receive Shares or Allocations and cannot be used for groundwater uses required to have an Allocation (i.e., these GMP-excluded uses must remain under the manner of use under the respective permit at GMP approval)²⁸.
- 18.3 After approval of this GMP, any proposal approved by the State Engineer to convert use of a water right that is already under the GMP to a use under one of the groundwater rights categories listed in Section 18.1 (either through a new or change application) will require an Allocation and Shares, as applicable, and shall fall under all requirements of the GMP. If applicable, the Allocation and Benchmark Reduction Table in Appendix G will be used to project maximum groundwater needs for the life of any project or use (which may be in perpetuity) and would require that a sufficient amount of groundwater be dedicated for this period of time.²⁹
- 18.4 This GMP makes the following recommendations to encourage groundwater conservation for those uses that do not fall under the GMP:
- Full consideration of the options described under NRS 534.090(2) and (3) by the State Engineer for the uses listed in Section 18.1 to minimize unnecessary groundwater use (e.g., waive “use it or lose it”).
 - Enforcement by the State Engineer of the statutory requirements for domestic wells at the maximum total allowable withdrawal and for domestic purposes only (i.e., single-family residence only with no commercial use). NRS 534.180.
 - Enforcement by the State Engineer of permit terms for all groundwater rights not receiving Shares or otherwise within the scope of the GMP.
 - With the State Engineer’s support, the AB will request of and work with Eureka County to:

²⁶ Based on State Engineer records, all of these uses combined, not including vested rights, account for less than 5% of the total groundwater appropriations and less than 3% of the total groundwater pumped in Diamond Valley at the time of the GMP submission to the State Engineer.

²⁷ Since expressly excluded from this GMP, these uses cannot receive groundwater Shares or Allocations and non-vested water uses under Section 18.1 cannot be used for new groundwater uses required to have an Allocation (i.e., non-vested GMP-excluded uses must remain under the manners of use under the permit at GMP approval).

²⁸ It is understood that valid vested rights for irrigation or mining purposes and mining rights without an irrigation base permit will continue to be used for irrigation or mining purposes.

²⁹ Example: A developer buys a farm, subdivides the land, and proposes a housing development. This developer would need to dedicate water rights to cover the water use of the homes, which is an “excluded” use under Section 18.1. However, this is a “new” use that did not exist at GMP approval. The developer would need to convert an irrigation base water right to a quasi-municipal use through the application and permitting process of the State Engineer. If approved by the State Engineer, this “new” quasi-municipal use would fall under all provisions of the GMP including metering and pumping reduction requirements. The State Engineer would require enough water to be dedicated in perpetuity for this new use, considering the future pumping reductions required under the GMP.

- Relinquish (to the Diamond Valley basin) any County groundwater rights not reasonably needed in the foreseeable future;
 - Implement effective tiered-rates on municipal use to incentivize groundwater conservation;
 - Waive hookup fees for groundwater users near the municipal groundwater system to incentivize hookups and reduce new domestic wells;
 - Offer domestic well credits to those abandoning current domestic wells and hooking into a municipal water system and potentially assist in cost-sharing to abandon any old domestic well in accordance with Nevada law;
 - Invest in infrastructure to better enable hookups to a municipal system; and
 - Amend the County groundwater dedication ordinance for new parcels to require groundwater rights and/or Allocations in an amount that equals two acre-feet per year for the life of this GMP (based on the Allocation and Benchmark Reduction Table).
- The State Engineer and AB should work with appropriate entities to:
 - Develop and distribute educational materials on groundwater conservation practices, especially for domestic and municipal uses;
 - Develop and distribute educational materials to domestic well users outlining typical domestic use at or below two acre-feet per year; and
 - Pursue and implement incentive programs for groundwater conservation (e.g., xeriscaping, turf removal, irrigation scheduling).

19. Non-Consumptive Groundwater Uses

- 19.1 Some groundwater withdrawals, such as mine pit dewatering, are non-consumptive because much of the groundwater is returned to Diamond Valley aquifers through injection or infiltration. Groundwater withdrawals that are non-consumptive will remain under the authority of the State Engineer.
- 19.2 Based on net-consumption analysis by the State Engineer, the consumptive use portion of the groundwater withdrawal will require a Groundwater Allocation, but non-consumptive groundwater use will not.
- 19.3 The State Engineer, working with any entity proposing withdrawing groundwater in Diamond Valley and then returning groundwater to Diamond Valley, will consult with the AB to develop measures, as feasible, that return water to Diamond Valley in a manner that provides a net-benefit to the alluvial aquifer.

20. Funding of GMP

- 20.1 Implementation, management, and administration of the GMP will be primarily funded through the State Engineer special annual assessment authority³⁰ where groundwater rights in Diamond Valley are assessed to cover expenses in managing groundwater use. The base right receiving Shares will continue to be the avenue for levying of the assessment through the County tax roll.
- 20.2 DWR will require continued funding to manage groundwater in Diamond Valley. In coordination with the AB, the State Engineer will develop a fair annual assessment that will adequately fund GMP administration and other DWR costs to manage Diamond Valley groundwater. Through an annual budget process, the State Engineer shall endeavor to set the annual assessment in an amount that does not exceed the annual cost of GMP administration to avoid large annual roll-overs of funds from one fiscal year to the next.
- 20.3 The State Engineer shall develop an annual budget that outlines expected revenues and expenditures for the year in which the annual assessment will be based, which will include consideration of recommendations from the AB.
- 20.4 The portion of the annual assessment used for GMP administration and any other administrative fees collected under the GMP shall only be used for GMP administration and related expenses, as determined by the State Engineer, which may include, without limitation:
- Maintenance of the Share register and water trading system;
 - Compensation of the Water Manager and any other necessary staff or consultants;
 - Office space;
 - Office supplies;
 - Field vehicles;
 - Field equipment;
 - Travel expenses;
 - Groundwater conservation grants; and
 - Fallow land stabilization (e.g., cover crop planting, weed control, rodent control).
- 20.5 Annual special assessments must be fully paid in order to receive subsequent annual Groundwater Allocations under any Account. Annual Groundwater Allocations will not be made to any account associated with an over-due special assessment until the delinquency is settled. Allocations made once overdue special assessments are fully paid will be depreciated at five (5) percent and an additional one (1) percent for each month of delay or fraction thereof after every day the assessment became due. The State Engineer, in consultation with the AB, if satisfied the delay was excusable, may remit any part of the penalty.

³⁰ NRS 534.040

20.6 For water rights dedicated to the State Engineer for evaporative groundwater losses from applicable pit lakes or other man-made surface water bodies as outlined in Section 13.15, an average of all past annual assessments at the time water rights are dedicated will be calculated and that average amount multiplied by 15 and assessed to the water right/allocation holder to account for 15 subsequent years of assessments. Payment can be made at the time that water is dedicated or continue to be paid on an annual basis by the operator/owner. In lieu of paying the 15-year projected assessment, water allocations may be dedicated to the evaporative loss at 2:1 where the additional associated annual allocations above the amount of evaporation will become available and equally disbursed to the remaining groundwater users under the GMP.

21. Relinquishment of Groundwater Rights or Allocations

- 21.1 Groundwater rights (with the associated Shares) or any portion of an already received Allocation under the GMP may be relinquished with the written consent of all parties with an interest in the right or Allocation³¹.
- 21.2 Any groundwater right or Allocation relinquished in Diamond Valley shall be removed from the Share Register and Groundwater Account, respectively, and shall not be re-issued.
- 21.3 If any groundwater right or Allocation under the GMP is relinquished, the State Engineer shall update the Groundwater Allocation and Benchmark Reduction Table (Appendix G) to reflect this change and future annual Groundwater Allocations shall be divided among the remaining overall groundwater Shares.

22. Lands Retired from Irrigation

- 22.1 There are likely lands in Diamond Valley that will be retired from irrigation (permanently and temporarily). This GMP expresses a preference that these lands retain a beneficial land use and be managed to prevent land degradation due to soil erosion, weeds, and rodents and to avoid detrimental impacts on neighboring lands. The State Engineer and AB will rely on, and may work with, the relevant entities that already have legal jurisdiction over these issues including, but not limited to, Eureka County, Eureka Conservation District, Diamond Valley Weed Control District, Diamond Valley Rodent Control District, and Nevada Department of Agriculture.
- 22.2 Funds raised through the special annual assessment may be used for land stabilization projects, weed control, and rodent control, but any expenditure of special assessment funds for these purposes shall go through the annual, public budgeting processes as described in Section 20.

³¹ There have been efforts by other parties in Diamond Valley to acquire funding to purchase and retire groundwater rights as an effort to reduce pumping. As an example, the Eureka Producers Cooperative entered into an agreement with General Moly, Inc. to establish the Diamond Valley Agricultural Sustainability Trust which, when funded, is anticipated to be potentially used for this purpose.

- 22.3 Separate funds may be pursued from grants, gifts, etc. and spent by the State Engineer, in coordination with the AB, for land stabilization projects, weed control, and rodent control.
- 22.4 The GMP does not mandate that owners of fallow lands plant cover crops and control weeds and rodents. However, any funding acquired and spent through this GMP for these purposes or to retire groundwater shall require that landowners, before receiving any funding assistance, sign a contractual agreement accepting these responsibilities as condition of receiving funding. The State Engineer shall perform at least an annual inspection of grant recipient projects to ensure that funds were used according to the grant terms. The State Engineer, on recommendation from the AB, may demand reimbursement from grant recipients who failed to use funds according to grant terms. The State Engineer, with input from the AB, shall develop standard criteria to evaluate the use of grant funding by funding recipients.
- 22.5 This GMP recommends that funding mechanisms outside of the GMP (e.g., Agricultural Sustainability Trust, NRCS Farm Bill programs) require that fallowed lands in Diamond Valley be subjected to weed and rodent control and cover crop requirements.

23. Other Land Management

- 23.1 The State Engineer, in coordination with the AB, shall work with appropriate entities, including land management agencies, to enhance groundwater recharge in Diamond Valley. This may include, but is not limited to:
- Vegetation management (e.g., pinyon and juniper removal) in areas where vegetation grows outside its desired ecological state or impairs groundwater recharge;
 - Directing surface runoff to catchment basins where surface water can infiltrate to benefit the alluvial aquifer;
 - Use of aerators or infiltration equipment (i.e., rotary subsoiler); and
 - Cloud seeding.
- 23.2 No groundwater Shares or Allocations shall be issued for any land management activities intended to enhance groundwater recharge in Diamond Valley³².

24. Annual Meeting

- 24.1 In addition to any other meetings held by the State Engineer or AB, the State Engineer and AB shall hold a joint annual meeting each year between the dates of November 1 and December 15.
- 24.2 Notice shall be posted at least two weeks in advance of the meeting.
- 24.3 The annual meeting shall be a public meeting where the State Engineer and AB shall:
- Accept input from Shareholders and groundwater users on ways to improve GMP management and administration;

³² This prohibition does not apply to import of physical groundwater into Diamond Valley.

- Present the proposed upcoming year's Allocation with a special focus on proposed changes from the benchmark reductions (after Year 10);
- Present the proposed GMP budget, including the proposed annual special assessment, for the upcoming fiscal year;
- Conduct AB elections, if in an election year, as described in Section 11;
- Present groundwater level monitoring results;
- Present any other relevant data or information, as the State Engineer and AB deem necessary and appropriate; and
- Conduct any other business as the State Engineer and AB deem necessary and appropriate.

24.4 The State Engineer, with input from the AB, may take final action on items at the annual meeting or may elect to postpone final action if desired, based on input received at the meeting.

25. GMP Publically Accessible

- 25.1 The approved GMP shall be posted on and downloadable from the State Engineer's website and any other website that may be developed for the GMP.
- 25.2 Upon request, the State Engineer shall provide a copy of the GMP so long as the requestor pays any associated costs that may be charged by the State Engineer.

26. GMP Review, Modification, or Discontinuation

- 26.1 This GMP may be amended at any time according to the requirements of NRS 534.037(5) or any other pertinent provision of Nevada law that may now exist or exist in the future, subject to State Engineer approval and potential judicial review.
- 26.2 At a minimum, the State Engineer, in coordination with the AB, shall review this GMP in Year 6. At that time, the State Engineer and AB shall jointly send a letter to every groundwater right and Water Account holder in Diamond Valley informing them of the review and requesting input as to whether this GMP should continue, be amended, or be discontinued. The letter shall set a date for a joint State Engineer and AB meeting to discuss the GMP review and provide a 30-day deadline for written responses. The joint State Engineer and AB meeting shall be held on the date and time identified in the letter, at which the State Engineer and AB shall accept input, discuss and consider whether to continue, amend, or discontinue this GMP.
- 26.3 Discontinuation of the GMP, if desired by the groundwater rights holders, shall follow the same rules as an amendment of a GMP pursuant to NRS 534.037(5).
- 26.4 Should the GMP be discontinued, groundwater management shall revert back to the base groundwater right with the same status that existed at the time of GMP approval and any subsequent changes in the base right during GMP implementation. It is required that

holders of water rights ensure proper paperwork is filed with the State Engineer to reflect any change in ownership or location of the associated groundwater right (e.g., point of diversion or place of use of the base right) that occur during the period of GMP operation.

- 26.5 Many appendices to the GMP are, by nature, living documents that must change as the GMP progresses. Reasonable updates to any appendix shall not be deemed an amendment to the GMP.
- 26.6 Specific references to Nevada law in this GMP may change as the GMP progresses. Updates in legal citations or added references to other pertinent provisions of Nevada law that may now exist or exist in the future shall not be deemed as amendments to the GMP.



**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)
 a) 007-210-28
 b) 007-330-02
 c) _____
 d) _____

2. Type of Property:
 a) Vacant Land b) Single Fam. Res.
 c) Condo/Twnhse d) 2-4 Plex
 e) Apt. Bldg f) Comm'l/Ind'l
 g) Agricultural h) Mobile Home
 Other WATER RIGHTS ONLY

FOR RECORDER'S OPTIONAL USE ONLY	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. Total Value/Sales Price of Property \$ 1,303,560.00
 Deed in Lieu of Foreclosure Only (value of property) (_____)
 Transfer Tax Value: \$ _____
 Real Property Transfer Tax Due \$ EXEMPT

4. **If Exemption Claimed:**
 a. Transfer Tax Exemption per NRS 375.090, Section 2
 b. Explain Reason for Exemption: A TRANSFER OF TITLE TO A POLITICAL
SUBDIVISION OF THE STATE OF NEVADA

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity Seller
 Signature [Signature] Capacity Buyer

SELLER (GRANTOR) INFORMATION
(REQUIRED)
 Print Name: J.W.L. Properties LLC
 Address: PO Box 231
 City: Smith
 State: NV Zip: 89430

BUYER (GRANTEE) INFORMATION
(REQUIRED)
 Print Name: NV Dept of Conservation & Natural Resources
 Address: 901 S Stewart St., Ste. 1003
 City: Carson City
 State: NV Zip: 89701

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
 Print Name: DARRIN MADDOX Escrow #: _____
 Address: 9130 DOUBLE DIAMOND PARKWAY
 City: RENO State: NV Zip: 89521

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED