

In Re: Notice of Dispute of Action taken by the Authority – Rule 8(b) Regarding St.
James Discovery-Annexation 1H-2C; PLL# 21-8275

TRUCKEE MEADOWS WATER AUTHORITY APPEAL BRIEF

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES iii

I. **INTRODUCTION** 1

 A. The Appeal 2

 B. TMWA Discovery Process 2

 C. St. James Current Discovery 3

 D. Saint James History Prior to Merger 4

 E. History of Mt. Rose Galena Fan Groundwater Levels..... 4

 F. Washoe County Merger Obligations 5

 G. St. James History Post Merger 5

II. **APPLICABLE LAW/STANDARD OF REVIEW** 6

III. **ARGUMENT** 7

 A. TMWA Acted Reasonably In Applying Current NAC Standards Necessary To Protect Public Health And Safety..... 7

 1. The Tree Distribution System Does Not Comply With NAC Requirements..... 7

 2. TMWA Is Not Bound By Washoe County Decisions Based On Old Standards..... 8

 3. Fire Flows Requirements Cannot Be Met With Existing Infrastructure..... 9

 4. Maximum Day Demand Requirements Cannot Be Served With Existing Infrastructure 9

 B. TMWA Acted Reasonably In Applying Its Professional Judgment In Finding That Supplemental Water Supplies Were Necessary To Serve SJV Units 1H And 2C..... 10

 1. Insufficient Water Exists To Supply the Project Solely From Existing Wells 10

 a. The Water Rights For the St. James Wells Are More Than Physical Water Available 11

 b. Substantial Evidence Supports Previous Groundwater Pumping Is Not Sustainable 11

c.	TMWA Developed A Regional Groundwater Model For Sustainable Management.....	12
d.	Petitioner’s Evidence Does Not Support That the Project Can Solely Rely On Groundwater	12
e.	TMWA’s Use Of The Valve Does Not Impact Water Levels	13
f.	TMWA Acted Based on Sound Utility Practices In Determining The St. James Wells Were Not Adequate To Serve The Project.....	14
2.	<u>TMWA Is Not Contractually Obligated To Provide Water Service To Petitioner Under the Pagni Agreement</u>	14
3.	<u>Petitioner Cannot Challenge the Area 15 Fees</u>	14
4.	<u>TMWA’s Actions Do Not Constitute A Taking</u>	15
5.	<u>TMWA Will-Serve Does Not Relate To The Project Subject To This Appeal And Any Will-Serve Is Subject To Satisfaction Of All Other TMWA Rules</u>	16
6.	<u>TMWA Signature on Subdivision Plat Constitutes Approval Of Easements Only</u>	16
C.	<u>The Denial of SJV’s Motion to Strike Should Be Upheld</u>	17
IV.	CONCLUSION	17
	TMWA EXHIBIT LIST	18
	SJV EXHIBIT LIST	19

TABLE OF AUTHORITIES

Cases

State v. Eighth Judicial. Dist. Ct., 131 Nev. 411, 351 P.3d 736 (2015)	15
---	----

Statutes

NRS 233B.135	6, 7
NRS 278.0235.....	15
NRS 278.3195.....	15

Regulations

NAC 445A.6672	9
NAC 445A.6712	4, 8

I. INTRODUCTION

This appeal arises from a November 21, 2021, Discovery request for twenty-four lots¹ submitted by St. James Village, Inc. (hereinafter SJV or Appellant). SJV appealed the Discovery under TMWA Rule 8 and a hearing was held. At the hearing, SJV presented no witnesses and instead its attorney provided oral argument and conducted cross-examination of TMWA's witnesses. The Hearing Officer issued her decision finding the Discovery was supported by substantial evidence and TMWA did not act arbitrarily, capriciously or in violation of its authority.

There are three issues involved in this appeal. First, whether TMWA acted reasonably and based on substantial evidence in requiring the infrastructure necessary for SJV to connect to the existing TMWA water system comply with the Nevada Administrative Code (NAC), Washoe County Health standards, and TMWA design criteria. This issue includes the requirement for a looping versus "tree" distribution and for providing sufficient fire flows necessary to protect public health and safety. Second, whether TMWA acted reasonably and based on substantial evidence in finding the existing St. James wells were not sufficient as a standalone supply and requiring supplemental water supplies to also serve the twenty-four units. Finally, whether this requirement for supplemental water constituted a taking of SJV's groundwater rights.

As demonstrated in detail below, TMWA staff acted reasonably in complying with applicable law and standards to protect public health and safety. TMWA presented data, public records, and two witnesses to support its Discovery. In 2014, TMWA merged with the Washoe County Department of Water Resources and assumed responsibility for providing service in the Mt. Rose/St. James area. (Ex. 1.) As detailed below, prior to the merger, Washoe County had responsibility for serving the SJV Project. However, upon acceptance of the Washoe County system, TMWA could not require updates to the existing system. However, for new projects, TMWA is obligated to comply with the NAC, Washoe County Health standards, and TMWA design criteria. If the Board were to grant SJV's requested relief, it would be directing TMWA staff either to not follow important public health and safety regulations and TMWA's established design criteria or require TMWA to make the necessary system upgrades and charge all customers. These regulations are designed to protect the public water system and ensure sufficient fire flows in the entire subject water system.

Based on the record, the Board should uphold the Hearing Officer's April 14th and April 20th decisions.

¹ The seven infill lots referenced by SJV were not part of the Discovery. As described in detail, those seven lots are no longer owned by SJV.

A. The Appeal

SJV appeals two decisions issued by the Hearing Officer. The first is the April 14, 2022, decision (Ex. A.) upholding TMWA's Discovery. The second is the April 20, 2022, decision (Ex. B) on a motion to strike made by SJV as it related to TMWA's witnesses.

During the hearing, SJV did not present any witnesses. Instead, SJV's attorney argued TMWA issued the Discovery conditions "because the Authority said so." (Ex. C, 15:12-15; 17:16-18; 19:11-13; 20:7-8; 30:9-10; 87:10-12.) However, TMWA's brief referenced and relied on the NAC and over 30 exhibits, and TMWA presented two witnesses, Scott Estes and John Enloe, to provide context and explain the evidence supporting the Discovery. The Hearing Officer found TMWA's Discovery was supported by substantial evidence and upheld the Discovery.

In an attempt to undermine the Hearing Officer's decision, SJV filed a Motion to Strike within minutes of the decision being issued. SJV moved to strike the testimony of Mr. Enloe and Mr. Estes from the record, or in the alternative, for a rehearing. This Motion was based on the premise the witnesses had not been sworn and was made despite SJV's attorney cross examining both witnesses without requesting the witnesses be sworn. SJV's attorney on cross examination also did not question the witnesses' truthfulness or object to their testimony. The Hearing Officer denied the Motion to Strike in her April 20, 2022, order but also found that her April 14, 2022, decision was supported by evidence already in the record - in essence the testimony was not necessary to her finding because it was covered in the existing record. (Ex. B, p. 2-3.) Additionally, in response to the Motion to Strike, TMWA filed affidavits of both Mr. Enloe and Mr. Estes stating they had reviewed the transcript, it accurately reflected their testimony, and their testimony was true and correct. These were sworn, signed, and notarized statements.

B. TMWA Discovery Process

Shortly after TMWA was formed, the Board instituted a policy that growth pays for growth. (Ex. 2.) Essentially, new development pays for the cost of new facilities to provide new services, rather than existing customers paying for those facilities. (Ex. 2) The Board also adopted rules for implementing this policy. TMWA Rule 5 describes the process, including the discovery process, that is at issue in this appeal. The discovery process determines the necessary infrastructure and water needs to serve a new project. (Ex. 3, p. 1.) As the regional water provider, TMWA has an obligation to ensure the water dedicated to serve a project is sustainable to meet the project's needs into the future.

SJV asserts TMWA "promulgated" the discovery. However, it is important to note TMWA did not "promulgate" a discovery proceeding. It is not an administrative rule. Rather, a discovery is a non-binding estimate of anticipated facilities and costs required to support a development, provided for informational purposes only. After a discovery is completed, an applicant can decide whether to continue by negotiating an annexation agreement and/or water service agreement. These agreements would contractually bind

the applicant to build and dedicate the necessary infrastructure and pay required fees prior to TMWA committing to provide water service.

C. SJV Current Discovery

This appeal arises out of a November 21, 2021, request for Discovery submitted by SJV for twenty-four units, some outside and some within TMWA's existing service area². (SJV Ex. 1-A.) The original Discovery application identifies 26 lots but the cover letters submitted by SJV also reference seven infill lots. By letter dated December 23, 2021, TMWA informed SJV the seven infill lots would not be part of the Discovery because they were not included in the application and the seven lots were not owned by SJV. (Ex. 4.) While the documents reference several different number units, TMWA reviewed the maps included and completed the Discovery for the twenty-four lots ("Project") shown in the maps and identified by the parcel numbers in the application.³

The seven infill lots are not part of this existing Discovery and there is a long and protracted history related to these lots. Communication related to the seven infill lots is included in Exhibit 5 attached to this brief. Importantly, SJV asserted in its Complaint that it relied on the subdivision plat (SJV Ex. 15.) recorded for those seven infill lots, which TMWA signed along with other utility providers to approve the utility easements noted on the plat, and the associated will-serve letter (SJV Ex. 16.) for the proposition that Water Service Facility fees ("WSF") would not apply to this Project. The Hearing Officer in her April 14, 2022, ruling found St. James could not reasonably rely on the will-serve letter to determine that the WSF Charge was not applicable because the language in the will-serve letter clearly states that "water service is conditional upon the applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rates Schedules...." (Ex. A, p. 5.)

As part of its normal business practice, TMWA reviews and signs maps like the one shown in SJV's Exhibit 15 for the sole purpose of confirming utility easements. As shown on SJV's exhibit 15, TMWA's signature is below the title "Utility Companies Certificate." As Mr. Estes explained, the signature does not indicate an obligation to serve water to a project, rather it is an acknowledgement of the utility easements. (Ex. C p. 11:5-8.)

Under normal business practices, TMWA would not have issued a will-serve letter for the seven infill lots. In this case, however, the seven lots needed to be created by subdivision plat out of larger parcels that existed as common area, which TMWA did not want to annex. The State Engineer does not sign plats for properties to be served by TMWA unless a will-serve letter has been issued showing that sufficient water rights exist to provide water for the development. Accordingly, TMWA issued a will-serve to enable

² No lots have water service agreements, have paid fees, or have will serve letters.

³ The APNs are 156-040-15 and 156-111-23. SJV incorrectly listed twenty-six units and included the wrong APN of 156-040-14 on the application. SJV's complaint references twenty-eight lots but Units 1H and 2C are twenty-four lots.

the State Engineer to sign the subdivision plat and allow TMWA to annex only the land covered by the seven lots. SJV knew this was an accommodation. In good faith reliance on the status of the 2018 SJV application for annexation, and to allow the creation of the seven lots without annexing the larger common areas into TMWA's service area, TMWA issued the will-serve letter. (Ex. 5, May 20, 2021 letter.) The will-serve letter (SJV Ex. 16) clearly states that a final water service agreement must be executed and all fees paid prior to delivering water to the project. No annexation agreement, however, was ever signed by SJV and all seven lots were annexed individually by current owners who purchased the lots from SJV.

D. Saint James History Prior to Merger

SJV has a long history of trying to develop the St. James Project. Prior to TMWA merging with Washoe County Department of Water Resources, between 1994 and 1997, the County approved several final maps for St. James Village Units 1 and 2. (Ex. C. 6:2-7.) This included drilling and dedication of St. James wells 1 and 2. (Complaint, p. 1-2.) Furthermore, the County approved the existing "tree" water distribution system. In 1997, certain provisions of the Nevada Administrative Code were adopted that prohibit the use of tree systems. (NAC 445A.6712; Ex. C 6:8-13.) In 2011, SJV reverted the remaining lots back to acreage. (Ex. 5 March 30, 2021, p. 1, letter; Ex. C 4:7-9.) This reversion nullified any water service commitments made by the County, and TMWA is not bound by those commitments. The Hearing Officer affirmed this in her April 14, 2022, decision finding that "no prior commitments are binding, any applications or requests for services on such acreage must be evaluated as new applications and subjected to the requirements of the law in existence at the time of such new requests." (Ex. A, p. 3.)

E. History of Mt. Rose Galena Fan Groundwater Levels

During the time when Washoe County Department of Water Resources was the water provider in the area around the Project and the Mt. Rose Galena Fan area, the sole source of water provided was groundwater. Exhibit 6 shows the St. James monitoring well had declining water levels (blue line) until the time around the merger. (Ex.6.) The data also show that regional pumping (black line) increased and then begin declining in 2015. (Ex. 6.) Reports from 2002 indicate that based on the existing data, water levels in the Mt. Rose Galena Fan were already falling and that demand from future development could not be met with existing groundwater supplies. (Ex. 7, p. 4-1.) In 2011, to mitigate the impacts to domestic wells from municipal pumping, the County approved the Mt. Rose Galena Fan Domestic Well Mitigation Program. (Ex. 8, p. 1; Ex. C 6:23-7:3.)

During the merger process, TMWA recognized that once the mergers with South Truckee Meadows General Improvement District ("STMGID") and Washoe County were complete, it would need to develop programs to move surface water into the Mt. Rose Galena Fan area and conjunctively manage the surface and groundwater supplies to address the falling groundwater levels. (Ex. 9, p. 1.)

Immediately after the merger, the TMWA Board adopted the County's Mt. Rose Galena Fan Domestic Well Mitigation Program in Rule 10. (Ex. 10.)

After the merger, TMWA began exploring options to move surface water into the Mt. Rose Galena Fan area. In April 2015, TMWA agendized and conducted the first public hearing to increase the Area 15 fees to help pay for new infrastructure necessary to implement conjunctive use. (Ex. 11.) TMWA also conducted two public workshops on the proposed fee increases. (Ex. 12, p. 11.) In May 2015, after the second public hearing on the rate increase, the TMWA Board adopted the modified Area 15 fee. (Ex. 13.) There were no legal challenges to this action and the Area 15 fee became effective June 1, 2015. (Ex. 12, p. 12.) Following the adoption of the new Area 15 fees, TMWA sent a letter to nearly 8,000 property owners on the Mt. Rose Galena Fan area. (Ex. 14.) The letter described in detail the need for conjunctive use, the benefits of resting wells, and TMWA's development and expansion of a groundwater model for the area. (Ex. 14.) The letter further explained that new projects would have to dedicate supplemental surface water supplies when dedicating groundwater for new service in the area. (Ex. 14, p. 3.) TMWA is informed and believes SJV's representative Mr. Woodside received this letter. The Hearing Officer affirmed the above findings and denied St. James' request to set aside the Discovery making Area 15 fees applicable to St. James. (Ex. A, p. 5.)

F. Washoe County Merger Obligations

In the Washoe County merger, TMWA expressly agreed to assume only responsibilities to provide water service to existing customers. It expressly disclaimed any obligation to assume any agreements the County entered with developers for future water service, or to serve any potential customer outside of the specific service area it was taking over from the County. (Ex. 15.)

G. St. James History Post Merger

Since the merger, TMWA has worked on several Discoveries and provided several annexation agreements to SJV. In 2015, SJV submitted a request for Discovery for 239 lots. (Ex. 16, p. 1.) The 2015 Discovery identified many of the same issues as the 2022 Discovery, including issues with capacity, water supply, and the existing "tree" system. (Ex. 16.) The 2015 Discovery did indicate the 239 lots could be served with upgrades and new infrastructure at a cost of \$11,457,216, which included the Area 15 surface water treatment plant. (Ex. 16, p. 9.) The Discovery also showed the declining groundwater levels in the St. James system and noted imported water from a source other than groundwater may be necessary. (Ex. 16, pp. 4-5.)

In 2016, TMWA received a letter from SJV counsel regarding the 2015 Discovery. The letter acknowledged the 2015 discovery and noted that SJV would be hiring its own consultants. (Ex. 17.) A subsequent 2021 letter received by SJV counsel stated, "no valid TMWA discovery exists for St. James's Village." (Ex. 18.)

II. APPLICABLE LAW/STANDARD OF REVIEW

Under TMWA Rule 8(D)(3), the Board shall follow the standards for review, procedure, and burdens of proof as set forth in subsection 3 of NRS 233B.135, which states as follows:

NRS 233B.135 Judicial review: Manner of conducting; burden of proof; standard for review.

1. *Judicial review of a final decision of an agency must be:*

- (a) *Conducted by the court without a jury; and*
- (b) *Confined to the record.*

In cases concerning alleged irregularities in procedure before an agency that are not shown in the record, the court may receive evidence concerning the irregularities.

2. *The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.*

3. *The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:*

- (a) *In violation of constitutional or statutory provisions;*
- (b) *In excess of the statutory authority of the agency;*
- (c) *Made upon unlawful procedure;*
- (d) *Affected by other error of law;*
- (e) *Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or*
- (f) *Arbitrary or capricious or characterized by abuse of discretion.*

4. *As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.*

(Added to NRS by 1989, 1650; A 2015, 710) (emphasis added).

Under TMWA Rule 8(D)(4), the Board’s “Findings of Fact must be based exclusively on substantial evidence and on matters officially noticed.”

Thus, the Board’s decision in this matter is governed by two principles. First, if the positions taken in TMWA’s Discovery are supported by “substantial evidence”, the Board shall not substitute its judgment for that of the TMWA Staff. And, second, the Board may remand or set aside the Discovery, in whole or in part, only if it finds proof that “substantial rights of the petitioner have been prejudiced” by TMWA’s positions that are “clearly erroneous,” “arbitrary or capricious” or constitute an “abuse of discretion.” In making this decision, the Board is confined to the record presented to the Hearing Officer and cannot accept new evidence. (NRS 233B.135.)

III. ARGUMENT

A. TMWA Acted Reasonably In Applying Current NAC Standards Necessary To Protect Public Health And Safety.

The Hearing Officer’s Decision affirmed TMWA acted reasonably and based on substantial evidence in finding the SJV proposed infrastructure for the Project does not meet the NAC standards, TMWA design standards, or provide for adequate health and safety measures in three important ways: 1) The proposed tree distribution system does not comply with NAC or TMWA design standards; 2) The proposed system does not provide sufficient capacity to meet required fire flows for the existing homes and is made worse with the addition of the 24 lots; and 3) The existing capacity does not meet Maximum Day Demand with the addition of the 24 lots. (Ex. A, pp. 3-4.) Vacating TMWA’s Discovery and the Hearing Officer’s decision would require staff to disregard NAC requirements, existing laws, and long establish standards.

1. The “Tree” Distribution System Does Not Comply With NAC Requirements

The existing SJV system is laid out in a “tree” configuration, with a single arterial main that decreases in diameter over its length, which has various mains of smaller diameter connected to it. (Ex. 19, Figure 2.) SJV’s own exhibits and consultant agree the current tree system does not meet NAC standards and acknowledge they did not review or provide any analysis on the issue. The St. James Water System Preliminary Report submitted by SJV and prepared by Lumos admits the existing system is “lacking proper looping, which is important for service redundancy and greater fire flow to the customers.” (SJV Ex. 1-B, pp. 1, 6.) Furthermore, SJV and its consultants have not conducted any such evaluation: “...Lumos has not conducted a water model evaluation of the St. James distribution system but does recommend developing a hydraulic water model in the future to evaluate future looping options, required flow capacities, and pressure/flow assessments.” (SJV Ex. 1-C, pp. 25-26.) Despite this, SJV argues they should be allowed to continue the “tree” distribution system rather than the required looped system.

This proposed system design and layout does not comply with the Nevada Administrative Code and does not meet TMWA Design Standards. (NAC 445AA.6712, TMWA Design Standard 1.1.06.06). (Exhibits 20 and 30; Ex. C 43:2-13.) NAC 445A.6712 states “a distribution system must be designed, to the extent possible, in such a manner as to eliminate dead ends and form a grid system or system of arterial loops. Except as otherwise justified by an engineer and approved by the Division or the appropriate district board of health, tree systems are prohibited.” (NAC 445A.6712, 445A.6582.)

TMWA’s design standards (section 1.1.06.06) recognize dead ends are sometimes unavoidable but limit the length to 800 feet. (Ex. C 44:3-10.) This is the maximum radial main length the Washoe County Health District has accepted in the past and is the maximum radial main length TMWA will accept. The existing St. James system far exceeds this maximum (*greater than 6,000 feet for one branch*) and extending this existing noncompliant system to new services will not be allowed without modifications or mitigation measures to resolve the issue and protect public health and safety. (Ex. 21; Ex. C 43:20-25.) The purpose and intent of prudent water system design is not just to move water from point A to point B; it is to ensure protection of water quality, quantity, and system pressure and to provide system redundancies in the interests of public health and prudent utility operations, including for fire protection. (Ex. C 44:16-45:3.)

Sound engineering grounds support these regulations and design standards including TMWA’s reasonable application of such to the Project. The lack of looping greatly increases the chance of pressure loss in the water system during main breaks and leaks. Loss of pressure in the system may result in potential contamination of the system due to introduction of foreign material. Therefore, the lack of looping in the existing water system is a public health issue. Additionally, the lack of looping and existing main sizes significantly limit the available fire flow for existing and future units in the development. Reduced fire flow in remote and/or wildland urban interface environments, such as those of the Project, create additional public health and safety issues.

2. TMWA Is Not Bound By Washoe County Decisions Based On Old Standards

SJV argues TMWA is substituting its own judgment instead of relying on Washoe County Department of Water Resources “expertise and judgment.” (Complaint p. 2.) This argument is flawed for many reasons. SJV withdrew its prior maps and reverted the parcels back to acreage. This means TMWA must look at the system today and apply the NAC Regulations and TMWA Design Standards applicable today to this Project. The fact Washoe County approved the system previously is not binding on TMWA and is of no consequence since the parcels reverted back to acreage. Furthermore, TMWA is not able to disregard the NAC nor does TMWA believe it is prudent utility management or in the interest of public health and safety to support a request for a variance greater than 800 feet. Finally, TMWA is not requiring SJV to bring lots that have already been developed into compliance with NAC, it is only requiring the new lots comply with the NAC and applicable public health standards.

The Hearing Officer agreed in her decision stating “the legal effect of the 2011 reversion to acreage is that the lots created by the prior recorded subdivision maps are no longer in existence and any entitlements related to those lots were relinquished as of the date of the reversion.” (Ex. A, p. 3.) She further concluded that “[e]ven if the NAC did not prohibit the tree systems and dead ends, TMWA would be acting irresponsibly and contrary to the health and safety considerations if it allowed SJV to add additional lots to the existing system without modifications.” (Ex. A, p. 4.)

3. Fire Flows Requirements Cannot Be Met With Existing Infrastructure

TMWA’s Design Standards and the NAC require separate analyses for Average Day, Maximum Day, Maximum Day plus Fire Flow, and Peak Hour conditions. (Ex. 22, NAC 445A.6672; Ex. C 46:24-47:6.) SJV did not provide these analyses. However, both TMWA and SJV’s consultant found fire flows for the Project were 2,500 gallons per minute (“gpm”) for a duration of two hours while maintaining a residual system pressure greater than 20 pounds per square inch (psi). (SJV Ex. 1-C, p. 24 and Ex. 19, p. 8; Ex. C 47:7-10.) TMWA modeled capacity based on the Project’s existing tree configuration and found the system capacity is insufficient to meet fire flows. (Ex. C 48:7-18.) Exhibit 23 shows in gpm that the 2500 gpm standard and NAC are not met throughout most of the existing system. In fact, in some areas it drops below 1,000 gpm. The Project fails to meet this important public health and safety design criteria with the existing infrastructure. (Ex. 23.)

4. Maximum Day Demand Requirements Cannot Be Served With Existing Infrastructure

SJV argued the entire Project can be served with the existing infrastructure. (SJV Ex. 1, pp. 1-2.)⁴ The NAC requires a system relying exclusively on wells to provide a total well capacity to meet the maximum day demand (MDD) when all the wells are in operation. (NAC 445A.6672.) SJV’s assumption that it can meet the MDD is flawed because it relies on the entire capacity (605 gpm) of St. James Well 1 and 2. (SJV Ex. C, p. 23.) However, TMWA, based on sound data and prudent utility operation, has derated the reliable capacity of both St. James Well 1 and 2 to 175 gpm per well for a total capacity of 350 gpm. (Ex. 19, p. 3; Ex. C 50:6-8 and 51:6-16.) TMWA’s Discovery found the MDD was 364.1 gpm. (Ex. 19, pp. 3,5.) This calculation was based on the existing MDD of 207 gpm, 122 gpm for remaining undeveloped lots, and 35.1 gpm for this Project. (Ex. 19, p. 5.) This creates a Project capacity deficit of at least -14 gpm. (Ex. C 50:1-12.) This is a conservative calculation because the Lumos report submitted by SJV identifies an additional 18 units that TMWA did not include in the demand calculation. (SJV Ex. 1-C, p. 22, Table 4.3; Ex. C 50:13-21.) SJV’s Ex. 1-B Figure 2 denotes the 18 vacant lots outside of the St. James gate. If those 18 units are included in the demand calculation, the deficit would increase. (SJV Ex. 1-C, p. 22, Table 4.3.)

⁴ Exhibit 24 is a table created to summarize the information in this paragraph.

B. TMWA Acted Reasonably In Applying Its Professional Judgment In Finding That Supplemental Water Supplies Were Necessary To Serve SJV Units 1H And 2C

SJV asserts several arguments to advance its claim there is sufficient water for the Project and that Area 15 fees should not apply. Each of these arguments fail as briefly described here and in detail below. First, TMWA relied on substantial evidence in finding supplemental water supplies were necessary to serve the Project. Furthermore, SJV was aware of falling groundwater levels in the area near the St. James wells as early as 2002. Second, TMWA had no obligation to provide service to SJV based on SJV banking its water rights with Washoe County and later TMWA. Third, this is not the appropriate venue to challenge the Area 15 fees adopted by the TMWA Board. Fourth, the evidence provided by SJV is a single well test that does not represent the extent of the hydrologic impacts throughout the rest of the groundwater basin and region. Finally, SJV does not present any evidence of a taking of SJV's water rights or any legal basis that a taking is even possible.

The Hearing Officer agreed with TMWA's analysis and found "It is clear from Mr. Enloe's testimony information shown in the Eco:Logic Engineering report in 2002 (TMWA Exhibit 7) and the graph showing the decline in groundwater levels (TMWA Exhibit 6) that over-pumping of the aquifer was resulting in falling groundwater levels..." (Ex. A, p. 4.) The Ruling goes on to find St. James should have challenged the actions adopting Area 15 fees and inclusion in previous publicly noticed TMWA Board actions. (Ex. A, pp. 4-5.) Finally, the Ruling found TMWA is not a party to or subject to the Pagni Ranch Purchase Agreement and cannot be in breach of that agreement. (Ex. A, p. 6.)

1. Insufficient Water Exists To Supply the Project Solely From Existing Wells

TMWA has an obligation to confirm water dedicated for a project is sufficient to meet the project's demands and is sustainable into the future. In the Discovery TMWA found that "[A]dditional sources of supply and/or supply capacity improvements will be required to serve the Project. Because of the declining water levels observed in the existing Saint James' wells and prudent utility operation practices coupled with the fact the Project demands exceed the available rated capacity of the wells, TMWA is unwilling to supply the Project any future development solely from the two existing groundwater wells as proposed without additional supply capacity..." (Ex. 19, p. 4.) TMWA then identified other sources of supply or mitigation available for the Project. (Id.) This should not have surprised SJV because in the 2015 Discovery TMWA informed SJV that water levels in the two St. James wells have been declining since 1993 when they were installed. (Ex. 16, p. 4.) While the 2015 Discovery anticipated drilling two new wells to meet capacity issues, it also noted "[i]t is possible that groundwater supplies sufficient to meet the project demand cannot be located on site. In that case, the Applicant might be able to import water from other sources." (Ex. 16, p. 5.)

TMWA relied on decades of water level data, previous Washoe County technical memoranda, and an updated groundwater model in the area to conclude the existing wells were insufficient to supply sustainable water supply to the Project. (Ex. C 55:3-14 and 65:1- 66:2.) TMWA must look at not only the Project but existing demand and other lots where services are committed to determine whether the proposed water supply is sustainable. Here, there is existing demand plus eighty-one undeveloped lots that are committed to service from the existing St. James wells. (Ex. 19, p. 3.)

a. The Water Rights For the St. James Wells Exceed The Physical Water Available

The primary risk with any water right is whether a reliable supply of actual physical water exists year-in, year-out that can be pumped for the intended use. The critical question is not whether a person has a right on paper (i.e., in a permit) to water, it is whether the water claimed on paper actually exists. This is particularly true in groundwater basins where the amount of water stored in the aquifer continually declines year-over-year. In the early 1990's, concern was expressed that the Mt. Rose/Galena Fan aquifer was being over pumped, causing continual decline in water levels year-over-year without evidence of recovery from the natural hydrologic cycle. In 1991, County modeling concluded that "pumping a total of 8,892 AFA of groundwater from the Mt Rose / Galena Fan area... results in over pumping of the aquifer system". (Ex. 7, p. 4.2.) The County developed the South Truckee Meadows Facility Plan, which concluded the Mt. Rose/Galena Fan aquifer is over pumped and in need of supply augmentation to meet demands in the area, reaffirming earlier County modeling efforts. (Ex. 7.)

As summarized in the exhibits and Mr. Estes' and Mr. Enloe's testimony, TMWA staff has determined sufficient evidence exists to conclude the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water that can be extracted on a sustainable basis without impairing TMWA water rights used to meet existing commitments or impairing existing domestic wells. Figure 1 in the 2015 Discovery depicts the St. James monitoring wells' historic water levels from 1993 through 2015. (Ex. 16. p.4, Figure 1.) This figure demonstrates the general downward trend of groundwater levels through 2015 and the recovery occurring thereafter. (Ex. 16. p. 4, Figure 1.) These issues were identified by TMWA during due diligence on the Washoe County merger. (Ex. 9, p. 1.)

b. Substantial Evidence Supports Previous Groundwater Pumping Is Not Sustainable

TMWA recognized that, upon acquisition of the Washoe County and STMGID systems, TMWA would need to develop programs to move surface water into these systems and conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. (Ex. 14, p. 1.) In fact, TMWA's unique ability to provide conjunctive use management (something neither STMGID nor DWR could do with their more limited assets) was one of the identified benefits in

consolidating the systems. (Ex. 14, p. 1.) In anticipation of the groundwater issues, the TMWA Board adopted the County's Mt Rose / Galena Fan Domestic Well Mitigation Program to provide mitigation for domestic well owners suffering unreasonable adverse impacts from municipal well pumping. (Ex. 10.)

Additionally, prior to the completion of the merger, TMWA staff began evaluating and developing strategies for financing and constructing infrastructure needed to move surface water resources into the Mt. Rose Fan area. (Ex. 9, Ex. 14.) These efforts are the basis of the increased Area 15 fee discussed in detail below.

c. TMWA Developed A Regional Groundwater Model For Sustainable Management

TMWA's experienced technical staff have developed a groundwater sustainability and conjunctive use plan. The successful execution of this plan is indicated by recovering water levels over the previous seven years across the Mt. Rose Fan where groundwater levels had dropped nearly 80 feet over the last 30 years. (Ex. 6, Ex. 16, Figure 1; Ex. C 66:3-67:5.) As part of this plan, TMWA developed a groundwater model to assess groundwater pumping impacts on a regional scale. (Ex. 25; Ex. C 67:20-68:12.) The model incorporates many data sources including aquifer test data from dozens of wells (including the Serpa and St. James wells), natural and anthropogenic recharge, geologic controls (e.g. faulting), and pumping data from municipal, domestic, and geothermal wells. (Ex. 25.) Historical data trends and groundwater modeling results indicate the St. James wells are connected to the regional aquifer and pumping from those wells impacts other basins. (Ex. 26, p. 5; Ex. 25; Ex. C 71:13-19.)

d. SJV's Evidence Does Not Support That the Project Can Solely Rely On Groundwater

SJV asserts one test on the Serpa well, as presented by Confluence, is evidence the St. James wells are disconnected from the rest of the regional area. (Complaint, p. 5.) This evidence does not demonstrate that increased pumping is sustainable. It simply demonstrates that in one location after two weeks of pumping, water levels rose again. It has no bearing on overall regional hydrology. Furthermore, Mr. Enloe testified the Confluence Report (SJV expert) recognized the hydraulic connection between the pump test at Serpa and the St. James wells. (Ex. C 71:16-19; SJV Ex. 1-C (Ex. F Confluence Slide 23).)

SJV alleges the Serpa well test demonstrates "hydrogeologic characteristics which actually require an island based handling of the pertinent hydrology at that location." (Ex. C 21:2-6.) To support this claim, they cite to a memo to file drafted by Mr. Benedict (SJV Ex. 20.) in an attempt to undermine using a regional model, as argued by their attorney, but without any support from an expert, "utilizing a widespread regional groundwater model that doesn't particularly have those certain variances incorporated into the model parameters makes the regional model inapplicable or suspect to question." (Ex. C 22:10-14.) However, as Mr. Enloe testified, TMWA's regional model included faulting identified in the Benedict memo, as well as the information obtained from the Serpa well test. (Ex. C 69:9-70:16.)

Furthermore, the Benedict memo finds there is hydraulic connectivity between the Serpa well (located in the Washoe Valley basin) and the St. James wells (located in the Pleasant Valley basin). (SJV Ex. 20, p. 8.)

As is the case with other hydrographic basins where TMWA utilizes groundwater, resource management must be done at the regional scale and not “island based hydrology” to ensure a sustainable and reliable resource. TMWA’s implementation of the groundwater sustainability and conjunctive use plan have yielded rising levels and a movement towards sustainable groundwater levels in the area. (Ex. 6.) As shown in the graph, since 1993 the St. James water levels have been declining. (Ex. 6.) When the County merger was completed and TMWA began reducing groundwater pumping and using other surface water in the area, the groundwater levels have remained stable. (Ex. 6.) SJV asserts that Lumos’ analysis, looking only at water levels from the last five years, indicate this stability will occur into the future without acknowledging TMWA’s many efforts to stabilize the regional groundwater levels. Furthermore, the TMWA regional model for the South Truckee Meadows shows in Scenario 1 (the continued reduced pumping) groundwater levels increase from one foot to seven feet, indicating a sustainable operation. In Scenario two and three, which includes additional groundwater pumping to meet future development including the Project, the model shows increased groundwater level declines of up to 40 feet. (Ex. 25, pp. 2-5; Ex. C 71:20-71:5.)

e. TMWA’s Use Of The Valve Does Not Impact Water Levels

SJV appears to assert TMWA opened a valve and served neighboring developments with the two St. James wells that contributed to the overall drawdown in the surrounding aquifer. (Complaint p. 3.) First, as demonstrated above, SJV was aware as early as 2002 that water levels in the area were declining. While there is a valve that connects the Mt. Rose and St. James systems, it routinely remains shut, but there have been two instances in 2017 and 2018 when the valve was opened. In fact, the 2022 Discovery notes that in an emergency “the Saint James system can be supplied with water from the Mount Rose system for a limited period.” (Ex. 19, p. 2.) That emergency supply occurs through the valve. In 2017, it was opened and adjusted to flow water from St. James to Mt. Rose to assist in a well failure in the Mt. Rose system. In 2018, in response to a motor being replaced on St. James well 2, the valve was opened to flow water from the Mt. Rose system to the St. James system. These examples highlight the importance of redundancy in a regional water system to ensure public health and safety needs are met in emergencies.⁵ (Ex. C 72:15-18.)

⁵ TMWA manages the regional groundwater resources as one since they are hydrologically connected. It is prudent to manage water resources in this way rather than managing, as SJV suggests, islands within the larger system.

f. TMWA Acted Based on Sound Utility Practices In
Determining The St. James Wells Were Not Adequate To
Serve The Project

Based on the evidence and as affirmed by the Hearing Officer, it was reasonable for TMWA to use its professional judgment to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water that can be extracted on a sustainable basis without impairing the use of TMWA permits to meet prior commitments and/or existing domestic wells. Accepting groundwater rights as the sole source of supply without some element of mitigation would expose TMWA and existing customers to potentially substantial additional financial risk, accelerate and increase the number of claims under the existing Domestic Well Mitigation Program, and/or degrade the aquifer before supply augmentation solutions can be implemented. The success of the conjunctive use plan for the Mt Rose and STMGID areas requires additional surface water resources be delivered to the areas. The Area 15 charges include a resource supply component to enable TMWA to acquire supplemental surface water supplies when accepting groundwater dedications in Area 15. Supplemental surface water resources are a critical component of conjunctive resource management and are necessary to ensure a sustainable water supply for existing and new development in this basin.

2. TMWA Is Not Contractually Obligated To Provide Water Service To SJV Under the Pagni Ranch Agreement

SJV asserts TMWA has a contractual obligation to provide water service “as designated” by SJV based on a Purchase Agreement dated June 12, 1990 between Washoe County and SJV’s alleged predecessors-in-interest (Pagni Ranch Agreement). TMWA was not a party to that Agreement and TMWA did not assume it under the merger with the County’s water utility. (Ex. 15.) The County conveyed the water rights subject to the Pagni Ranch Agreement to TMWA and those rights are currently banked with TMWA for future water service, but TMWA did not assume any obligations under the Agreement. Additionally, the Pagni Ranch Agreement does not relate to the real property subject to this appeal. Lastly, even if TMWA assumed the Pagni Ranch Agreement and it related to the real property subject to this appeal, it specifically states: “[T]o obtain water service for any project based on these water rights, Pagni must comply with all valid requirements imposed by the water purveyor and governmental entities having jurisdiction, including the construction and dedication of other facilities required for the project...” As affirmed by the Hearing Officer, TMWA is not contractually obligated to provide unconditional water service to SJV. (Ex. A, p. 6.)

3. SJV Cannot Challenge the Area 15 Fees

SJV attempts to challenge the application of the Area 15 applies as applied to this Project. (Complaint p. 5.) As confirmed by the Hearing Officer, this tactic is inappropriate, outside the scope of the Discovery, and the time for any such challenge has passed. (Ex. A, pp. 4-5.)

In April 2015, TMWA posted an agenda that included a public hearing on rate and rule amendments. (Ex. 11, p. 2.) This item notified the public TMWA was considering

changes to the TMWA Rate Schedule Water System Facility Charges (“WSF”) for areas 14 and 15. The staff report for this agendized public hearing was clear that as early as 1991 it was known the Mt. Rose/Galena Fan aquifer was being over pumped and the amendment to the fees was necessary to supply “additional water resources” in the Mt. Rose area. (Ex 12, pp.4-5.) The staff report further included a map that shows the St. James area was within Area 15. (Ex.12, p. 11.) In May 2015, TMWA agendized and the Board acted on the Public Hearing to update the WSF Rates for Area 14 and 15 and adopted the WSF rates. In addition to the two noticed public hearings where SJV could have appeared to challenge the fees and the applicability of the fees, which they did not, TMWA conducted two public workshops in April 2015. (Ex. 12, p. 11.) There was no challenge by SJV or any other person to the WSF Area 15 increases and they became effective June 1, 2015. The appropriate time to challenge the application of the Area 15 WSF has passed, and SJV has waived its rights to challenge. TMWA Rule 8 and judicial review have a 25-day statute of limitations to appeal. (See generally NRS 278.0235; NRS 278.3195.)

4. TMWA’s Actions Do Not Constitute A Taking

SJV asserts it is a taking of their groundwater rights to require SJV to dedicate supplemental Whites Creek water rights (or pay a higher WSF fee to reimburse TMWA for the cost of acquiring Whites Creek water rights for developers). SJV cites no authority, beyond a general reference to the Nevada Constitution, to support its allegation that TMWA has somehow reduced its beneficial interest in its water rights without payment of just compensation. In general, the Nevada Supreme Court has required the finding of an extreme economic burden to find liability for a regulatory taking. *State v. Eighth Judicial Dist. Ct.*, 131 Nev. 411, 419, 351 P.3d 736, 741 (2015) (to effect a regulatory taking, the regulation must “completely deprive an owner of all economically beneficial use of her property”) (citations omitted).

The facts of this matter, however, do not support any sort of “taking” or “eminent domain” claim by SJV. As set forth above, Whites Creek water will be treated by TMWA and used to provide water to customers and recharge the aquifer, which make SJV’s groundwater rights sustainable. TMWA applied its Rule 7 dedication formula to estimate the demand of the project. (SJV Ex. 24.) SJV was not required to dedicate more of its groundwater rights than required by Rule 7. Furthermore, SJV has simply “banked” its subject water rights with TMWA while it pursues its tentative and final maps for its development. At any time, at SJV’s request, TMWA can return the rights to SJV and they can be retained pending the filing of an application for water service on its development, sold on the open market or put to use in the formation of SJV’s own water service provider, separate from TMWA. (Ex. C 63:9-22.) Simply put, TMWA has done nothing but protect the value and perpetuation of SJV water rights - it has done nothing to devalue them. Accordingly, there is no taking of Appellant’s real property rights.

Additionally, requiring SJV to dedicate supplemental creek rights or pay a higher WSF fee does not constitute per se forfeiture or cancellation of Appellant’s groundwater

rights because as stated above, Appellant was not required to dedicate more of its groundwater rights than is required by TMWA Rule 7. Also, since, 1990 Washoe County and TMWA have kept Appellant's water rights in good standing with the State Engineer by filing the necessary annual applications for extensions of time to file the proof of beneficial use.

5. TMWA Will-Serve Does Not Relate To The Project Subject To This Appeal And Any Will-Serve Is Subject To Satisfaction Of All Other TMWA Rules

Appellant asserts that because TMWA issued a will-serve commitment for seven so-called "infill" lots within another existing SJV residential subdivision, SJV "justifiably assumed" the WSF fees were inapplicable to the project subject to the Discovery. This argument fails for the following reasons. First, the will-serve Appellant references is for another SJV project and the parcels subject to that will-serve are now owned by third parties. Second, Appellant knew the Area 15 fee would apply to the seven infill lots because TMWA sent SJV a water right dedication "Calculation Worksheet," which clearly states that the Area 15 Surface Water Treatment Plant Fee would apply. (Ex. 27.) The Worksheet also referred Appellant to a table in a 2018 Discovery involving the seven lots described above plus two additional lots. That 2018 Discovery stated the WSF Fee Appellant would be required to pay if it did not dedicate supplemental Whites Creek water rights to TMWA (Ex. 28.) Additionally, TMWA's standard will-serve states that it is subject to all applicable TMWA rules, does not constitute an obligation to provide water service under NAC 445A, and is conditional on execution of a water service agreement. Here, Appellant did not sign the annexation agreement nor a water service agreement.

TMWA issued the will-serve as an accommodation to Appellant so that it could record the subdivision plat. The reason for the accommodation was the seven infill lots had not yet been created by subdivision plat and the project included several large areas that were proposed to be common area and which TMWA did not want to annex into its service area. (Ex. 29; Ex. 5, May 20, 2021 letter.) Accordingly, TMWA issued the will-serve letter prior to annexation so only the seven lots could be created and annexed into TMWA's service area.

6. TMWA's Signature on Subdivision Plat Constitutes Approval Of Easements Only

Appellant alleges that because TMWA signed the subdivision plat for the seven infill lots it somehow approved the Project subject to this Complaint. As stated above, the map related to creating the seven infill lots and did not relate to the real property subject to this appeal. Additionally, for all land division maps, TMWA signs the "Utility Companies Certificate," which only approves the utility easements shown on the maps. (Ex. C 11:5-8.) TMWA's signature does not constitute approval of any other aspect of the real property described by the map. TMWA cannot and does not approve projects. Rather,

TMWA issues will-serve letters following its own rules and procedures, and only after verifying the existence of an adequate water supply.

C. The Denial of SJV's Motion to Strike Should Be Upheld

The testimony of TMWA's two witnesses was and remains truthful, and it has been confirmed under oath. Each witness has sworn, under oath, that all of their testimony provided on March 31, 2022, was and is truthful. (See Ex. D and attached Affidavits.) SJV cannot and has not demonstrated any prejudice. During the subject hearing, SJV did not challenge the truthfulness of either witnesses' testimony or object to the presentation of any testimony, on any grounds. In fact, SJV's attorney cross examined each witness at the hearing and never requested the witnesses be sworn before doing so. Finally, the Hearing Officer found the witnesses' testimony was not necessary to substantiate her findings, so the Motion is also patently moot. (Ex. B.)

IV. CONCLUSION

The Hearing Officer found TMWA acted based on substantial evidence and using sound engineering judgment in finding the Project required additional infrastructure, water rights dedication and payment of the applicable fees for TMWA to sustainably supply water. Furthermore, it is unreasonable, if not absurd, for SJV to assert TMWA should not comply with existing law when even its own consultants recognize and admit the existing system does not meet current legal requirements for looping, fire flow requirements, and maximum day demands. TMWA has an obligation to comply with State water system regulations, Washoe County Health Department requirements, and its own design criteria to ensure both current and future homeowners have adequate water resources and infrastructure to meet public health and safety requirements.

Respectfully submitted this 15th day of July, 2022.

McDONALD CARANO LLP

By: 

Matthew C. Addison, Esq.

Attorneys for

Truckee Meadows Water Authority

TMWA EXHIBIT LIST

Exhibit 1	St. James Timeline
Exhibit 2	TMWA website- Issue Paper on Growth Pays for Growth
Exhibit 3	TMWA Rule 5
Exhibit 4	December 23, 2021, Letter from Mr. Rotter to Mr. Krater and Mr. Champa re 7 infill lots
Exhibit 5	Various Correspondence between Mr. Pagni and Mr. Champa
Exhibit 6	Figure Re St. James Monitoring Well and Regional Pumping from 1994-2022
Exhibit 7	South Truckee Meadows Facility Plan- Phase II Technical Memorandum No. 4
Exhibit 8	Washoe County Staff Report re Mt. Rose-Galena Fan Domestic Well Mitigation Program
Exhibit 9	April 6, 2015, TMWA Staff Report re Area 14 and 15 Charges
Exhibit 10	TMWA Rule 10
Exhibit 11	April 15, 2015, TMWA Agenda
Exhibit 12	May 14, 2015, TMWA Staff Report re Area 14 and 15 Charges
Exhibit 13	May 21, 2015, TMWA Agenda
Exhibit 14	July 2015 Letter RE TMWA's Plan for Groundwater Sustainability on the Mt. Rose Fan sent to 8,000 property owners and Receipt of Mass Mailing
Exhibit 15	Portions of December 2014 Closing Memorandum to Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Into Truckee Meadows Water Authority
Exhibit 16	December 23, 2015, St. James Village Discovery
Exhibit 17	January 28, 2016, letter from St. James Counsel to TMWA re Annexation Applications for St. James's Village Inc., and Sierra Reflections
Exhibit 18	March 11, 2021, Letter from St. James Counsel re St. James Village
Exhibit 19	February 14, 2022, Saint James Village Units IH and 2C Discovery
Exhibit 20	TMWA Design Standard 1.1.06.06
Exhibit 21	Figure showing Saint James length of dead mains
Exhibit 22	TMWA Design Standard 1.1.05.06
Exhibit 23	Figure showing Saint James Existing Fire Flows Model
Exhibit 24	Table of Maximum Day Demand Deficit
Exhibit 25	December 22, 2021, South Truckee Meadows Model Simulation Results
Exhibit 26	December 3, 2020, Galena Area Water Level Predictions
Exhibit 27	February 28, 2019, Water Calculation Worksheet
Exhibit 28	May 9, 2018, Saint James Infill Lots Discovery
Exhibit 29	May 2, 2018, Memo Re Saint James Discovery Water
Exhibit 30	Applicable NAC Sections
Exhibit A	Hearing Officer's April 14, 2022 Decision
Exhibit B	Hearing Officer's April 20, 2022 Decision
Exhibit C	March 31, 2022 Transcript
Exhibit D	TMWA Reply and Affidavits

ST. JAMES VILLAGE EXHIBIT LIST

SJV Exhibit 1-A (Partial)
SJV Exhibit 1-B (Partial)
SJV Exhibit 1-C (Partial)
SJV Exhibit 1 (Partial)
SJV Exhibit 15
SJV Exhibit 16
SJV Exhibit 20
SJV Exhibit 24 (Partial)
Complaint


CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury, that I am an employee of Truckee Meadows Water Authority, and that I caused a true and correct copy of the foregoing document to be delivered via electronic mail, addressed to the following persons:

TMWA Board of Directors
Sonia Folsom, Secretary to the Board
TMWA
1355 Capital Blvd
Reno, NV 89502
sfolsom@tmwa.com

Evan J. Champa
Holland & Hart LLP
5441 Kietzke Lane, Suite 200
Reno, NV 89511-2094
EJChampa@hollandhart.com

DATED this 16th day of July, 2022.



Stefanie D. Morris
TMWA
Director of Legal and Regulatory Affairs

Saint James Timeline

- 1992 - Saint James Village (SJV) tentative map approved by Washoe County for 530 single family residence (SRF) lots
- 1995 – Applicant initiates water system design
- 1994-1997 – Washoe County approves several final maps for SJV Units 1 and 2
- 1997 – Nevada Administrative Code 445A is effective prescribing water controls- design, construction, operation, and maintenance
- 2011 – Several Final Maps (including the lots subject to the discovery) are reverted to acreage
- 2011 – Washoe County creates the Mt. Rose Domestic Well Mitigation Program to mitigate impacts from municipal pumping on domestic wells
- 2014- Washoe County water systems are merged into TMWA; TMWA Board adopts Rule 10 the Mt. Rose Domestic Well Mitigation Program; and TMWA establishes initial Facility Charges for County systems
- 2015 – TMWA Board notices and approves increase to Area 15 (Mt. Rose/Arrowcreek) Facility Charge to include the Mt. Rose Surface Water Treatment Plant; TMWA derates the Tessa Wells (located on the Mt. Rose Fan)
- 2015 – SJV files discovery, TMWA issues Discovery 15-4624 for 239 SFR lots. Key points include:
 - Existing system in laid out in a tree configuration
 - Long-term (1994-2015) decline in groundwater levels and deration of the SJV wells (175 GPM each)
 - Dedication of surface (creek) water rights and financial contribution to construction of the proposed Mt. Rose Water Treatment Plant
 - Construction/development of two new groundwater wells
 - Fire flow deficiencies
 - Regional integration of the SJV system
- 2016 – TMWA completes construction of the \$4.4 million Arrowcreek Drought Response Project, which provides of -peak and emergency surface water supplies to the Arrowcreek tank and the Mt. Rose fan.
- 2018 – TMWA issues Notice to Proceed for construction of the Mt. Rose Treatment Plant
- May 9, 2018 – SJV Infill Lots Discovery 18-6172 is issued.
 - 9 infill lots. 2 within TMWA service area, 7 not.
 - Concluded “Because of the declining water levels seen in the existing St. James’s wells, TMWA is unwilling to supply any additional development from the two existing wells until the regional groundwater sustainability plan for the Mt. Rose and Glena alluvial fans (see discussion below) is in place and operational, and groundwater in the existing wells have stabilized to TMWA's satisfaction.”)

- February 28, 2019 – TMWA issues will-serve commitment for 7 “infill” lots to permit St. James could record a subdivision plat to create the parcels. Will-serve commitment contains provision saying all applicable WSF will apply.
- April 15, 2019 – TMWA signs Utility Companies Certificate on Subdivision Tract Map No. 5331, which approved the utility easements shown on the map.
- 2019 – Annexation Agreement for infill lots is issued (no action taken by SJV)
- November 2021 – SJV requests discovery for 24 SFR lots (Unit IH and Unit 4C) and 7 infill lots.
- December 2021 – TMWA responds to inform that the 7 infill lots are no longer owned by the applicant and will not be part of the Discovery.
- March 2022- TMWA Issues Discovery
- March 2022 – SJV requests dispute resolution under TMWA Rule 8

WATER TOPICS IN OUR COMMUNITY: GROWTH

QUESTIONS AND ANSWERS ABOUT WATER AND GROWTH

CAN THE WATER WE CONSERVE BE USED FOR GROWTH - TO BUILD MORE HOUSES OR BUSINESSES?

The answer is no. Some people mistakenly believe that when our residential customers use less water through conservation, the water saved is used for growth. That is not what happens. The Truckee River Operating Agreement (TROA) requires that TMWA use conserved water to increase drought storage availability and enhance in-stream flows in the Truckee River for wildlife purposes. Reselling of conserved water to serve new houses does not occur.

WHERE DOES THE WATER COME FROM FOR NEW GROWTH?

TMWA holds water rights dedicated to serving each business or home. New developments must acquire water rights from a willing seller. Anytime someone wants to build a house, a subdivision, or a business, they must bring existing water rights to TMWA. In most cases, agricultural irrigation rights are purchased by developers and are converted to municipal use for new projects.

The amount of Truckee River water available for use in the Truckee Meadows was determined by a 1944 court decree and has not changed. When people who own irrigation water rights decide not to use them any longer, they can sell them like any other real property. If they are sold to a developer, the developer must then legally change the use to municipal purposes and transfer them to TMWA so they can serve new customers. There is no increase in the amount of water that can be diverted from the river. The only thing that changes is how the water is used.

DOES GROWTH PAY FOR GROWTH AT TMWA?

Yes, it does. The development community pays for all new facility and water rights expenses related to growth when they want to build a new project. The TMWA Board of Directors instituted this policy shortly after TMWA was formed in 2001.

Growth is paying the cost of new facilities to provide new service. The fee that developers pay includes the cost of new water mains, pumps and tanks, plus expansion of water treatment plants. The development community has agreed to this policy, which ensures that existing customers do not pay for new facilities to serve new development and new customers.



QUICK FACTS

Remaining water rights:
50,000 acre-feet of Truckee River water rights and more than 19,000 acre-feet of creek rights remain for future conversion.

Total converted irrigation and groundwater water rights available for TMWA to use for the Truckee Meadows: 81,300 acre-feet

Potential drought storage:
22,000 to 32,000 acre-feet in upstream reservoirs

Use of Truckee River:
TMWA customers use only 3 percent of the water in the Truckee River in a non-drought year and up to 9 percent in a drought year.

Number of new Truckee River water rights:

None since 1944

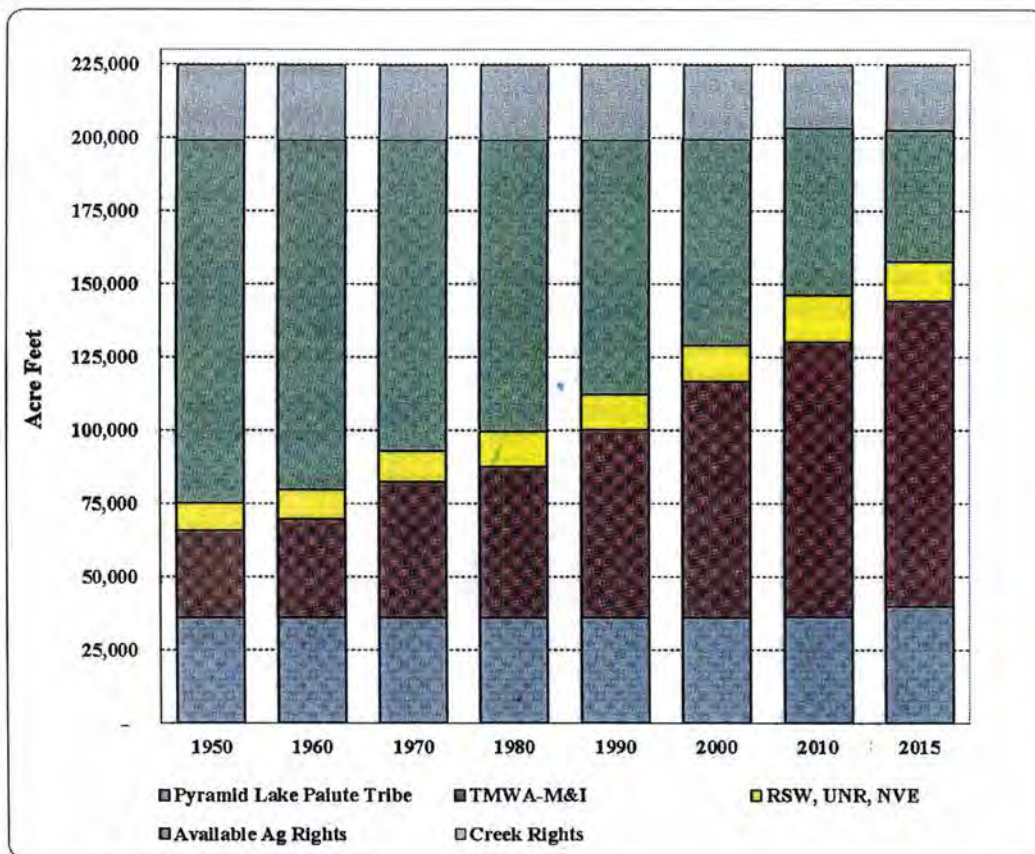
Investment in new water facilities:

\$100 million since 2002 paid by developer fees.

WHAT IS TMWA'S ROLE IN GROWTH IN OUR COMMUNITY?

Local governments set the communities' direction on growth. TMWA is a water provider and a facilitator to serve local government in managing and developing existing or future water supplies and resources. We cannot deliver more water than is allowed by water rights and drought reserves -- for any purpose, including growth. The community sets the course for growth through regional planning and local government directives. If anyone would like to have input in the issue of growth, contact your elected representative and/or the planning commissions.

TRUCKEE RIVER WATER RIGHTS SAME WATER, DIFFERENT USE



About TMWA:

Truckee Meadows Water Authority (TMWA) is a not-for-profit water utility, overseen by elected officials from Reno, Sparks and Washoe County. TMWA employs a highly skilled team who ensure the treatment, delivery and availability of high-quality drinking water around the clock for more than 425,000 residents of the Truckee Meadows.

About this series:

"Water Topics in Our Community" is a series of papers designed to provide the citizens of the Truckee Meadows information about key water topics in this region.

To access all of the papers, go to www.tmwa.com/topics.

About TMWA's Board of Directors:

The TMWA Board welcomes you to attend and comment at any board meeting. Meeting schedules are posted at

www.tmwa.com/meetings.

To send a question to the Board, visit us online at

www.tmwa.com/comment.

Questions or feedback?

We'd like to hear from you. Please call our Community Communications line with any remaining questions you have on this topic or other water topics. The number is

(775) 834-8290.

Truckee Meadows Water Authority

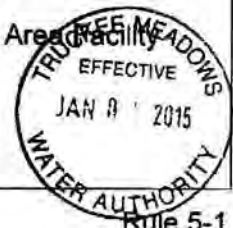
RULE 5

WATER SYSTEM FACILITIES

A. Applicability

1. This Rule defines the responsibilities of the Authority and of the Applicant for the cost and requirements for construction, extension and/or modification of Water System Facilities required to provide new Service or Modified Service to the Applicant's project(s) within the Authority's approved Service Area. No Service Property shall be eligible for water service, nor shall Authority have any obligation to provide water service to any Service Property, if the Service Property is located outside Authority's Service Area.
2. Annexation of Service Property. Authority shall have no obligation to annex or provide water service to any Service Property located outside Authority's Service Area. An Applicant seeking new Service to a Service Property located outside the Authority's Service Area shall submit an application for annexation to the Authority. The Authority may, in its sole discretion, deny the application or agree to annex the Service Property into the Authority's Service Area on such terms and conditions determined by Authority and set forth in an Annexation Agreement. An Applicant approved for new Service to a Service Property located outside the Authority's Service Area must satisfy both the terms and conditions of the Annexation Agreement and terms and conditions applicable to new Service set forth in Authority's Rules, including this Rule.
3. Definitions. Terms not defined in this section shall have the meaning set forth in Rule 1. As used in this Rule:
 - a. "Applicant" shall mean the legal owner of the Service Property to receive New or Modified Water Service which results in the need for addition to or modification of Water System Facilities.
 - b. "Applicant Installed Facilities" shall mean those Water System Facilities or portions of Water System Facilities required or approved by the Authority for installation by Applicants, and include Project Mains and associated Facilities, Meters or Services.
 - c. "Authority Installed Facilities" shall mean those Water System Facilities or portions of Water System Facilities installed and constructed by the Authority or its agent, and including, but not limited to, supply/treatment improvements, feeder mains, pressure regulating stations, system interties, new pump stations or rebuilds of pump stations, new standby power generators, storage facilities, and retrofit additions.
 - d. "Business Services" shall mean the cost of services provided by the Authority for the benefit of the Applicant associated with providing new Service or Modified Service and may include, but are not limited to, system planning; engineering design; permitting; property, right-of-way, or easement acquisition; design review; material acquisition; bidding and contracting; construction; construction management; inspection; and administrative overheads and financing costs.
 - e. "Charge Area" shall mean the geographically defined boundaries where Area Unit Costs have been established by the Authority.

Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 06/19/13; 01/01/15



Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- f. "Deficit Demand" shall have the meaning ascribed to such term in Rule 7.
- g. "Effective Date of the Water Service Agreement" shall mean the earlier of (i) the date stated in a Water Service Agreement that it is to become effective or (ii) the date the Water Service Agreement is executed by both the Applicant and the Authority.
- h. "Facilities Application" shall mean the Applicant's request for Water System Facilities submitted on such form prepared by or revised by the Authority from time to time.
- i. "Feeder Mains" shall mean on-site or off-site mains and associated Facilities required to provide the requested service, which will also provide excess capacity to serve additional future Customers or redundant mains necessary to comply with local, State or Federal regulations.
- j. "Oversizing Costs" shall mean the difference between the cost of the Oversized Facilities and the cost of Water System Facilities necessary to serve Applicant's project, as estimated by the Authority. Authority's responsibility for Oversized Facilities costs shall not be allocated based on Applicant's percentage utilization of the water system facility's capacity.
- k. "Oversized Facilities" shall mean those portions of Water System Facilities required by Authority of greater capacity or size than would be necessary to provide the service requested by the Applicant.
- l. "Project Mains" shall mean on-site or off-site mains and associated Facilities required to provide the requested service that do not provide excess capacity to also serve additional future Customers. The capacity of a main and whether excess capacity is available is solely determined by the Authority.
- m. "Water Service Agreement" shall mean the agreement entered into between the Applicant and the Authority that defines the terms and conditions under which the Authority shall provide the requested water service.
- n. "Water System Facilities" shall mean all on-site and off-site improvements required to provide new Service or Modified Service to a Service Property or Applicant's project and as necessary to develop, treat, store, transport and distribute water to the Applicant's project, and any additional facilities specified or required by local, State, or Federal regulations, or stipulated in an Annexation Agreement, whether Applicant Installed Facilities or Authority Installed Facilities, and shall include, but not be limited to, supply/treatment facilities, water mains and associated facilities, storage tanks, pressure regulating stations, pump stations, standby power generators and any other ancillary equipment or controls necessary to integrate new water Facilities or to connect to, expand, relocate or alter existing water Facilities.

Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 01/01/15



Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

B. Responsibilities and Requirements for Installation of Water System Facilities

1. Application and Processing.

- a. Applicant shall apply for new Service or Modified Service by submitting a complete Application with the Authority. An Application shall be deemed complete if the Authority determines it includes sufficient information to allow Authority to perform system planning and develop preliminary facility plans, prepare sketches, and estimates of Applicant's costs to be advanced to Authority for Authority's business services.
- b. The Application must be accompanied by appropriate fees for business services as provided in Rate Schedule BSF. All Rate Schedule BSF fees paid at the time of Application are non-refundable, except as otherwise provided in Section B.6.c of this Rule 5.
- c. The Authority shall determine, in its sole discretion, whether any changes to a project or Application after submission of a completed Application (changes may include but are not limited to type of development, number of units or parcels, change in size of units or parcels, change in grading, change in street layout, fire flow required, or estimated demand(s)) changes the estimated demands of the project or requires submission of a New Application.
- d. An Application shall automatically be deemed canceled and rejected, and shall be null and void without further notice from the Authority:
 - i. on the date the Applicant notifies the Authority the project is canceled;
 - ii. on the date approval for the project by the applicable governing body expires or is terminated; or
 - iii. if a Water Service Agreement has not been executed by Applicant and Authority within twelve (12) months of the date the completed Application was first received by Authority.
- e. The Authority, in its sole discretion, may approve an extension of time for a pending application beyond its scheduled cancellation date under the following conditions:
 - i. the Applicant requests the extension of time in writing no later than 30 days prior to the pending cancellation date;
 - ii. there are no changes planned, proposed, or subsequently made to the project; and
 - iii. the Water Service Agreement for the project is subject to different terms, conditions, fees, and/or facility charges than those offered in a prior Water Service Agreement for the project.

Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 01/19/12



Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- f. An Applicant may resubmit a rejected or canceled Application to the Authority for reconsideration at any time; provided, however, the resubmission of a canceled Application will be treated as a new Application and must comply with all conditions in these Rules applicable to a new Application, including payment of appropriate fees.

2. Applicant Installed Facilities.

- a. Applicant will be responsible for all engineering design, permitting, property acquisition, right-of-way, material acquisition, bidding and contracting, and construction of Applicant Installed Facilities. Authority will, at Applicant's expense, perform planning, administer the Water Service Agreement described in Section B.6 of this Rule, review and approve designs of Applicant Installed Facilities, inspect and approve Applicant Installed Facilities during construction, and, to the extent necessary to acquire access rights for Applicant Installed Facilities, review and process right-of-way and property documents.
- b. The Authority will, at its sole discretion, determine the feasibility of proposed or alternate routes for Facilities and for establishing capacity requirements.
- c. Feeder Mains, Project Mains, storage facilities, and pressure regulating stations may be designated as Applicant Installed Facilities at the sole discretion of the Authority.
- d. Applicant Installed Facilities work must be conducted in coordination with the Authority to permit the Authority to perform its related work efficiently with minimum delay.
- e. Applicant must comply with the following conditions to install Applicant Installed Facilities.
 - (1) All design, plans, and specifications shall be prepared by the Applicant at the Applicant's expense and must be approved by the Authority before construction can commence. If the Authority, in its sole discretion, determines that engineering design is required for the water facilities, Applicant's designs shall be prepared by or under the direction of and wet-stamped by a Professional Engineer registered in the State of Nevada in accordance with Nevada Law, including NAC 625.611.



Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- (2) All phases of the installation of Applicant Installed Facilities are subject to inspection and approval by the Authority, at Applicant's expense. Applicant shall require Applicant's contractor to conduct a pre-construction meeting to be attended, at a minimum, by the Applicant's design engineer, contractor's superintendent and Authority's inspector.
- (3) The Applicant's contractor must hold a valid Contractor's License of a proper classification ("A" General Engineering, or subclassification "A-19" specialty contractor's license) issued by the State of Nevada Contractor's Board in accordance with NRS 624. The contractor must furnish sufficient experienced and qualified personnel and must demonstrate availability of adequate reliable equipment to handle and install Applicant Installed Facilities in a workmanlike manner in accordance with industry standards, TMWA standards and manufacturer's recommendations.
- (4) The Applicant and/or Applicant's contractor must comply with the Authority's Standards, and any additional specified construction standards and/or governmental requirements (i.e., OSHA, City, County, State, etc.) that may apply in all phases of the Applicant Installed Facilities installation.
- (5) The Applicant must provide all material in accordance with the Authority's Standards or specifications. All material provided will be subject to acceptance by the Authority, based on inspections by the Authority at Applicant's expense.
- (6) The Applicant and/or Applicant's contractor must guarantee all material and workmanship against defects for one (1) year following final acceptance of Applicant Installed Facilities by the Authority. This guarantee shall be made a part of the Water Service Agreement.
- (7) If Applicant's contractor, for any reason, ceases work on Applicant Installed Facilities prior to acceptance by Authority, the Applicant or Applicant's contractor must immediately notify the Authority of the work cessation and the reasons therefore, and must notify the Authority at least two (2) working Days prior to recommencing work, unless otherwise agreed to by the Authority. The Authority may require a pre-construction meeting per Section B.2.e.(2) of this Rule prior to the commencement of work.

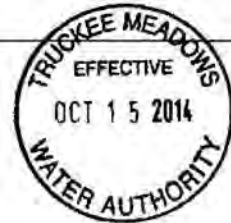


Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES



- (8) Applicant must enter into a Water Service Agreement with the Authority as described in Section B.6 of this Rule.
- (9) The Applicant shall install all Oversized Facilities specified by the Authority subject to the reimbursement provisions of this Rule.
- (10) The Applicant shall commence installation of Applicant Installed Facilities within the earlier of (i) 12 months after the effective date of an executed Water Service Agreement; or (ii) the time schedule set forth in a Water Service Agreement. Applicant shall apply best commercial efforts to complete construction of the water facilities no later than 12 months from the commencement date, or in accordance with specific required completion dates as established by the Authority.
- (11) The delivery of water will not be provided to a Service Property or Applicant's project by the Authority until the necessary Water System Facilities are complete, tested, accepted and placed into service, and applicable Schedule WSF Charges shall be paid as determined by the Authority in Section B.4.

3. Authority Installed Facilities.

- a. Unless otherwise expressly noted in this Rule or specifically provided for in the Water Service Agreement, all Water System Facilities shall be deemed Authority Installed Facilities.
- b. Applicants shall prepay to Authority the Authority's estimated cost of preparing final design documents for Authority Installed Facilities, including detailed plans, specifications and cost estimates as a condition of Authority beginning such services. In addition, Applicant shall comply with the following requirements for Authority Installed Facilities.
 - (1) Applicant shall provide the Authority with maps and drawings, in an electronic format and to suitable scale satisfactory to the Authority, showing final street and lot layouts and final grading plans indicating existing and final elevation contours of the area to be developed.
 - (2) Applicant shall provide Authority with a proposed construction schedule and service date. The Authority will develop a tentative project schedule in consultation with Applicant, accounting for anticipated permitting, land and/or right-of-way acquisition, material acquisition, design and construction time frames.

Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 10/15/14

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES



- (3) Applicant shall furnish any required property ownership, property description, plot plan or record of survey information concerning the area to be served under the provisions of this Rule. Such information shall be furnished in a format acceptable to the Authority.
- (4) Applicant shall furnish any other relevant information that the Authority may require to complete Authority's design or construction of Authority Installed Facilities.

If changes are made subsequent to the presentation of the information described in Section B.3.b and these changes require additional expense to the Authority in revising plans, specifications and cost estimates, this additional expense shall be advanced by the Applicant.

- c. Applicant shall submit an advance payment, equal to the Authority's estimated cost to provide the requested service, including permitting, land and right-of-way acquisition, material and equipment acquisition(s), bidding and contracting, construction, inspection and administration, thirty (30) Days prior to the start of construction of any Authority Installed Facilities. Scheduling of the construction start date is contingent upon Authority's receipt of Applicant advance payments and all project approvals, required easements and project permits.
- d. The Authority may require an acceptable bond, letter of credit or guarantee related to the required cash advance whenever installation of Authority Installed Facilities requires firm scheduling by the Authority more than thirty (30) Days prior to construction. Bonds, letters of credit or guarantees provided for this purpose will be replaced with cash thirty (30) Days prior to construction, except that Applicant will advance the cost, in cash for special materials not normally stocked by the Authority in the quantities needed, as a condition of Authority ordering such materials.
- e. In those instances where more than one Applicant is to be served jointly from the same extension or alteration, the total advance required from such Applicants shall be apportioned among the Applicants as provided in the Water Service Agreement. The total advance shall equal the Authority's total cost for providing service to all such Applicants.

Added: 10/01/03 Amended: 03/01/05; 03/01/08; 05/21/09; 05/21/10; 10/15/14

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES



4. Facilities and Cost Responsibilities.

- a. All Applicant Installed Facilities and Authority Installed Facilities shall be and remain the sole property of the Authority. Size, type, quality of material and location of Water System Facilities installed or constructed shall be selected by the Authority in accordance with the Authority's standards of service, engineering and construction practices and in compliance with local, State and Federal regulations. At its option, the Authority will retain ownership of existing Facilities that are removed in connection with new Facilities installation; otherwise, such removed facilities will become the property of the Applicant. No salvage value will be assigned or granted to the Applicant for existing facilities that are removed.
- b. The Authority is not responsible for damages, including consequential damages, delay or other inconveniences resulting from delays in design, planning, review, approval or construction of Water System Facilities caused by circumstances beyond the control of the Authority.
- c. Applicant cost responsibilities for Water System Facilities installed pursuant to this Rule shall include, but are not limited to, all regulatory, environmental and other permit fees, engineering, permitting, land acquisition(s), right-of-way, inspection, material, labor, transportation, cost for removal of existing Facilities, associated Authority overheads, financing charges and other charges which are related to the Facilities, including any modification or improvement of existing Facilities, or installation of temporary Facilities required to provide the requested service.
- d. Applicant shall be responsible for the actual cost of all Water System Facilities identified by the Authority, and/or required by local, State or Federal regulations, as required to provide the requested new Service or Modified Service, including, without limitation, costs for:
 - (1) Project Mains. The Applicant is solely responsible for the cost of Project Mains as required by the Authority to provide the necessary capacity for the requested New or Modified Service. Applicant will be responsible for the cost of a Project Main of such capacity and along such a route as would be adequate to provide the required service, provide for the logical and orderly expansion of the water system to serve future customers, or meet requirements of applicable regulations, as determined by Authority.
 - (2) New Pump Station Facilities
 - (3) Service and Meter Facilities (per Rule 6).

Added: 10/01/03 Amended: 03/01/05; 03/01/08; 05/21/09; 05/21/10; 10/15/14

Truckee Meadows Water Authority



RULE 5

WATER SYSTEM FACILITIES

- (4) Supply and Treatment Facility Charge. Applicants shall be responsible for a Supply and Treatment Facility Charge, the amount of which will be based on the following calculation:

Supply and Treatment Facility Charge = Demand multiplied by *Supply and Treatment Facility Unit Cost*

Where:

Supply and Treatment Facility Charge = Applicant's share of costs to add new or modify existing supply and treatment facilities.

Demand = Excluding fire flow, Applicant's Maximum Day Demand plus any Deficit Demand at the Service Property in GPM as determined by the Authority.

Supply and Treatment Facility Unit Cost = unit cost in dollars per GPM of Maximum Day Demand, representing the cost to construct and finance supply/treatment improvements identified by the Authority as set forth in Rate Schedule WSF.

- (5) Storage Facilities. Where, as solely determined by the Authority, storage is required that benefits or serves primarily the Applicant's Project, the Applicant will be solely responsible for financing, constructing and dedicating to the Authority the storage facilities required to serve the Applicant's Project. The Authority, at its option, may require Applicant to oversize said storage facilities; in such case, Authority shall be responsible for Oversizing Costs as provided in Section B.5 of this Rule 5.

- (i) If not required to construct and dedicate storage facilities, the Applicant shall pay the Authority a Storage Facility Charge, the amount of which will be based on the following calculation:

Storage Facility Charge = Demand multiplied by *Storage Facility Unit Cost*

Where:

Storage Facility Charge = Applicant's share of storage costs including operating, fire and emergency storage components.

Demand = Excluding fire flow, Applicant's Maximum Day Demand plus any Deficit Demand at the Service Property in GPM as determined by Authority.

Storage Facility Unit Cost = unit cost in dollars per GPM of Maximum Day Demand, representing the cost to construct and finance storage improvements identified by Authority as set forth in Rate Schedule WSF.

Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 06/19/13

Truckee Meadows Water Authority



RULE 5

WATER SYSTEM FACILITIES

(6) **Area Facility Charge.** The Applicant is solely responsible for the cost of Feeder Mains and other area specific facilities required by the Authority to provide the necessary capacity for the requested New or Modified Service. The Authority, at its option, may require Applicant to oversize said Feeder Main or area specific facilities; in such case, Authority shall be responsible for Oversizing Costs as provided in Section B.5 of this Rule 5. Where a Service Property is not located within an established Charge Area or where the Area Facility Unit Cost for that Charge Area has not been established, applicable Area Facility Unit Costs shall be determined by Authority on a case by case basis and may include charges for on-site and off-site improvements, including Oversizing Costs, to integrate new Water System Facilities or to connect to, expand, relocate or alter existing water Facilities, determined by the Authority as necessary to facilitate annexation of the Service Property into the Authority's Service Area and/or development of the Charge Area or Charge Area Unit Cost to be established, as set forth in the Annexation Agreement or Water Service Agreement between Applicant and Authority.

(i) If Applicant's Project is determined to be located in a Charge Area as set forth in Rate Schedule WSF, the Applicant shall pay the Authority an Area Facility Charge, the amount of which will be based on the following calculation:

Area Facility Charge = Demand multiplied by the Area Facility Unit Cost

Where:

Area Facility Charge = Applicant's share of Feeder Main and area specific facility costs.

Demand = Excluding fire flow, Applicant's Maximum Day Demand plus any Deficit Demand at the Service Property in GPM as determined by Authority.

Area Facility Unit Cost = unit cost in dollars per GPM of Maximum Day Demand, representing the cost to construct and finance Feeder Main and area specific facility improvements for the appropriate Charge Area as identified by Authority as set forth in Rate Schedule WSF.

(7) **Pressure Regulator Stations and System Intertie Facilities.** If applicable, these facilities may include Meter Facilities. Applicant is solely responsible for the actual cost of these Facilities as required to serve the Applicant's project. Capacity requirements are solely determined by the Authority.

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- (8) Standby Power Generator Additions or Retrofits. Applicant is solely responsible for the actual cost of standby power generation additions or retrofits required to provide additional reliable, normal, or fire flow capacity, or provide alternative pumping capacity in compliance with local, State and Federal regulations.
- (9) Pump Station Additions or Rebuilds. Applicant is solely responsible for the actual cost of pump station additions or rebuilds required to provide additional reliable, normal, or fire flow capacity, or provide alternative pumping capacity or power sources in compliance with local, State and Federal regulations. Pump station additions or rebuilds and/or standby power installations are not eligible for reimbursement or participation payments from subsequent development.
- e. For projects with total costs as estimated by the Authority of twenty-five thousand dollars (\$25,000.00) or greater, the Applicant shall advance the estimated project costs and, following acceptance and completion of such projects by the Authority, Applicant payments will be adjusted to reflect the actual cost of the project and the Applicant will be billed or reimbursed as applicable. On projects with total estimated costs as estimated by the Authority less than twenty-five thousand dollars (\$25,000.00) the Applicant's cost responsibilities shall be the estimated cost of the project.
- f. Participation Payments. An Applicant whose Project(s) require or will utilize a portion of previously constructed Oversized Facilities shall pay Authority a participation payment based on a proration of the Applicant's project(s)' demand relative to the total capacity of previously installed Oversized Facilities or other appropriate proration as determined by the Authority.
- g. Payment of Schedule WSF Charges. Applicant shall be required to pay Schedule WSF charges for all Project Demand and Deficit Demand as determined by the Authority required to provide new Service or Modified Service to the Applicant's project(s) within the Authority's approved Service Area. Schedule WSF Charges shall be paid at the time the Water Service Agreement is executed, except as provided in subsection (1) below:



Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 06/19/13; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- (1) Deferral of Payment of Schedule WSF Charges. An Applicant for a single family residential subdivision Project or a New or Modified Service for a single family residence may, at Applicant's election, defer payment of Schedule WSF Charges otherwise due pursuant to this Rule until a date no later than ten (10) days prior to the date a meter is to be installed for the corresponding service. Notwithstanding the foregoing, all Schedule WSF Charges applicable to the Project shall be due and paid as provided in the Water Service Agreement, but no later than two (2) years after the first Certificate of Occupancy is issued in the Project. If Applicant elects to defer Schedule WSF Charges under this subsection (1), Applicant will pay the Schedule WSF Charges in effect at the time of payment, together with all finance carrying and administration costs imposed by Authority in connection with such deferral. Applicant's Project shall not be eligible for water service, and Authority shall have no obligation to set water meters or provide water service to any portion of Applicant's Project until Schedule WSF Charges have been paid in accordance with this Rule. Schedule WSF Charges may not be deferred for any Project which includes commercial, condominium or multi-family/multi-unit dwelling uses.
- h. Demand and Deficit Demand Appurtenance. Upon payment of WSF charges paid by an Applicant, the corresponding Demand and Deficit Demand shall be appurtenant to the Service Property for which they were paid and are held for the benefit of the Service Property owner, except: (i) where forfeited as a result of retirement of Service(s); (ii) with respect to refunds issued pursuant to Section B.6.c.(1); or (iii) with respect to credits issued pursuant to Section B.6.c.(2).
5. Oversizing Facilities and Oversizing Reimbursements
 - a. The Authority may, at its option, require installation of Oversized Facilities, the cost of which Applicant shall be required to advance.
 - b. The cost of pump station additions or rebuilds (to existing pump station facilities), standby power installations, pressure regulating stations, system interties, Project Mains and Feeder Mains sized to meet the requirements of the Applicant's project are not eligible for reimbursement or participation payments.
 - c. Oversizing Reimbursements. Except as otherwise provided in an Annexation Agreement, an applicant is eligible for future reimbursement of Oversizing Costs subject to the following:



Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- (1) For all Oversized Facilities other than new pump stations, the Authority shall reimburse the Applicant an amount equal to the Authority's estimate of Applicant's Oversizing Costs for Oversized Facilities upon completion of installation, and final inspection and acceptance by the Authority.
- (2) Where Oversized Facilities are new pump stations, Applicant may receive participation payments from future Applicants for the future Applicant's respective utilization of the oversized pump station(s) subject to the following conditions:
 - i. The Authority shall collect from future Applicants participation payments as set forth in Section B.5.c and remit such payments to Applicant who

constructed the oversized pump station(s) within ninety (90) Days of Authority's receipt.
 - ii. The Applicant who constructed the oversized pump station(s) shall be entitled to any reimbursement only if participation payments are received by the Authority within five (5) years from the date of execution of the Water Service Agreement by the Applicant who constructed the oversized pump station(s).
 - iii. The Applicant who constructed the pump station(s) shall become ineligible for reimbursement in the event a subsequent capacity improvement project requires a modification of or addition to such oversized pump station(s).
- (3) Applicants shall not be entitled to any interest on reimbursement payments.
- (4) In those cases where two or more Applicants make a joint advance or contribution on the same Oversized Facilities, the Authority shall distribute reimbursements to such Applicants in the same proportion as their advances or contributions bear to the joint total, unless otherwise directed by all parties.
- (5) Reimbursable amounts hereunder may be accumulated by the Authority to a minimum of one thousand dollars (\$1,000.00) before payment.



Added: 03/23/01 Amended: 10/01/03; 03/01/05; 03/01/08; 05/21/09; 05/21/10; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

6. Water Service Agreement

- a. All Applicants requesting service for a project under the provisions of this Rule shall be required to enter into a Water Service Agreement with the Authority. A proposed Water Service Agreement must be executed by Applicant within sixty (60) days after issuance by Authority, or such other time as set forth in the proposed Water Service Agreement. A proposed Water Service Agreement shall only be binding when executed by both Authority and Applicant, and all terms and conditions in a proposed Water Service Agreement are subject to change until executed by Applicant and Authority.
- b. At the time the Water Service Agreement is executed, Applicant shall pay all applicable Schedule BSF charges not otherwise paid at the time of Application and shall pay all Schedule WSF charges, unless payment of Schedule WSF Charges is deferred pursuant to Section B.4.g(1).
- c. A Water Service Agreement shall automatically terminate and be null and void without further notice from the Authority (i) on the date and terms stated within the Water Service Agreement; (ii) on the date Applicant provides written notice to the Authority that Applicant's project is canceled; (iii) if

Applicant does not commence construction on water facilities required by this Rule and/or the Water Service Agreement within 12 months of the effective date of the Water Service Agreement or within such other deadline contained in the Water Service Agreement; or (iv) on the date approval for the project by the applicable governing body expires or is terminated. Upon the termination of a Water Service Agreement, the Application for the project for new Service or Modified Service shall automatically be deemed rejected or canceled.

- (1) If a rejected or canceled Application for the project is re-submitted, a new Water Service Agreement must be entered into by the Authority and Applicant for the project, which agreement may include different terms and conditions, including different fees and facility charges, than those set forth in the prior terminated Water Service Agreement.
- d. If a Water Service Agreement has been executed by Applicant and Authority, and Applicant has paid all required charges in accordance with Schedule WSF and the Water Service Agreement is subsequently terminated, the Applicant shall be entitled to a cash refund or a "capacity credit", as set forth below:



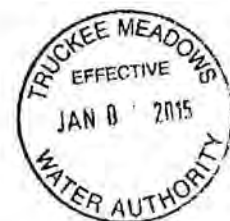
Added: 03/01/08 Amended: 05/21/09; 05/21/10; 01/20/11; 01/19/12; 06/19/13; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- (1) If the total Schedule WSF charges paid by the Applicant pursuant to the terminated Water Service Agreement are \$50,000 or less and Applicant submits a written request for a refund to the Authority within 90 days after the execution of the Water Service Agreement, Authority will refund the Applicant or Applicant's designated successor or assign such Schedule WSF charges paid by the Applicant, without interest.
- (2) If the total Schedule WSF charges paid by the Applicant pursuant to the terminated Water Service Agreement are more than \$50,000 or the written request for a refund to the Authority is made more than 90 days after the execution of the Water Service Agreement, Authority shall issue a "capacity credit" expressed in GPM to the owner of the Service Property or its designated successor or assign, equal to the Demand and Deficit Demand purchased by Applicant. Capacity credits may be assigned or transferred to other parties only upon notification to and written approval from the Authority. Capacity credits issued pursuant to this subsection can only be applied to other Water Service Agreement(s) for Application(s) for new Service and Modified Service within the same Charge Area as the Service Property for which the capacity credit was issued; provided, however, that capacity credits related to Supply and Treatment Charges issued pursuant to this subsection for service properties in Charge Areas 0 through 12 can be applied to other Water Service Agreement(s) for Application(s) for new Service and Modified Service anywhere within Charge Areas 0 through 12. Written direction to the Authority by the Service Property owner, or its designated successor or assign, is required to apply capacity credits to subsequent Water Service Agreement(s). In no event can any capacity credit issued by Authority be converted to a cash refund.
- (3) If construction has not commenced on water facilities under the terminated Water Service Agreement, Authority will refund to an Applicant or Applicant's designated successor or assign, all Schedule BSF charges paid by the Applicant pursuant to the terminated Water Service Agreement provided in no event shall Schedule BSF charges be refunded if the Authority has otherwise performed any services in connection with such fees.
- (4) Except as provided in this subsection B.6.c, all Schedule BSF and Schedule WSF charges paid by an Applicant are non-refundable.



Added: 05/21/09 Amended: 05/21/10; 01/19/12; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RULE 5

WATER SYSTEM FACILITIES

- e. Water Service Agreements, or any rights arising in connection therewith as provided in this Rule, may only be assigned by written notice of assignment provided to the Authority by the Applicant(s) executing the Water Service Agreement. For purposes of Applicant reimbursements for oversizing under this Rule, assignments shall not be effective until thirty (30) days after receipt by the Authority of the written notice of assignment. The Authority is not responsible for errors associated with making, or the inability to make, Applicant reimbursements under this Rule due to any dissolution of any joint venture, partnership, corporation or other entity, or where rights have not been properly assigned in accordance with this Rule.
- f. The Authority shall maintain detailed records of actual costs and provide all Applicants with an opportunity for review of such records, for a period of time in accordance with Authority's records retention schedules.

C. General Provisions

1. Construction Prior to Establishing Final Grade or Alignment. Where either final grade or the alignment of roads, streets and alleys, in the proximity of proposed facilities, have not been established, the Authority will require that the Applicant deposit cash or post an acceptable surety bond, in the amount of the Authority's estimated cost of relocation or reconstruction of the facilities thirty (30) Days prior to construction. Upon completion of any such relocation or reconstruction, the Applicant shall replace said surety bond with cash in the amount of the Authority's actual cost incurred in making the relocation or reconstruction.

Where the Applicant has deposited cash to cover such relocation or reconstruction, that deposit shall be adjusted by the Applicant or the Authority to reflect the Authority's actual cost incurred for the relocation or reconstruction. Applicant's responsibility for relocation expires at such time that final grade is established and it is demonstrated, to the satisfaction of the Authority, that the Authority's Water Facilities are installed in accordance with the Authority's Standards.

2. Easements and Right-of-Way. The Authority shall only construct or accept construction of Water System Facilities under this Rule that will be located in a public street, road or highway, which the Authority has the legal right to occupy. At its sole discretion, Authority may allow location of Water System Facilities on public lands and private property across which rights-of-way, easements and permits are satisfactory to the Authority have been provided by the Applicant. Easements on private lands less than 10 feet in width either side of the centerline of the Facilities, or easements located under structures or through parking areas will not be considered by the Authority. The Authority will not purchase rights-of-way for installation of Facilities under the provisions of this Rule.

Added: 01/01/15





12/23/21

File: TMWA PLL#21-8275

Attention: Ken Krater, P.E., Krater Consulting Group
Evan Champa, Esq., Holland and Hart

Via Email to eichampa@hollandhart.com ; ken@kraterconsultinggroup.com

RE: St James Village_ANNEX-DISC2

TMWA is in receipt of the application filed by St. James Village, Inc., for annexation and discovery (level 2) filed November 6, 2021 with the payment received for complete application November 10, 2021. The application identifies Unit 1H (former Tract Map 4567) and Unit 2C (former Tract Map 4705) as the project to which the application applies, indicating an intention to resubmit final map applications consistent with the lot layouts depicted in those two former tract maps. We note that accompanying letters from Krater Consulting Group and Evan Champa include references to 7-infill lots in TM 5331 and Unit 2D; however, those properties are not identified in the application and the 7-infill lots are not even owned by the applicant St. James Village, Inc. As such, neither the 7-fill lots nor Unit 2D will be considered as part of the pending application.

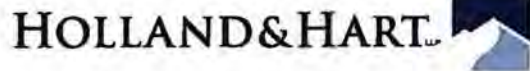
Sincerely,

Danny Rotter, P.E.

Engineering Manager

Truckee Meadows Water Authority

CC via email: Brooke Long, Principal Engineer
Scott Estes, Director of Engineering



Evan J. Champa
Phone (775) 327-3000
Fax (775) 786-6179
ejchampa@hollandhart.com

March 24, 2021

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

Truckee Meadows Water Authority
1355 Capital Blvd.
Reno, NV 89520
Attn: Mark Foree
mforee@tmwa.com

Re: ST. JAMES'S VILLAGE TENTATIVE MAP AND ANNEXATION

Dear Mr. Foree:

This firm represents St. James's Village, Inc., a Nevada corporation ("SJV") in connection with its continued development of the St. James's Village community and the Sierra Reflections community (collectively, the "Development"). SJV has engaged the law firm of Holland & Hart, LLP (the "Firm") to assist in resolving certain issues raised by Truckee Meadows Water Authority (the "Authority") in relation to SJV's pursuit of the Development. Reference is hereby made to that certain Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility Into the Authority, dated January 29, 2010 (the "Interlocal Agreement").

Around October 2015, an attorney with the law firm of McDonald Carano Wilson, LLP, on behalf of SJV, caused to be filed with the Authority an application to annex portions of the Development into the Authority's service territory (the "Application"). On December 23, 2015, the Authority provided to SJV its discovery of annexation, Work Order 15-4624 (the "Discovery"). Authority and SJV ultimately failed to consummate a Water Service Agreement (an "Agreement").

On or around April 12, 2019, SJV caused to be set forth a Final Map for Bennington Court – Unit 2, St. James's Village – Unit 2D. As required by NRS 278.373, the Authority, which had assumed "all legally delegable functions previously performed by the Washoe County Board in connection with the Water Utility or by the Water Utility" (Interlocal Agreement, § 2.4), caused its Water Resources Manager to acknowledge and approve the final map. Upon acquisition of the remaining required signatures which included signatures from the Washoe County Community Services Department, the Division of Water Resources, and the District Board of Health, SJV recorded the map in the official records of the Washoe County Recorder on June 21, 2019, as Document No. 4922453, Tract Map No. 5331 (the "Map"). With the various approvals and recordation of the Map (inclusive of the Authority's) came with it an obligation of the Authority to fulfil its duty as the municipal purveyor of water for the public it serves.

However, of the seven (7) lots created in the Map, the Authority thereafter annexed only one (1) lot, thus leaving the six (6) following lots as not annexed and without municipal water service: Washoe County Assessor Parcel Numbers 046-153-10, 046-153-09, 046-153-08, 046-151-08, 046-161-09, and 156-084-18 (the "Lots"). SJV has expressed, and the Firm agrees, that these actions are unwarranted in light of the Map and thus cause for concern. We understand that the Authority may be refusing to annex the Lots due to the Discovery. If so, the Authority's position is untenable.

Under Authority Rule 5(B)(1)(d), "[a]n Application shall automatically be deemed canceled and rejected, and shall be null and void without further notice from the Authority:...(iii) if a Water Service Agreement has not been executed by Applicant and Authority within twelve (12) months of the date the completed Application was first received by Authority." Here, the Application became null and void around October 2016, as SJV and the Authority failed to enter into a Water Service Agreement. Further, the action taken by the Authority in relation to the Map – approving it three years after the expiration of the Application – confirms that the Authority's decision to approve such Map was not based on the Discovery.

Put simply, the Application is null and void – as is the subsequent Discovery – and the Authority's approval of the Map coupled with the annexation of one lot, but failure to annex in the remaining Lots, threatens to cause significant damages to SJV. Whether this was an oversight or whether it was purposeful, and thus arbitrary or capricious, is immaterial, and SJV rightfully requests the Authority annex the Lots so that the Development can continue.

As for the continued progress of the Development, SJV understands that future applications are "treated as a new [a]pplication [which] must comply with all conditions in [the Authority's] Rules." Authority Rule 5(B)(1)(f). To that end, SJV has engaged Lumos & Associates to provide engineering design to accompany its forthcoming Final Map application for five residential lots. With this, SJV is hopeful that it can come to a compromise with the Authority for this phased development.

We look forward to your prompt attention to this matter. I urge you to contact me by email or phone should you have any questions.

Sincerely,



Evan J. Champa
of Holland & Hart LLP

ATTY:

cc: SJV
jzimmerman@tmwa.com

McDONALD CARANO

Michael A.T. Pagni
mpagni@mcdonaldcarano.com

Reply to: Reno

March 30, 2021

Via Email ejchampa@hollandhart.com

Evan Champa, Esq.
Holland & Hart
5441 Kietzke Lane, Ste. 200
Reno, Nevada 89511

Re: *St. James Village – Water Service Bennington Ct., Mount Mahogany, and Timbercreek Ct.*

Dear Mr. Champa:

Our firm serves as legal counsel to the Truckee Meadows Water Authority. This letter is written in response to your letter dated March 24, 2021 from St. James Village Inc. (“St. James”) to Mark Foree, pursuant to which you contend that TMWA is somehow obligated to provide water service to six lots (the “Six Lots”)¹ created by Tract Map 5331 because in May 2019 TMWA accepted easements offered for dedication in that map, and that TMWA is now refusing to annex the Six Lots into its service area due to a 2015 Discovery. We were somewhat perplexed by your assertions, as you appear to misunderstand both the factual history of these lots as well as basic requirements which govern eligibility for water service from TMWA.

By way of background, TMWA did not exist at the time the tentative map for St. James’ Village was approved in 1992, and TMWA did not provide water service to nor was it the retail water service provider for St. James’ Village when its development entitlements were first approved. Notably, all of the lands in which the Six Lots and Lot 507 (collectively, the “Seven Lots”) are located reverted to acreage in 2011, and as a result any water service commitments that may have been previously issued by Washoe County terminated in 2011.

As you indicated, TMWA acquired certain water utility assets from Washoe County and South Truckee Meadows General Improvement District on December 31, 2014. As part

¹The six lots at issue are located at 28 Bennington Ct., 32 Bennington Ct., 41 Bennington Ct., 58 Bennington Ct., 95 Bennington Ct. and 455 Mount Mahogany Ct. in the St. James Village project. While not referenced in your letter, this response includes information related to service to 305 Timbercreek Ct. (referred to as “Lot 507”), which was also created by Tract Map 5331.

mcdonaldcarano.com

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100



of that transaction, TMWA agreed to provide water service to all Washoe County customers receiving water service on the Closing Date subject to the terms and conditions of TMWA Rules of Service and to honor resource commitments specifically identified in closing schedule 5.6. TMWA specifically excluded from the acquisition any obligations or liabilities arising out of written agreements between Washoe County and any developer involving the terms and conditions of providing new water service. As a result of the 2011 reversion to acreage, no will serve commitment or other obligation to provide water service for the property in question existed for TMWA to assume on December 31, 2014 nor was any identified in schedule 5.6. As a result, there were no “legally delegable functions” to assume as you assert, nor did TMWA assume obligations with respect to future water service to the unimproved, unsubdivided property that would later become the Seven Lots. Thus, any person desiring to receive new water service from TMWA on the Seven Lots is, and has always been, required to comply with all TMWA Rules and regulations in the ordinary course.

Pursuant to TMWA Rule 5(A), “no Service Property shall be eligible for water service, nor shall Authority have any obligation to provide water service to any Service Property, if the Service Property is located outside Authority’s Service Area” and TMWA has “no obligation to annex or provide water service to any service property located outside of Authority’s Service Area”. See *TMWA Rule 5 (A)(1) and (A)(2)*. Any person seeking annexation must first “submit an application for annexation to the Authority” which TMWA may accept or deny in its sole discretion. *Id.* In short, TMWA Rules provide a mechanism for applicants to apply for annexation; however, TMWA retains the authority to deny or condition such annexation as determined appropriate.

Applicants for water service to a property outside of TMWA’s Service Area “must satisfy both the terms and conditions of the Annexation Agreement and terms and conditions applicable to new Service set forth in Authority’s Rules” including, without limitation, separate submission of an Application for new water service. *Id.* Following submission and processing of an Application for new water service, all “Applicants requesting service for a project under the provisions of this Rule shall be required to enter into a Water Service Agreement with the Authority.” *TMWA Rule 5(B)(6)*. The Water Service Agreement sets forth the terms and conditions of service, including obligations that applicants pay the “actual cost of all Water System Facilities identified by the Authority, and/or required by local, State or Federal regulations, as required to provide the requested new Service”, including Supply and Treatment Facility Charges, Storage Facility Charges, and Area Facility Charges. See *TMWA Rule 5(B)(4)(d) and (B)(4)(g)*. There are a number of reasons for all of these rules, not the least of which is ensuring adequate water system facilities and sustainable water resources exist to provide service to these areas.

In 2018 St. James requested a Discovery (essentially a non-binding due diligence investigation) for property which included the Seven Lots. That Discovery (Discovery 18-6172, attached) was completed and provided to St. James on May 9, 2018. The 2018 Discovery stated that TMWA could serve the Seven Lots, but expressly stated the Seven Lots “are outside TMWA’s service territory and will require annexation prior to service from TMWA.” The Discovery also recognized a modified Charge Area 15 Fee would be required to be paid as a further condition of service. The Discovery mentioned the prior 2015 Discovery (which you reference in your letter), but concluded that based on various facility improvements that had occurred after the 2015 Discovery “TMWA has revised the conclusion of the 2015 discovery . . . [and] will now allow development in the St. James system, limited to [the nine] infill lots that do not require construction of new water pipe”, which included the Seven Lots. In other words, the 2018 Discovery recognized a unique, limited and *less restrictive* set of circumstances applicable to annexation of the Seven Lots.

Relevant to your water service inquiry, the 2018 Discovery stated: i) “annexation is required” to be eligible for water service; ii) no water resource credits or water rights had been dedicated at that time, and as such St. James would be required to “pay all fees for water rights needed in order to obtain a will serve commitment letter”; iii) “if needed the property owner will need to grant TMWA the proper easements and/or land dedications to provide water service to the properties”; iv) Charge Area 15 fees would need to be paid; and v) “the applicant shall be responsible for all application, review, inspection, storage, treatment, permit, easements and other fees pertinent to the Project as adopted by TMWA at the time of execution of a water service agreement”. In short, St. James was specifically informed and has been well aware since 2018 that none of the Seven Lots were eligible nor could they become eligible for water service unless and until they were annexed into TMWA’s service area, appropriate easements dedicated, water rights dedicated, applications for service submitted, will serve commitments issued, water service agreements entered, appropriate fees paid, and necessary water facilities constructed and dedicated.

Following issuance of the 2018 Discovery, St. James initiated *the first of the many steps* required to become eligible for service by filing an application with TMWA to annex the Seven Lots into TMWA’s service area. TMWA processed that application and began taking steps in reliance on St. James application and commitment to annex the Seven Lots. Because the Seven Lots did not exist as separate legal parcels at the time, St. James processed a final map (Tract Map 5331) to create those Seven Lots as separate legal parcels as a condition precedent to completing the annexation. That map also sought to satisfy the separate easement dedication requirement with respect to the property identified in the map. You are correct that TMWA signed Tract Map 5331; however, it did so only in the context of accepting the easements offered for dedication. In no way did TMWA accept nor assume any obligation to provide water service by simply agreeing that “the utility easements shown on

this plat have been checked and approved by the undersigned public utility and cable TV companies, and Truckee Meadows Water Authority". Any suggestion to the contrary is unsupported.

After the Tract Map was recorded, the annexation process moved forward and on October 15, 2019 TMWA submitted the final Annexation Agreement to St. James for execution. The Annexation Agreement provided for the annexation of the Six Lots² into TMWA's service area and included a \$172,423 estimate of the WSF Area 15 Facility Charges that would be due at the time a Water Service Agreement was entered. The Annexation Agreement expressly stated it "merely addresses conditions required for expansion of Authority's retail water service area, and that Owner must independently comply with all applicable requirements in Authority's Rules before Authority has any obligation to provide water service to the Property including without limitation (i) submitting and receiving approval from the Authority of appropriate applications for service; (ii) dedicating sufficient Water Resources to the Authority and receiving a Will Serve Commitment for service to the Property³; (iii) in addition to any dedication requirements in Section 2 of this Annexation Agreement, dedicating appropriate easements and other real property required for service; (iv) in addition to any dedication requirements in Section 2 of this Annexation Agreement, installing, constructing and dedicating subdivision or on-site water system facility additions, improvements or modifications or further additions, improvements, extensions or modifications to Authority's Water System Facilities as necessary to provide the requested new service(s) or modification of service(s) to the Property; (v) payment of Area Facility Charges, Supply-Treatment Facility Charges and Storage Charges (collectively "WSF Charges"); and (vi) satisfying such other terms and conditions pursuant to the Authority's Rules and any requirements of any local governmental entity with jurisdiction over the Property as necessary to obtain a Will-Serve Commitment letter from the Authority for the delivery of water to the Property."

While it remains unclear why, ***St. James never signed the Annexation Agreement nor has it subsequently sought to complete annexation of any of the Seven Lots.***

²Notwithstanding that St. James' had not yet completed the requirements for water service, St. James sold Lot 507 to the Marian S. Ross Trust on August 1, 2019 before the Annexation Agreement was issued. It is unknown what representations regarding water service St. James made to the Ross Trust at the time of sale.

³ In further reliance on the annexation application and St. James commitment to annex the lots, and based on water rights dedicated pursuant to TMWA Rule 7, TMWA issued a will serve commitment indicating TMWA held sufficient resources to meet 5.57 AF of demand on the Six Lots and Lot 507. Such commitment was "conditional on applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rate Schedules", including without limitation a complete application for service, payment of fees, approval of a water facilities plan, construction and dedication of water system facilities, final approval of a water facility plan by the health authority and execution of a Water Service Agreement, none of which have been satisfied to date.

Thus, in response to your letter the Six Lots have not been annexed not because of any “refusal” by TMWA as you contend, but solely because of St. James’ own inadvertence, negligence or willful misconduct in failing to sign and return the Annexation Agreement provided by TMWA. The Six Lots and Lot 507 remain outside TMWA’s service area to this day⁴.

You cite Rule 5(B)(1)(d) as somehow relevant to this circumstance. Respectfully, you completely misconstrue the Rule. Rule 5(B) applies to Applications for new or modified service, not Discoveries or annexations. *See TMWA Rule 1* (Application defined as a request for new Service). Your contention that TMWA never entered a water service agreement because the 2015 Discovery became “null and void” is equally false, and grossly misapplies TMWA’s Rules, misconstrues the purpose and function of a Discovery, and misconstrues TMWA’s application processes. To the contrary, TMWA never entered a water service agreement for the Six Lots or Lot 507 because ***St. James never filed an application for new service***. Presumably, this is because St. James never annexed the Six Lots or Lot 507 in the first instance, which annexation is a condition precedent to filing any such application(s). As no water service agreement was ever entered, St. James also failed to pay applicable WSF Charges which are also prerequisites for water service eligibility.

Put simply, there is no legal or factual basis for St. James to contend TMWA has refused to annex the Six Lots or is obligated to provide water service to the Six Lots, nor is there any rational basis to threaten TMWA with damage claims for circumstances arising solely from St. James’ failure to follow and comply with TMWA Rules for water service. For these reasons, your demand and damage claims are rejected.

That being said, there is, as there always has been, a simple path forward to annexation and water service. First, St. James and other owners of the Seven Lots can execute an Annexation Agreement. To that end, TMWA is enclosing an updated Annexation Agreement and requests St. James circulate this to the owners of the Six Lots and Lot 507 for execution, and return a fully executed, notarized original to TMWA no later than June 1, 2021. Upon receipt, TMWA will record the Annexation Agreement and the corresponding lots will be annexed into TMWA’s retail area as desired.

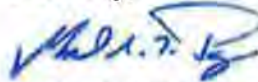
⁴We understand St. James sold three of the Six Lots in late 2020 and early 2021. It is unknown if St. James disclosed the lack of water service to the buyers in those transactions, but it is clear St. James was aware at that time: i) the Six Lots had never been annexed into TMWA’s service area; and ii) the Six Lots were not and could not be eligible for water service until they were annexed and satisfied additional obligations under TMWA Rules, including submission of an application for water service, execution of a water service agreement, and payment of WSF Fees.

Second, if St. James or any of the other owners of the Seven Lots wish to take the next step to receive water service, they can subsequently file applications for water service in accordance with TMWA Rules and comply with any other requirements necessary to become eligible for water service under TMWA Rules in the ordinary course (including payment of applicable WSF Fees), like every other customer in the TMWA system.⁵

Finally, you mention a desire to seek future water service to an additional five lots. You indicated St. James has retained Lumos & Associates to provide engineering design to accompany a proposed final map application for these five new lots. TMWA will review that application for compliance with TMWA's Rules and NAC water system requirements when received. We note that an application for annexation will also be required for any lots proposed to be created by the new final map, and all other requirements of TMWA Rules and NAC regulations must be satisfied as a condition of providing water service to any of these five lots.

I hope the foregoing helps to alleviate any confusion St. James' is operating under with respect to annexation or water service to the Six Lots. If water service is desired for any of the Six Lots or Lot 507, it is imperative that these deficiencies be remedied as soon as possible. Should you or any of the owners of the Six Lots or Lot 507 have any questions, please feel free to contact me. Your anticipated cooperation is appreciated.

Sincerely,



Michael A. T. Pagni

MATP:ma

Attachment

cc: Client
Marian Ross
Joseph & Lisa Viso
John and Vicky Griffin
Geoffrey Long

⁵ As a meter set was previously installed on Lot 507, Lot 507 is only required to pay applicable WSF Fees at this time. Depending on whether the owner of Lot 507 was aware at the time of purchase that the property had not satisfied TMWA's rules of service, TMWA may be willing to discuss terms for installment payments of applicable fees.



Michael A.T. Pagni
mpagni@mcdonaldcarano.com

Reply to: Reno

May 3, 2021

Via Email ejchampa@hollandhart.com
Evan Champa, Esq.
Holland & Hart
5441 Kietzke Lane, Ste. 200
Reno, Nevada 89511

Re: St. James Village - Water Service Bennington Ct., Mount Mahogany, and Timbercreek Ct.

Dear Mr. Champa:

Thank you for your April 19, 2021 letter regarding water service to six lots (the "Six Lots")¹ created by Tract Map 5331. We appreciate St. James' willingness to move forward in compliance with TMWA rules and regulations and believe such can be accomplished expeditiously. We note, however, that despite the background provided in our March 30th letter there still seems to be some confusion regarding TMWA service requirements, so we have provided additional clarification below.

First, some of the information in the table in your letter is not accurate. As we previously stated, none of the Six Lots are currently located within TMWA's Service Area. However, all can be annexed upon execution of the attached Annexation Agreement. Similarly, none of the Six Lots are currently located within Charge Area 15 due to, *inter alia*, the fact that none of the Six Lots are within TMWA's Service Area in the first place. All Six Lots will be annexed into Charge Area 15 (and the Area 15 map updated accordingly) upon annexation into TMWA's Service Area as the facilities captured in Charge Area 15 costs will be utilized to provide water service to those lots (and thus, the lots should pay for their share of the capacity in those facilities).

Second, the April 22, 2019 letter you reference as a "will serve" commitment is not a will serve commitment. Will serve commitments are issued by TMWA upon dedication of water resources; the April 22, 2019 document was issued by the State Engineer at the time of final map. That being said, we can confirm that 5.57 AF under Permit 59330 was

¹The six lots at issue are located at 28 Bennington Ct., 32 Bennington Ct., 41 Bennington Ct., 58 Bennington Ct., 95 Bennington Ct. and 455 Mount Mahogany Ct. in the St. James Village project.

mcdonaldcarano.com

100 West Liberty Street • Tenth Floor • Reno, Nevada 89501 • P: 775.788.2000
2300 West Sahara Avenue • Suite 1200 • Las Vegas, Nevada 89102 • P: 702.873.4100



dedicated to TMWA and is available and has been allocated to supply demand to the Six Lots and Metered Lot (Lot 507) upon annexation and satisfaction of conditions of service. Please note that will serve commitments simply acknowledge availability of water resources – they do not indicate satisfaction of conditions to water service or guarantee water service will be provided as you infer. We cannot speak to any contention that St. James erroneously relied on the issuance of a will serve commitments for any other purpose when dealing with buyers, but want to reiterate once again that satisfying resource dedication requirements only addresses one of many prongs that must be satisfied to receive water service.

Third, your letter indicates St. James will remit payment of applicable Modified Area 15 fees, but seems to suggest such payments will only be made for some of the Six Lots. To be clear, each of the Six Lots must pay Modified Area 15 fees in effect at the time of application to receive water service.

Finally, with respect to your inquiry about the Metered Lot, the owner of that lot has been in direct discussions with TMWA to address requirements for annexation and water service and we anticipate any service issues on that lot will be resolved shortly².

In furtherance of your request to move forward with the annexation of the Six Lots, we are again attaching the Annexation Agreement required to do so³. Please circulate this to the owners of the Six Lots for execution, and return a fully executed, notarized original to TMWA no later than June 1, 2021. Upon receipt, TMWA will record the Annexation Agreement and the corresponding lots will be annexed into TMWA's retail area as desired. Again, execution of the Annexation Agreement will not, as you continue to mistakenly infer, "assure" that the Six Lots will receive water service as it is the first of many steps in the process. If St. James or any of the other owners of the Six Lots wish to take the next step to receive water service, they can subsequently file applications for water service in accordance with TMWA Rules and comply with any other requirements necessary to become eligible for water service under TMWA Rules in the ordinary course (including payment of applicable Modified Charge Area 15 Fees), like every other customer in the TMWA system.

² The Metered Lot is also required to pay Modified Area 15 fees and is in process of coordinating payment with TMWA.

³ To the extent you were suggesting Section 3 of the agreement be revised, the language will not be modified. Section 3 contains standards terms and conditions advising any owner of the other steps that must be separately satisfied to receive water service. Satisfaction of those steps is documented separately. Additionally, as discussions with the Metered Lot owner are proceeding separately we have not modified the Agreement to include the Metered Lot.

We look forward to hearing from you soon.

Sincerely,



Michael A. T. Pagni

MATP:ma

Attachment

cc: Client
Marian Ross
Joseph & Lisa Viso
John and Vicky Griffin
Geoffrey Long

May 17, 2021

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

McDonald Carano
100 West Liberty Street, Tenth Floor
Reno, NV 89501
Attn: Mike Pagni
mpagni@mcdonaldcarano.com

Re: ST. JAMES'S VILLAGE WILL SERVE

Dear Mr. Pagni:

Thank you again for your May 3, 2021 letter regarding water service for the lots associated with Bennington Court, Mount Mahogany Court, and Timbercreek Court ("Second Letter"). We greatly appreciate the time you've spent explaining this issue. Still, we feel some clarification is required based on the points raised in your Second Letter and your March 30, 2021 letter ("First Letter").

You have repeatedly stated that APNs 046-153-10, 046-15-09, 046-153-08, 046-161-09, 156-084-18, 046-151-08 (the "6-Lots") and 156-071-15 (the "Metered Lot" and, together with the 6-Lots, the "Lots") were not – and still are not – within the Truckee Meadows Water Authority ("TMWA") Retail Area as depicted in the TMWA Water Service Area Map (the "Map"). Our assertion that some of the Lots were in the TMWA Service Area while some Lots were not was based on the aforementioned Map, which was updated at the beginning of 2021.

As previously mentioned, St. James is aware that it cannot wholly rely on the Map. For that reason and upon further research, St. James identified the attached correspondence from TMWA to the Nevada Division of Water Resources, dated February 28, 2019 (the "Will-Serve", attached as Exhibit "A"). This Will-Serve is contrary to St. James' previous assertion relating to the TMWA Service area, as the Will-Serve states that TMWA "determined the [Lots are] within TMWA's retail service territory." This statement is contrary, too, to your repeated assertions that *none* of the Lots are within TMWA's service area. Further, it is also contrary to the assertion in the First Letter that TMWA's April 12, 2019 signature on Tract Map 5331 was to "accept[] easements offered for dedication in that map." Rather, it would appear that TMWA's signature on Tract Map 5331 was acknowledging dedicated water to supply demand to the Lots.

Regardless, St. James questions whether the proposed Annexation Agreement is superfluous or if TMWA preemptively annexes in property eight months in advance of preparing such an agreement. As you explained in your First Letter, the "essentially non-binding" Discovery 18-6172 required annexation, but the later-in-time Will-Serve expressly said the Lots were already within TMWA's Service Area. As you can guess, this leads to confusion because

TMWA has, in writing and to the pertinent regulatory state agency, taken one position while you take a contrary position. Perhaps this is why St. James has appeared “mistaken” or “incorrect” in its past correspondence.

To lend further confusion to this issue, you said in your Second Letter that “none of the Six Lots are currently located within Charge Area 15 due to, *inter alia*, the fact that none of the Six Lots are within TMWA’s Service Area in the first place.” Furthermore, when annexed, the “Area 15 map [will be] updated accordingly.” Your statement seemingly implies that if certain lands are annexed into TMWA’s Service Area, then (if applicable) such lands will be annexed into Charge Area 15 and the requisite map will be then updated. When coupled with the preceding relating to the Will-Serve, you can see how befuddled St. James is over this process: the Will-Serve said the Lots were in TMWA’s Service Area, the Map was updated to include only a few of the Lots, and the Area 15 Map has not been updated since March 16, 2015¹. These past actions, when taken together, portray a different process than what you asserted.

Furthermore, a simple comparison between the Area 15 Map and the Map show that there is little relationship when it comes to these areas as there are no interior “holes” or “gaps” in the Area 15 Map, but there are in the Map. St. James can understand that the Area 15 Map’s borders may be rationally based on hydrogeologic conditions and, as such, require defined boundaries and lateral continuity. But many of Area 15’s boundaries seem constrained by lands owned by the United States or Washoe County, and simply expanding Area 15’s borders based upon a future annexation appears peculiar. St. James would greatly appreciate any sort of information used by TMWA that provides a rational nexus to justify Area 15’s existing boundaries and expansion so that it is not caught by surprise by what TMWA says in the future.

None of the foregoing is to say that St. James is exempt from TMWA’s Rules. To the contrary and as the Will-Serve stated, St. James is required to satisfy such rules moving forward, but missing from the list of various requirements was executing an Annexation Agreement. TMWA apparently, and rightfully, considered that redundant. However, any fees that may be required for the Lots will be borne by St. James and not the current owners thereof. For that reason, among the others state herein, if you could please provide us with the Water Service Agreement and Area 15 information, St. James would be greatly appreciative and ready to move forward with this matter with fees determined upon completion of our current water study for St. James, concurrence by TMWA engineers in our water study plans, and calculation of Area 15 fees based on an approved St. James study that creates a rational nexus with said fees.

//

//

¹ See Mt. Rose – Galena Fan Domestic Well Mitigation Area Map, located at https://tmwa.com/wp-content/uploads/docs/Customer_Services/DWM031615_Web.pdf

Sincerely,

Evan Champa

Evan J. Champa
of Holland & Hart LLP

EJC:d

cc: SJV
jzimmerman@tnwa.com
Marian Ross
Viso Trust
John and Vicki Griffin
Geoffrey Long

EXHIBIT A



February 28, 2019

Project: ST JAMES'S VILLAGE UNIT 2D AND
BENNINGTON CT. UNIT 2
JOY LAKE RD. AND BENNINGTON CT.
SFR (7 LOTS)
LANDSCAPING: N/A

Tim Wilson, P.E.
State of Nevada
Division of Water Resources
901 S. Stewart St.
Carson City, NV 89701-5250

Water Rights (AF): 5.57
Demand (AF): 5.57
Permit No(s) (AF): 59330 (5.57AF)

Dear Mr. Wilson:

We have reviewed the plans for the above referenced development ("Project") as submitted to the Truckee Meadows Water Authority (TMWA) and have determined the Project is within TMWA's retail service territory. This letter constitutes a commitment that the applicant for the Project has dedicated sufficient water resources to TMWA to meet the demand described above, and that TMWA has sufficient water resources to deliver water in the amount of the demand to the Project. The water demand stated herein is an estimate based on the information provided by the applicant.

This commitment is made subject to all applicable TMWA Rules. This commitment does not constitute an obligation to provide water service to the Project under NAC 445A or to provide planning, design or construction of the water facilities necessary for service to the project. The provision of water service is conditional upon applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rate Schedules and requirements of the local health authority, including, without limitation and where applicable, the submission of a specific development proposal with a complete Application for Service, payment of fees, review and approval of a water facilities plan, the construction and dedication of water system facilities, final approval of the water facility plan by the local health authority, and approval of and execution of a Water Service Agreement.

Please be advised that completing this process can be time consuming, and there is no guarantee of how long the approval process, including approval from the local health authority, may take or that such approval will be granted. Once final approval is received from the local health authority, TMWA will prepare the Water Service Agreement which includes all fees; the applicant must pay TMWA prior to water being delivered to the project.

Since the subject water rights are permitted rights, no guarantee by TMWA is required for these rights.

Should the approval of this Project expire or be terminated by the local governing body, this commitment shall automatically terminate and be deemed void.

Very truly yours,


John R. Zimmerman, Esq.
Water Resources Manager

JZ/dn
cc: ST. JAMES'S VILLAGE, INC.

**ST. JAMES'S VILLAGE UNIT 2 & 2D - 7 LOTS
GROUND WATER RIGHTS AND METER FUND CONTRIBUTION
CALCULATION WORKSHEET**

Line No.	Lot Number	Lot Size	Demand Calculation
1	309	63,741	0.80
2	316	70,800	0.81
3	317	72,340	0.81
4	322	65,884	0.80
5	330	59,310	0.79
6	507	84,208	0.80
7	519	45,305	<u>0.76</u>
			5.57
		Less: Demand Credits	<u>0.00</u>
		NET PROJECT DEMAND	5.57
		TOTAL WATER RIGHTS REQUIRED	5.57

Quote is valid for 30 days
from date of statement

18-0002, St. James's Village Unit 2 and 2D, 7 Lots, 12-2018
2/28/2019
3:20 PM

Michael A.T. Pagni
mpagni@mcdonaldcarano.com

Reply to: Reno

May 20, 2021

Via Email ejchampa@hollandhart.com
Evan Champa, Esq.
Holland & Hart
5441 Kietzke Lane, Ste. 200
Reno, Nevada 89511

Re: *St. James Village – Water Service Bennington Ct., Mount Mahogany, and Timbercreek Ct.*

Dear Mr. Champa:

In response to your May 17, 2021 letter:

The February 28, 2019 will-serve commitment was issued by TMWA in good faith reliance on the status of St. James' 2018 application for annexation and understanding annexation agreements would be delivered following recordation of the map. The premature issuance of the will serve was an accommodation made for the benefit of St. James to facilitate the creation of the legal parcels desired to be annexed¹, but we agree with you that in retrospect the accommodation should never have been given and the proper course of action should have been to revoke the will serve and return the dedicated resources in 2019 when St. James failed to timely execute the annexation agreement. That option remains viable and is becoming increasingly likely with St. James' continued delay in executing the annexation agreement. However, given the purported interest in annexing the Six Lots TMWA has been willing to temporarily leave the will serve in place until June 1, 2021 as yet

¹As St. James was specifically advised at the time, creation of the service properties as separate legal parcels (and segregation from larger common areas that were not receiving service) was necessary to annex them. Those parcels could not be created without recordation of the tract map, which could not occur without issuance of the will serve. St. James was well aware of the timing issues surrounding both the recordation of the map and the accommodation provided with the early issuance of the will serve. Moreover, the will-serve expressly states it "does not constitute an obligation to provide water service to the Project under NAC 445A", and is conditional on St. James' satisfaction of requirements under TMWA rules and regulations, "including without limitation submission of a specific development proposal with a complete Application for Service, payment of fees, review and approval of a water facilities plan, the construction and dedication of water system facilities, final approval of the water facility plan by the local health authority and execution of a Water Service Agreement."

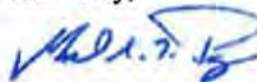
a further accommodation to St. James to facilitate annexation of the Six Lots into TMWA's Service Area.

With respect to your remaining comments: i) none of the Six Lots are currently located within TMWA's Service Area and the accommodation issuance of the 2019 will-serve does not alter that fact; ii) your comment regarding the effect of TMWA's signature on Tract Map 5331 remains false, for reasons previously stated; iii) the Six Lots will be annexed into Charge Area 15 (and the Area 15 map updated accordingly) upon annexation into TMWA's Service Area as previously stated²; iv) applications for water service can be found online at <https://tmwa.com/doing-business-with-us/new-construction/> or by contacting a TMWA new business project coordinator; and v) applications for water service will be processed in accordance with TMWA rules, TMWA will determine in its sole discretion what facilities are required for service, and all applicable fees will be due at the time and manner set forth in TMWA rules.

Please be advised we are growing concerned by St. James' continued delay in pursuing annexation and our willingness to provide continued accommodations is diminishing with each response. It has been nearly two months since we provided the most recent execution copy of the Annexation Agreement for signature by the owners of the Six Lots, yet nothing has been received to date nor does there appear to be a definitive commitment to do so. We renew our request, for a third time, that you circulate the attached Annexation Agreement to the owners of the Six Lots for execution, and return a fully executed, notarized original to TMWA no later than June 1, 2021. Upon receipt, TMWA will record the Annexation Agreement and the corresponding lots will be annexed into TMWA's retail area. If the fully executed Annexation Agreement is not received by that time, TMWA will evaluate how best to respond to St. James' perplexing refusal to execute the documents necessary to achieve the annexation it seems so eager to obtain.

We look forward to hearing from you soon.

Sincerely,



Michael A. T. Pagni

MATP:ma
Attachment
cc: Client

² We will not speculate about other properties for which applications for service have not been filed.

Marian Ross
Joseph & Lisa Viso
John and Vicky Griffin
Geoffrey Long



June 1, 2021

VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

McDonald Carano
100 West Liberty Street, Tenth Floor
Reno, NV 89501
Attn: Mike Pagni
mpagni@mcdonaldcarano.com

Re: ST. JAMES'S VILLAGE ANNEXATION

Dear Mr. Pagni:

St. James's expresses its gratitude for your and TMWA's patience with this matter. However, some of the larger questions and concerns posed in our May 17, 2021 letter remain unanswered. Among these, and most importantly, is what substantial evidence was used by TMWA to establish the Domestic Well Mitigation Area.

As it stands now, the bulk of Area 15 encompasses Pleasant Valley Hydrographic Basin 88 where domestic well pumping was the cause for concern. However, Area 15 also encompasses a portion of Washoe Valley Hydrographic Basin 89 where limited, if any, domestic wells drew water. Based simply on this, St. James's is concerned that the Domestic Well Mitigation Area is not based on hydrogeologic conditions that originated within Basin 88. To add to the concern, Basin 88 has known sub-basins where pumping stressors from one sub-basin have limited, if any, impact in another sub-basin. In an effort to further understand the hydrogeologic conditions in Basin 88, ongoing studies are being conducted which may assist in the delineation of these sub-basins. This, coupled with the known basin boundaries, may lead to a conclusion that the Domestic Well Mitigation Area is, in fact, not based on substantial evidence.

Given the timing of completing its study and the June 1, 2021 deadline, St. James's will remit the Total Cost (as set forth in the Retail Water Service Area Annexation Agreement) for the six (6) parcels identified therein. By doing so, St. James's is not conceding that the Modified Area 15 Facility Charge is applicable to these, or any future, parcels. St. James's therefore reserves all rights in the event substantial evidence proves the Facility Charge is either arbitrary or capricious.

//

Holland & Hart LLP Attorneys at Law

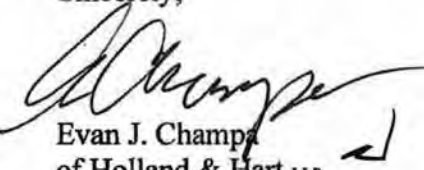
Phone (775) 327-3000 Fax (775) 786-6179 www.hollandhart.com

5441 Kietzke Lane, Suite 200 Reno, NV 89511-2094

Alaska Colorado Idaho Montana Nevada New Mexico Utah Washington, D.C. Wyoming

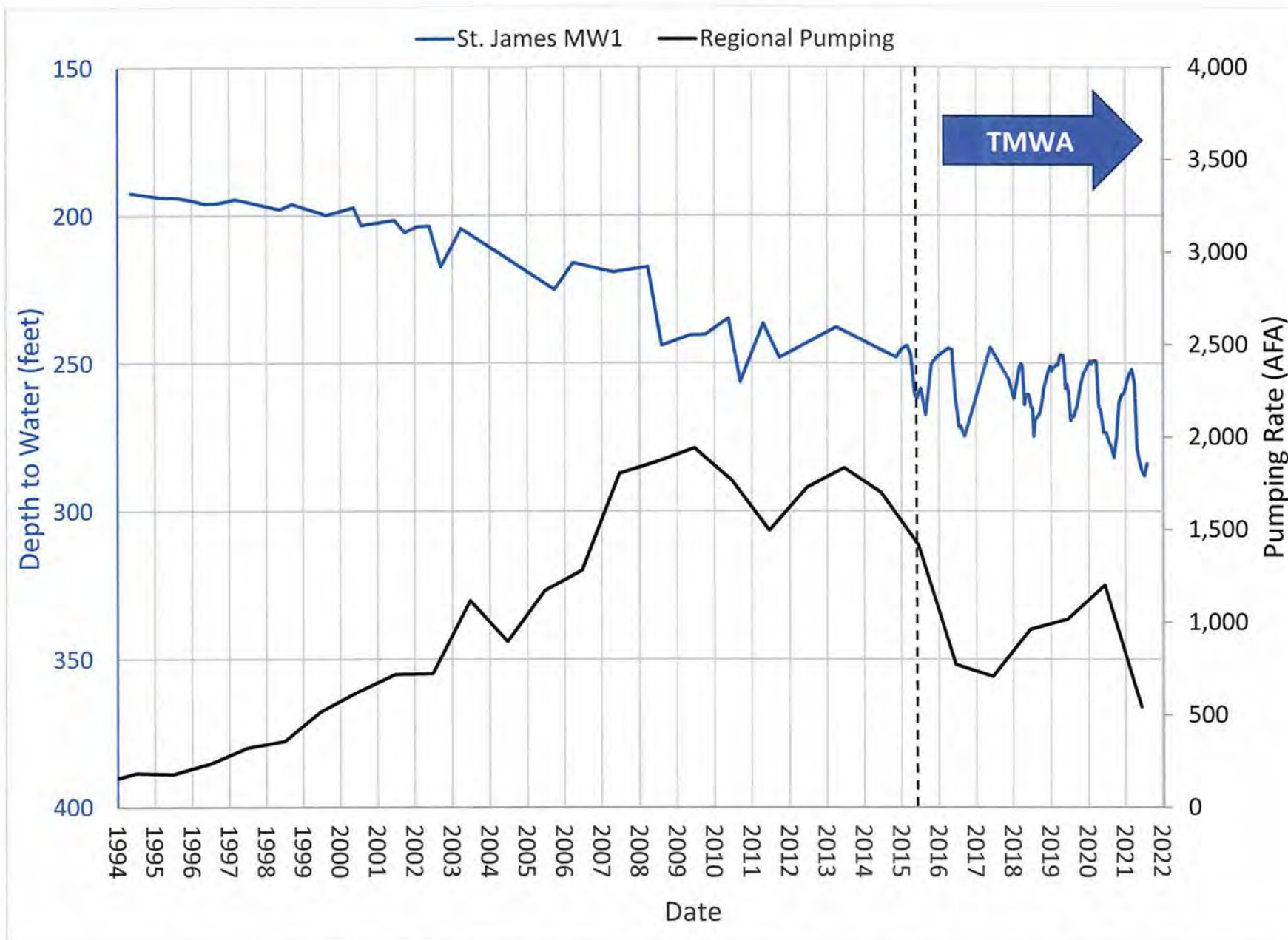
Should you have any questions, please don't hesitate to call.

Sincerely,


Evan J. Champa
of Holland & Hart LLP

EJC:d

cc: SJV
jzimmerman@tnwa.com
Marian Ross
Viso Trust
John and Vicki Griffin
Geoffrey Long



ECO:LOGIC Engineering

SOUTH TRUCKEE MEADOWS FACILITY PLAN - PHASE II TECHNICAL MEMORANDUM NO. 4

SUBJECT: Preliminary Results of Groundwater Investigation

PREPARED BY: Dale C. Bugenig

DATE: January 25, 2002

1. PURPOSE

Washoe County and the South Truckee Meadows General Improvement District have acquired a total of approximately 9,600 acre-feet per year (AFA) of groundwater rights primarily in exchange for commitments to provide service in the South Truckee Meadows. The estimated demand at build-out to be met by groundwater and that is associated with the will serve letters and other commitments, not their face value, has been calculated to be 9,105 AFA. In addition to the 9,105 AFA of groundwater extractions that are allocated to municipal wells, approximately 3,140 AFA of groundwater is projected to be consumed by residents served by individual domestic wells within the planning area. Therefore, net groundwater withdrawals totaling approximately 12,245 AFA are required to meet the demand that will be placed on groundwater resources at build-out within the South Truckee Meadows area.

The total estimated water-supply demand in the area is approximately 18,800 AFA. It is obvious that additional sources must be exploited to meet this demand. These sources might include surface water from the creeks in the study area, water supplied by the intertie with the Truckee Meadows Water Authority, or some other means.

Table 4-1

WC/STMGID Groundwater Rights	Acre-Feet
Will Serves	6,279
Committed for Tentative Maps	3,130
Uncommitted	166
Total	9,575
Estimated Demands @ Build-out to be Satisfied by Groundwater	Acre-Feet
Groundwater from within study area	
♦ Municipal Systems – County & STMGID	9,105
♦ Domestic Wells (1,666 AF in model area)	3,140
Total	12, 245

Prior to any groundwater development within an aquifer, a state of equilibrium exists whereby groundwater flow through the aquifer is balanced by recharge. The exploitation of groundwater resources as a source of water supply *must* be accompanied by changes within the groundwater flow system. The most readily-apparent change is a lowering of the water table, referred to as drawdown. Drawdown is influenced by aquifer properties transmissivity and coefficient of storage, the hydraulic gradient, and the location of wells relative to discharge areas. Under certain circumstances, drawdown can be large, particularly if groundwater extractions are substantial compared to the groundwater flux. Drawdown will be negligible only if groundwater extractions are small compared to the total available resource. At some point in time, so long as groundwater extractions do not exceed the average annual recharge to the aquifer, the conditions in the aquifer will ultimately achieve a new equilibrium condition whereby groundwater extractions are balanced by the groundwater flux through the system that wells can capture. Once this occurs, water levels cease to decline, although seasonal fluctuations resulting from variations in pumping rates and recharge will persist. But, over the long term, there will be minimal net change in water level once the new equilibrium condition has been achieved. It can take many years or decades to reach this new steady-state condition.

The magnitude of the groundwater resources within the aquifer beneath the South Truckee Meadows and possible changes due to increased exploitation of the resource were previously investigated through a computerized groundwater flow model developed for Washoe County by Hydro-Search, Inc. (HSI, 1991). The investigators concluded that pumping a total of 8,892 AFA of groundwater from the Mount Rose / Galena fan area ". . . results in over pumpage of the aquifer system." (*ibid.*). A better understanding of this statement and the consequences of resource development with respect to current water-supply facility planning were sought by updating the original model in the context of data and information amassed since 1991. The purpose of this memorandum is to present the results of the current reconnaissance-level groundwater model.

2. MODEL FEATURES

2.1. Model Grid

The location of the groundwater model domain is depicted in Figure 4-1. The current model was based on the previous modeling effort undertaken on behalf of Washoe County by HSI, 1991.

Both models utilize the computer code MODFLOW (MacDonald & Harbaugh, 1988). It employs a finite difference grid with a uniform grid spacing of 1,000 feet. The grid contains 47 rows and 36 columns. Figure 4-2a illustrates the model grid and shows the active model cells within the grid. Figure 4-2b displays a perspective of the model grid, viewed toward the northwest. In general, the model represents the portion of the basin below the range front (refer to Figure 4-1).

The aquifer materials in the South Truckee Meadows comprise alluvial deposits (mixtures of sand, gravel, silt and clay) and fractured volcanic rocks. The current model incorporates two layers. The model makes no explicit distinction between these materials in either layer other than the variations in hydraulic properties of the materials. The upper layer (Layer 1) represents

the uppermost 200 feet of saturated deposits within the aquifer that is typically exploited by individual domestic wells. The lower layer (Layer 2) represents the deeper portion of the aquifer wherein most municipal wells are completed. The thickness of Layer 2 was extrapolated from the depths of the completed production wells. That is, it assumes that the wells extend to the bottom of Layer 2. The layers are hydraulically connected. That is, groundwater moves freely between them in a manner consistent with aquifer properties.

2.2. Modifications to the Previous Model

The current model retains the three-dimensional grid of the original model, but many aspects of the model were modified extensively. Principal changes include:

- The bottom layer (Layer 3) was disabled. This layer represented the bedrock beneath the currently developed aquifer system. Virtually no wells are completed in Layer 3. Consequently, groundwater conditions within Layer 3 are effectively unknown. However, Layer 3 can be reactivated if and when data become available in the future and there is justification to include it.
- The hydraulic conductivity distribution within the aquifer was re-defined. It incorporates subsurface data acquired from exploration and production wells drilled since the previous study was completed. The current model utilizes a distribution of hydraulic conductivity based on values from every completed municipal water supply well and several other wells in the area for which there are reliable data. The individual values were established through analysis of data from formal aquifer stress tests performed on the wells. The distribution of hydraulic conductivity within the model was determined by interpolating between well locations where the hydraulic conductivity was known. An inverse distance-weighted method was used to interpolate between the well locations with known values of hydraulic conductivity and the interpolated values were assigned to the model cells. The hydraulic conductivity distribution is provided in Figure 4-3.
- The top of Layer 1 was defined as the water table as interpreted from 1979-80 water level measurements. The initial saturated thickness of Layer 1 was arbitrarily assumed to be 200 feet to allow the model to separate the portion of the aquifer where domestic wells are typically completed from the deeper portion of the aquifer where most municipal wells are completed.
- The top of Layer 2 was defined as the bottom of Layer 1. The bottom of Layer 2 was defined by interpolation between the depths of completed municipal and exploratory wells. In concept, this is the same as the previous model. However, the elevations of the top of Layer 2 / bottom of Layer 1 differ from the previous model.
- The current model incorporates the net groundwater withdrawals from individual domestic wells within the model domain. The total net groundwater withdrawals from domestic wells within the South Truckee Meadows study area were calculated to be 3,140 AFA. Many domestic wells are located outside of the model domain and only 1,666 AFA of groundwater extractions via domestic wells are considered by the model. Secondary recharge from

residential septic tank effluent is factored into this amount, so that it represents the net groundwater withdrawals.

- The western-most portion of the southern model boundary was extended southward to include the wells at St. James's Village.
- The model explicitly incorporates the effects of numerous faults that act as impediments to groundwater flow. Many faults are known to exist within the model domain. Water level data and the results of aquifer-stress tests obtained since 1991 clearly show that faults impede the flow of groundwater moving eastward in the Mount Rose and Galena fans. However, this effect is not clearly defined for every known or suspected fault throughout the model domain.

2.3. Model Calibration to Background Water Level Conditions

Water-level data for the South Truckee Meadows provided by Washoe County Department of Water Resources (DWR) for the period 1979–1982 were presumed to represent background conditions in the aquifer prior to large-scale groundwater exploitation via municipal wells. The water table elevations for each cell in the model for 1979-82 conditions were calculated by linear interpolation between the measured water levels. The water table is depicted in Figure 4-4. At best, the potentiometric surface defined by the data is only an approximation of the water table at that time. The data represent measurements from wells of different depths over a period of three years. Furthermore, the water table may be influenced by vertical gradients that are known to exist in the aquifer.

The model presumes that the 1979-82 water-level data represent a steady-state condition in the aquifer at that time, but it is unlikely that conditions in the aquifer were in true equilibrium then. However, groundwater development in the South Truckee Meadows in the late 1970s / early 1980s was primarily a result of the domestic wells and these captured a relatively small proportion of the total groundwater flux through the aquifer. With this in mind, the 1979-82 data represents the closest approximation of a steady-state condition that is available for this area.

Given the large amount of data available for the study area and confidence in the aquifer properties, a somewhat arbitrary target of 20 feet was selected for calibration of the model to the observed water levels. The general calibration procedure involved:

- *Changing the recharge fluxes along the model boundaries.* Recharge to the aquifer originating in the mountains cannot be calculated directly by an independent method that has a high degree of certainty. However, recharge can be evaluated indirectly on the basis of known aquifer properties and observed gradients. Once a preliminary distribution of recharge along the model boundary was attained, the recharge fluxes were varied by trial and error until a satisfactory reproduction of the observed water levels was obtained. This process is believed to provide more reliable estimates of recharge than assuming a value for recharge and varying the aquifer properties to match existing gradients.

- *Incorporating horizontal flow barriers (faults).* Barriers were added interactively to improve on the initial calibration.
- *Minimizing modifications to the hydraulic conductivity distribution.* Aquifer properties were not changed significantly because of the high level of confidence in these components of the model. Hydraulic conductivity was modified sparingly only after the recharge fluxes were changed and horizontal flow boundaries were added.

The simulated water levels in Layer 1 for background conditions are provided in Figure 4-5 and are compared to the observed water levels in Figure 4-6. If the model is generally representative of conditions in the aquifer, then a plot of observed and simulated levels should fall on a line with a one to one slope. From the comparison provided in Figure 4-6, the plot of observed and simulated water levels fall along such a line.

Another test of how well a model is calibrated is a comparison of the mean error (the average difference between observed and simulated water levels) with the maximum head difference across the model domain. If the model provides a credible representation of the aquifer, the mean error should be less than five percent. For the simulation of background conditions, the mean error was 12.5 feet, compared to a difference in the head across the model of approximately 1,350 feet, or approximately 0.9%.

The information provided in Figure 4-6 also clearly shows that there are instances where the model does not meet the calibration goal. Some of the problem areas probably relate to large vertical and horizontal gradients in the aquifer, the different depths of the wells where measurements were taken, the three-year period over which measurements were taken, and the interpolated values for the hydraulic conductivity, especially where data are sparse. The largest error is for wells completed in the rocks of the Steamboat Hills. The hydrogeology of the geothermal reservoir is very complex. Very little effort was expended to improve the model in this area because it is generally impractical to expect that a model will represent all areas of the domain equally well. However, given the small mean error and the good overall correlation between observed and simulated water levels, we conclude that the model portrays the aquifer under background conditions well enough that it is suitable for planning purposes.

The objective of this current modeling effort was a reconnaissance-level analysis of the aquifer that will provide a sense of which water-supply options are appropriate for this area. It is our opinion the model meets this objective, but it is probably not suitable for the purpose of optimizing withdrawals from specific wells. Additional work is obviously required to perfect a model that more completely replicates groundwater conditions in this area, especially if the purpose of the model is to manage the distribution of pumping in the County and STMGID's well fields. Washoe County DWR has plans to undertake a comprehensive modeling effort in the near future. The next generation model is expected to benefit from this recent modeling effort.

2.4. Estimates of Available Groundwater Resources

The current model results suggest the combined recharge from the mountains to the alluvial aquifer in the South Truckee Meadows is approximately 17,000 AFA. Of this, the groundwater

recharge from the Carson Range to the Mount Rose / Galena fan areas is approximately 13,900 AFA, a value that is consistent with the estimate of recharge determined from the previous model of the aquifer (HSI, 1991). The remainder of 3,100 AFA is groundwater recharge to the southeastern Truckee Meadows from the Virginia Range that has little influence on the hydrogeologic conditions west of U.S. 395. By comparison, the demand on the groundwater resources available from the Mount Rose / Galena Fan aquifer at build-out is 12,245 AFA, approximately 88% of the estimated recharge to the aquifer.

3. MODEL PREDICTIONS

3.1. Steady State Model

The model was employed to examine effects that might arise from the groundwater withdrawals allocated to meet build-out conditions in the South Truckee Meadows.

An initial steady-state simulation of pumping 9,105 AFA from municipal wells (refer to Section 1) and 1,666 AFA from domestic wells (a total of 10,771 AFA) was run to examine the long-term drawdown in the aquifer resulting from pumping this amount of groundwater. The results are shown in Figures 4-7a and 4-7b. These figures indicate more than 40 feet of drawdown over most of the Mount Rose and Galena Fans once the aquifer attains a new equilibrium or steady state condition. The results are not totally unexpected, given the results of the previous groundwater model prepared for the County and the changes in water levels observed to date.

In addition to the drawdown throughout the model domain, the anticipated drawdown in specific municipal wells was investigated. Note that Figures 4-7a and 4-7b depict the average drawdown in each of the cells making up the model. For a model cell containing a pumped well, the average drawdown in the cell (with dimensions of 1,000 feet on a side for this particular model) is not the same as the drawdown in a well with a radius of several inches to one foot. The drawdown in a well will be greater than the average drawdown in the model cell containing a well. Therefore, the drawdown in a cell with a well must be adjusted to reflect the diameter of a particular well.

Why is this important? It is desirable to maintain the pumping level in a well at an elevation above the top of the well screen or perforations. When drawdown is excessive and the pumping level is drawn down below the top of the screen, there is a potential for cascading water, which can result in air becoming entrained in the discharge. Air in the discharge is a nuisance to the consumer. Furthermore, it can reduce the "wire to water" efficiency of the pump, increasing the per gallon cost to deliver water. Exposing the screen to the atmosphere can accelerate corrosion of the well screen if the well was not constructed with corrosion resistant materials. Also, if the pumping level reaches the pump intake, air will be introduced and cavitation will result. The consequence is that the production from an affected well would need to be reduced.

A series of steady-state simulations were undertaken to estimate the average long-term drawdown that might be experienced in the aquifer. These simulations assumed groundwater withdrawals of 50%, 60%, 70%, 80%, 90% and 100% of the build-out municipal groundwater demand. The drawdowns for most of the municipal water-supply wells within the study area

were evaluated for each simulation. The results are summarized in Table 4-2. It should be recognized that the drawdown value represented in the table represents the average drawdown in the well. When the well is not pumped, the drawdown will be less than that listed in the table and when the well is pumped, drawdown will be greater.

Table 4-2 Simulated Drawdown in Municipal Water-Supply Wells in the South Truckee Meadows

WELL	Well Data				Steady-State Water-Level Decline, average of pumping & non-pumping conditions (feet)											
	Depth	Screen Interval feet b.l.s.	Static Level Depth feet b.l.s.	Available Drawdown feet	4553 AFA 50% Buildout		5463 AFA 60% Buildout		6374 AFA 70% Buildout		7284 AFA 80% Buildout		8195 AFA 90% Buildout		9105 AFA 100% Buildout	
					100% Eff.	90% Eff.	100% Eff.	90% Eff.	100% Eff.	90% Eff.	100% Eff.	90% Eff.	100% Eff.	90% Eff.		
STMGID 1	530	260-520	90	170	45	50	59	65	73	81	89	99	107	119	127	141
STMGID 2	515	255-505	132	123	55	62	72	80	89	99	110	122	131	145	161	179
STMGID 3	590	240-580	160	80	41	45	58	65	78	87	99	110	123	136	157	174
STMGID 5	760	400-750	298	102	101	112	124	137	152	169	173	192	199	221	218	241
STMGID 6	650	250-640	101	149	79	88	96	106	113	126	130	144	147	163	168	187
STMGID 11	720	380-680	230	150	68	75	86	96	108	120	129	143	153	170	180	200
THOMAS CREEK	686	400-680	303	97	73	81	91	101	112	124	130	144	150	167	167	185
DOUBLE DIAMOND 2	183	100-175													0	
DOUBLE DIAMOND 1	428	114-425													0	
ARROWCREEK 1	510	320-500	210	110	34	38	45	50	57	64	66	74	68	76	82	91
ARROWCREEK 2	610	260-600	95	165	32	36	45	50	60	67	74	82	87	97	152	169
ARROWCREEK 3	700	440-700	331	109	79	87	96	106	112	125	130	145	147	164	173	192
MT. ROSE 3	223	120-210	22	98	66	74	76	84	89	99	96	107	107	118	113	126
MT. ROSE 5 "Cinder"	800	400-780	231	169	66	73	79	87	92	102	105	117	119	133	120	133
MT. ROSE 6	755	540-740	306	234	52	57	38	43	45	50	52	58	59	65	87	96
ST. JAMES'S 1	700	260-620	195	65	65	72	77	86	91	101	104	116	118	131	123	137
ST. JAMES'S 2	605	350-590	242	108	76	84	97	107	115	127	132	147	150	167	153	170
TESSA W	780	400-760	281	119	69	77	84	93	98	109	113	125	127	141	137	152
TESSA E	735	440-710	219	221	66	74	78	87	93	103	106	118	120	133	129	143
CALLAMONT N	810	400-800														
CALLAMONT S	910	400-900														

Notes: Indicates drawdown is within 10 feet of the available drawdown to the top of the well screen.
 Indicates drawdown is within equal to or greater than the available drawdown to the top of the well screen.
 The drawdown represents the average of the non-pumping and pumping conditions. When the well is off, the decline will be less. When the pump is on, the decline will be greater.

From the information presented in Table 4-2, it is apparent that most municipal wells in the study area may experience excessive drawdown at 100% of the build-out demand that is expected to be satisfied by pumping groundwater from the aquifer in the South Truckee Meadows. It can be deduced that pumping 9,105 AFA from the municipal wells may result in over pumping the aquifer. This inference is consistent with the conclusion drawn from the previous modeling effort that pumping a total of 8,892 AFA of groundwater from the Mount Rose / Galena fan area ". . . results in over pumpage of the aquifer system (HSI, 1991)."

It is also apparent from Table 4-2 that at 50% of build-out (4,553 AFA), few wells should be affected by excessive drawdown. The anticipated drawdown in specific production wells can easily be mitigated by modifying how pumping is distributed among the various wells. STMGID and Washoe County wells currently withdraw approximately 4,700 AFA of groundwater and the observed drawdowns in the municipal wells are presently within acceptable limits. Therefore, the model appears to be consistent with the empirical data associated with 50% of build-out.

Table 4-2 shows that, as groundwater extractions increase, more wells can be expected to experience drawdown that may not be acceptable. These results were discussed with the Regional Water Planning Commission and the STMGID Local Managing Board. A consensus was reached that it is likely that the municipal wells can reliably supply up to approximately 80% of the municipal build-out water-supply demand allocated to groundwater resources in addition to the demand placed on the aquifer by individual domestic wells. Note that 80% of the build-out demand equates to approximately 7,284 AFA, or roughly 75% of the total of the groundwater rights that have been acquired by Washoe County and STMGID. The remaining 25% represent an asset that might be usable elsewhere within the Truckee Meadows.

At 7,284 AFA, there is a possibility that more than half of the municipal wells may experience potentially excessive drawdown. Each well must be evaluated individually to determine if the projected drawdown will result in operational problems. This level of analysis, however, is beyond the scope of this investigation.

From the steady-state model results, it is apparent that any analysis of the water-supply alternatives for the South Truckee Meadows planning area should consider that the reliable groundwater supply from the municipal wells in the area is in the range of 7,284 AFA, over and above the net withdrawals from the individual residential wells.

3.2. Transient Model

A preliminary transient model was utilized to further assess the groundwater supply. The model is preliminary in the sense that it was not calibrated to the changes in water level associated with the increase in groundwater extractions and changes in land uses that have occurred since the late 1970s / early 1980s. However, it still is instructive because it describes how the aquifer might react to a future hypothetical groundwater resource development scenario. The steady-state model results indicate that municipal wells can provide 7,284 AFA on a sustained basis. The effect of pumping them at higher rates for a limited time was assessed through the use of the transient model.

The pumping scenario that was investigated specified:

- The municipal wells are pumped for 30 years at a rate equivalent to 80% of the build-out demand (7,284 AFA) that has been allocated to the municipal wells.
- After 30 years of pumping at this rate, groundwater withdrawals are increased to 100% of the build-out groundwater demand (9,105 AFA).
- The pumping rate is decreased to 7,284 AFA after pumping 9,105 AFA for three years.

The municipal well groundwater extraction rates listed above can be viewed as representing two variations of one scenario. For all practical purposes, these two variations are indistinguishable in the model. For either variation, the consumptive use of groundwater by residents served by domestic wells is assumed to be 1,666 AFA.

In the first variation, the municipal wells are pumped at 9,105 AFA. Of this amount, a total of 1,821 AFA originate as water injected into the aquifer as part of an aquifer storage and recovery (ASR) program. Therefore, the *net* withdrawal of groundwater from the aquifer is 7,284 AFA. After 30 years of pumping under these conditions, it is specified that the 1,821 AFA of water supplied through ASR become unavailable, a situation that might arise in the worst years of a protracted drought. The municipal groundwater extraction rate from wells in the South Truckee Meadows is increased to 9,105 AFA (100% of the build-out demand that has been allocated to wells) to make up the difference. After three years at this higher rate, the groundwater extractions are returned to the previous net withdrawal rate of 7,284 AFA.

The second variation assumes no ASR program and the municipal well groundwater extractions are specified at 7,284 AFA for 30 years. Due to drought conditions that reduce the availability of water from other sources, the wells are called upon to meet a higher proportion of the water-supply demand within the South Truckee Meadows. As a result, the groundwater withdrawals are increased to 9,105 AFA for three years, after which they are reduced to the previous rate of 7,284 AFA.

The results of the transient simulation are shown in Figures 4-9, 4-10, 4-11 and 4-12. These represent hydrographs for four representative wells in the South Truckee Meadows. From the hydrographs, the short-term increase in net groundwater withdrawals results in a relatively small increase in drawdown that is reversed once groundwater extractions return to "normal." The hydrographs also indicate that it may be possible to over pump some wells while under pumping others. What becomes apparent is the need to carefully consider how pumping is distributed among the available wells to maximize the available resource.

4. ADDITIONAL WORK TO BE COMPLETED

Modeling related to the water-supply facility planning to date has focused on steady-state conditions for which calibration was judged to be satisfactory. Preliminary transient model runs suggest that steady-state conditions are approached in as little as 20 to 30 years after a stress is applied to the aquifer. Therefore, steady-state simulations approximate the conditions that might be realized within a realistic planning horizon. Comprehensive transient modeling is required to more rigorously evaluate other model scenarios when stresses on the aquifer are

variable and a more comprehensive analysis of a particular water-supply scenario is desirable. A comprehensive transient model is also required to better evaluate the performance of specific wells and optimize the output from the municipal water-supply well fields operated by Washoe County and STMGID. Such a modeling effort will be undertaken by Washoe County Department of Water Resources staff in the near future.

5. SUMMARY

The total water supply demand at build-out within the entire South Truckee Meadows planning area is approximately 18,800 AFA. Of this amount 12,245 AFA have been allotted to groundwater sources to be exploited by withdrawals from municipal and individual domestic wells within the Mount Rose and Galena alluvial fans. The remainder (approximately 6,600 AFA) was expected to be satisfied by sources other than groundwater.

The available groundwater resources and implications of groundwater development within a portion of the planning area below the range front were examined through the application of an updated groundwater model to a portion of the study area. This model yielded an estimate of approximately 17,000 AFA for the amount of groundwater recharge to the entire South Truckee Meadows. Of this total, 13,900 AFA of groundwater recharge was estimated for the aquifer beneath the Mount Rose / Galena alluvial fans, in essence the portion of the aquifer west of U.S. 395 where most of the municipal wells are located.

The build-out demand allocated to groundwater resources in the portion of the study area examined by the model is 9,105 AFA. In addition, residents supplied by domestic wells within the area investigated by the model are expected to consume 1,666 AFA. Together, these represent a demand of 10,771 AFA that the groundwater resources of the Mount Rose / Galena Fan aquifer system were expected to satisfy, or 77% of the groundwater recharge to the portion of the study area represented by the model.

The previous model of the aquifer system prepared for Washoe County in 1991 concluded the aquifer is over pumped when withdrawals from municipal wells in the South Truckee Meadows total approximately 8,900 AFA. While the current groundwater model of the South Truckee Meadows did not clarify "over pumped" within the framework of the previous investigation, it suggests that it may be impractical to develop more than 8,950 AFA of groundwater from the Mount Rose and Galena alluvial fans on a sustained basis. This amount represents a combination of 7,284 AFA from municipal wells and 1,666 AFA net groundwater withdrawals from domestic wells. In other words, the aquifer appears to be capable of reliably sustaining approximately 80% of the build-out demand that was allotted to municipal wells (7,284 AFA divided by 9,105 AFA) in addition to the groundwater that is expected to be consumed by domestic well owners.

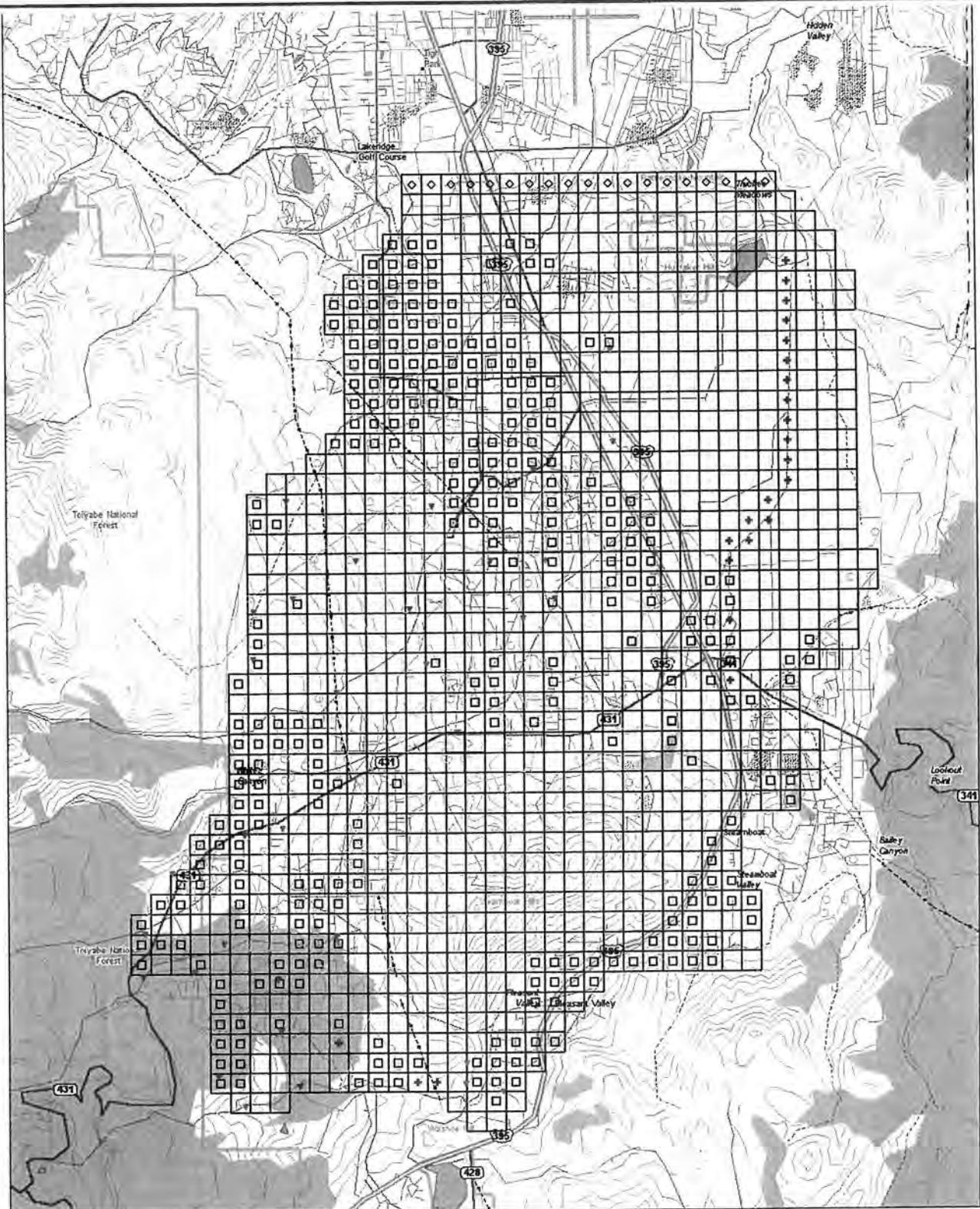
These results clearly show that facility planning in the South Truckee Meadows must include the means to make up a shortfall in groundwater supply of approximately 1,820 AFA. The potential sources of this make-up water are beyond the scope of this memorandum, but might include surface water supplied from the Truckee Meadows Water Authority, groundwater diverted to the

study area from sources elsewhere in the Truckee Meadows, or surface water from the creeks within in the South Truckee Meadows.

The model results also indicate that the aquifer can support municipal well pumping of more than 7,284 AFA for relatively short periods of time. The need to pump more than 7,284 AFA might arise when one or more of the other sources of water become unavailable, such as during a protracted drought period. In essence, for short periods the supply would exploit groundwater in storage within the aquifer. However, this strategy will require optimization of the distribution of pumpage from the municipal wells.

Another outcome of the model is a realization that declines in water levels of more than 40 feet should be anticipated for many domestic wells in the South Truckee Meadows. Most of these wells are shallower than the municipal wells and may be adversely impacted by a lowering of the water table of this magnitude. Options to mitigate the impacts to domestic well owners will be part of water supply facilities planning for this area. These mitigation measures might include deepening affected wells, providing service through the municipal systems, minimizing water-level declines through augmentation of natural recharge, or reducing withdrawals from the municipal wells. However, a discussion of mitigation measures is beyond the scope of this memorandum.

It is readily apparent that the build-out water demand in the South Truckee Meadows will not be satisfied by the groundwater resources available from this area. Therefore, conjunctive use of surface water and groundwater, including aquifer storage and recovery, must be incorporated into water-supply facility planning the South Truckee Meadows.



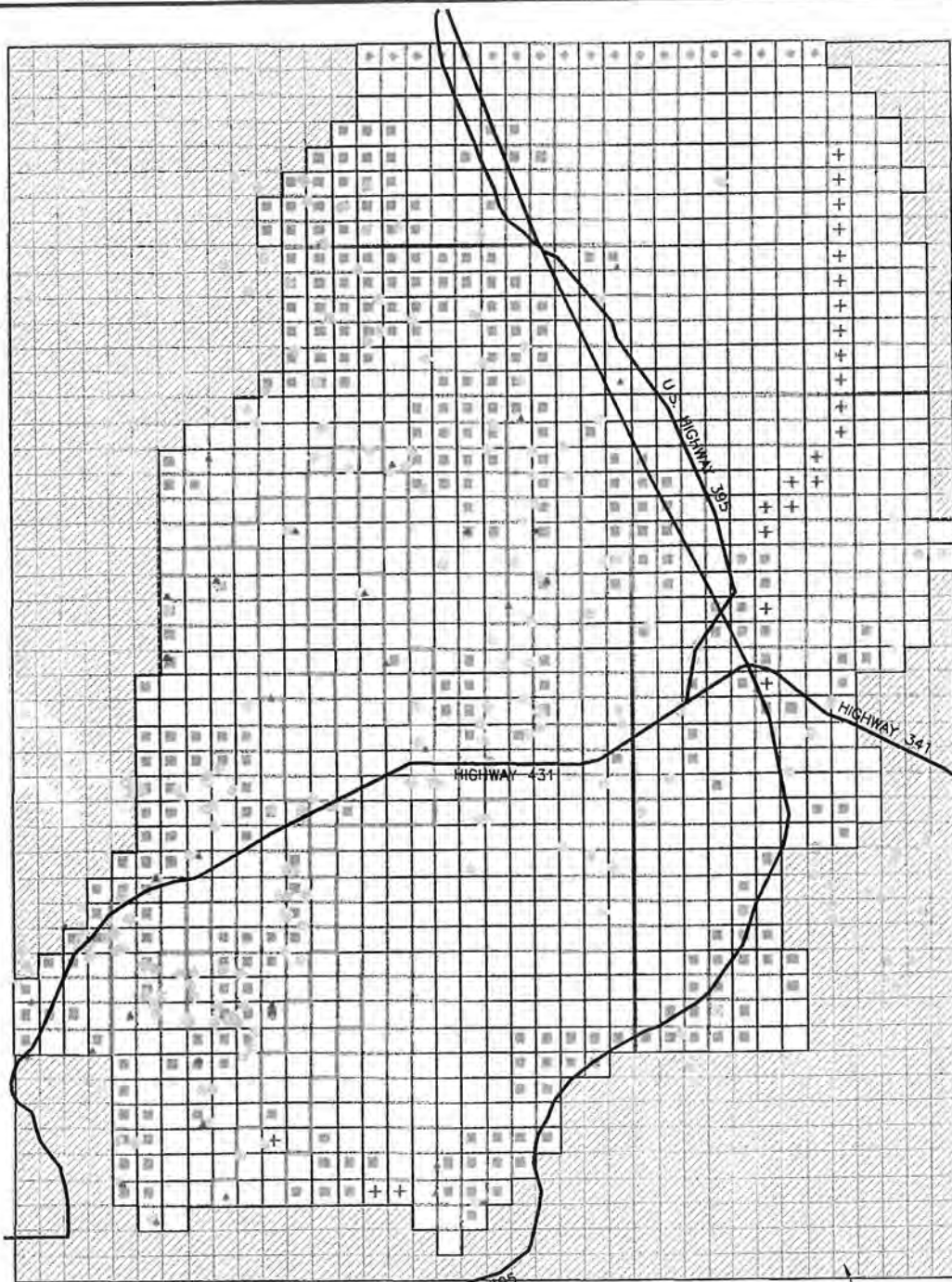
EXPLANATION

- CELL WITH DOMESTIC WELL
- ★ WATER-SUPPLY WELL
- ◇ CONSTANT-HEAD CELL
- ✦ STREAM CELL

ECO:LOGIC
 Consulting Engineers

**SOUTH TRUCKEE MEADOWS
 WATER SUPPLY, WASTEWATER AND
 STORMWATER FACILITY PLAN
 PHASE 2 - GROUNDWATER INVESTIGATION
 FIGURE 4-1
 MODEL DOMAIN**

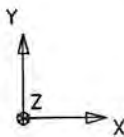
Date: 7/16/02 Scale: AS SHOWN
 Designed By: DCB Project No: 00742
 Drawn By: LKB File: 00742-F1



MODFLOW BC Sym

- Horiz. Flow Barrier
- Domestic Well & Constant-Flux Cells Along Boundary
- River
- Constant Head
- Production Wells

0 5000'

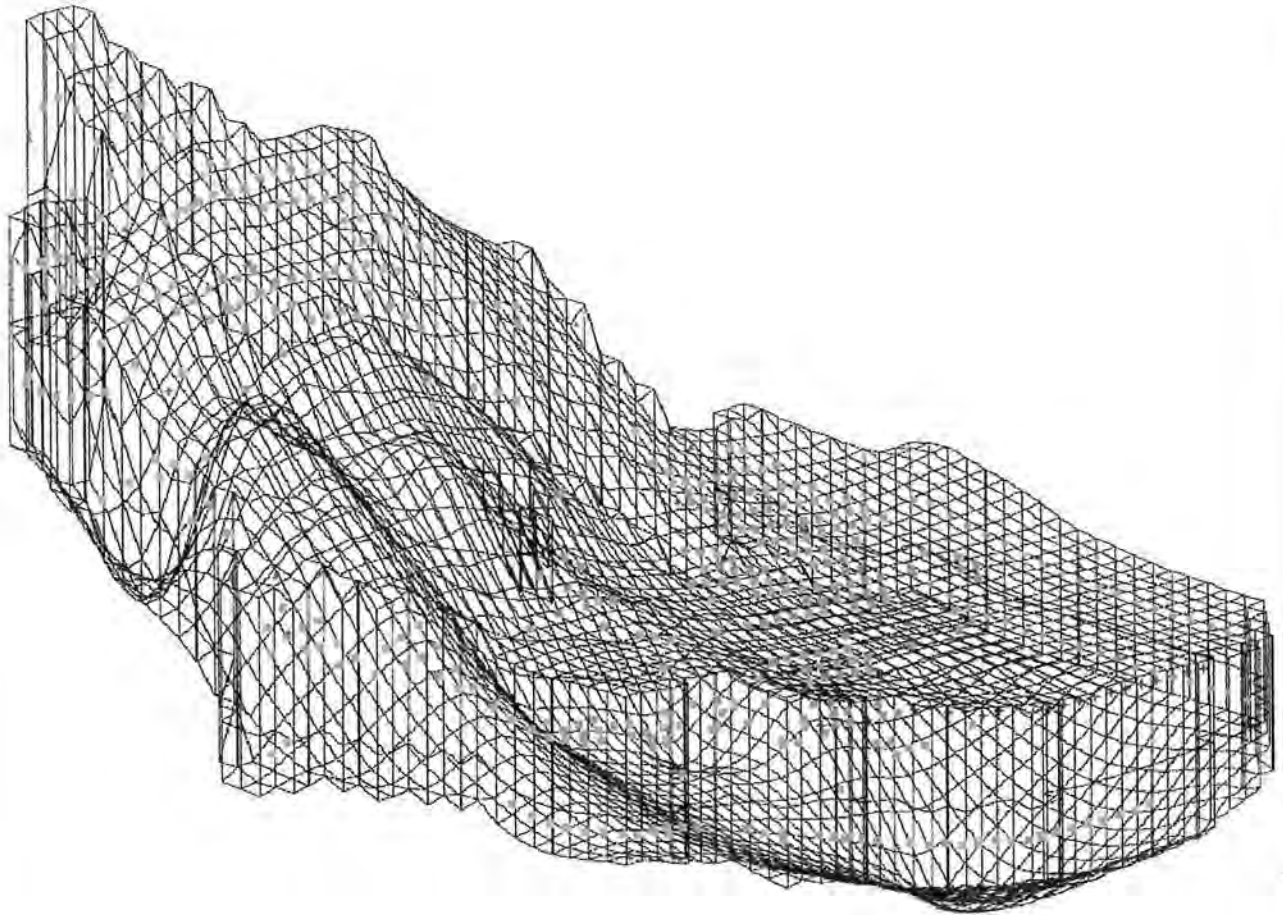


ECO-LOGIC
Consulting Engineers

**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION
FIGURE 4-2A**

MODEL GRID (PLAN VIEW)

Date: 7/16/02	Scale: AS SHOWN
Designed By: DCB	Project No: 00742
Drawn By: LKB	File: 00742-F2A



VIEW TOWARD
THE NORTHWEST

MODFLOW BC Sym

- Well
- + River
- ◆ Constant Head

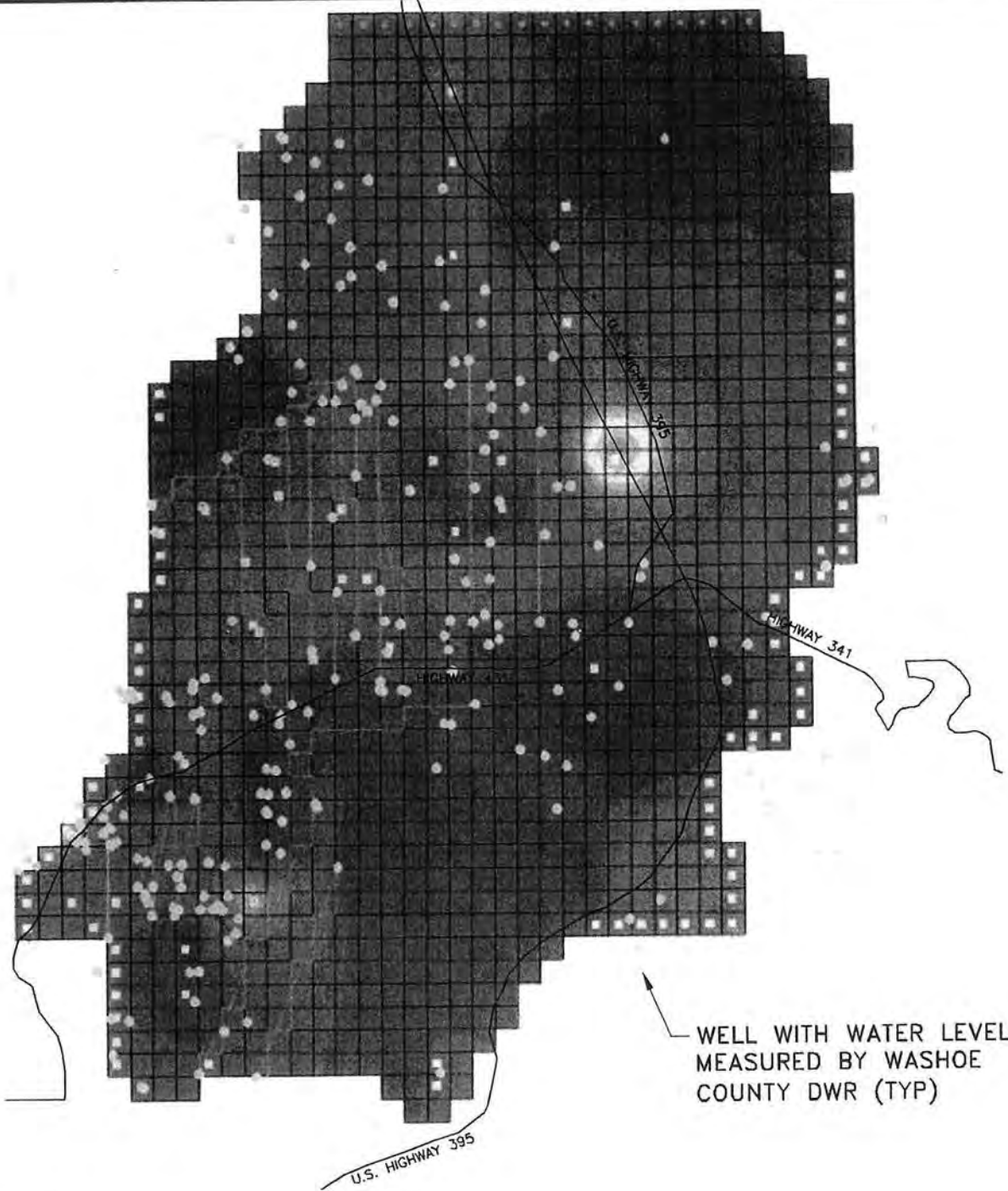


ECO-LOGIC
Consulting Engineers

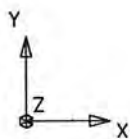
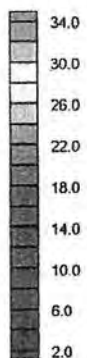
**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 – GROUNDWATER INVESTIGATION
FIGURE 4-2B**

MODEL GRID (OBLIQUE VIEW)

Date: 7/16/02	Scale: None
Designed By: DCB	Project No: 00742
Drawn By: LKB	File: 00742-F2B



HYDRAULIC
CONDUCTIVITY
(FT/DAY)



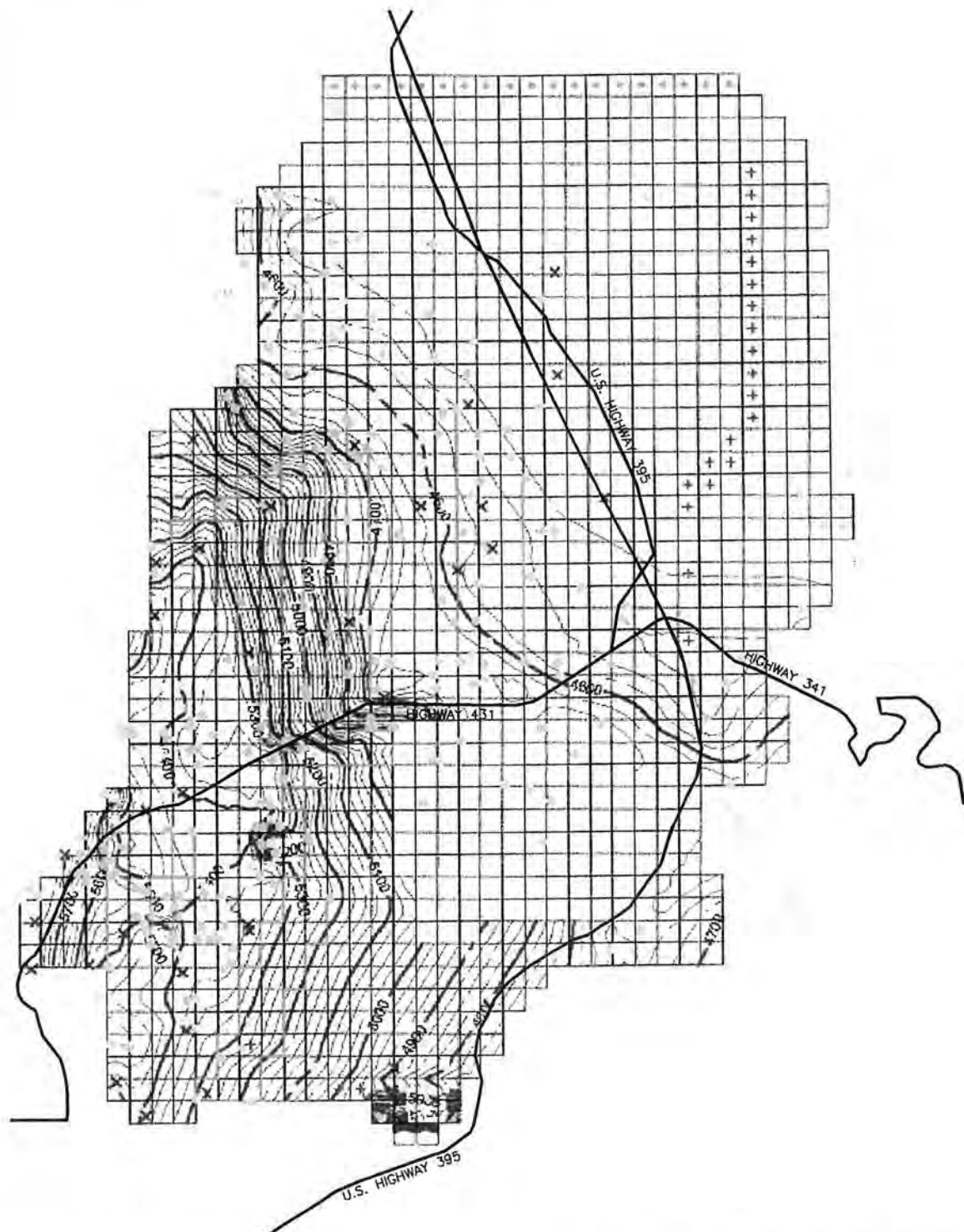
ECO:LOGIC
Consulting Engineers

**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION
FIGURE 4-3**

HYDRAULIC CONDUCTIVITY DISTRIBUTION

Date: 7/16/02
Designed By: DCB
Drawn By: LKB

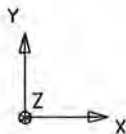
Scale: AS SHOWN
Project No: 00742
File: 00742-F3



CONTOUR INTERVAL = 20 FT

0 5000'

WELL FOR WHICH
 x TEST DATA IS
 AVAILABLE



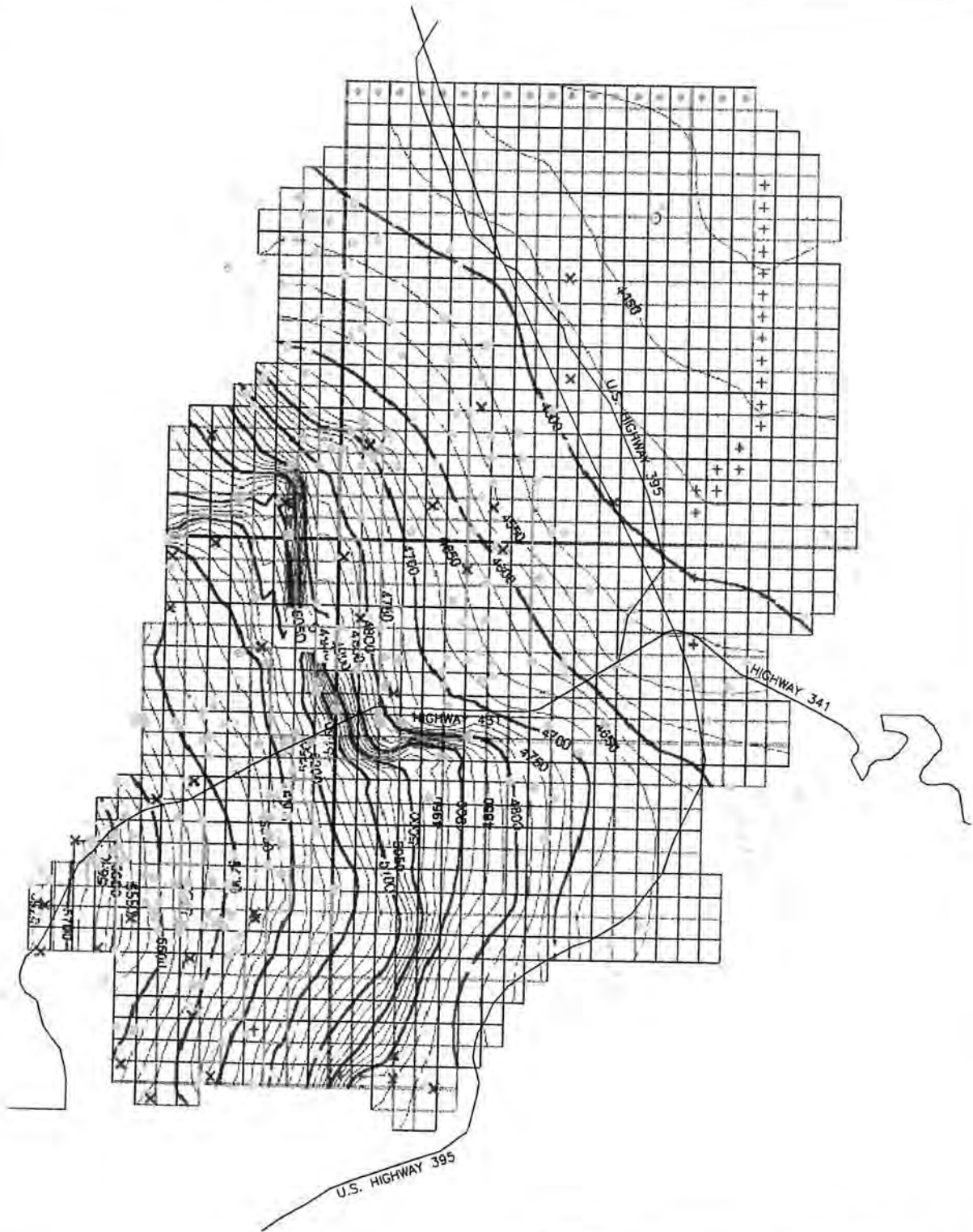
ECO-LOGIC
 Consulting Engineers

**SOUTH TRUCKEE MEADOWS
 WATER SUPPLY, WASTEWATER AND
 STORMWATER FACILITY PLAN
 PHASE 2 - GROUNDWATER INVESTIGATION
 FIGURE 4-4**

**BACKGROUND (1979-1982)
 GROUNDWATER ELEVATIONS**

Date: 7/16/02
 Designed By: DCB
 Drawn By: LKB

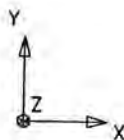
Scale: AS SHOWN
 Project No: 00742
 File: 00742-F4



CONTOUR INTERVAL = 20 FT

0 5000'

x WELL FOR WHICH
TEST DATA IS
AVAILABLE



ECO:LOGIC

Consulting Engineers

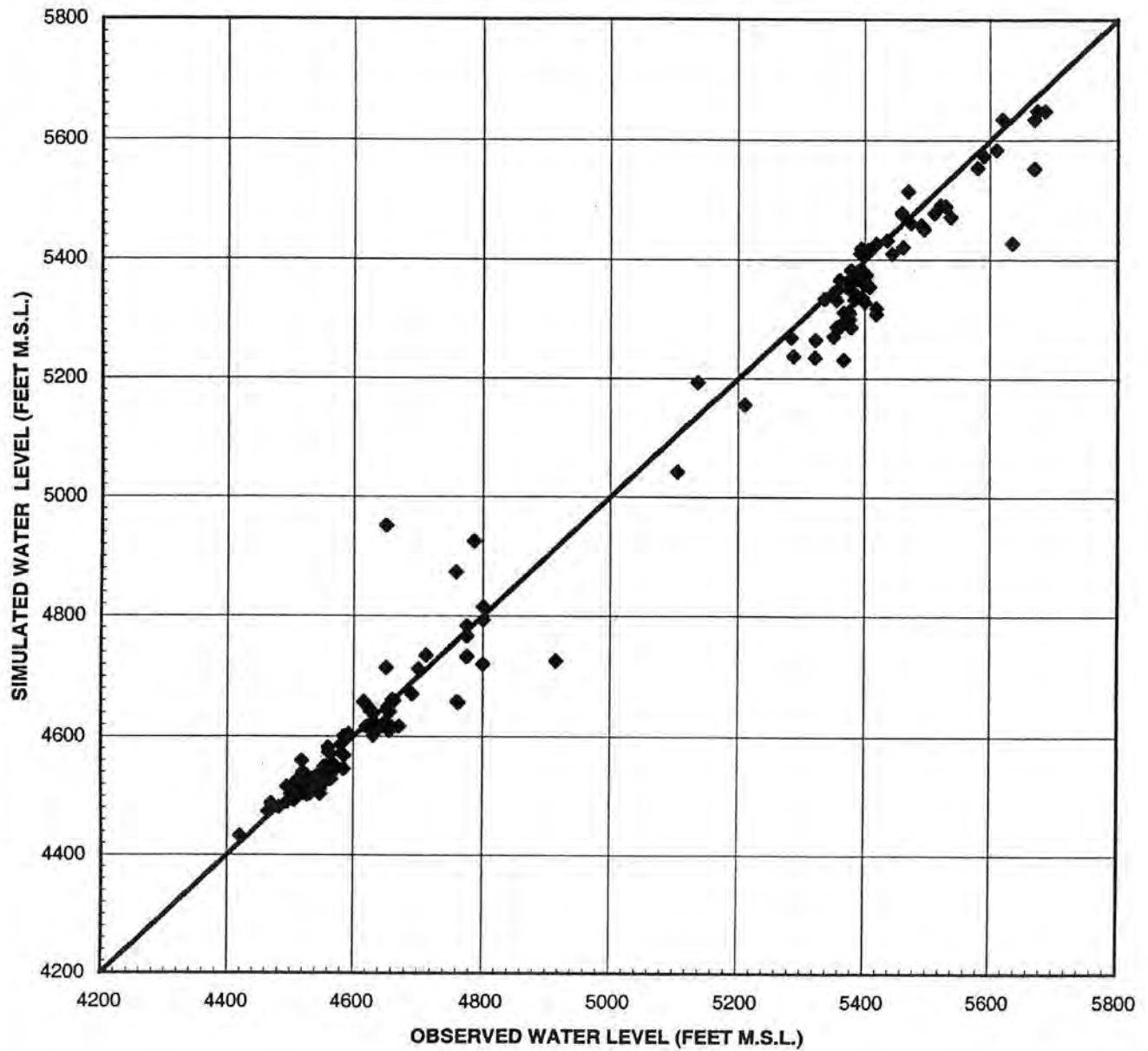
**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION
FIGURE 4-5**

**SIMULATED BACKGROUND
GROUNDWATER ELEVATIONS**

Date: 7/16/02
Designed By: DCB
Drawn By: LKB

Scale: AS SHOWN
Project No: 00742
File: 00742-F5

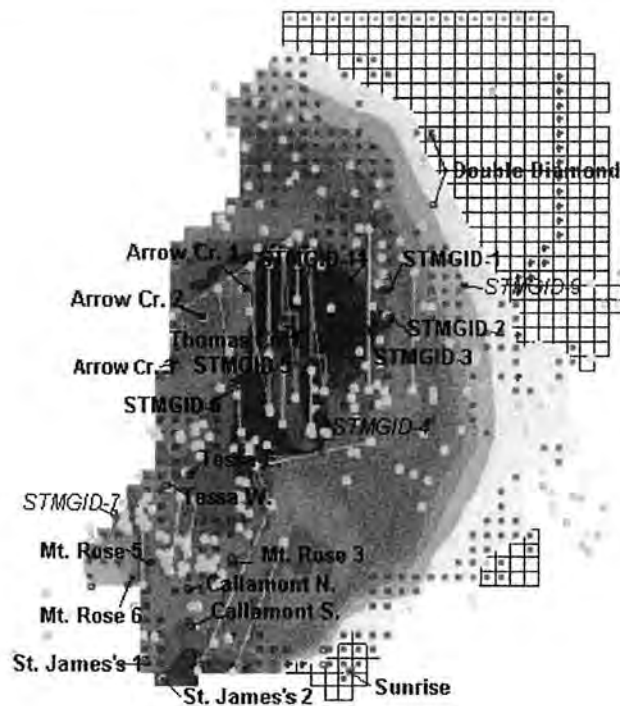
Steady-State Simulation



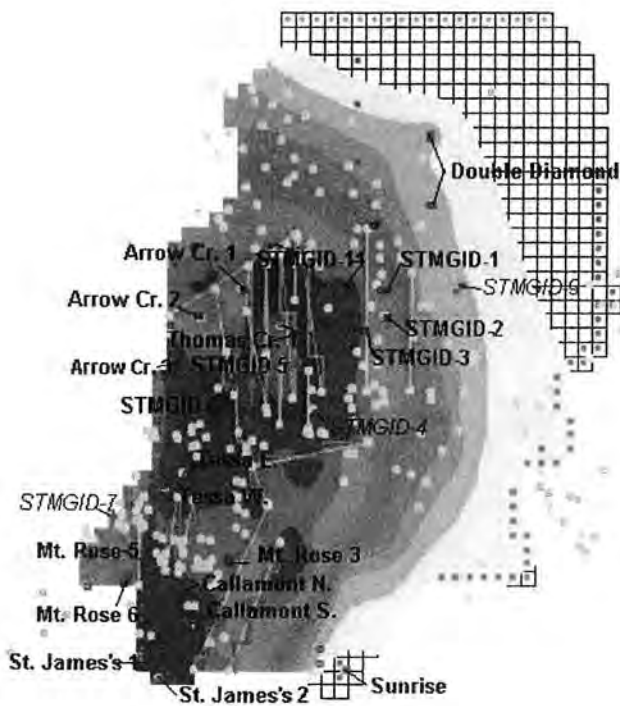
SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION
FIGURE 4-6

COMPARISON OF SIMULATED AND
OBSERVED WATER LEVELS

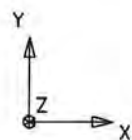
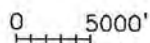
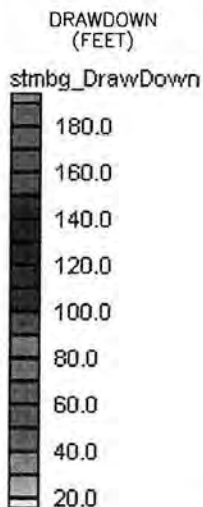
Date: 7/16/02 Scale: AS SHOWN
Designed By: DCB Project No: 00742
Drawn By: LKB File: 00742-F6



7a. LAYER 1



7b. LAYER 2

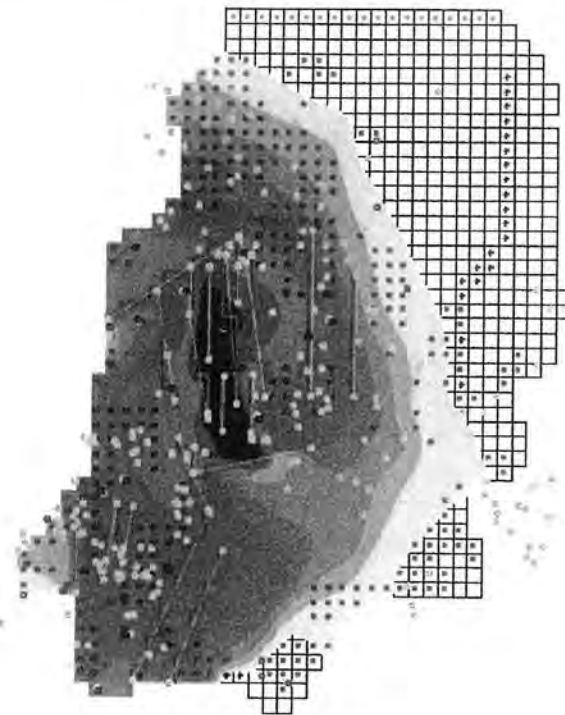


ECO-LOGIC
Consulting Engineers

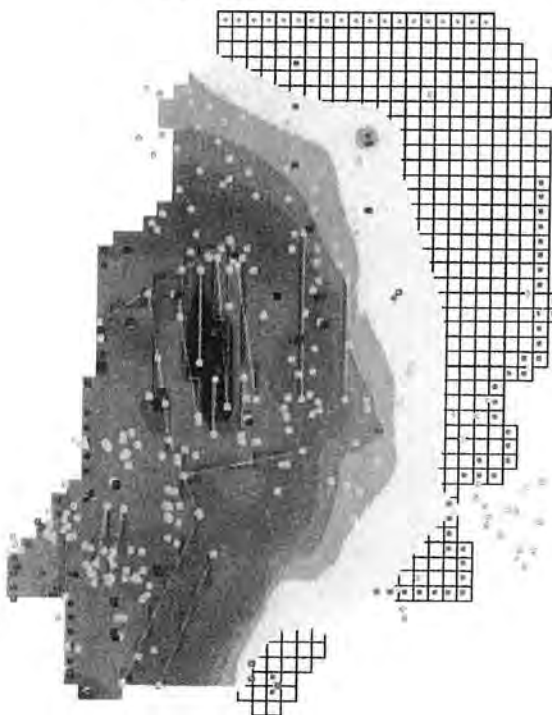
**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION
FIGURE 4-7
DRAWDOWN IN LAYER 1 AND LAYER 2
AT BUILDOUT GROUNDWATER
DEMAND (9,105 AFA)**

Date: 7/16/02
Designed By: DCB
Drawn By: LKB

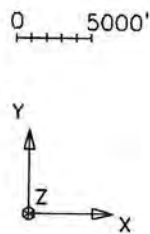
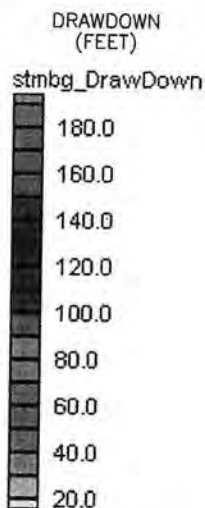
Scale: AS SHOWN
Project No: 00742
File: 00742-F7



8a. LAYER 1



8b. LAYER 2



ECO:LOGIC
Consulting Engineers

**SOUTH TRUCKEE MEADOWS
WATER SUPPLY, WASTEWATER AND
STORMWATER FACILITY PLAN
PHASE 2 - GROUNDWATER INVESTIGATION**

FIGURE 4-8

**DRAWDOWN IN LAYER 1 AND LAYER 2
AT 80% OF BUILDOUT GROUNDWATER
DEMAND (7,284 AFA)**

Date: 7/16/02

Designed By: DCB

Drawn By: LKB

Scale: AS SHOWN

Project No: 00742

File: 00742-F8

Figure 4-9 STMGID-1
Water-Level Decline (Average of pumping & non-pumping levels)

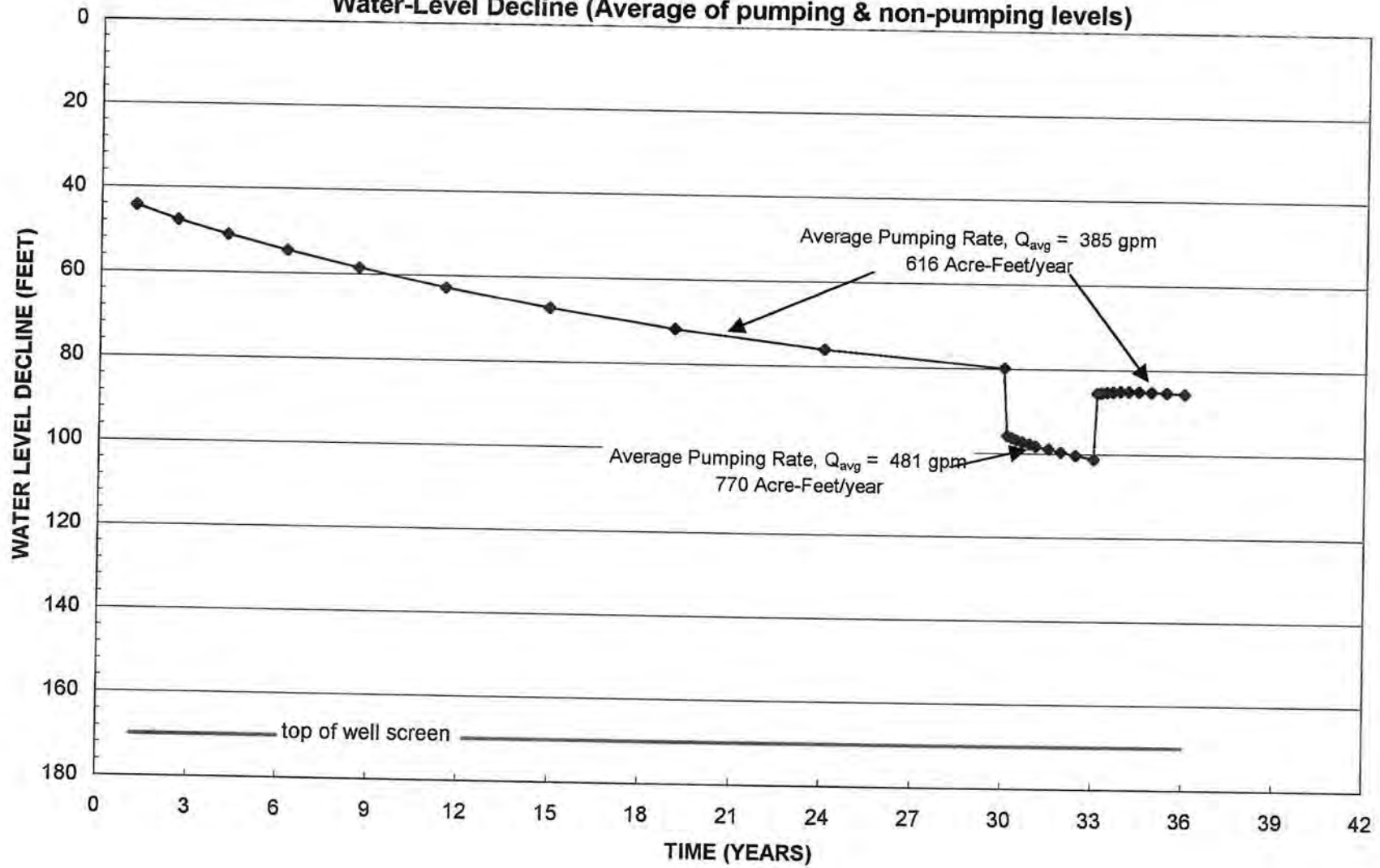


Figure 4-10 STMGID-6
Water-Level Decline (Average of pumping & non-pumping levels)

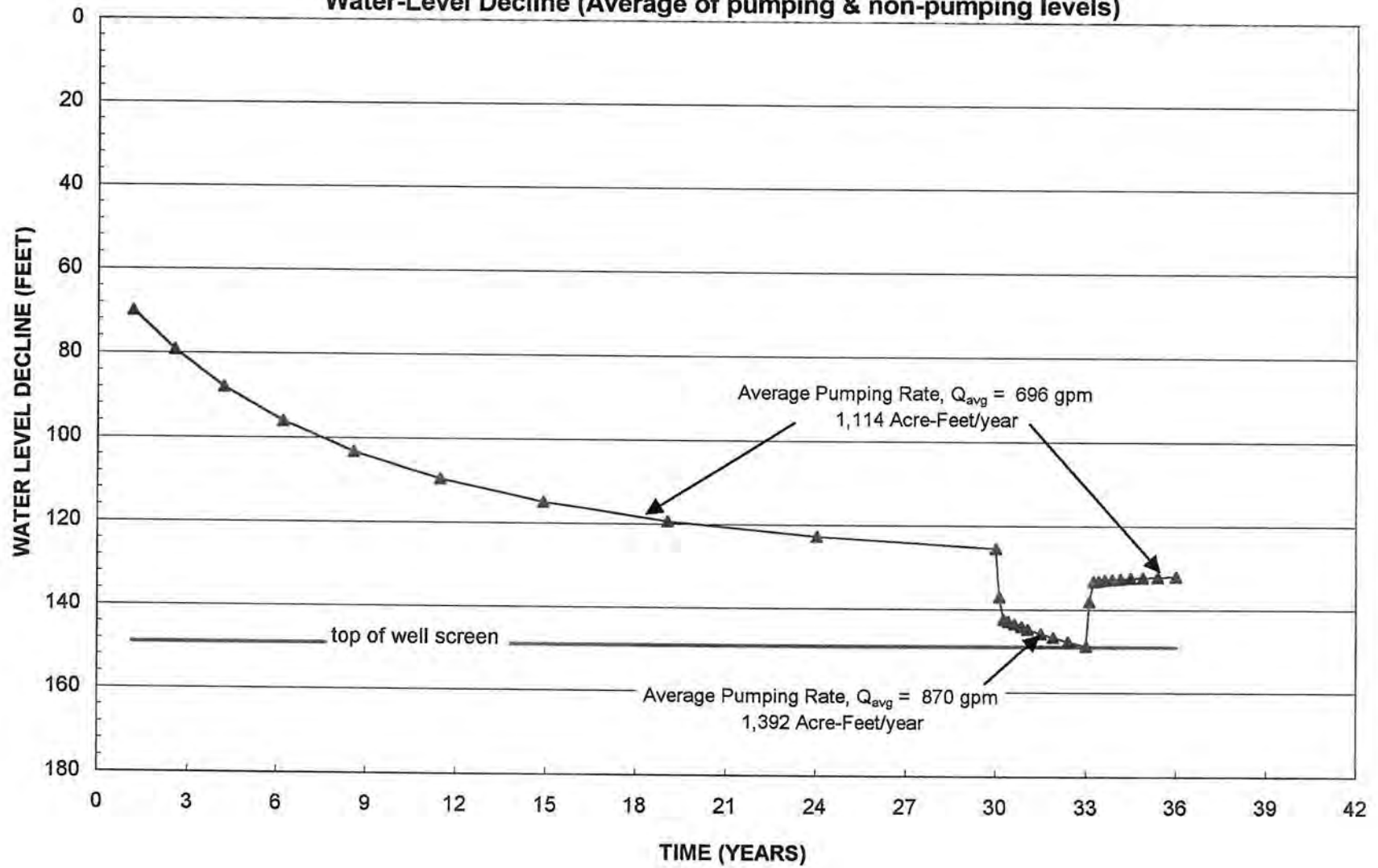


Figure 4-11 Tessa West
Water-Level Decline (Average of pumping & non-pumping levels)

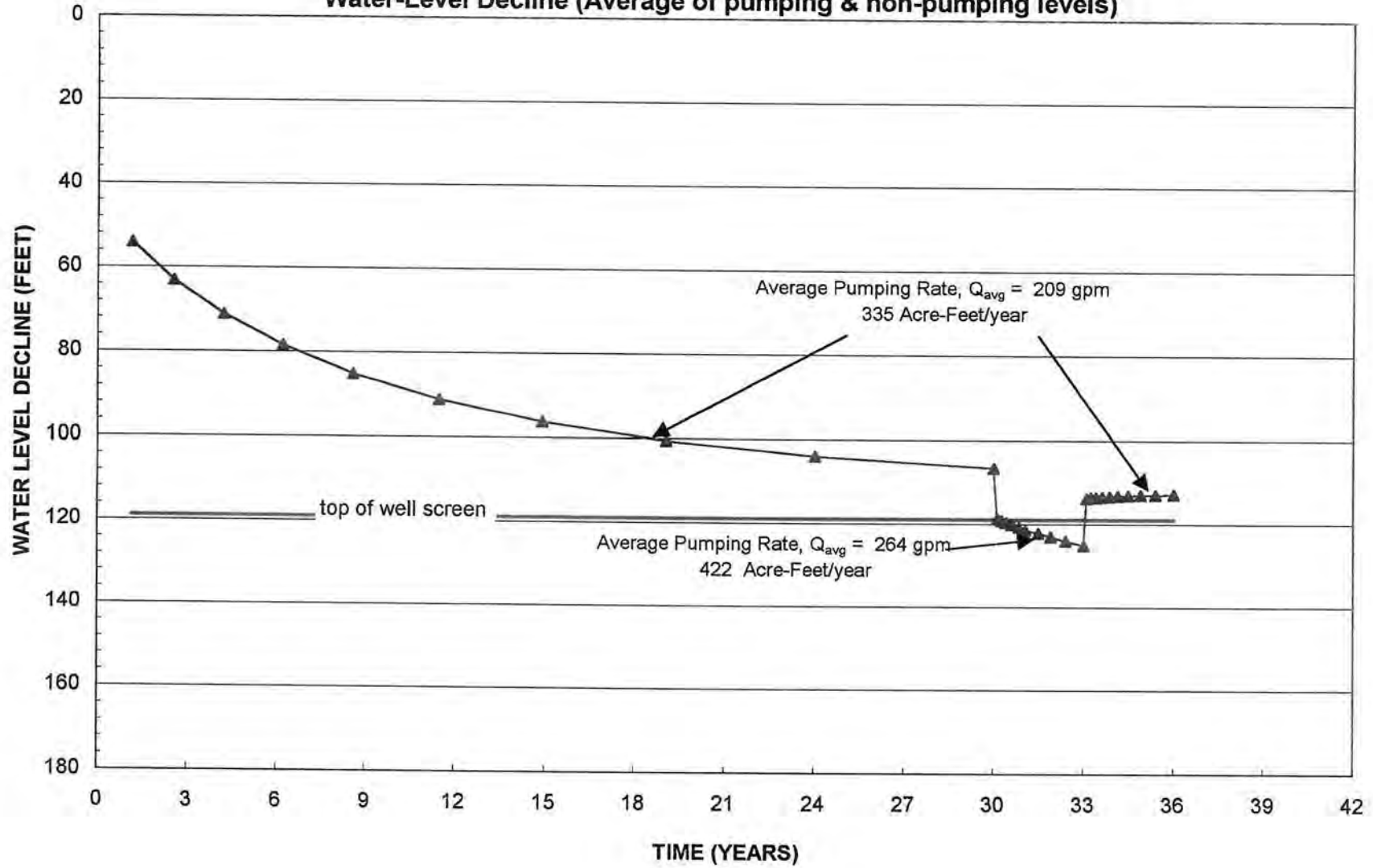
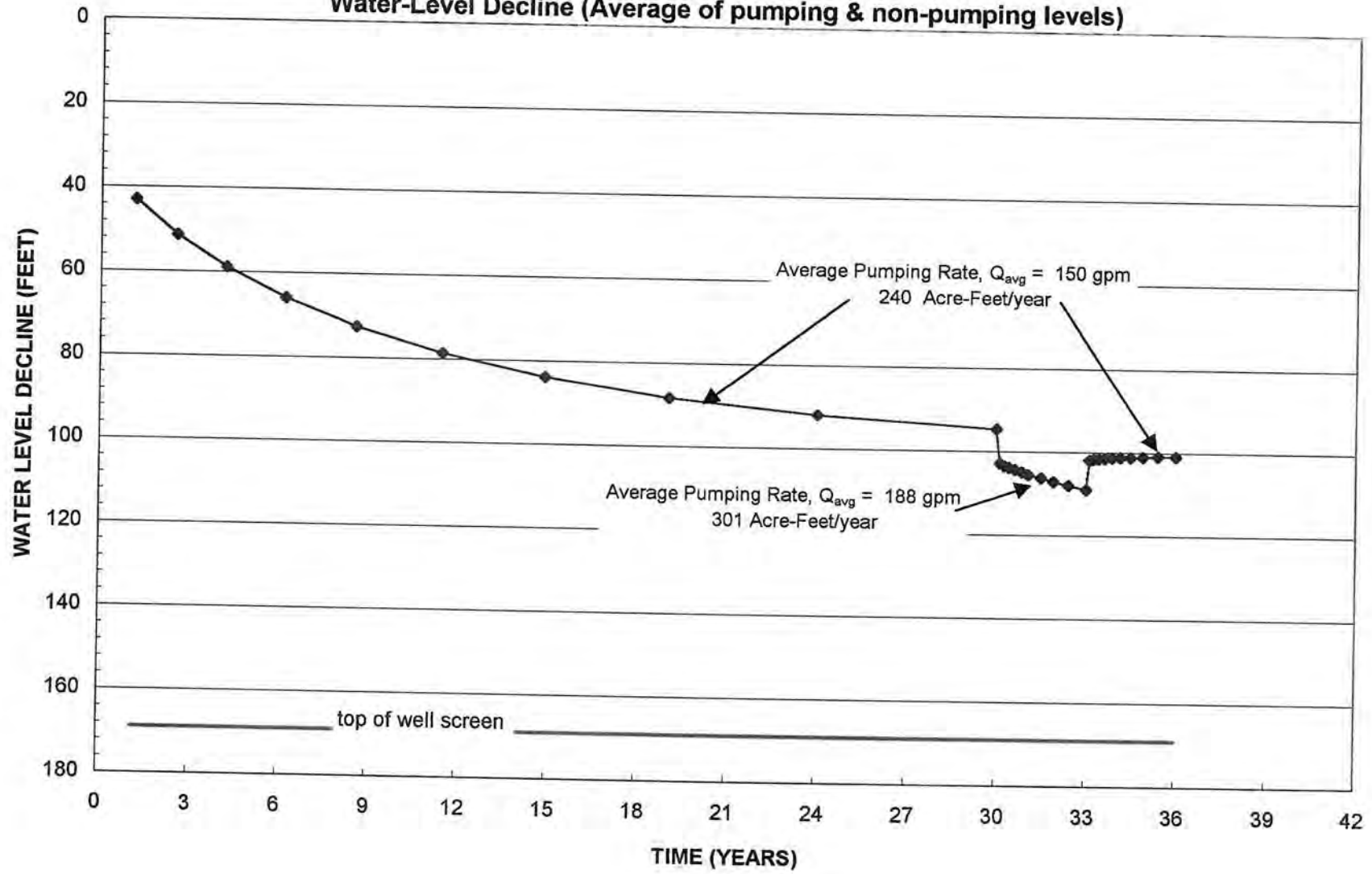


Figure 4-12 Mount Rose 5
Water-Level Decline (Average of pumping & non-pumping levels)





WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.co.washoe.nv.us

Exhibit 8

CM/ACM De
Finance AH
DA pld
Risk Mgt. N/A
HR N/A
Other N/A

STAFF REPORT BOARD MEETING DATE: August 9, 2011

DATE: July 20, 2011
TO: Board of County Commissioners
FROM: Rosemary Menard, Director, Department of Water Resources *RAM*
954-4666, rmenard@washoecounty.us
SUBJECT: **Review and adoption of: 1) The recommended Washoe County Domestic Well Mitigation Policy; and 2) The recommended Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures.** (All Commission Districts)

SUMMARY

On June 28, 2011, the Department of Water Resources' (DWR) presented to the Board of County Commissioners (Board) its recommended program for the mitigation of unreasonable adverse effects of municipal pumping on domestic wells in the Mt. Rose-Galena Fan area, and a draft Washoe County Domestic Well Mitigation Policy. Following the discussion, the Board directed DWR staff to finalize the policy and prepare amendments to its Water Rates, Fees and Charges Ordinance (Ordinance 1411) for Board action.

In addition to finalizing the Washoe County Domestic Well Mitigation Policy (see Attachment A), DWR staff has prepared procedures for the implementation of the Mt. Rose-Galena Fan Domestic Well Mitigation Program for adoption by the Board (see Attachment B).

A major element of the draft Washoe County Domestic Well Mitigation Policy is the proposed definition of "unreasonable adverse effects." The term "unreasonable adverse effects" comes directly from NRS 533.024 but is undefined in state law. The definition staff has developed articulates the legal, scientific, and policy principles that have been used in developing the Mt. Rose-Galena Fan Domestic Well Mitigation Program and establishes these principles as a guide for evaluating domestic well issues wherever they may occur within the County's water service area.

When implementing the Water and Sanitary Sewer Financial Assistance Program last year, DWR staff has found that the preparation and adoption by the Board of procedures for the program has worked well as both a clear guide for staff and an efficient and effective communication tool for potential program participants. Based on that experience, staff has prepared a set of procedures for the Mt. Rose-Galena Fan Domestic Well Mitigation Program for the Board's consideration.

AGENDA ITEM #

12

Both the recommended amendments to the Washoe County Schedule of Rates and Charges for Water Service Ordinance No. 1411, and the recommended Mt. Rose-Galena Fan Domestic Well Mitigation Program Implementation Procedures cover mitigation for the following major categories of property owners:

- Properties with domestic wells where community water service is not now and is not expected to be available in the future;
- Properties where the availability of community water system facilities will result in the conversion of a domestic well to the community water system;
- Properties where a domestic well owner voluntarily deepened his/her well in advance of the installation of community water system facilities; and
- Properties where the owner requests individual evaluation of their circumstances because they do not believe they fit into any of the options listed above.

Strategic Objective supported by this item: Sustainable Resources

BCC Annual Goal supported by this item: Sustainable resources linked to the needs of the public (public safety, security, health, cultural, recreational). The Department of Water Resources (DWR) will manage and protect regional water resources in a sustainable, cost-effective manner.

PREVIOUS ACTION

On June 28, 2011, the Board directed DWR staff to prepare changes to Ordinance No. 1411 necessary to implement the Mt. Rose-Galena Fan Domestic Well Mitigation Program and to bring to the Board for action a recommended Washoe County Domestic Well Mitigation Policy.

On February 22, 2011, the Board received a status report on groundwater management in the Department of Water Resources' service areas and directed DWR staff to work with community interests to develop the Mt. Rose-Galena Fan Domestic Well Mitigation Program.

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

It is recommended that the Board of County Commissioners review and adopt: 1) The recommended Washoe County Domestic Well Mitigation Policy; and 2) The recommended Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to adopt: 1) The recommended Washoe County Domestic Well Mitigation Policy; and 2) The recommended Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures."

RM/lr

Attachment A

Washoe County Domestic Well Mitigation Policy

1. Purpose

Washoe County owns and operates municipal water systems in several areas of the County where some established development is served by domestic wells. Over the last two decades the Department of Water Resources (DWR), the agency charged with administering, operating, and maintaining these water systems, has worked to address a range of groundwater management issues, especially those related to concerns raised by domestic well owners about the impacts of municipal pumping on groundwater levels and domestic well failures. Specific efforts in three areas, Spanish Springs, Northeast Lemmon Valley and the Mt. Rose-Galena Fan area of Southwest Reno have resulted in site specific approaches to addressing relevant issues. In some of these locations, property owners have raised concerns that the operation of municipal wells has caused or is causing an unreasonable adverse effect to domestic wells. Over time, DWR staff and community interests have worked with representatives of the Nevada State Engineer's Office to develop local approaches to reasonably mitigating the impacts of municipal pumping on domestic wells.

The purpose of this policy is to provide direction on the creation of domestic well mitigation programs and the settlement of individual claims for domestic well mitigation that are determined to be necessary to:

- improve management and protection of groundwater resources,
- prevent over-pumping the aquifer, and
- address any unreasonable adverse effects of municipal pumping on domestic wells in the Washoe County Department of Water Resources and South Truckee Meadows General Improvement District (STMGID) water service areas.

2. Connection to Nevada State Water Law

Under the laws of Nevada, all water "whether above or beneath the surface of the ground" belongs to the public, and while a person can establish a right to use waters of the State, such rights are defined and constrained by Nevada water law. In general, a right to use water in Nevada is acquired by applying to the Nevada Division of Water Resources for a permit to appropriate water and then proving the water has been actually diverted and put to beneficial use. Generally, a permit to appropriate will not be granted if all available water has already been appropriated, or if the proposed use will be detrimental to rights of established water users or the public interest.

Nevada water law has codified in statute the common law doctrine of "first in time, first in right." Under this doctrine, a "junior" appropriator's water rights are subordinate to the rights of "senior" appropriators. Generally, this means that the holders of water rights with earlier priority dates are entitled to receive their full water allocations, in order of priority, before any water is allocated to holders of rights with later priority. Water rights are treated as real property and can be severed from the original property and monetized as a separate property interest.

Nevada law creates an exception from the appropriation process and permit system for domestic wells. The owner of a typical domestic well does not acquire a “water right” but may use available groundwater resources to meet his or her domestic needs so long as the annual water draught from the well does not exceed 2 acre feet per year. The Nevada Division of Water Resources inventories domestic wells primarily through reporting requirements placed on well drillers. NRS 533.024.1(b) indicates that it is the “Policy of the State to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and *which cannot reasonably be mitigated.*” (emphasis added.)

Nevada water law does not, however, define what an unreasonable adverse effect is nor does it define what reasonable mitigation is. It does grant administrative powers to the State Engineer to manage the use of water in a basin including, but not limited to, restricting the drilling of domestic wells where water can be provided by a community water system or restricting the amount of water an individual permit holder can pump. The State Engineer, however, has not been granted the statutory authority to grant or award monetary relief to mitigate any injury suffered by domestic well owners whose domestic wells have been unreasonably adversely impacted by municipal pumping.

Appendix 1 to this policy statement provides excerpts of provisions of Nevada Water Law that are relevant to domestic wells. Some additional annotations and explanatory information have been provided in the interest of clarity and for establishing context. In particular, these excerpts address the status of domestic wells with respect to water rights, the amount of permitted use, and the establishment of a priority date for domestic wells.

3. Definition

Unreasonable Adverse Effect: For the purposes of this policy, Washoe County will consider an application for mitigation of an alleged unreasonable adverse effect caused by municipal pumping when all of the following circumstances have been shown to exist:

- A. The impacted domestic well must draw from the same source aquifer as the municipal well(s) alleged to be causing the unreasonable adverse effect; and
- B. Objective evidence must exist that clearly connects the municipal pumping to the impairment of the affected domestic well’s ability to provide a sustainable source of potable water for the property; and
- C. The impacted domestic well must be experiencing an actual or imminent effect resulting from the reduction of ground water supply to the well and that leads to the actual inability of the well to produce an adequate supply of water for domestic use; and
- D. Any protectable interest in the impacted domestic well is limited to the draught allowed under NRS 534.180(1); and
- E. The impacted domestic well must have a priority date, as defined by NRS 534.080.4, that is more senior than the priority date of the municipal well(s) alleged to be creating the unreasonable adverse effect.¹

¹ Except for the requirement that a domestic well must have existed before July 1, 2011, the priority date criteria is not being applied as a necessary criteria for establishing an unreasonable adverse effect for the Mt. Rose-Galena Fan Domestic Well Mitigation Program.

4. Policy Statement

A. General Provisions

In circumstances where application of the above criteria demonstrates the unreasonable adverse effects of municipal pumping on one or more domestic wells, it is the County's policy, when developing a mitigation strategy for an area, to establish an approach that provides affected parties with certainty, ensures that parties with similar circumstances are treated equably, and that the County's response to requests for mitigation is timely. Mitigation may be provided in a variety of forms and combinations including the following:

- Modifying the operation of municipal wells to lessen the impact of municipal pumping;
- Implementing active recharging programs for affected basins;
- Funding all or some part of a domestic well deepening;
- Funding all or some part of construction of a new domestic well when an existing domestic well can no longer provide water service to the property owner and the existing domestic well cannot be deepened; or
- Where a community water system is available, assisting property owners in connecting to the community water system by providing lowered cost or no cost connections to the community water system.

Where municipal pumping has caused or continues to cause an unreasonable adverse effect on a group of domestic wells, and the Board of County Commissioners (Board) has adopted a finding to this effect, Washoe County shall establish a programmatic approach to providing mitigation. As a general rule, properties being served by municipal wells whose operation has been shown to cause the unreasonable adverse effects on domestic wells, shall be the primary source of funding for domestic well mitigation programs developed for properties affected by such municipal pumping.² However, the funds needed to support a domestic well mitigation program may be generated by using a variety of funding mechanisms. Similarly, the mitigation programs created for different areas may use different approaches should the specific circumstances warrant it.

DWR has an obligation to the public and to its rate-payers to manage its financial resources in a fiscally responsible manner. Mitigating for the unreasonable adverse effects of municipal pumping on domestic wells is a legitimate cost of doing business when it has been established that such effects are occurring. When adverse effects have not been established, it is not appropriate or legally defensible for DWR to use public funds to compensate individual property owners for issues for which the individual property owner is legitimately responsible.

² The Board of County Commissioners may in the future seek legislative authorization for the establishment of a groundwater management program similar to the Las Vegas Valley Groundwater Management Program, which would allow for the establishment of funding mechanisms for groundwater protection and mitigation of water quality and supply issues.

No mitigation shall be provided to any domestic well owner unless the owner executes a document, which will be recorded against the subject property with the Washoe County Recorder, that acknowledges acceptance of mitigation for the impacted domestic well and fully releases and satisfies all current and future obligations of the County to provide mitigation for the unreasonable adverse effects of municipal pumping on the domestic well being mitigated.

B. Water Resources Department Director's (Director) Authority.

DWR's Director shall have the authority to grant or deny mitigation claims for amounts not to exceed \$25,000. Awards shall be subject to and in accordance with this Policy and any policies and procedures created pursuant to the creation of a Domestic Well Program for a district or impacted area. The Board further authorizes the Director to issue to the owners of eligible properties mitigation awards pursuant to the adopted compensated formula in single claim amounts not to exceed \$25,000 or less. For all other mitigation awards in single claim amounts that exceed \$25,000, Board authorization shall be required.

The Director shall establish and implement as needed regulations, policies and procedures regarding the administration of this or any Domestic Well Mitigation Program for an impacted district or area. Mitigation Program regulations, policies and procedures shall include, but not be limited to, the responsibility for: receiving and processing claims for mitigation; developing conditions, specifications and providing criteria for the granting of eligible mitigation claims in a not-to-exceed amount authorized by the Board for individual mitigation claims; establishing mechanisms for the review and evaluation of programmatic and individual mitigation claims. Regulations, policies and procedures for an impacted district or area shall be adopted by the Board prior to implementation.

C. Establishment of a Mitigation Program District

Where multiple domestic wells in an area are being adversely impacted by municipal pumping, a mitigation program applicable to the impacted area may be developed to address all adversely impacted domestic wells.

In considering whether to establish a mitigation district, the following criteria shall be considered:

- The degree to which the operation of a municipal well or well field is creating, or will create in the future, unreasonable adverse effects to an area containing multiple domestic wells;
- The degree to which the most likely mitigation that would be provided to the impacted domestic wells would be consistent across a large number of wells;
- The potential for increasing certainty of resolution, for both the County and potentially affected property owners whose domestic wells may be impacted by establishing a mitigation district; and
- The potential for reducing the County's cost for administration and management of a domestic well mitigation program for an impacted area through the establishment of a mitigation district.

Impacted or potentially impacted members of the area, as well as any other interested parties, will be consulted in the development of any mitigation program developed under this provision. Such a program will include a funding mechanism to support the program. Any program for an impacted area shall be authorized by the Board, and shall be designed to:

- Appropriately mitigate the adverse impacts of municipal pumping on domestic wells, while recognizing that not all impacts experienced by domestic well owners are the result of municipal pumping and that the age, condition, original construction and concentration of domestic wells in the adjacent area all can and often do influence the productivity of a domestic well.
- Achieve a sustainable water supply for the area given the anticipated or potential drawdown associated with current and planned municipal pumping. It is the responsibility of the domestic well owner to plan for, manage and maintain his or her domestic well to provide an adequate water supply to the property under other conditions that may affect the aquifer including drought, impacts related to other domestic wells or long term changes in water availability due to causes such as climate change.
- Result in a full and complete release of Washoe County from all liability once individual property owners receive appropriate mitigation for adverse impacts on domestic wells caused by municipal pumping.
- Be implemented in a manner that is fair and timely and that insures that those with similar conditions are treated equitably.
- Be easy to understand and efficient to administer.
- Be predictable and provide certainty to both domestic well owners and to DWR so that all parties can do appropriate planning and be prepared to meet their financial obligations when they occur.
- Be legally defensible and meet the requirements of Nevada law.
- Recognize that the mitigation program the County offers must be based on sound science and a finding of fact establishing a “cause and effect” relationship between the County’s municipal pumping and the unreasonable adverse effects on domestic wells of its pumping.

D. Mitigation to Individual Domestic Well Owners

Where an individual property owner believes his or her domestic well is experiencing the unreasonable adverse effect of municipal pumping, DWR’s Director shall apply the approaches, principles and scientific assessments used in making an area-wide finding of an unreasonable adverse effect to determine the eligibility of an individual property owner for mitigation. Such mitigation or offers of mitigation, if determined to be applicable in accordance with the Board of County Commissioners’ adopted policy criteria and principles, shall be similar in form and amount to that provided to domestic well owners when they are part of a mitigation program for an impacted area involving multiple domestic wells. The Director’s discretion to mitigate claims made by individual property owners is subject to satisfying the adopted mitigation program policy criteria and principles of eligibility.

E. Appeal

Should an affected domestic well owner not agree with the mitigation offered under either an area specific mitigation program or for an individual domestic well, he or she continues to have the right to submit his or her case to the State Engineer's office.

APPENDIX 1

Nevada Water Law regarding domestic wells **Pertinent sections from the Nevada Revised Statutes (NRS)** **(with some legislative history)**

NRS 533.025 Water belongs to public. The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public.

[1:140:1913; 1919 RL p. 3225; NCL § 7890]

Notes: This section of NRS is the basis of Nevada Water Law and the doctrine of prior appropriation.

NRS 533.024 Legislative declaration. The Legislature declares that:

1. It is the policy of this State:

(b) To recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from *unreasonable* adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated.

(Added to NRS by 1991, 296; A 1993, 2640; 2001, 551; 2005, 2560; 2009, 469)

Notes: This section declares the legislative intent and was added to the NRS in 1993 in an attempt to provide some additional recognition and protection to domestic wells not specifically afforded to them under the NRS. Prior to enactment of this provision, domestic wells were merely exempt from the appropriation process under NRS, i.e., a permit was not required for a domestic use well, but a domestic well was allowed everywhere water service was not available.

NRS 533.370 Approval or rejection of application by State Engineer: Conditions; exceptions; considerations; procedure.

5. Except as otherwise provided in subsection 11, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit. If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication.

[63:140:1913; A 1945, 87; 1947, 777; 1949, 102; 1943 NCL § 7948]—(NRS A 1959, 554; 1973, 865, 1603; 1977, 1171; 1981, 209, 359; 1989, 319; 1991, 759, 1369; 1993, 1459, 2082, 2349; 1995, 319, 697, 2523; 1999, 1045; 2001, 552; 2003, 2980; 2005, 2561; 2007, 2017; 2009, 597)

Notes: The declarations in NRS 533.025, 533.024 and re-iterated in 533.370(5) does not provide a *superiority* to domestic wells but rather provides for their equal consideration during the appropriation process.

NRS 534.013 “Domestic use” and “domestic purposes” defined. “Domestic use” or “domestic purposes” extends to culinary and household purposes directly related to:

1. A single-family dwelling; and
2. An accessory dwelling unit for a single-family dwelling if provided for in an applicable local ordinance, including, without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if the amount of water drawn does not exceed the maximum amount set forth in NRS 534.180 for exemption from the application of this chapter.

(Added to NRS by 1987, 1770; A 1999, 1184; 2007, 842)

NRS 534.120 State Engineer authorized to make rules, regulations and orders when groundwater is being depleted in designated area; preferred uses of water; temporary permits to appropriate water; revocation of temporary permits; restrictions placed on certain wells.

3. Except as otherwise provided in subsection 5, the State Engineer may:

(c) Limit the depth of domestic wells.

(d) Prohibit the drilling of wells for domestic use, as defined in NRS 534.013, in areas where water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.

[10.5:178:1939; added 1955, 328]—(NRS A 1989, 1401; 1999, 3542; 2001, 555; 2003, 622, 624; 2007, 845)

NRS 534.180 Applicability of chapter to wells used for domestic purposes; registration and plugging of wells used for domestic purposes; wells for accessory dwelling unit of single-family dwelling.

1. Except as otherwise provided in subsection 2 and as to the furnishing of any information required by the State Engineer, this chapter does not apply in the matter of obtaining permits for the development and use of underground water from a well for domestic purposes where the draught does not exceed 2 acre-feet per year.

2. The State Engineer may designate any groundwater basin or portion thereof as a basin in which the registration of a well is required if the well is drilled for the development and use of underground water for domestic purposes. A driller who drills such a well shall register the information required by the State Engineer within 10 days after the completion of the well. The State Engineer shall make available forms for the registration of such wells and shall maintain a register of those wells.

3. The State Engineer may require the plugging of such a well which is drilled on or after July 1, 1981, at any time not sooner than 1 year after water can be furnished to the site by:

(a) A political subdivision of this State; or

(b) A public utility whose rates and service are regulated by the Public Utilities Commission of Nevada, but only if the charge for making the connection to the service is less than \$200.

[3:178:1939; A 1947, 52; 1949, 128; 1955, 328]—(NRS A 1971, 868; 1977, 383; 1981, 1843; 1983, 2090; 1985, 1302; 1997, 2010; 2007, 846)

NRS 534.080 Appropriation of underground water for beneficial use from artesian, definable aquifer or percolating water: Acquisition of rights under chapter 533 of NRS; orders to desist; dates of priority.

4. The date of priority for the use of underground water from a well for domestic purposes where the draught does not exceed 2 acre-feet per year is the date of completion of the well as:

(a) Recorded by the well driller on the log the well driller files with the State Engineer pursuant to NRS 534.170; or

(b) Demonstrated through any other documentation or evidence specified by the State Engineer.

[9:178:1939; A 1947, 52; 1943 NCL § 7993.18]—(NRS A 1957, 718; 1967, 195; 2007, 843)

Notes: Excerpts above clearly indicate that domestic wells are under the jurisdiction and regulation of the State Engineer. Their rights are only those contained under NRS and they are not above the provisions of the Nevada Water Law. The State Engineer retains the right to regulate their drilling, use and their abandonment when warranted under NRS. . In 2007 the legislature clarified what the applicable priority date for a domestic well is (534.080(4)) reiterating the jurisdiction of the State Engineer, the NRS and the prior appropriation doctrine over domestic wells.

NRS 534.020 Underground waters belong to public and are subject to appropriation for beneficial use; declaration of legislative intent.

1. All underground waters within the boundaries of the State belong to the public, and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water and not otherwise.

[1:178:1939; 1931 NCL § 7993.10]

NRS 533.030 Appropriation for beneficial use; use for recreational purpose, developed shortage supply or intentionally created surplus declared beneficial; limitations and exceptions.

1. Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

[2:140:1913; 1919 RL p. 3225; NCL § 7891]—(NRS A 1969, 141; 1981, 658; 1985, 1301; 1989, 535, 1444; 1995, 2659; 2009, 643)

Notes: The water rights associated with the municipal wells owned by Washoe County are appropriations of ground water fully consistent with the provisions of NRS above. The municipal wells providing water service to a large number of residents of the State have an equal right to the ground water resources of the state as any domestic well within the State of Nevada.

NRS 534.110 Rules and regulations of State Engineer; statements and pumping tests; conditions of appropriation; restrictions.

3. The State Engineer shall determine whether there is unappropriated water in the area affected and may issue permits only if the determination is affirmative. The State Engineer may require each applicant to whom a permit is issued for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more, to report periodically to the State Engineer concerning the effect of that well on other previously existing wells that are located within 2,500 feet of the well.

4. It is a condition of each appropriation of groundwater acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right

must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining a reasonable lowering of the static water level in a particular area, the State Engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water on the economy of the area in general.

5. This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions. At the time a permit is granted for a well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more, the State Engineer shall include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to *prevent any unreasonable adverse effects on an existing domestic well* located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures that mitigate those adverse effects.

6. The State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, the State Engineer may order that withdrawals be restricted to conform to priority rights.

[10:178:1939; A 1947, 52; 1949, 128; 1955, 328]—(NRS A 1993, 2641; 2001, 553)

Notes: The provisions of NRS above clearly indicate that lowering of water level is a natural and anticipated impact of any ground water appropriation and diversion. These provisions also represent some of the restrictions that are imposed on municipal wells and the ground water appropriations associated with them. These restrictions only emerge from an unreasonable lowering of the ground water levels. The Nevada water law does not contain a pre-determined magnitude of declines to define an unreasonable lowering.

Attachment B

Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures

These Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures shall be applied to guide the Department of Water Resources' (DWR) implementation of the Mt. Rose-Galena Fan Domestic Well Mitigation Program. Modification of these procedures shall require review and action by the Washoe County Board of Commissioners.

1. Definitions

Unreasonable Adverse Effect: For the purposes of this policy, Washoe County will consider an application for mitigation of an alleged unreasonable adverse effect caused by a municipal pumping when all of the following circumstances have been shown to exist:

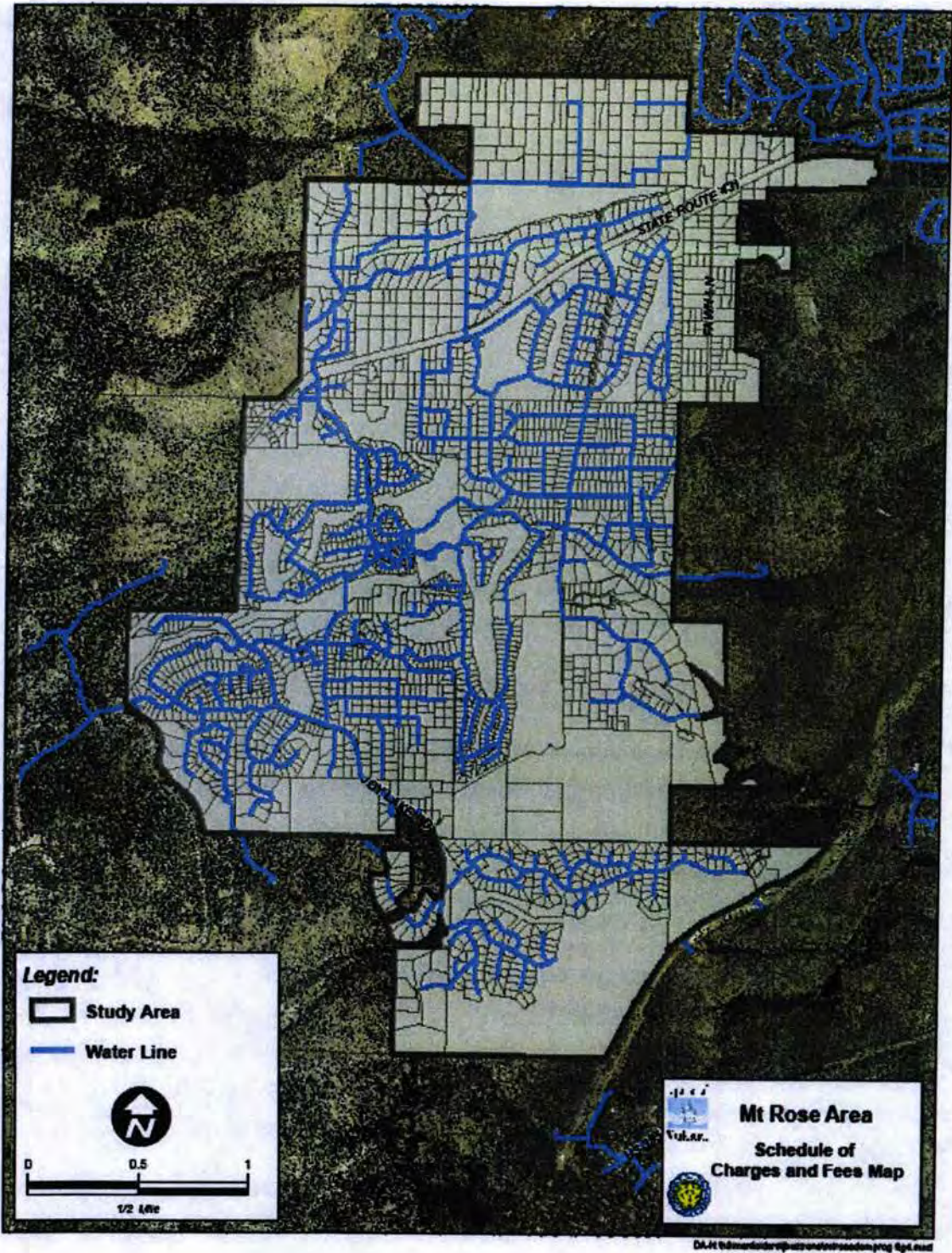
- A. The impacted domestic well must draw from the same source aquifer as the municipal well(s) alleged to be causing the unreasonable adverse effect; and
- B. Objective evidence must exist that clearly connects the municipal pumping to the impairment of the affected domestic well's ability to provide a sustainable source of potable water for the property; and
- C. The impacted domestic well must be experiencing an actual or imminent effect resulting from the reduction of ground water supply to the well and that leads to the actual inability of the well to produce an adequate supply of water for domestic use; and
- D. Any protectable interest in the impacted domestic well is limited to the draught allowed under NRS 534.180(1); and
- E. The impacted domestic well must have a priority date, as defined by NRS 534.080.4, that is more senior than the priority date of the municipal well(s) alleged to be creating the unreasonable adverse effect.¹

Mt. Rose-Galena Fan Domestic Well Mitigation Program: Properties located in the Mt. Rose-Galena Fan Domestic Well Mitigation Program Area boundary shown on Figure 1² and served by a domestic well established before July 1, 2011, or multiple properties served by an established quasi-municipal well located within the Program Area boundary, are eligible to apply for mitigation of the unreasonable adverse effects of municipal pumping on domestic wells. The provisions of the program are as defined by the Department of Water Resources' Water Rate Ordinance as adopted by the Board of County Commissioners and Section 2 of these Policies and Implementation Procedures.

¹ Except for the requirement that a domestic well must have existed before July 1, 2011, the priority date criteria is not being applied as a necessary criteria for establishing an unreasonable adverse effect for the Mt. Rose-Galena Fan Domestic Well Mitigation Program.

² Figure 1 includes properties located in both Washoe County DWR and the South Truckee Meadows General Improvement District (STMGID) service areas.

Figure 1
Mt. Rose-Galena Fan Domestic Well Mitigation Program Area Map



2. Mt. Rose-Galena Fan Domestic Well Mitigation Program

A. General Provisions

Only developed properties existing in the Mt. Rose-Galena Fan Domestic Well Mitigation Program Area delineated on Figure 1 and being served by a domestic well existing before July 1, 2011, or that have been served by a domestic well at some point before July 1, 2011, shall be eligible to participate in the mitigation programs described in these implementation procedures.

Properties in the Mt. Rose-Galena Fan Domestic Well Mitigation Area shown on Figure 1 that are undeveloped before July 1, 2011, and that will be served by a domestic well or by existing or future community water facilities shall not be eligible to participate in the mitigation programs described in these Policies and Implementation Procedures. Such properties shall be subject to all relevant terms and conditions of DWR's Water Rate Ordinance related to connecting to the community water system or the Washoe County Health District's and Nevada Division of Water Resources' requirements for developing a domestic well.

Each property eligible for participation in the Mt. Rose-Galena Fan Domestic Well Mitigation Program Area shall be limited to receiving mitigation, as outlined in these procedures, for a maximum of one domestic well per property.

B. The Mt. Rose-Galena Fan Domestic Well Mitigation Program includes the following elements:³

(1) Properties with domestic wells where community water service is not now and is not expected to be available in the future.

Property owners in this category shall be entitled to compensation for deepening their domestic well by 150 feet⁴.

Effective July 1, 2011, the compensation for 150 feet of well deepening shall be \$9,961 (150 feet @ \$66.40 per foot), and the annual compensation amount for each new fiscal year shall be established using the following procedure and shall become effective on July 1st of each year.

The procedure for adjusting the annual compensation amount shall be as follows:

³ Note: Programs described and detailed in Section 2, Mt. Rose-Galena Fan Domestic Well Mitigation Program are specific to and limited to the Mt. Rose-Galena Fan Domestic Well Program area established in Figure 1 and shall not be considered to apply elsewhere where individual or programmatic domestic well mitigations may occur.

⁴ Note: The recommended 150 feet of deepening is specific to those properties in the Mt. Rose-Galena Fan Domestic Well Mitigation Program where community water service is not now and is not expected to be available in the future.

DWR shall conduct a survey of a minimum of five (5) licensed well drillers in the region to determine the average cost of deepening a well by 150 feet. For the purposes of this survey, the region shall be defined as Northern Nevada and Northeastern California. This cost shall include the following activities: mobilization and demobilization, set-up, drilling, permitting, site rehabilitation, subject to limitations described below, necessary materials and materials disposal. The cost estimate shall not include appurtenances. For the purposes of these Policies and Implementation Procedures, appurtenances shall include but not be limited to the following domestic well components: pumps, motors, wire, pipe adapters, valves, clamps, couplings, spacers, gauges, wrap, pressure tanks, switches, and pitless adapters.

The cost per foot of 150 feet of deepening obtained from all the drillers participating in the survey shall be subjected to a simple mathematical averaging process to establish the revised annual compensation amount.

In the event that a well cannot be deepened, for example, due to casing size limitations that do not allow the insertion of drilling and pumping equipment, DWR shall provide compensation using the cost per foot established for deepening of a well for drilling a new well to a depth not to exceed the depth of the to-be abandoned well plus 150 feet. Property owners choosing to drill a well deeper than this shall be responsible for any incremental cost associated with drilling the well deeper.

Property owners shall be responsible for covering any and all other on-site costs associated with well deepening, including the restoration of any landscaping, irrigation or hard-scaping as well as any necessary appurtenances associated with the new or deepened well. Property owners requiring a new well to be drilled shall be responsible for all costs of abandoning the original well.

The quasi-municipal well serving the following seven parcels: Assessor Parcel Numbers 047-162-16, 047-162-26, 047-162-27, 047-162-28, 047-162-29, 047-162-30, and 047-162-31, shall be covered by this program element and shall be entitled to have their community well deepened in the event their community well is unreasonably adversely impacted by municipal pumping. These property owners shall be responsible for covering any and all other on-site costs including the restoration of any landscaping, irrigation or hard-scaping as well as any necessary appurtenances associated with a deepened well.

- (2) Properties where the availability of municipal water system facilities has resulted or will result in the conversion of a domestic well to the municipal water system.**

In accordance with Nevada law, properties with a domestic well where a water line is available will be required to connect to the municipal water system. For these properties, DWR will provide a recordable, transferrable guarantee of a “zero cost” connection to water system infrastructure in the public right of way. This means DWR will waive any and all of the following fees that would typically apply to a property connecting to the community water system:

- General Connection Privilege Fee;
- Line Extension Fee;
- Meter Pit and Service Lateral Construction Fee; and
- Meter Set Fee, which includes the meter and automated meter reading device as well as the labor required to install the meter.

Property owners will be responsible for covering all on-site costs related to the conversion from a domestic well to community water service including trenching from the meter box to the residence, modifying residential plumbing to accept the new service, removing and disposing of any pressure tanks or other facilities related to the domestic well and properly abandoning the domestic well, including but not limited to, obtaining any required permits, inspections and covering any other related fees or expenses.

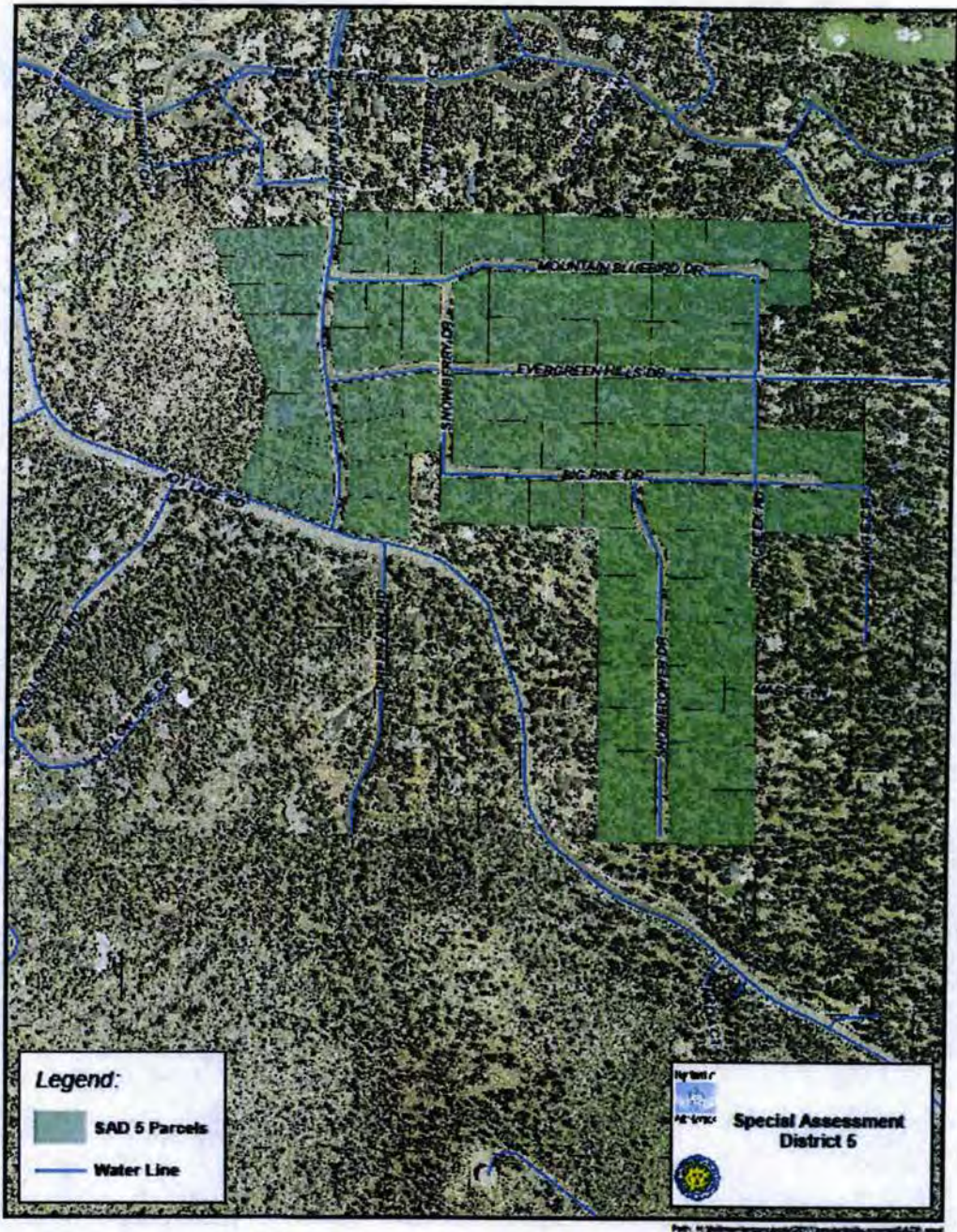
Property owners converting from domestic wells to community water service have the option to apply for financing of their on-site costs through the DWR’s Water and Sanitary Sewer Financial Assistance Program.⁵

Property owners in the impacted area whose domestic wells have failed, who meet the other program criteria and who have already connected to the municipal water system shall receive a reimbursement of previously paid connection fees related to the cost of infrastructure in the public right-of-way. Any prior mitigation provided by Washoe County or STMGID for on-site costs will be subtracted from the reimbursement. Property owners who received prior mitigation in excess of the total cost of connection to the infrastructure in the public right-of-way will not be required to reimburse DWR for any amount they received above the public right-of-way cost. Reimbursements shall not include interest.

Parcels with domestic wells located in the now closed Special Assessment District (SAD) 5, (see map in Figure 2), shall have the amount of the assessment they paid for the water facility portion of the SAD refunded (typically in the range of \$3400) and shall be allowed to connect to the community water system under the same terms as other property owners in this category.

⁵ For information about the terms and conditions of the Water and Sanitary Sewer Financial Assistance Program, please reference materials posted on the County’s website at <http://www.washoecounty.us/water/AB-54.htm>.

Figure 2
Special Assessment District 5 Boundary Map



(3) Properties where a domestic well owner deepened his/her well in advance of the installation of municipal water system facilities.

Property owners who deepened their well in advance of a water line being installed will receive a recordable, transferable guarantee of a “zero cost” connection to water system infrastructure in the public right of way. This means DWR will waive any and all of the following fees that would typically apply to a property connecting to the community water system:

- General Connection Privilege Fee;
- Line Extension Fee;
- Meter Pit and Service Lateral Construction Fee; and
- Meter Set Fee, which includes the meter and automated meter reading device as well as the labor required to install the meter.

Property owners will be responsible for covering all on-site costs related to the conversion from a domestic well to community water service including trenching from the meter box to the residence, modifying residential plumbing to accept the new service, removing and disposing of any pressure tanks or other facilities related to the domestic well and properly abandoning the domestic well, including but not limited to, obtaining any required permits, inspections and covering any other related fees or expenses.

(4) Evaluation of individual circumstances not initially fitting into any of the above categories.

Property owners who have either already connected to a municipal water system or have already deepened their domestic well before July 1, 2011 and who believe the circumstances related to their individual situation does not place them clearly into one of the categories described in this section may request their claim to be reviewed by DWR staff.

When conducting this evaluation, DWR staff will use the criteria included in the definition of “unreasonable adverse effect” from Section 1 of this document and will also take into consideration the following additional factors that can affect a well’s ability to reliably produce water for domestic use:

- The impacts on groundwater levels resulting from natural variability of annual precipitation, including multi-year droughts;
- The impact on well performance of the well’s original construction, including the degree to which the well’s failure can be attributed to sub-standard construction methods and/or not initially drilling the well deep enough to provide an adequate and reliable supply under conditions that could reasonably be

anticipated, including the local concentration of other domestic wells.

Property owners requesting individual evaluation of their circumstances may be required to submit historical and/or current documents such as the Well Driller's Report from the well's initial construction, maintenance records, the Well Driller's Report from any well deepening activities, receipts for work performed, and any other information or data necessary for or desired by DWR staff to fully consider and properly evaluate a property owner's individual circumstances.

DWR's Director shall have the discretion to approve or deny mitigation claims for property owners requesting evaluation of their individual circumstances based on the following criterion:

- The mitigation must be generally consistent with the approaches developed for those categories described in Section 2.B and will be based on the findings and recommendations of DWR staff.

A property owner who is not satisfied by the mitigation offered by DWR has the right to submit his or her case for review by the State Engineer.

Processing of individual evaluation requests shall be on a "first come, first serve" basis using date stamp received and shall be accommodated by DWR staff as feasible given other workloads. Reimbursements shall not be issued until evaluations are complete and the property owner has signed the necessary release.

3. Mt. Rose-Galena Fan Domestic Well Mitigation Program Implementation Procedures

A. Notice

DWR will provide notice to all property owners within the designated boundary of the Mt. Rose-Galena Fan Domestic Well Mitigation Program of the availability of the program. The notice will provide property owners with information on eligibility and how to apply for mitigation.

Only current property owners will be notified by DWR of the program's availability. DWR is under no obligation to attempt to locate or to provide notice to a previous owner of any parcel in the Mt. Rose-Galena Fan Domestic Well Mitigation Program Area.

B. Procedures for Reimbursement of Fees Paid or Costs Incurred

(1) Eligible Properties

To be eligible to receive reimbursement, a property owner, or community property interest holder, must have been the owner of record of the property at the time the cost for which the reimbursement is being requested was incurred.

An individual need not be the current owner of the property to receive reimbursement. Should a previous property owner submit a request for mitigation, DWR will notify the current owner that mitigation has been applied for. DWR will require a former property owner to provide appropriate documentation demonstrating that he or she was the owner of record at the time eligible mitigation costs were incurred. If mitigation is provided to a previous property owner, documentation of mitigation received will be recorded against the property and will foreclose the current property owner's eligibility to receive mitigation.

Should a dispute arise between a current property owner and a former property owner or any current or former community property interest holders about who is entitled to receive mitigation, DWR shall not provide any mitigation until the dispute is resolved by the parties and documentation to that effect is provided to DWR.

(2) Application for Reimbursement

Property owners who believe they are owed a reimbursement for public right-of-way infrastructure connection fees already paid or for well deepening that has already occurred shall submit an application (form to be provided) to DWR briefly stating the basis for the reimbursement.

(3) Processing of Applications for Reimbursements

DWR staff shall process applications for reimbursement in the order of date stamp received, and shall issue reimbursements using the relevant program provisions described in Section 2 of these Policies and Implementation Procedures. Reimbursement checks shall not be issued until the recipient has executed the required legal release document indicating that the property is not eligible for future or further mitigation.

(4) Documentation of Mitigation Received

When a property owner has exercised his or her right to receive mitigation, DWR staff shall record in the Office of the County Recorder, Official Records, a notice against the property documenting the mitigation provided, including a copy of the property owner's legal release of the County for any further or future mitigation. Recording fees shall be paid by DWR.

C. Procedures for Properties to Receive Future Mitigation

(1) Eligible Property Owner

For those properties eligible to receive future mitigation, mitigation will be provided to the owner of record at the time the property's well is deepened or the connection to the community water system is made.

(2) Application for Future Mitigation

Property owners who believe their property is eligible for future mitigation shall submit an application (form to be provided) to DWR briefly stating their eligibility for future mitigation.

(3) Processing of Applications for Future Mitigation

Once DWR staff has substantially completed processing the applications for reimbursement, including any reimbursement requests submitted under the Special Circumstances provisions of Section 3.D below, DWR staff shall process applications for future mitigation in the order of date stamp received. The mitigation to be provided shall be based on applying the relevant program provisions described in Section 2.B of these Policies and Implementation Procedures.

(4) Documentation of Eligibility for Future Mitigation

DWR staff shall record in the Office of the County Recorder, Official Records, a document indicating each property's eligibility for future mitigation, including specifying what mitigation is to be provided. All commitments of future mitigation shall be transferable to future property owners and shall remain in effect until the designated mitigation is provided. Recording fees shall be paid by DWR.

(5) Exercising a Commitment for Future Mitigation

At the time a property owner needs to exercise his/her commitment for future mitigation, he or she shall contact DWR, or a water purveyor that is DWR's successor in interest, and request that the commitment for future mitigation be fulfilled. Mitigation shall not be provided in advance of the property owner actually connecting to the community water system or deepening his/her domestic well. All property owners wanting to exercise their commitment for future mitigation must execute the required legal release document prior to being reimbursed for well deepening costs or having a meter set that provides for connection to the community system.

(6) Documentation of Mitigation Received

When a property owner has exercised his or her right to receive mitigation, DWR staff shall record in the Office of the County Recorder, Official Records, a notice against the property documenting the mitigation

provided, including a copy of the property owner's legal release of the County for any further or future mitigation. Recording fees shall be paid by DWR.

D. Property Owners Requesting Individual Review Due to Special Circumstances

(1) Eligible Property Owner

A property owner requesting an individual review due to special circumstances must meet the applicable property eligibility requirements laid out in these procedures.

(2) Application for Individual Review Due to Special Circumstances

Property owners who believe their circumstances require individual review shall submit an application (form to be provided) to DWR briefly stating the special circumstances that necessitate an individual review.

(3) Processing of Applications for Individual Review

Once DWR staff has substantially completed processing all applications for reimbursement under Section 2.B of these Policies and Implementation Procedures, DWR staff will process applications for individual review on a first come, first serve basis using the date stamp received.

Individual reviews shall be conducted in accordance with the provisions of Section 2.B of these Policies and Implementation Procedures. DWR staff shall notify the property owner of the outcome of the individual review and a property owner may choose to accept DWR's proposed mitigation, or submit his or her case to the State Engineer for review.

(4) Reimbursement of Connection Fees or Well Deepening Expenses Incurred

If a property owner requesting individual review is eligible for and requests reimbursement of connection fees paid or domestic well deepening costs incurred, such requests will be processed as outlined in Section 2.B of these Policies and Implementation Procedures. Reimbursement checks that may be required to provide agreed-upon mitigation shall not be issued until the recipient has executed the required legal release document indicating that the property is not eligible for future or further mitigation. Reimbursements issued shall be recorded in the Office of the County Recorder, Official Records, as per the provisions Section 3.D(7) below.

(5) Documentation of Eligibility for Future Mitigation

If a property owner requesting individual review is eligible for and accepts a commitment of future mitigation, DWR staff shall record in the Office of the County Recorder, Official Records, a document indicating the property's eligibility for future mitigation, including specifying what mitigation is to be provided. All commitments of future mitigation shall be transferable to future property owners and shall remain in effect until the designated mitigation is provided. Recording fees shall be paid by DWR.

(6) Exercising a Commitment for Future Mitigation

At the time a property owner needs to exercise his/her commitment for future mitigation, he or she shall contact DWR, or a water purveyor that is DWR's successor in interest, and request that the commitment for future mitigation be fulfilled. Mitigation shall not be provided in advance of the property owner actually connecting to the community water system or deepening his/her domestic well. A property owner wanting to exercise his or her commitment for future mitigation must execute the required legal release document prior to being reimbursed for well deepening costs or having a meter set that provides for connection to the community system.

(7) Documentation of Mitigation Received

When a property owner has exercised his or her right to receive mitigation, DWR staff shall record in the Office of the County Recorder, Official Records, a notice against the property documenting the mitigation provided, including a copy of the property owner's legal release of the County for any further or future mitigation. Recording fees shall be paid by DWR.



STAFF REPORT

TO: Board of Directors
THRU: Mark Foree, General Manager
FROM: Scott Estes, Director of Engineering
John Erwin, Director of Natural Resources
DATE: April 6, 2015
SUBJECT: **Rate Amendment, Introduction: Introduction and First Reading of amendments to TMWA Rate Schedule Water System Facility Charges (“WSF”) for Charge Areas 14 and 15**

RECOMMENDATION

Staff presents for the Board’s consideration and discussion with possible direction to staff the First Reading of proposed amendments to TMWA’s Rate Schedule WSF Water System Facility Charges (WSF) to modify Charge Area 14 and 15 Facility Charges and boundaries. The proposed amendments are necessary to allocate costs of additional facilities identified by TMWA after completion of the merger which will be necessary to conjunctively manage and improve the sustainability of water supply in Charge Areas 14 and 15.

Proposed amendments are shown in the attached redline copies. The proposed amendments, if adopted after the public hearing for the Second Reading, tentatively scheduled for May 21, 2015, are to be effective the start of business day June 1, 2015.

BACKGROUND

During merger due diligence, TMWA identified that once the mergers with STMGID and Washoe County were complete, TMWA would need to develop programs to move surface water into and conjunctively manage surface and groundwater resources in the Mt. Rose/Galena Fan area to protect existing municipal groundwater supplies. The Mt. Rose/Galena Fan area is located in the southwest Truckee Meadows and is broken into two sub-areas: (1) the area in Pleasant Valley Hydrographic Basin 88, also referred to as the Arrowcreek/Mt. Rose Area (“Arrowcreek/Mt Rose”) and (2) the southwest area in Truckee Meadows Hydrographic Basin 87, also referred to as the STMGID West/Thomas Creek area (“STMGID West”). TMWA Charge Area 14 encompasses portions of STMGID West/Thomas Creek and Arrowcreek/Mt. Rose. TMWA Charge Area 15 encompasses only portions of Arrowcreek/Mt. Rose. Each area has unique geology and hydrologic constraints and thus, two separate but necessary solutions are required to improve groundwater resource supplies in these areas.

Based on growth and other projections at the time, it was anticipated TMWA would have some time after the merger closing to refine and implement conjunctive use resource and facility planning in these areas. However, accelerated recovery in the housing markets combined with historic extended drought conditions have accelerated the need to implement such plans to mitigate impacts of future groundwater dedications while developing long term engineered solutions to replenish the aquifer. These plans include 1) identifying supplemental surface water dedication requirements; and 2) modifying capital improvement plans to develop water system facilities to move surface water resources into the fan area.

On December 31, 2014, the Truckee Meadows Water Authority acquired the water utility systems of the Washoe County Department of Water Resources (“DWR”) and the South Truckee Meadows General Improvement District (“STMGID”). The systems acquired include systems in the Mt. Rose/Galena Fan area in southwest Reno. As a result, TMWA is now the municipal purveyor with the authority to provide water service to new development in the Mt. Rose/Galena Fan.

The Mt. Rose/Galena Fan is located in hydrographic basin 88 and the southwest corner of hydrographic basin 87. The area is generally located along the corridor of the Mt. Rose highway, and south of the highway into Pleasant Valley. In addition to the former municipal systems of DWR and STMGID, there are approximately 450 to 500 active domestic wells in Area 15 that rely on groundwater resources.

DWR and STMGID relied solely on groundwater to provide water supply in the Mt. Rose/Galena Fan area, providing water service through numerous municipal wells. Many of these rights came from the County’s acquisition of the Mt. Rose Utility system and various groundwater rights in the early 1990’s. Mt. Rose Service Company also assigned ownership of various water rights to private parties as well, so ownership of permitted groundwater rights are mixed between DWR (now TMWA) and private developers. On paper, TMWA now owns over 3,900 AF of groundwater permits issued by the State Engineer in Basin 88. Approximately 1,500 AF of groundwater permits remains uncommitted for future use.

The primary risk with any water right is whether a reliable supply of actual physical water exists year-in, year-out that can be diverted for the intended use. The critical question is not whether a person has a right on paper (i.e., in a permit) to water, it is whether the water claimed on paper actually exists. This is particularly true in groundwater basins where the amount of water stored in the aquifer continually declines year-over-year. If aquifers are over pumped and in continual decline, wells eventually go dry, causing hardships on municipal and domestic well owners and threatening the sustainability of water supplies previously committed for service.

In the early 1990’s, concern was expressed that the Mt. Rose/Galena Fan aquifer was being over pumped, causing continual decline in water levels year-over-year without evidence of recovery from the natural hydrologic cycle. In 1991, County modeling concluded that “pumping a total of 8,892 AFA of groundwater from the Mt Rose / Galena Fan area... results in over pumping of the aquifer system”. See Preliminary Results of Groundwater Investigation, Technical Memo 4, pg 4-2 (Jan 25, 2002). The County developed the South Truckee Meadows Facility Plan, which

concluded the Mt Rose/Galena Fan aquifer is over pumped and in need of supply augmentation in order to meet demands in the area,¹ reaffirming earlier County modeling efforts.

Based on analyses, studies and the history of groundwater levels in Area 15 and the southwest portion of Basin 87, water levels are declining and evidence indicates additional withdrawals of groundwater will exceed the perennial yield of the basin, causing continued declines in water levels in the aquifer. TMWA staff has determined that sufficient evidence exists to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water than can be extracted on a sustainable basis without impairing TMWA water rights used to meet existing commitments or impairing existing domestic wells. These issues were identified by TMWA during the Merger due diligence. TMWA recognized that upon acquisition of the DWR and STMGID systems, TMWA would need to develop programs to move surface water into these systems and conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. In fact, TMWA's unique ability to provide conjunctive use management (something neither STMGID nor DWR could do with their more limited assets) was one of the identified benefits in consolidating the systems. In anticipation of the groundwater issues, the TMWA Board adopted the County's Mt Rose / Galena Fan Domestic Well Mitigation Program to provide mitigation for domestic well owners suffering unreasonable adverse impacts from municipal well pumping. Additionally, prior to the completion of the merger TMWA staff began evaluating and developing strategies for financing and constructing infrastructure needed to move surface water resources into the Mt. Rose Fan area.

SOUTHWEST TRUCKEE MEADOWS: CONJUNCTIVE USE FACILITY PLAN

In October 2014, the TMWA Board approved updates to Schedule WSF that implemented applicable cost recovery mechanisms for Washoe County water systems upon the close of merger. The collection of Facility Charges from new development is necessary to reimburse the utility for facility improvements required to meet the demands of new growth. Area Facility Charges, Supply and Treatment Facility Charges and Storage Facility Charges apply only to developers applying for new or expanded water service, and do not affect the costs or rates to serve existing customers. In other words, pursuant to prior Board direction on customer rates: growth pays for growth.

To begin the process to mitigate the potential shortfall in real water in this area, TMWA has identified the need for additional infrastructure and facilities to take advantage of Galena, Thomas and Whites Creek resources to improve the long-term viability and sustainability of water supplies in this region. In order to recover applicable costs from new development, TMWA staff is seeking Board approval of amendments to the Water System Facility charges imposed on new development.

¹ "A consensus was reached that it is likely that the municipal wells can reliably supply up to approximately 75% of the groundwater rights allocated to municipal wells in the STM, in addition to the demand placed on the aquifer by individual domestic wells." Technical Memo 8, Recommended Water and Wastewater Facility Plan, Pg 8-3 (June 28, 2002)

Since the merger, TMWA conducted pump tests at the Napoleon #1 & #2 Wells (formerly known as the Tessa East & West Wells). Based on the result of those pump tests, staff concluded that continued pumping of these wells at rated/design capacity cannot be sustained. The non-pumping static water level in these wells has declined about 80 feet in the last 10 years and average pumping levels are now 45 feet below the top of the well screen. The long-term reduction of pressure in water bearing strata can lead to dewatering and consolidation of the geologic formation and can result in irreversible damage to the aquifer. Approximately 1,450 gallons per minute (gpm) of maximum day supply has been committed from the Napoleon wells. However, staff is limiting the production from these two wells to 1,000 gpm total to reduce continued degradation of the basin. A similar conservative approach is recommended for equipping of the future Callamont wells. Clearly a supplemental source of supply is needed for the area.

The current groundwater situation has been aggravated by continued drought conditions, thus staff is accelerating plans to construct facilities to deliver conjunctive use surface water into the area. The resulting facility plan is slightly different than that used to develop the original developer fees approved in 2014. The current plan takes advantage of existing property and facilities with excess off-peak capacity to deliver surface water to the upper reaches of the Arrowcreek system to allow passive recharge to begin in much of Area 15 during the winter of 2015/2016. The plan is a phased approach and eventually will deliver surface water to the balance of Area 15, including the upper reaches of the Mt. Rose system. In addition, the current facility plan still includes a separate system to deliver conjunctive use surface water into the STMGID West zone (Area 14) with a proposed in-service date for these facilities in Fiscal Year 2017.

Some of the facilities to implement conjunctive use on the Thomas Creek/Whites Creek and Galena Creek/Mt. Rose fans address an existing problem and will benefit primarily existing customers, thus these facilities should be paid by existing customers. This cost allocation had been identified as part of the merger requirements with STMGID which included the transfer of STMGID cash and assets to pay for the construction of the STMGID West zone conjunctive use facilities. Since new growth in Area 14 will be served by supply from TMWA's Truckee River Resource Area ("TMRA")², new development utilizing TMRA resources in Area 14 will pay the full T MWA Supply-Treatment Facility Charge.

To provide reliability of supply, avoid or reduce pumping costs and avoid major on-peak capacity improvements within the lower TMWA gravity system, a small treatment plant located above the Arrowcreek system to treat Whites Creek and Thomas Creek water is also proposed. The County's South Truckee Meadows Facility Plan recognized "The upper treatment plant is an integral component of the recommended water supply plan.... Most importantly; it will provide recharge water and/or offset winter groundwater pumping in the upper Mt Rose fan area".³

² As defined in Rule 7 the "Truckee Meadows Resource Area ("TMRA")" means the portion of TMWA's Service Area within which TMWA can accept for dedication any mainstem Truckee River water source/right that can be diverted at its Chalk Bluff or Glendale treatment plants.

³ Technical Memo 8, Recommended Water and Wastewater Facility Plan, Pg 8-14 (June 28, 2002)

Although actual will-serve commitments will be made against groundwater dedications, it will take both groundwater and conjunctive use surface water to effectively realize the yield of the groundwater rights. As these facilities primarily benefit growth, the cost of the treatment plant and the additional creek rights to make it viable will be paid by growth in Area 15.

SOUTHWEST TRUCKEE MEADOWS CONJUNCTIVE USE RESOURCES

Sufficient evidence exists to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water than can be extracted on a sustainable basis without impairing the use of TMWA permits to meet prior commitments and/or existing domestic wells. Accepting groundwater rights as the sole source of supply without some element of mitigation will expose TMWA and existing customers to potentially substantial additional financial risk, accelerate and increase the number of claims under the existing Domestic Well Mitigation Program, and/or degrade the aquifer before supply augmentation solutions can be implemented.

The success of the conjunctive use plan for the Mt Rose and STMGID areas requires additional surface water resources be delivered to the areas. The Area 15 charges include a resource supply component to enable TMWA to acquire supplemental surface water supplies when accepting groundwater dedications in Area 15. Supplemental surface water resources are a critical component of conjunctive resource management and are necessary to ensure a sustainable water supply for existing and new development in these basins. Requiring supplemental resources is similar in concept to requirements imposed by the County in Spanish Springs prior to the merger. In the event the Applicant is able to dedicate supplemental surface (creek) water supplies to TMWA which are acceptable to TMWA under Rule 7, the Area 15 charge would be reduced to offset the surface water resource component in the fee.

SUMMARY

TMWA is now the municipal purveyor with authority to issue will serve commitments in Areas 14 and 15. As described above, analysis by TMWA of the groundwater conditions in Areas 14 and 15 concurs with prior analyses that additional water resources are needed in the Mt Rose area. TWMA has developed plans to conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. Growth and development demands in Areas 14 and 15 as well as historic extended drought conditions have accelerated the need to implement a plan to mitigate impacts of groundwater dedications while long term engineered solutions to replenish the aquifer are explored. Supplemental surface water resources are a critical component of conjunctive resource management and providing for a sustainable water supply for existing and new development in this basin.

The proposed amendments to the Area 14 and 15 fees are shown in the attached red-line version of Rate Schedule WSF. Area Facility Charges are applied on a geographic basis and are based on the cost to expand the capacity of the water system in specific areas where growth is anticipated

to occur. The proposed changes include modified boundaries between Areas 14 and 15 to better reflect actual operational pressure zones and the actual areas benefiting from the facilities.

As part of the public process associated with amending TMWA's rates or fees, TMWA conducted a public workshop on Monday evening, April 13, 2015. TMWA is also scheduled to make another presentation on this subject to BANN's Infrastructure & Planning Committee on April 23, 2015.

Staff recommends the Board accept for a second reading the proposed amendments to TMWA Rate Schedule WSF.

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS



ARTICLE I. MT. ROSE-GALENA FAN DOMESTIC WELL MITIGATION PROGRAM

A. Applicability

Pursuant to the Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority approved January 29, 2010, the Authority and the Washoe County Board of County Commissioners agreed to the terms and conditions to merge the Washoe County Community Services Department Water Utility into the Authority (the "**Merger**"). Prior to the Merger, Washoe County was charged with administering, operating and maintaining municipal water systems near development served by domestic wells, and worked to address a range of groundwater management issues, especially those related to concerns raised by domestic well owners about the impacts of municipal pumping on groundwater levels and domestic well failures. Specific efforts by Washoe County included the adoption of the Mt. Rose-Galena Fan Domestic Well Mitigation Program.

The Mt. Rose-Galena Fan Domestic Well Mitigation Program ("**Mitigation Program**") established in this Rule is created by the Authority consistent with and to continue the efforts of Washoe County to address the management and protection of the shared groundwater resources in the Mt. Rose-Galena Fan area, which include but are not limited to conjunctive use of surface and groundwater resources, reducing long-term-average-annual pumping in the Mt. Rose-Galena Fan area, and limiting municipal groundwater pumping as permitted by the Nevada State Engineer. This Rule applies to and sets forth the responsibilities and requirements of a Person applying for eligibility to receive mitigation in the Mitigation Program. This Rule shall be effective upon the successful closing and consummation of the merger of the Washoe County Community Services Department Water Utility into TMWA as contemplated by that certain Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority approved January 29, 2010, and any amendments thereto.

B. Definitions

1. Terms not defined in this Section shall have the meaning set forth in Rule 1.
2. As used in this Rule:
 - a. "**Eligible Property**" shall mean a Service Property which (a) is located within the Program Area Boundary shown on the Program Area Boundary Map; (b) is being served by or was served by a domestic well that existed prior to July 1, 2011; (c) has experienced an Unreasonable Adverse Effect; (d) has not previously received mitigation from Washoe County, STMGID or Authority under a domestic well mitigation program; and (e) at the time of application to the Mitigation Program :

Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS



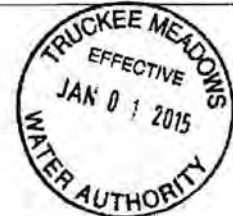
- i. The Authority determines water service from the Authority is not reasonably available; or
 - ii. The Authority determines connection into Authority's water system is reasonably available to permit conversion from a domestic well; or
 - iii. The Service Property (a) is connected to the Authority water system but received service from a domestic well prior to the time of application to the Mitigation Program, or is receiving service from a domestic well at the time of application to the Mitigation Program; and (b) the owner voluntarily deepened the domestic well prior to July 1, 2011 in response to an Unreasonable Adverse Effect caused by municipal pumping by Washoe County or South Truckee Meadows General Improvement District.
- b. "Eligible Property Owner" shall mean the owner of record of an Eligible Property.
 - c. "Mitigation Program" shall mean the Mt. Rose-Galena Fan Domestic Well Mitigation Program established in this Rule.
 - d. "Program Applicant" shall mean an applicant seeking mitigation in the Mitigation Program.
 - e. "Program Area Boundary" shall mean the area shown in the Mitigation Program Area Boundary Map set forth in this Rule.
 - f. "Unreasonable Adverse Effect" shall mean, for purposes of determining eligibility in the Mitigation Program, adverse impact on a domestic well related to or caused by municipal pumping by the Authority of former Washoe County or former South Truckee Meadows General Improvement District groundwater facilities which shall be deemed to have occurred when all of the following circumstances exist:
 - i. The impacted domestic well draws from the same source aquifer as the Authority municipal well(s) alleged to be causing the unreasonable adverse effect; and
 - ii. Objective evidence exists that clearly connects Authority's municipal pumping to the impairment of the affected domestic well's ability to provide a sustainable source of potable water for the property; and
 - iii. The impacted domestic well is experiencing an actual or imminent adverse effect resulting from the reduction of ground water supply to the well which leads to the actual inability of the well to produce an adequate supply of water for domestic use; and
 - iv. The protectable interest in the impacted domestic well is limited to the draught allowed under NRS 534.180(1).

Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS



For purposes of the Program Area Boundary only and to facilitate continuity with Washoe County's mitigation program, the priority date of the impacted domestic well as defined by NRS 534.080(4) shall not be a factor in evaluating unreasonable adverse effect.

C. Establishment of Mt. Rose-Galena Fan Domestic Well Mitigation Program

1. Prior to Authority's acquisition of Washoe County municipal well facilities, Washoe County adopted by ordinance the Mt. Rose-Galena Fan Domestic Well Mitigation Program to establish a program to mitigate what the County deemed to be unreasonable adverse effects on domestic wells related to or caused by municipal pumping by Washoe County groundwater facilities. Pursuant to the Merger, the Authority acquired certain water system facilities of Washoe County, including municipal wells. The Authority hereby establishes a program to address claims for domestic well mitigation in the Program Area Boundary arising in connection with Authority's operation of former Washoe County and South Truckee Meadows General Improvement District municipal wells.
2. Nothing in this Rule prevents Authority from seeking additional or alternate funding mechanisms for groundwater protection and mitigation of water quality and supply issues, including but not limited to legislative authorization for the establishment of a groundwater management program similar to the Las Vegas Valley Groundwater Management Program.

D. Mitigation Application Process.

1. Application. A Program Applicant must satisfactorily complete and submit the applicable mitigation request form to the Authority before being considered eligible to receive mitigation in the Mitigation Program.
2. Program Forms. The Authority shall prescribe and make available Mitigation Program forms to Program Applicants.
3. Priority. A request for mitigation in the Mitigation Program will be processed on a first-come, first-serve basis as of the date a completed and submitted mitigation request form is received by the Authority, with priority determined as of the date of the application's postmark, receipt date of facsimile or electronic mail transmission, or hand delivery date stamp received.
4. Submission of Mitigation Request Not a Final Determination of Mitigation Granted. Receipt and acceptance of a Mitigation Program form indicates only a determination that the request has been satisfactorily completed, but does not constitute or imply a commitment of the Authority to provide mitigation, and shall not be construed as such until issuance of a final written determination.

Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS



5. Denials. Letters of denial will be issued to Program Applicants whose individual circumstances do not satisfy the requirements of the Mitigation Program and such denials shall state the reason for the denial of mitigation in the Mitigation Program.
6. Per Property Limitation. Each Service Property eligible for mitigation in the Mitigation Program shall be limited to receiving mitigation in the amount and manner as outlined in this Rule for a maximum of one domestic well per Service Property.
7. Application Is Not Guarantee. Consideration of a Program Applicant's request for mitigation shall not be construed to require or obligate the Authority to provide mitigation pursuant to the Mitigation Program or to provide any other relief, equitable or legal.
8. Appeal to State Engineer. A property owner who is dissatisfied by the mitigation offered by the Authority may submit a claim to the State Engineer.

E. Types of Mitigation Available

1. Reimbursement for Deepening or Drilling a New Well. Where the Authority determines that connection into the Authority water system is not reasonably available for an Eligible Property Owner, mitigation shall be provided to such Eligible Property Owner in the form of reimbursement for certain costs to deepen the domestic well or drill a new well as described in this Rule.

- a. Well Deepening. Mitigation for well deepening shall be in the form of a one-time compensation for deepening a domestic well up to 150 feet. The amount of well deepening reimbursement available to such Eligible Property Owner shall be established by the Authority's General Manager. The amount available for reimbursement will be based on the following calculation:

The General Manager shall solicit quotes from at least three (3) licensed well drillers in Northern Nevada to deepen a domestic well, such costs to include mobilization and demobilization, set-up, drilling, permitting, site rehabilitation, and necessary materials and materials disposal but to exclude domestic well components such as, but not limited to, pumps, motors, wire, pipe adapters, valves, clamps, couplings, spacers, gauges, wrap, pressure tanks, switches, and pitless adapters. The amount of well deepening reimbursement available shall be the average of the construction costs quotes obtained, stated in dollars per foot.

- b. New Well Drilling. Where a well cannot be deepened due to physical constraints of the existing well and the drilling of a new well is required, mitigation shall be in the form of a one-time compensation for drilling the new well to the depth of the original well plus up to 150 feet deeper than the original well. The amount of reimbursement shall be the actual construction costs verified by receipts prepared by the well driller of record, excluding domestic well components such as, but not limited to, pumps, motors, wire,

Added: 1/1/15

Truckee Meadows Water Authority



RULE 10

SPECIAL CONDITIONS AND PROGRAMS

pipe adapters, valves, clamps, couplings, spacers, gauges, wrap, pressure tanks, switches, and pitless adapters, stated in dollars per foot. When receipts cannot be verified, the mitigation shall only be for 150 feet at the per foot allowance calculated in Section E.1.a.

- c. Program Applicants shall be solely responsible for covering any and all other on-site costs associated with well deepening or drilling a new well, including the restoration of any landscaping, irrigation or hardscaping as well as any necessary appurtenances associated with the new or deepened well. Where the drilling of a new well is required, Program Applicants shall be responsible for all costs of abandoning the original well.
2. Waiver of Charges For Connection to System. Mitigation shall be provided to an owner of an Eligible Property that is required to abandon the domestic well in accordance with applicable law and connect into the Authority water system where connection into the Authority water system is determined to be reasonably available by the Authority. Mitigation for Eligible Property owners that connect into the Authority water system and abandon their domestic well shall be a waiver of Schedule WSF charges, a waiver of Schedule BSF charges, and reimbursement for the actual cost as verified by receipts prepared by the contractor for installation of the Service and Meter Facilities if required to provide the delivery of water to the Eligible Property.
 - a. Water and Sanitary Sewer Financial Assistance Program. Property owners converting from domestic wells to the Authority water system may be eligible to apply for financing to cover their on-site costs through the Water and Sanitary Sewer Financial Assistance Program administered by Washoe County.
 3. Mitigation For Prior Well Deepening or Prior Connection to Water System. Mitigation shall be provided to an Eligible Property which in response to an Unreasonable Adverse Effect caused by municipal pumping by Washoe County or South Truckee Meadows General Improvement District either (a) connected to the Authority water system but received service from a domestic well prior to July 1, 2011, or (b) is receiving service from a domestic well that the owner voluntarily deepened prior to July 1, 2011. Mitigation shall be provided in the form of reimbursement for verifiable costs comparable to the reimbursable costs identified in this Section E actually incurred by the Eligible Property owner prior to July 1, 2011.
 4. Mitigation for Other Circumstances. An Owner of an Eligible Property located within the Program Area Boundary whose Service Property does not otherwise qualify for the types of mitigation set forth in this Rule may request review of an individual mitigation claim by the Authority. The Authority shall evaluate and consider the individual claim in a manner consistent with Mitigation Program criteria to ensure consistent and equal treatment for all similarly situated property owners. The Authority may consider the following additional factors to determine if an owner of a service property may otherwise be eligible for participation in the Mitigation Program:

Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS

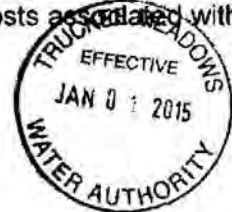
- a. The impacts on groundwater levels resulting from natural variability of annual precipitation, including multi-year droughts;
- b. The impact on well performance arising from the well's original construction, including the degree to which the well's failure can be attributed to sub-standard construction methods and/or not initially drilling the well deep enough to provide an adequate and reliable supply under conditions that could reasonably be anticipated, including the local concentration of other domestic wells.

The Authority may require the requesting property owner to provide additional data and documentation to properly evaluate and determine a property owner's individual circumstances and mitigation claim.

5. Owner Responsible for All Other Fees Required for Connection. Authority shall only be responsible for providing mitigation in accordance with this Rule. Property owners shall be solely responsible for all other costs arising from well deepening or connection into the Authority system, including without limitation, landscaping, hardscaping, on-site costs related to the well deepening or conversion from a domestic well to the municipal water system, trenching and installation of private water service facilities, modifying residential plumbing, removing and disposing of any pressure tanks or other facilities related to the domestic well, abandoning the domestic well, obtaining any required permits or inspections, appurtenant facilities such as pumps, motors, wire, pipe adapters, valves, clamps, couplings, spacers, gauges, wrap, pressure tanks, switches, and adapters, and any other related fees or expenses. Owners connecting into the Authority water system shall be required to satisfy all requirements under Authority rules of service to be eligible to receive water service.
6. Mitigation Award Limitations. An Eligible Property may receive mitigation under only one of the provisions in Sections E.1 through E.4 of this Rule. Any mitigation award in a single claim amount that exceeds \$25,000 shall require approval of the Authority's Board of Directors.

F. Recordation of Mitigation Award.

1. Upon the Authority's determination that a property is eligible to receive a mitigation award, the property owner must execute and the Authority shall record in the Office of the County Recorder, Official Records, a document identifying the property or properties entitled to such mitigation award. The right to mitigation award shall run with the property until such time as the owner of the property then holding legal title exercises the right to receive the mitigation award under this Rule, at which time the Authority or its successor shall be forever discharged from any and all claims, demands and costs associated with any Unreasonable Adverse Effect.



Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS

2. Before issuance of mitigation award under this Mitigation Program, the property owner must execute, and the Authority shall record in the Office of the County Recorder, Official Records, a document evidencing the property owner's release and discharge of any potential claims against the Authority related to an Unreasonable Adverse Effect on a domestic well and a notice of full satisfaction of any mitigation award determined by the Authority. Once the release and notice of satisfaction have been recorded, the Authority shall issue the mitigation award to the property owner for well deepening, new well drilling, or connecting to the Authority water system.



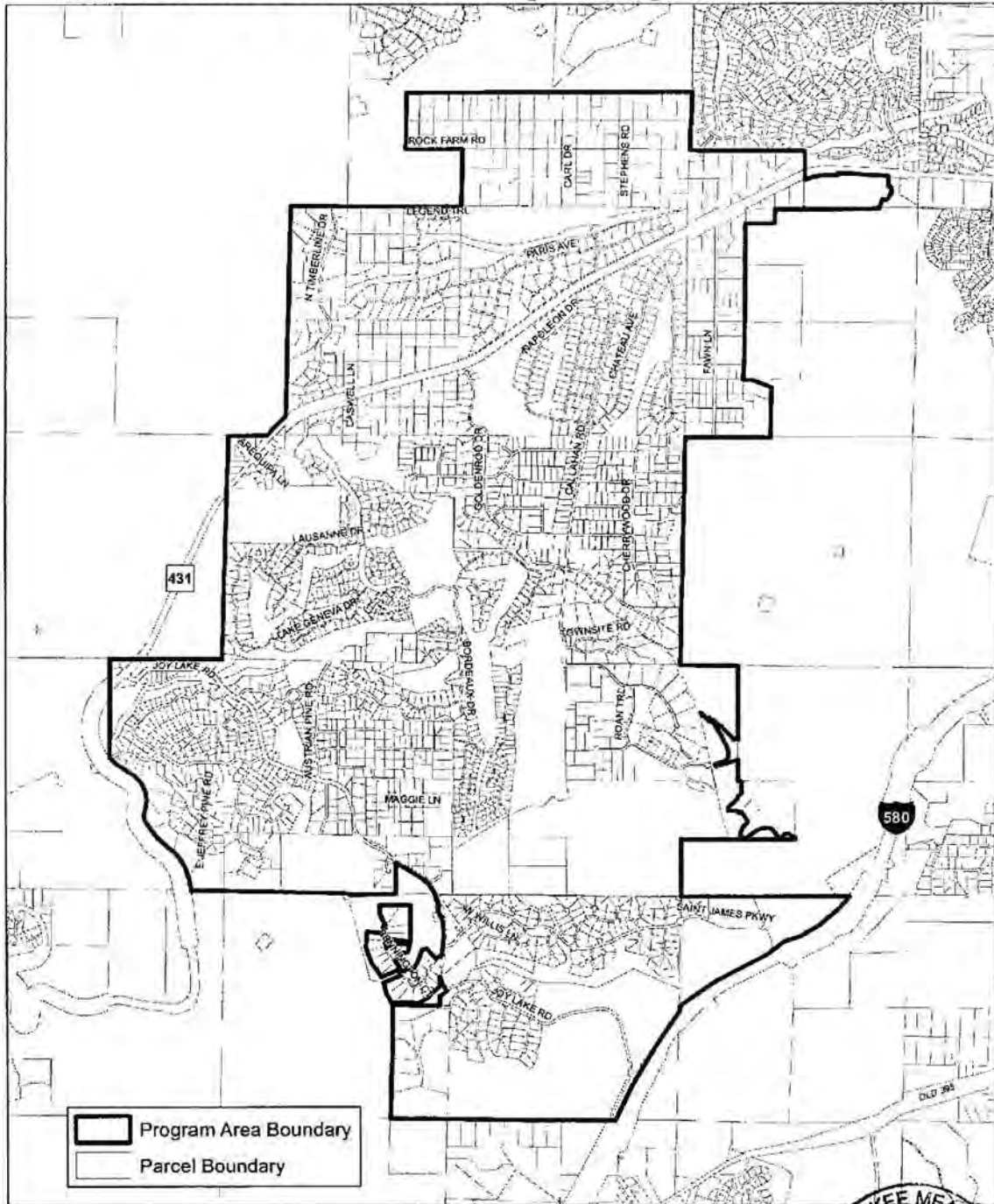
Added: 1/1/15

Truckee Meadows Water Authority

RULE 10

SPECIAL CONDITIONS AND PROGRAMS

Mt. Rose-Galena Fan Domestic Well Mitigation Program Area Boundary Map



Added: 1/1/15



TRUCKEE MEADOWS WATER AUTHORITY
Board of Directors
AGENDA

Wednesday, April 15, 2015 at 10:00 a.m.
Sparks Council Chambers, 745 4th Street, Sparks NV

NOTES:

1. The announcement of this meeting has been posted at the following locations: Truckee Meadows Water Authority (1355 Capital Blvd., Reno), Reno City Hall (1 E. First St., Reno), Sparks City Hall (431 Prater Way, Sparks), Sparks Justice Court (1675 E. Prater Way, Sparks), Washoe County Courthouse (75 Court St., Reno), Washoe County Central Library (301 South Center St., Reno), Washoe County Administration (1001 East Ninth St., Reno), at <http://www.tmwa.com>, and State of Nevada Public Notice Website, <https://notice.nv.gov/>.
2. In accordance with NRS 241.020, this agenda closes three working days prior to the meeting. We are pleased to make reasonable accommodations for persons who are disabled and wish to attend meetings. If you require special arrangements for the meeting, please call 834-8002 before the meeting date.
3. The Board may elect to combine agenda items, consider agenda items out of order, remove agenda items, or delay discussion on agenda items. Arrive at the meeting at the posted time to hear item(s) of interest.
4. Asterisks (*) denote non-action items.
5. Public comment is limited to three minutes and is allowed during the public comment periods. The public may sign-up to speak during the public comment period or on a specific agenda item by completing a "Request to Speak" card and submitting it to the clerk. In addition to the public comment periods, the Chairman has the discretion to allow public comment on any agenda item, including any item on which action is to be taken.

1. Roll Call*
2. Pledge of allegiance*
3. Public comment — limited to no more than three minutes per speaker*
4. Approval of the agenda (**For Possible Action**)
5. Approval of the minutes of the March 18, 2015 meeting (**For Possible Action**)
6. Presentation on the Truckee Basin Study — Arlan Neckel (USBR) Jeff Payne (USBR), and Shawn Stoddard*
7. Presentation of the President's Award from the Partnership for Safe Water— Paul Miller*
8. Discussion and possible direction to staff regarding 2015 legislative activities and current bills — John Erwin and Steve Walker (**For Possible Action**)
9. Discussion and possible action on appointment of a second alternate member to the TMWA Legislative Subcommittee — John Erwin (**For Possible Action**)

¹ The Board may adjourn from the public meeting at any time during the agenda to conduct a closed labor briefing with management representatives pursuant to NRS 288.220.

10. Presentation, discussion and possible action on the TMWA Tentative Budget for Fiscal Year 2016, and Draft Capital Improvement Plan for Fiscal Years 2016 through 2020 — Jeff Tissier **(For Possible Action)**
11. Request for Board to amend the May 16, 2013 Interlocal Agreement for the Acquisition of Water Quality Water Rights between TMWA and the Western Regional Water Commission — John Erwin **(For Possible Action)**
12. PUBLIC HEARING ON RATE AND RULE AMENDMENTS
 - a. Public comment — limited to no more than three minutes per speaker*
 - b. Rate Amendment, Introduction: Introduction and First Reading of amendments to TMWA Rate Schedule Water System Facility Charges (WSF) for Charge Areas 14 and 15 — Scott Estes and John Erwin **(For Possible Action)**
 - c. Rate Amendment, Introduction: Introduction and First Reading of amendments to customer Rate Schedules Residential Metered Water Service (RMWS), Residential Flat-Rate Water Service (RFWS), Small Unit Flat-Rate Service (SUFR), Multiple-Unit Residential Flat-Rate Service (MRFS), Multiple-Unit Residential and Irrigation Service (MRIS), Former STMGID Rate Residential Unmetered Service for Residential and Irrigation Service (RFWG), and Former Washoe County Rate Residential Unmetered Service for Residential (RFWD) in connection with switching Flat-Rate billed waters services to metered billing — John Erwin and Kim Mazeres **(For Possible Action)**

CLOSE PUBLIC HEARING

13. Discussion and possible direction to staff regarding consideration of special rates or programs for low-income and/or senior citizen customers — John Erwin, Kim Mazeres and Jeff Tissier **(For Possible Action)**
14. General Manager's Report*
15. Public Comment — limited to no more than three minutes per speaker*
16. Board comments and requests for future agenda items*
17. Adjournment **(For Possible Action)**

¹The Board may adjourn from the public meeting at any time during the agenda to conduct a closed labor briefing with management representatives pursuant to NRS 288.220.



STAFF REPORT

TO: Board of Directors
THRU: Mark Foree, General Manager
FROM: Scott Estes, Director of Engineering
John Enloe, Operational Strategies Manager
John Erwin, Director of Natural Resources
Jeff Tissier, CFO
DATE: May 14, 2015
SUBJECT: **Second and Final Reading, Public Hearing and Possible Adoption of Resolution No. 229 to Amend TMWA's Rate Schedule Water System Facility Charges (WSF)**

RECOMMENDATION

Staff submits for Second Reading and adoption by resolution the proposed amendments to the TMWA Rate Schedule WSF to Modify Charge Area 14 and 15 Facility Charges and Boundaries. Proposed amendments are shown in the attached redline copies.

Possible Motion: "I move to adopt Resolution 229 and to amend TMWA's Rate Schedule WSF to Modify Charge Area 14 and 15 Facility Charges and Boundaries, to be effective upon the start of business day June 1, 2015."

BACKGROUND

During merger due diligence, TMWA identified that once the mergers with STMGID and Washoe County were complete, TMWA would need to develop programs to move surface water into and conjunctively manage surface and groundwater resources in the Mt. Rose/Galena Fan area to protect existing municipal groundwater supplies. The Mt. Rose/Galena Fan area is located in the southwest Truckee Meadows and is broken into two sub-areas: (1) the area in Pleasant Valley Hydrographic Basin 88, also referred to as the Arrowcreek/Mt. Rose Area ("Arrowcreek/Mt Rose") and (2) the southwest area in Truckee Meadows Hydrographic Basin 87, also referred to as the STMGID West/Thomas Creek area ("STMGID West"). TMWA Charge Area 14 encompasses portions of STMGID West/Thomas Creek and Arrowcreek/Mt. Rose. TMWA Charge Area 15 encompasses only portions of Arrowcreek/Mt. Rose. Each area has unique geology and hydrologic constraints and thus, two separate but necessary solutions are required to improve groundwater resource supplies in these areas.

Based on growth and other projections at the time, it was anticipated TMWA would have some time after the merger closing to refine and implement conjunctive use resource and facility planning in these areas. However, accelerated recovery in the housing markets combined with historic extended drought conditions have accelerated the need to implement such plans to mitigate impacts of future groundwater dedications while developing long term engineered solutions to replenish the aquifer. These plans include 1) identifying supplemental surface water dedication requirements; and 2) modifying capital improvement plans to develop water system facilities to move surface water resources into the fan area.

On December 31, 2014, the Truckee Meadows Water Authority acquired the water utility systems of the Washoe County Department of Water Resources (“DWR”) and the South Truckee Meadows General Improvement District (“STMGID”). The systems acquired include systems in the Mt. Rose/Galena Fan area in southwest Reno. As a result, TMWA is now the municipal purveyor with the authority to provide water service to new development in the Mt. Rose/Galena Fan.

The First Reading to amend TMWA Rate Schedule Water System Facility Charges (“WSF”) to modify Charge Area 14 and 15 Facility Charges and boundaries was presented for the Board’s consideration and discussion on April 15, 2015, at which time the amendment was approved for referral to a second reading. The proposed amendments are necessary to allocate costs of additional facilities identified by TMWA after completion of the merger which will be necessary to conjunctively manage and improve the sustainability of water supply in Charge Areas 14 and 15.

DISCUSSION

The Mt. Rose/Galena Fan is located in hydrographic basin 88 and the southwest corner of hydrographic basin 87. The area is generally located along the corridor of the Mt. Rose highway, and south of the highway into Pleasant Valley. In addition to the former municipal systems of DWR and STMGID, there are approximately 450 to 500 active domestic wells in Area 15 that rely on groundwater resources.

DWR and STMGID relied solely on groundwater to provide water supply in the Mt. Rose/Galena Fan area, providing water service through numerous municipal wells. Many of these rights came from the County’s acquisition of the Mt. Rose Utility system and various groundwater rights in the early 1990’s. Mt. Rose Service Company also assigned ownership of various water rights to private parties as well, so ownership of permitted groundwater rights are mixed between DWR (now TMWA) and private developers. On paper, TMWA now owns over 3,900 AF of groundwater permits issued by the State Engineer in Basin 88. Approximately 1,500 AF of groundwater permits remains uncommitted for future use.

The primary risk with any water right is whether a reliable supply of actual physical water exists year-in, year-out that can be diverted for the intended use. The critical question is not whether a person has a right on paper (i.e., in a permit) to water, it is whether the water claimed on paper actually exists. This is particularly true in groundwater basins where the amount of water stored in the aquifer continually declines year-over-year. If aquifers are over pumped and in continual

decline, wells eventually go dry, causing hardships on municipal and domestic well owners and threatening the sustainability of water supplies previously committed for service.

In the early 1990's, concern was expressed that the Mt. Rose/Galena Fan aquifer was being over pumped, causing continual decline in water levels year-over-year without evidence of recovery from the natural hydrologic cycle. In 1991, County modeling concluded that "pumping a total of 8,892 AFA of groundwater from the Mt Rose / Galena Fan area... results in over pumping of the aquifer system". See Preliminary Results of Groundwater Investigation, Technical Memo 4, pg 4-2 (Jan 25, 2002). The County developed the South Truckee Meadows Facility Plan, which concluded the Mt Rose/Galena Fan aquifer is over pumped and in need of supply augmentation in order to meet demands in the area,¹ reaffirming earlier County modeling efforts.

Based on analyses, studies and the history of groundwater levels in Area 15 and the southwest portion of Basin 87, water levels are declining and evidence indicates additional withdrawals of groundwater will exceed the perennial yield of the basin, causing continued declines in water levels in the aquifer. TMWA staff has determined that sufficient evidence exists to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water than can be extracted on a sustainable basis without impairing TMWA water rights used to meet existing commitments or impairing existing domestic wells. These issues were identified by TMWA during the Merger due diligence. TMWA recognized that upon acquisition of the DWR and STMGID systems, TMWA would need to develop programs to move surface water into these systems and conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. In fact, TMWA's unique ability to provide conjunctive use management (something neither STMGID nor DWR could do with their more limited assets) was one of the identified benefits in consolidating the systems. In anticipation of the groundwater issues, the TMWA Board adopted the County's Mt Rose / Galena Fan Domestic Well Mitigation Program to provide mitigation for domestic well owners suffering unreasonable adverse impacts from municipal well pumping. Additionally, prior to the completion of the merger TMWA staff began evaluating and developing strategies for financing and constructing infrastructure needed to move surface water resources into the Mt. Rose Fan area.

A. Southwest Truckee Meadows Conjunctive Use Facility Plan

In October 2014, the TMWA Board approved amendments to Schedule WSF that implemented applicable mechanisms to recover costs for infrastructure to serve growth in the STMGID and Washoe County water systems upon the close of merger. The collection of Facility Charges from new development is necessary to reimburse the utility for facility improvements required to meet the demands of new growth. Area Facility Charges, Supply and Treatment Facility Charges and Storage Facility Charges apply only to developers or applicants applying for new or expanded

¹ "A consensus was reached that it is likely that the municipal wells can reliably supply up to approximately 75% of the groundwater rights allocated to municipal wells in the STM, in addition to the demand placed on the aquifer by individual domestic wells." Technical Memo 8, Recommended Water and Wastewater Facility Plan, Pg 8-3 (June 28, 2002)

water service, and do not affect the costs or rates to serve existing customers. In other words, pursuant to prior Board direction on customer rates: growth pays for growth.

To begin the process to mitigate the potential shortfall in real water in this area, TMWA has identified the need for additional infrastructure and facilities to take advantage of Galena, Thomas and Whites Creek resources to improve the long-term viability and sustainability of water supplies in this region. In order to recover applicable costs from new development, TMWA staff is seeking Board approval of amendments to the Water System Facility charges imposed on new development in Charge Areas 14 and 15.

Since the merger, TMWA conducted pump tests at the Napoleon #1 & #2 Wells (formerly known as the Tessa East & West Wells). Based on the result of those pump tests, staff concluded that continued pumping of these wells at rated/design capacity cannot be sustained. The non-pumping static water level in these wells has declined about 80 feet in the last 10 years and average pumping levels are now 45 feet below the top of the well screen. The long-term reduction of pressure in water bearing strata can lead to dewatering and consolidation of the geologic formation and can result in irreversible damage to the aquifer. Approximately 1,450 gallons per minute (gpm) of maximum day supply has been committed from the Napoleon wells. However, staff is limiting the production from these two wells to 1,000 gpm total to reduce continued degradation of the basin. A similar conservative approach is recommended for equipping of the future Callamont wells. Clearly a supplemental source of supply is needed for the area.

The current groundwater situation has been aggravated by continued drought conditions, thus staff is accelerating plans to construct facilities to deliver conjunctive use surface water into the area. The resulting facility plan is slightly different than that used to develop the original developer fees approved in 2014. The current plan takes advantage of existing property and facilities with excess off-peak capacity to deliver surface water to the upper reaches of the Arrowcreek system to allow passive recharge to begin in much of Area 15 during the winter of 2015/2016. The plan is a phased approach and eventually will deliver surface water to the balance of Area 15, including the upper reaches of the Mt. Rose system. In addition, the current facility plan still includes a separate system to deliver conjunctive use surface water into the STMGID West zone (Area 14) with a proposed in-service date for these facilities in Fiscal Year 2017.

As a preliminary matter, TMWA recognizes that some of the facilities to implement conjunctive use on the Thomas Creek/Whites Creek and Galena Creek/Mt. Rose fans address an existing problem with supply to existing customers. As these facilities will benefit primarily existing customers, it is appropriate that the cost of these facilities should be paid by existing customers. TMWA identified the need to construct these facilities and improve supply to existing customers during merger due diligence, so as part of the merger requirements with STMGID TMWA identified and required the transfer of STMGID cash and assets to pay for the construction of these facilities. The costs of these facilities are not included in the Area 14 or Area 15 Facility Charges, and will not be paid by TMWA customers, but will be financed by treasury transferred to TMWA as part of the merger.

New facilities will also be required to implement conjunctive use for new development demands. Since new growth in Area 14 will be served by supply from TMWA's Truckee River Resource Area ("TMRA")², new development utilizing TMRA resources in Area 14 will pay the full TMWA Supply-Treatment Facility Charge to recover the costs for growth demands on Truckee River supply and treatment facilities.

In addition, TMWA has identified the need to construct a small treatment plant located above the Arrowcreek system to treat Whites Creek and Thomas Creek water to provide reliability of supply, avoid or reduce pumping costs and avoid major on-peak capacity improvements within the lower TMWA gravity system. The County's South Truckee Meadows Facility Plan recognized "The upper treatment plant is an integral component of the recommended water supply plan.... Most importantly; it will provide recharge water and/or offset winter groundwater pumping in the upper Mt Rose fan area".³ Although actual will-serve commitments will be made against groundwater dedications, it will take both groundwater and conjunctive use surface water to effectively realize the yield of the groundwater rights. As these facilities primarily benefit growth, the cost of the treatment plant and the additional creek rights to make it viable will be paid by growth in Area 15.

B. Southwest Truckee Meadows Conjunctive Use Water Resources

Sufficient evidence exists to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water than can be extracted on a sustainable basis without impairing the use of TMWA permits to meet prior commitments and/or existing domestic wells. Accepting groundwater rights as the sole source of supply without some element of mitigation will expose TMWA and existing customers to potentially substantial additional financial risk, accelerate and increase the number of claims under the existing Domestic Well Mitigation Program, and/or degrade the aquifer before supply augmentation solutions can be implemented.

The success of the conjunctive use plan for the Mt Rose and STMGID areas requires additional surface water resources be delivered to the areas. The Area 15 charges include a resource supply component to enable TMWA to acquire supplemental surface water supplies when accepting groundwater dedications in Area 15. Supplemental surface water resources are a critical component of conjunctive resource management and are necessary to ensure a sustainable water supply for existing and new development in these basins. Requiring supplemental resources is similar in concept to requirements imposed by the County in Spanish Springs prior to the merger. In the event the Applicant is able to dedicate supplemental surface (creek) water supplies to TMWA which are acceptable to TMWA under Rule 7, the Area 15 charge would be reduced to offset the surface water resource component in the fee.

² As defined in Rule 7 the "Truckee Meadows Resource Area ("TMRA")" means the portion of TMWA's Service Area within which TMWA can accept for dedication any mainstem Truckee River water source/right that can be diverted at its Chalk Bluff or Glendale treatment plants.

³ Technical Memo 8, Recommended Water and Wastewater Facility Plan, Pg 8-14 (June 28, 2002)

C. Development of Proposed Fee Amendments for Areas 14 and 15

1. “Growth pays for growth”.

The City of Reno, City of Sparks and the County of Washoe formed a Joint Powers Authority (JPA) in December of 2000, pursuant to Chapter 277 of the NRS, with the purpose of acquiring the water assets of Sierra Pacific Resources (SPR). SPR decided to divest its water assets in a blind bid process, whereby potential bidders are unknown to each other and bone fide bids are confidential. The intent of the local governments was to preserve local control of the region’s water resources consistent with what existed historically.

On June 11, 2001, the water operations transitioned from SRP to TMWA. At the time of transition SRP looked to customer rates to support expansion of certain elements of the water system for new and expanded service, i.e. growth, which has a very specific meaning. Costs associated with feeder main improvements to serve new and expanded service was originally charged to “growth” by SRP but supply/treatment and storage costs related to new and expanded service were borne by customer rates including a rate of return on utility constructed improvements as approved by the Public Utilities Commission of Nevada.

Subsequent to TMWA assuming water system operations, staff proposed and the TMWA Board adopted Resolution 19 *Adopting a Financial Guidelines Policy* at the September 2001 board meeting. This policy is also referred to as the “non-cross-subsidization policy” which essentially declared that there would be no cross-subsidization between customer groups or classes. This policy had far reaching implications in that it clearly defined the concept that “growth pays for growth”. As a result, the funding responsibilities for supply/treatment and storage costs associated with new and expanded service transferred from existing customer rates to developers. These costs for feeder main, supply/treatment and storage facilities for growth are recovered from developers under TMWA’s WSF (Water System Facility) fees in TMWA’s rate schedules (and are also known as “Facility Charges” or “System Development Charges” in the industry). In September 2003 when customer rates were adjusted, the development community took responsibility for all costs assigned to new and expanded service and TMWA instituted the WSF fees that included feeder main fees. These fees have been periodically updated in fiscal years 2005; 2006; 2008 and 2013.

In October of 2014 in a merger related item, TMWA updated these WSF fees to include areas of service of the former Washoe County Water Utility and the South Truckee Meadows General Improvement District so that TMWA was prepared to collect WSF fees from growth in this area after the merger was completed. At that time the terminology for Feeder Main Area unit costs was changed to Area Facility unit costs. These fees are periodically updated as required and reviewed for adequacy and adherence to Resolution 19.

2. Funding sources available to implement the Arrow Creek and STMGID conjunctive use facilities, and the planned water treatment plant.

Transferred cash reserves from Washoe County (\$35.52 million) and STMGID (\$15.7 million) will be used to fund the conjunctive use projects which benefit existing customers. With respect to the Mt. Rose Surface Water Treatment Plant, Washoe County cash reserves will be used again to initially to fund the project in addition to any connection fees collected for this purpose up to the point of construction completion. Post construction, TMWA will seek reimbursement from supply/treatment connection fees to replenish the cash reserves used to construct this treatment facility.

3. Adapting the Capital Improvement Plan to post-merger conditions

The 2010-2030 Water Facility Plan Update was issued in July 2010 and subsequently approved by the Board in October 2010 (2010 WFP). The 2010 WFP provides a 20-year blueprint for orderly expansion of the water system to serve growth while maintaining adequate levels of water service for existing customers. The 2010 WFP utilizes the Maximum Day Demand projections produced by TMWA's Resource group to establish the timing and sizing of improvements to meet capacity requirements of the water system through the 20-year planning horizon. The 2010 WFP is typically updated every five years. TMWA's Capital Improvement Plan CIP is prepared and approved by the Board on an annual basis and reflects adjustments in the timing and scope of projects to reflect current conditions. The annual CIP can be described as a mini-WFP since it is a focused, five year look ahead at facility requirements.

The 2010 WFP did not contemplate a consolidation with the Washoe County and STMGID water systems. The facilities published in the 2010 WFP for the South Truckee Meadows (STM) Phase 1 and 2 were for distribution system improvements in TMWA's gravity system (and Longley pump zone) to provide up to 7,400 gallons per minute (GPM) and up to 11,650 GPM, respectively in wholesale water to the County in the STM. As is sometimes the case, the facilities were never constructed since the County decided to pursue other means of expanding the capacity of their water supply.

Due to dependence upon groundwater and the continued decline in water levels aggravated by the ongoing drought, it is necessary to provide a supplemental source of supply for the water systems located on the upper Mt. Rose and Galena fan areas as soon as possible. This is a current problem impacting existing customers. The Arrowcreek-Mt. Rose Conjunctive Use Facilities Phase 1 and 2 items in the current CIP will provide up to 1,500 GPM of off-peak supply for the upper fan areas to allow the TMWA production wells in Area 15 to rest during the winter season.

The Phase 1 facilities consist of three booster pump stations and about 3,600 feet of 10-inch pipe on Zolezzi Lane to deliver conjunctive use water to the Arrowcreek #3 Tank. Phase 2 improvements move some of the supply into the Mt. Rose, St. James and Galena Forest areas. Because the facilities do not require acquisition of private property, they can be

constructed relatively quickly, which is a major benefit to the plan. This supply plan should meet the off-peak demand of existing (plus committed) customers but will not provide additional on-peak capacity for growth in Area 15.

Approved tentative maps in Area 15 include:

• Sierra Reflections	938 units
• Terrasante (Callamont)	210 units
• Mt. Rose Estates	23 units
Total	1,171 units

The estimated maximum day demand for these potential future single family residential units is about 1,557 GPM. In comparison, the estimated maximum day demand for existing plus committed customers in Area 15 is about 4,680 GPM. To provide reliability for existing customers and additional capacity to serve the approved development in Area 15, a two million gallon per day (2 MGD; 1,400 GPM nominal capacity) water treatment plant is proposed for treating creek water from Whites Creek and Thomas Creek. This “wet” surface water capacity will augment the 1,500 acre-feet of local basin groundwater rights that were banked by Washoe County as “acceptable resources” to meet future residential project dedication requirements.

An alternative analysis indicated that this plan is the overall least cost option for increasing the supply to Area 15, ranking highly from both a lower operating cost and also from a capital cost perspective. It is proposed that a suitable site for the treatment plant be acquired and permitted as soon as possible to allow time to perform a more detailed analysis of potential growth and development to be completed prior to initiating construction of the facilities.

The STMGID Conjunctive Use Facilities item in the CIP will provide a conjunctive use supply for Area 14 which consists primarily of the former STMGID customers in the western portion of STMGID. Very little future growth is anticipated in Area 14 and the facilities are proposed to benefit existing customers by preserving the existing groundwater supply. The system consists of a new booster pump station to be located on the reclaim water reservoir site off of Arrowcreek Parkway and about 8,100 feet of 10-inch pipe on Arrowcreek Parkway to deliver about 1,000 GPM of off-peak supply to the STMGID Tank 4 and Tank 5 zones.

Looking beyond the tentative maps listed above, there may an additional 1,600 acres of developable land in and adjacent to Area 15. In the future, if overall supply capacity to the Double Diamond area is increased sufficiently, a relatively moderate oversizing of these facilities (14” pipeline, slightly bigger pumps/motors) could provide up to 2,500 GPM of on-peak supply for growth on the upper fan area if a development were to pay the direct costs of extending facilities from the STMGID Tank 4/5 zone. The decision to oversize this pipeline and provide additional capacity to serve future development will be made at a later date.

In summary, immediate construction of the facilities to implement conjunctive use should provide a measure of reliability for existing customers by mitigating the continued decline of

groundwater levels in the area; and the development of supplemental surface water supplies and dedication requirements will provide for the long-term solvency of existing local groundwater rights.

4. Water resource planning to meet objectives of the Regional Plan / Forest Area Plan.

In the early 1990's, concern was expressed that the Mt. Rose/Galena Fan aquifer was being over pumped, causing continual decline in water levels year-over-year without evidence of recovery from the natural hydrologic cycle. In 1991, County modeling concluded that "pumping a total of 8,892 AFA of groundwater from the Mt Rose / Galena Fan area... results in over pumping of the aquifer system". In 2002, the County adopted the South Truckee Meadows Facility Plan, which also concluded the Mt Rose/Galena Fan aquifer is over pumped and in need of supply augmentation in order to meet demands in the area.

TMWA recognized that upon acquisition of the DWR and STMGID systems, TMWA would need to implement plans to move surface water into these systems and conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. TMWA's unique ability to provide conjunctive use management (something neither STMGID nor DWR could do with their more limited assets) was one of the identified benefits in consolidating the systems.

Subsequent to the merger, TMWA staff determined that sufficient evidence exists to conclude that the number of permitted groundwater rights in Area 15 is greater than the amount of actual physical water that can be extracted on a sustainable basis without impairing TMWA water rights used to meet existing commitments or impairing existing domestic wells. Although actual will-serve commitments will be made against groundwater dedications, it will take both groundwater and supplemental surface water (creeks) rights to effectively realize the yield of the groundwater rights to ensure a sustainable water supply for existing and new development in these basins.

Surface water from local creeks, historically used for agricultural irrigation, has long been part of the regional water resources mix for the South Truckee Meadows. In addition to creek water rights dedicated for return flow purposes and used to augment the STMWRF reclaimed water supply, over 1,900 acre feet of creek water rights have been approved by State Engineer for will-serve commitments. Will-serve commitments have been issued against these creek rights since 2010. Furthermore, continued conversion of the creek water resources in the South Truckee Meadows to municipal use will not negatively impact TMWRF operations (personal communication, Mike Drinkwater, TMWRF Plant Manager).

The County's South Truckee Meadows Facility Plan recognized "The upper treatment plant is an integral component of the recommended water supply plan.... Most importantly; it will provide recharge water and/or offset winter groundwater pumping in the upper Mt Rose fan area". TMWA's plan to develop a small water treatment facility for this purpose is consistent with the Facility Plan, as well as Washoe County's Forest Area Plan, quoted below:

“Water Resources – Supply

Goal Seventeen: Water resources will be supplied to land uses in the Forest planning area according to the best principles/practices of sustainable resource development. Because all existing residences are supplied by groundwater wells, future development must be constrained to the sustainable groundwater yield of the basins in the planning area, and minimize pumping impacts to domestic wells. Whenever possible, future water supply systems will be designed to lessen the burden on existing municipal and domestic wells.”

The proposed amendments to TMWA Rate Schedule Water System Facility Charges are also consistent with goals of the Regional Plan. The Regional Plan includes goals and policies to promote a Regional Form which encourages development within Transit Oriented Development Corridors and Regional Centers. As a water purveyor that responds to approved development, TMWA does not promote or encourage development in one location versus another. *When, where and what type* of growth should occur is solely within the land use entitlement and planning functions of cities, counties and regional planning agencies. By contrast, water supply planning is designed to provide for *the ability* to deliver safe and reliable water supplies through engineering solutions and project design, if and when land use entitlements are granted. Under the Cooperative Agreement, TMWA is obligated to provide retail water service to users in its service area, which it can only do by identifying and planning for water service needs within its retail and planning service areas. TMWA’s integrated planning processes ensures the long-term resource, facility and funding mechanisms are in place to meet current and future demand conditions. TMWA notes that the recommended WSF charge for the proposed Area 15 (a portion of the Washoe County TMSA) is \$12,568 compared to \$5,096 for the Central Reno Charge Area, demonstrating financial incentives for developing in the urban core consistent with the regional planning goals.

SUMMARY

TMWA is now the municipal purveyor with authority to issue will-serve commitments in Areas 14 and 15. As described above, analysis by TMWA of the groundwater conditions in Areas 14 and 15 concurs with prior analyses that additional water resources are needed in the Mt Rose area. TWMA has developed plans to conjunctively manage surface and groundwater resources in the Mt. Rose Fan to protect existing municipal groundwater supplies. Growth and development demands in Areas 14 and 15 as well as historic extended drought conditions have accelerated the need to implement a plan to mitigate impacts of groundwater dedications while long term engineered solutions to replenish the aquifer are explored. Supplemental surface water resources are a critical component of conjunctive resource management and providing for a sustainable water supply for existing and new development in this basin.

The proposed amendments to the Area 14 and 15 fees are shown in the attached red-line version of Rate Schedule WSF. Area Facility Charges are applied on a geographic basis and are based on the cost to expand the capacity of the water system in specific areas where growth is anticipated to occur. The proposed changes include modified boundaries between Areas 14 and 15 to better reflect actual operational pressure zones and the actual areas benefiting from the facilities.

As part of the public process associated with amending TMWA's rates or fees, TMWA conducted a public workshop on Monday evening, April 13, 2015. A First Reading and public hearing of the amendments was heard by the Board at its April 15, 2015 meeting. TMWA also conducted a presentation on this subject to BANN's Infrastructure & Planning Committee on April 23, 2015. As of this writing, staff has not received any written comments on the proposed amendments.

Staff recommends the Board adopt Resolution 229 and to amend TMWA's Rate Schedule WSF to Modify Charge Area 14 and 15 Facility Charges and Boundaries, to be effective upon the start of business day June 1, 2015.

TRUCKEE MEADOWS WATER AUTHORITY

RESOLUTION NO. 229

A RESOLUTION ADOPTING AMENDMENTS TO TRUCKEE MEADOWS WATER AUTHORITY’S SCHEDULE WSF “WATER SYSTEM FACILITIES”

WHEREAS, upon its formation, the Truckee Meadows Water Authority (“the Authority”) adopted Rules of Service on March 28, 2001, and such Rules have been modified and revised subsequent to the formation of TMWA;

WHEREAS, after conducting a review of its rate schedules, the Authority has revised and amended Rate Schedule WSF from time to time to meet the needs of its business environment by ensuring appropriate cost recovery through its fees and rates;

WHEREAS, the Authority’s Board desires to amend the Authority’s Rate Schedule WSF to update the fees charged for services rendered and facilities constructed as more fully described in Exhibit 1 attached hereto and incorporated herein by reference;

WHEREAS, the revisions to Rates Schedule forth in Exhibit 1 attached hereto and incorporated herein are appropriate and justified;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE TRUCKEE MEADOWS WATER AUTHORITY DOES RESOLVE:

The revisions to Rate Schedule WSF as set forth in Exhibit 1 are approved and adopted effective the start-of-business day June 1, 2015.

Upon motion of _____, seconded by _____, the foregoing Resolution was passed and adopted this 21st day of May, 2015, by the following vote of the Board:

Ayes: _____

Nays: _____

Abstain: _____ Absent: _____

Approved this 21st day of May, 2015

Chairman

Truckee Meadows Water Authority
Resolution No. 229

STATE OF NEVADA,)
 : ss.
COUNTY OF WASHOE)

On this _____ day of May, 2015, Geno Martini, Chairman of the Board of Truckee Meadows Water Authority, personally appeared before me, a Notary Public in and for said County and State, and acknowledged that he executed the above instrument freely and voluntarily and for the purposes therein mentioned.

Notary Public

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES

APPLICABILITY

Pursuant to procedures set forth in Rule 5, Applicants for new Service or Modified Service to a Service Property(ies) are subject to Water System Facility (WSF) Charges. WSF Charges are based on the Maximum Day Demand estimated in gallons per minute (GPM) by the Authority to serve the Service Property(ies) multiplied by the following Unit Costs. WSF Charges will be assessed where applicable and as identified in the Water Service Agreement.

A. Area Facility Unit Cost by Charge Area

	Charge Area	Amount	
0	Central Reno	\$ 0.00	per GPM
1	South Truckee Meadows	\$958.00	per GPM
2	Sparks-East Reno	1,711.00	per GPM
2A	Sparks-Inside McCarran Blvd	856.00	per GPM
3	Northwest Reno – Northgate/Mogul	1,575.00	per GPM
4	Sparks – Pyramid/Spanish Springs	2,877.00	per GPM
5	Sparks – The Vistas	4,555.00	per GPM
6	Sun Valley-Sullivan Pump Zones	1,309.00	per GPM
7	Verdi	TBD	
8	Sierra-North Virginia Pump System	4,168.00	per GPM
8A	Horizon Hills	4,023.00	per GPM
9	Lakeridge-Plumas Pump System	1,838.00	per GPM
10	Stead – Silver Lake	5,623.00	per GPM
11	Southeast Truckee Meadows	2,828.00	per GPM
12	Spanish Springs	5,789.00	per GPM
13	Lemmon Valley	2,734.00	per GPM
13A	Heppner*	1,011.00	per GPM
13B	Fish Springs	4,237.00	per GPM
14	Thomas/Whites Creek	5,103.00	per GPM
	<u>STMGID West/Thomas Creek</u>	<u>655.00</u>	
15	Mt. Rose/Galena	4,038.00	per GPM
	<u>Arrowcreek-Mt. Rose**</u>	<u>12,568.00</u>	

____ Where a Service Property is not located within an established Charge Area described above or where the Area Facility Unit Cost for that Charge Area has not been established, applicable Area Facility Unit Costs shall be determined by Authority on a case by case basis and may include charges for on-site and off-site improvements, including Oversizing Costs, to integrate new Water System Facilities or to connect to, expand, relocate or alter existing water Facilities, determined by the Authority as necessary to facilitate annexation of the Service Property into the Authority's Retail Service Area and/or development of the Charge Area or Charge Area Unit Cost to be established, as set forth in the Annexation Agreement or Water Service Agreement between Applicant and Authority.

* Charge Area 13A is subject to an additional charge of \$5,490.00 per lot for on-site distribution improvements.

Added: 06/18/03 Amended: 10/01/03; 01/21/04; 03/01/05; 10/18/06; 03/01/08; 05/21/09; 05/21/10; 06/19/13; 10/15/14; 01/01/15

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES

** Component of fee includes estimated costs of acquiring supplemental resource supply. Fee may be reduced to \$7,618.00 upon Applicant dedication of an acceptable combination of groundwater and creek water rights to satisfy supplemental conjunctive use supply as determined by the Authority pursuant to its Rule 7.

Added: 06/18/03 Amended: 10/01/03; 01/21/04; 03/01/05; 10/18/06; 03/01/08; 05/21/09; 05/21/10; 06/19/13;
10/15/14; 01/01/15

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES

B. Supply and Treatment Facility Unit Cost By Charge Area

"Supply and Treatment Facility Unit Cost" is the unit cost in dollars per GPM of Maximum Day Demand, representing the cost to construct and finance supply/treatment improvements identified in the Authority's facility plan.

	Charge Area	Amount	
0	Central Reno	\$4,163.00	per GPM
1	South Truckee Meadows	4,163.00	per GPM
2	Sparks-East Reno	4,163.00	per GPM
2A	Sparks-Inside McCarran Blvd	4,163.00	per GPM
3	Northwest Reno – Northgate/Mogul	4,163.00	per GPM
4	Sparks – Pyramid/Spanish Springs	4,163.00	per GPM
5	Sparks – The Vistas	4,163.00	per GPM
6	Sun Valley-Sullivan Pump Zones	4,163.00	per GPM
7	Verdi	TBD	per GPM
8	Sierra-North Virginia Pump System	4,163.00	per GPM
8A	Horizon Hills	4,163.00	per GPM
9	Lakeridge-Plumas Pump System	4,163.00	per GPM
10	Stead – Silver Lake	4,163.00	per GPM
11	Southeast Truckee Meadows	4,163.00	per GPM
12	Spanish Springs	4,163.00	per GPM
13	Lemmon Valley	0.00	per GPM
13A	Heppner	0.00	per GPM
13B	Fish Springs	0.00	per GPM
14	<u>STMGID West/Thomas/Whites</u> Creek	<u>2,082,004.163.</u> <u>00</u>	per GPM
15	<u>Arrowcreek-Mt. Rose/Galena</u>	<u>2,082,000.00</u>	per GPM

Added: 06/18/03 Amended: 10/01/03; 01/21/04; 03/01/05; 10/18/06; 03/01/08; 05/21/09; 05/21/10; 06/19/13;
10/15/14; 01/01/15

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES

C. Storage Facility Unit Cost By Charge Area

“Storage Facility Unit Cost” is the unit cost in dollars per GPM of Maximum Day Demand, representing the cost to construct and finance storage improvements identified in the Authority’s facility plan.

	Charge Area	Amount
0	Central Reno	\$933.00 per GPM
1	South Truckee Meadows	933.00 per GPM
2	Sparks-East Reno	933.00 per GPM
2A	Sparks-Inside McCarran Blvd	933.00 per GPM
3	Northwest Reno – Northgate/Mogul	933.00 per GPM
4	Sparks – Pyramid/Spanish Springs	933.00 per GPM
5	Sparks – The Vistas	933.00 per GPM
6	Sun Valley-Sullivan Pump Zones	933.00 per GPM
7	Verdi	TBD per GPM
8	Sierra-North Virginia Pump System	933.00 per GPM
8A	Horizon Hills	0.00 per GPM
9	Lakeridge-Plumas Pump System	933.00 per GPM
10	Stead – Silver Lake	933.00 per GPM
11	Southeast Truckee Meadows	0.00 per GPM
12	Spanish Springs	0.00 per GPM
13	Lemmon Valley	0.00 per GPM
13A	Heppner	0.00 per GPM
13B	Fish Springs	0.00 per GPM
14	<u>STMGID West/Thomas</u> <u>Creek/Thomas/Whites-Creek</u>	0.00 per GPM
15	<u>Arrowcreek-Mt. Rose Mt.</u> <u>Rose/Galena</u>	0.00 per GPM

NOTE: The following map depicts only approximate boundaries of the Charge Areas because the Authority’s distribution system undergoes frequent modification, Charge Area boundaries are subject to frequent adjustment and the exact boundaries of the Charge Areas shall be maintained by and may be adjusted from time to time by the General Manager of the Authority. The Authority attempts to keep a current map posted on its website, at www.tmwa.com; however, this map may not show sufficient detail to depict Charge Areas precisely. Pursuant to Rule 5 the Authority will determine the Charge Area and associated Area Facility charges to serve the Applicant’s Service Property(ies) at the time of application based on the most current Charge Area boundary information maintained by the General Manager of the Authority.

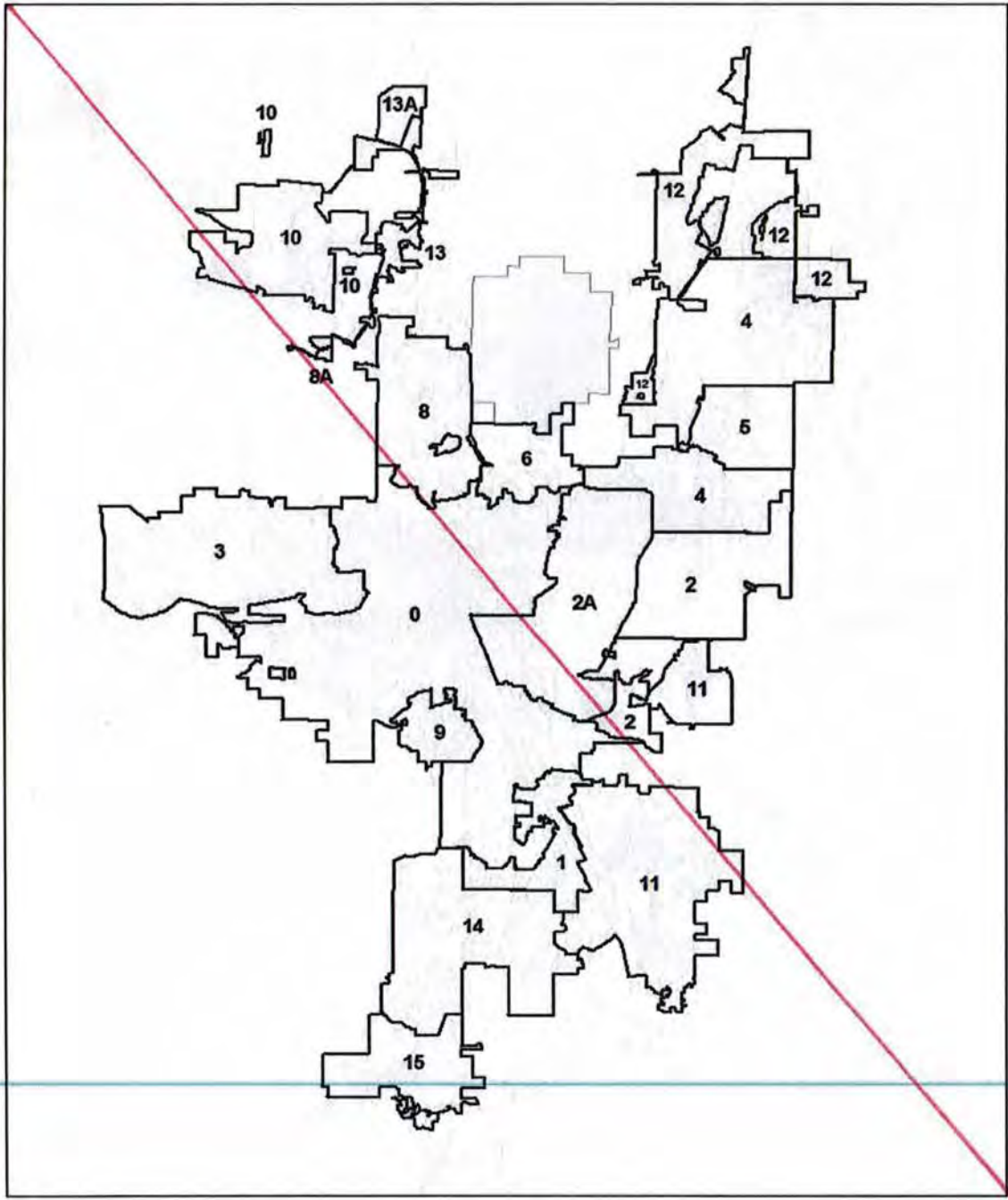
Added: 06/18/03 Amended: 10/01/03; 01/21/04; 03/01/05; 10/18/06; 03/01/08; 05/21/09; 05/21/10; 01/01/15

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES

EXISTING AREAS

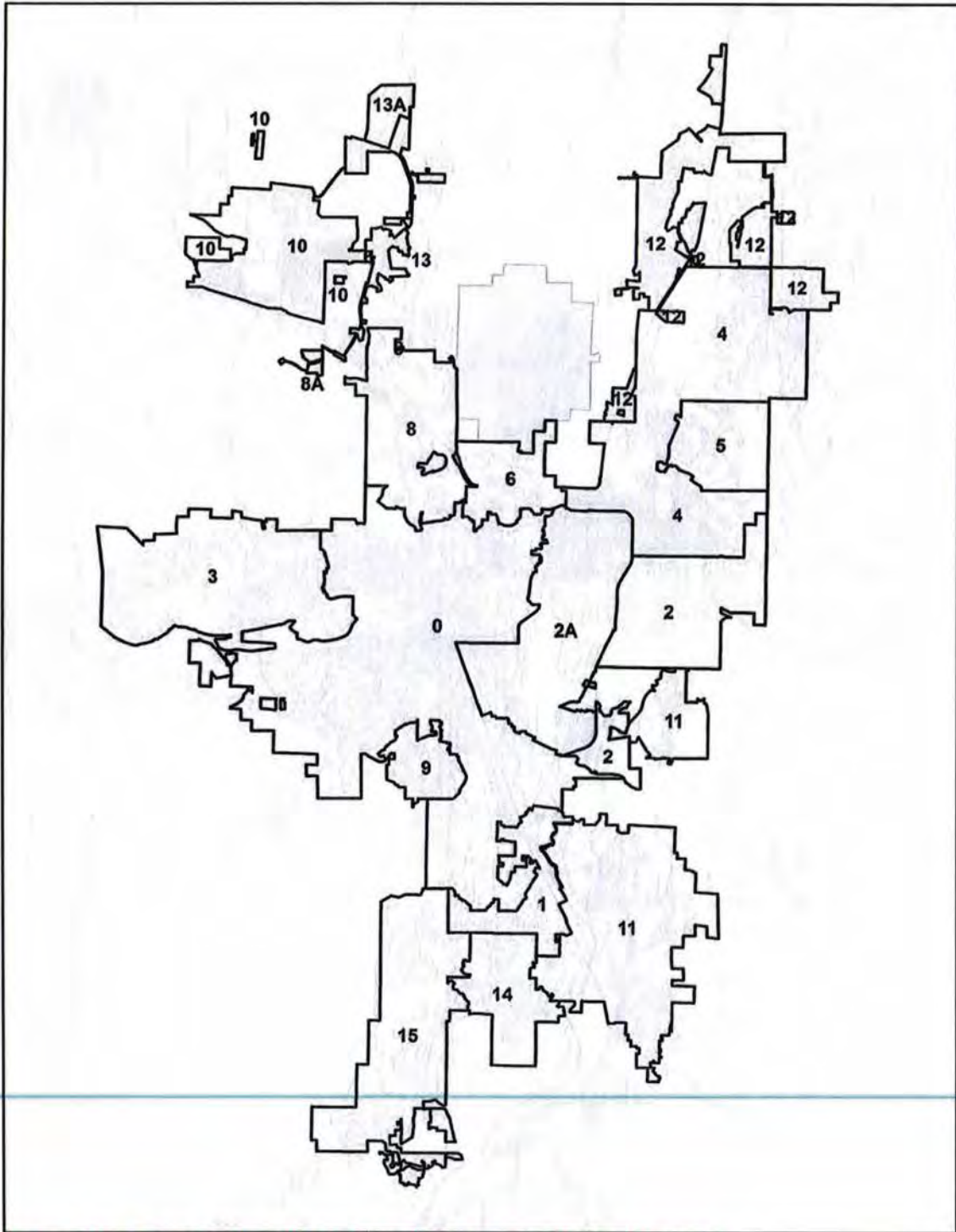


Added: 01/01/15

Truckee Meadows Water Authority

RATE SCHEDULES

WSF – WATER SYSTEM FACILITY CHARGES



PROPOSED AREAS – MODIFIED AREA 14 & 15 BOUNDARIES

Added: 01/01/15



TRUCKEE MEADOWS WATER AUTHORITY
Board of Directors
AGENDA

Thursday, May 21, 2015 at 10:00 a.m.
Sparks Council Chambers, 745 4th Street, Sparks NV

NOTES:

1. The announcement of this meeting has been posted at the following locations: Truckee Meadows Water Authority (1355 Capital Blvd., Reno), Reno City Hall (1 E. First St., Reno), Sparks City Hall (431 Prater Way, Sparks), Sparks Justice Court (1675 E. Prater Way, Sparks), Washoe County Courthouse (75 Court St., Reno), Washoe County Central Library (301 South Center St., Reno), Washoe County Administration (1001 East Ninth St., Reno), at <http://www.tmwa.com>, and State of Nevada Public Notice Website, <https://notice.nv.gov/>.
2. In accordance with NRS 241.020, this agenda closes three working days prior to the meeting. We are pleased to make reasonable accommodations for persons who are disabled and wish to attend meetings. If you require special arrangements for the meeting, please call 834-8002 before the meeting date.
3. The Board may elect to combine agenda items, consider agenda items out of order, remove agenda items, or delay discussion on agenda items. Arrive at the meeting at the posted time to hear item(s) of interest.
4. Asterisks (*) denote non-action items.
5. Public comment is limited to three minutes and is allowed during the public comment periods. The public may sign-up to speak during the public comment period or on a specific agenda item by completing a "Request to Speak" card and submitting it to the clerk. In addition to the public comment periods, the Chairman has the discretion to allow public comment on any agenda item, including any item on which action is to be taken.

1. Roll Call*
2. Pledge of allegiance*
3. Public comment — limited to no more than three minutes per speaker*
4. Approval of the agenda (**For Possible Action**)
5. Approval of the minutes of the April 15, 2015 meeting (**For Possible Action**)
6. Discussion and action on request to approve Resolution No. 226 of the Board of Directors of the Truckee Meadows Water Authority, Nevada, providing for the issuance of its Water Revenue Bond, Series 2015 B, in the principal amount of \$15,000,000; providing the form, terms and conditions thereof; and providing other matters relating thereto — Jeff Tissier (**For Possible Action**)
7. PUBLIC HEARING ON ADOPTION OF BUDGET
 - a. Public comment — limited to no more than three minutes per speaker*
 - b. Discussion and action on request for Adoption of Resolution No. 227: A Resolution to Adopt the Final Budget for Fiscal Year 2016 and the 2016-2020 Five-Year Capital Improvement Plan — Jeff Tissier (**For Possible Action**)

¹ The Board may adjourn from the public meeting at any time during the agenda to conduct a closed labor briefing with management representatives pursuant to NRS 288.220.

CLOSE PUBLIC HEARING

8. PUBLIC HEARING ON RATE AND RULE AMENDMENTS

- a. Public comment — limited to no more than three minutes per speaker*
- b. Second and Final Reading, Public Hearing and possible adoption of Resolution No.228 to amend TMWA's Water Rate Schedules for conversion of flat rate to metered billing: Amending applicability of Rate Schedules Residential Metered Water Service (RMWS), Residential Flat-Rate Water Service (RFWS), Small Unit Flat-Rate Service (SUFR), Multiple-Unit Residential Flat-Rate Service (MRFS), Multiple-Unit Residential and Irrigation Service (MRIS), and Former Washoe County Rate Residential Unmetered Service for Residential (FRMWC, subpart RFWD) — Kim Mazeres **(For Possible Action)**
- c. Second and Final Reading, Public Hearing and possible adoption of Resolution No.229 to amend TMWA Rate Schedule Water System Facility Charges (WSF) for Charge Areas 14 and 15 — Scott Estes **(For Possible Action)**

CLOSE PUBLIC HEARING

9. Discussion and possible direction to staff regarding 2015 legislative activities and current bills — John Erwin and Steve Walker **(For Possible Action)**
10. Discussion and action on request for Board approval of an Amendment to the June 19, 2013 Contract for the Delivery of Water between TMWA and the Reno Sparks Indian Colony — John Erwin **(For Possible Action)**
11. General Manager's Report*
12. Public Comment — limited to no more than three minutes per speaker*
13. Board comments and requests for future agenda items*
14. Adjournment **(For Possible Action)**

¹ The Board may adjourn from the public meeting at any time during the agenda to conduct a closed labor briefing with management representatives pursuant to NRS 288.220.



Quality. Delivered.

July ??, 2015

1355 Capital Blvd. • P.O. Box 30013 • Reno, NV 89520-3013

P 775.834.8080 • F 775.834.8003

{FIRSTNAME} {LASTNAME}
 {MAILINGSTREET}
 {MAILCITY}, {MAILSTATE} {MAILZIP}

**RE: TMWA's Plan for Groundwater Sustainability on the Mt. Rose Fan
 Regarding Service Address: {STREETNUM} {STREET} {CITY}, NV {ZIPCODE}**

Since the successful completion of Truckee Meadows Water Authority's (TMWA's) merger with the Washoe County Department of Water Resources (DWR) and the South Truckee Meadows General Improvement District (STMGID) water systems, TMWA is working on enhancing groundwater resources in the Mt. Rose Fan area.

At TMWA we recognized that once the merger was completed, we would implement programs to move treated surface water from the Truckee River and various creeks into the former DWR and STMGID systems. This conjunctive management of surface and groundwater resources in the Mt. Rose Fan area helps to protect and restore groundwater supplies. **Conjunctive use management maximizes use of surface water when it's available, thereby reducing groundwater pumping. This approach allows us to meet demands with surface water, and to rest and recharge specific wells when enough surface water is available.** For example, from January through May of 2015, the Double Diamond #1 and STMGID #1, #2, #3 and #11 wells were not pumped; the areas that these wells serve were supplied with surface water. Compared to January through May of 2014, this operation reduced groundwater pumping by over 147 million gallons. In addition, we also recharged over 18 million gallons of surface water into the groundwater aquifer during this same period.

Due to dependence upon groundwater and the continued decline in water levels aggravated by the ongoing drought, it is necessary to provide a supplemental source of supply for the water systems located on the upper Mt. Rose and Galena fan areas as soon as possible. These areas currently rely on groundwater wells for 100 percent of their water supply and the continuing drought situation has severely limited the amount of natural recharge to local aquifers. TMWA's unique ability to provide conjunctive use management is something neither STMGID nor DWR could do with their more limited water resources. This program and the projects described below support one of the primary goals of consolidation: **to improve management of the area's water resources.**

*Truckee Meadows Water Authority is a not-for-profit, community-owned water utility,
 overseen by elected officials and citizen appointees from Reno, Sparks and Washoe County.*

With the full resources of a consolidated water utility now available, immediate construction of the facilities to implement conjunctive use management has begun. This will improve reliability for both TMWA customers and domestic well owners by mitigating the continued decline of groundwater levels in the area.

TMWA's Conjunctive Use Plan

TMWA is implementing a \$7.8 million conjunctive-use plan for the Mt. Rose/Galena Fan area, consisting of three projects (see enclosed map) which will provide the ability to deliver treated surface water from the Truckee River to the area:

- Arrowcreek/Mt. Rose Conjunctive-Use Facilities
- Expanded Conjunctive-Use Facilities/Aquifer Storage and Recovery Program
- STMGID Conjunctive-Use Facilities

Note: these facility improvements are included in TMWA's existing budget and will not affect rates.

Arrowcreek/Mt. Rose Conjunctive-Use Facilities

The Arrowcreek/Mt. Rose Conjunctive-Use Phase 1 Facilities will deliver up to 1,500 gallons per minute of surface water during the winter months. This allows TMWA to not pump its production wells in the Arrowcreek and Mt. Rose water systems. These facilities consist of three booster pump stations and about 3,600 feet of 10-inch pipe on Zolezzi Lane. When installed, the project will deliver water to the Arrowcreek #3 Tank, located below the Thomas Creek Trail parking lot off Timberline Drive. This \$2.8 million project is scheduled for construction in the summer of 2015; the facilities are planned to be operational by November of this year.

Expanded Conjunctive-Use Facilities/Aquifer Storage and Recovery Program

TMWA is also expanding its Aquifer Storage and Recovery (ASR) Program. ASR occurs during the fall, winter and spring when water use in the community drops to approximately one-fourth of its peak summer usage, making Truckee River water available for recharge. ASR is the process of injecting treated surface water into the groundwater aquifer when the wells are not in use. The more water we can recharge and store during the off-peak season, the more we will have available when river flows are low. It's like money in the bank.

Since last winter, TMWA engineers, hydrogeologists and operations personnel have been identifying well sites for recharge in the Mt Rose/Galena Fan area. Staff is working as quickly as possible to test, design, permit, construct and implement recharge in at least three wells by this coming winter. The first wells scheduled to be equipped for recharge are Arrowcreek 2, Tessa West and Mt Rose 3.

An additional component of the overall ASR program is Phase 2 of the Arrowcreek/Mt. Rose conjunctive-use facilities. Scheduled to be constructed in 2016-2017, Phase 2 will consist of an additional \$1.2 million of system improvements. This will allow delivery of surface water into the upper portions of the Mt. Rose/Galena water system for use in recharging additional wells.

STMGID Conjunctive-Use Facilities

The third project, the \$3.8 million STMGID Conjunctive-Use Facilities, will provide an off-peak surface water supply for an area which primarily serves former STMGID customers, located in the vicinity of the Saddlehorn neighborhood. The facilities will be constructed in 2017-2018, benefiting TMWA customers and domestic well owners by providing surface water to protect and restore groundwater resources. The project will consist of a new booster pump station and about 8,100 feet of 10-inch pipe to be located on Arrowcreek Parkway. These facilities will deliver about 1,000 gallons per minute to the STMGID Tank 4 and Tank 5 zones during the winter months.

Addressing Water Demand Created by New Development

Effective June 1, 2015, TMWA's Board of Directors adopted revisions to its rules, water rights dedication policies and Water Service Facility Charges for the Mt. Rose/Galena Fan area. These changes affect new development in the area.

It is important to note that TMWA is a water purveyor required to respond to development approved by local governments. TMWA does *not* promote or encourage development in one location versus another. When, where and what type of growth occurs is solely within the land-use entitlement and planning functions of cities, counties and regional planning agencies. By contrast, TMWA's water-supply planning is designed to facilitate delivery of safe and reliable water supplies—*if and when land-use entitlements are granted*. TMWA is obligated to provide retail water service to users in its service area, which it can only do by identifying present and future needs and doing the necessary planning to meet them. TMWA's integrated planning process ensures the long-term water resources, facility capacity and funding mechanisms are in place to meet current and future water supply and demand conditions.

The newly adopted rules, water rights dedication policies and Water Service Facility Charges for this area require developers to dedicate supplemental surface water (creek) supplies when dedicating groundwater for new service in the area. Supplemental surface water resources (Whites, Thomas and/or Galena creeks) are a key component of the conjunctive resource management plan and necessary to ensure a sustainable water supply for existing customers, domestic well owners and new development in these areas.

Surface water from Whites, Thomas and Galena creeks has historically been used for agricultural irrigation. These creeks remain a key part of the regional water resources for the South Truckee Meadows. For instance, the creeks are used to augment the South Truckee Meadows Water Reclamation Facility reclaimed water (purple pipe) supply. The State Engineer also permits the use of these creek rights for water service.

In order to develop supplemental surface water supplies that will provide for the long-term sustainability of the local groundwater aquifer, TMWA is implementing the plan to construct a small water treatment plant (WTP) off of Whites and Thomas Creeks— this plan was approved as part of Washoe County’s 2002 South Truckee Meadows Facility Plan. The County’s Facility Plan recognized that, “The upper treatment plant is an integral component of the recommended water supply plan ... Most importantly, it will provide recharge water and/or offset winter groundwater pumping in the upper Mt. Rose fan area.”

As part of the process of planning for this small WTP, biologists and scientists are evaluating creek habitat and biological resources, as well as its form, structure and functionality. This assessment will make it possible to estimate the amount and timing of water that could be supplied to the WTP. The WTP project will be vetted through various permitting agencies and Washoe County’s Special Use Permit process, taking into account public input and comments.

Lastly, TMWA is developing and expanding an updated groundwater model for the area. The new model will significantly improve estimates of water-level impacts from future pumping, climate variability and recharge scenarios. TMWA plans to use the model to optimize well-pumping rates and locations, as well as recharge locations. This will help reduce the drawdown that can be expected to occur, particularly in the months when the municipal wells are used the most.

I understand this is a lot of information. If you have questions or would like further explanation of TMWA’s plans, please contact me at jenloe@tmwa.com or 834-8250.

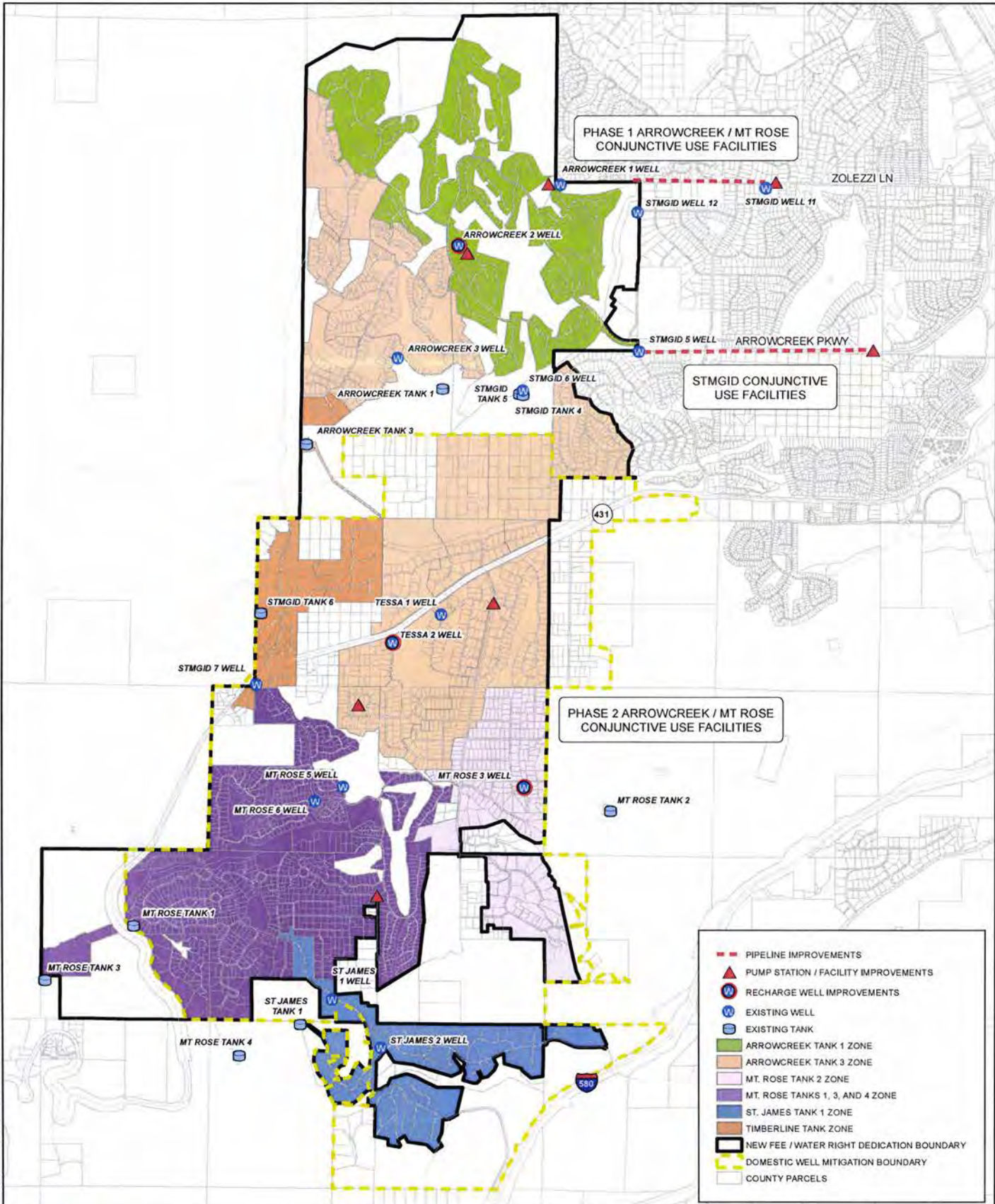
Sincerely,

A handwritten signature in black ink that reads "John Enloe". The signature is written in a cursive, flowing style.

John Enloe, P.E.
Manager, Operational Strategies

Enclosure

W:\projects\Facilities\Facility_clean_up\projects\mxdk\UK_17x11_2015_TMWA_ARROWCREEK_MTROSE_CONJUNCTIVE_#3MAP_8.5x11.mxd



	PIPELINE IMPROVEMENTS
	PUMP STATION / FACILITY IMPROVEMENTS
	RECHARGE WELL IMPROVEMENTS
	EXISTING WELL
	EXISTING TANK
	ARROWCREEK TANK 1 ZONE
	ARROWCREEK TANK 3 ZONE
	MT. ROSE TANK 2 ZONE
	MT. ROSE TANKS 1, 3, AND 4 ZONE
	ST. JAMES TANK 1 ZONE
	TIMBERLINE TANK ZONE
	NEW FEE / WATER RIGHT DEDICATION BOUNDARY
	DOMESTIC WELL MITIGATION BOUNDARY
	COUNTY PARCELS



GROUNDS SUSTAINABILITY PLAN
ARROWCREEK / MT. ROSE
CONJUNCTIVE USE FACILITIES

DATE	7/14/2015
MAP BY:	JK
REQUESTED BY:	JE
SCALE:	1 inch = 4,100 feet





Nevada Presort & Mail Marketing

10 Hardy Drive
 Sparks, NV 89431
 Phone (775) 358-1066
 FAX (775) 358-0254

Estimate

DATE	ESTIMATE #
7/13/2015	78057

Truckee Meadows Water Authority
 1355 Capital Blvd.
 Reno Nevada 89502

			PROJECT
DESCRIPTION	QTY	COST	TOTAL
Job Description: Mail Merged Letter			
CASS Certification & NCOA Service	8,000	0.009	72.00
Print & Mail Merge Document - Pg 1-4/K+Pg 2-K/K+Pg 3-K/0, 70lb - 8,000	8,000	0.25	2,000.00
Collating	8,000	0.03	240.00
Machine Fold	8,000	0.02	160.00
Provide #10 Windowed Envelopes - 70lb -4/0 - 8,000		1,142.30	1,142.30T
Machine Insert	8,000	0.03	240.00
Machine Seal	8,000	0.016	128.00
Barcode	8,000	0.02	160.00
Deliver to Post Office		15.00	15.00
Estimated First Class Automated Postage	8,000	0.391	3,128.00
Client will provide print ready artwork and mailing list. Estimated postage is due prior to mailing.			
Sales Tax		7.725%	88.24
		TOTAL	\$7,373.54

**CLOSING MEMORANDUM
TO INTERLOCAL AGREEMENT GOVERNING THE MERGER
OF THE WASHOE COUNTY DEPARTMENT OF WATER RESOURCES
INTO THE TRUCKEE MEADOWS WATER AUTHORITY**

This Closing Memorandum (this "Closing Memo") is made and entered into this 31st day of December, 2014, by and between TRUCKEE MEADOWS WATER AUTHORITY ("TMWA"), a Joint Powers Authority entity created pursuant to a cooperative agreement among the cities of Reno, Nevada, Sparks, Nevada and Washoe County, Nevada, pursuant to NRS Chapter 277 and WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada ("County") (each a "Party" and collectively "Parties") in connection with the closing under the Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority dated January 29, 2010. Except as otherwise defined in this Closing Memo, defined terms used shall have the meanings set forth in the Merger Agreement for such terms.

RECITALS

WHEREAS, County and TMWA entered into that certain Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority dated January 29, 2010 (the "Merger Agreement"), which provides for the merger of the DWR Water Utility into TMWA ("Merger").

WHEREAS, County and TMWA entered into that certain Addendum to the Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority dated January 29, 2010 effective October 28, 2014 (the "Addendum").

WHEREAS, the Parties have designated December 31, 2014 as the closing date for the transactions contemplated under the Merger Agreement (the "Closing Date").

WHEREAS, on or about October 15, 2014 the Board of Directors of the Truckee Meadows Water Authority adopted Resolution No. 217, and on or about October 28, 2014 the Board of County Commissioners of Washoe County adopted a resolution, each of which provided various authorizations to the General Manager of TMWA and the County Manager prepare and sign all necessary documents to consummate the Merger and to edit and amend certain documents related to the Merger, including without limitation closing memoranda and final schedules of transfer documents, to effectuate the implementation and consummation of the Merger Agreement.

WHEREAS, the Parties anticipate the Necessary Conditions will be achieved on or before December 31, 2014, and desire to enter into this Closing Memo to update schedules attached to the Addendum, as contemplated therein, and to provide written verification that all conditions to Closing have been satisfied and all required deliveries have been made to the appropriate Party.

NOW THEREFORE, for valuable consideration, which is hereby acknowledged, the Parties agree as follows:

1. Effect of Memorandum and Recitals. The Merger Agreement and all other documents evidencing the Closing shall remain in full force and effect. If any term of the Merger Agreement is inconsistent with any term of this Memorandum, the Merger Agreement shall control. This Memorandum provides instructions for closing and certain documentation details in furtherance of and to supplement the Merger Agreement. The recitals set forth above are incorporated herein by this reference as though set forth in full herein.

2. Consents. In satisfaction of Section 7.12 of the Merger Agreement, on or about October 15, 2014 the Board of Directors of the Truckee Meadows Water Authority adopted Resolution No. 217, and on or about October 28, 2014 the Board of County Commissioners of Washoe County adopted a resolution, each of which provided various authorizations to the General Manager of TMWA and the County Manager prepare and sign all necessary documents to consummate the Merger, including without limitation closing memoranda and final schedules of transfer documents, to effectuate the implementation and consummation of the Merger Agreement.

3. Closing and Transfer Documents. The Closing with respect to the purchase and sale of the Transferred Assets will occur on December 31, 2014, or as soon thereafter as the Parties may agree. The Parties agree that the on or before the Closing, County shall deliver to TMWA or Escrow Holder the following:

- a. A Grant, Bargain and Sale Deed - Fee Title Property conveying fee title to the Real Property identified in Schedule 5.3(b)(1).
- b. A Grant, Bargain and Sale Deed - Fee Title Property conveying fee title to the Longley Lane Treatment Plant.
- c. A Grant, Bargain and Sale Deed – Bulk Easements conveying the easements, rights of way and permits identified in Schedule 5.3(b)(2), including easements held of record by County for the benefit of the STMGID water utility.
- d. A Grant, Bargain and Sale Deed –Easements conveying certain easements and rights of way to four parcel areas.
- e. A Grant, Bargain and Sale Deed – Park Easements conveying certain easements and rights of way across County Parks property.
- f. An Assignment and Assumption of Leases, Licenses and Permits, conveying the leases, licenses and permits described in Schedule 5.3(b)(3).
- g. A Water Rights deed conveying the Water Utility Water Resources and any STMGID Water Resources held of record by County as described in Schedule 5.3(c).
- h. A General Assignment and Bill of Sale conveying the Transferred Assets.
- i. An Assignment of Assumed Contracts, assigning the Assumed Contracts described in Schedule 5.4.

j. Funds in the aggregate approximate amount of \$35 million, subject to external audit and verification to define final balances, anticipated to be completed by April 1, 2015.

k. An electronic schedule of the Washoe County Customers existing as of the Closing Date, along with a description of the class of service and premises address.

l. All books, records and other tangible Transferred Assets capable of physical delivery.

m. Such other funds, documents, and instruments required to be delivered under the Merger Agreement to consummate the transfer of the Transferred Assets and Merger as contemplated by the Merger Agreement.

4. Financing Documents. The Parties agree that all actions necessary to achieve the financial policies set forth in Article IV have been, or will be, satisfied on or before the Closing or as provided in the Addendum, and the forms of documents necessary to do so have been approved by the relevant party. The Parties may enter separate closing memoranda addressing terms and conditions for the defeasance or removal of legal conditions in the TMWA and DWR Obligations.

5. Necessary Conditions. The Parties acknowledge that the following conditions to Closing have been satisfied:

5.1 Modification of TMWA JPA. The Parties acknowledge the TMWA Joint Powers Agreement was amended on February 3, 2010 in satisfaction of Section 3.1.1 of the Merger Agreement.

5.2 Defeasance or Removal of Legal Conditions in TMWA and DWR Obligations. Relevant TMWA Obligations and DWR Obligations have been, or will be by the dates set forth in Section 4 above, defeased, retired or amended to permit the Merger to occur as contemplated by Section 3.1.2 of the Merger Agreement.

5.3 County Intrafund Loan Retirement. County represents that all Washoe County Intrafund Loans have been retired and no amounts are due from the DWR Water Resources Fund – Water Utility to the Washoe County General Fund or other non-Water Utility Funds.

5.4 Fish Springs Ranch Facilities. The Parties acknowledge construction of the Bravo Intertie project has been completed and Washoe County has demonstrated the Fish Springs Ranch water system facilities are operational.

5.5 Customer Deposits. Washoe County has used commercially reasonable efforts to refund all customer deposits to Washoe County customers prior to the Closing.

5.6 Board Approvals. Each party represents to the other that it has secured all approvals of its respective Board of County Commissioners or Board of Directors necessary to consummate the transactions under the Merger Agreement.

6. Schedules of Assets and Liabilities and Disclosure Schedules. Attached hereto and incorporated herein by reference are final versions of the following schedules (the “Schedules”), in accordance with Section 5.2 of the Merger Agreement, which shall be deemed

incorporated into and part of the Merger Agreement as if originally set forth therein, which shall supersede and replace the Schedules attached to the Addendum in their entirety:

(a) Schedule 3.5A:	Water Resource Commitment Liability
(b) Schedule 5.3(a):	Water Utility Facilities
(c) Schedule 5.3(b)(1):	Fee Title Real Property
(d) Schedule 5.3(b)(2):	Easements and ROW
(e) Schedule 5.3(b)(3):	Leases, Licenses, Permits
(f) Schedule 5.3(c):	Water Utility Water Resources
(g) Schedule 5.3(d):	Designated Funds
(h) Schedule 5.3(f):	Cash and Near Cash Assets
(i) Schedule 5.3(i):	Equipment and Rolling Stock
(j) Schedule 5.4:	Excluded Assets
(k) Schedule 5.5:	Assumed Contracts
(l) Schedule 5.6 (f):	Assumed Liabilities
(m) Schedule 5.7 (c):	Excluded Liabilities
(n) Schedule 6.1(a):	County Disclosures Regarding Real Property
(o) Schedule 6.1(b):	County Disclosures Regarding Water Resources
(p) Schedule 6.1(c):	County Disclosures Regarding Utility Water Facilities
(q) Schedule 6.1(d):	County Disclosures Regarding Other Assets
(r) Schedule 6.1(e):	County Disclosures Regarding Assumed Contracts
(s) Schedule 6.1(f):	County Disclosures Regarding Regulatory Compliance
(t) Schedule 6.1(g):	County Disclosures Regarding Environmental Claims
(u) Schedule 6.1(h):	County Disclosures Regarding Litigation
(v) Schedule 6.1(i):	County Disclosures Regarding Other Liabilities
(w) Schedule 6.4:	Priority Material Conditions Remaining to Be Cured

7. Amendment of Addendum Section 3.6: Liabilities. Subsequent to the execution of the Addendum, the County has disclosed additional Liabilities including shortfalls in the transferrable amounts in the Washoe County Equipment Services Fund (ESF) relating to deposits made by the water utility, arc flash compliance issues, and issues relating to billing of former Washoe County water utility customers. As a result, the Parties agree that Schedule 5.7(c) shall be amended as set forth herein and that the fourth sentence of Section 3.6 of the Addendum shall be amended and restated to read as follows: "Except for indemnified claims, to the extent Unknown Liabilities in excess of One Million Seven Hundred Thousand Dollars (\$1,700,000) are asserted against TMWA before the expiration of six (6) years following the Closing Date, the Parties may pursue such remedies permitted by law and the Parties shall cooperate with each other in the defense of any such action and will use commercially reasonable efforts and will cooperate with each other to facilitate resolution of any such claims."

8. Retiree Health Benefits. Section 8 of the Addendum is hereby amended and restated in its entirety as follows: "The TMWA General Manager and County Manager agree that the amount of cash assets to be transferred from the Washoe County OPEB Trust Fund to the TMWA Section 115 OPEB Trust Fund prior to the Closing Date shall be as follows: 1) the cash assets to be transferred from the Washoe County OPEB Trust Fund to the TMWA Section 115 OPEB Trust at the Closing will be \$546,873; 2) TMWA's OPEB obligation to fund the TMWA Section 115 OPEB Trust is estimated to be \$721,127. County will transfer the foregoing cash assets on or before March 31, 2015. An itemization of such funds is attached as Schedule 8 to this Closing Memo.

9. Affirmation of Washoe County Representations and Warranties. County affirms that the representations and warranties by County set forth in the Merger Agreement and Addendum remain true and correct as of the Closing Date.

10. Further Cooperation. Each Party agrees that it shall, at any time and from time to time after the Closing Date, upon the request of any other party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably requested by the other party, including reasonable efforts to secure third party approvals if necessary, to effectuate the intent and purpose of the Merger Agreement and the purchase and sale of the Transferred Assets, including, without limitation, assisting TMWA in securing the easements and other third party property interests identified in Schedule 5.3(b)(3). The Parties will cooperate as needed to review possible adjustments of pre-2001 wholesale commitments and facilitate allocation of any resulting resources for the benefit of County's obligations under Section 1.E.4 of the Truckee River Operating Agreement.

IN WITNESS WHEREOF, the Parties have set their hands with the intent to be bound.

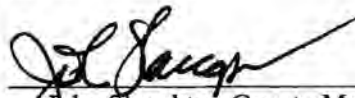
TRUCKEE MEADOWS WATER AUTHORITY, a
Joint Powers Authority created pursuant to NRS Chapter
277

Dated December 31, 2014

By: 
Mark Force, General Manager

Dated December 31, 2014

WASHOE COUNTY

By: 
John Slaughter, County Manager

Schedule 5.5
Assumed Contracts

	Title	Date	Counterparty	Description
1.	All outstanding and recorded contracts between Washoe County and property owners for mitigation under the Mt. Rose-Galena Fan Domestic Well Mitigation Program issued under Article 7, Washoe County Ordinance 1470	Various	Qualified property owners under Mitigation Program	Domestic Well mitigation reimbursements
2.	Water Banking Trust Agreement	2/28/06	Fish Springs Ranch, LLC	Fish Springs Ranch water dedication and banking
3.	License Agreement	7/22/08	Fish Springs Ranch, LLC	Access water data collection equipment
4.	Infrastructure Dedication Agreement	10/16/07	Fish Springs Ranch, LLC	Dedication of water collection and transmission infrastructure
5.	All public works construction contracts awarded by County for water utility projects which are in progress at the time of and specifically identified at Closing	Various		
6.	All third party warranties for goods or services provided to Water Utility	Various		
7	Revocable License Agreement	2/23/2010	UbiquiTel Leasing Company	Cell Tower communication license
8	Revocable License Agreement	4/8/2014	New Cingular Wireless PC	Cell Tower communication license
9.	All other cell tower license agreements identified by TMWA at the Closing as acceptable for assumption	Various	Various	Cell Tower communication licenses

Schedule 5.6 (f)
Additional Assumed Liabilities

Set forth below are the additional Assumed Liabilities TMWA agrees to assume pursuant to Section 5.6 (f) of the Merger Agreement:

1. All outstanding and recorded contracts between Washoe County and eligible property owners for mitigation under the Mt. Rose-Galena Fan Domestic Well Mitigation Program issued under Article 7, Washoe County Ordinance 1470.
2. Liability, if any, for payment to Pall Filter Company of the invoice described in Schedule 6.1(h) regarding alleged filter membrane and component fabrication.
3. Obligations to issue up to 101.8 gpm connection fee credits and bank up to 163.346 acre feet of Whites Creek water rights pursuant to the Settlement Agreement and Release dated March 27, 2013 between Washoe County and HOF Financial I, LLC, as assigned to and assumed in part by Lennar Reno, LLC.
4. Balance due to the NDEP under the 2005 Longley Lane Bond in the Safe Drinking Water SRF in the principal amount of \$9,109,438, under new agreement to be entered between TMWA and NDEP in accordance with Section 4.
5. Payments of Interest and Principal Payable on General Obligation (Limited Tax) Water and Sewer Bonds (Additionally Secured by Pledged Revenues) Series 2005 issued by Washoe County, in the approximate principal amount of \$26,100,000 in accordance with Section 4 of the Addendum.
6. All accounts and related balances that comprise the reporting level presentation for the following reporting classifications, outstanding and existing as of the expiration of the Reconciliation Period:
 - a. Accounts Payable.
 - b. Accrued Liabilities-Salaries and Benefits with respect to those County employees hired by TMWA as of the Closing Date.
 - c. Accrued Liabilities-Compensated Balances.
 - d. Contracts and Contract Retentions
 - e. Due to Other Governments
 - f. Due to Others
 - g. Net Positions of Water Fund

Schedule 5.7 (c)
Additional Excluded Liabilities

Set forth below are the additional Excluded Liabilities TMWA is not assuming pursuant to Section 5.7 (c) of the Merger Agreement:

1. Customer Deposits existing prior to the Closing Date.
2. All Liabilities associated with any and all indebtedness of County, including Liabilities arising in connection with 2005 Longley Lane Bond in the Safe Drinking Water SRF and the General Obligation (Limited Tax) Water and Sewer Bonds (Additionally Secured by Pledged Revenues) Series 2005 issued by Washoe County, to the extent not expressly assumed as Assumed Liabilities.
3. Any Liabilities arising under or in connection with the Developer Agreements (as defined in Addendum). Except as otherwise provided in the New TMWA/Developer Agreements, in the event TMWA is unable to enter New TMWA/Developer Agreements, TMWA agrees to provide the connection fee credits, water system capacity reservations, and/or resource credits to certain developers as set forth in Exhibit C to Schedule 6.1(c) as more particularly described in Section 7 of the Addendum reduced by any amounts of such credits utilized by the developer between the date of this Addendum and the Closing Date.
4. All Liabilities associated with any Excluded Assets.
5. All Liabilities (i) arising under any Assumed Contract prior to the Closing Date, (ii) resulting from any breach or default prior to the Closing Date of any Assumed Contracts or other Assumed Obligations, or (iii) arising under any contract not assumed by TMWA.
6. All Liabilities of County to County's employees, any employee benefit plan or any Governmental Authority, including Liabilities arising or accrued prior to the Closing Date under any severance pay program or arrangement, Equal Employment Opportunity Commission claim, unfair labor practice, wage and hour practice that exist as of the Closing Date and which are not expressly assumed hereunder. County will pay such excluded employee benefits and compensation during the Reconciliation Period.
7. Any penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by the County of any legal requirement in connection with operations of the Water Utility.
8. Liabilities associated with the Golden Valley Recharge program.
9. Liabilities arising from or associated with amounts billed to or collected from Water Utility customers prior to the Closing Date.

Schedule 6.1(e)
County Disclosures Regarding Assumed Contracts

Washoe County has not identified additional contracts to be assumed by TMWA nor are there additional disclosures on contracts to be assumed by TMWA other than those shown on Schedule 5.6 (f) Additional Assumed Liabilities.

046-180-13 046-180-14 156-141-04 156-040-09 156-040-11 156-040-14 156-111-23

The project parcels cover approximately 425 acres. The Project is outside TMWA's retail service boundary and will require annexation prior to service from TMWA. The project will be within Fee Area 15 once annexed, but the area fee will be modified to credit the Applicant for the Applicant's construction of existing and future facilities.

ASSUMPTIONS:

1. The applicant shall be responsible for all application, review, inspection, storage, treatment, permit, easements, and other fees pertinent to the Project as adopted by the TMWA at the time of execution of water service agreement.
2. The cost opinions contained herein do not include new business fees, cost of water rights and related fees, or contribution to the water meter retrofit fund.
3. For the purposes of discovery, the total maximum day demand is estimated at 467 gpm, and average day demands are estimated at 179 gpm. Demand calculations are attached. Demand calculations, and fees based on demands, are estimates; actual fees will be determined at the time of application for service.
4. For the purposes of discovery, fire flow requirements are assumed at 2,500 gpm for 2 hours with 20 psi residual pressure. This fire flow requirement is consistent with International Fire Code requirements for single family homes up to 9,400 square feet in size. The Truckee Meadows Fire Protection District is responsible for establishing the fire flow requirements.
5. Project pressure criteria are:
 - a. Maximum day pressure of at least 45 pounds per square inch (psi) at building pad elevation with tank level at top of fire storage,
 - b. Peak hour pressure of at least 40 psi at building pad elevation with tank level at top of emergency storage,
 - c. Maximum day plus fire flow pressure of at least 20 psi at center of street elevation with tank level at bottom of fire storage, and
 - d. Wintertime minimum demand pressure of at most 100 psi at service elevation with the tank nearly full and filling.
 - e. TMWA does not calculate pressures for multi-story buildings. Confirmation that pressure will be adequate for upper stories is the responsibility of the Applicant.
6. Site elevations were taken from existing topography provided by Washoe County. Existing elevations on the project site range from 5294 to 5970 feet. Changes in assumed site elevations may affect the facility requirements.
7. Facility requirements for the Project are based on the assumed elevations, maximum day demand, and fire flow requirements. Changes in these may affect facility requirements.
8. Easements, permits and all pertinent Agency approvals are obtained for the design and construction of the water infrastructure necessary to serve the proposed Project.
9. All cost opinions are preliminary and subject to change. The costs presented in this study are planning level estimates based on the information available. Actual costs will be determined at the time of application for service. Cost opinions do not include on-site improvements made by the applicant.
10. This discovery is based on the current status of TMWA's system. Future development may alter the conclusions of this discovery. Capacity in TMWA's system is available on

a first-come, first-served basis, and commitment to provide service is not established until a contract for service is executed and all fees are paid.

DISCUSSION:

The Applicant proposes development of approximately 239 single family residential lots in Washoe County Nevada. The project is further development of the St. James's Village and forms a portion a tentative map first approved in 1993.

The Applicant will be required to construct new facilities to serve the project. The Applicant will be responsible for the entire cost of the new facilities, including design, permitting, and construction. The design and construction need to be to TMWA's standards, and TMWA's approval of the plans, and ongoing inspection of the construction, will be required. Upon completion of construction, and acceptance by TMWA, the facilities will be dedicated to TMWA. There is no mechanism for the Applicant to recover any portion of the facilities cost from subsequent users who may tap into, extend, or otherwise benefit from the Applicant's installation of the facilities.

Issues the new facilities will need to address include:

- Existing System Configuration,
- Water Supply,
- Storage Tanks,
- Regional Integration,
- Project Phasing, and
- Site Topography

Existing System Configuration

The existing system is laid out in a tree configuration (Exhibit 2), with a single arterial main that decreases in diameter over its length, which has various mains of smaller diameter connected to it. This layout is contrary to TMWA design standards (section 1.1.06) and appears to not comply with Nevada Administrative Code. Nevada Administrative Code section 445A.6712 requires systems to be designed, to the extent possible, to eliminate dead ends and for a system of arterial loops. Tree systems are prohibited except as justified by an engineer.

The lack of looping greatly increases the chance of loss of pressure in the water system during main breaks and leaks. Loss of pressure in the system results in potential contamination of the system due to introduction of foreign material. Therefore, the lack of looping in the existing water system is a potential public health issue. TMWA's design standards (section 1.1.06.06) recognize dead ends are sometimes unavoidable, but limit the length to 800 feet where practical. The St. James's system far exceeds this maximum. Thus, TMWA is unwilling to extend service to additional lots in St. James's system that rely on an unlooped system. The service plan presented later in this document remedies the lack of looping in the existing system and allows for further development of the St James's system.

The lack of looping is also reflected in the available fire flow to the existing lots (Exhibit 3). TMWA does not have records to indicate what the fire flow requirements were at the time the existing portion of the St. James's development was designed.

Water Supply

The existing St. James's system wells have a nameplate capacity of 715 gpm. Existing maximum day demand is estimated at 206 gpm from 138 developed residential lots and common area landscaping. Despite the existing demand being a fraction of the rated well capacity, the static water levels in the two St. James's wells have been declining since the wells were installed in 1993. Figure 1 shows the groundwater level at the monitoring wells adjacent to the system production wells.

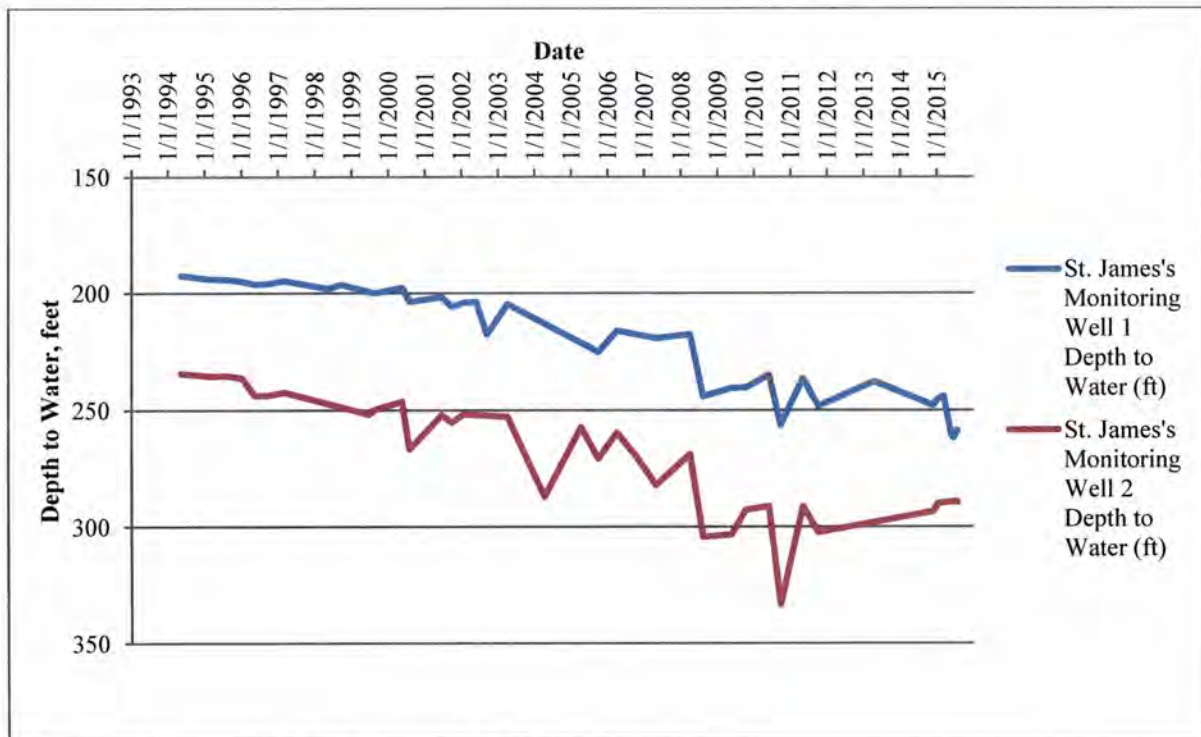


Figure 1. St. James's Monitoring Wells Historic Water Level

There are an additional 85 undeveloped residential lots in the approved subdivision, with service committed from the existing wells. The estimated maximum day demand from the remaining 85 developed lots is 145 gpm. Because of the declining water levels seen in the existing St. James's wells, TMWA is unwilling to supply any additional development from the two existing wells until the regional groundwater sustainability plan for the Mt Rose and Galena alluvial fans (see discussion below) is in place and operational, and groundwater levels in the existing wells have stabilized to TMWA's satisfaction.

For the proposed project, TMWVA will require the Applicant to complete at least two new groundwater wells. Two exploration wells have been drilled for the project, St. James's wells 3 and 4, and Applicant holds groundwater rights on these two wells. This discovery assumes the development of these two wells will be sufficient to provide the needs of the project. The following guidelines will apply to new wells:

-
1. The groundwater supplies must be proven sustainable to TMWA's satisfaction,
 2. Exploration and development shall be coordinated with TMWA.,
 3. Exploration wells shall be completed as monitoring wells,
 4. Wells, and the water produced, shall meet Nevada Administrative Code requirements,
 5. Wells shall be equipped with emergency generators,
 6. Wells shall be equipped for recharge,
 7. Wells shall discharge directly to tank zones, and
 8. Changing well locations or capacities from the values assumed in this discovery may alter the on-site improvements discussed in this discovery.

In addition, TMWA will require the Applicant to contribute to TMWA's efforts to stabilize groundwater levels in the Mt. Rose and Galena alluvial fans. TMWA's plan to stabilize groundwater levels is to use creek water while surface water runoff is seasonally available, and supplement the creek water with groundwater wells during peak demands. The applicant's responsibility toward TMWA's efforts to stabilize groundwater levels will consist of dedication of creek water rights (in addition to dedication of groundwater rights and development of groundwater wells) and financial contribution toward the construction of a new surface water treatment plant (TMWA's Area 15 Surface Water Treatment Plant). Financial contributions will be pro-rated based on the project's demand.

It is possible groundwater supplies sufficient to meet the project demand cannot be located on site. In that case, the Applicant might be able to import water from other sources. One such source would be the Sierra Reflections project located nearby and under common ownership.

For the purposes of discovery, it is assumed the project will require the completion of both St. James's wells 3 and 4, each with a nominal 300 gpm production capacity.

Fire Flows

Next to a sustainable water supply, the second most difficult aspect of service to the proposed project is the provision of fire flow. Exhibit 3 shows the existing system fire flows with existing facilities, all wells running, and the tank storage level at the bottom of fire storage. Fire flows are limited by the tree structure of the existing system, relatively high service elevations on the tree, and relatively small pipe diameters along the system backbone.

The addition of the proposed project worsens fire flows in the existing development by increasing the ordinary demands on the system. Exhibit 4 shows fire flows with the additional of the proposed project, but before any additional looping or improvements to the existing distribution system are made. As with Exhibit 3, the data used in Exhibit 4 was modeled with all wells running and the tank level set to the bottom of fire storage.

This discovery assumes the fire flow requirement for the existing and proposed development is 2,500 gpm, consistent with International Fire Code requirements for stick-built residences of up to 9,600 square feet. For reference, the largest existing residence in St. James's Village has a footprint of approximately 10,000 square feet. While the building footprint is not necessarily the square footage used in calculation of the fire flow requirement, it does give an indication of the size of residences expected. The International Fire Code allows for the reduction of fire flow requirements if internal fire suppression systems (fire sprinklers) are installed. Establishment of

the fire flow requirement is done on a building-by-building basis by the Truckee Meadows Fire Protection District at the time of application for building permits.

Fire flows are the worst for existing and proposed development south of Brown's Creek. To the north of Brown's Creek, the transmission main for the two proposed wells provides a convenient means of looping the nearby zones, and in so doing provides adequate fire flows. To the south of Brown's Creek, the existing system configuration forces all flow through a single main, which decreases in diameter from 12 inches at the tank to 8 inches in diameter at the services. To achieve a 2,500 gpm fire flow to the proposed project, several improvements were considered. Listed in order of decreasing effectiveness, the improvements considered included:

1. Additional looping from Joy Lake Road to the existing termination of Timberlake Court,
2. Installation of a double check valve on the hydrant extension into private property at the existing termination of Timberlake Court,
3. Installation of a Pressure Regulating Station on Joy Lake Road adjacent to Green Ash Road, and
4. Installation of a second pipeline crossing Brown's Creek parallel to Joy Lake Road.

These improvements are shown on Exhibit 5 and are discussed in more detail in the Service Plan section of this discovery. The final fire flow with the proposed service plan is shown in Exhibit 6.

Fire flow improvements that were considered but rejected include:

1. A parallel tank main between Joy Lake Road and Bennington Court in the existing dirt access road. This improvement had minimal impact on fire flows and was therefore rejected, and
2. A pump station at the existing termination of West Pinewild Court. This pump station would have pumped from the merged St. James 1/Joy Lake 2 zones (see service plan, below) to the termination of the St. James tank zone south of Brown's Creek. This improvement was unable to satisfy fire flow requirements.

Storage

The project is expected to add the following requirements to storage:

Emergency Storage: 1 average day @ 179 gpm =	257,760 gallons
Operating Storage: 15% of maximum day at 467 gpm =	<u>100,872</u>
Total:	358,632 gallons

The St. James's tank currently has 359,760 gallons of unattached storage capacity. TMWA's system currently has adequate storage to accommodate the project.

Regional Integration

The project lies between the existing St. James's system and proposed projects to the east and north. The proposed project to the east, Sierra Reflections, is under common ownership with the St. James's development. To provide support for the Sierra Reflections project, the

Applicant will be expected to set aside a location for a pressure regulating station to provide support for the Sierra Reflections project.

In addition, as a condition of annexation, the Applicant will be required to grant TMWA a public utility easement for waterline construction and maintenance between St. James Parkway and the St. James Well 4 site. The purpose of this easement is for integration of the St. James's system with future development to the north, and for mutual support between the St. James's system and other parts of TMWA's system.

Phasing

This discovery does not consider any potential phasing plan. The Applicant will be responsible for ensuring that all phases of the project are capable of meeting TMWA and regulatory requirements without the addition of future phases.

Site Topography

The project site is divided by the Brown's Creek drainage. The Applicant will be required to provide looping to all services despite the presence of the drainage. The maximum allowable slope of installed pipe is 10%, and the creek crossings themselves will require special construction. The Applicant is referred to TMWA design standard sections 1.1.06 and 1.1.20.04 for further information.

SERVICE PLAN

The proposed Project includes construction of 239 residential units. The lots will be distributed into five pressure zones, including two new pressure zones, and one formed by merging two existing zones. See Exhibit 5. Significant features of the service plan are:

1. Two new wells, the St. James 3 and 4 wells. These two wells have been drilled (in 1993) as exploration wells, and were tested at approximately 150 gpm each. Both had water that met the then current drinking water regulations. Each of these wells will need to be redrilled and equipped as production wells. As discussed elsewhere in this discovery, the sustainable production capacity of these wells will need to be demonstrated to TMWA's satisfaction.

The wells will discharge to the tank zone via a new pipeline installed in St. James Village HOA property along the northern boundary of the existing development.

2. A dual zone regulating station at the St. James Well 4 site. One of the zones will discharge to the St. James 2 regulated zone on the upstream side of the existing St. James Pressure Regulating Station 3 via a pipeline installed through property owned by St. James Village Inc. The second zone will discharge to the St. James 3 regulated zone via a pipeline along the northern boundary of the project to the eastern end of the project. This will provide looping to the St. James 2 and 3 regulated zones.
3. A pipeline across Brown's Creek from the St. James 2 Pressure Regulating Station to Joy Lake Road. This pipeline will merge the existing St. James 1 and Joy Lake 2 zones, and provide required looping to both zones.

-
4. Six single zone pressure regulating stations. One station provides looping for new lots added to the merged St. James 1/Joy Lake 2 zones (item 3 above). Four stations provide looped supply into each of two new pressure zones. The sixth station is on Joy Lake Road adjacent to Green Ash Road (Item 5.C. below).
 5. Fire flow improvements to tank zone lots south of Brown's Creek (see fire flow discussion above). It should be noted that while items A and D below are categorized as fire flow improvements, they also fulfill looping requirements, and that TMWA will not consider additions to any area that will not be adequately looped.
 - A. Additional looping from Joy Lake Road to the existing termination of Timberlake Court. This alignment was chosen to cover the best topography, and avoid undeveloped land. The alignment crosses land owned by St. James Village HOA, the Gourley Family Trust (APN 046-190-16), and the Marud-Rivas Family Trust (APN 156-082-01). The alignment starts at Joy Lake Road on the south side of Brown's Creek, and terminates at the existing end of Timberlake Court. The new looping pipeline will parallel existing pipe in Pine View Court and Timberlake Court. If right-of-way cannot be secured for this alignment, alternate alignments may be possible, but were not investigated.
 - B. Installation of a double check valve on the hydrant extension into private property at the existing termination of Timberlake Court. This will maintain positive pressure at the local distribution system high point during fire flow demands.
 - C. Installation of a Pressure Regulating Station on Joy Lake Road adjacent to Green Ash Road. The PRS will be used to deliver additional water from higher zones in the Mt. Rose water system during fire flows. The delivery of water from Mt. Rose will decrease the flows out of the St. James Tank, resulting in higher pressures in the St. James system during fire flows.
 - D. Installation of a second pipeline crossing Brown's Creek parallel to Joy Lake Road. This is necessary to reduce frictional losses in the current single Brown's Creek crossing and provide redundant supply to the proposed lots in the St. James Tank zone south of Brown's Creek.

Service Pressure and Elevation

Due to elevation changes in the project, two new pressure zones will be required to maintain service pressures in the project between 45 and 100 psi. Exhibits 7 through 9 show the proposed service pressures and pipe diameters.

Cost Opinion

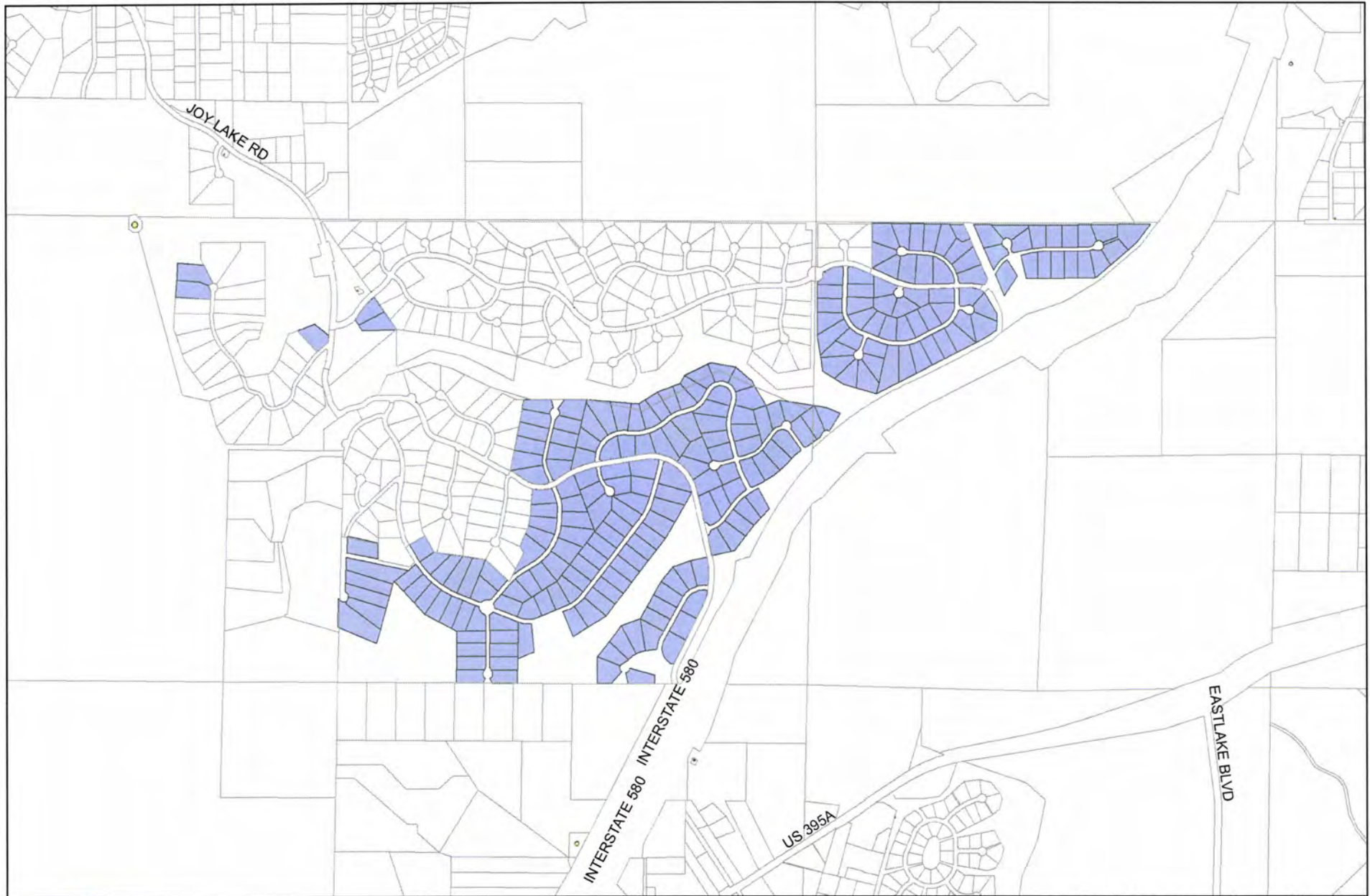
The cost opinion for the proposed project includes TMWA's facility fees, off-site improvements, and major or unusual on-site costs. The cost opinion for major improvements for the proposed Project is presented in Table 1.

Table 1. Cost Opinion for Major Improvements

Imp. #	Description	Quantity	Units	Unit Cost	Extension
1	New Production Wells	2*	Ea.	\$2,000,000	\$4,000,000
	8" Diameter Production Well Discharge Piping	5600	LF	\$120	\$672,000
2	Dual Zone Regulating Station at SJ Well 4 Site	1	Ea.	\$125,000	\$125,000
	8" Diameter Looping pipeline to SJ 2 Reg Zone	700	LF	\$120	\$84,000
	8" Diameter Looping pipeline to SJ 3 Reg Zone	3400	LF	\$120	\$408,000
3	8" Diameter Looping Pipeline to Merge St. James 1 & Joy Lake 2 Reg Zones	2800	LF	\$160	\$448,000
4	New regulator Stations	6	Ea.	\$75,000	\$450,000
5.A	10" Diameter St. James Tank Zone Looping Pipeline	4400	LF	\$200	\$880,000
	8" Diameter St. James Tank Zone Looping Pipeline	500	LF	\$160	\$80,000
	Right-of-Way acquisition for St. James Tank Zone Looping Pipeline	1	Ea.	\$50,000	\$50,000
5.B	Double Check Valve at Timberlake Court Termination	1	Ea.	\$75,000	\$75,000
5.C	Included in item 4. above				\$ -
5.D	8" Diameter Brown's Creek Crossing Parallel to Joy Lake Road	1500	LF	\$160	\$ 240,000
---	Area 15 Surface Water Treatment Plant Fee	467	Maximum Day gpm	\$8,448**	\$3,945,216
TOTAL					\$11,457,216

*Number of wells subject to change

** Fee could be lowered to \$ 3,497/gpm if Applicant provides and dedicates acceptable creek water rights



**ST. JAMES'S DISCOVERY
PROPOSED DEVELOPMENT**

EXHIBIT 1

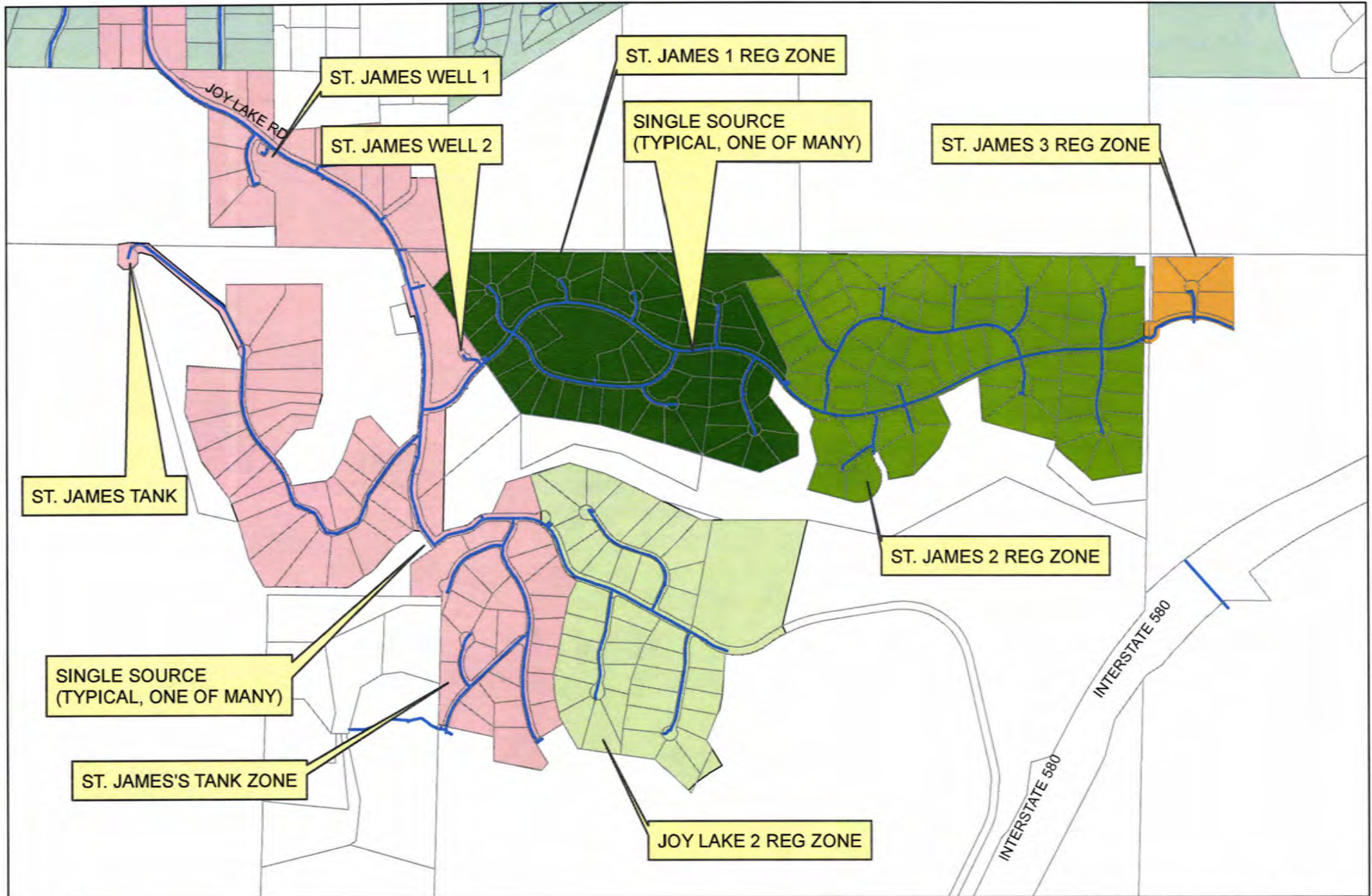
WORK ORDER: 15-4624

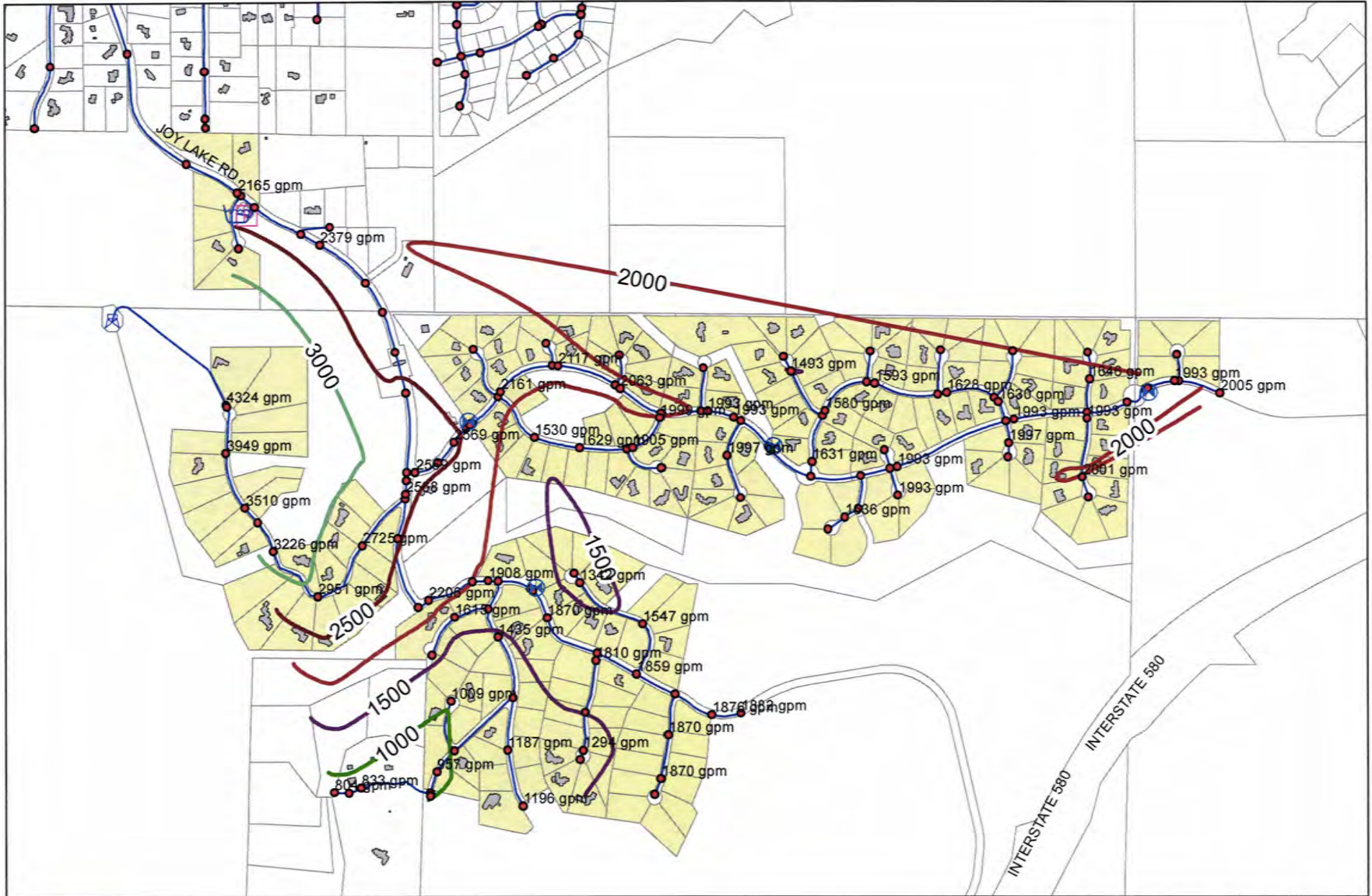
DATE: 12-1-2015

SCALE: 1 inch = 1,500 feet



NAD 83 NEVADA STATE
PLANE WEST FEET

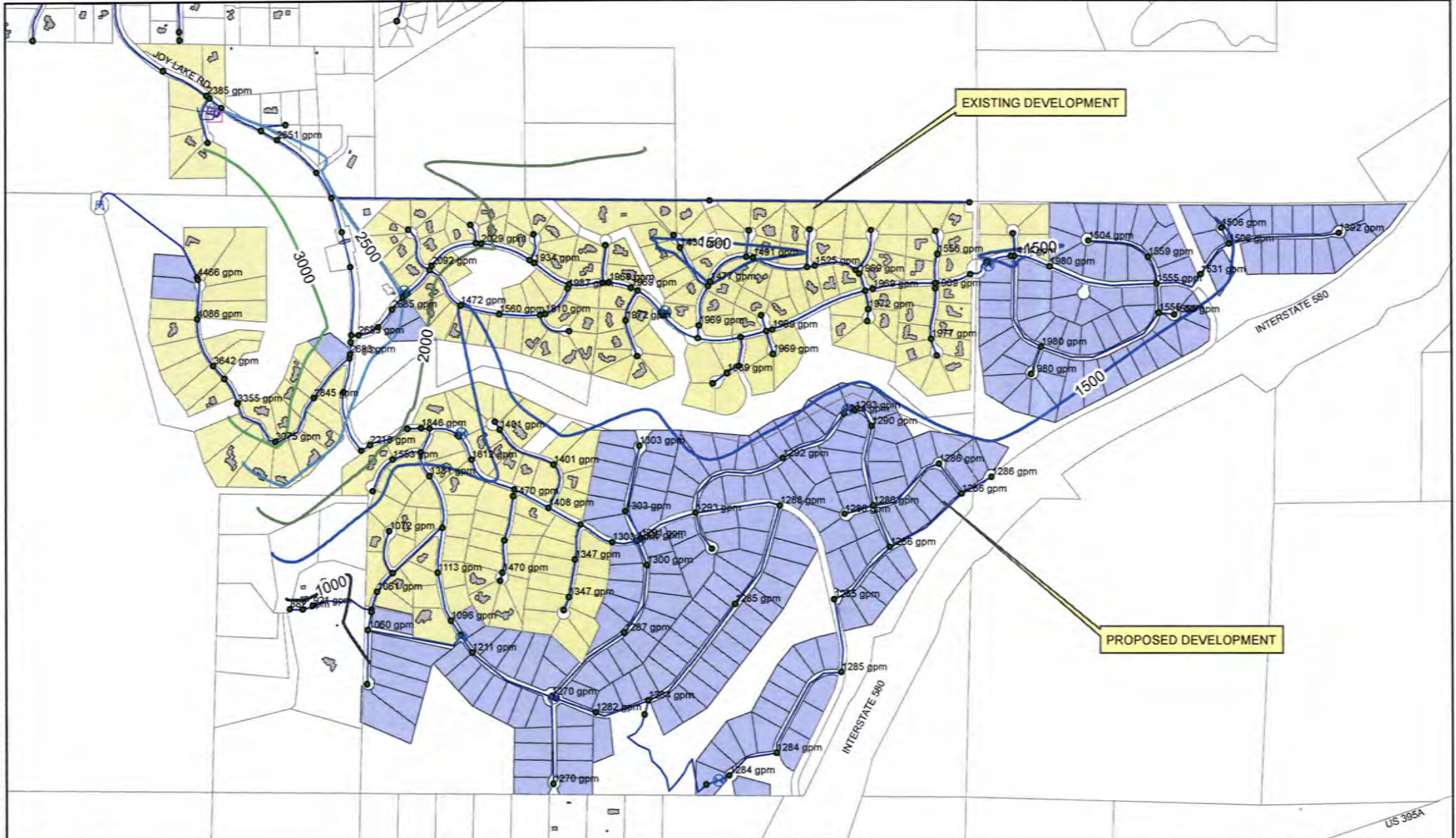




ST. JAMES'S DISCOVERY
EXISTING FIRE FLOW

EXHIBIT 3
WORK ORDER: 15-4624
DATE: 12-7-2015
SCALE: 1 inch = 1,000 feet





d:\cpath:\userfiles\path\stampl\locite copy and pasted\copath\here

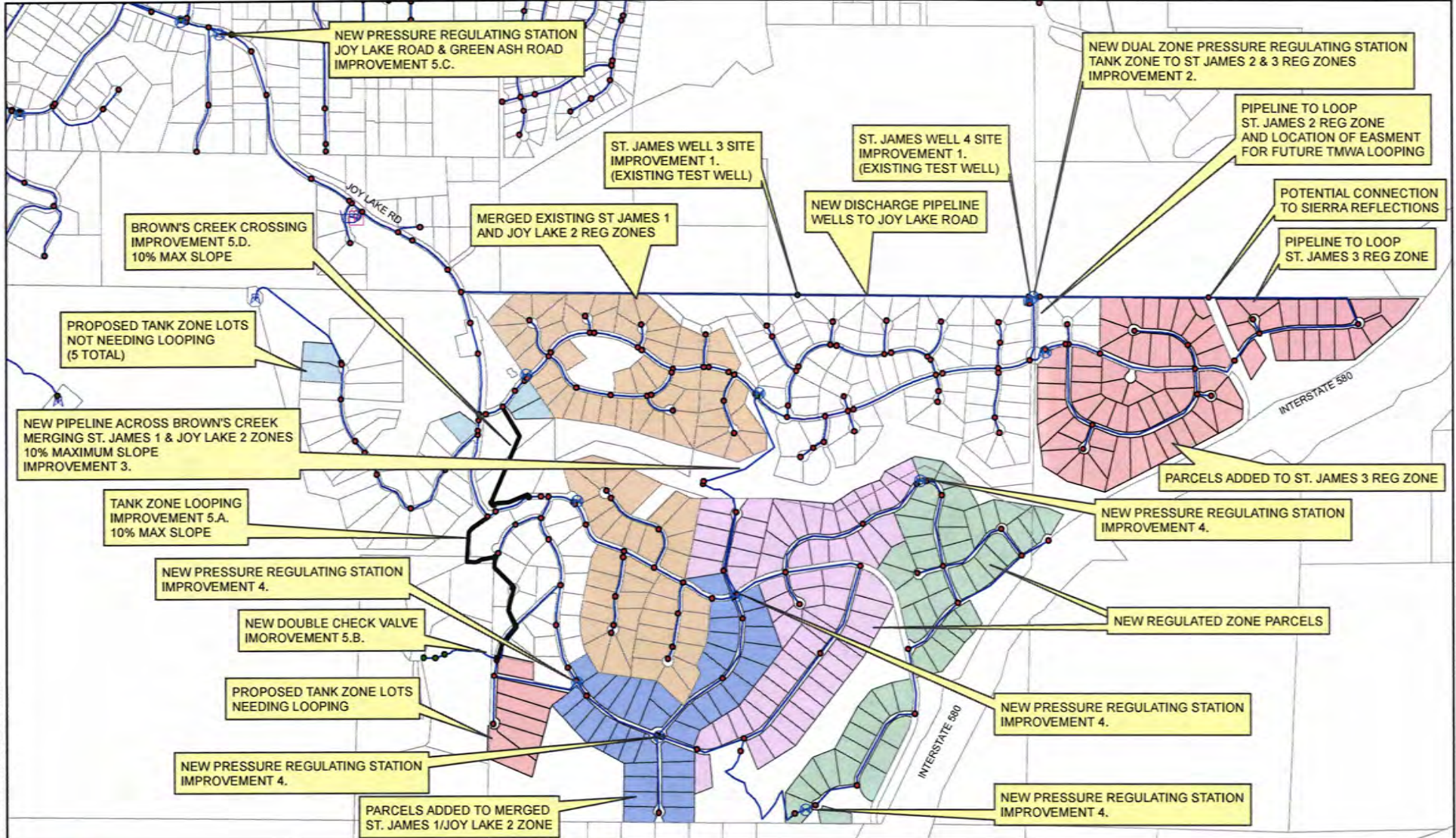


ST. JAMES'S DISCOVERY

FIRE FLOW WITH PROPOSED PROJECT BEFORE LOOPING OR FIRE FLOW IMPROVEMENTS

EXHIBIT 4	<p>NORTH</p> <p>NAO 83 NEAR 24 STATE PLANE WEST FEET</p>
WORK ORDER: 15-4624	
DATE: 12-8-2015	
SCALE: 1 inch = 800 feet	

US 395A



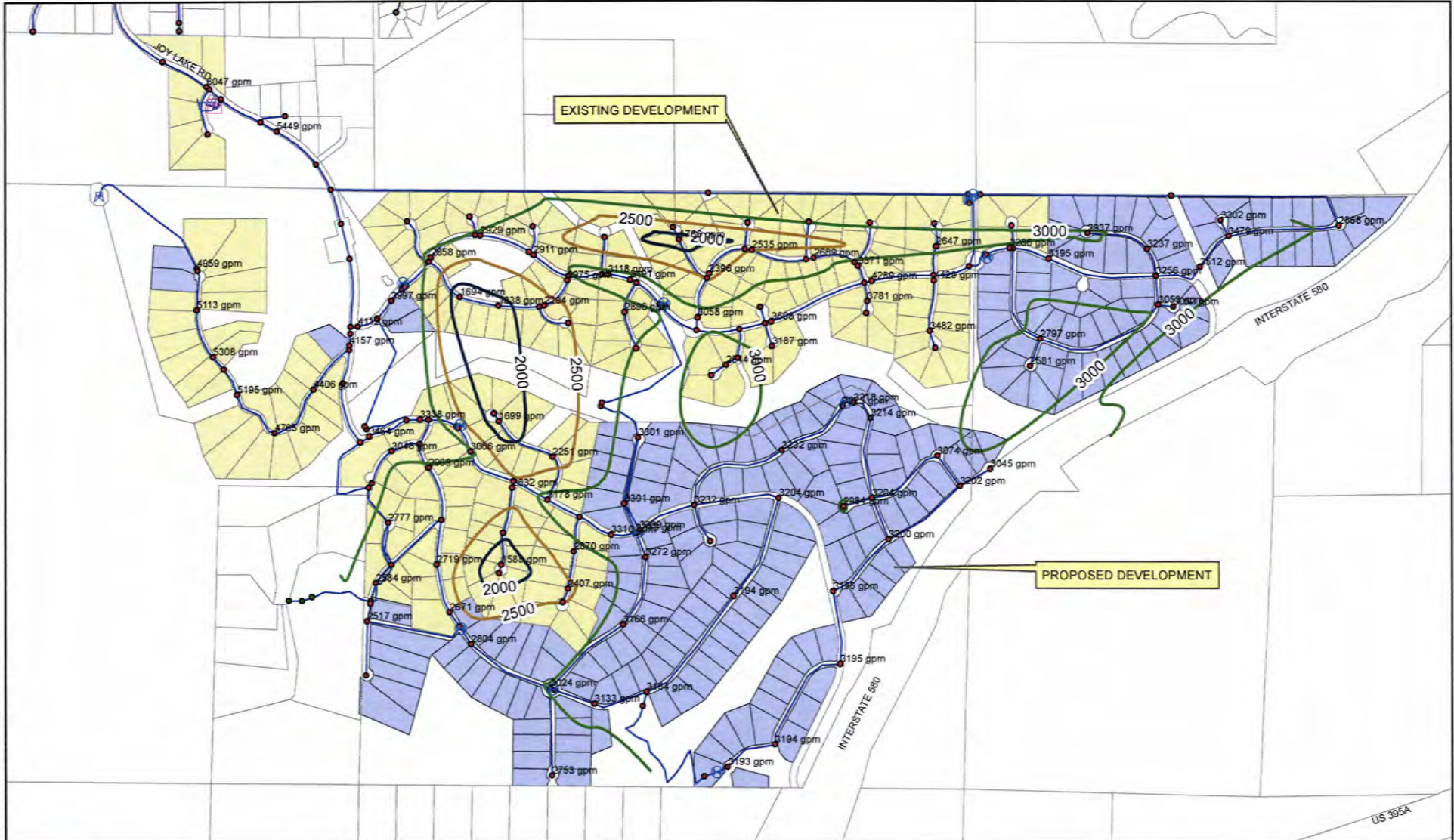
d:\gpath:\userfiles\pathstampa\tocto copy and pasted\gpath\here



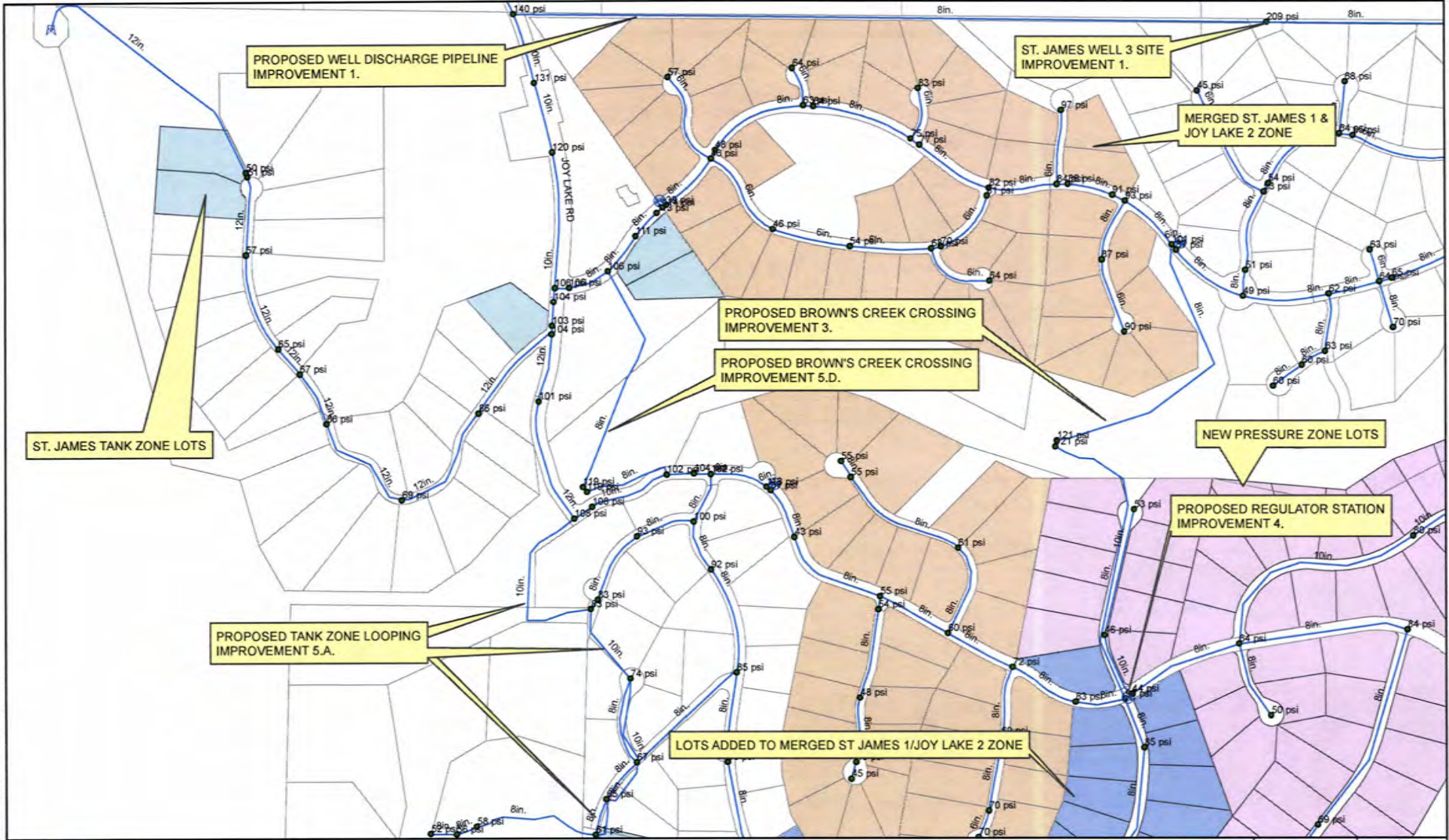
ST. JAMES'S DISCOVERY

SERVICE PLAN

EXHIBIT 5	
WORK ORDER: 15-4624	
DATE: 12-8-2015	
SCALE: 1 inch = 900 feet	NAD 83 NERADA STATE PLANE WEST FEET



d:\cpath:\user\file\path\stamp\to\c\copy and paste\d\c\path\here



doqpath:\userfiles\psh\stampa\to\copy and paste\doqpath\here



ST. JAMES'S DISCOVERY

PIPE DIAMETERS AND MAXIMUM DAY PRESSURES

EXHIBIT 7

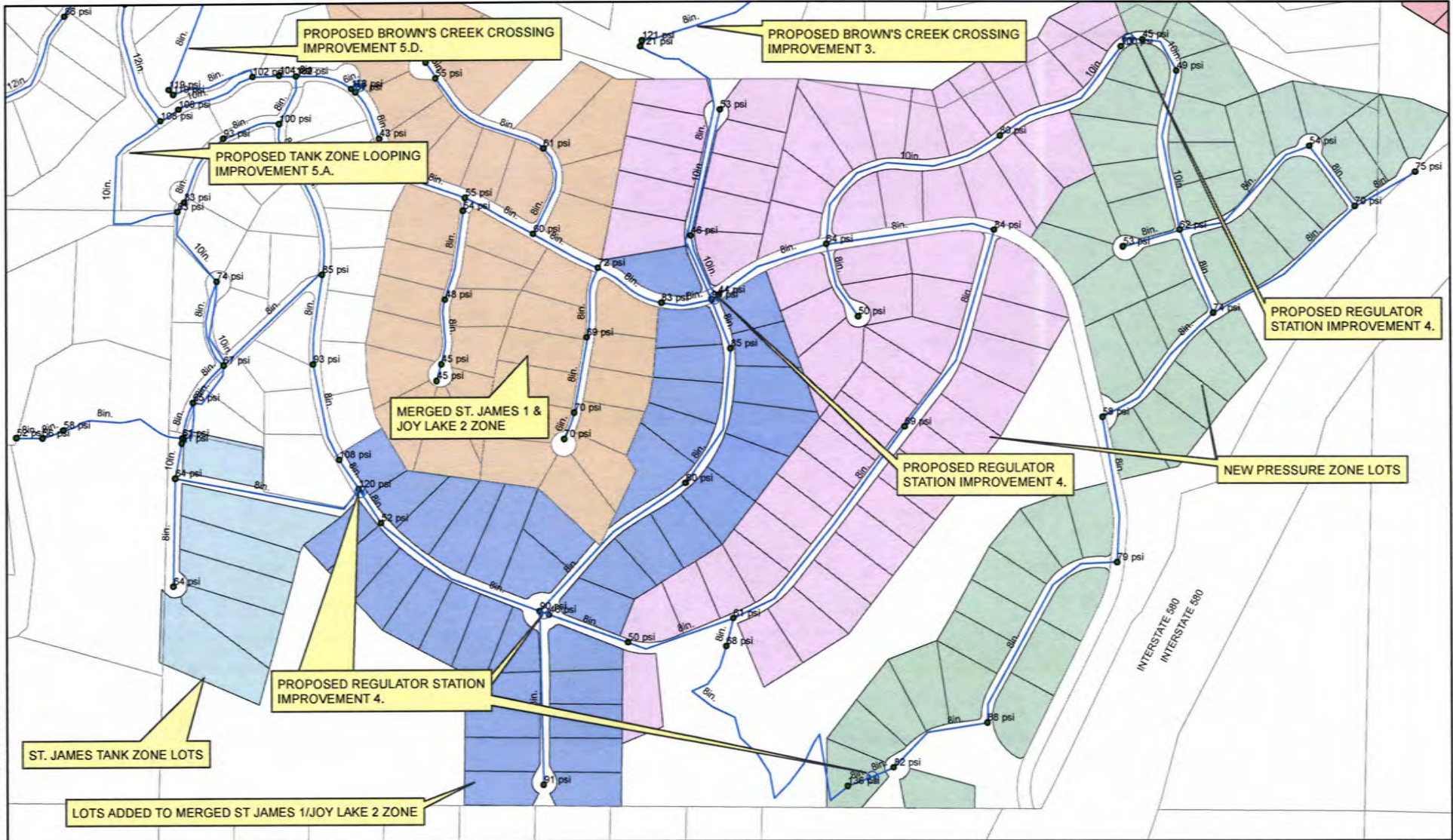
WORK ORDER: 15-4624

DATE: 12-8-2015

SCALE: 1 inch = 400 feet



NAD 83 NEVADA STATE PLANE WEST FEET

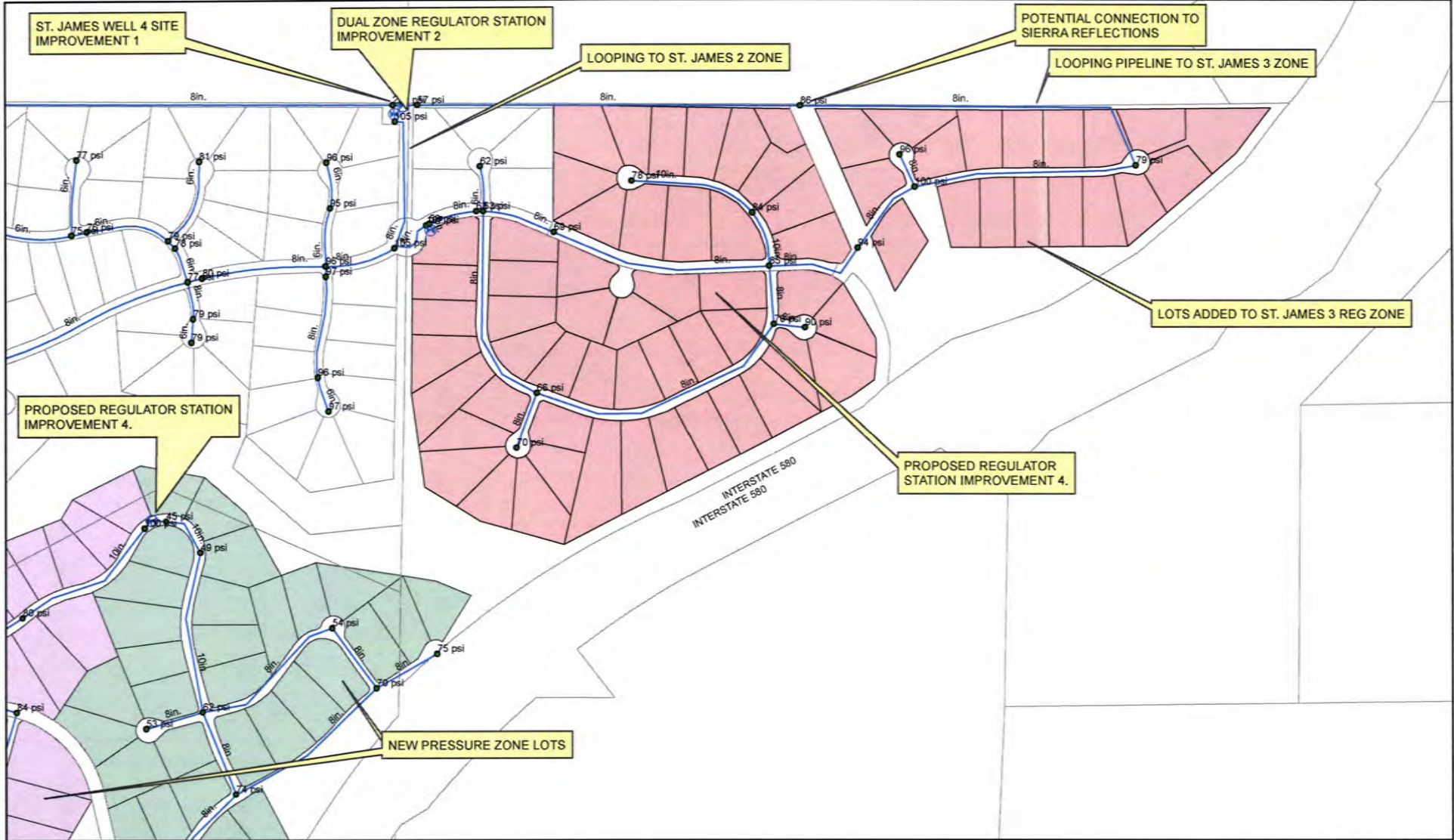


d:\cpath\user\kpath\amp\to\copy and paste\d\cpath\here



ST. JAMES'S DISCOVERY
PIPE DIAMETERS AND MAXIMUM DAY PRESSURES

EXHIBIT 8	
WORK ORDER: 15-4624	
DATE: 12-8-2015	
SCALE: 1 inch = 400 feet	



d:\path\ure\file\path\stamp\to\c\o\p\y and paste\d\o\p\ath\h\ere



ST. JAMES'S DISCOVERY
PIPE DIAMETERS AND MAXIMUM DAY PRESSURES

EXHIBIT 9	 <small>NAD 83 NEVADA STATE PLANE WEST FEET</small>
WORK ORDER: 15-4624	
DATE: 12-8-2015	
SCALE: 1 inch = 400 feet	



MCDONALD·CARANO·WILSON^{PC}

John Frankovich, Partner
jfrankovich@mcdonaldcarano.com

Reply to: Reno

January 28, 2016

Truckee Meadows Water Authority
1355 Capital Blvd.
Reno, NV 89502

Attention: Scott Estes, Director of Engineering

Re: Annexation Applications for St. James's Village Inc. and Sierra Reflections

Dear Scott:

This letter is submitted on behalf of St. James's Village Inc., as the owner and developer of the St. James's Village Subdivision and Sierra Reflections, the owner and developer of the Sierra Reflections Project. Both St. James's Village and Sierra Reflections have submitted Applications for Annexation into the TMWA service area. This letter is to notify you that both of these Applications for Annexation are withdrawn.

After reviewing TMWA's written discovery with respect to these Projects, it has become clear that it is necessary to engage a qualified consulting team to review other options to provide water service to these Projects. Since both of these Projects have received tentative map approval from Washoe County with a commitment by Washoe County to provide water service, it was anticipated that these Projects would be within TMWA's service area when TMWA acquired and assumed Washoe County's water facilities and commitments. Indeed, TMWA is currently the owner of all of the water rights for these Projects which were dedicated to Washoe County. In addition, with respect to the St. James's Village Project, it has been already approximately 50% built out, including the water infrastructure. It certainly was not contemplated that to continue with the Project which would be necessary to substantially modify the existing water infrastructure and provide additional storage facilities and production wells.

Once we have evaluated other options, we would like to set up a meeting with TMWA to review the recommendations of our consulting team and the next steps moving forward. It is believed that this information will be beneficial to both of us.

100 WEST LIBERTY ST., 10TH FLOOR
RENO, NEVADA 89501

P.O. BOX 2670, RENO, NEVADA 89505
775-788-2000 • FAX 775-788-2020

ATTORNEYS AT LAW



WWW.MCWLAW.COM

2300 WEST SAHARA AVENUE
SUITE 1200
LAS VEGAS, NEVADA 89102
702-873-4100
FAX 702-873-9965



MCDONALD-CARANO-WILSON

Scott Estes
January 28, 2016
Page 2

Thank you for your assistance in this matter. If you have any questions, or need any additional information, feel free to contact me.

Very truly yours,

A handwritten signature in black ink that reads "John Frankovich". The signature is written in a cursive style with a large, looping 'J' and 'F'.

John Frankovich

JF:km

cc: Ghassan Dahlawi
Fred Woodside
Sam Chacon

LEMONS,
GRUNDY &
EISENBERG

March 11, 2021

Attorneys at Law

6005 Plumas Street

Third Floor

Reno, NV 89519

T: 775-786-6868

F: 775-786-9716

Edward J. Lemons

David R. Grundy
1949-2020

Robert L. Eisenberg

Christian L. Moore

Alice Campos Mercado

Douglas R. Brown

Todd R. Alexander

Caryn S. Tijsseling

Dane A. Littlefield

Sarah M. Molleck

Rebecca Bruch*

* OF COUNSEL

John R. Zimmerman, Esq.
Truckee Meadows Water Authority
Water Resources Manager
1355 Capital Blvd.
Reno, Nevada 89502

**Re: St. James's Village re TMWA
Our File No. 90.8011**

Dear Mr. Zimmerman:

As you know, I am counsel for St. James's Village. In that regard, it has recently come to the attention of my client that six of the seven lots that were approved for a final map in 2019 currently have no water service, despite your signature of approval on behalf of TMWA on the final plat map.

Until recently, my client was unaware that TMWA failed to provide service to six of the seven lots that were approved for final map status in 2019. Because TMWA did provide service to Lot 507, we remain optimistic that the failure to provide service to the remaining six lots may have been an oversight on the part of TMWA. We are, however, mindful of our recent discussions with TMWA and its lack of willingness to work with St. James's Village on the current water issues facing the development because my client did not execute an annexation agreement. As we have communicated to TMWA, my client is not opposed to executing the annexation agreement with TMWA, but it does not feel the fees associated with the annexation agreement are reasonable or supported by research my client has conducted concerning the water issues affecting St. James's Village.

As you may recall, no valid TMWA discovery exists for St. James's Village because the project was originally approved by Washoe County as a design-build project that would have allowed full completion of the project as originally approved. My client has expressed its desire to work with TMWA and conduct preliminary engineering and submit discovery for St. James's Village to look at phasing and build out of the project based on the recent well test data and my client's commitment to require fire sprinklers in homes that exceed 3,600 square feet in size. Despite the unwillingness of TMWA to work with St. James's Village on the water issues affecting the development, my client remains committed to working towards a resolution with TMWA.



John R. Zimmerman, Esq.

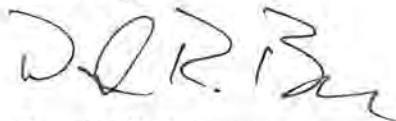
March 11, 2021

Page 2

The failure of TMWA to provide water service to the referenced lots has put my client in a difficult position and will cause significant damages should TMWA refuse to provide service. My client, in reliance on the approval of the final map, has listed the subject lots for sale. Of the seven lots listed for sale, four have already been sold with the expectation that water service would be provided to the lots.

Upon receipt of this letter, please confirm in writing that TMWA will provide service to the lots subject to the 2019 final map that was approved and executed by TMWA. As noted, my client remains committed to working with TMWA towards a resolution of the proposed annexation fees. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Brown", written in a cursive style.

Douglas R. Brown

DRB/sgd



TO: Nancy Raymond DATE: February 14, 2022

THRU: Scott Estes & Danny Rotter

FROM: David Kershaw

RE: **DISCOVERY: Saint James Village Annexation Units 1H & 2C¹**
TMWA WO# 21-8275

PURPOSE:

The purpose of this Discovery is to present a water service plan including the offsite water facility requirements and an estimate of their associated costs for the proposed project (Project).

DISCUSSION:

The Project is proposed to include development of up to 24-single family residences within Saint James Village Units 1H & 2C. These two subdivisions are located within portions of two Washoe County parcels with an approximate acreage of 105 acres (Washoe County APNs: 156-040-14 & 156-111-23) on the Mount Rose Fan area. Only a portion of the total parcel area is being proposed for development in this Discovery. The Project is partially located within TMWA's retail service territory, with Unit 2C within TMWA's existing service territory but without any service commitments and Unit 1H outside the service territory. Therefore, annexation is required for the portion of the Project consisting of Unit 1H.

It should be noted that a previous Discovery (W.O. 15-4624) was completed, dated December 23, 2015. The 2015 Discovery identified required improvements to provide water service for remaining infill of existing approved lots and an additional (then) proposed 239 single family residential lots.

Existing System Configuration:

The existing system is laid out in a tree configuration (Figure 2), with a single arterial main that decreases in diameter over its length, which has various mains of smaller diameter connected to it. This system was designed and installed for a prior water utility and was not reviewed or approved by TMWA. This existing system design and layout is contrary to TMWA design standards (section 1.1.06) and does not comply with Nevada Administrative Code. For example, Nevada Administrative Code section 445A.6712 requires systems to be designed, to the extent possible, to eliminate dead ends and for a system of arterial loops.

¹ As previously advised on December 23, 2021, the Discovery request is limited to Unit 1H and 2C.

Tree systems are prohibited except as justified by an engineer. TMWA will not support a request for variance from these standards from the Bureau of Safe Drinking Water or Washoe County Health District and in TMWA's engineering opinion and reasonable utility discretion does not believe perpetuating or extending system layouts contrary to TMWA design standards and/or the Nevada Administrative Code is in the best interests of public health and safety or prudent utility operations.²

Sound engineering grounds support these opinions, including the following. The lack of looping greatly increases the chance of pressure loss in the water system during main breaks and leaks. Loss of pressure in the system may result in potential contamination of the system due to introduction of foreign material. Therefore, the lack of looping in the existing water system is a potential public health issue. TMWA's design standards (section 1.1.06.06) recognize dead ends are sometimes unavoidable, but limits the length to 800 feet. This is the maximum radial main length that the Health District has accepted in the past and is the maximum radial main length TMWA will accept. Additionally, the lack of looping and existing main sizes also significantly limits the available fire flow for existing and future units in the development. Reduced fire flow in remote and/or wildland urban interface environments create additional public health and safety issues. The existing St. James's system far exceeds this maximum (>6,000 feet for one branch) and extending this existing noncompliant system to new services will not be allowed without modifications or mitigation measures to resolve the issue and protect public health and safety. The purpose and intent of prudent water system design is not just to move water from point A to point B; it is to ensure protection of water quality, quantity, and system pressure and to provide system redundancies in the interests of public health and prudent utility operations, including for fire protection.

Water Supply:

At this time, no will serve commitments have been issued for the Project. The current development is supplied by two municipal groundwater production wells, Saint James Well 1 and Saint James Well 2. These two wells have a historical nameplate total capacity of 715 gallons per minute (gpm); however, the actual sustainable capacity is far less (as discussed below)³. In an emergency, the Saint James system can be supplied water from the Mount Rose system for a limited period. Existing maximum day demand supplied from these wells without the proposed Project is estimated at approximately 207 gpm.

² Even if one were to assume that the existing water system facilities are adequate to simply move water from point A to point B, substantial evidence exists which a reasonable mind could accept as sufficient to demonstrate that design of those systems is contrary to applicable standards and interests of public health and safety such that reasonable engineering discretion could conclude the existing system is not adequately designed to permit extension for service to new development without modifications which bring it into closer conformity with applicable standards.

³ It is not uncommon for there to be a significant difference between the face value identified on a permit and the actual water the permitted source can reliably and sustainably produce.




Figure 1 shows the water level in the two production wells and the existing monitoring wells on the property. The data indicates a fairly consistent decline in water levels in both monitoring and production wells with a slow leveling off in the last four years. Notably, in the last five years TMWA has actively tried to reduce groundwater pumping from the region and supply more of the region with surface water as part of a resource conjunctive use strategy that includes the construction of the Mt. Rose Surface Water Treatment Plant. One of the purposes of these efforts is to reduce overpumping of the groundwater aquifer which was prevalent in this area prior to TMWA taking over the Washoe County utility and South Truckee Meadows GID systems.

A significant risk with any water right, whether permitted by the Nevada State Engineer or not, is whether a reliable supply of actual physical water exists year-in, year-out that can be diverted for the intended beneficial use. This is particularly true in groundwater basins where the amount of water stored in the groundwater aquifer experiences continual decline in water levels year-over-year without evidence of recovery either from natural hydrologic cycle or engineered solutions⁴ that replenish the aquifer. The impact of declining sub-surface water supplies causes hardships on municipal and domestic well owners and may threaten the sustainability of water supplies previously committed for service. These issues can be exacerbated, and reliability of municipal supplies threatened, if prudent resource management and discretion is not exercised and groundwater resources in these types of basins are accepted without considering the supply's long term- reliability and sustainability.

With these principals in mind and based on sound data and prudent utility operation practices to ensure sustainable supply sources, TMWA has derated the reliable maximum day capacity for these two wells and other wells in the area in its 2035 Water Facility Plan due to the continued decline of water levels observed since construction. Both Saint James Well 1 and Saint James Well 2 have been derated to 175 gpm each for planning purposes.

In addition to the Project and existing demands, there are an additional 81 approved, undeveloped residential lots in the subdivision, with service committed to those lots from the existing wells. The maximum day demand from the remaining 81 developed lots is estimated at 122 gpm which will be additional future demand on the groundwater basin and wells. Thus, the total maximum day demand associated with existing development and future approved development (81 lots) is 329 gpm, nearly the full sustainable rated capacity of the two wells.

Additional sources of supply and/or supply capacity improvements will be required to serve the Project. Because of the declining water levels observed in the existing Saint James' wells and prudent utility operation practices coupled with the fact that the Project demands exceed the available rated capacity of the wells, TMWA is unwilling to supply the Project or

⁴ Engineered solutions can include deploying alternate sources of supply in lieu of continued groundwater pumping, injecting other treated water supplies into the aquifer, spreading or rapid infiltration basins, pumping limitations on municipal and domestic wells, or any combination of these.

any future additional development solely from the two existing groundwater wells as proposed without additional supply capacity, other mitigation measures⁵ or until, at the earliest, the groundwater levels in the existing wells have stabilized and modelling demonstrates the stabilized wells can independently provide sustainable adequate sources of supply for future growth to TMWA's satisfaction.

However, alternate sources of supply or mitigations are available for water supply to the Project⁶. This Discovery has identified facility improvements to allow the new units to obtain a water supply from TMWA's regional, conjunctive use system without impacting the local groundwater resources. TMWA is open to consideration of other supply options that do not negatively impact the long-term reliability of existing regional groundwater resources and wells, but understandably it is contrary to public health and prudent water supply management to issue will serve commitments supported solely on unsustainable or unproven sources of water supply.

⁵ Based on data from TMWA's historical hydrogeologic monitoring and modeling efforts for the area, data from the Nevada State Engineer and other studies, groundwater levels in this area are declining and evidence indicates additional withdrawals of groundwater will exceed the sustainable yield of the basin, causing continued declines in water levels in the aquifer, and/or conflict with existing water rights. Pursuant to TMWA Rule 7, the Authority has the right, in its sole discretion, to accept or reject any water rights offered for dedication based upon its consideration of criteria set forth in that Rule and exercise of prudent utility resource management discretion.

⁶ The unique conditions of groundwater rights in this area and concerns with, among other things, the quantity, drought-year supply, and yield of groundwater rights requires surface and groundwater resources be conjunctively managed to mitigate these issues. TMWA's Rules provide mechanisms for dedication of supplemental surface water supplies at the time groundwater rights are offered for dedication to facilitate issuance of will serve commitments in Charge Area 15.

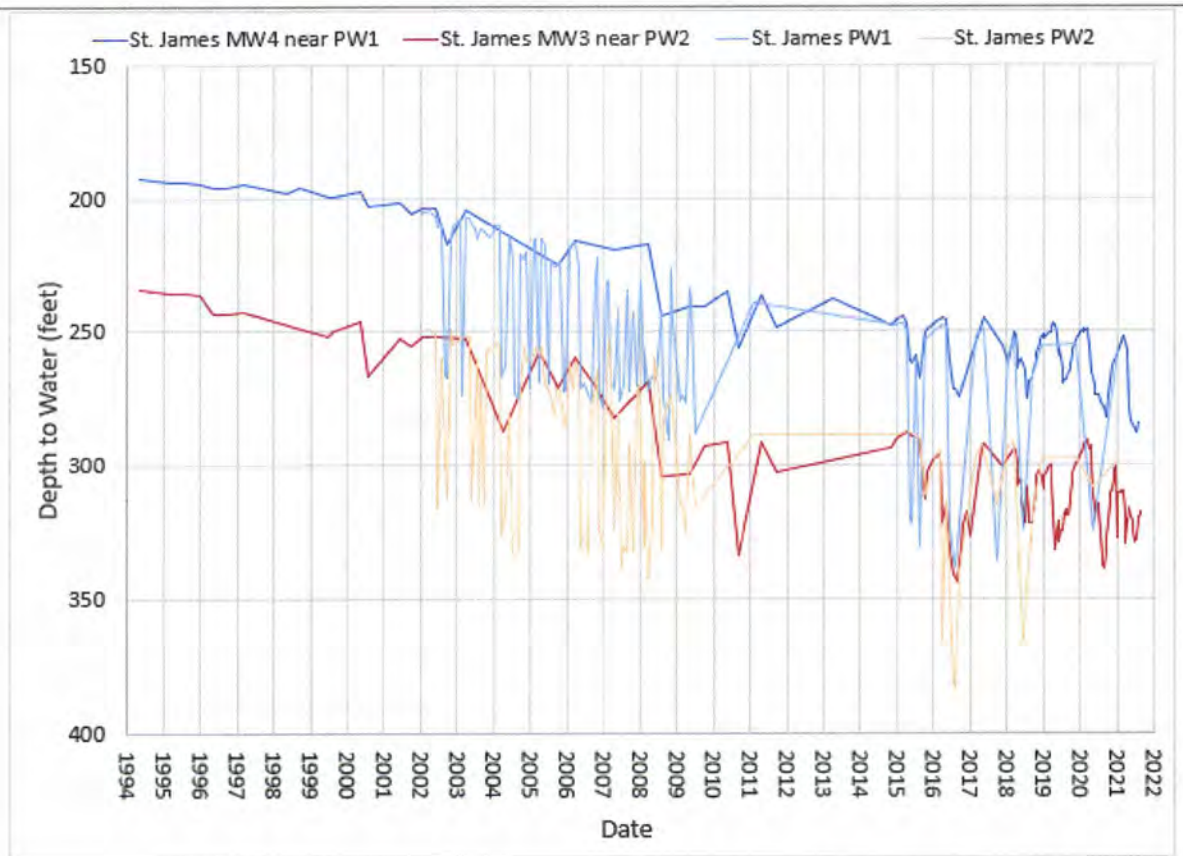


Figure 1. St. James's Production and Monitoring Wells Historic Water Levels

Location:

The Project is located on Joy Lake Road and Saint James Parkway just west of Interstate 580 at the north end of Washoe Valley (see Figure 2). Portions of the Project which are annexed into TMWA's service area (Unit 2C) are located within TMWA's Water Service Facilities Area 15. Portions of the Project outside TMWA's service area (Unit 1H) will be located within TMWA's Water Service Facilities Fee Area 15 upon annexation.

PROJECT WATER MAXIMUM DAY DEMANDS

The Project's estimated maximum day demand (MDD) is 35.1 gallons per minute. A common area irrigation demand estimate was not included in this Discovery. Current uncommitted sustainable supply from Saint James Well 1 and Saint James Well 2 is insufficient to serve the entire Project demand. Additional sources of supply and/or supply capacity improvements will be required to serve the Project.

MAJOR WATER FACILITIES AND COST OPINION

A conceptual water service plan for the Project is shown in Figure 1.

The improvements include looping mains and pressure reducing stations to supply the design fire flow event and meet design criteria regarding radial mains for the Project. The improvements also include a new SCADA controlled pressure reducing station at the intersection of Austrian Pine Road and Joy Lake Road to supply water to the Saint James system from TMWA's regional conjunctive use system to supply the Project maximum day demands. These improvements provide the additional water supply required to serve the entire Project demand through supplemental supply from conjunctive use management of groundwater supply from other municipal wells and surface water supply from the Mt. Rose Water Treatment Plant consistent with the overall conjunctive use strategy for the area. Additionally, these improvements will provide short term system redundancy in the event of a mechanical well failure on Well 1 or Well 2.

The Project is (or will be) located within TMWA Charge Area 15 and will be subject to TMWA WSF charges applicable to Charge Area 15.

An opinion of cost for the major Project water facilities and TMWA's current Water Service Facilities Fee Area 15 charge are listed in Table 1.

Table 1. Cost Opinion

Description	Quantity	Unit	Unit Cost	Cost
8" Diameter Onsite Main	750	Linear Feet	\$200	\$150,000
8" Diameter Offsite Main	11,800	Linear Feet	\$200	\$2,360,000
10" Diameter Onsite Main	800	Linear Feet	\$250	\$200,000
Pressure Reducing Station	1	Each	\$100,000	\$100,000
Pressure Reducing Station w/SCADA Control	1	Each	\$125,000	\$125,000
Area 15 Facility Charge ⁵	35.1	MDD, gpm	\$14,624	\$513,302
			Total	\$3,448,302

- 1. All facilities must be permitted, designed (such design to be approved by TMWA), and built by the developer and then dedicated to TMWA.*
- 2. All costs are the responsibility of the developer.*
- 3. The cost opinion does not include meters, meter assemblies, backflow devices, and any associated private fire loop for the Project.*
- 4. No common area irrigation demand was included in this Discovery. For reference, 1 acre-foot of irrigation demand equates to 1.7 gpm of MDD.*
- 5. Unit Fee could be reduced to \$10,286/gpm if applicant provides and dedicates acceptable creek water rights.*

STORAGE CAPACITY

TMWA has sufficient storage capacity for the Project.

PROJECT PRESSURES

Maximum Day pressures are shown in Figure 2. Individual service pressure reducing valves are required to be installed on each water service with system pressures of 80 psi and higher and on all water services in pump system pressure zones and any regulated pressure zones. If the water service is a combined fire and domestic service, pressure regulating valves may need to be installed downstream of the fire service tee, installation of the pressure reducing valves on any fire line shall be reviewed by the fire contractor.

DEAD ENDS AND LOOPING

Nevada Administrative Code section 445A.6712 requires systems to be designed, to the extent possible, to eliminate dead ends. The water facility layout proposed in this Discovery meets the dead end and looping requirements that include radial mains which do not exceed 800 linear feet per TMWA design criteria.

It should be noted that other existing water facilities in the Saint James Village development do not meet this requirement; however they are located outside of the pressure zones which will serve this Project. While outside the scope of this Discovery, please note that those

other existing water facilities will need to be addressed prior to development and/or annexation of new projects in those pressure zones.

FIRE FLOWS

Fire flow requirements are established by the fire department. The assumed fire flow requirement for this project provided by the applicant is 2,500 gpm for two hours. The proposed facility improvements identified in this Discovery can convey estimated maximum day demands and provide up to 2,500 gpm fire flow for 2 hours while maintaining a residual pressure greater than 20 psi.

REGIONAL INTEGRATION

The project lies between the existing St. James's system and proposed projects to the east and north. The proposed project to the east, Sierra Reflections, is under common ownership with the St. James development. To provide support for the Sierra Reflections project and integrate system extension, the Applicant will be requested to set aside a location for a pressure regulating station for the Sierra Reflections project.

In addition, as a condition of annexation, the Applicant will be required to grant TMWA a public utility easement for access and water facilities construction, operation and maintenance between St. James Parkway and the St. James Monitoring Well 1 site. The purpose of this easement is for integration of the St. James's system with future development to the north, and for mutual support between the St. James's system and other parts of TMWA's system.

FUTURE PHASES OF DEVELOPMENT

Additional supply and main facility improvements will be required for continued development in the area. The previous completed Discovery dated December 23, 2015 identified some of the required improvements that include distribution main looping and sizing to meet current design criteria and proposed fire flow requirements. The document has been attached for reference. Any future proposed development in the area will need to apply for a new Discovery evaluation to take into account then current supply constraints, design requirements, and development phasing, which may require updates or revisions to required improvements.

ASSUMPTIONS:

1. The applicant shall be responsible for all application and review fees in effect at the time of application submittal. The applicant is responsible for all inspection fees, permit fees, easements, Area Fees and Facility Charges in effect at the time the project is approved by TMWA and the Water Service Agreement is issued. The Water Service Agreement must be executed and all fees paid within 60 days of agreement issuance.

2. The cost opinions contained herein do not include new business fees, cost of water rights, sustainability fees and related fees.
3. Project pressure criteria are:
 - a. Maximum day pressure of 45 pounds per square inch (psi) at building pad elevation with tank level at top of emergency storage,
 - b. Peak hour pressure of 40 psi at building pad elevation with tank level at top of emergency storage, and
 - c. Maximum day plus fire flow pressure of 20 psi at center of street elevation with tank level at bottom of fire storage.
 - d. For new systems, unregulated distribution system pressures should not exceed 100 psi anywhere in the system. Individual water service pressure regulators are required for system service pressures over 80 psi and on all individual water services in regulated system pressure zones and pump zones.
4. A site grading plan with elevations was not provided by the applicant. Elevations used for this Discovery were derived from existing site topographic information.
5. Facility requirements for the Project are based on the assumed elevations, maximum day demand and fire flow requirements. Changes in elevation, demand or fire flow requirements may affect facility requirements.
6. Easements, permits and all pertinent Agency approvals shall be obtained by applicant for the design and construction of the water infrastructure necessary to serve the proposed Project.
7. All cost opinions are preliminary and subject to change. The costs presented in this study are planning level estimates based on the information available. Actual costs will be determined at the time of application for service and nothing in the foregoing cost opinions should be construed as a guaranty of cost or shall be binding on TMWA in any respect.
8. Future development (on or off-site) may alter the conclusions of this Discovery. Capacity in TMWA's system is available on a first-come, first-served basis, and commitment to provide service is not established until a contract for service is executed, all fees are paid, adequate resources dedicated and a will serve commitment issued in compliance with TMWA Rules.
9. Applicant shall comply with all applicable TMWA Rules and Regulations applicable to applications for new service.

Review of conceptual site plans or tentative maps by TMWA does not constitute an application for service, nor constitute or imply a commitment by TMWA for planning, design or construction of the water facilities necessary for service, nor constitute or imply a commitment by TMWA to provide future water service. The extent of required off-site and on-site water infrastructure improvements will be determined upon TMWA receiving a specific development proposal or complete application for service and upon review and approval of a water facilities plan. After submittal of a complete Application for Service, the required facilities, the cost of these facilities, which could be significant, and associated fees

will be estimated and will be included as part of the Water Service Agreement for the project. All fees must be paid to TMWA prior to water being delivered to the project.

Please contact David Kershaw (834-8201) with any questions or comments regarding this Discovery.

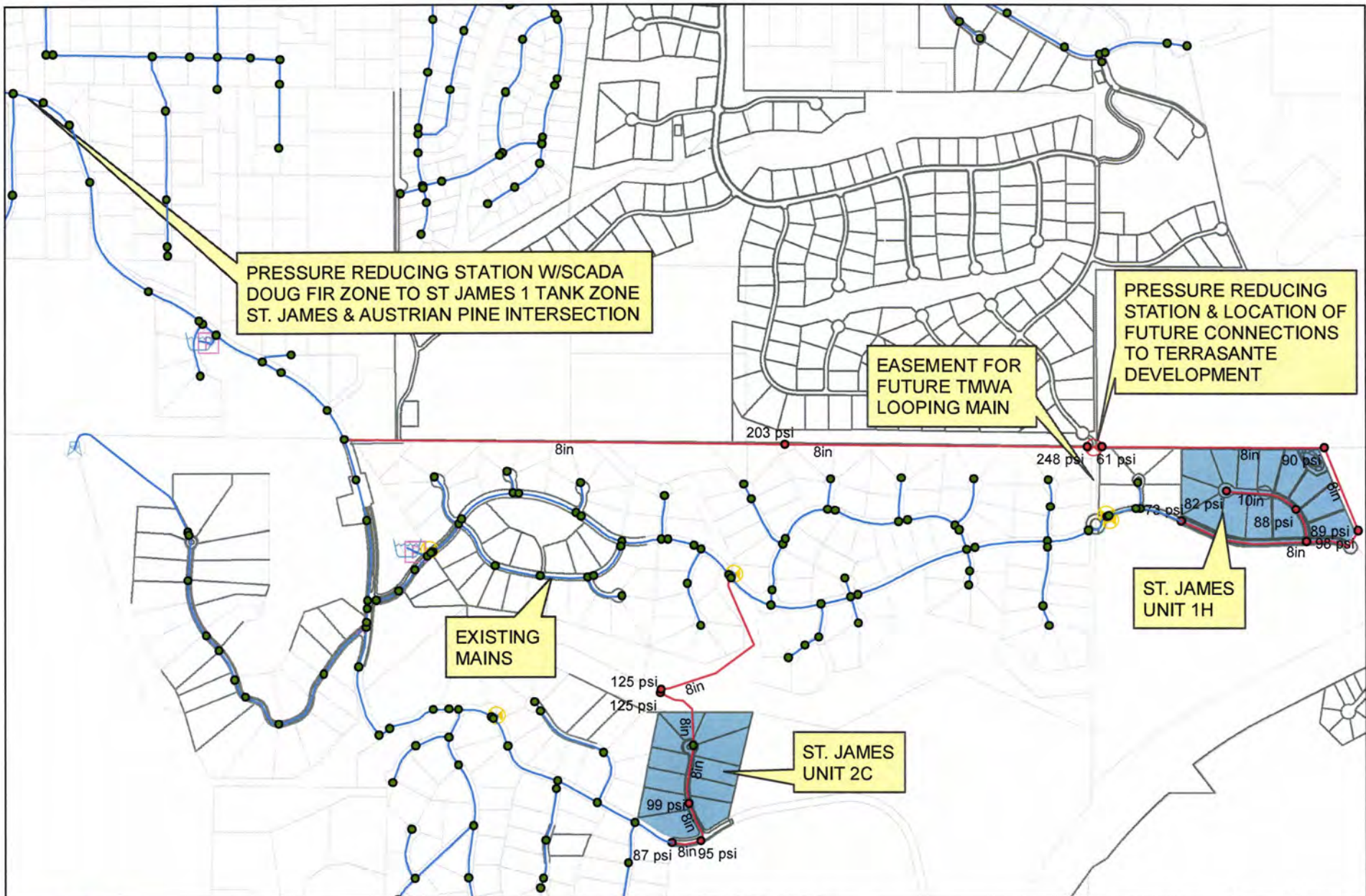


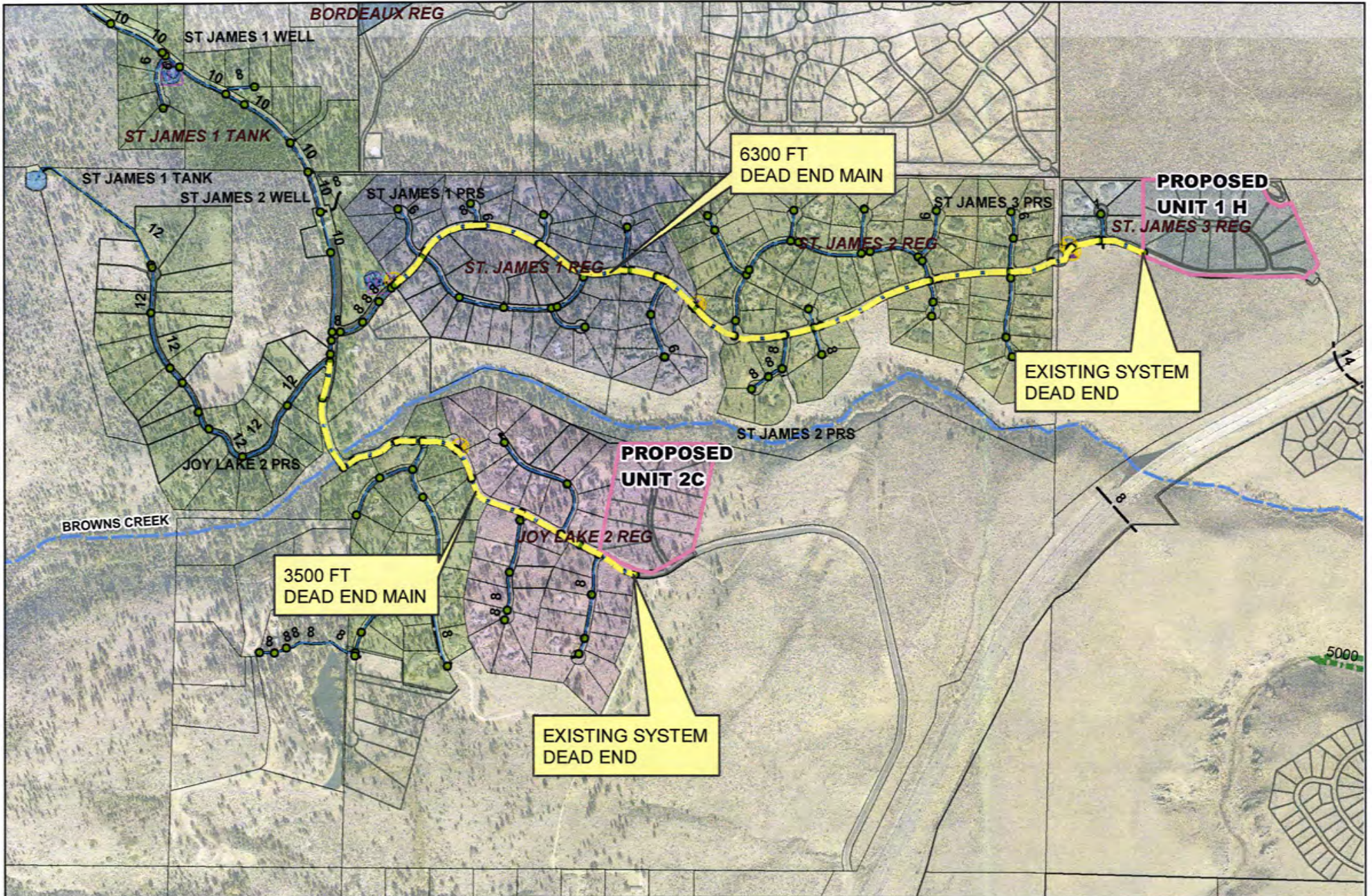
FIGURE 2: WATER FACILITIES
21-8275
ST JAMES VILLAGE DISCOVERY
UNITS 1H & 2C

- 1.1.06.04 If the water main design does not call for a common trench water main and gas main installation, and gas is to be located within a separate trench, then the gas main must be located no less than three (3) feet from the water main trench wall. Water main designs shall comply with the separation requirements conveyed in Section 1.1.20 and 1.1.21. Designs shall incorporate a separation of ten (10) feet horizontally (outside to outside) from any non-potable water line (reclaimed) or sewer line (sanitary or storm), and eighteen (18) inches vertically above any non-potable water line or sewer line, or as otherwise provided for in Section 1.1.20 and 1.1.21. Location of other utilities in the easements should be coordinated with the Authority on an individual basis.
- 1.1.06.05 If a vertical clearance of eighteen (18) inches between the water line that crosses over a non-potable water line or sanitary or storm sewer line cannot be maintained, then the design must comply with the criteria for water/non-potable water line or sewer main crossings in Section 1.1.20 and 1.1.21 must be complied with.
- 1.1.06.06 Dead-end mains shall be minimized by looping mains whenever practical or where required by the Authority and/or the Health Authority. Preliminary design and layout of subdivision streets and lots should contribute to elimination of dead-end mains. The maximum length of a dead-end main shall be approximately 800 feet. All dead-end mains shall be terminated with a flush valve assembly.
- 1.1.06.07 Mains installed in a cul-de-sac shall run the full street length ending approximately fifteen (15) feet from the property's front edge at the end of the cul-de-sac, or five (5) feet past the last service as designated on the plans, unless they are looped. Mains installed in a cul-de-sac that is greater than eight hundred (800) feet in length shall be looped where practical.
- 1.1.06.08 Temporary dead-ended mains that will be extended with subsequent phases of development shall be stubbed at least ten (10) feet beyond the edge of pavement and shall be terminated with a flush valve assembly.

1.1.07 FULL FRONTAGE EXTENSION

At the Authority's discretion, the developer may be required to install the water main along the entire length of at least one property line frontage of the property to be developed whenever future line extension is possible. The property line frontage is that portion of the property along the public right-of-way. If a parcel to be developed has more than one property line frontage, the Authority may require a water line to be installed along the other frontage(s). The minimum pipe diameter required in the frontage street shall be in accordance with Section 1.1.04, or as required by the Authority.

DRAWN	DESIGN	DATE	REV	TRUCKEE MEADOWS WATER AUTHORITY	
		07/2011	3rd	ENGINEERING & CONSTRUCTION STANDARD SECTION 1.1 – DESIGN STANDARDS	1-13



**ST JAMES SYSTEM
EXISTING SYSTEM**

DATE	MAR 2022
MAP BY:	BL
MAP FOR:	-
SCALE:	1 inch = 1,000 feet



beginning and ending nodes, lengths in feet, diameters in inches, coefficient of friction, and other pertinent information.

- B. Provide input data tables for all nodes modeled. Junction node data tables shall, at a minimum, include node identification as shown on the node map, elevation in feet for all nodes using the NAVD 88 datum, node demand in gpm, connecting pipes, and other pertinent information.

1.1.05.06 Analysis

- A. Separate analyses for Average Day, Maximum Day, Maximum Day plus Fire Flow, and Peak Hour conditions are required for each phase of the development, as well as for the entire project. In the analyses for Maximum Day plus Fire Flow, the worst-case scenario must be considered.
- B. Explain any assumptions made as part of conducting the analyses; provide any comments that may ease and expedite the review of the analyses.

1.1.05.07 Output Data Tables

- A. Output results for pipes shall include, at a minimum, flow rate in gpm, flow velocity in fps, head loss in feet, and other pertinent information for each pipe. A separate pipe report is required for each demand scenario analyzed.
- B. Output results for nodes shall include, at a minimum, hydraulic grade in feet, node pressure in psi, elevation, demand, and other pertinent information for each node. A separate node report is required for each demand scenario. Provide a separate hydrant node report with residual pressure at each hydrant for the required flow and the minimum system residual pressure in the system when flowing that hydrant.
- C. Provide a summary table, for each phase of development, showing the minimum and maximum residual pressures for each condition, and minimum and maximum static pressures.

1.1.05.08 Miscellaneous

- A. The roughness factors to be used in the analyses for proposed piping should be as follows:

C= 120 for pipe ≤12-inch in diameter
 C= 130 for pipe ≥14-inch in diameter

DRAWN	DESIGN	DATE	REV	TRUCKEE MEADOWS WATER AUTHORITY	
		07/2011	3rd	ENGINEERING & CONSTRUCTION STANDARD SECTION 1.1 – DESIGN STANDARDS	1-11

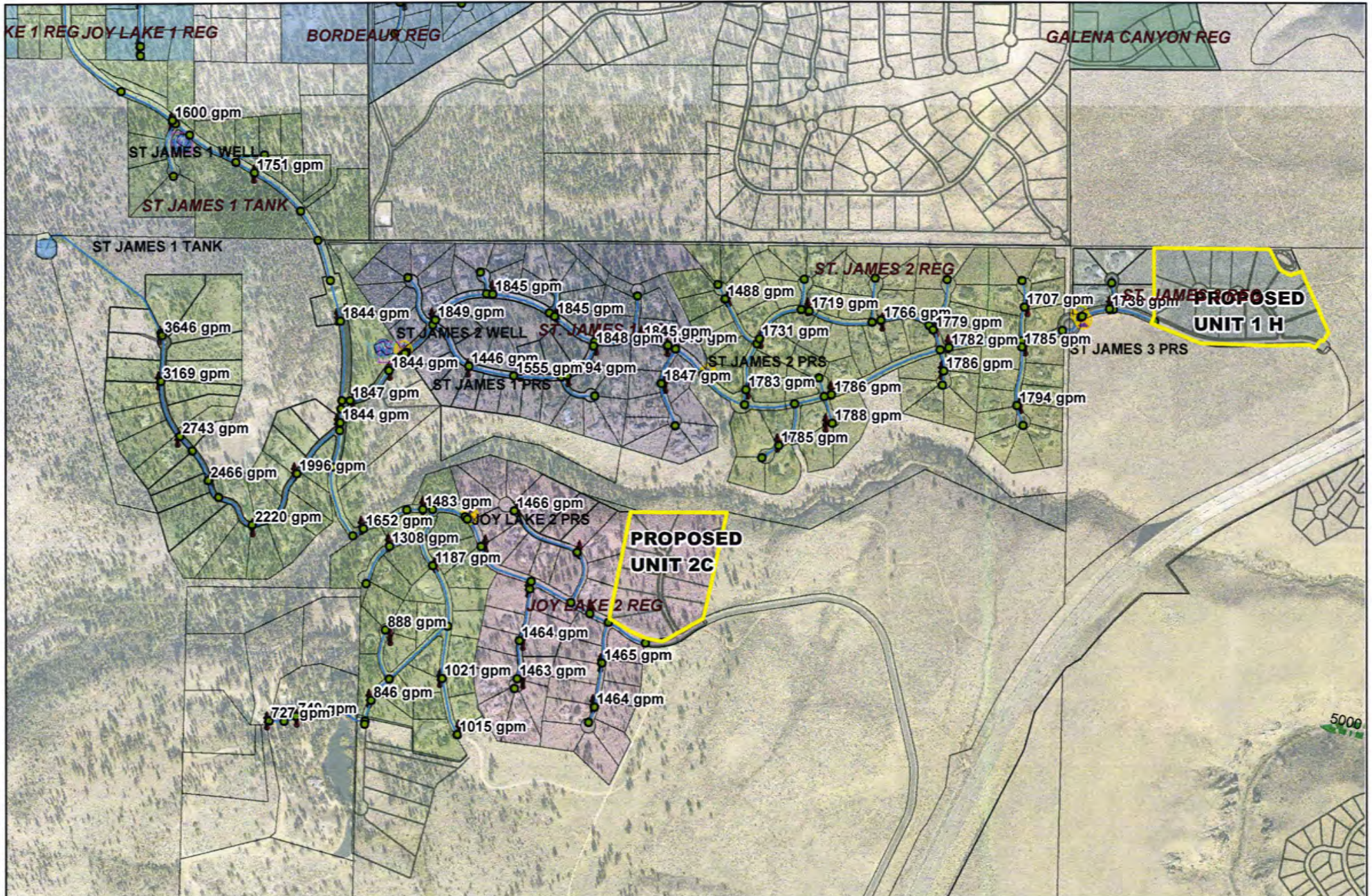


Exhibit 24
Maximum Day Demand (MDD) for the Project in Gallons per Minute

	MDD
Existing	207 gpm
81 Lots	122 gpm
24 lots subject to Discovery	<u>35.1 gpm</u>
	364.1 gpm
St. James 1 & 2 combined capacity	<u>350 gpm</u>
Deficit capacity	-14.1 gpm

South Truckee Meadows Model Simulation Results

December 22, 2021

Background

The South Truckee Meadows groundwater model (Pohll, 2019) was used to evaluate the impact of increased pumping rates at eleven wells in the Galena management area.

The model modification relevant to this analysis is the approximately 1.3 mile southward expansion of the model grid to allow for the simulation of pumpage in the Serpa Well located in that area, as well as the nearby wells Old Washoe Estates 3 and 4. Layer thicknesses were extrapolated from the existing model. Additionally, within that area, Little Washoe Lake was simulated as a general head boundary, and a section of Steamboat Creek was simulated using MODFLOW's river package. Both the lake and creek were assigned conductances matching the calibrated values used for lakes and streams in the previously existing model domain. The model hydraulic conductivity in the vicinity of the Serpa Well was increased to 6.7 ft/day in layer 4 in accordance with an aquifer test at that well (White, 2018).

Three pumping scenarios were evaluated by adjusting pumping rates at eleven wells (Mt. Rose 3, Mt. Rose 5, Mt. Rose 6, St. James 1, St. James 2, Sunrise 1, Tessa East, Tessa West, Callamont North, Callamont South, and Serpa). The three scenarios include:

1. Continuation of 2016 – 2021 average pumping rates (884 acre-feet per year).
2. Increasing pumping rates an additional 1,169 AFY from 2016 – 2021 levels to meet increased demands at planned developments in the south Truckee Meadows (i.e. Ascente, Terrasante, St. James, Sierra Reflections, and Montreux).
3. Increasing pumping rates an additional 3,137 AFY from 2016 – 2021 levels to match full water right allocations for the eleven productions wells.

Table 1 shows the well production rates for three scenarios at the eleven production wells. Average production from 2016 – 2021 was 884 AFY, which is a decline of approximately 800 AFY since TMWA took over the Washoe County wells in the South Truckee Meadows. Scenario 2 represents pumping of 2,053 AFY, which is an increase of 1,169 AFY to meet the increasing demand with the Ascente, Terrasante, St. James, Sierra Reflections, and Montreux developments. Scenario 3 represents the full water right of 4,021 AFY at the eleven production wells.

Table 1. Well production rates for three scenarios at the eleven production wells.

Well	2016 - 2021 Avg (AFY)	New Development (AFY)	Full Water Right (AFY)	Notes
Mt_Rose_3	17	36	50	Montreux
Mt_Rose_5	174	249	750	Montreux
Mt_Rose_6	205	317	546	Montreux
St_James_1	128	175	360	St. James (Lumos estimates)
St_James_2	123	175	360	St. James (Lumos estimates)
Tessa_2_West	69	129	471	Ascente
Tessa_1_East	131	192	471	Ascente
Serpa	-	448	478	Sierra Reflections
Callamont South	-	146	237	Montreux & Terrasante
Callamont North	-	146	237	Montreux & Terrasante
Sunrise 1	37	40	61	Miscellaneous
Total:	884	2,053	4,021	

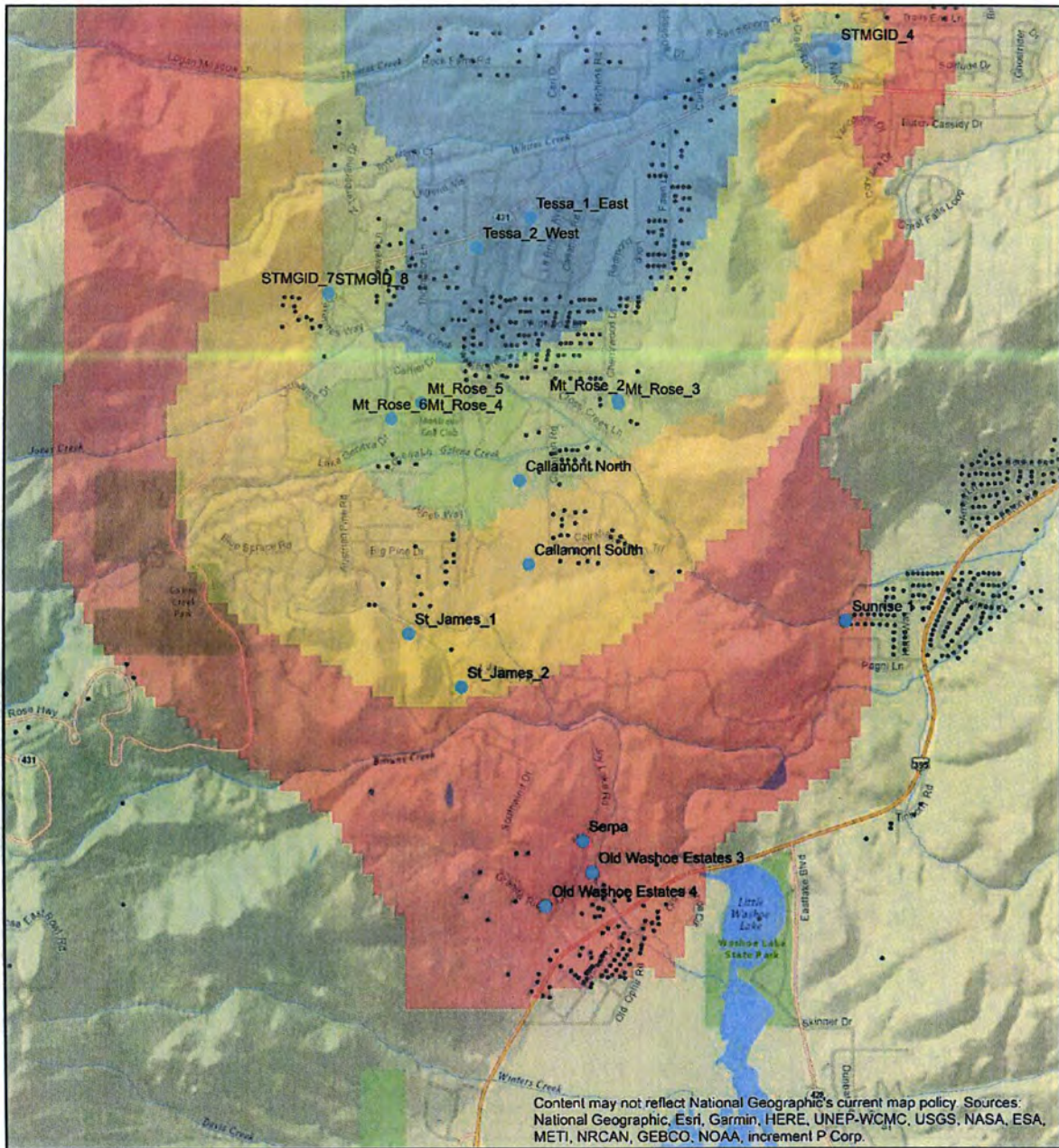
The model initial condition was taken as the last time step in the South Truckee Meadows transient historical model (2020). This condition ends in a period of increasing water levels in response to decreasing pumping after 2016.

Results

Plots of groundwater level change 20 years into the future are shown in Figures 1 – 3 for Scenarios 1 -3, respectively. Groundwater levels increased from 1 to over 7 feet in Scenario 1 after 20 years. Groundwater levels increase in this scenario because pumping rates declined by about 800 AFY after 2016 and continue through this 20 year simulation. At these rates the equilibrated water levels are 1 – 7 feet higher than the 2020 levels. Groundwater levels decrease 5 to over 20 feet in the next 20 years in Scenario 2. Largest declines (20 feet) are in the vicinity of the Serpa and Old Washoe Estates well and more moderate declines (10 – 15 feet) are in the vicinity of the St. James and Callamont wells. Groundwater levels decrease 20 to over 40 feet in the next 20 years in Scenario 3. Largest declines (> 40 feet) are in the vicinity of the Mt. Rose, Callamont, and Tessa wells.

References

- Pohll, G., 2019. South Truckee Meadows Groundwater Model, Truckee Meadows Water Authority Technical Report, 80p.
- Pohll, G. and S. Rybarski, 2018. South Truckee Meadows Groundwater Model, Report prepared for the Truckee Meadows Water Authority, 38p.
- Ramelli A.R., dePolo Craig, Garside, L. House, Trexler, J. and Widmer, M., 2011. Revised Geologic Maps of the Reno Urban Area, Nevada, Nevada Bureau of Mines and Geology.
- White, N., 2018. Serpa Well Pump Test Analyses, Forward Simulation and Groundwater Modeling, Truckee Meadows Internal Technical Memorandum, August 2, 2018.



Legend

- Domestic Wells
 - TMWA Wells
- | Drawup (ft) |
|-------------|
| > 7 |
| 5 - 7 |
| 3 - 5 |
| 1 - 3 |

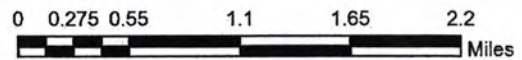
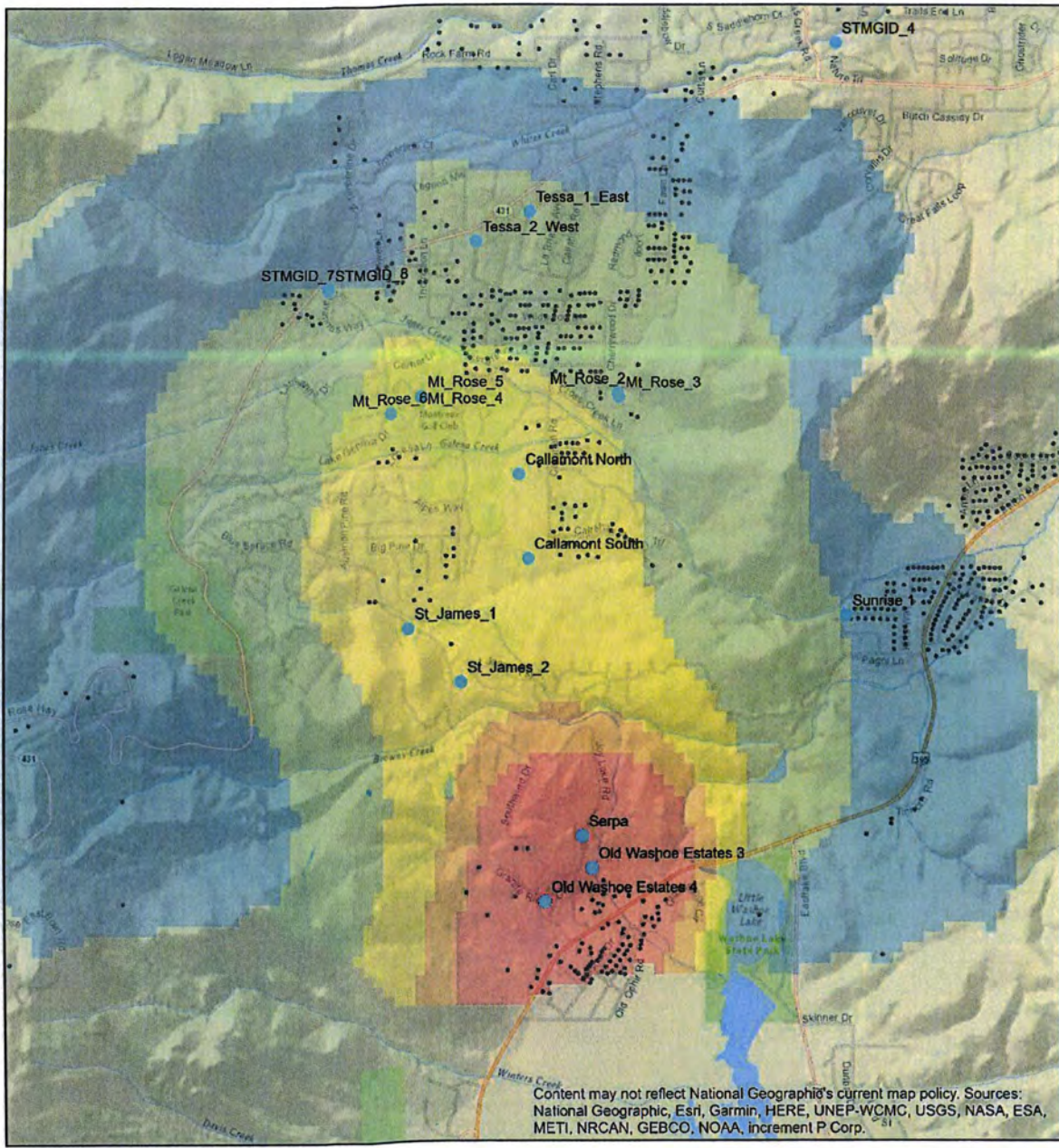


Figure 1. Groundwater level change 20 years into the future for Scenario 1.



Legend

- Domestic Wells
 - TMWA Wells
- | Drawdown (ft) |
|---------------|
| 1 - 5 |
| 5 - 10 |
| 10 - 15 |
| 15 - 20 |
| > 20 |

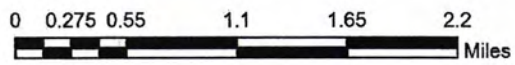
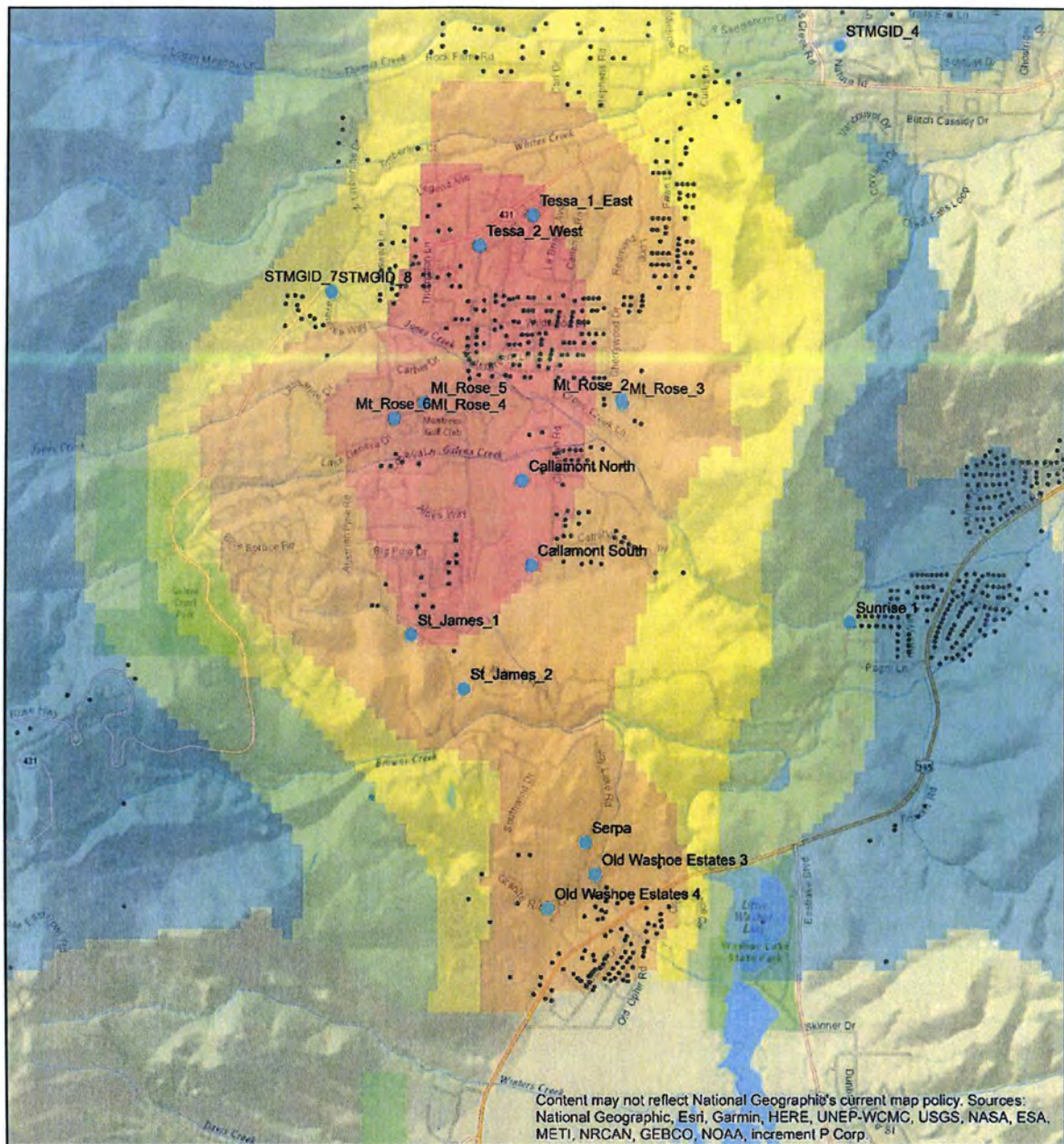


Figure 2. Groundwater level change 20 years into the future for Scenario 2.



Legend

- Domestic Wells
 - TMWA Wells
- | Drawdown (ft) |
|---------------|
| 1 - 10 |
| 10 - 20 |
| 20 - 30 |
| 30 - 40 |
| > 40 |

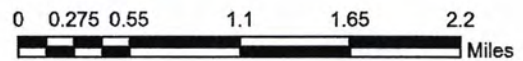


Figure 3. Groundwater level change 20 years into the future for Scenario 3.

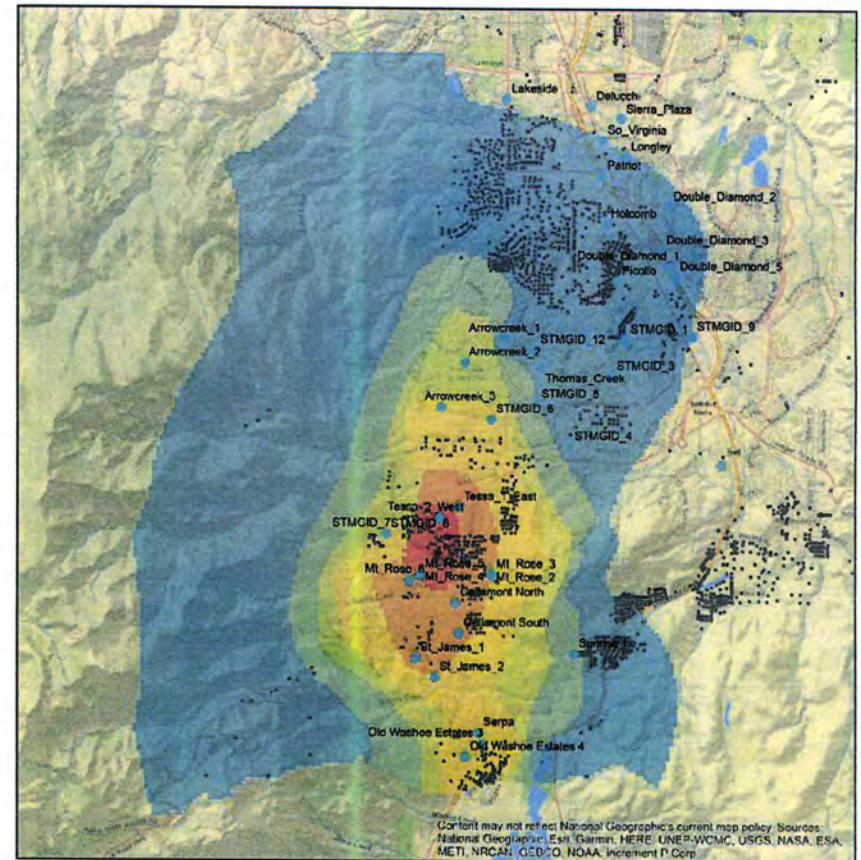
Galena Area Water Level Predictions

12/3/20

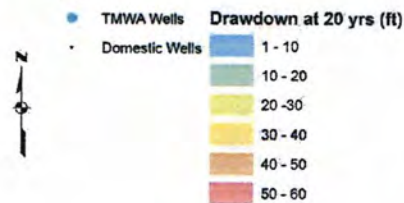
Model Scenarios

Well	Scenario 1		Scenario 2	
	2020-2030 Demand	2020-2030 Demand	Full Buildout	Full Buildout
	Amount (AFA)	Amount (ft ³ /day)	Amount (AFA)	Amount (ft ³ /day)
Mt. Rose 3	36	4296	50	5967
Mt. Rose 5	249	29716	750	89507
Mt. Rose 6	317	37831	546	65131
St. James 1	216	25778	360	42963
St. James 2	216	25778	360	42963
Sunrise 1	40	4774	61	7309
Tessa 1 East	214	25539	471	56225
Tessa 2 West	121	14440	471	56225
Callamont North	91	10860	237	28270
Callamont South	91	10860	237	28270
STMGID Well 7	19	2267	19	2297
Serpa	448	53465	478	57026
Total:	2,058.0	245,605.8	4,040.1	482,152.4

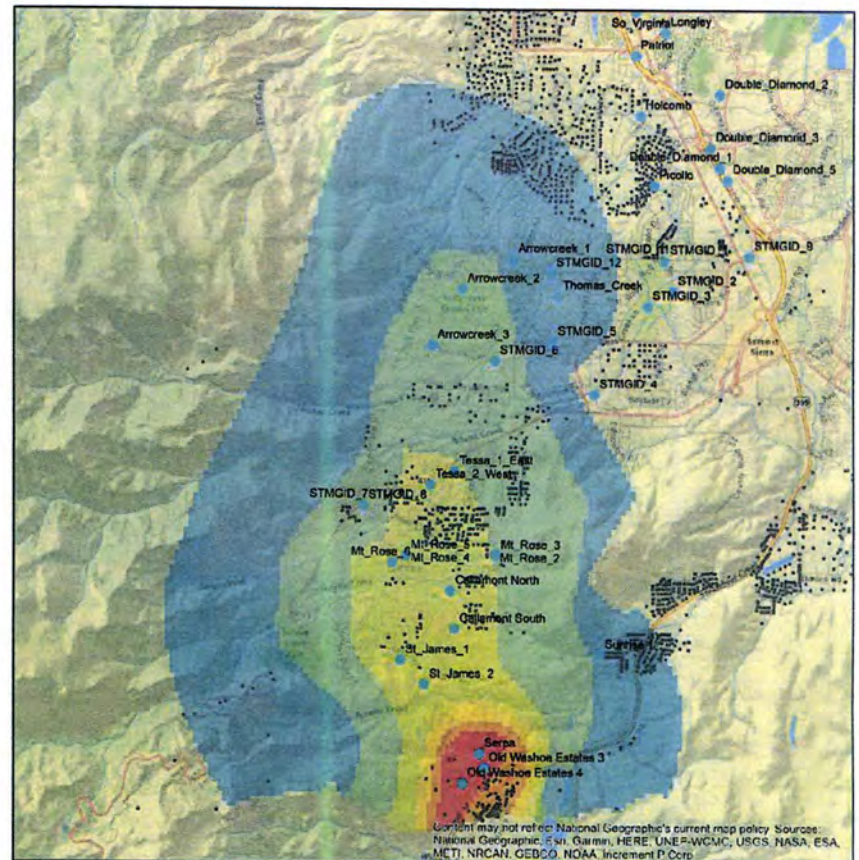
Scenario 3 Drawdown (20 years) Full use of water rights



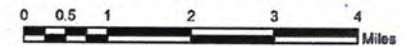
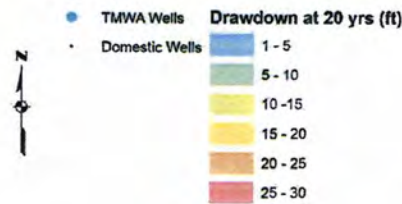
Legend



Scenario 2 Drawdown (20 Years) Known future demand



Legend



Content may not reflect National Geographic's current map policy. Sources: National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, Increment P Corp.

Conclusions

- Pumping has declined 800 – 1,000 AFY in the last five years
- Water levels have declined about 40 feet at the St. James wells from 2000 – 2015, then stabilized
- At Callamont wells water levels declined about 10 feet in 2015, then increased about 10 – 15 since
- Additional pumping to meet near-term demands will result in 10 – 15 ft of drawdown in the St. James/Montreux area in the next 20 years and 25 feet near the Serpa well
- Pumping at full paper water rights will result in 50-60 ft of drawdown in the St. James/Montreux area in the next 20 years, which is not sustainable

ST. JAMES'S VILLAGE UNIT 2 & 2D - 7 LOTS
GROUND WATER RIGHTS AND METER FUND CONTRIBUTION
CALCULATION WORKSHEET

Line No.	Lot Number	Lot Size	Demand Calculation
1	309	63,741	0.80
2	316	70,900	0.81
3	317	72,340	0.81
4	322	65,994	0.80
5	330	59,310	0.79
6	507	64,208	0.80
7	519	45,305	<u>0.76</u>
			5.57
	Less: Demand Credits		<u>0.00</u>
	NET PROJECT DEMAND		5.57

TOTAL WATER RIGHTS REQUIRED 5.57

Price of Water Rights per AF	\$7,600		
TOTAL COST OF WATER RIGHTS		\$	0
Review/Transfer Water Rights		\$	0
Will Serve Letter Preparation		\$	<u>100</u>
TOTAL TO TRUCKEE MEADOWS WATER AUTHORITY		\$	100
			=====

SUBMITTED BY: St. James's Village PHONE: Fred W. 849-9070

APN: 7 Lots DATE: 12/20/2018

PROJ NO: 18-6602 CALCED BY: David

REMARKS: TMWA has no Rule 7 water resources for purchase in this area.

Applicant will need to dedicate area groundwater (basin 088) for these 7 residential lots.

Reference Table 1 in discovery, PLL #18-6172 - St. James Infill Lots, for Area 15

Surface Water Treatment Plant Fee.

Nine residential lots totaling approximately 12.5 acres will be created from the project parcel's total area of about 148 acres. Lots 322 and 519 are within TMWA's service territory, while the remaining 7 lots are outside TMWA's retail service boundary and will require annexation prior to service from TMWA. The project will be within Fee Area 15 once annexed, but the area fee will be modified to credit the Applicant for the Applicant's construction of existing facilities.

ASSUMPTIONS:

1. The applicant shall be responsible for all application, review, inspection, storage, treatment, permit, easements, and other fees pertinent to the Project as adopted by the TMWA at the time of execution of water service agreement.
2. The cost opinions contained herein do not include new business fees, cost of water rights and related fees, or contribution to the water meter retrofit fund.
3. For the purposes of discovery, the total maximum day demand is estimated at 19.9 gpm. Demand calculations, and fees based on demands, are estimates; actual fees will be determined at the time of application for service. TMWA plans to reevaluate the maximum day demand equations for all customer usage types within the next 12 months, as part of a Water Facility Plan Update.
4. For the purposes of discovery, fire flow requirements are assumed at 2,500 gpm for 2 hours with 20 psi residual pressure. This fire flow requirement is consistent with International Fire Code requirements for single family homes up to 9,400 square feet in size. The Truckee Meadows Fire Protection District is responsible for establishing the fire flow requirements.
5. Project pressure criteria are:
 - a. Maximum day pressure of at least 45 pounds per square inch (psi) at building pad elevation with tank level at top of fire storage,
 - b. Peak hour pressure of at least 40 psi at building pad elevation with tank level at top of emergency storage,
 - c. Maximum day plus fire flow pressure of at least 20 psi at center of street elevation with tank level at bottom of fire storage, and
 - d. Wintertime minimum demand pressure of at most 100 psi at service elevation with the tank nearly full and filling.
 - e. TMWA does not calculate pressures for multi-story buildings. Confirmation that pressure will be adequate for upper stories is the responsibility of the Applicant.
6. Site elevations were taken from existing topography provided by Washoe County. Changes in assumed site elevations may affect the facility requirements.
7. Facility requirements for the Project are based on the assumed elevations, maximum day demand, and fire flow requirements. Changes in these may affect facility requirements.
8. Easements, permits and all pertinent Agency approvals are obtained for the design and construction of the water infrastructure necessary to serve the proposed Project.
9. All cost opinions are preliminary and subject to change. The costs presented in this study are planning level estimates based on the information available. Actual costs will be determined at the time of application for service. Cost opinions do not include on-site improvements made by the applicant.
10. This discovery is based on the current status of TMWA's system. Future development may alter the conclusions of this discovery. Capacity in TMWA's system is available on a first-come, first-

served basis, and commitment to provide service is not established until a contract for service is executed and all fees are paid.

DISCUSSION:

The Applicant proposes development of 9 single family residential lots in Washoe County Nevada (Figure 1). These lots were considered in a previous discovery (15-4624, December 23, 2015). The previous discovery concluded "Because of the declining water levels seen in the existing St. James's wells, TMWA is unwilling to supply any additional development from the two existing wells until the regional groundwater sustainability plan for the Mt Rose and Galena alluvial fans (see discussion below) is in place and operational, and groundwater levels in the existing wells have stabilized to TMWA's satisfaction."

TMWA has completed construction of portions of the groundwater sustainability plan (the Arrowcreek Drought Response Project), and has other parts under design (STMGID Conjunctive Use and the Mt. Rose Water Treatment Plan). With this progress, TMWA has revised the conclusion of the 2015 discovery. TMWA will now allow new development in the St. James system, limited to infill lots that do not require construction of new water pipe. Expansion of the St. James system will not be allowed until completion and operation of the Mt. Rose Water Treatment Plant (expected in year 2020). This restriction on expansion of the St. James system is consistent with conditions TMWA has imposed on other proposed developments in the area.

Fire Flows

Figure 2 depicts existing fire flow contours in the St. James system. The Owner is advised to consult with the Truckee Meadows Fire Protection District for the fire flow requirements of the proposed development.

Storage

TMWA's system currently has adequate storage to accommodate the project.

Supply Capacity

TMWA's system currently has adequate supply capacity to accommodate the project.

Off-Site Improvements

No off-site improvements are proposed.

Service Pressure and Elevation

Due to elevation changes in the project, two new pressure zones will be required to maintain service pressures in the project between 45 and 100 psi. Exhibits 7 through 9 show the proposed service pressures and pipe diameters.

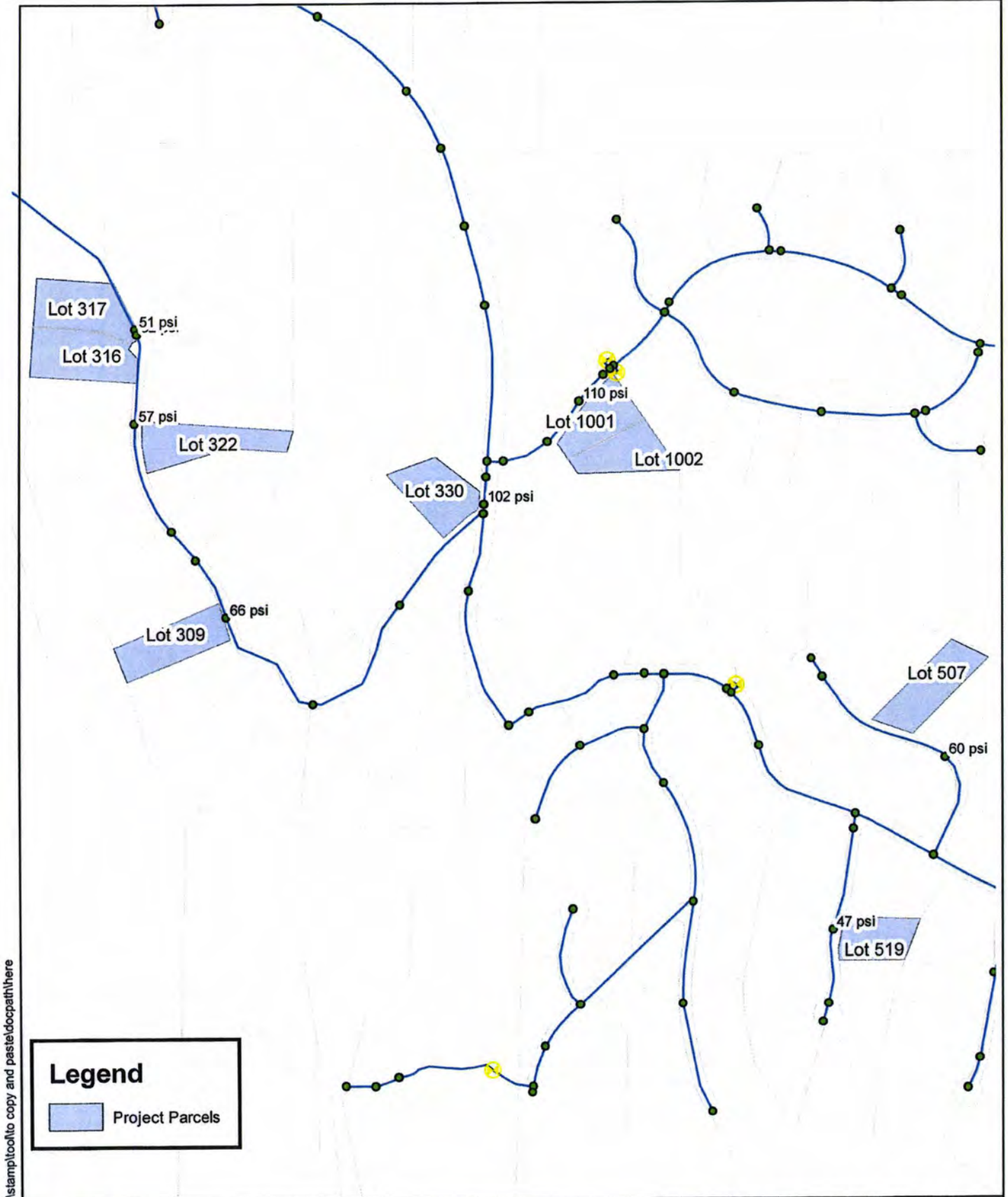
Cost Opinion

The cost opinion for the proposed project includes TMWA's facility fees. The cost opinion for major improvements for the proposed Project is presented in Table 1.

Table 1. Cost Opinion for Major Improvements

Description	Quantity	Units	Unit Cost	Extension
Area 15 Surface Water Treatment Plant Fee	19.9	Maximum Day gpm	\$8,448**	\$168,115

** Fee could be lowered to \$ 3,497/gpm if Applicant provides and dedicates acceptable creek water rights



Legend

Project Parcels

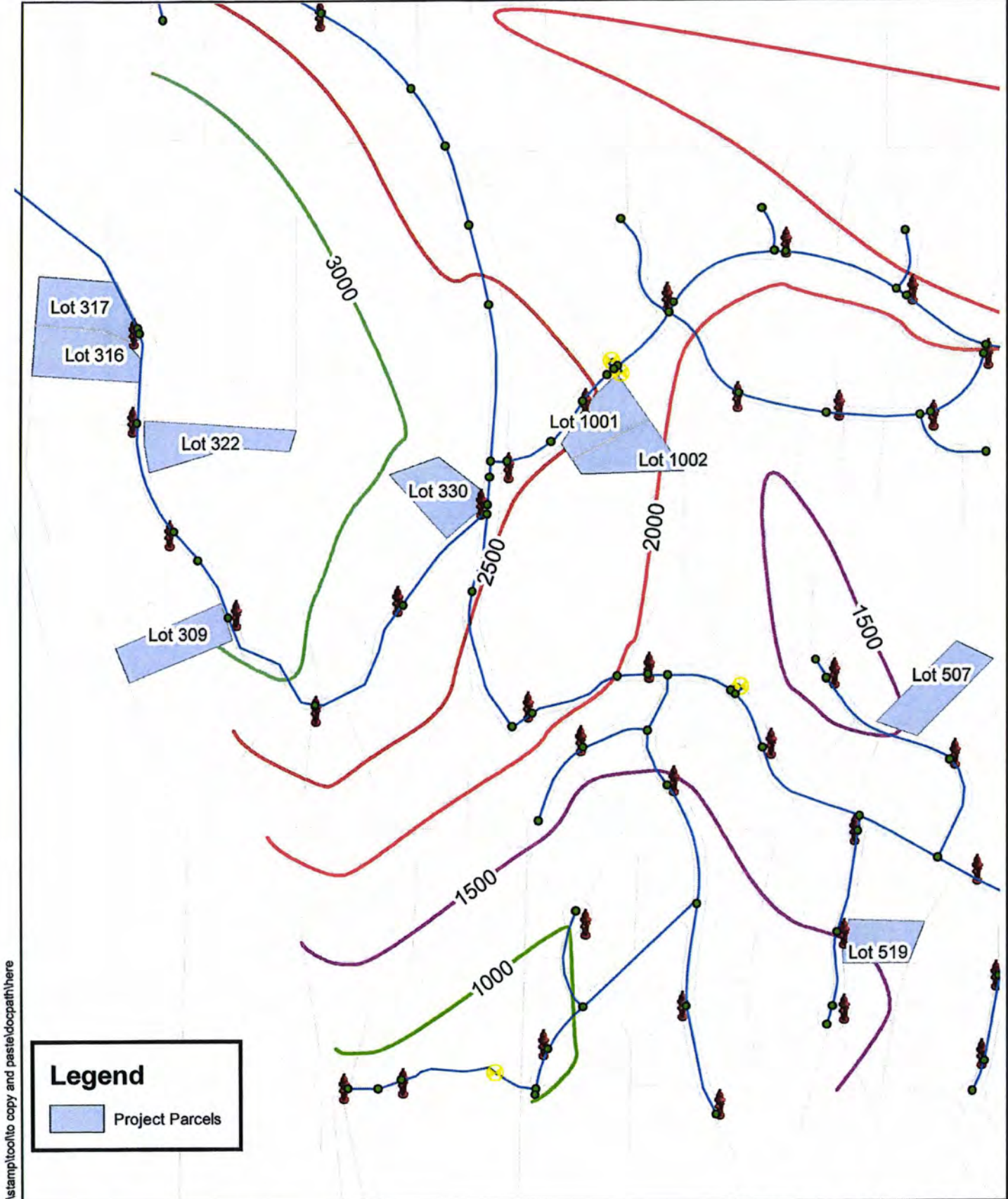
d:\cpath:\use\filepath\stamp\to copy and paste\d\cpath\here



**DISCOVERY
 ST. JAMES INFILL
 LOCATION AND PRESSURE**

FIGURE 1
 DATE: 5-9-2018
 WORK ORDER: 18-6172
 SCALE: 1 inch = 500 feet





Legend

Project Parcels

d:\path\use\filepath\stamp\tool\to copy and paste\d\ocpath\here

TRUCKEE MEADOWS WATER AUTHORITY
Quality. Delivered.

**DISCOVERY
 ST. JAMES INFILL
 EXISTING FIRE FLOW CONTOURS**

FIGURE 1

DATE: 5-9-2018

WORK ORDER: 18-6172

SCALE: 1 inch = 500 feet

NORTH

NAD 83 NEVADA STATE PLANE WEST FEET



Date: May 2, 2018

To: Karen Meyer

From: David Nelson *DN*

RE: 18-6172, St. James Infill Lots Discovery, (APN 046-180-13, 046-180-14, 156-040-11 & 156-084-18)

The New Business/Water Resource team will answer the following assumptions on each new discovery:

- Is the property within Truckee Meadows Water Authority's water service territory?
- Does the property have Truckee River water rights appurtenant to the property, groundwater or resource credits associated with the property?
 - If yes, what is the status of the water right: Agricultural or Municipal and Domestic use?
- Estimated water demand for residential and or commercial projects.
- Any special conditions, or issues, that are a concern to TMWA or the customer.

The following information is provided to complete the Discovery as requested:

- These subject parcel (APN 046-180-13, 046-180-14, 156-040-11) are not within Truckee Meadows Water Authority's (TMWA's) service territory. An annexation is required. APN (156-084-18) is within TMWA's service territory. An annexation is not required.
- There are no resource credits or Truckee River decreed water rights appurtenant to these properties. The developer will be required to follow TMWA's current rules, specifically Rule 7, and pay all fees for water rights needed in order to obtain a will serve commitment letter.
- Based on the information provided by the applicant this project "St. James Infill Lots Discovery" is estimated to require a domestic demand of **7.11 acre-feet (AF)**. Landscaping plans were not provided to TMWA; therefore, a demand could not be determined. Please see the attached demand calculation sheet for the **estimated** demand; however, no water resource fees were assessed due to TMWA not having area groundwater for purchase in this area. Once final plans are submitted a more accurate demand will be calculated. *Note: Area groundwater rights held or banked by the applicant must be dedicated to the project. At this time TMWA has no Rule 7 for purchase in this area.*
- Any existing right of ways and public easements would need to be reviewed, and if needed the property owner will need to grant TMWA the proper easements and/or land dedications to provide water service to the subject properties. Property owner will be required, at its sole expense, to provide TMWA with a current preliminary title report for all subject properties. Owner will represent and warrant such property offered for dedication or easements to TMWA shall be free and clear of all liens and encumbrances. Owner is solely responsible for obtaining all appropriate permits, licenses, construction easements, subordination agreements, consents from lenders, and other necessary rights from all necessary parties to dedicate property or easements with title acceptable to TMWA.

**ST. JAMES INFILL LOTS
GROUND WATER RIGHTS AND METER FUND CONTRIBUTION
CALCULATION WORKSHEET**

Line No.	Lot Number	Lot Size	Demand Calculation
1	309	63,741	0.80
2	316	72,476	0.81
3	317	70,764	0.81
4	322	65,994	0.80
5	330	59,310	0.79
6	507	64,208	0.80
7	519	45,306	0.76
8	1001	49,343	0.77
9	1002	51,874	0.77
			7.11
			0.00
			7.11

TOTAL WATER RIGHTS REQUIRED 7.11

Price of Water Rights per AF	\$7,600	\$	0
TOTAL COST OF WATER RIGHTS		\$	0
Review/Transfer Water Rights		\$	100
Will Serve Letter Preparation		\$	100
TOTAL TO TRUCKEE MEADOWS WATER AUTHORITY		\$	100

SUBMITTED BY: St. James's Village, Inc. PHONE: Fred Woodside 849-9070

APN: 046-180-13, 046-180-14, 156-040-11, etc. DATE: 5/2/2018

PROJ NO: 18-6172 CALCED BY: David 834-8021

REMARKS: PRICE OF WATER RIGHTS SUBJECT TO CHANGE.

Estimate shows dedication of area Groundwater resources. At this time TMWA has
no area Groundwater resources for sale.

PROJECT SUMMARY REPORT

Report Ran On 2/28/2019 3:21:26 PM

PROJECT ID: 201902030
PROJECT NAME: St James's Village Unit 2D and Bennington Ct. Unit 2
PROJECT ADDRESS: Joy Lake Rd. and Bennington Ct.
DESCRIPTION: SFR (7 lots)
CITY: Washoe County
COMMIT ACRE FEET QTY: 5.57
REQUIRED ACRE FEET QTY: DOM 5.57 IRR 0.00 Total 5.57
ASSIGNED GPM: DOM IRR Total
PROJECT TYPE: SUBDIVISION **Project APNS:**

PROJECT COMMENTS: 2019/2/28 Will serve needed before annexation/discovery so that lots could be created, and plat recorded. Once lots created TMWA will annex and issue services. This was processed backward since TMWA did not want to annex the whole common area, just the lot size. This went through management. Dnelson

DEED SUMMARY

<u>S/G</u>	<u>CLAIM #</u>	<u>DEED #</u>	<u>COMMIT DATE</u>	<u>COMMIT AF QTY</u>	<u>APN</u>	<u>APP #</u>	<u>PERMIT DATE</u>
G	8811.0	001.00	02/28/2019	5.57		59330	11/01/1995

Exhibit 30

Applicable NAC Sections

NAC 445A.65845 “Distribution system” defined. ([NRS 445A.860](#))

“Distribution system” means all the facilities of a public water system used to deliver finished water to service connections from the source of the water or from any related treatment facilities. (Added to NAC by Bd. of Health, eff. 2-20-97)

NAC 445A.6582 “Dead end” defined. ([NRS 445A.860](#)) “Dead end” means the end of a water main which is not connected to other parts of the distribution system by means of a connecting loop. (Added to NAC by Bd. of Health, eff. 2-20-97)

NAC 445A.6712 Distribution system: Dead ends. ([NRS 445A.860](#))

1. A distribution system must be designed, to the extent possible, in such a manner as to eliminate dead ends and form a grid system or system of arterial loops. Except as otherwise justified by an engineer and approved by the Division or the appropriate district board of health, tree systems are prohibited.

2. Where a dead end cannot be eliminated, it must:

(a) If the flow and pressure is sufficient, terminate with:

- (1) A gate valve of the same size as the water main; and
- (2) A fire hydrant; or

(b) Terminate with a flushing device approved by the Division or the appropriate district board of health. The flushing device must be of a sufficient size to provide a velocity of at least 2.5 feet per second in the water main being flushed. No flushing device may be connected directly to any sewer line. (Added to NAC by Bd. of Health, eff. 2-20-97; A by Environmental Comm’n by R194-08, 10-27-2009)

NAC 445A.6672 Existing systems: Minimum capacities; minimum pressure and velocity of water; total capacity of groundwater system; timely completion of water projects. ([NRS 445A.860](#)) A supplier of water for an existing public water system shall:

1. Ensure that the public water system maintains a sufficient capacity for the development and treatment of water, and a storage capacity of sufficient quantity, to satisfy the requirements of all users of the public water system under the conditions of maximum day demand and peak hour demand.

2. Ensure that the residual pressure in the distribution system is:

(a) At least 20 psi during conditions of fire flow and fire demand experienced during maximum day demand;

(b) At least 30 psi during peak hour demand; and

(c) At least 40 psi during maximum day demand. Unless otherwise justified by an engineer and approved by the Division or the appropriate district board of health, high head losses must be avoided by maintaining normal water velocities at approximately 8 feet per second during all conditions of flow other than fire flow.

3. If the public water system relies exclusively on water wells as its source of water, ensure that the total capacity of the system is sufficient to meet:

(a) The maximum day demand, fire flow and fire demand when all the facilities of the system are functioning; or

(b) The average day demand, fire flow and fire demand when the most productive well of the system is not functioning, whichever is greater. When computing total capacity for this purpose, credit must be given for any storage capacity.

4. Ensure that water projects are completed in such a manner as to meet the actual maximum day demand, peak hour demand, fire flow and fire demand for developments of property in the area of service of the public water system.

(Added to NAC by Bd. of Health, eff. 2-20-97; A by Environmental Comm'n by R194-08, 10-27-2009)

**TRUCKEE MEADOWS WATER AUTHORITY
MATTERS BEFORE HEARING OFFICER**

In the Matter of:)
)
ST. JAMES VILLAGE, INC.,)
a Nevada corporation)
)
Petitioner,)
)
v.)
)
TRUCKEE MEADOWS WATER)
AUTHORITY, a joint powers authority)
Under NRS 277)
)
Respondent)
_____)

Hearing Date: March 31, 2022

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION OF THE
HEARING OFFICER**

In this matter, both parties submitted Pre-Hearing Briefs and a supplemental brief regarding the legal impact of property being reverted to acreage under NRS 278.490 *et seq.*

During the Hearing, St. James Village, Inc. (“SJV”) was represented by its attorney, Evan Champa, who presented no witnesses. Truckee Meadows Water Authority (“TMWA”) was represented by John Zimmerman; Stefanie Morris; and Matthew Addison, TMWA’s attorney. TMWA presented two witnesses: Scott Estes and John Enloe. The Hearing lasted approximately two and one-half hours.

The relief requested by SJV is to vacate the following determinations in TMWA’s DISCOVERY -St. James Village Discovery 2__Annexation 1H_2C; PLL# 21-8275 (the “Discovery”) issued February 15, 2022:

1. That SJV must construct and dedicate to TMWA the offsite water mains shown in the Discovery;
2. That SJV must construct and dedicate to the Authority water mains to loop the existing water facility system which would cross Brown's Creek;
3. That SJV is located within Area 15 and subject to the Area 15 Facility Charge;
4. That SJV must dedicate further water rights for the Development; and
5. That the Wells are incapable of producing sufficient water for the Development.

SJV asserts that this relief is appropriate because the Discovery (1) violates the United States and Nevada Constitutions; (2) breaches TMWA's contractual obligations; (3) is erroneous in view of the reliable, probative, and substantial evidence on the record; and (4) TMWA has acted arbitrarily, capriciously and in violation of its authority.

TMWA Rule 8 Standard of Review

Under TMWA Rule 8(C)(6), the Petitioner, SJV, shall bear the burden of proof in this hearing. In addition, TMWA Rule 8(C)(6) states: the "Hearing Officer shall comply with the standards for review set forth in subsection 3 of NRS 233B.135 which states as follows:

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:
 - (a) In violation of constitutional or statutory provisions;
 - (b) In excess of the statutory authority of the agency;
 - (c) Made upon unlawful procedure;
 - (d) Affected by other error of law;
 - (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
 - (f) Arbitrary or capricious or characterized by abuse of discretion.

For purposes of clarification, subsection 4 of NRS 233B.135 states: "As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion."

TMWA Rule 8(C)(7) states that the Hearing Officer's "Findings of Fact must be based exclusively on substantial evidence and on matters officially noticed."

7 Infill Lots

The 7 infill lots discussed in the briefs are not included in this decision as they were not part of the Discovery, and TMWA properly notified SJV as such by letter dated December 23, 2021 (TMWA Exhibit 4).

TMWA's Decision to Require SJV to Construct and Dedicate to TMWA the Offsite Water Mains Shown in the Discovery and to Require SJV to Construct and Dedicate to the Authority Water Mains to Loop the Existing Water Facility System

SJV argues that TMWA arbitrarily vacated the County's findings regarding the infrastructure required to supply municipal water to the Development's future residents. The facts and the law do not support this assertion.

In 2011, SJV voluntarily requested that the property at issue in the Discovery be reverted to acreage pursuant to NRS 278.490. SJV was unable to locate the actual application that was submitted but admits in its supplemental brief that the reversion to acreage was not a result of an expired map as set forth in NRS 278.360(1)(b). NRS 278.490 refers to a voluntary request by the applicant to revert any recorded subdivision map, parcel map, or map of division into large parcels. I, therefore, reject SJV's assertion that the TM and associated entitlements are not terminated simply because SJV reverted some of its maps to acreage for two reasons. First, the new map replaces any prior recorded maps as set forth in NRS 278.490. Second, it is untrue that associated entitlements are not terminated upon a reversion. If that was true, why would SJV have needed to seek a new sewer will serve letter as set forth in SJV Exhibit 21? I, therefore, find that the legal effect of the 2011 reversion to acreage is that the lots created by the prior recorded subdivision maps are no longer in existence and any entitlements related to those lots were relinquished as of the date of the reversion. As no prior commitments are binding, any applications or requests for services on such acreage must be evaluated as new applications and subjected to the requirements of the law in existence at the time of such new requests.

In 1997, the Board of Health amended Nevada Administrative Code ("NAC") Chapter 445A. This Chapter addresses water controls design, construction, operation and maintenance. NAC 445A.6712(1) states: "A distribution system must be designed, to the extent possible, in such a manner as to eliminate dead ends and form a grid system or system of arterial loops." Both parties acknowledge that the tree system utilized by SVJ does not eliminate dead ends or form a grid system or system of arterial loops. The only exception offered in NAC 445A.6712 states: "Except as otherwise justified by an engineer and approved by the Division or the appropriate district board of health, tree systems are prohibited." There is no evidence on the record that SVJ obtained the approval of either the Division of Environmental Protection of the State Department of Conservation and Natural Resources or the District Board of Health. Mr. Estes, in fact, presented evidence that the longest dead ends that the District Board of Health would approve are

800 ft. The dead ends on the proposed Project are 3500 ft. and 6300 ft. as set forth in TMWA Exhibit 21. Mr. Estes testified that these dead ends would also not meet TMWA's design standards and that he would not recommend a variance due to public health and safety reasons. SJV's own engineers confirm that: "Many of the existing distribution water mains contain dead ends, lacking proper looping, which is important for service redundancy and greater fire flow to the customers" (SJV Exhibit 1(B) p.1).

Even if the NAC did not prohibit tree systems and dead ends, TMWA would be acting irresponsibly and contrary to health and safety considerations if it allowed SJV to add additional lots to the existing system without modifications. Mr. Estes testified that the 2,500 gallons per minute fire flow requirement comes from the 2018 International Fire Code Standards. TMWA's Exhibit 23 shows that much of SJV's existing system does not meet that requirement. Adding additional water demand to the system could not make the system perform any better.

Mr. Estes also testified as to how TMWA develops its water model and how the water model and computer modeling are used to determine required additional facilities and the costs for those additional facilities. SJV did not develop a hydrologic water model as set forth in its Exhibit 1(C) p. 39. As such, SJV did not present any evidence that TMWA's water model was not appropriate for determining what additional facilities would be necessary for the Development.

TMWA acted reasonably and its decision was based on substantial evidence in finding that the existing infrastructure for the Project does not meet the NAC requirements or TMWA design standards. For TMWA to have decided any other way would have violated the NAC and exposed the lots covered by the Discovery to inadequate health and safety measures.

Area 15 Inclusion and Fees

SJV asserts that including St. James Village in Area 15 and subjecting SJV to fees for the White's Creek Water Treatment Plant ("WCTP") is an arbitrary decision that is an abuse of discretion. It is clear from Mr. Enloe's testimony, information shown in the Eco:Logic Engineering report in 2002 (TMWA Exhibit 7) and the graph showing the decline in groundwater levels (TMWA Exhibit 6) that over-pumping of the aquifer was resulting in falling groundwater levels and that a program for the mitigation of unreasonable adverse effects of municipal pumping on domestic wells in the Mr. Rose-Galena Fan area was reasonably proposed. TMWA then properly noticed and held two public hearings and two public workshops prior to the TMWA Board of Directors adopting the rate and rule amendments. SJV was included on Groundwater Sustainability Plan map included in 8,000 letters sent in July 2015 (TMWA Exhibit 14, p. 5). Mr. Enloe testified that Mr. Woodside, SJV's representative, told him that he received multiple copies. SJV had the opportunity to challenge these actions at that

time and did not do so. Accordingly, the request to set aside the part of the Discovery stating that SJV is located within Area 15 and subject to the Area 15 Facility Charge is not granted.

TMWA's Decision that the Wells are Incapable of Producing Sufficient Water for the Development and that SJV Must Dedicate Further Water Rights for the Development

Mr. Estes testified that pursuant to NAC 445A.6672, TMWA must determine the maximum daily demand ("MDD") and average daily demand and determine whether the capacity of the wells serving the project is sufficient. Mr. Estes testified that the process set forth in NAC 445A.6672 and TMWA Rule 5 is used with all customers and potential customers of TMWA and that SJV was treated no differently than any other water customer submitting an application for water service.

Though there is some discrepancy as to the total MDD when one compares SVJ Exhibit 1(B) p. 8 and TMWA Exhibit 24, TMWA's analysis is reasonable. The real discrepancy comes from what each party thinks is the capacity of SJV's Wells 1 and 2. As long as the positions taken by TMWA in the Discovery are supported by substantial evidence, I may not substitute my judgement for that of the TMWA staff in making the decision to derate the 2 existing SJV wells and demand that SJV dedicate additional water resources in exchange for TMWA's agreement to provide water services. I find, therefore, that TMWA's decision to derate the 2 SJV wells (as well as at least 2 other wells in the area) as part of the larger regional Mt. Rose-Galena Fan Domestic Well Mitigation Program as well as TMWA's demand that SJV dedicate additional water resources as part of the conjunctive use plan are supported by substantial evidence. Pieces of this substantial evidence are found in TMWA's Exhibits 6, 7, 8, 9, 10, 12, 14, 25 and 26.

SJV's asserts that TMWA ignored SJV's substantial evidence; however, Mr. Enloe testified that TMWA staff met with Confluence Water Resources LLC, the authors of the Serpa Well Testing and Groundwater Analysis, and incorporated the results into TMWA's comprehensive model of the area (See TMWA Exhibit 25). John Enloe also testified that John Benedict's information (SJV Exhibit 20) was incorporated into TMWA's regional groundwater model and that all TMWA's regional models look at hydrologic barriers including faults and bedrock. Accordingly, I do not find that the evidence that SJV's submitted with its application for Discovery was ignored or discredited.

Will Serve Letter

SJV argues that it relied on the Will Serve letter dated February 28, 2019 in assuming that the WSF Charge were inapplicable to Unit 2D. TMWA states the letter was an accommodation to assist with getting the lots subdivided. Mr. Champa rejected that assertion. Nevertheless, the letter contains the following statements:

This commitment is made subject to all applicable TMWA Rules.
This commitment does not constitute an obligation to provide

water service to the Project under NAC 445A or to provide planning, design, or construction of the water facilities necessary for service to the project. The provision of water service is conditional upon applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rate Schedules and requirements of the local health authority, including without limitation and where applicable, the submission of a specific developmental proposal with a complete Application for Service, payment of fees, review and approval of a water facilities plan, the construction and dedication of water system facilities, final approval of the water facility plan by the local health authority, and approval of and execution of a Water Service Agreement.

Since this language specifically states: "The provision of water service is conditional upon applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rate Schedules ..., including without limitation and where applicable, ...payment of fees, ...," I reject the assertion that SJV reasonably relied upon this letter to determine that the WSF Charge was not applicable.

Contractual Breach Issue

TMWA was not a party to the Pagni Purchase Agreement (SJV Exhibit 4) and did not assume it in the merger with Washoe County Water Resources in 2014 (TMWA Exhibit 15). I, therefore, find that there can be no breach of contract by TMWA.

Constitutional Taking Issue

SJV makes three separate arguments regarding the taking of its water rights in violation of the United States and Nevada Constitutions. The first argument is that TMWA has taken its water rights. However, TMWA responded that TMWA has banked SJV's water rights while SJV pursues its tentative and final maps for its development. TMWA further stated that at any time, at SJV's request, TMWA will return the undedicated water rights to SJV, and they can be retained pending the filing of an application for water service on its development, sold on the open market, or put to use in the formation of SJV's own water system provider, separate from TMWA. Therefore, this cannot be a taking in violation of the US Constitution or the Nevada Constitution.

SJV's second taking argument is that TMWA's decision to request different water rights in exchange for its agreement to provide water service "effectively nullifies a large portion of [SJV's] Water Rights" and "is per se forfeiture of the certificated portion and cancellation of remaining permitted portion of the Water Rights" (SJV Brief, p. 9). I disagree and find that no water rights have been taken with TMWA's decision to request additional water rights in exchange for water service. SJV's brief states: "The Takings Clause of the United States and

Nevada Constitutions prohibits the state from taking private property for public use without just compensation (SJV p. 2). There has been no taking of private property because, as discussed above, all un-dedicated water rights can be returned by TMWA to SJV for its use upon request.

SJV's third taking argument is that there is a taking because TMWA "no longer identifies these alternative water rights as usable for the Development" in the Discovery. The language that SJV refers to is the following language contained in the 2015 Discovery: "It is possible groundwater supplies sufficient to meet the project demand cannot be located on site. In that case, the Applicant might be able to import water from other sources. One such source would be the Sierra Reflections project located nearby and under common ownership." The Discovery contained the following language:

However, alternate sources of supply or mitigations are available for water supply to the Project. This Discovery has identified facility improvements to allow the new units to obtain a water supply from TMWA's regional, conjunctive use system without impacting the local groundwater resources. TMWA is open to consideration of other supply options that do not negatively impact the long-term reliability of existing regional groundwater resources and wells, but understandably it is contrary to public health and prudent water supply management to issue will serve commitments supported solely on unsustainable or unproven sources of water supply. (SJV Exhibit 24, p. 4)

Not only does it appear that TMWA would consider alternate water rights, but the evidence presented at the hearing shows that the new alternate sources are significantly less expensive for SJV than what was proposed in the 2015 Discovery. In the 2015 Discovery, SJV was asked to construct two additional groundwater wells at a cost of \$4 million (Exhibit 16 p. 9) whereas the costs of dedicating surface water rights and paying the Area 15 fees are more than \$2.9 million less (TMWA Exhibit 19 p. 7). Therefore, the decision by TMWA to demand additional water rights from SJV in the Discovery cannot be a taking.

SJV also states that TMWA "arbitrarily and capriciously disregarded its own previous decision to utilize available water sources for water service to the Development." Since TMWA did not disregard its own previous decision, I find that TMWA did not act arbitrarily or capriciously.

Conclusion

TMWA Rule 8 directs my decision making as follows. First, as long as the positions taken by TMWA in the Discovery are supported by "substantial evidence," I may not substitute my judgement for that of the TMWA staff. Second, I may set aside the Discovery, in whole or in part, only if I find proof that the Discovery: (a) violates constitutional or statutory provisions; (b) exceeds the statutory authority of the agency; (c) is made upon unlawful procedure; (d) is affected by other error of law; (e) is clearly erroneous in view of the reliable, probative and

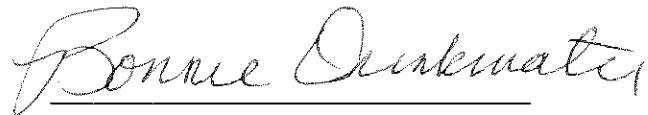
substantial evidence on the whole record; or (f) is arbitrary or capricious or characterized by abuse of discretion. SJV asserts that the relief requested is appropriate because the Discovery: (1) violates the United State and Nevada Constitutions, (2) breaches TMWA's contractual obligations, (3) is erroneous in view of the reliable, probative, and substantial evidence on the record, and (4) TMWA has acted arbitrarily, capriciously and in violation of its authority in doing so.

I therefore make the following findings:

1. The Discovery does not violate either the United States or Nevada Constitutions;
2. No contractual obligations have been breached;
3. The Discovery was reasonably based on substantial evidence in the record; and
4. TMWA did not act arbitrarily, capriciously or in violation of its authority.

As such, I do not grant SJV's request to vacate any determinations in TMWA's Discovery.

Dated: 4/14/22



Bonnie Drinkwater, Hearing Officer

**TRUCKEE MEADOWS WATER AUTHORITY
MATTERS BEFORE HEARING OFFICER**

In the Matter of:)
)
ST. JAMES VILLAGE, INC.,)
a Nevada corporation)
)
Petitioner,)
)
v.)
)
TRUCKEE MEADOWS WATER)
AUTHORITY, a joint powers authority)
Under NRS 277)
)
Respondent)
_____)

Hearing Date: March 31, 2022

DECISION REGARDING MOTION TO STRIKE OR FOR REHEARING

The hearing (“Hearing”) in this matter was held on March 31, 2022. During the Hearing, Truckee Meadows Water Authority (“TMWA”) presented two witnesses: Scott Estes and John Enloe. At no time did Petitioner, St. James Village, Inc. (“SJV”), object to the testimony of these witnesses or demand that they be sworn under oath and, in fact, cross examined both witnesses. This Hearing Officer presented her Findings of Fact, Conclusions of Law and Final Decision (the “Decision”) on April 14, 2022 at 2:34 PM. SJV submitted its Motion to Strike Testimony of Witnesses From the Record or, In the Alternative, Request for Rehearing (the “Motion”) on April 14, 2022 at 2:47 PM. TMWA, through its legal counsel, responded with Respondent’s Reply to Motion to Strike or For Rehearing (the “Reply”) on April 18, 2022.

Despite the fact that Petitioner never questions either witnesses’ truthfulness and did not object to their testimony during the Hearing, it is SJV’s contention that my failure to swear in the witnesses pursuant to NRS 233B.123 should result in either the exclusion of all of the testimony

from the hearing on March 31, 2022 (the Hearing”) by Mr. Enloe and Mr. Estes or, in the alternative, a new hearing with a new hearing officer.

NRS 233B.123(3) states, “Every witness shall declare, by oath or affirmation, that he or she will testify truthfully. TMWA’s Response contained the Affidavit of Scott Estes in Support of Respondent’s Reply to Motion to Strike or For Rehearing (Exhibit A to the Reply), the Affidavit of John Enloe in Support of Respondent’s Reply to Strike or For Rehearing (Exhibit B to the Reply), and Affidavit of Matthew C. Addison in Support of Respondent’s Reply to Motion to Strike or For Rehearing (Exhibit C to Reply). In the affidavits for Mr. Enloe and Mr. Estes, there is an affirmation that each witness reviewed his testimony as contained in the official transcript of the Hearing (the “Transcript”) and that the Transcript is a true and accurate statement of his testimony except for a few, minor transcription errors which were corrected in the affidavits. I find that these affidavits meet the requirement in NRS 233B.123(3) that each witness declare by affirmation that the testimony is truthful. As such, I deny SJV’s request that the testimony be stricken from the record.

Despite the fact that I have denied the request to strike the testimony from the record, I have carefully reviewed my Decision and have determined that each part of the testimony to which I referred can be either (1) supported by other evidence on the record, or (2) treated as unnecessary to the Decision. The following are such statements and my categorization of each:

1. Mr. Estes, in fact, presented evidence that the longest dead ends that the District Board of Health would approve are 800 ft.

TMWA’s brief, page 6, states, “TMWA’s design standards (Section 1.1.06.06) recognize dead ends are sometimes unavoidable but limit the length to 800 feet. This is the maximum radial main length that the Washoe County Health District has accepted in the past and is the maximum radial main length that TMWA will accept.” Therefore, this information was on the record before Mr. Estes’ testimony.

2. Mr. Estes testified that these dead ends would also not meet TMWA’s design standards and that he would not recommend a variance due to public health and safety reasons.

As stated above, TMWA’s brief page 6 addresses the statement that 800 feet is the maximum radial main length that the Washoe County Health District has accepted in the past and is the maximum radial main length that TMWA will accept. It is clear from the Discovery that TMWA chose not to allow a variance. There is sufficient evidence on the record, even without this testimony, that TMWA’s decision not to allow a variance was based on the NAC requirement, TMWA design standards, prior TMWA practices and health and safety concerns.

- 3. Mr. Estes testified that the 2,500 gallons per minute fire flow requirement comes from the 2018 International Fire Code Standards.**

The 2,500 gallons per minute flow requirement is contained in TMWA's brief p. 7.

- 4. Mr. Estes also testified as to how TMWA develops its water model and how the water model and computer modeling are used to determine required additional facilities and the costs for those additional facilities.**

Even without Mr. Estes' testimony, it was clear that TMWA used an extensive water model and other historical information to determine the water needs for the new areas of SJV. The falling groundwater levels and proposed (and implemented) remedies are well documented in the briefs submitted by TMWA and SJV. SJV did not develop a hydrologic water model as set forth in its Exhibit 1(C) p. 39. As such, SJV did not present any evidence that TMWA's water model was not appropriate for determining what additional facilities would be necessary for the Development. Even if this testimony was stricken from the record, SJV did not meet its burden of proof to show that TMWA's water model was not based on substantial evidence.

- 5. Mr. Enloe testified that Mr. Woodside, SJV's representative, told him that he received multiple copies.**

TMWA properly noticed and held two hearings and two workshops on the subject of Area 15 fees; therefore, proof of whether SJV actually received the letter is not required for my Decision.

- 6. Mr. Estes testified that pursuant to NAC 445A.6672, TMWA must determine the maximum daily demand ("MDD") and average daily demand and determine whether the capacity of the wells serving the project is sufficient.**

The TMWA brief, page 7, clearly describes this process and references NAC 445A.6672; therefore, this information was already in the record prior to Mr. Estes' testimony.

- 7. Mr. Estes testified that the process set forth in NAC 445A.6672 and TMWA Rule 5 is used with all customers and potential customers of TMWA and that SJV was treated no differently than any other water customer submitting an application for water service.**

There was never any allegation or evidence presented by SJV that it had been treated differently than any other applicant; therefore, the exclusion of this testimony would not alter my Decision.

- 8. Mr. Enloe testified that TMWA staff met with Confluence Water Resources LLC, the authors of the Serpa Well Testing and Groundwater Analysis, and incorporated the results into TMWA's comprehensive model of the area (See TMWA Exhibit 25).**

While this information is important and relevant to the allegation that TMWA ignored the reports submitted with SJV's application, it is not essential to my Decision that TMWA's decision to derate the 2 SJV wells (as well as at least 2 other wells in the area) as part of the larger regional Mt. Rose-Galena Fan Domestic Well Mitigation Program as well as TMWA's demand that SJV dedicate additional water resources as part of the conjunctive use plan are supported by substantial evidence (TMWA's Exhibits 6, 7, 8, 9, 10, 12, 14, 25 and 26). In order to make this finding, I did not need to find that SJV's evidence was not ignored.

- 9. John Enloe also testified that John Benedict's information (SJV Exhibit 20) was incorporated into TMWA's regional groundwater model and that all TMWA's regional models look at hydrologic barriers including faults and bedrock.**

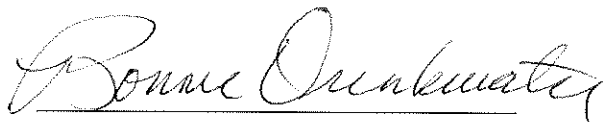
The analysis in #8 above applies here as well.

- 10. The evidence presented at the hearing shows that the new alternate sources are significantly less expensive for SJV than what was proposed in the 2015 Discovery.**

In addition to having been presented at the Hearing, this information was already on the record as it was contained in the 2015 Discovery (Exhibit 16 p. 9) and the Discovery (TMWA Exhibit 19 p. 7).

I conclude that the requirement contained in NRS 233B.123(3) has been met. Even if it was not met and the testimony had to be stricken from the record, for the reasons listed above, my Decision would not change. I, therefore, deny SJV's request to strike the testimony of Mr. Enloe and Mr. Estes and deny SJV's request to grant a new hearing.

Dated: 4/20/22



Bonnie Drinkwater, Hearing Officer

April 22, 2022

Ms. Bonnie Drinkwater
Hearing Officer
Via E-Mail bdrinkwater@drinkwaterlaw.com

Re: Stipulation to Correct April 20, 2022, Decision Regarding Motion to Strike or For Rehearing

Hearing Officer Drinkwater:

We have received and reviewed your April 20, 2022, Decision. The Parties believe there is missing information in Paragraph 4. The Parties agree, through this letter stipulation, that Paragraph 4 should be amended to include Mr. Enloe and Mr. Estes. Mr. Enloe provided testimony about the groundwater models and Mr. Estes provided testimony about the additional facilities. If the Hearing Officer agrees, the Parties stipulate to make the following changes in Paragraph 4:

1. In the title add "and Mr. Enloe" after Mr. Estes and delete "also"; and
2. In the first sentence add "Mr. Enloe and" after "Even without"

Thank you for your consideration.



Evan Champa
Counsel for:
St. James Village



Stefanie Morris
Counsel for:
Truckee Meadows Water Authority

1	I N D E X	
2		
3	THE WITNESS: SCOTT ESTES, P.E.	PAGE:
4		
5	Direct examination by Ms. Morris	36, 85
6		
7		
8	THE WITNESS: JOHN ENLOE, P.E.	
9		
10	Direct examination by Ms. Morris Examination by Hearing Officer Drinkwater Cross-examination by Mr. Champa	55, 77 79 79
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 RENO, NEVADA; THURSDAY, MARCH 31, 2022; 9:00 A.M.
-o0o-

2

3

4

HEARING OFFICER DRINKWATER: Good morning,
5 everyone. My name is Bonnie Drinkwater. I am the
6 designated hearing officer for TWMA and have been that
7 since 2010. I need to get a couple of things out of the
8 way before we start. This is Reno and there are, I
9 think, one degree of separation between most people in
10 this town. So I think it's important that I tell you
11 that in 2010 when TWMA was formed, I was on the team at
12 McDonald Carano. I left one year later from that firm
13 and started my own firm, and so I've been away from
14 McDonald Carano and TWMA for 20 years. But my husband,
15 Michael Drinkwater, is involved in the water world. He
16 is the plant manager of Truckee Meadows Water Reclamation
17 Facility. And as such, I've met a number of you over the
18 years. Dave Kershaw's son went to high school with my
19 daughter, and of course I've known Matt Addison since he
20 was my partner at McDonald Carano.

21

22

23

24

25

The briefs themselves show a number of
similar-type situations from this town where people know
each other. I don't believe any of those things cause
any sort of conflict or affect my ability to make an
objective decision today, but I didn't want anybody to be

1 surprised by any of those things. So without further
2 delay, let's get moving.

3 I plan to follow Rule 8, the process set
4 forth there for the hearing, and that means that the
5 first thing that happens is a brief orientation by
6 Authority staff.

7 MR. ADDISON: Good morning, Your Honor. Matt
8 Addison, from McDonald Carano, on behalf TMWA. With me
9 is John Zimmerman, the Assistant General Manager of TWMA,
10 Stefanie Morris, in-house counsel. What we thought we'd
11 do for the introduction is call Scott Estes. Scott is an
12 engineer with TWMA.

13 Scott, if you'd come forward and have a seat
14 at this table, we'd appreciate it. And as I know Your
15 Honor's read all of the briefs, Exhibit 1 is a timeline
16 of the procedural history in this matter. Rather than
17 simply read that, we've asked Scott to give you a
18 narration -- I'll guide that a bit -- of his personal
19 knowledge of this project and the Mr. Rose Alluvial Fan
20 as he's had experience with it over the years.

21 So with that, Scott, would you please state
22 your name and spell your name for the record.

23 MR. ESTES: My name is Scott Estes. I'm the
24 Director of Engineering at TMWA. My last name is spelled
25 E-S-T-E-S.

1 MR. ADDISON: Thank you, sir. And would you
2 give the Hearing Officer a brief summary of your
3 employment history related to the Mt. Rose Alluvial Fan
4 and your work for TWMA over the years.

5 MR. ESTES: I actually started working for
6 the water company when it was under Sierra Pacific in
7 1989, and I've been continuously employed since that
8 time. And I've been in the new business area for at
9 least 20 years here at TWMA.

10 MR. ADDISON: Do you have then personal
11 knowledge of this process with St. James Village in its
12 application and attempted development of its property --

13 MR. ESTES: I do.

14 MR. ADDISON: -- on the Mt. Rose Highway?

15 MR. ESTES: I do.

16 MR. ADDISON: Okay. With that then, I'd
17 rather not ask you questions and lead you through this,
18 but I'd like you to speak directly to the Hearing Officer
19 and tell her what you recall from your personal knowledge
20 about the history of this matter and its procedural
21 history. Who did what when, according to your
22 involvement.

23 MR. ESTES: Okay. Great. Please interrupt
24 me if you have any questions.

25 HEARING OFFICER DRINKWATER: I will. Thank

1 you.

2 MR. ESTES: So this project goes back about
3 30 years. St. James Village, in 1992, got approval of a
4 tentative map for 530 single-family residential units.
5 Then in the period in 1994 to 1997, several final maps
6 were approved through Washoe County for St. James
7 Villages 1 and 2.

8 Also in 1997, the NAC 445A regulations became
9 effective. Those regulations are minimum standards for
10 the design, construction, operation of water system
11 facilities. I bring that up because it appears that the
12 water system design for these final maps was actually
13 performed before the effective date of those regulations.

14 So I'm going to jump forward to 2008. That
15 was when TWMA and Washoe County began a joint study to
16 evaluate the feasibility of merging of the water systems.
17 That process, during that process, TWMA had the ability
18 to review pumping, historical pumping data, historical
19 groundwater level, things of that nature. And that data
20 showed us that the water, groundwater levels were
21 declining pretty severely, especially up in the Mt. Rose
22 Fan area.

23 So in 2011, these groundwaters continued to
24 decline, but Washoe County was concerned about that as
25 well. In 2011, they created the Mt. Rose Fan Domestic

1 Well Mitigation Program, and that was because of the
2 effect that municipal pumping was having on the domestic
3 wells in the Mt. Rose Fan area.

4 Also in 2011, which was about the bottom of
5 the Great Recession, St. James Village reverted their
6 remaining subdivision maps they had not developed yet to
7 acreage. What I mean by that is the subdivision maps
8 basically go away and this property where a subdivision
9 map had been reverts back to raw land.

10 HEARING OFFICER DRINKWATER: Can I ask you a
11 question about that?

12 MR. ESTES: Certainly.

13 HEARING OFFICER DRINKWATER: How does that
14 procedurally happen? Does the map expire, just expires,
15 or does somebody do something to make the reversion
16 occur?

17 MR. ESTES: I believe they have to submit a
18 request for reversion to Washoe County.

19 HEARING OFFICER DRINKWATER: So the landowner
20 would submit a request for the reversion?

21 MR. ESTES: Correct.

22 HEARING OFFICER DRINKWATER: Thank you.

23 MR. ESTES: Sure. So I'm going to jump to
24 the very end of 2014 now. This is when the merger of the
25 Washoe County Water Systems into TWMA was completed.

1 With that action, the TWMA board adopted the Mt. Rose
2 Domestic Well Mitigation Program as our Rule 10, and the
3 board also approved initial water facility charges for
4 former county systems.

5 So in 2015, we were experiencing drought
6 conditions and nobody really knew what was going to
7 happen, how long those conditions would persist.
8 Groundwater levels were continuing to decline in the Mt.
9 Rose area.

10 And because of that, we decided -- TWMA
11 decided to accelerate our conjunctive use program. So
12 that decision actually culminated in May of 2015 when the
13 TWMA Board approved an increase to our Area 15 facility
14 charge, and that increase was because we added the cost
15 to construct the Mt. Rose Water Treatment Plant. That
16 facility will divert and treat water from Whites Creek
17 and put it right back into the distribution system on the
18 Mt. Rose Fan.

19 HEARING OFFICER DRINKWATER: Sorry. I have
20 another question for you.

21 MR. ESTES: Sure.

22 HEARING OFFICER DRINKWATER: Area 15. Can
23 you explain to me how areas are developed?

24 MR. ESTES: Sure. An area reflects the fact
25 that the facility improvements within that area and

1 sometimes outside the area will improve service within
2 that particular geographic area within the boundaries of
3 the area. Does that make sense?

4 HEARING OFFICER DRINKWATER: Yes. But how
5 are they exactly set? And when?

6 MR. ESTES: They are proposed by TWMA staff
7 and the TWMA Board approves those.

8 HEARING OFFICER DRINKWATER: Thank you.

9 MR. ESTES: So our first interaction with St.
10 James Village came later on in the fall of 2015. They
11 submitted an application for discovery for 239 single
12 family residential units, so TWMA took in the
13 application, processed it, did our analysis.

14 We published a report on that discovery in
15 deposition of 2015. That report identified several
16 deficiencies in the existing system, St. James Village,
17 and it also provided a laundry list of facilities
18 including two new production wells that would be required
19 to build out St. James Village.

20 That report had a concluding statement, and
21 the statement said that TWMA was unwilling to serve
22 additional growth in the St. James Village area until
23 such time as we had fully implemented our conjunctive use
24 plan and until water levels in the existing St. James
25 wells had stabilized to our satisfaction.

1 St. James Village digested that report, and
2 in 2016, in January, they sent us a letter, and the
3 letter withdrew applications for discovery and also
4 notified TWMA that they would be hiring consultants to
5 evaluate other water supply options for their project.

6 In early 2016, TWMA completed the very first
7 conjunctive use project. It was called the Arrowcreek
8 Drought Response Project. That allowed us to deliver a
9 limited amount of conjunctive use water up into the
10 Arrowcreek zone, and from there, it could be distributed
11 into the systems up there on the Mt. Rose Fan.

12 The next big step in implementing our
13 conjunctive use plan came in 2018 when we issued a notice
14 to proceed for construction of the Mt. Rose Water
15 Treatment Plant. Later on in 2018, St. James Village
16 proposed a nine-unit infill project. What I mean by
17 infill was they took existing open space and HOA
18 properties within the existing subdivision and turned
19 those into residential lots.

20 Because TWMA was having -- making very good
21 progress in implementing our conjunctive use plan at that
22 time, we decided to agree to go ahead and serve these
23 infill lots, but we included a statement in our discovery
24 that we were not willing to serve an expanded St. James
25 Village system until such time as the Mt. Rose Water

1 Treatment Plant was in service.

2 So in 2019, we worked with St. James Village.
3 We issued a will-serve commitment for those infill lots
4 that allowed them to record their tract map, subdivision
5 tract map. We also signed off as a utility service
6 provider on that tract map, and that signing off is
7 really just an approval of the easements that are shown
8 on the tract map.

9 So in October 2021, St. James Village was
10 able to obtain an extension, a two-year extension of
11 their original tentative map. That extension will take
12 them out to October 2023.

13 The following month in November, St. James
14 Village submitted an application for discovery for a
15 24-unit project to TWMA. That consisted of Units 1H,
16 Unit 4C, and the infill lots. Along with that
17 application for discovery, St. James Village attached the
18 Lumos reports for our use and review.

19 Earlier this month, TWMA issued the discovery
20 report. This report presents a revised water supply plan
21 for growth in St. James Village. Instead of requiring
22 the construction of two new water production wells, this
23 plan will deliver supply through the existing -- through
24 and from the existing Mt. Rose system. So this new water
25 supply plan is less expensive than the original plan

1 proposed in 2015. So we gave that report to St. James
2 Village, and they digested that. And even though it was
3 a less expensive and better plan in our minds, they told
4 us that they wished to pursue dispute resolution per our
5 TWMA Rule 8, and that takes us up to today.

6 MR. ADDISON: Thank you, Mr. Estes.

7 HEARING OFFICER DRINKWATER: Can I just --

8 MR. ADDISON: Does Your Honor have more
9 questions?

10 HEARING OFFICER DRINKWATER: Yes, I'm sorry.

11 MR. ADDISON: Please. No.

12 HEARING OFFICER DRINKWATER: I'm confused
13 about the infill lots, and I think everybody might be a
14 little bit confused. In the application itself, I don't
15 see the infill lots, but they are referenced in the cover
16 letter. Were the infill lots included in the discovery
17 that came out and are we talking about them as well?

18 MR. ESTES: The infill lots were not a part
19 of the 2021 discovery. And the reason for that was we
20 found out that St. James Village had actually sold most
21 of those -- I don't know -- maybe all of those lots, and
22 so they were no longer the owner of those lots.

23 HEARING OFFICER DRINKWATER: Thank you.

24 MR. ADDISON: We did anticipate a number of
25 questions, so I'm not going to -- like I said, I'm not

1 going to lead him or anything. Just put it out there
2 through his own voice and allow you to get everything
3 straight that you want.

4 HEARING OFFICER DRINKWATER: I am going to
5 allow myself a question period at the end, but I'd like
6 to hear from St. James Village first before I compile all
7 of those questions. Maybe we'll take a short break.

8 MR. ADDISON: Of course.

9 HEARING OFFICER DRINKWATER: Make sure to
10 have everything compiled in an orderly manner.

11 MR. ADDISON: And also so that you know,
12 Mr. Estes will stay and be in the back, and he can be
13 recalled at any time.

14 HEARING OFFICER DRINKWATER: Great. Thank
15 you.

16 MR. ESTES: You're welcome.

17 MR. ADDISON: What's that? We don't need a
18 break if you'd like to continue.

19 HEARING OFFICER DRINKWATER: I don't mean
20 now. Before I compile all of my -- I have lists already.
21 I just want to know what's been answered, but I'd like to
22 hear from St. James Village before we do that.

23 MR. ADDISON: Okay.

24 MS. MORRIS: And, Your Honor, just to be
25 clear, we planned on summarizing our brief in our

1 testimony after St. James Village according to Rule 8.

2 HEARING OFFICER DRINKWATER: Yes, of course.

3 MS. MORRIS: Thank you.

4 HEARING OFFICER DRINKWATER: Okay. Ready?

5 MR. CHAMPA: I believe so. St. James Village
6 is here to show that the authorities' discovery is
7 clearly erroneous in view of the substantial evidence on
8 the whole record. The Authority's discovery is
9 arbitrary, capricious, and an abuse of discretion, and
10 the Authority's position is in violation of Nevada water
11 law and various constitutional principles.

12 Because of this, the Hearing Officer can
13 overturn the discovery in its entirety. Particularly,
14 the Authority failed to adhere to the pertinent
15 administrative code in rendering its discovery as it
16 relates to the current water facilities. Also, the
17 Authority failed to follow Nevada's long-standing water
18 law resulting in injury to St. James's property rights.

19 Further, the Authority failed to utilize
20 substantial evidence in rendering its discovery. Now we
21 know that substantial is that which a reasonable mind
22 might accept as adequate to support a conclusion. Now
23 St. James will show that the Authority's discovery was
24 not based on substantial evidence. St. James will
25 further show that with the exhibits to the discovery

1 request and attachments to its brief, substantial
2 evidence was provided to the Authority but incorrectly
3 discredited or flat-out ignored.

4 Conversely, the Authority will simply
5 continue to say that its discovery is based on
6 substantial evidence. The pieces of evidence the
7 Authority uses in support of its claim are staff reports
8 and board recommendations and the agenda, the Authority's
9 rules, various party correspondence and items that
10 generally don't provide a reasonable mind with enough
11 information to accept as adequate the Authority's
12 findings in its discovery. Still just from the evidence
13 provided, the Authority says a reasonable mind should
14 accept as adequate the conclusions in the discovery
15 because the Authority says so.

16 At no small expense, St. James has been
17 continuing its development in earnest. There was the
18 hiccup in 2008 caused by the Great Recession, and there
19 was reversion to acreage, but that was from extraneous
20 forces. Still, in no small expense, St. James, according
21 to Mr. Estes's brief discussion there, said that it would
22 go out and hire consultants, which it did. And it
23 created its new discovery submittal utilizing certified
24 engineering reports, engaging in constant input from its
25 third-party consultants, and then where applicable,

1 utilizing a Department of Water Resources' opinion.

2 These items are all from the following
3 personnel. There's Kent Grader, who is a professional
4 engineer, who I believe is up on zoom right now. He
5 holds a Master's in civil engineering with over 30 years
6 of experience. He authored the transmittal and the new
7 business application of a portion of Exhibit A of
8 Attachment 1.

9 Susan Hood has also been a consultant, who is
10 a retired professional engineer who worked for Washoe
11 County Department of Water Resources for 15 years.

12 Michael Hardy, another professional engineer,
13 professional geologist and licensed Nevada water rights
14 surveyor, has 12 years of Nevada experience, and he
15 authored the Lumos reports in Exhibits B and C of
16 Attachment 1.

17 There's Matthew Banza, a professional
18 hydrogeologist with over 20 years of experience, whose
19 report was reviewed by Timothy Donahoe. Mr. Banza, of
20 Confluence Resources, authored the Confluence reports in
21 Exhibit F of Attachment 1 as well as Attachment 18. And
22 then the Department of Water Resources' opinion was
23 authored by John Benedict, who is the senior
24 hydrogeologist from the Division of Water Resources, who
25 has roughly 21 years of experience.

1 Now this memorandum, which was Attachment 20,
2 was in reference, as I said, to both the Confluence
3 report as well as the Authority's own separate analysis
4 which it authored due to what's called the Serpa Well
5 test of the Falcon Capitol Well, and that is attached as
6 -- identified as Attachment 19.

7 So these reports and opinions, all taken from
8 third-party impartial professional engineers, actually
9 represents the substantial evidence that St. James has
10 relied upon in pursuit of its development. This is the
11 same substantial evidence St. James thought the Authority
12 would rely upon in rendering its discovery. Still, this
13 is the same substantial evidence that St. James requests
14 the Hearing Officer to rely upon in rendering the
15 findings of fact.

16 What St. James requests is the Hearing
17 Officer not rely on the Authority's decisions simply
18 because the Authority says so. Now there's two main
19 issues that St. James has with the discovery. There's
20 the implication on the existing water facilities and then
21 the implications associated with St. James' beneficial
22 interests in the water rights.

23 First I'm going to turn to focus on the water
24 facilities. At St. James, a tree system exists because
25 Washoe County, when it first approved or first reviewed

1 the tentative map and promulgated its approval, saw that
2 there was certain issues with the topography of the land
3 and utilized cost benefit analysis to decide that there
4 can be two tree systems which would satisfy the public
5 health and water service criteria at the time when that
6 system was designed. And the tentative map process with
7 the application and Washoe County subsequent approval are
8 the Attachments 6 to 8 of our list of attachments.

9 Would you like me to offer exhibits as I go
10 along?

11 MR. ADDISON: It's up to you. We can follow
12 you. It's up to Hearing Officer Drinkwater in my view.

13 HEARING OFFICER DRINKWATER: I read every one
14 of them, so I know they're there. I've seen them.

15 MR. CHAMPA: Okay. All right. So Mr. Estes
16 talked about that there were changes, and I can't
17 specifically remember the actual words he used, but as I
18 recall, there were amendments to the NAC in 1997.

19 And so prior to 1997 when I know St. James
20 was pursuing its tentative map approval, there wasn't a
21 whole lot regarding dead ends or tree systems. But after
22 the 1997 revisions, tree systems became prohibited in
23 general. But the ability still remains to this day to
24 construct and continue utilizing these tree water
25 systems.

1 The NAC requirements, which particularly
2 relate to fire flows and maximum day demand, are shown to
3 have been met in the Lumos Engineering reports. And as I
4 reviewed everything, the Authority's support to combat
5 these findings is the map showing the Authority's own
6 model which just shows that there's a little bit of
7 variation that some pressure or some GPD goes below, I
8 think, a thousand gallons a minute or a thousand gallons
9 a day -- sorry -- and the Authority's decision to sua
10 sponte derate the St. James wells.

11 Now all we know that these decisions were
12 made because the Authority said so, but we don't know
13 why. And in particular, the wells were derated or what
14 the data behind the Authority's model was to come up to
15 allow the Authority to come up with its decision. So the
16 Authority takes the applicable NAC standard and then goes
17 above and beyond what the general requirements are. And
18 this is above and beyond what the board of health and the
19 environmental commission deems necessary for continuing
20 to utilize a tree system.

21 Instead of just allowing an engineer to just
22 -- to allow a tree system, it's now the Authority's
23 decision that matters and controls. This detracts from
24 any engineer providing substantial evidence to prove that
25 a tree system is still viable as long as the Division or

1 the appropriate district board of health approve of the
2 system. So it takes away any engineer's ability to say
3 that a tree system can be used. That's gone. Now
4 without it giving any regard for the County's expertise
5 as to why a tree system should be used or could continue
6 to be used, the Authority fails to give a reasonable
7 review of the pertinent code and simply says no. It's
8 because we say so.

9 Now turning to the water rights and the water
10 supply issue, St. James provided substantial evidence
11 that its water supply was viable and its beneficial
12 interest in the dedicated water rights were also
13 sufficient for the development.

14 St. James proved that the well capabilities
15 and capacities were found to be sustainable. This was
16 found in the Lumos report. And to that point, the
17 Authority said well, it's not valid because we de-rated
18 the wells because we felt like it. The Serpa Well
19 pumping test also determined that water could sustainably
20 supply the development. This resulted in identifying
21 various aquifer characteristics based on the pumping test
22 that showed favorable conditions existed to allow
23 continued and sustainable use of the aquifer.

24 The Authority projections that came from the
25 Serpa Well test are based on regional data and

1 depth-to-water base drawdown rather than looking at a
2 percentage-based reduction at specific wells. Also from
3 that pump test, boundary conditions show that their
4 hydrogeologic characteristics which actually require an
5 island based handling of the pertinent hydrology at that
6 location.

7 HEARING OFFICER DRINKWATER: Sorry. Can you
8 repeat that?

9 MR. CHAMPA: Boundary conditions show that
10 there are hydrogeologic characteristics requiring
11 island-based handling of the hydrology at that specific
12 location. Sorry.

13 HEARING OFFICER DRINKWATER: Can you put that
14 in English for me?

15 MR. CHAMPA: Let me try. So I'm a lawyer.
16 I'm not a hydrogeologist anymore. Boundary and
17 conditions are certain aspects of the aquifer, the rocks
18 and how the water translates through those. And so not
19 everything is, according to Steno's Law, homogenous
20 throughout. There are going to be variations. There's
21 going to be peaks and valleys, faults that create
22 different sort of mechanisms that are going to implicate
23 the transmissivity values the way that water flows at a
24 certain rate through certain media.

25 And so with these pump tests -- and I think

1 the State Engineer's report from John Benedict does a
2 really good job of explaining the mathematical components
3 that are seen through graphs when water hits certain
4 highly permeable or impermeable media.

5 So boundary conditions that are shown,
6 especially through the Serpa Well report, identified that
7 there is some lag with the data, and whether that is
8 closer to the pumping well or closer to the monitoring
9 wells which prove that lag is still unknown, but there is
10 something there. And so utilizing a widespread regional
11 groundwater model that doesn't particularly have those
12 certain variances incorporated into the model parameters
13 makes the findings of that regional model inapplicable or
14 suspect to question.

15 So because of the boundary conditions shown,
16 you have to look at everything sort of in a microscope
17 for the specific area that is subject to the drawdown
18 rather than looking at a multiple basin and just
19 utilizing regional groundwater drawdowns as the end all
20 say all. Did that help? Okay.

21 So, like I said, both reports, both the
22 Confluence reports as well as the Authority's
23 hydrogeologic reports associated with the pumping well
24 test at the Serpa Well were given to the State Engineer.
25 And the Nevada Division of Water Resources, under John

1 Benedict, created an opinion which looked at both lines
2 of evidence and the conclusions drawn from Confluence as
3 well as the Authority and figured out what in the State
4 Engineer's mind was the correct findings, and those show
5 that there are certain things associated with the St.
6 James area which require -- which go to show that it can
7 be treated as a moderately, if not wholly separate and
8 distinct hydro geographical component of the Pleasant
9 Valley Hydrographic Basin.

10 HEARING OFFICER DRINKWATER: Can you point me
11 to that specifically, the State Engineer's decision?

12 MR. CHAMPA: It's not an order, but yes.
13 That will be our Attachment 19.

14 HEARING OFFICER DRINKWATER: Okay.

15 MR. CHAMPA: Or no. Sorry. Attachment 20.

16 HEARING OFFICER DRINKWATER: Okay. So
17 specifically in Attachment 20.

18 MR. CHAMPA: Yes. So the hydraulic barriers
19 in most of these findings are throughout in bold.

20 HEARING OFFICER DRINKWATER: So page four, is
21 that where you're looking?

22 MR. CHAMPA: You can go to page five.

23 HEARING OFFICER DRINKWATER: Okay. You're
24 talking about the -- Okay. The bolded language.

25 MR. CHAMPA: Bold language. So ultimately,

1 most reliable to conclude that one: Boundaries do affect
2 drawdown in the area. The data are most consistent with
3 the boundary to the north-northwest of the pumped and the
4 observation wells, but boundaries in the St. James Sierra
5 Reflections area are neither planar or necessarily
6 continuous in dimension. Do you want me to go through
7 and --

8 HEARING OFFICER DRINKWATER: No. I'm going
9 to come back to this. I will ask you more questions
10 about it later.

11 MR. CHAMPA: Okay.

12 HEARING OFFICER DRINKWATER: So sorry to
13 interrupt your flow.

14 MR. CHAMPA: It's quite all right. I'll
15 figure out where I'm going. Now St. James is of the
16 opinion that what the State Engineers Office or what
17 Mr. Benedict of the State Engineers Office has provided
18 is very telling and should be followed and at least given
19 some semblance of it's of such weight that the Authority
20 should have at least spoken to this finding, yet the
21 Authority did not. There was no mention made of John
22 Benedict's obtaining or the findings therein.

23 Instead, the Authority utilized the Serpa
24 Well data to incorporate such data into its existing
25 model which then extended the model parameters 1.3 miles

1 to the south into St. James as well as the Sierra
2 Reflections area. St. James also has large concerns
3 regarding the water rights and the fact that the water
4 rights are in good standing with the Division of Water
5 Resources.

6 The Authority, throughout its discovery and
7 briefs, talk about how papered rights don't really
8 account for much. But even with a papered right, the
9 granting itself is based on prior appropriation doctrine,
10 the doctrine of good faith and beneficial use, the
11 non-impairment doctrine and water availability just to
12 name a few. But those are all decisions made by the
13 State Engineer's Office.

14 Unfortunately, St. James feels that the
15 Authority sees itself as the ultimate decision maker as
16 to what a water right means and how such rights can be
17 used. Each of the Authority's justifications run afoul
18 of basic concepts and doctrines of Nevada water law. The
19 Authority's sole determination that it has the power to
20 determine whether water exists to satisfy the paper
21 right, that violates the non-delegation doctrine. That's
22 something for the State Engineer to decide and no one
23 else.

24 It also seems to violate St. James' due
25 process rights that when somebody files an application to

1 get a water right, they could file it for 50,000 acre
2 feet if there's water available, but if they cannot put
3 the water to beneficial use by the time they have to file
4 the proof of beneficial use, then they get whatever
5 certificated right they get. It could be five acre feet.
6 But just simply saying this permanent right which has not
7 yet been certificated and it goes away, there are certain
8 statutory safeguards under NRS 533 that should be
9 followed.

10 St. James is also concerned that the
11 Authority's forfeiting the portion or the permitted and
12 the certificated water rights which would be a regulatory
13 taking. Water rights can be split from a thousand acre
14 feet all the way down to five acre feet or less. Taking
15 60, 50, 40, however many acre feet St. James has
16 beneficial interest in and saying you need to bring more
17 water, what the going rate on the market is maybe \$7,000
18 according to the Authority's figure, but it could also go
19 up to \$65,000. That's a lot of money to say no, we're
20 not allowing you to use your water rights anymore.

21 HEARING OFFICER DRINKWATER: So in your
22 brief, I understood you to say that your taking argument
23 had to do with water rights that had been dedicated and
24 --

25 MR. CHAMPA: For beneficial use.

1 HEARING OFFICER DRINKWATER: -- not used.

2 But today, this is a slightly -- What I'm hearing you say
3 is something different, which is your taking argument is
4 that not that your rights have been taken, but that in
5 fact, you're being asked to bring different water rights
6 that cost money. Is that right? Which argument are you
7 making?

8 MR. CHAMPA: I think it's one and the same
9 because the original taking argument we made was that we
10 no longer have the beneficial interest in these water
11 rights. The Authority is getting rid of that.

12 Now the Authority brought up salient argument
13 that it was only founded on the Nevada Constitution and
14 said regulatory takings are very hard to make, and so I'm
15 answering that now in this oral argument, is that not
16 only is the beneficial use taken away, but the Authority
17 is saying you have to bring more water rights. But
18 because that beneficial use is taken away, because that
19 beneficial use is a stick in the bundle of rights -- and
20 there's lots of sticks in the bundle so to say with water
21 rights, whether it be priority, the beneficial use, what
22 have you, that's still a right that has been taken away
23 that St. James originally had, but now it doesn't
24 anymore. And that will cause an actual monetary harm to
25 continue its development even though it also went out and

1 purchased water rights.

2 HEARING OFFICER DRINKWATER: Is that still
3 your argument after TWMA's brief said all of your rights
4 are banked and you can have them back?

5 MR. CHAMPA: I'll have to ask my client about
6 that, but I would see that if all of the rights would
7 come back, everything that was originally banked, then
8 that would definitely be an argument, and I don't think I
9 could, with a straight face, make any kind of takings
10 argument.

11 HEARING OFFICER DRINKWATER: Okay. You'll
12 let me know on that?

13 MR. CHAMPA: I can let you know on that.

14 HEARING OFFICER DRINKWATER: Thanks.

15 MR. CHAMPA: Many of the Authority's findings
16 were based on regional water level. And I touched upon
17 this already, but substantial evidence should be based on
18 the hydro geographical findings, and it should dictate
19 anyone's course of action.

20 Now the Authority said that -- and this is in
21 particular to our claim about the valves being opened.
22 When a valve is opened, a pond somewhere else with water
23 is going to incur a larger draw on the production wells.

24 We don't know how long the valves were
25 opened, but what the Authority says in its brief is that

1 the valves were opened twice: Once for an emergency
2 outside of St. James and once for an emergency inside of
3 St. James. But what the Lumos reports found is that when
4 they went out into the field -- and this is past the 2017
5 or 2018 valve openings that the Authority has
6 identified -- the valve had been opened and no one knew
7 for how long or why the valve was open. But the fact was
8 the valve remained open for potentially long period of
9 time which calls into question the actual data that the
10 Authority is relying upon at this time to say that the
11 wells can't meet their production because of groundwater
12 drawdowns.

13 Basically going to wrap this up as quick as I
14 can. I know I've been rambling. St. James has a bit of
15 concern with the fact that the Authority doesn't seem to
16 care what was in the original Pagni agreement or the
17 Pagni Ranch provided the water rights to Washoe County.

18 I understand now that when the Authority
19 takes water rights from -- not takes water rights but,
20 you know, assumes the role of accepting water rights for
21 potential well serves. There are certain agreements, and
22 the Pagni agreement would not have met the muster of the
23 Authority whatsoever, but we can't focus on what the
24 Authority would do now. We have to look at what Washoe
25 County did and the terms that they agreed to in order to

1 take those water rights and then convey those to the
2 Authority.

3 Just because Washoe County agrees to some
4 terms associated with the water rights, particularly that
5 the beneficial interest owner had the ability to identify
6 where those water rights should be used, the Authority
7 says that it doesn't have to do that because it never
8 took any interest in that agreement.

9 Now just because they say so, it seems like a
10 relatively novel concept that I've yet to see for
11 terminating any sort of covenants associated with real
12 property. So it is St. James' opinion that those water
13 rights should be used where St. James decides they should
14 be used and St. James wants those water rights to be used
15 for the St. James development.

16 Now I think we've initially touched on the
17 Area 15. I know you had some questions on that, and I
18 think Mr. Estes did a good job identifying that there
19 were certain lots that were outside of the service area
20 but not within Area 15, but those lots right now were
21 still being subject to the Area 15 fee. There was even
22 one lot that was within the service area and not within
23 Area 15, but still, they're subject to the Area 15 feet.
24 There was even one lot outside the service area but
25 within Area 15, but it had a meter, and the Authority was

1 providing water to that residence.

2 I don't know if any annotation agreements or
3 water service agreements had been signed at this point,
4 but that seemed a little strange, and in the Authority's
5 -- I believe the Authority has some various
6 correspondence under their Exhibit 5. And what's missing
7 is the letter that St. James wrote to the Authority's
8 attorney highlighting these details, but that's missing
9 in the Authority's exhibits, and I have three copies if
10 anybody wants one.

11 HEARING OFFICER DRINKWATER: I would like a
12 copy, please. That's on my list of questions.

13 MR. CHAMPA: Okay. Good. So all this being
14 said, St. James has some very valid concerns.

15 HEARING OFFICER DRINKWATER: Hold on. Before
16 you move past Area 15, you said certain lots are outside
17 the service area but subject to the Area 15 fee. Those
18 lots -- and I think there are seven lots -- they're
19 outside of the service area because they were never
20 annexed. They're not outside the service area of the map
21 of Area 15; is that right?

22 MR. CHAMPA: Yes. So if they're outside the
23 service area, they're outside of TWMA's service area
24 because they had not yet been annexed.

25 HEARING OFFICER DRINKWATER: But had they

1 been annexed, they would certainly be within Area 15; is
2 that correct?

3 MR. CHAMPA: I don't believe that's correct.

4 HEARING OFFICER DRINKWATER: All right. Can
5 you show me that or --

6 MR. CHAMPA: Okay. This is my terrible
7 sketch. I'll get you a cleaner one. And I think that
8 was one of the things and the Authority's previous
9 attorney had said that well, once they're annexed in or
10 once the lands are annexed into the TMWA service area,
11 then they will be annexed into Area 15.

12 But as I look at the Area 15 map, which was
13 just recently printed, it was last updated March 16th of
14 2015. And it makes me think that Area 15 is not subject
15 to any sort of updates because yet there are no -- I have
16 not seen any staff reports or Authority board meetings to
17 show that Area 15 is actually up for, you know, an
18 update. So it seems like once the original Area 15, at
19 least from St. James' position, once this was created,
20 it's been set in stone and this is what it is. But
21 that's all St. James knows at this point.

22 HEARING OFFICER DRINKWATER: Okay. Sorry.
23 Finish your conclusion.

24 MR. CHAMPA: So St. James is concerned about
25 just the economic ramifications of what the Authority

1 alone is requiring to continue building this project.
2 Just on the recent discovery alone for 24 lots, I
3 believe, it comes to \$150,000 of improvements per lot. I
4 think -- and this is St. James' position -- that you
5 would be hard-pressed to find a developer who can make a
6 project like that pencil. And this is something that
7 Washoe County was keenly aware of and made their decision
8 based on that, but the Authority is shrugging it off
9 because it says so.

10 And so one final point. Mr. Estes talked
11 about signing the final map, and that is only a signature
12 identifying that the Authority is willing to accept the
13 easements and the necessary improvements for that
14 particular development. And with the will-serve letter,
15 as I see it, which the Authority sent to the State
16 Engineer a will-serve letter on February 20 -- on
17 February 28th, 2019, which was Attachment 16. But then
18 shortly thereafter, right around the same time as the
19 State Engineer wrote back to the Authority and said: I
20 confirm all of this water is good to go, the Authority
21 signed the final map.

22 And I know that the NAC provisions are a
23 little peculiar, and it's subject to interpretation, but
24 it's St. James' interpretation that particular to the
25 seven lots which the Authority signed, there was

1 correspondence saying that everything has already been
2 dedicated up to this point and you're good to go, and
3 this is for water. And then their form language, I
4 believe that says still subject to the rules and
5 everything else.

6 So it's St. James' position that when the
7 Truckee Meadows Water Authority signs a final map and
8 it's in lieu of a will-serve agreement that's sent to the
9 Nevada State Engineer, it seems like it's more akin to
10 providing water than requiring utilities.

11 HEARING OFFICER DRINKWATER: I'm sorry. Did
12 you just say that you think a signature on a final map
13 can replace a water service letter agreement? Sorry.
14 You don't need to have the agreement if you sign the map?

15 MR. CHAMPA: In the normal course of events,
16 I would think you would. According to the Authority's
17 rules, you would. But particular to the seven lots,
18 things were done a little strangely.

19 HEARING OFFICER DRINKWATER: Do you dispute
20 TWMA's contention that that was done -- that letter was
21 done as an accommodation being essentially a
22 chicken-and-egg problem, the lots couldn't be divided
23 unless the will-serve letter had issued and the lots, I
24 mean, you couldn't do a will-serve until the lots
25 existed. I mean, you couldn't do a water service

1 agreement until the lots existed.

2 MR. CHAMPA: No, because you can do a water
3 service agreement for it.

4 HEARING OFFICER DRINKWATER: I'm sorry. You
5 do dispute --

6 MR. CHAMPA: I do dispute --

7 HEARING OFFICER DRINKWATER: -- their
8 explanation?

9 MR. CHAMPA: Yes, I do.

10 HEARING OFFICER DRINKWATER: So it wasn't
11 done to help your client get the lots subdivided?

12 MR. CHAMPA: I don't believe so.

13 HEARING OFFICER DRINKWATER: Okay. And it
14 was only those seven lots, that will-serve letter;
15 correct?

16 MR. CHAMPA: Correct.

17 HEARING OFFICER DRINKWATER: Thanks.

18 MR. CHAMPA: I'll turn it over to the
19 Authority now. Do you need a break or are we ready to --

20 MR. ADDISON: It's up to you, Your Honor.
21 We're ready to proceed.

22 HEARING OFFICER DRINKWATER: All right.

23 MR. ADDISON: What we have now then is
24 co-counsel, Stefanie Morris, will conduct direct of Scott
25 Estes and then John Enloe. Your Honor, we estimate 40

1 minutes on that testimony at most. But Mr. Estes will go
2 first.

3 HEARING OFFICER DRINKWATER: Okay.

4 MR. ADDISON: Mr. Estes?

5

6 DIRECT EXAMINATION

7 BY MS. MORRIS:

8 Q Your Honor, I'm not going to spend a lot of
9 time focusing on some of the legal arguments that I think
10 are covered in the brief and the evidence, in particular,
11 relating to the seven infill lots which are not part of
12 this discovery. But I am going to spend some time with
13 Mr. Estes talking about the engineering and TMWA's proven
14 utility management of the water of the system including
15 looping, fire flow, maximum daily demand.

16 And with Mr. Enloe, I'm going to talk a
17 little bit about the hydrogeologic area on the Mt. Rose
18 Fan and whether the water supply is sufficient from St.
19 James Wells 1 and 2 to supply the project as asserted by
20 the Petitioners.

21 So Mr. Estes has already stated his name for
22 the record. Could you please describe for us, Mr. Estes,
23 what a discovery is and the general process for obtaining
24 water service from TWMA?

25 A Discovery is a process that I'll describe is

1 -- for a typical subdivision project, it's a process that
2 a developer can give us whatever information they have on
3 their proposed residential project and we do an analysis,
4 we do computer modeling, we look at the location of the
5 project, and we develop a report for them which will show
6 them what kind of facilities are going to be required to
7 provide the requested water service. That may include
8 offsite improvements, things of that nature. It also
9 includes the cost of connection fees for their project.

10 And in general, in most cases, this
11 information is used by the property owner to assist them
12 in getting proper financing for their project, and it
13 also allows them to proceed with the water system design
14 because we tell them -- we show them how this water
15 system should be laid out and what the pressures are
16 going to be, things of that nature. So it allows them to
17 proceed with a preliminary design.

18 HEARING OFFICER DRINKWATER: Can you please
19 elaborate on you said: We do our analysis and computer
20 modeling. What role does the information that's provided
21 to you, for example, the Lumos report and the other
22 reports, what role do those reports play in your analysis
23 and what is your body of data that you're comparing it
24 with?

25 THE WITNESS: Take a stab at this. The

1 information such as provided by Lumos really doesn't
2 enter into our new business investigations and analysis
3 because we're primarily concerned with distribution
4 facilities and service pressures and things of that
5 nature. They did not analyze or develop a computer model
6 to do those kind of things, so it's that kind of
7 information is more the information they provided was
8 more in the water resource arena instead of the
9 distribution system arena.

10 Q (BY MS. MORRIS:) Just to follow up on that
11 question, can you look at the larger binder that is the
12 Petitioner's exhibits, and under Exhibit C, which is the
13 St. James Village Water System Preliminary Engineering
14 Report dated November 1st, 2021, submitted by Lumos, and
15 could you look at page 39 of that report, the second
16 bullet, please.

17 A Okay.

18 Q Thanks. Does that indicate that the
19 hydraulic modeling was not completed by Lumos for this
20 project?

21 A That is correct.

22 Q Does it also suggest that that modeling be
23 completed in the future to help with developing looping
24 strategies?

25 A It does.

1 **Q** **Thank you. Going back to the process, once**
2 **you get through a discovery, does that mean you're**
3 **guaranteed water service? What are the next steps?**

4 **A** The next step following the discovery --
5 assuming that the developer wants to move forward, they
6 actually submit an application for water service. Now
7 preceding that, if in fact this location of the project
8 is outside a retail water service area, they usually have
9 to submit an application for annexation. And they can do
10 that at the same time as application for water service,
11 but we cannot enter into an water service agreement until
12 we have the annexation agreement.

13 HEARING OFFICER DRINKWATER: I'm sorry. Can
14 I interrupt?

15 MR. ADDISON: Sure.

16 HEARING OFFICER DRINKWATER: I need to go
17 back to my past question because you answered half of it,
18 but you didn't answer the other half, and I really,
19 really need that answer.

20 THE WITNESS: Could you repeat that?

21 HEARING OFFICER DRINKWATER: What is your
22 body of data and how do you do your modeling?

23 THE WITNESS: So the data that we're looking
24 for from an applicant includes lot layouts, street
25 layouts, more importantly, elevations, the grading plan.

1 Those are the most important items. Lot sizes, we need
2 those to calculate the maximum day demand, things of that
3 that nature.

4 HEARING OFFICER DRINKWATER: Okay. Thank
5 you.

6 Q (BY MS. MORRIS:) Mr. Estes, you spoke about
7 annexation. When an area is annexed, like there's
8 property that's outside the service area and let's just
9 say Area 15 applies, when you annex those new properties
10 or lots in, does the Area 15 fee or any area fee apply?

11 A Yes. The area fee would apply upon
12 annexation. We would adjust that boundary to include the
13 annexed property.

14 Q And why is that?

15 A Well, I mean, it's a process that needs to be
16 done to adjust those boundaries to include the
17 properties. They're benefitting from the facilities that
18 go into this area fee, and so that's why they need to pay
19 the fee.

20 Q And just to follow up on the discovery, if a
21 discovery provides information such as the Lumos report
22 and the Confluence report, do you look at it and consider
23 it before you come out with your discovery? Even if you
24 don't necessarily reference it, did you review it in this
25 instance prior to the discovery being completed?

1 A Yes, I did review it.

2 Q Thank you. I want to clear up some confusion
3 about the lot sizes which are subject to the 2022
4 discovery because there's a number of different numbers
5 of lots floating around. How many lots are in the St.
6 James Village 2021 discovery request?

7 A Twenty four.

8 Q And did TWMA inform St. James that the seven
9 infill lots were not part of the discovery?

10 A Right. Correct.

11 Q And looking at TWMA Exhibit 4, which is in
12 the smaller binder, it's a December 23rd, '21 letter to
13 Mr. Krater and Mr. Champa from Mr. Rotter, the
14 engineering manager. Is this the communication that let
15 them know that those seven infill lots were no longer --
16 were not part of the discovery?

17 A That is correct.

18 Q And does it say why they are not part of the
19 discovery?

20 A Well, yes, it does.

21 Q And is that because they no longer own those
22 lots?

23 A That was one of the items, yes.

24 MS. MORRIS: Thank you.

25 HEARING OFFICER DRINKWATER: I'm sorry. I

1 missed your exhibit. I read it. I know I read it.

2 MS. MORRIS: Exhibit 4.

3 HEARING OFFICER DRINKWATER: Exhibit 4.

4 Thank you.

5 Q (BY MS. MORRIS:) Of course. When looking at
6 necessary infrastructure, does TWMA follow the Nevada
7 Administrative Code or NAC?

8 A We do.

9 Q And when looking at necessary infrastructure,
10 does TWMA have design standards?

11 A We do.

12 Q Does the Nevada Division of Environmental
13 Protection and the Washoe County Public Health Department
14 review and approve TWMA's design standards?

15 A They did.

16 Q And looking at TWMA Exhibit 19, can you
17 identify what this document is?

18 A This is the discovery for the 24 units.

19 Q And it's dated February 14, 2022?

20 A Correct.

21 Q And looking at page 11, which it's not
22 marked, but it's Figure 2, water facilities, does this
23 show the current system?

24 A It does.

25 Q And is this a tree distribution system?

1 A Yes, it is.

2 Q And looking at Exhibit 30 of TWMA's exhibits,
3 do you see NAC Section 445.6712?

4 A I do.

5 Q And does that section allow for a tree
6 distribution system?

7 A It does not.

8 Q In looking at Exhibit 20, is this a page from
9 TWMA's design standards?

10 A It is.

11 Q And looking specifically at standard
12 1.1.06.06, does this standard allow for a tree system?

13 A It does not.

14 Q And can you please turn to Exhibit 21. Can
15 you explain what this exhibit shows?

16 A This exhibit highlights the single arterial
17 dead end main that forms the basis of the tree system
18 both in the north and in the south of the St. James
19 Village water system.

20 Q Does it also show the lengths of those dead
21 end mains?

22 A It does.

23 Q And could you please state for the record
24 what they are.

25 A The northern section is 6,300 feet long.

1 That comes from -- goes from St. James Parkway all the
2 way to the end of the system at proposed Unit 1H.

3 **Q Are there occasions when TWMA design**
4 **standards allow for a dead end main?**

5 A They do. We've, over the years in
6 discussions with the health Authority, we've come to an
7 agreement that we can have a maximum dead end length of
8 800 feet. That accommodates a lot of the longer
9 cul-de-sacs that you see in some of the developments
10 these days.

11 **Q And based on Exhibit 21 and the lengths shown**
12 **here, would this please TWMA's design standards?**

13 A No, it wouldn't.

14 **Q Because it's more than 800 feet?**

15 A Correct.

16 **Q In your professional judgment, would you**
17 **recommend a variance from the 800-foot dead end main**
18 **requirement?**

19 A No, I would not.

20 **Q And why not?**

21 A In a radial dead end main such as this, any
22 break in single portions of the main, everybody
23 downstream from that point of the main break is going to
24 be without water pressure. And when you depressurize a
25 main like that, you're asking for problems from

1 infiltration and possible contamination of the main.

2 Q So it's a public health and safety issue?

3 A Correct.

4 Q Thank you. And you did -- you said you
5 reviewed the Lumos technical memo that was submitted with
6 the St. James discovery request; correct?

7 A I did.

8 Q So looking at Petitioner Exhibit 1, Tab B,
9 it's a technical memorandum to Mr. Woodside from
10 Mr. Hardy about the St. James Village water system
11 analysis.

12 A Okay.

13 Q Do you see that?

14 A I do.

15 Q Looking at the third full paragraph,
16 beginning with: "The St. James Village water system
17 currently consists of," do you see that? I think it's
18 exhibit -- it's B. It's a memo. It's not the larger
19 Lumos report.

20 HEARING OFFICER DRINKWATER: It's in Exhibit
21 1.

22 MS. MORRIS: 1B. 1C is the larger Lumos
23 report. You've got to go backwards. No. Other way.

24 THE WITNESS: Other way.

25 MS. MORRIS: B. Look for B.

1 THE WITNESS: B?

2 MS. MORRIS: B. Keep going.

3 THE WITNESS: Oh, Exhibit B?

4 MS. MORRIS: Yeah. Exhibit 1, Tab B.

5 THE WITNESS: Okay.

6 Q (BY MS. MORRIS:) Okay. So looking -- you
7 see that's the technical memorandum to Mr. Woodside from
8 Mr. Hardy?

9 A Correct.

10 Q Okay. Looking at the third full paragraph,
11 did Lumos agree that the system lacked proper looping?

12 A They did.

13 Q And of that same exhibit, can you turn to
14 page six?

15 A Okay.

16 Q And looking at the distribution piping and
17 pressure zones tab in the last sentence, does that
18 paragraph -- does that also agree that there was not
19 proper looping for the system?

20 A It does.

21 Q And does it state that that was important for
22 system redundancy and greater fire flow?

23 A It does.

24 Q Thank you. Let's talk a little bit about
25 fire flows. I think you said that -- and we looked at

1 the Lumos larger report -- that they did not conduct fire
2 flow modeling; is that correct?

3 A That is correct.

4 Q And can you turn to -- Did TWMA complete that
5 modeling?

6 A We did.

7 Q And what are the fire flows for this project?

8 A Taking a look at the size of the homes in
9 that development, we determined that the fire flow would
10 be 2,500 gallons per minute.

11 Q And did Lumos agree with that?

12 A They did.

13 Q And that's not a number TWMA just made up;
14 correct?

15 A No.

16 Q It's based on a standard?

17 A International Fire Code standards.

18 Q And the NAC requires that you do such
19 analysis and modeling for fire flow; correct?

20 A It does.

21 Q And could you turn to TWMA Exhibit 23? If
22 you could explain what this shows and maybe orient us a
23 little bit about where the proposed areas for this
24 project are for the discovery.

25 A This again is a -- this exhibit is a map of

1 the St. James Village water system. It shows both the
2 northern and southern portions of the system. And what
3 this is, this shows the result of a fire flow analysis
4 throughout the entire system. And the nodes with the
5 numbers next to them, that indicates the maximum fire
6 flow that can be delivered at that point in the system.

7 **Q And can you tell me if this modeling**
8 **demonstrates that the 2,500 gallons per minute or GPM**
9 **standard is met?**

10 A You can see on the west side or the left side
11 of this exhibit near the St. James 1 tank, this is the
12 only area within that system where you can get in excess
13 of 2,500 gallons per minute of fire flow. The remaining
14 portions of the system are -- well, you can tell from
15 just looking at the numbers no numbers exceed 2,500
16 gallons per minute. And even in the southeastern portion
17 towards the bottom left of this exhibit, you can see the
18 fire flows are less than a thousand gallons per minute.

19 **Q Thank you. Let's talk a little bit about**
20 **maximum day demand. Looking at Exhibit 30, TWMA Exhibit**
21 **30.**

22 A Okay.

23 **Q And these are relevant sections of the NAC.**
24 **Does NAC 445.6672 require an analysis that includes a**
25 **maximum day demand?**

1 A It does.

2 Q And did TWMA complete that analysis?

3 A We did.

4 Q And if we could turn to TWMA Exhibit 24.

5 Maybe you could just briefly explain what a maximum day
6 demand is and why it's important.

7 A Sure. For residential development, we
8 calculate the maximum day demand by the lot size. So
9 what we do is we take the lot area in square feet, put
10 this into a spreadsheet, and we calculate the maximum
11 daily demand for each lot in the project and we get a
12 total maximum day demand that way.

13 So for the existing St. James units, the max
14 daily demand using that method is 207 gallons per minute.
15 That includes the homeowner's association irrigation
16 service. There's an additional 81 lots in the St. James
17 Village area that were committed to serve, but they serve
18 -- but they're not yet built, so that's a committed max
19 day demand of 122 gallons per minute.

20 And then if you add the 24 lots that were
21 part of the discovery, they had a maximum day demand of
22 35.1 gallons per minute which gives you a total committed
23 max day demand in the 24 lots were developed of 364.1
24 gallons per minute.

25 Q And when you look at the max day demand, as

1 proposed by the Petitioner, it would be met with just St.
2 James' Wells 1 and 2 for a capacity; correct?

3 A Correct.

4 Q And what are the capacity rates of those two
5 wells?

6 A We de-rated the original capacity of those
7 two wells, so the combined capacity from the existing
8 wells is 350 gallons per minute.

9 Q And so looking at Exhibit 24, it shows that
10 based on your analysis, there's a deficit capacity just
11 using those two wells for that source; correct?

12 A Correct: 14.1 gallons per minute.

13 Q And in the Lumos report that was submitted,
14 which is Petitioner Exhibit 1, Tab B on page 8, they also
15 identify additional 18 lots that are outside the St.
16 James gated community as a requirement for future demand.
17 Did you include those 18 units in this analysis?

18 A No.

19 Q And if you did include those, would that make
20 the deficit greater?

21 A It would.

22 MS. MORRIS: Thank you.

23 HEARING OFFICER DRINKWATER: Can I ask -- I
24 don't know if this is a good time, but it's as good a
25 time as any. Explain to me about de-rating the well.

1 Are you involved in that?

2 THE WITNESS: That's probably a better
3 question for Mr. Enloe.

4 HEARING OFFICER DRINKWATER: Okay. Thank
5 you. I will ask it.

6 Q (BY MS. MORRIS:) Yeah, and I have questions
7 about that. But I would like you to talk about capacity
8 de-rating versus water resource availability de-rating.
9 Can you speak to the capacity de-rating?

10 A I think I can handle that one.

11 Q Thank you.

12 A The actual capacity -- we're talking about
13 capacity of supply is the amount of water that you can
14 pump by the wells. The water rights capacity is more of
15 an annual duty for the development, and it's usually
16 noted in acre feet per year.

17 HEARING OFFICER DRINKWATER: The Lumos --
18 second Lumos report, the Exhibit C to Exhibit 1, has
19 charts on page 22 regarding maximum daily demand. There
20 numbers are slightly different from your numbers. It's
21 my understanding this is a fairly formulaic process based
22 on those lot sizes. Why are the numbers different?

23 Q (BY MS. MORRIS:) Maybe I could just help
24 here. If you look at the table in 22, if you take the
25 existing residential demand plus the HOA irrigation which

1 you said you combined for the 206, is the 194 plus 13

2 roughly 206? I'm really bad at math. I'm a lawyer.

3 HEARING OFFICER DRINKWATER: 194 plus 213?

4 MS. MORRIS: Thirteen.

5 HEARING OFFICER DRINKWATER: Oh, 13 plus 13.

6 So these two?

7 Q (BY MS. MORRIS:) Mr. Estes, you have to help
8 me with the math.

9 A Yes.

10 Q So in TWMA Exhibit 24, you said existing use
11 was 206 GPM?

12 A 207.

13 Q And then if you take the table from Lumos on
14 page 22 and look at -- and this is Table 4.3, for the
15 record, and look at the first two lines, existing
16 residential plus HOA irrigation, is that roughly the 206
17 that you used?

18 A It's the 207. Yes.

19 Q Rounding errors potentially?

20 A Yes, probably.

21 MS. MORRIS: Do you have more questions on
22 that table before I move on?

23 HEARING OFFICER DRINKWATER: I'm not sure.

24 I'll have to come back to that.

25 Q (BY MS. MORRIS:) Okay. Looking at Exhibit

1 16, TWMA's Exhibit 16, can you identify for the record
2 what this document is?

3 A This is the 2015 discovery report.

4 Q And it was provided to St. James --

5 A It was.

6 Q -- Village. Did this discovery suggest
7 drilling two new wells: St. James three and four, to
8 meet capacity issues?

9 A It does.

10 Q And the cost estimate for the two new wells
11 shown on page nine of the discovery under item one?

12 A Yes.

13 Q And what was the estimated cost for those two
14 new wells?

15 A For the two wells, cost estimate was \$4
16 million dollars.

17 Q And looking at that same Exhibit 16 on page
18 five, district your attention to the second full
19 paragraph. Did the discovery acknowledge that there may
20 not be sufficient groundwater supplies onsite to meet the
21 project demand?

22 A It does.

23 Q And looking at the paragraph above, did it
24 also acknowledge the Area 15 fees would apply?

25 A It does.

1 Q Did the 2022 discovery find a different way
2 to try to address the reliable pumping capacity issue?

3 A It did.

4 Q And let's look at that discovery. Can you
5 turn to Exhibit 19.

6 A Okay.

7 Q And what was the solution that TWMA came up
8 with to try to address the reliable pumping capacity
9 issue other than drilling two new wells?

10 A Instead of putting additional stress on the
11 aquifer by building additional production wells, what we
12 proposed now is to serve growth in St. James Village by
13 sending water through the existing -- from and through
14 the existing Mt. Rose water system.

15 Q And looking at Exhibit 19, page seven, let me
16 know when you get there.

17 A Okay.

18 Q Can you identify which line item would be the
19 cost of that proposed solution.

20 A That would be the pressure reducing station
21 with SCADA control at a cost estimate of \$125,000.

22 Q So that would be a cheaper solution to
23 address the capacity issues rather than drilling two new
24 wells?

25 A It would.

1 Q By roughly how much?

2 A When you take into account the connection
3 fees, the Area 15 fees as well, the revised plan is
4 approximately \$2.9 million dollars less.

5 Q And, Mr. Estes, have you seen the cost
6 benefit analysis that Washoe County performed --

7 A I have not.

8 Q -- that was referenced --

9 A No.

10 Q -- in the pleadings? So that wasn't provided
11 by the Petitioners?

12 A I have not seen it.

13 MS. MORRIS: Okay. Thank you.

14

15 DIRECT EXAMINATION

16 BY MS. MORRIS:

17 Q Mr. Enloe, can you please state your name and
18 your title and spell your last name for the record.

19 A Sure. My name is John Enloe: E-N-L-O-E.
20 I'm the Director of Natural Resources for TWMA.

21 Q In your role as natural resources, do you
22 oversee hydrogeologists?

23 A Yes, I do.

24 Q And do you work with those hydrogeologists to
25 determine how TWMA can serve reliable water supply in the

1 future?

2 A Yes, I do.

3 Q And could you please describe your
4 professional experience working with the Mt. Rose-Galena
5 Fan groundwater resources from 1999 to roughly 2015.

6 A Sure. So in 1999, I was a consultant for a
7 company called Ecologic Engineering, and we were hired by
8 Washoe County and the South Truckee Meadows General
9 Improvement District to prepare a comprehensive water and
10 wastewater facility plan for the entire south Truckee
11 Meadows area. It's a much larger area than really what
12 we're talking about up on the Mt. Rose Fan, all of Double
13 Diamond and Arrowcreek and so forth.

14 Part of that study included a groundwater
15 model for that entire area where we looked at the
16 sustainable pumping amount. Mr. Estes referred to an
17 earlier conjunctive use, so we were looking at a facility
18 plan that utilized groundwater resources, creek
19 resources. And at the time, TWMA had a wholesale service
20 to Washoe County utilizing Truckee River resources, so we
21 were looking at the combination of those three resources
22 to satisfy a large area demand. One of the --

23 Q Mr. Enloe, sorry. If I can stop you.

24 A Sure.

25 Q As part of that work that you were involved

1 in looking at Exhibit 7 of TWMA's exhibits, is that the
2 technical memorandum you were referring to?

3 A Yeah, that's what I was just going to speak
4 to. So one of the outcomes of this facility plan was a
5 groundwater model. And this Exhibit 7 that is being
6 referred to is one of the technical memoranda within that
7 facility plan.

8 And the primary conclusion from this was that
9 the amount of committed and I'll say water rights that
10 were intended to serve tentative maps within the entire
11 service area, there was not sufficient groundwater, there
12 were not sufficient groundwater resources, the wet water,
13 to satisfy the amount of permitted groundwater in the
14 area.

15 So one of the outcomes of that facility plan
16 was a recommendation for the construction of an upper
17 water treatment plant that would be used to supply
18 treated surface water to augment the groundwater
19 resources in that area. So at the time, Washoe County
20 and STMGID, in that area, relied 100 percent on
21 groundwater. And this facility plan, which was approved
22 by Washoe County and STMGID in 2002, acknowledged that
23 and recognized the need for conjunctive use and the need
24 for an upper surface water treatment plant to provide
25 that source of supply.

1 Q And would the Mt. Rose Water Treatment Plant
2 that was recently completed by TWMA be just that kind of
3 facility?

4 A Yes, it is.

5 Q Okay. And do you have the Petitioner's
6 complaint in front of you?

7 A I do.

8 Q Could you please turn to page 10. And I want
9 to direct your attention to lines four through six. It
10 says: "The Authority determined that it would initiate
11 an aquifer supply recovery program due to the extensive
12 aquifer drawdown on the Mt. Rose Alluvial Fan caused by
13 domestic well pumping." Do you see that?

14 A Yes, I do.

15 Q Do you agree with that statement?

16 A No, I don't.

17 Q And can you please turn to Exhibit 8, TWMA
18 Exhibit 8. What is that document?

19 A This is a staff report from Washoe County in
20 August of 2011 related to the implementation of the
21 domestic well mitigation program for the Mt. Rose Fan.

22 Q So does that indicate to you that it was
23 really municipal pumping that was causing issues with
24 domestic wells?

25 A That was the reason this whole program was

1 implemented. There's been a long history of public
2 engagement, I will say, with the utilities related to
3 municipal groundwater pumping that impacts the domestic
4 wells. It was a big part of the facility plan effort
5 completed in 2002. That carried on through the early
6 2000s and culminated with this domestic well mitigation
7 program that compensates domestic well owners for the
8 impacts of municipal pumping on domestic wells.

9 **Q Can you describe -- since the Washoe County**
10 **merger in 2014 -- what has TWMA done to promote**
11 **conjunctive use and what steps have you taken?**

12 **A** Sure. So Mr. Estes referred to it. When
13 TWMA -- so just for some clarity, I didn't start work for
14 TWMA until 2014, but during the merger process, it was
15 recognized that there was a significant problem in the
16 Mt. Rose Fan.

17 The drought of 2011 through 2015 exacerbated
18 that problem, and upon completion of the merger, TWMA
19 accelerated improvements for this conjunctive use plan so
20 that consisted of the water supply project that Mr. Estes
21 referred to pumping water from basically treated Truckee
22 River water from the Walmart area and Double Diamond all
23 the way up to the top of Arrowcreek Parkway. From that
24 point, the water could be distributed to the entire upper
25 portions of the Mt. Rose Fan. And we completed that in

1 2016, and with completion of that project, we were able
2 to reduce groundwater pumping by those upper wells by
3 approximately 40 percent.

4 And in addition to that, Mr. Estes referred
5 to the design and construction of the Mt. Rose Water
6 Treatment Plant which is now complete, and we are also
7 actively recharging three wells in that area. So placing
8 -- during this time of year actually treated water back
9 down the wells to help restore groundwater levels in the
10 area.

11 Q Thank you. I want to take a couple of steps
12 back. When TWMA -- when the merger was complete, did
13 TWMA adopt the Mt. Rose-Galena Fan domestic well
14 mitigation program?

15 A Yes, we did.

16 Q And looking at Exhibit 10 of TWMA, is that
17 Rule 10 for TWMA?

18 A Yes, it is.

19 Q And I want to talk briefly about how TWMA
20 adopts area fees, so could you please turn to Exhibit 9,
21 TWMA Exhibit 9. Thank you. Could you just explain what
22 this document is.

23 A So this is a staff report dated April 6th,
24 2015 related to proposed rule changes and WSF charges,
25 the Area 15 -- they're essentially connection fees, 14

1 and 15, for that area.

2 Q And when TWMA changes its fees, does it have
3 to do a public process?

4 A Yes, we do. There's two public readings of
5 that. And for this process, we also held a public
6 workshop.

7 Q And can you just briefly look at Exhibits 11
8 and 13? Are those the TWMA board agendas agendizing the
9 changes to those rate fees for Area 15?

10 A Yes, they are.

11 Q And after TWMA adopted the rate changes and
12 through that public process, if you could turn to Exhibit
13 14. And can you describe what Exhibit 14 is.

14 A So Exhibit 14 is a letter that we sent out to
15 over 8, 000 water customers in the Mt. Rose Fan basically
16 advising them that TWMA is now the water purveyor in the
17 region. We recognize that there are significant problems
18 with the groundwater resource in that area and that we
19 were moving forward with implementation of several large
20 improvement projects to address that issue.

21 Q And this is a little bit of a strange letter
22 because it says -- again, it's Exhibit 14. It says:
23 July, question mark, question mark, 2015. But if you
24 look at the back page of the exhibit, there's an invoice
25 attached. Did TWMA cause, through a mail merge, 8,000 of

1 these letters to be sent to property owners --

2 A Yes.

3 Q -- in the area? And do you know if
4 Mr. Woodside, the representative for St. James Village,
5 received this letter?

6 A He did not receive the letter directly. I
7 looked at the actual mail merge list, but I recalled in
8 one of our meetings here at TWMA that Mr. Woodside did
9 receive that letter because he commented that he received
10 multiple copies of it.

11 Q And then if I could just direct your
12 attention again to Exhibit 14, there's the second-to-last
13 page, there's a map. And that was sent with the letter.
14 Can you describe what that map shows in the context of
15 yellow dotted lines as well as the blue area labeled St.
16 James?

17 A Right. So I think there's some confusion
18 between the domestic well mitigation program boundary and
19 our Area 15 boundary because they are not the same. The
20 yellow dashed line represents the domestic well
21 mitigation area boundary, so any domestic well owner
22 within that area could file a claim with TWMA and
23 basically, if they needed to do something with their
24 wells, their costs are partially reimbursed according to
25 the rules and so forth.

1 The black line is the line that reflects the
2 Area 15 charge boundary, and so that's more -- that's in
3 line with TWMA's service area, and it so it extends all
4 the way up to the Arrowcreek subdivision to the north as
5 far south as St. James Village, and it was -- that area
6 was identified to incorporate the municipal wells in the
7 upper Mt. Rose Fan that were contributing to the regional
8 water level decline in the area.

9 **Q So I'd like to direct your -- I have a very**
10 **quick question before we talk about water supply about**
11 **banked water at TWMA versus dedicated. So if water is**
12 **banked at TWMA, does that mean TWMA controls it and**
13 **possesses it or does that mean that TWMA holds it for the**
14 **use of someone else at a certain point in time?**

15 **A Yeah, we're basically holding it for the**
16 **beneficial use of others.**

17 **Q And if a person who has banked water or an**
18 **entity has banked water and they want it back, how does**
19 **that work?**

20 **A I don't know exactly, but if they want their**
21 **water back, I believe they could send us a request and we**
22 **would deed their water back to them.**

23 **Q Thanks. And I want to take a look at**
24 **Petitioner's exhibit. It's that bigger binder. And in**
25 **looking at 6, Exhibit 6.**

1 A Six?

2 Q Yeah. And -- sorry -- seven. And I would
3 like to direct your attention first to the cover page, if
4 you could describe for the record what this exhibit is.

5 HEARING OFFICER DRINKWATER: Wait. Their
6 Exhibit 7 or yours?

7 MS. MORRIS: Their Exhibit 7. Petitioner's
8 Exhibit 7.

9 THE WITNESS: This looks like the tentative
10 map and special use conditions for St. James Village.

11 Q (BY MS. MORRIS:) That was adopted by the
12 Washoe County?

13 A Right. In 1992. Correct.

14 Q And if you could turn to page 17 of that
15 exhibit and look at condition 69. Can you describe what
16 that condition says?

17 A Basically, it says if water usage monitoring
18 demonstrates the water rights dedicated to serve the
19 project are insufficient, then additional water rights
20 shall be required to serve that demand.

21 Q So it looks like Washoe County had a
22 condition that considered that there may not be
23 sufficient water and they were going to monitor it in the
24 future to determine that.

25 A Correct.

1 Q Okay. And now let's look at exhibit -- TWMA
2 Exhibit 16. Sorry I'm making you flip all over the
3 place. This is the December 23rd, 2015 discovery. And
4 I'd like to direct your attention to page four, and in
5 particular, Figure 1.

6 So is this the data that TWMA relied upon in
7 2015 to make the determination that there was -- that the
8 St. James Wells 1 and 2 were not sufficient to meet the
9 reliable water supply for the project into the future?

10 A Yeah, this and other data as well.

11 Q And can you describe what is shown on Figure
12 1?

13 A So Figure 1 shows the static water level and
14 two monitoring wells nearby to the St. James production
15 wells. And over essentially a what is that?
16 20-year-period, there were over 50 feet of water level
17 declines in each of those wells really with very small
18 pumping amounts relative to their overall water rights.

19 Q And can you -- Sorry. This is showing data
20 for 1994 through 2015?

21 A Correct.

22 Q And this was one of the pieces of data that
23 you were looking at to make that determination in the
24 discovery?

25 A Yeah. This was the determination in the

1 discovery as well as this type of information fed into
2 the whole Area 15 conjunctive use mitigation program.

3 **Q And if we could also turn to Exhibit 6, TWMA**
4 **Exhibit 6. Can you please describe what this depicts**
5 **including what the blue and black lines show as well as**
6 **the dotted line?**

7 A Sure. So the blue line represents the water
8 levels in one of those same monitoring wells: St. James
9 monitoring well one. And you have that same time period
10 from basically '95 through 2015.

11 What the black line shows is the cumulative
12 pumping of its seven wells in the Mt. Rose Fan.
13 Basically, it's the municipal wells south of Mr. Rose
14 Highway, and over that time period, that pumping
15 increased from only a couple hundred feet, acre feet to
16 almost 2,000 acre feet per year, and the dashed line
17 basically represents when TWMA took over.

18 And what you can see from the blue line is
19 the water levels, compared to earlier years, started to
20 stabilize. And the reason that those water levels are
21 stabilizing can be seen in the black line because at that
22 same time period, TWMA -- that was when we talked about
23 implementing these conjunctive use, sending water up
24 Arrowcreek and reducing the groundwater pumping.

25 So the groundwater pumping went down from

1 over 1,500, 1,700, 1,800 acre feet a year to maybe an
2 average of a thousand acre feet per year. So it was that
3 reduction in regional groundwater pumping that
4 contributed to the stabilization of the St. James water
5 levels.

6 Q Thank you. Mr. Enloe, did you review the
7 Confluence materials that were submitted separately as
8 well as part of the Lumos materials for the 2021 same
9 joint discovery?

10 A Yes, I did.

11 Q And did some of your staff meet with
12 Confluence to discuss those findings and materials?

13 A Yes, they did.

14 Q And in general, did your staff agree with the
15 findings for the Serpa Well tests that were provided?

16 A Yeah, they did agree with the test results
17 from the Serpa Well to a large extent, and they took
18 those results and incorporated them into our regional
19 model.

20 If I could just add something. Because of
21 this regional model, there were models developed in the
22 early 1990s that identified that there was a problem in
23 the upper Mt. Rose Fan with the sustainable water
24 resources. The modeling that we did as part of the
25 facility plan confirmed that.

1 When TWMA took over the system in 2015, we
2 worked on additional models to try to incorporate the
3 most comprehensive and available information. One of the
4 big additions to this was we were able to incorporate the
5 Ormat geothermal facility into the groundwater modeling
6 because that was essentially a black box in all of the
7 other groundwater models that had been developed and we
8 were never able to get that information. But through
9 some good work of our hydrogeologist, they were able to
10 work with Ormat and get that information, so we feel we
11 have a very accurate and comprehensive model of that
12 area. With respect to the Serpa groundwater model, I
13 mean one of the things --

14 **Q Let's talk -- the Serpa, the well testing,**
15 **you mean?**

16 A Right.

17 **Q So you're familiar with that test?**

18 A Yes.

19 **Q Okay. And what basin are the St. James --**
20 **What groundwater basin are the St. James wells located**
21 **in?**

22 A St. James are in the Pleasant Valley
23 Hydrographic Basin.

24 **Q And what basin is the Serpa Well located in?**

25 A The Washoe Valley Hydrographic Basin.

1 Q And you have a groundwater modeler on staff;
2 correct?

3 A A very good one.

4 Q And what is his name?

5 A Greg Pohll.

6 Q And he updates the regional models as you've
7 just described?

8 A Yes, he did.

9 Q Your regional model looks at hydraulic
10 barriers, does it not?

11 A Yes, it does.

12 Q It considers those when it looks at regional
13 impacts?

14 A Yes, it does.

15 Q That would include faults?

16 A Yes.

17 Q That would include bedrock?

18 A And that was really -- with the comments that
19 John Benedict from the State Engineers Office, he
20 provided some input on faulting and so forth, and that
21 information was also incorporated into the regional
22 groundwater model.

23 Q And so I want to direct your attention to
24 TWMA Exhibit 25. And let me know when you get there.

25 HEARING OFFICER DRINKWATER: Sorry. Which

1 exhibit?

2 Q (BY MS. MORRIS:) TWMA Exhibit 25.

3 Is this a summary of some model simulations
4 that were run by your staff?

5 A Yes, it is.

6 Q And on the first page of that exhibit, on the
7 second paragraph at the very bottom, it talks about the
8 model hydraulic conductivity in the vicinity of the Serpa
9 Well was increased, blah, blah, blah?

10 A Right.

11 Q In accordance with an aquifer test at that
12 well. Do you see that?

13 A Yes.

14 Q So the results from the Serpa Well tests were
15 incorporated into this model?

16 A That is correct.

17 Q And can you just briefly summarize what the
18 model results show from these runs, in particular,
19 looking at scenario two?

20 A Right. So scenario two is basically a
21 representation in the model of increased pumping rates
22 from approved development up in the area. So not only
23 does St. James Village have an approved tentative map,
24 but so does a project called Terrasante, another one
25 called Ascente, so there's much more potential

1 development up there in that area. So this scenario two
2 looked at increased pumping levels from all of those
3 approved developments to reflect long-term changes in the
4 groundwater level.

5 Q In your professional opinion, would it be
6 wise to make a long-term resource supply determination
7 based on a two-week test from a well that's not even
8 contemplated to provide water supply?

9 A No.

10 Q Would you do it without looking at other
11 regional impacts?

12 A No.

13 Q And finally, in your opinion, and based on
14 the modelings, is there a hydrologic connectivity between
15 the Pleasant Valley Basin and other surrounding basins?

16 A Yes, there is. And I just wanted to comment
17 that the Confluence report even recognized the
18 conductivity between the pump test at Serpa and the St.
19 James Wells.

20 Q And I want to direct your attention to
21 Petitioner Exhibit 19. This is a TWMA memo dated August
22 2nd, 2018 to the file. Does Mr. White work with you?

23 A Yes, he did.

24 Q And are you familiar with this memo?

25 A Yes.

1 Q And looking at page one, on the fourth
2 bullet, does that indicate that the model found regional
3 drawdown over much of the Mt. Rose Fan exceeding 50 feet
4 based on future development?

5 A Correct.

6 Q And does this memo and the model results in
7 Exhibit 25 indicate regional hydrologic connectivity?

8 A I'm sorry. Can you repeat that question?
9 You threw out another exhibit there.

10 Q I'll strike that. I'm going to move on.
11 Mr. Enloe, are you familiar with the valve that's
12 referenced in Petitioner's complaint that connects the
13 Mt. Rose system with the St. James system?

14 A Yes, I am.

15 Q Are you aware that in 2017 and 2018, the
16 valve was opened to help address wells being down in
17 either of those systems?

18 A Yes, I am.

19 Q Is it generally good public utility -- Is it
20 prudent for utilities to have redundancy in systems to be
21 able to address outages in other areas?

22 A Very much so.

23 Q Did TWMA base its opinions and conclusions
24 about the groundwater availability for the 2015 discovery
25 on data from the future?

1 A No.

2 Q Or was it on past data prior to 2017 and
3 2018?

4 A It was basically the 2015 discovery and that
5 Figure 1 that we looked at in there that was prior to
6 really TWMA taking over the system and prior to that
7 valve even being opened. So during the time period when
8 that valve was opened was the time period when the water
9 levels were stable in the St. James Wells because of kind
10 of our reduced groundwater pumping.

11 Q Okay. Thank you. And if you can look again
12 at Petitioner's brief on page nine, and really focusing
13 on lines three through 14, essentially four through 14.

14 A Okay.

15 Q Do you agree with that statement that the
16 Authority wouldn't consider alternative water rights?

17 A No.

18 Q Has it changed its opinion from 2015 to 2022?

19 A No. In the discovery, I think, mentioned a
20 couple of alternatives, one being wells down on the
21 Sierra Reflections property and the other being
22 supplemental water rights from the Whites Creek Water
23 Treatment Plant.

24 Q And if you could reference Exhibit TWMA
25 Exhibit 19, page four, the first full paragraph.

1 A Starting with "However"?

2 Q Yes. Does that confirm what you just said:
3 That other sources of supply or mitigation could be
4 available?

5 A Correct.

6 Q And does it also suggest that TWMA's open to
7 considering other supply options as long as they don't
8 have impacts on the long-term reliability of the regional
9 groundwater?

10 A Correct.

11 HEARING OFFICER DRINKWATER: I'm not with
12 you. Sorry. He's right.

13 MS. MORRIS: I think it's TWMA Exhibit 19.

14 HEARING OFFICER DRINKWATER: All right. I'm
15 there.

16 MS. MORRIS: And it's page four.

17 HEARING OFFICER DRINKWATER: And my page four
18 is all references.

19 MS. MORRIS: I think you're on the wrong
20 exhibit book.

21 HEARING OFFICER DRINKWATER: Oh, you're
22 right. Sorry. That's exactly what happens.

23 MS. MORRIS: No worries. I'll wait.

24 HEARING OFFICER DRINKWATER: Got it. Thank
25 you. Sorry.

1 Q (BY MS. MORRIS:) So again, looking at page
2 four of --

3 HEARING OFFICER DRINKWATER: Yeah, I see
4 where you're talking about.

5 Q (BY MS. MORRIS:) -- Exhibit 19. And then I
6 guess in -- I need one second. So just to confirm, TWMA
7 would be open to looking at other water resources and
8 mitigation?

9 A Correct.

10 Q As indicated on page four?

11 A Correct.

12 MS. MORRIS: I don't have any further
13 questions.

14

15 EXAMINATION

16 BY HEARING OFFICER DRINKWATER:

17 Q Could we go back to my earlier question about
18 the de-rating of the well?

19 A Sure.

20 Q How and when and how -- I mean, how does that
21 all happen?

22 A Okay. So when we were looking at
23 implementing this entire program, we were looking at
24 water levels with wells in that entire area, and we
25 actually conducted and reviewed pump tests on wells and

1 so forth. But what we were seeing was that water levels
2 were declining rapidly, easily two or more feet a year
3 with no rebound whatsoever.

4 The derating of these wells was not just
5 limited to St. James Village. We also derated -- they're
6 called two Tessa wells that were equipped and providing
7 service to customers, and the water levels in those wells
8 were really dropping. So again, cutting back on the
9 pumping reduces that demand on the aquifer.

10 And then there are two other wells. They're
11 not TWMA wells currently, but they're associated with the
12 Terrasante development that have also been derated for
13 the same reason. So we're looking at, I mean, it's
14 really not just the GPM pumping capacity issue, but how
15 much water can you remove from the aquifer in that
16 location without causing a significant impact.

17 HEARING OFFICER DRINKWATER: Okay. Thank
18 you.

19 MR. ENLOE: And so these wells were derated
20 in 2015, as were the other four that I referred to.

21 HEARING OFFICER DRINKWATER: I have one more
22 question for Mr. Estes. I didn't ask you, but I meant to
23 ask you. You described the process of the application
24 and the discovery and my question is: Was St. James
25 Village treated any differently than any other customer

1 in your process?

2 MR. ESTES: No, they weren't.

3 HEARING OFFICER DRINKWATER: Thank you.

4 MS. MORRIS: I remembered my last question if
5 you wouldn't mind. It was for Mr. Enloe.

6 HEARING OFFICER DRINKWATER: Okay.

7

8 FURTHER EXAMINATION

9 BY MS. MORRIS:

10 Q When you look at other projects and other
11 discoveries, do you, in that area, would you use the same
12 regional model?

13 A Yes.

14 Q And you would look at that pumping and assess
15 based on that regional model whether that resource was
16 sustainable?

17 A Correct.

18 MS. MORRIS: Thank you.

19 HEARING OFFICER DRINKWATER: I think it's
20 time for us to take a short break. Is ten minute us
21 enough time? So let's come back just about a little bit
22 after 11:00.

23 (Recess.)

24 HEARING OFFICER DRINKWATER: We're back.

25 MR. ADDISON: Your Honor, this is Matt

1 Addison again. I just have two housekeeping matters,
2 procedural matters. The first is you had referenced your
3 desire to see an April 19th, 2021 letter from Mr. Champa,
4 Petitioner's counsel, to our former partner, Mike Ponti
5 at McDonald Carano, on behalf of TWMA. And Mr. Champa
6 indicated on the record earlier he had three copies of
7 and that and he would distribute it.

8 During the break, we negotiated a stipulation
9 very quickly to simply take this copy that Mr. Champa
10 provided and amend the record in the matter by amending
11 TWMA's Exhibit Number 5 and appending this letter of
12 April 19th, 2021, to the end of Exhibit 5 to supplement
13 the record.

14 Mr. Champa, have I stated our stipulation
15 correctly?

16 MR. CHAMPA: That's correct.

17 MR. ADDISON: Thank you. I appreciate your
18 courtesy very much.

19 Your Honor, is that okay with you?

20 HEARING OFFICER DRINKWATER: Absolutely.

21 MR. ADDISON: Thank you very much.

22 Secondly, just as I indicated before we took
23 the direct testimony of Mr. Estes and Mr. Enloe, we
24 completed -- Ms. Morris completed that direct examination
25 just about in the time we had allotted, and we want to

1 make sure that you have a complete opportunity to ask
2 these gentlemen questions and then open them up for
3 cross-examination by Mr. Champa. So they're here.
4 They're ready. Any questions you or Mr. Champa have,
5 they're ready to field.

6 HEARING OFFICER DRINKWATER: Would you like
7 to do cross-examination?

8 MR. CHAMPA: Briefly.

9 HEARING OFFICER DRINKWATER: Okay.

10

11

CROSS-EXAMINATION

12 BY MR. CHAMPA:

13 Q Good morning still. I'm Mr. Champa, on
14 behalf of St. James. Now I think this question is for
15 you, Mr. Estes. I'm not quite sure, but in regards to
16 the NAC provisions, particularly regarding the
17 Authority's 1.1.06.06 Provision, you had stated that you
18 had provided or sought counsel from the applicable
19 authorities. I think it was the health department.

20 Is there any writing pertaining to that
21 confirmation where the authorities said or the health
22 division said oh, we agree with the 1.1.06.06 provisions?

23 A Well, in general, we have a letter that says
24 they reviewed and approved our standards.

25 MR. ADDISON: Objection. Excuse me. I don't

1 mean to be interrupting, but that's not the NAC
2 provision, right?

3 MR. CHAMPA: Correct. No.

4 MR. ADDISON: That's the TWMA internal rules.

5 MR. CHAMPA: TWMA internal rules.

6 MR. ADDISON: No offense. I think the
7 question was posed as referring to the NACs.

8 MR. CHAMPA: Okay. I apologize. Would you
9 like me to rephrase?

10 MR. ADDISON: I just don't want the record to
11 be confused, so if you wouldn't mind.

12 MR. CHAMPA: Okay. Absolutely.

13 MR. ADDISON: Thank you.

14 MR. CHAMPA: Let me actually go to the --

15 MR. ADDISON: And it's the TWMA internal
16 design; correct?

17 THE WITNESS: Uh-huh.

18 MS. MORRIS: It's Exhibit 20, if you're
19 looking for it.

20 MR. CHAMPA: Exhibit 20.

21 MS. MORRIS: Uh-huh.

22 Q (BY MR. CHAMPA:) So you indicated earlier
23 that you took the Truckee Meadows Water Authority
24 engineering and construction standards and provided a
25 copy of those to I think it was the health department who

1 is the one who promulgated the NAC provisions regarding
2 tree systems. Is that correct?

3 A Correct.

4 Q Okay. And do you have a copy of that
5 correspondence or was there any written correspondence?
6 Sorry. That's compound.

7 MR. ADDISON: You're fine.

8 Q (BY MR. CHAMPA:) Was there any written
9 correspondence from the health department approving the
10 1.1.06.06 TWMA standards?

11 A We have a letter noting their approval of our
12 standards as a whole. They don't address specific items
13 within those standards.

14 Q And did the health department review the
15 entirety of what this Exhibit 20, the engineering and
16 construction standards, design guidelines?

17 A Yes, and much more than that.

18 Q And do we have -- Is there a copy readily
19 available online of all of these design standards?

20 A They should be on our website.

21 Q Okay. Now I think this might be another one
22 for you. When TWMA was taking over Washoe County in
23 particular the STMGID duties for the southern area of
24 Reno, particularly the St. James region, did TWMA perform
25 a review of the existing water facilities at St. James?

1 A Yes, we did.

2 Q And did you review the well capacities
3 associated with the wells that were there?

4 A The reported capacity, yes.

5 Q Did you also review the existing tree
6 structures?

7 A I don't recall looking at that specifically
8 at that time.

9 Q Were you aware that the tree systems were in
10 excess of 800 feet?

11 A I could have told that by looking at the
12 system mapping, but I don't recall doing that
13 specifically either at that point.

14 Q So was it correct then that you had not
15 performed any maximum day demand calculations at that
16 time?

17 A No, we did some rough calculations based on
18 the information at hand.

19 Q Did you find that those calculations
20 satisfied the existing NAC provisions?

21 A I will have to review that calculation sheet.
22 I don't recall off the top of my head.

23 Q And I would pose the same question for the
24 fire demand as well. Would that also take a review and
25 confirm whether those fire demands met TWMA's approval?

1 A At that time, we did not have computer models
2 built of all of the former county systems, so we would
3 not have performed that analysis at that time.

4 Q Okay. Now this question is for you,
5 Mr. Estes. Did you review my or St. James' Attachment 20
6 which is the State Engineer report from?

7 A Yes. Enloe.

8 Q Enloe. Did I say Enloe or Estes?

9 MR. ESTES: Estes.

10 Q My apologies.

11 A No problem.

12 Q Yeah, this is in regards to our Exhibit 20,
13 if you can get there, please.

14 MS. MORRIS: Just for the record, if I may,
15 there's nothing on this that indicates it's an official
16 document from the Nevada Division of Water Resources. In
17 fact, there's no logo or anything of that nature. It
18 looks like it's just a memo to file from John Benedict,
19 but again, no indication that it's an official document
20 from the Nevada Division of Water Resources.

21 HEARING OFFICER DRINKWATER: Mr. Champa, do
22 you want to explain that or --

23 MR. CHAMPA: No, no.

24 MS. MORRIS: Just objecting to the
25 characterization.

1 HEARING OFFICER DRINKWATER: All right.

2 Q (BY MR. CHAMPA:) Absolutely. Okay.

3 Mr. Enloe?

4 A Yes.

5 Q You've been a hydrogeologist in this area for
6 quite some time; correct?

7 A No. I'm a Professional Engineer. I'm not a
8 hydrogeologist.

9 Q Okay. But in that vain, are you familiar
10 with John Benedict?

11 A Yes, I am.

12 Q Do you know where he works?

13 A I think he's still working part time at the
14 State Engineers Office.

15 Q Okay. So but have you reviewed this
16 memorandum from John Benedict?

17 A Not in detail, no. I relied upon TWMA's
18 hydrogeology staff to review the technical details of it.

19 Q I think that's all I have for that then
20 unless -- When you reviewed your -- the hydrogeology
21 staff -- were you aware that they had reviewed this
22 report?

23 A Yes.

24 Q And were you aware that there were different
25 findings from the Confluence report compared to what the

1 **Authority had created?**

2 A I know there were some minor differences, but
3 as I stated in my testimony, I believe Mr. Pohll
4 incorporated the hydraulic properties and much of the
5 information that was contained from their pump test into
6 our regional model including faults and so forth.

7 MR. CHAMPA: Okay. I have no further
8 questions.

9 MR. ADDISON: Your Honor, if you don't mind,
10 we just have one follow-up. Ms. Morris does. Very
11 brief.

12 HEARING OFFICER DRINKWATER: Okay.

13

14 FURTHER EXAMINATION

15 BY MS. MORRIS:

16 Q Mr. Estes, when TWMA took on the county
17 system, you just took it as it was; correct?

18 A True.

19 Q You didn't have the opportunity to amend it.
20 It wasn't like an annexation where you could require
21 things to be amended?

22 A That is correct.

23 Q To make the system better?

24 A Yes, that's correct.

25 MS. MORRIS: Thank you. No further

1 questions.

2 HEARING OFFICER DRINKWATER: I think my
3 questions were answered already, so thank you.

4 MR. ADDISON: Thank you. That would conclude
5 TWMA's case-in-chief.

6 HEARING OFFICER DRINKWATER: Thank you.

7 MR. ADDISON: Thank you.

8 HEARING OFFICER DRINKWATER: Okay.
9 Mr. Champa, your rebuttal?

10 MR. CHAMPA: This is going to be a bit longer
11 than my opening, so bear with me.

12 MR. ADDISON: I appreciate your good nature.

13 MR. CHAMPA: I try. Now, the St. James,
14 based upon all of the information it's provided, has
15 shown in comparison to the authorities's findings that
16 the discovery is erroneous in view of the substantial
17 evidence on the whole record. The Authority's discovery
18 is arbitrary, capricious and abuse of discretion, and
19 their position is still in violation of Nevada water law
20 and the various constitutional principles and doctrines
21 associated with water.

22 The Authority gave no regard for the County's
23 expertise as to why a tree system should be used.
24 Instead, the Authority based its decision on its
25 interpretation of the pertinent code and then doubled

1 down on utilization of its annex requirements and
2 concluded that the tree system is not viable.

3 The Authority attempted to discredit the
4 capacity of the wells by derating them because they just
5 said so and decided to do so. The Authority attempted to
6 forfeit portions of St. James' water rights through means
7 that result in violations of long-standing doctrines of
8 western water law and Nevada water law itself because it
9 said so.

10 In all, the Authority picks and chooses what
11 it wants, how it wants it and when all because it says
12 so. Because of this and the papers on file representing
13 the substantial evidence on the whole record, the Hearing
14 Officer should overturn the discovery in its entirety.
15 That's it.

16 HEARING OFFICER DRINKWATER: I have a
17 question for you.

18 MR. CHAMPA: Okay.

19 HEARING OFFICER DRINKWATER: Please explain
20 to me the legal impact of property being reverted to
21 acreage. I know I didn't say that exactly right, but you
22 know what I mean.

23 MR. CHAMPA: My understanding -- and this is
24 not my realm, so I think I would probably do best to
25 write a memo or a brief in very short order to not put

1 anything on the record that is incorrect.

2 HEARING OFFICER DRINKWATER: Is that
3 acceptable?

4 MR. ADDISON: Well, Your Honor, what I'd like
5 to do is add to that. And I'd like Mr. Enloe or
6 Mr. Estes to answer that question because they can
7 explain the practical effect of returning land to
8 acreage. And it's a footnote three in our brief toward
9 the beginning. I believe it's page five or so.

10 And that's something I would like one of our
11 gentlemen to talk about because it does have effect. And
12 I'll just, as an offer of proof, summarize it. What it
13 does is start the process over at that point. That
14 becomes raw land which then, if the developer wants to
15 subsequently develop it, he or she or they or it has to
16 come back and ask for more discovery, do an application,
17 the whole nine yards for service. So again, just an
18 offer of proof from a lawyer. But I'd prefer, if you're
19 going to allow that, which I have no objection to, that
20 one of these gentlemen speak to it first from our
21 perspective.

22 HEARING OFFICER DRINKWATER: Okay,
23 Mr. Champa. How soon can you get that to me?

24 MR. CHAMPA: Thursday.

25 HEARING OFFICER DRINKWATER: I have only ten,

1 I think, either ten or ten days to --

2 MR. CHAMPA: Monday.

3 HEARING OFFICER DRINKWATER: Monday? Monday
4 is good.

5 MR. CHAMPA: Okay.

6 HEARING OFFICER DRINKWATER: Thank you.

7 MS. MORRIS: Just, Your Honor, if there are
8 additional legal arguments raised, we'd like the
9 opportunity to respond by Tuesday. There may not be, but
10 if there's new legal arguments raised, we should have the
11 opportunity to respond.

12 HEARING OFFICER DRINKWATER: Yes, that seems
13 fair to me.

14 MR. ADDISON: And do you want concurrent
15 letters on the first day with the ability to provide --

16 HEARING OFFICER DRINKWATER: I think you're
17 going to ask your question and let your people answer
18 here. If you'd like to write a brief as well, I suppose
19 you could do that by Monday as well.

20 MR. ADDISON: Well, thank you. Because what
21 my point was very specific. And I said I would like one
22 of these gentlemen to opine on the practical effects of
23 that with TWMA, not necessarily the legal side.

24 HEARING OFFICER DRINKWATER: Okay.

25 MR. ADDISON: So we would appreciate the

1 opportunity to simultaneously brief the issue on Monday,
2 but I would like the practical side on the record now as
3 well.

4 HEARING OFFICER DRINKWATER: Okay. Let's do
5 that.

6 MR. ADDISON: Gentlemen, which of you is
7 best? Mr. Estes?

8 MR. ESTES: I'm going to take a stab at it
9 first.

10 MR. ADDISON: Okay, sir. Do you now
11 understand the context of the question?

12 MR. ESTES: I do.

13 MR. ADDISON: Okay. What happens when land
14 is returned to acreage?

15 MR. ESTES: As I tried to describe earlier,
16 when that happens, it's basically the land goes from a
17 subdivision plat, an approved subdivision to raw land.
18 In my mind, that starts the process of all over again for
19 the property owner as far as obtaining a final map again
20 on that property in the future, and as far as TWMA goes,
21 it's they're starting all over again with us.

22 MR. ADDISON: So describe each -- just
23 summarize again quickly this, each step of that process,
24 please, in chronological order.

25 MR. ESTES: As far as TWMA processes are

1 concerned, they would have to apply for a discovery.
2 They would have to apply for annexation. And ultimately,
3 assuming that annexation agreement is executed, they
4 would have to apply for a water service agreement.

5 MR. ADDISON: So, in other words, it's
6 starting completely over?

7 MR. ESTES: Correct.

8 MR. ADDISON: And nothing that's done
9 beforehand is binding on that started-over process;
10 correct?

11 MR. ESTES: That is correct.

12 MR. ADDISON: Okay. Because conditions could
13 change in the interim?

14 MR. ESTES: Absolutely.

15 MR. ADDISON: Okay. And that's why a
16 discovery would be necessitated again, the process be
17 completed again before any promises of service would be
18 made?

19 MR. ESTES: That's right.

20 MR. ADDISON: Okay. Thank you, Your Honor.
21 That's all I have.

22 HEARING OFFICER DRINKWATER: Okay. I believe
23 you guys get a final rebuttal, although I lost my piece
24 of paper.

25 MR. ADDISON: We do not.

1 HEARING OFFICER DRINKWATER: Oh, you do not?

2 MR. ADDISON: No.

3 HEARING OFFICER DRINKWATER: Okay. So at
4 this point, I am awaiting two briefs on Monday with
5 responses to each other's briefs by Tuesday, let's say,
6 5:00 o'clock each day. And my report will be delivered
7 in accordance with the time frame set out in Rule 8.

8 Does anyone have any questions for me?

9 MR. ADDISON: I do, Your Honor.
10 Single-spaced letter okay instead of a traditional
11 pleading brief?

12 HEARING OFFICER DRINKWATER: Yes.

13 MR. ADDISON: Or do you want a pleading
14 brief?

15 HEARING OFFICER DRINKWATER: Whatever form
16 you'd like. I can read it either way. And then can we
17 have a page limit? I mean, I don't want to get this out
18 of control and create, you know -- I'm concerned about
19 the potential for new arguments.

20 MR. CHAMPA: No. I appreciate it.

21 MR. ADDISON: How about two pages,
22 single-spaced letter?

23 HEARING OFFICER DRINKWATER: Is that
24 acceptable to you?

25 MR. CHAMPA: That's acceptable.

1 MR. ADDISON: Thank you. I just want to keep
2 parameters around it in light of the tight deadlines.

3 HEARING OFFICER DRINKWATER: Thank you. I've
4 been reading a lot lately.

5 MR. ADDISON: Thank you, Your Honor. We
6 appreciate that.

7 MR. ADDISON: And exchange them by e-mail and
8 get them to you by email as well?

9 HEARING OFFICER DRINKWATER: Yes, please.
10 That would be excellent.

11 MR. ADDISON: Got it.

12 HEARING OFFICER DRINKWATER: I just want to
13 make sure I have all of my questions answered for
14 Mr. Champa.

15 HEARING OFFICER DRINKWATER: Mr. Champa, in
16 your brief on page nine, you talk about and we discussed
17 this briefly earlier, but I still want to circle back to
18 this. You talk about this at line 15. The Authority's
19 decision effectively nullifies a large portion of
20 Petitioner's water rights. Explain that, please, that
21 statement.

22 MR. CHAMPA: Which line again?

23 HEARING OFFICER DRINKWATER: I'm sorry. Your
24 page nine, line 15. It's the last full paragraph on the
25 page.

1 MR. CHAMPA: Okay. Yeah. So this goes back
2 to the aspect of St. James has dedicated water rights
3 with the Authority. There's a certain amount. I can't
4 specifically remember. Let's say it's 160 have been
5 utilized for both services, so that leaves 40 left.

6 That's 40 acre feet of water rights that are
7 a property right, and the Authority is now saying you
8 cannot use these. You have to bring different water
9 rights. You have to use water rights from the Serpa Well
10 or potentially a Pleasant Valley or creek rights in lieu
11 of that. And so those 40 water rights in St. James'
12 position have just vanished. And that's the simplest I
13 can make the argument.

14 MR. ADDISON: Your Honor, may I rebut that?

15 HEARING OFFICER DRINKWATER: Yes, please.

16 MR. ADDISON: And I don't need to do it. I
17 would like Mr. Enloe to do it, please, because I'd like
18 you to hear it from the horse's mouth. Mr. Enloe?

19 MR. ENLOE: I don't believe that statement is
20 correct because we will accept St. James Village
21 groundwater rights. There's never been an issue with
22 that.

23 The issue is we need supplemental rights in
24 addition to those groundwater rights to make a full water
25 supply. So it's really the combination of the two, the

1 groundwater rights and the supplemental Whites Creek
2 rights. Because on their own, the groundwater rights
3 don't provide a sustainable supply, my professional
4 opinion.

5 On their own, the Whites Creek water does not
6 provide a sustainable supply because of it's really
7 timing issues. There's a lot of water in the creek
8 spring runoff, and then in the summer, it goes down and
9 there's not much water available. So it's the
10 combination of the groundwater rights and the Whites
11 Creek surface water rights that make a full sustainable
12 water supply.

13 MR. ADDISON: Mr. Enloe, I'd like to ask you
14 a question. Are the groundwater rights gone, as
15 Mr. Champa put it?

16 MR. ENLOE: No. No.

17 MR. ADDISON: Where are they and can they be
18 returned? And if so, in full?

19 MR. ENLOE: Bank with TMWA. If they want
20 them back, send us a letter.

21 MR. ADDISON: All of them?

22 MR. ENLOE: Whatever.

23 MR. ADDISON: So yes?

24 MR. ENLOE: Yeah. Sorry. Yeah.

25 MS. MORRIS: All of the ones that are not

1 committed --

2 MR. ENLOE: Not committed. Right.

3 MS. MORRIS: -- to other projects.

4 MR. ENLOE: Right. Exactly. But, I mean,
5 that really serves no purpose because you still need --
6 you need the groundwater rights to be able to pump water
7 from wells. This conjunctive use program is giving you
8 the opportunity to use those groundwater rights, like I
9 said, because on their own, they're not sustainable. But
10 with supplemental surface water rights, they are.

11 MR. ADDISON: Thank you, sir. Appreciate the
12 clarification.

13 HEARING OFFICER DRINKWATER: Thank you. That
14 is my last question as well. So I thank you all for your
15 time today and look forward to seeing your briefs on
16 Monday.

17 MS. MORRIS: Thank you.

18 MR. ADDISON: Thank you, Your Honor.

19 HEARING OFFICER DRINKWATER: Have a good day.

20 (The proceedings concluded at 11:27 a.m.)

21 -o0o-

22

23

24

25

1 STATE OF NEVADA)
2 WASHOE COUNTY)

3

4 I, NICOLE J. HANSEN, Court Reporter for the
5 administrative hearing, do hereby certify:

6

7 That on the 31st day of March, 2022, I was
8 present at said meeting for the purpose of
9 reporting in verbatim stenotype notes the within-entitled
10 public meeting;

10

11 That the foregoing transcript, consisting of pages 1
12 through 96, inclusive, includes a full, true and correct
13 transcription of my stenotype notes of said public
14 meeting.

15

16 Dated at Reno, Nevada, this 1st day of
17 April, 2022.

17

18

Nicole J. Hansen

19

20

NICOLE J. HANSEN, NV CCR #446
CAL. CSR 13,909 RPR, CRR, RMR

21

22

23

24

25

1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE
2 Litigation Services is committed to compliance with applicable federal
3 and state laws and regulations ("Privacy Laws") governing the
4 protection and security of patient health information. Notice is
5 hereby given to all parties that transcripts of depositions and legal
6 proceedings, and transcript exhibits, may contain patient health
7 information that is protected from unauthorized access, use and
8 disclosure by Privacy Laws. Litigation Services requires that access,
9 maintenance, use, and disclosure (including but not limited to
10 electronic database maintenance and access, storage, distribution/
11 dissemination and communication) of transcripts/exhibits containing
12 patient information be performed in compliance with Privacy Laws.
13 No transcript or exhibit containing protected patient health
14 information may be further disclosed except as permitted by Privacy
15 Laws. Litigation Services expects that all parties, parties'
16 attorneys, and their HIPAA Business Associates and Subcontractors will
17 make every reasonable effort to protect and secure patient health
18 information, and to comply with applicable Privacy Law mandates,
19 including but not limited to restrictions on access, storage, use, and
20 disclosure (sharing) of transcripts and transcript exhibits, and
21 applying "minimum necessary" standards where appropriate. It is
22 recommended that your office review its policies regarding sharing of
23 transcripts and exhibits - including access, storage, use, and
24 disclosure - for compliance with Privacy Laws.

25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)



April 18, 2022

Nicole J. Hansen
Litigation Services

Via E-Mail: transcripts@litigationservices.com

Re: Hearing Transcript Re St. James Discovery- Annexation 1H-2C: PLL #21-8275

Ms. Hansen:

We have received the March 31, 2022, transcript for the above referenced hearing. Upon review of the transcript by Mr. Scott Estes, Mr. John Enloe, and myself, we submit the following transcription corrections:

- Global change throughout the transcript of “TWMA” to “TMWA”
- On page 9, line 15, strike “deposition” and insert “December”
- On page 39, line 8, strike “usually”
- On page 44, line 12 strike “please” and insert “meet”
- On page 49, line 17, strike “were” and insert “we are”
- On page 49, line 23, strike “in” and insert “if”
- On page 51, line 14, strike “by” and insert “from”
- On page 53, line 18 strike “district” and insert “direct”
- On page 55, line 21 insert “Director of” after “as” and before “natural resources”
- On page 66, line 13, strike “Mr.” and insert “Mt.”
- On page 71, line 23, strike “did” and insert “does”
- On page 73, line 9, strike “of kind”
- On page 95, line 19, add “ed” to “bank” should read “banked”

Should you have any questions, please feel free to contact me.

Sincerely,

Stefanie Morris

Cc: Evan Champa
Bonnie Drinkwater

1 Matthew C. Addison, Esq. (NSBN 4201)
McDONALD CARANO LLP
2 100 West Liberty Street, 10th Floor
Reno, NV 89501
3 Telephone: (775) 788-2000
Facsimile: (775) 788-2020
4 maddison@mcdonaldcarano.com

5 *Attorneys for Respondent Truckee Meadows Water Authority*

6
7
8 ST. JAMES’S VILLAGE, INC., a Nevada)
corporation,)
9)
Petitioner,)
10)
11 v.)
12 TRUCKEE MEADOWS WATER)
AUTHORITY, a joint powers authority under)
13 NRS277,)
14)
Respondent.)
15)
16)

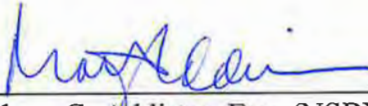
In Re: Notice of Dispute of Action taken by
the Authority – Rule 8(b) Regarding St.
James Discovery-Annexation 1H-2C; PLL#
21-8275

17 **RESPONDENT’S REPLY TO MOTION TO STRIKE OR FOR REHEARING**

18 Respondent Truckee Meadows Water Authority (“TMWA”), by and through its
19 undersigned counsel of record, hereby submits this Reply to Petitioner’s Motion to Strike or for
20 Rehearing (“Reply”), pursuant to the Hearing Officer’s authorization to do so. This Reply is based
21 upon the facts and legal authorities cited herein and the Exhibits attached hereto.

22 DATED this 18th day of April, 2022.

23 McDONALD CARANO LLP

24 
25 _____
26 Matthew C. Addison, Esq. (NSBN 4201)
27 100 West Liberty Street, 10th Floor
Reno, NV 89501
Telephone: (775) 788-2000
maddison@mcdonaldcarano.com
28 *Attorneys for Respondent TMWA*

McDONALD CARANO
100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

POINTS AND AUTHORITIES IN SUPPORT OF TMWA’S REPLY

INTRODUCTION

The testimony of TMWA’s two witnesses was and remains undisputedly truthful, and they have confirmed it to be so, under oath, after a careful review of the certified court reporter’s transcript. Petitioner had at least three separate and clear opportunities, during the hearing, to object and demand the witnesses be sworn, but it never did so. As Petitioner cites no factual evidence or legal authority in support of its request for alternative relief, its Motion to Strike or For Rehearing (the “Motion”) is unfounded, without merit and should be denied in its entirety.

ARGUMENT

I. The Witnesses Have Sworn, Under Oath, They Testified Truthfully.

Each of TMWA’s witnesses has sworn, under oath, that all of his testimony given on March 31, 2022 was and is completely truthful. *See* Affidavits of Scott Estes and John Enloe, attached hereto as Exhibits “A” and “B”, respectively. Tellingly, nothing in the Motion even questions the veracity of either witness. Its bald, underlying assertion is the Hearing Officer should simply enforce “form over substance”.

II. Each Witness Has Confirmed, Under Oath, The Transcript Preserved His Truthful Testimony.

A true and correct copy of the certified court reporter’s transcript of the March 31st hearing is attached hereto as Exhibit “D”. *See* Affidavit of Matthew C. Addison, attached hereto as Exhibit “C”, at paragraph 6. Each of TMWA’s witnesses has carefully reviewed his entire testimony set forth in that transcript and confirmed, under oath: (a) but for a few minor reporting errors, the transcript fully and accurately reflects his substantive testimony; (b) his substantive testimony reflected therein was and is completely truthful; and (c) had he been sworn prior to giving his substantive testimony, it would not have differed, at all, from that reported in the transcript. *See* Exh. “A” at paragraphs 5-13, and Exh. “B” at paragraphs 5-12.

Petitioner agreed to have the hearing reported and to pay half of the reporter’s charges, but its Motion is devoid of any mention of, let alone challenge to, the transcript’s reliability. A true and correct copy of Mr. Champa’s e-mail of March 22, 2022 is attached hereto as Exhibit “E”; *see*

1 Exh. C, at paragraph 7. Clearly, Petitioner agreed to purchase the transcript to memorialize “the
2 record” and support a future challenge to this Hearing Officer’s anticipated decision. Thus, its
3 present attempt to convince the Hearing Officer to ignore that same transcript to establish the
4 truthfulness of the subject testimony is disingenuous.

5 **III. Petitioner Never Objected on the Oath and Cross-Examined the Witnesses.**

6 As the certified court reporter’s transcript reflects, Petitioner did not object to Mr. Estes’
7 introduction and recitation of the procedural history of the matter. *See* Exhibit “D” at pgs. 4-5.
8 Petitioner then failed to object at the beginning of, or during, the direct testimony of either witness.
9 *Id* at pgs. 36-78. Finally, even after a break in the proceedings, specifically offered and taken to
10 allow Petitioner’s team to hone its cross-examination points, Petitioner proceeded, without
11 success, to “clarify” the witnesses’ testimony, but never questioned either’s truthfulness or
12 objected to their lack of an opportunity to swear an oath. *Id* at pgs. 78-85.

13 **IV. The Attached Affidavits are Admissible and Appropriate Evidence.**

14 In response to Petitioner’s Motion, the Hearing Officer specifically directed Respondent’s
15 counsel to provide her “... with affidavits from Mr. Enloe and Mr. Estes in accordance with NRS
16 223B.123(3).” A true and correct copy of Hearing Officer Drinkwater’s e-mail to counsel of April
17 15, 2022, is attached hereto as Exhibit “F”; *see* Exh. C, at paragraph 8. The Hearing Officer’s
18 direction was and is perfectly consistent with her express, statutory authority to receive evidence
19 in the form of affidavits. *See* NRS 233B.123(1).

20 **V. Petitioner Cannot Demonstrate Any Prejudice.**

21 As set forth above, (a) Petitioner’s Motion does not challenge the truthfulness of either
22 witness’ testimony; (b) each witness has affirmed the truthfulness of all of his substantive
23 testimony, under oath, following a careful review of the transcript; and (c) the Hearing Officer is
24 statutorily entitled to receive evidence in the form of affidavits.

25 In order to prevail on any claim the attached Affidavits (*see* Exh. “A” and Exh. “B”) do
26 not obviate its concerns, Petitioner would have to prove it would be “prejudiced substantially” by
27 their admission. NRS 233B.123(1). To show prejudice, Petitioner would have to solicit
28 admissions from the witnesses that they felt free to be dishonest because they realized they were

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

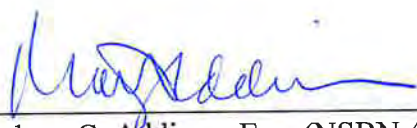
not under any binding obligation to tell the truth. Without so much as an allegation that either witness testified untruthfully, the likelihood of success of such an endeavor is obviously so slight that even the assertion of such a claim would be patently absurd. This is especially true since both witnesses have confirmed, under oath, that had they been sworn prior to giving their testimony at the hearing, it would not have differed, at all, from that reported in the transcript.

The attached Affidavits simply complete this hearing's formal record. They clearly do not constitute "new" evidence or additions to either witness' substantive testimony. As such, Petitioner has no grounds to assert any prejudice, let alone "substantial prejudice", to justify a request for a new hearing or a rehearing.

CONCLUSION

Petitioner failed to achieve the relief it sought through a full and fair briefing and hearing process, which included supplemental briefs, so it now seeks a second "bite at the apple" before a different hearing officer. There are, however, simply no allegations, which, if proved, would support any conclusion, by any hearing officer, that a rehearing of the matter would result in any substantive difference in the facts provided by the subject witnesses. This Hearing Officer has reasonably exercised her discretion to receive the attached Affidavits to finalize the formal record in an expeditious and efficient manner, which is clearly within her statutory authority. Thus, Petitioner's Motion should be DENIED, in its entirety.

DATED this 18th day of April, 2022.

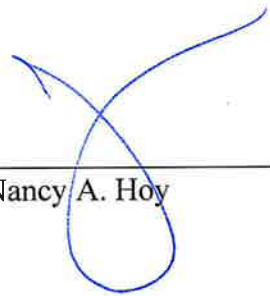
McDONALD CARANO LLP

Matthew C. Addison, Esq. (NSBN 4201)
100 West Liberty Street. 10th Floor
Reno, NV 89501
Telephone: (775) 788-2000
maddison@mcdonaldcarano.com
Attorneys for Respondent TMWA

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to NRCP 5(b), I certify that I am an employee of McDonald Carano LLP and on the 18th day of April, 2022, I caused to be served a true and correct copy of the foregoing **RESPONDENT TRUCKEE MEADOWS WATER AUTHORITY'S OPPOSITION TO MOTION TO STRIKE TESTIMONY OF WITNESSES FROM THE RECORD OR, IN THE ALTERNATIVE, REQUEST FOR REHEARING** on the parties below by electronic mail to the email addresses listed below:

Timothy A. Lukas, Esq.
Bryce C. Alstead, Esq.
Evan J. Champa, Esq.
Holland & Heart LLP
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511
TLukas@hollandhart.com
BAIstead@hollandhart.com
EJChampa@hollandhart.com



Nancy A. Hoy

4856-4472-3228, v. 2

EXHIBIT “A”

EXHIBIT “A”

1 Matthew C. Addison (NSBN 4201)
 2 McDONALD CARANO LLP
 3 100 West Liberty Street, 10th Floor
 4 Reno, NV 89501
 Telephone: (775) 788-2000
 Facsimile: (775) 788-2020
 maddison@mcdonaldcarano.com

5 *Attorneys for Respondent Truckee Meadows Water Authority*

8 ST. JAMES'S VILLAGE, INC., a Nevada)
 9 corporation,)
 10)
 11)
 12)
 13)
 14)
 15)
 16)

Petitioner,

v.

TRUCKEE MEADOWS WATER
 AUTHORITY, a joint powers authority under
 NRS277,

Respondent.

In Re: Notice of Dispute of Action taken by
 the Authority – Rule 8(b) Regarding St.
 James Discovery-Annexation 1H-2C; PLL#
 21-8275

**AFFIDAVIT OF SCOTT ESTES IN SUPPORT OF RESPONDENT'S REPLY TO
 MOTION TO STRIKE OR FOR REHEARING**

19 COUNTY OF WASHOE)
 20 STATE OF NEVADA) ss:
 21)

I, SCOTT ESTES, having first been sworn, state that:

- 22 1. I am the Director of Engineering at the Truckee Meadows Water Authority
- 23 ("TMWA"), Respondent in the above referenced action.
- 24 2. I make this Affidavit in support of TMWA's Reply to Motion to Strike or for
- 25 Rehearing ("Reply"). I am over the age of 18 and am competent to testify as to the same.
- 26 3. On March 31, 2022, I provided testimony in the hearing regarding St. James
- 27 Discovery- Annexation 1H-2C: PLL #21-8275.
- 28 4. A copy of the certified court reporter's transcript of the proceedings from the

1 March 31, 2022, hearing was provided to me, and I carefully reviewed all of my testimony
2 reported in it.

3 5. The transcript is a true and accurate statement of all of my testimony, except for a
4 few, minor transcription errors, which I feel should be corrected as follows.

5 6. On page 9, line 15, strike "deposition" and insert "December".

6 7. On page 39, line 8, strike "usually".

7 8. On page 49, line 17, strike "were" and insert "we are".

8 9. On page 49, line 23, strike "in" and insert "if".

9 10. On page 51, line 14, strike "by" and insert "from".

10 11. Based upon my recollection and my careful review of the court reporter's
11 transcript, I can confirm all of the testimony I provided was truthful and accurate.

12 12. Had I been given an oath and/or sworn in prior to providing my testimony on
13 March 31, 2022, it would not have differed, at all, from that reported in the transcript, except for
14 the corrections noted in paragraphs 6-10 above, which were transcription errors.

15 13. I appreciated the formal nature and solemnity of the hearing on March 31, 2022, I
16 knew I was obligated to testify truthfully, and I would have testified truthfully that day, and did
17 so, regardless of whether I had been sworn.

18 14. I declare under penalty of perjury under the laws of the State of Nevada that the
19 foregoing is true and correct.

20 DATED this 18th day of April 2022.

21
22
23
24
25
26
27
28

Scott Estes
Scott Estes

SUBSCRIBED and SWORN to before
me this 18th day of April, 2022.

Amanda Duncan

Notary Public
4883-9409-1292, v. 2

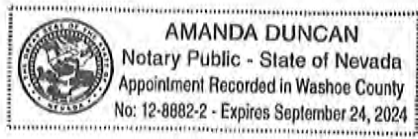


EXHIBIT “B”

EXHIBIT “B”

1 Matthew C. Addison (NSBN 4201)
 McDONALD CARANO LLP
 2 100 West Liberty Street, 10th Floor
 Reno, NV 89501
 3 Telephone: (775) 788-2000
 Facsimile: (775) 788-2020
 4 maddison@mcdonaldcarano.com

5 *Attorneys for Respondent Truckee Meadows Water Authority*

6
 7
 8 ST. JAMES'S VILLAGE, INC., a Nevada)
 corporation,)
 9)
 Petitioner,)
 10)
 v.)
 11)
 TRUCKEE MEADOWS WATER)
 12 AUTHORITY, a joint powers authority under)
 13 NRS277,)
 14)
 Respondent.)
 15)
 16)

In Re: Notice of Dispute of Action taken by
 the Authority – Rule 8(b) Regarding St.
 James Discovery-Annexation 1H-2C; PLL#
 21-8275

17 **AFFIDAVIT OF JOHN ENLOE IN SUPPORT OF RESPONDENT'S REPLY TO**
 18 **STRIKE OR FOR REHEARING**

19 COUNTY OF WASHOE)
) ss:
 20 STATE OF NEVADA)

21 I, JOHN ENLOE, having first been sworn, state that:

22 1. I am the Director of Natural Resources for the Truckee Meadows Water Authority
 23 ("TMWA"), Respondent in the above referenced action.

24 2. I make this Affidavit in support of TMWA's Reply to Motion to Strike or for
 25 Rehearing ("Reply"). I am over the age of 18 and am competent to testify as to the same.

26 3. On March 31, 2022, I provided testimony in the hearing regarding St. James
 27 Discovery- Annexation 1H-2C: PLL #21-8275.

28 4. A copy of the certified court reporter's transcript of the proceedings from the

1 March 31, 2022, hearing was provided to me, and I carefully reviewed all of my testimony
2 reported in it.

3 5. The transcript is a true and accurate statement of all of my testimony, except for a
4 few, minor transcription errors, which I feel should be corrected as follows.

5 6. On page 66, line 13, strike "Mr." and insert "Mt."

6 7. On page 71, line 23, strike "did" and insert "does".

7 8. On page 73, line 9, strike "of kind".

8 9. On page 95, line 19, add "ed" to "bank" should read "banked".

9 10. Based upon my recollection and my careful review of the court reporter's
10 transcript, I can confirm all of the testimony I provided was truthful and accurate.

11 11. Had I been given an oath and/or sworn in prior to providing my testimony on
12 March 31, 2022, it would not have differed, at all, from that reported in the transcript, except for
13 the corrections noted in paragraphs 6-9 above, which were transcription errors.

14 12. I appreciated the formal nature and solemnity of the hearing on March 31, 2022, I
15 knew I was obligated to testify truthfully, and I would have testified truthfully that day, and did
16 so, regardless of whether I had been sworn.

17 13. I declare under penalty of perjury under the laws of the State of Nevada that the
18 foregoing is true and correct.

19 DATED this 18th day of April 2022.

20

21

22



John Enloe

23

SUBSCRIBED and SWORN to before


24

me this 18th day of April, 2022.

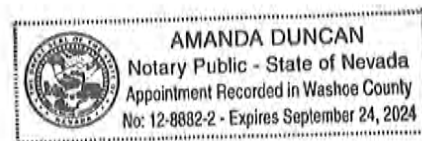
25

26

27



Notary Public



28

4878-9634-5372, v. 1

EXHIBIT “C”

EXHIBIT “C”

1 4. Attached to Respondent's Reply as Exhibit "A" is a true and correct copy of the
2 Affidavit of Scott Estes.

3 5. Attached to Respondent's Reply as Exhibit "B" is a true and correct copy of the
4 Affidavit of John Enloe.


5 6. Attached to Respondent's Reply as Exhibit "D" is a true and correct copy of
6 Litigation Services' "Transcript of Proceedings", Job Number 863093, from the March 31, 2022
7 Hearing "In the Matter Of: In Re: Notice of Dispute of Action Taken by the Authority".

8 7. Attached to Respondent's Reply as Exhibit "E" is a true and correct copy of Mr.
9 Champa's e-mail of March 22, 2022.

10 8. Attached to Respondent's Reply as Exhibit "F" is a true and correct copy of
11 Hearing Officer's e-mail to counsel of April 15, 2022.

12 9. I declare under penalty of perjury under the laws of the State of Nevada that the
13 foregoing is true and correct.

14 DATED this 18th day of April 2022.

15
16 
17 _____
Matthew C. Addison

18 SUBSCRIBED and SWORN to before
19 me this 18th day of April, 2022.


20
21 
22 _____
Notary Public



EXHIBIT “D”

**(Omitted for 7/26/2022 hearing
because transcript is attached as
TMWA Ex. "C.")**



Krater Consulting Group, PC
901 Dartmouth Drive
Reno, Nevada 89509

Ph: (775) 815-9561
Fax: (775) 786-2702
E-mail: Ken@KraterConsultingGroup.com

Transmittal

To: Danny Rotter, P.E., Engineering Manager
Truckee Meadows Water Authority

Nancy Raymond, New Business Project Coordinator
Truckee Meadows Water Authority

From: Kenneth Krater, P.E. *KK*

CC: Fred Woodside, St. James Village
Evan Champa, Holland and Hart

Date: November 3, 2021

RE: Annexation and Discovery Request for a Portion of St. James Village

Danny and Nancy,

I am pleased to submit an Annexation and Discovery application for a portion of St. James Village. The application is specific to Tract Maps, #4567 (Sloane Court), #4705 (Golden Yarrow Court), and #5331 (7-infill lots). Sloane Court and Golden Yarrow Court were reverted to acreage during the great recession but previously approved for water service by the Washoe County Department of Water Resources (WCDWR).

Lumos Engineers just completed a Preliminary Engineering Report along with a previous technical memorandum that combined provide detailed information on the St. James water system that was originally designed, financed, and constructed by the developer. It should be noted that at the time the St. James water system was designed and built, it met all the existing NAC 445A water works requirements and was approved by WDWR when they accepted the infrastructure.

We were recently informed by TMWA that Lumos cannot be provided with TMWA's water model to do a more detailed transmission study. Said study would help to develop looping strategies for the existing and future phases of development in the service area and help create redundancy in the existing and future distribution piping network along with better fire flows. But we understand TMWA's concerns in providing the model to third party consultants and look forward to developing a resolution on this matter.

The information provided in the enclosed reports on the two system wells and single water tank is in my opinion, valuable information. We will want to work with TMWA long term to prepare a broader study to evaluate looping strategies for the existing and future phases of development including model calibration to ensure accurate results to the satisfaction of both TMWA and the developer. But, as we are in great

need of additional recorded lots for sale, we are only requesting a fairly simple annexation and discovery and feel that the enclosed Lumos reports provide adequate information to help speed this process along. Lumos's reports clearly show that the existing two wells and single water tank provide adequate capacity for the number of units associated with this annexation and discovery request.

Please note that Unit 2C and two of the seven lots in Tract Map #5331 are already in TMWA's service territory. We have included an exhibit that demonstrates this fact. I have also included the original tract maps, original approved water plans, assessor maps and exhibits showing all of the properties within St. James Village and the location of the subject tract maps, proof of property tax payments, and a corporate resolution showing that Fred Woodside is authorized to sign on behalf of St. James Village.

Sincerely,

Kenneth Krater, P.E., MSCE



NEW BUSINESS APPLICATION FOR NEW OR MODIFIED SERVICE

Effective January 15, 2021

Project classifications (See Submittal Requirements for more information)

- Residential Service Subdivision or Multi-family Commercial Service Commercial With Main or Main only Hardship Letter
- Annexation Discovery Level 1 or 2 Tentative NAC Acknowledgment Letter Fire Service or Hydrant only

Do you have Water Rights? Yes No Unknown

Is Project in TMWA's Service Territory? Yes No Unknown

Golden Yarrow Ct. per the attached map lies in TMWA's Retail Service Territory.

Owner/Applicant Information: (Legal Name and Address for Owner)

Name St. James Village Inc. Attn: Fred Woodside
Mailing Address 4100 Joy Lake Road Email fred.woodside@att.net
City Reno State Nevada Zip Code 89511
Phone (775) 849-9070 Cell (775) 722-1499

Contact Information: (If different than Owner information)

Name Krater Consulting Group, PC Attn: Ken Krater
Mailing Address 901 Dartmouth Drive Email ken@kraterconsultinggroup.com
City Reno State NV Zip Code 89509
Phone (775) 815-9561 Cell (775) 815-9561

Engineering Firm

Firm Name Lumos & Associates Contact Mike Hardy
Phone (775) 827-6111 Email mhardy@lumosengineering.com

Project Information:

Service Address St. James Village City Reno
Assessor Parcel # (APN) 156-040-14 & 156-111-23
Number of units 24 Sq. footage of building/dwelling Largest Home = 8,411 sq. ft.
Location Description Sloane Ct. off Saint James Parkway and Golden Yarrow Ct. off Joy Lake Rd. (See attached maps)

Is this within Nevada Department of Transportation Right of Way? Yes No Unknown

Requested Services/Meters:

Domestic:

Meter Size 1" Quantity 24
Meter Size NA Quantity _____

Irrigation:

Meter Size 1" Quantity 0
Meter Size NA Quantity _____

Is Re-vegetation Required?

Yes No

Internal Fire Service(s):

Size NA Quantity _____

Fire Hydrant(s):

Quantity 6 3 each for Unit 1H and 2C

Will any pumps be installed (i.e. sewer pump, booster pumps, hydronic heating with chemical additives, etc.)? In accordance with NAC 445A.67195 appropriate backflow protection will be required.

Yes No Unknown Type _____

Brief Project Description (Include any project phasing):

This project is to allow two previously reverted Final Maps for Unit 1H (Sloane Ct., Tract map 4567) and Unit 2C (Golden Yarrow Ct., Tract map 4705) to be re-recorded and lots re-established. The previous final maps were recorded when the site was served by Washoe County Water Resources. A Technical Memorandum and Prelim Engineering Report was recently completed by Lumos & Associates in support of this Annexation and Discovery Request. Note that Unit 2C already lies in TMWA's Service Territory. WATER RIGHTS DEDICATION – Applications for Residential Service, Subdivision/Multi-family, Commercial Service and Commercial With Main may require Applicant to dedicate water rights or purchase Will Serve Commitments before service will be provided.

A change of ownership during the application process will require a new application form for the new owner with proof of ownership. Additional fees may be required. Timelines will be evaluated at time of new application.

As TMWA is subject to Nevada's public records act, TMWA is required to provide non privileged public records to third parties upon request. TMWA will determine in its sole discretion whether the public records act applies to documents specific to any future requests.

Owner understands and acknowledges that TMWA will forward this request and the findings or results of this request to the Owner of Record for the afore referenced parcel(s).

Owner's Signature Frederick D. Woodruff Date 10/29/21

TMWA Representative _____

Complete Submittal Date _____

Submittal Requirements Partial submittals will not be accepted (updated 10/1/2019)

Required (X)	Annexation	Discovery Level 1 or 2	Tentative NAC/ Acknowledgement Letter	Residential Service ³	Commercial Service	Commercial with Main	Subdivision/ Multi-family	Fire Service Only	
Initial Review Fee ¹	\$2,700 ⁴	\$2,400 ²	\$200	\$450 ⁴	\$1,150 ⁴	\$1,800 ⁵	\$2,850/phase ⁴	\$450/service	
Proof of Ownership (Copy of Deed or Title Report)	X	IF AVAILABLE		X	X	X	X	X	
Owner's Affidavit (ONLY if appointing third party agent)	X		X	X	X	X	X	X	
Tentative Map Plans per City / County Requirements ²			X						
Official Plat or Parcel Map Wet Stamped							X 3 Sets		
Full Civil Set Wet Stamped					X	X 2 Sets	X 2 Sets	X 2 Sets	
Approved Fire Hydrant Locations, Demand & Duration					X	X	X	X	X
Landscape & Irrigation Plans with Separate Irrigation Demands Wet Stamped					If Applicable	X 2 Sets	X 2 Sets	X 2 Sets	
Water Design (W-1) Wet Stamped					X 3 Sets	X 3 Sets	X 3 Sets	X 3 Sets	X 3 Sets
AutoCAD Files of Civil Set				X	X	X	X	X	
Plumbing, Architectural Floor & Mechanical Plans Wet Stamped						X 1 Set	X 1 Set		

Notes:

- 1 Check, Cash or Money Order only. Final project costs will be assessed at time of Water Service Agreement issuance in accordance with TMWA's current fee and rate schedules.
- 2 Discovery findings are preliminary in nature and are based on the quantity and accuracy of the data received. Level 2 Discovery fee is \$3,600; contact a Project Coordinator for fee determination.
- 3 Applies to a single parcel with no more than two (2) dwelling units [i.e. 1 single family home, 1 single family home with a "mother-in-law" unit or 1 duplex]. All others will be Commercial Service applications.
- 4 Includes both initial Engineering and Lands Fee.
- 5 An additional \$300 Lands Research/Easement establishment fee will be required if main is located on private property.
 - All Water Facility plan sets shall be 36" x 24" or 34" x 22". Plans plotted on larger formats will not be accepted.
 - All CAD files shall follow industry standard layer controls and include the following, at a minimum:
 - Property Lines
 - Limits of Paving (curb/gutter/sidewalk)
 - Building Footprints
 - Easements
 - Curb and Building Pad Elevations
 - Proposed Utility Piping
 - Above requirements are minimums. Additional information may be necessary depending upon the project complexity.

**CORPORATE RESOLUTION AND AUTHORIZATION OF CORPORATE
REPRESENTATIVE OF ST. JAMES VILLAGE, INC.**

The Board of Directors of St. James Village, Inc., a Nevada corporation (the "Corporation") through its Board of Directors hereby resolves and authorizes Frederick D. Woodside to act as the authorized agent of the Corporation to execute on behalf of the Corporation any and all real estate related documents, including but not limited to: (1) execution of documents from a state or local regulatory agency for land use, entitlements or water use; or (2) execution of documents related to the sale of individual lots at St. James Village. This authorization does not extend to the bulk sale of the St. James Village lots.

Dated March 4, 2019

ST. JAMES VILLAGE, Inc., a Nevada corporation


By: 

Ghassan Al Dahlawi, Chairman and President

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

This instrument was acknowledged before me on March 4, 2019 by Ghassan Al Dahlawi, as Chairman and President of St. James's Village, Inc.




Notary Public



Technical Memorandum

To: Fred Woodside

From: Michael Hardy, P.E., P.G., WRS

Cc: Kenneth Krater

Title: St. James Village Water System Analysis for 12 Additional Annexed Lots

Date: August 24, 2021

1.0 INTRODUCTION

The St. James Village Development is a gated mountain community located approximately 7 miles up Mount Rose Highway (Hwy 431), from Hwy 395, to Joy Lake Road and then approximately 2 miles down to the guard station. The water system was originally developed in the mid 1990's by St. James Village Inc. and dedicated to Washoe County Department of Water Resources (WDWR). On December 31, 2014, WDWR and Truckee Meadows Water Authority (TMWA) consolidated their two water utilities, which is now operated by TMWA, making TMWA the owner and operator of the water system in the St. James Village Service Area. The St. James Service Area straddles two hydrographic basins, which include the Pleasant Valley (Basin #88) and Washoe Valley (Basin #89) (Fig. 1).

The water system, which serves the St. James Village gated community, also serves several additional single family residential lots (13 lots) with homes outside the St. James Village gated community on Joy Lake Road. These lots are located up to a mile back up Joy Lake Road to the intersection of Austrian Pine Road where TMWA has a pressure reducing station and a cluster of three water valves that are only opened in the event of an emergency (Fig. 2).

The St. James Village water system currently consists of 1) two production wells, 2) a 1-million-gallon (MG) storage tank (located on Bennington Court cul-de-sac), and distribution water mains separated into 5 pressure zones. Many of the existing distribution water mains contain dead ends lacking proper looping, which is important for service redundancy and greater fire flow to the customers.

To date, the St. James Village Development has recorded 227 lots through final mapping with approximately 240± lots (1 acre+ in size) left to record. Currently, St. James Village has seven lots that were approved by Washoe County, but not annexed into the TMWA service area at the time of approval. Additionally, St. James Village Development would like to have an additional five lots recorded in the next month, making a total of 12 lots annexed into TMWA's service area.



Storage:

There is one relatively large storage tank associated with the water system infrastructure in the St. James Village Service Area. The storage tank is located at the end of Bennington Court and accessible up a gated dirt road.

Tank 1

The one storage tank in the St. James Village Water System is a nominal 1.01 MG welded steel tank constructed in 1996. The storage tank is 75 feet in diameter and 32 feet high. In 2017, the storage tank underwent a routine TMWA rehabilitation. The rehabilitation work included an internal/external recoating with typical tank improvements to the air gap, vent, manways, roof hatch, sample tap and pressure transducer vault. A welded steel storage tank, that is properly maintained, can have a useful life expectancy of 45 (±5) years. Currently the St. James Village Storage Tank is 25 years old.

Distribution Piping/Pressure Zones

The St. James Village Service Area’s pipeline distribution system is made up of approximately 38,079 linear feet of 6”, 8”, 10” and 12” PVC pipe with approximately 1,230 linear feet of 12” ductile iron pipe from Bennington court to the St. James Storage Tank¹. Table 1 contains the distribution pipe diameter, materials, and linear feet. The distribution water system is separated into 5 specific pressure zones. TMWA has identified the different pressure zones as 1) St. James Tank 1 Pressure Zone (feeds directly off the water storage tank), 2) Joy Lake 2 Pressure Zone, 3) St. James 1 Pressure Zone, 4) St. James 2 Pressure Zone, and 5) St. James 3 Pressure Zone (Fig. 3). Except for the St. James Tank 1 pressure zone, the other pressure zones contain several dead ends lacking proper looping for system redundancy and greater fire flow.

Table 1: Distribution Pipe Diameter and Linear Feet

Pipe Diameter	Linear Footage
6-inch (PVC)	7,854
8-inch (PVC)	19,872
10-inch (PVC)	5,231
12-inch (PVC)	3,892
12-inch (DI)	1,230
Total	38,079

Located at the highest point of the St. James Tank 1 Pressure Zone (at the intersection of Joy Lake Road and Austrian Pine Road) is a three-way water valve cluster, which in an emergency, can be opened to allow water to flow down into the St. James Village Service Area. It also allows for conveyance of water from the St. James Village Service Area down Austrian Pine Road into the Galena Forest Estates and Montreux communities.

¹ TMWA was given the current hydraulic water distribution model by WDWR with the current piping materials and sizes. TMWA has not field verified the distribution pipe sizes and materials in the hydraulic distribution water model.

St. James Village, Inc.

St. James Water System Preliminary Engineering Report

November 01, 2021



Prepared For:



St. James Village, Inc.
4100 Joy Lake Road
Reno, NV 89511

Prepared By:



9222 Prototype Drive
Reno, NV 89521-8987
775 / 883-7077
www.lumosengineering.com



11-01-2021

Michael Hardy

Digitally signed by Michael Hardy
DN: C=US,
E=mhardy@lumosinc.com,
O=Lumos & Associates, Inc., OU=Civil Engineer,
CN=Michael Hardy
Date: 2021.11.01 17:05:06-0700

month annual usage period, the ADD and MDD for common area irrigation usage was calculated as 10,330 gpd and 18,750 gpd, respectively. This equates to a multiplying factor of 1.82. Adding the HOA common area irrigation demands to the SFR demand equates to an ADD flow rate of 84 gpm and a MDD flow rate of 207 gpm. Table 4.2 contains a summary of the analysis from the three years of meter data.

Table 4.2: Existing Demand Based on Three Years Average (2018 – 2020)

Customer Class	No. of Customers	Average Daily Demand (gpdpc)	Total Average Demand per Day (gpd)	Total System Average Daily Demand (gpm)	System MDD Required (gpm)
Residential	159	700	111,300	77	194
HOA Irrigation	1	10,330	10,330	7	13
Subtotal	160	N/A	117,245	84	207

Using the SFR ADD and MDD previously discussed, Table 4.3 contains the system demand required to serve all current and future recorded lots that are considered part of the St. James Service Area. The future recorded lots include an additional 18 residential lots outside the gated community that are within the existing service area and 81 lots located inside the St. James Village gated community. Quantifying all the future recorded lots results in a total future ADD system demand of 132 gpm and a MDD of 327 gpm.

Table 4.3: Future Demand at Buildout

Customer Class	No. of Customers	Average Daily Demand (gpdpc)	Total Average Demand per Day (gpd)	Total System Average Daily Demand (gpm)	System MDD Required (gpm)
Existing Residential	159	700	111,300	77	194
HOA Irrigation	1	10,330	10,330	7	13
Remaining Lots inside St. James gated community	81	700	56,700	39	98
Added Lots outside of St. James gated community	18	700	12,600	9	22
Total	259		186,545	132	327

NAC 445A.6672 requires a system that relies exclusively on wells to provide a total well capacity sufficient to meet the MDD when all the wells are operational (total capacity), or the ADD with the most productive well out of service (firm capacity). Based on data provided by TMWA, Well-1 has an average flow rate of 285 gpm and Well-2 has an average flow rate of 320 gpm. The available total capacity with both wells in service is 605 gpm, as shown in Table 4.4. With Well-2, the largest producer, out of service, the available firm pumping capacity is 285 gpm. With only Well-1 operational, the ADD is met for both current and all the recorded lots in the St. James

Table 4.5: Comparing the NDWR Report and Meter Data with Percent Difference

Year	NDWR Reported Pumping (MG/Y)	Meter Data Usage (MG/Y)	Percent Meter Usage of Well Production
2015	59.17	N/A	N/A
2016	104.58	N/A	N/A
2017	68.06	N/A	N/A
2018	89.06	48.03	54%
2019	78.1	45.9	59%
2020	103.27	47.65	46%

TMWA completed a brief investigation into the cause of this discrepancy after it was brought to their attention. TMWA’s Engineering Manager believes the discrepancies are due to the valve at the intersection of Joy Lake Road and Austrian Pine Road being open for the last few years. Apparently, Galena Forest Estates and Montreux service areas had well failures at their Mt. Rose Wells 5 and 6. The loss of these wells resulted in the need for alternative water sources (St. James Wells 1 & 2 and surface water) to supply the needed demands. TMWA believes that it will take some time to develop a water balance determination from SCADA data on how much water was conveyed to these other service areas from the St. James Village Wells and surface water conveyances. Due to this discovery, a non-revenue water analysis could not be conducted at this time.

4.4 Water Storage Evaluation

Water storage is regulated by the Nevada Administrative Code, Sections NAC 445A.6674, NAC 445A.66745, NAC 445A.6675 and NAC 445A.66755.

Total required storage capacity includes operating storage, emergency storage, and fire flow storage. TMWA calculates their required total storage capacity to be an operating storage of 15% of MDD (this was a negotiated volume with the regulatory entities), an emergency storage of ADD, and fire flow for the largest structure fire flow demand.

- Operating Storage – Operating storage is provided at 15% of MDD. The MDD for the water service area was calculated from the three-year average ADD from meter data provided for years 2018, 2019, and 2020.
- Emergency Storage – The NAC states that emergency storage can either be determined by the engineer or is 75% of the amount of operating storage. Since TMWA has negotiated with the regulatory agencies that operating storage is only 15% of MDD, Lumos has added emergency storage equivalent to ADD for this situation.
- Fire Flow Storage – Lumos obtained the square footage for all residential homes within the St. James Village Service Area from the Washoe County Assessors website. Based on the square footage of the largest residential home (8,411 square feet) and construction type (Type V-B), the fire flow required from the 2018 International Fire Code (IFC) is 2,500 gpm for a duration of two hours.

Using TMWA’s regulatory approval for total storage capacity, which includes operating storage of 15% of MDD for one day, fire flow storage and emergency storage of ADD, Lumos developed an existing and recorded lots storage assessment for the St. James Service Area. Currently, there are 159 active SFR in the service area. Using the total unbuilt recorded lots remaining in the gated

community (81 lots) and remaining unbuilt SFR lots outside the gated community (18 lots), the total potential SFR equates to 258.

Table 4.6 shows the storage capacity analysis for existing and future conditions. The analysis estimates a storage capacity of 453,000 gallons for existing conditions and 548,325 gallons for future conditions. With the current storage tank capacity of 1,010,000 gallons, the existing storage capacity available meets the needs of all the recorded lots in the service area.

Table 4.6: St. James Village Storage Capacity Analysis

WATER SERVICE AREA STORAGE		EXISTING	FUTURE
		2020 (gallons)	Remaining Recorded Lots (gallons)
ST. JAMES VILLAGE SERVICE AREA		Existing Connections (159)	Recorded Lots Connections (259)
	MDD (ADD X 2.5) plus MDD for irrigation	297,000	470,250
Operational Storage	15% of MDD for one Day, based on historical usage (2018 - 2020)	44,550	70,538
Emergency Reserves	ADD for one Day, based on historical usage (2018 - 2020) plus ADD for irrigation	121,630	190,930
Fire Flows	2,500 gpm @ 2 hours - Largest Residential Home	300,000	300,000
Alternative Pumping Capacity: No Backup Power on St. James Well -1 & St. James Well-2		Total Storage Required	466,180
		Existing Storage Capacity	1,010,000
		Alternative Pumping Capacity	0
Recommendations:			
N/A		Total Storage Capacity Available	1,010,000
		Meets Requirements for Storage?	YES

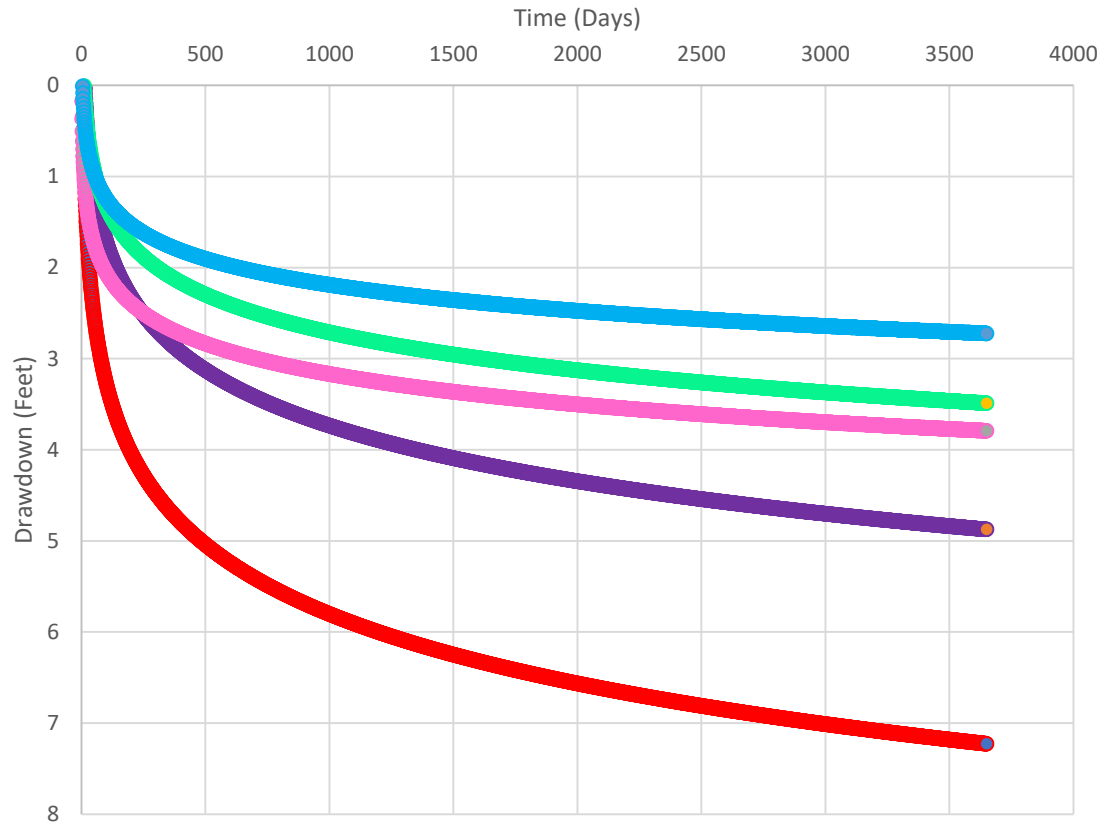
4.5 Water Distribution Evaluation

Lumos planned to work with TMWA's hydraulic water modeler to conduct an evaluation of the water distribution network. Unfortunately, a review of the hydraulic water model was not possible. It seems that the original hydraulic water model was created by WCDR and given to TMWA when they took over the system. Since TMWA has not had the time to verify all the components in the existing water model, they were not comfortable allowing Lumos to analyze the results of the model. TMWA did offer to provide the data in the water model to Lumos to develop a new model, but due to time constraints and additional cost to create and calibrate a water model, St. James Village Inc. decided not to move forward with the task. At this time, Lumos has not conducted a

water model evaluation of the St. James distribution system but does recommend developing a hydraulic water model in the future to evaluate future looping options, required flow capacities, and pressure/flow assessments.

Theis Analysis Of Well Drawdown Influences: CWR 10-Yr Analysis

Drawdown 1-Mile From Serpa Well Over 10-Years



- Input 1
- Input 2
- Input 3
- Input 4
- Input 5

- CWR simulated drawdown at St. James's Production Well 2.
- Input 1: TMWA OWE-4 Values.
- Input 2: TMWA OWE-3 Values
- Input 3: CWR OWE-4 detrended values.
- Input 4: CWR OWE-3 detrended values.
- Input 5: NDWR OWE-4 Values.
- Assumes no recharge or boundary conditions in analysis.

	Input 1		Input 2
Q cfs	0.654	Q cfs	0.654
T sq ft/day	4000	T sq ft/day	5000
t days	3650	t days	3650
r feet	5575	r feet	5575
S	0.002	S	0.007

	Input 3		Input 4		Input 5
Q cfs	0.654	Q cfs	0.654	Q cfs	0.654
T sq ft/day	9135	T sq ft/day	7337	T sq ft/day	10690
t days	3650	t days	3650	t days	365
r feet	5575	r feet	5575	r feet	5575
S	0.00124	S	0.00778	S	0.0051



SERPA WELL TESTING & GROUNDWATER ANALYSES

Date: 9/2/2020

Additional Forward Simulations

Slide 23

MEMORANDUM

November 4, 2021

TO: Truckee Meadows Water Authority (“TMWA”)
FROM: Evan J. Champa
RE: Discovery Unit 2D, 1H and 2C

To whom it may concern:

This Memorandum accompanies that certain Annexation and Discovery Request of even date herewith and the accompanying cover letter attached hereto as **Exhibit “A”**, filed on behalf of St. James’s Village, Inc., a Nevada corporation (the “Applicant”). The purpose of this Memorandum is to provide the supporting information for the Applicant’s contention that certain fees do not apply to Applicant’s Units 2D, 1H, and 2C (the “Development”) project. In particular, the existing water system facilities are more than sufficient to accommodate the Development, thus negating any off-site improvements, the Applicant controls enough water rights to fully support the Development, and, because of these water rights and other matters, the Area 15 Surface Water Treatment Plant Fee should not apply.

Accompanying this Memorandum and Discovery Request is that certain Technical Memorandum, dated August 24, 2021, from Michael Hardy, P.E., P.G., WRS, of Lumos and Associates (“Lumos”) regarding St. James Village Water System Analysis for 12 Additional Lots (the “Technical Memorandum”), attached hereto as **Exhibit “B”**. The Technical Memorandum provides the engineering findings which support the basis that certain fees should not apply. Specifically, the existing infrastructure for storage, distribution, and pressure complies with Nevada Administrative Code (“NAC”) and any requirement that such infrastructure be updated would amount to an arbitrary decision. Further, Lumos has prepared that certain St. James Village Water System Preliminary Engineering Report (“PER”), dated November 1, 2021, attached hereto as **Exhibit “C”**. The PER analyzes the Applicant’s potable water system in detail based on NAC requirements and supplements the Technical Memorandum.

Further, the well capacity analysis in the Technical Memorandum identifies that the water-producing infrastructure, standing alone, has capacity to provide the Development with a source of water that complies with the requisite NAC provisions. This finding is based on the fact that, for a certain period, the applicable wells were not only supplying the Applicant’s existing development with its source of water, but were also being used to supply water to two neighboring developments outside the Applicant’s existing development, thereby exceeding the demand requirement for the Applicant’s existing development. The sustainability analysis in the Technical Memorandum, which includes this excess pumping, proves that the Development can

be supplied with water from its existing wells without injury to the aquifer and, most importantly, from utilizing any other source.

Also, in furtherance of the Applicant's assertion, the Applicant is the predecessor-in-interest to that certain Purchase Agreement, attached hereto as **Exhibit "D"**, which established the obligations between the contracting parties regarding use of the water rights therein. Particularly, the water rights "will be utilized to provide water service as designated by [the Seller]." These water rights are the same as on file with the Nevada Division of Water Resources who identifies the Applicant's remaining demand balance for future will-serves. The Applicant intends to utilize a portion of its remaining balance associated with these water rights for the total demand of the Development. Due to the Applicant's designation, no other water source is requested or required for the Development.

The final aspect of the Applicant's position is that while the Area 15 Surface Water Treatment Plant Fee does not actually encompass five (5) lots within Unit 2D (*see **Exhibit "E"*** attached hereto), such fee is inapplicable for the Development altogether. An impetus for the Area 15 Surface Water Treatment Plant Fee was the construction of a surface water treatment facility that would be used in a conjunctive management program to reduce aquifer stresses caused by a high density of domestic wells located on the Galena Fan.

The analysis conducted by Lumos indicates that groundwater pumping for the Applicant's existing development is hydrologically distinct from the Galena Fan Domestic Well Mitigation Area due to boundary conditions identified in Confluence Water Resources, LLC's September 3, 2020, presentation regarding the Serpa Well Testing & Groundwater Analyses, attached as **Exhibit "F"**. The projected cone of depression in the vicinity of the Applicant's development does not exacerbate the drawdown on the Galena Fan. This finding means the Applicant's development is in a sub-basin of the Pleasant Valley Hydrographic Basin. Such hydrogeologic conditions are not uncommon, especially in the western Nevada/eastern Basin and Range Province, as shown in multiple USGS reports and Division of Water Resources Orders and Rulings.

Given the presence of such hydrogeologic conditions and the Applicant's water supply capabilities, coupled with the Applicant directing the water rights be used solely for the Development, the Applicant cannot be required to pay a fee that has no scientific or engineering basis and which further runs afoul of contractual obligations. To require otherwise would be arbitrary and capricious.

///

///

///

///

///

1885

BENNINGTON COURT - UNIT 2 ST. JAMES'S VILLAGE - UNIT 2D

OWNER'S CERTIFICATE

THIS IS TO CERTIFY THAT THE UNDERSIGNED ST. JAMES'S VILLAGE, INC., A NEVADA CORPORATION, IS THE OWNER OF THE TRACT OF LAND REPRESENTED ON THIS PLAT, HAS CONSENTED TO THE PREPARATION AND RECORDATION OF THIS PLAT, THAT THE SAME IS EXECUTED IN COMPLIANCE WITH AND SUBJECT TO THE PROVISIONS OF NRS CHAPTERS 118 AND 278, AND HEREBY GRANTS TO ALL PUBLIC UTILITIES, TRUCKEE MEADOWS WATER AUTHORITY AND WASHOE COUNTY PERMANENT EASEMENTS SHOWN ON THIS PLAT FOR THE CONSTRUCTION AND MAINTENANCE OF UTILITY SYSTEMS AND WATER AND SANITARY SEWER FACILITIES, TOGETHER WITH THE RIGHT OF ACCESS THERETO FOREVER. THE SEWER FACILITIES AND ASSOCIATED APPURTENANCES ARE HEREBY DEDICATED TO WASHOE COUNTY. THE OWNER AND ASSIGNEES AGREE TO THE USE OF RESIDENTIAL WATER METERS.

ST. JAMES'S VILLAGE, INC.,
A NEVADA CORPORATION

Frederick D. Woodside
FREDERICK D. WOODSIDE, AUTHORIZED
AGENT OF ST. JAMES'S VILLAGE, INC.

STATE OF NEVADA S.S.
COUNTY OF WASHOE

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON February 27
2019, BY FREDERICK D. WOODSIDE, AUTHORIZED AGENT OF ST. JAMES'S VILLAGE
INC., A NEVADA CORPORATION.

Clayton K. Hays
NOTARY PUBLIC



TITLE COMPANY CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS PLAT HAS BEEN EXAMINED AND THAT ST. JAMES'S VILLAGE, INC., A NEVADA CORPORATION, OWNS OF RECORD AN INTEREST IN THE LAND DELINEATED HEREON AND THAT IT IS THE ONLY OWNER OF RECORD OF SAID LAND; THAT ALL THE OWNERS OF RECORD OF THE LAND HAVE SIGNED THE FINAL MAP; THAT NO ONE HOLDS OF RECORD A SECURITY INTEREST IN THE LAND TO BE DIVIDED; AND THAT THERE ARE NO LIENS OF RECORD AGAINST THE COMMON INTEREST COMMUNITY FOR DELINQUENT STATE, COUNTY, MUNICIPAL, FEDERAL OR LOCAL TAXES OR ASSESSMENTS COLLECTED AS TAXES OR SPECIAL ASSESSMENTS, AND THAT A ~~RECORD~~ TITLE REPORT DATED 4-9-19 FOR THE BENEFIT OF THE COUNTY OF WASHOE, STATE OF NEVADA, HAS BEEN ISSUED WITH REGARD TO ALL THE ABOVE.

TICOR TITLE OF NEVADA, INC.

BY: *Benjamin* 4-10-19
TICOR TITLE OPERATIONS
MANAGER, VICE PRESIDENT DATE

UTILITY COMPANIES CERTIFICATE

THE UTILITY EASEMENTS SHOWN ON THIS PLAT HAVE BEEN CHECKED AND APPROVED BY THE UNDERSIGNED PUBLIC UTILITY AND CABLE TV COMPANIES, AND THE TRUCKEE MEADOWS WATER AUTHORITY.

Seth J. Horn 4-15-19
SIERRA PACIFIC POWER COMPANY, d/b/a NV ENERGY DATE
BY: SETH J. HORN, LANDS DRAFTSMAN

Clayton K. Hays 4-12-19
NEVADA BELL TELEPHONE COMPANY, d/b/a AT&T NEVADA DATE
BY: CLAYTON K. HAYS, ARCHITECT AND ENGINEERING DESIGNER

Timothy Simons 4/19/19
CHIEF ENGINEER - WASHOE COUNTY DATE
BY: TIMOTHY SIMONS, CHIEF ENGINEER

John R. Zimmermann 4-18-2019
TRUCKEE MEADOWS WATER AUTHORITY DATE
BY: JOHN R. ZIMMERMANN, CHIEF ENGINEER

John R. Zimmermann 4-12-2019
TRUCKEE MEADOWS WATER AUTHORITY DATE
BY: JOHN R. ZIMMERMANN, WATER RESOURCES MANAGER

WATER AND SEWER RESOURCE REQUIREMENTS

THE DEVELOPMENT DEPICTED ON THIS PLAT IS IN CONFORMANCE WITH THE PROVISIONS SET FORTH IN ARTICLE 422 OF THE WASHOE COUNTY DEVELOPMENT CODE (CHAPTER 110).

Vahid Behmavan 4/15/19
WASHOE COUNTY COMMUNITY SERVICES DEPARTMENT DATE



VICINITY MAP

SURVEYOR'S CERTIFICATE

I, GEORGE FONG, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

- THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY DIRECT SUPERVISION AT THE INSTANCE OF ST. JAMES'S VILLAGE, INC., A NEVADA CORPORATION.
- THE LANDS SURVEYED LIE WITHIN SECTION 14 AND NE1/4 OF SECTION 15, T.17N., R.19E., M.D.M. AND THE SURVEY WAS COMPLETED ON DECEMBER 10, 2018.
- THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
- THE MONUMENTS DEPICTED ON THE PLAT ARE OF THE CHARACTER SHOWN AND OCCUPY THE POSITIONS AS INDICATED, AND THAT NO FINANCIAL GUARANTEE WILL BE REQUIRED TO BE POSTED WITH THE BOYBORING BODY BEFORE REBORDATION TO ENSURE THE INSTALLATION OF THE MONUMENTS.

George Fong 4/27/19
GEORGE FONG, PLS 20484 DATE
LAND SURVEYOR STATE OF NEVADA
No. 4843

DIVISION OF WATER RESOURCES CERTIFICATE

THIS PLAT IS APPROVED BY THE STATE OF NEVADA DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY, SUBJECT TO THE REVIEW OF APPROVAL ON FILE IN THIS OFFICE.

Malcolm W. Williams 4/22/2019
DIVISION OF WATER RESOURCES DATE

TAXATION CERTIFICATE

THE UNDERSIGNED HEREBY CERTIFIES THAT ALL THE PROPERTY TAXES FOR ASSESSOR'S PARCELS NUMBER 048-180-13, 156-040-11, AND 156-084-18 FOR THE FISCAL YEAR HAVE BEEN PAID AND THAT THE FULL AMOUNT OF ANY DEFERRED PROPERTY TAXES FOR THE CONVERSION OF THE PROPERTY FROM AGRICULTURAL USE HAS BEEN PAID PURSUANT TO NRS 361A.265.

WASHOE COUNTY TREASURER
Deputy Treasurer 4/12/19
DATE

DISTRICT BOARD OF HEALTH CERTIFICATE

THIS FINAL MAP IS APPROVED BY THE WASHOE COUNTY DISTRICT BOARD OF HEALTH. THIS APPROVAL CONCERNS SEWAGE DISPOSAL, WATER POLLUTION, WATER QUALITY AND WATER SUPPLY FACILITIES AND IS PREDICATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND INDIVIDUAL SYSTEMS FOR DISPOSAL OF SEWAGE.

John D. Smith 04/17/2019
BY: THE DISTRICT BOARD OF HEALTH DATE

COUNTY SURVEYOR'S CERTIFICATE

I CERTIFY THAT I HAVE EXAMINED THIS MAP CONSISTING OF THREE SHEETS, AND THAT I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

Wayne Handrock 6-19-19
WAYNE HANDROCK, PLS 20484 DATE
WASHOE COUNTY SURVEYOR
STATE OF NEVADA
No. 4843

COMMUNITY DEVELOPMENT CERTIFICATE

THE TENTATIVE MAP FOR ST. JAMES'S VILLAGE, TMS-2-92, WAS RECOMMENDED FOR APPROVAL BY THE WASHOE COUNTY PLANNING COMMISSION ON THE 8TH DAY OF JULY 1992, AND APPROVED BY THE WASHOE COUNTY COMMISSION ON THE 18TH DAY OF AUGUST, 1992.

PER WASHOE COUNTY DEVELOPMENT CODE ARTICLE 608, AN EXTENSION OF TIME FOR THE TENTATIVE MAP OF ST. JAMES'S VILLAGE WAS GRANTED BY THE WASHOE PLANNING COMMISSION ON JULY 8, 2010 FOR TWO YEARS. THEREFORE, THE NEXT FINAL MAP FOR TMS-2-92 MUST BE APPROVED AND ACCEPTED FOR RECORDATION BY THE COMMUNITY DEVELOPMENT DIRECTOR ON OR BEFORE THE EXPIRATION DATE OF THE 11TH DAY OF OCTOBER, 2012.

PER ORDINANCE 1498 APPROVED BY THE BOARD OF WASHOE COUNTY COMMISSIONERS ON SEPTEMBER 25, 2012 AND REORDERED ON OCTOBER 9, 2012 AS DOCUMENT NO. 4180879, AN EXTENSION OF TIME FOR RECORDATION OF THE NEXT FINAL MAP WAS EXTENDED TO OCTOBER 16, 2016. PER SAME SAID ORDINANCE 1498, A FURTHER EXTENSION OF TIME FOR THE RECORDATION OF THE NEXT FINAL MAP WAS EXTENDED TO OCTOBER 16, 2020.

THIS FINAL MAP, BENNINGTON COURT - UNIT 2, ST. JAMES'S VILLAGE - UNIT 2D, MEET ALL APPLICABLE STATUTES, ORDINANCES, AND CODE PROVISIONS; IS IN SUBSTANTIAL CONFORMANCE WITH THE TENTATIVE SUBDIVISION MAP CASE NO. TMS-2-92; AND ALL CONDITIONS HAVE BEEN MET FOR THE PURPOSES OF RECORDATION OF THIS MAP.

THE NEXT FINAL MAP FOR TMS-2-92 MUST BE APPROVED AND ACCEPTED FOR RECORDATION BY THE COMMUNITY DEVELOPMENT DIRECTOR ON OR BEFORE THE EXPIRATION DATE, THE 16TH DAY OF OCTOBER, 2021, OR AN EXTENSION OF TIME FOR THE TENTATIVE MAP MUST BE APPROVED BY THE WASHOE COUNTY PLANNING COMMISSION ON OR BEFORE SAID DATE.

THIS FINAL MAP IS APPROVED AND ACCEPTED FOR RECORDATION THIS 20 DAY OF April, 2019, BY THE WASHOE COUNTY COMMUNITY DEVELOPMENT DIRECTOR.

M. Williams 6-20-19
MORRIS WILLIAMS, DIRECTOR
OF PLANNING AND BUILDING DATE

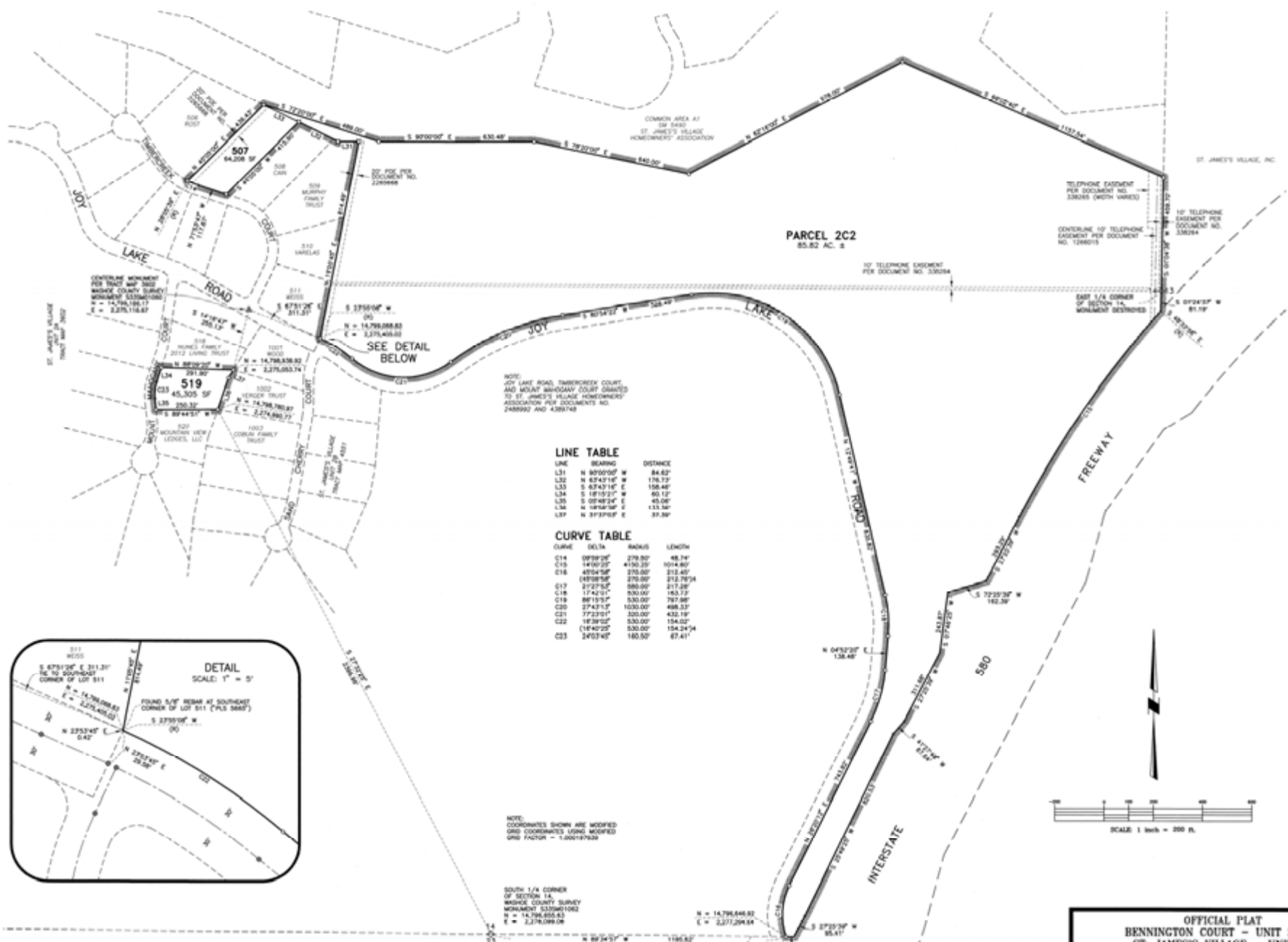
OFFICIAL PLAT BENNINGTON COURT - UNIT 2 AND ST. JAMES'S VILLAGE - UNIT 2D A COMMON INTEREST COMMUNITY SUBDIVISION WITHIN SECTION 14 AND NE1/4 OF SECTION 15, T.17N., R.19E., M.D.M. BEING A PORTION OF PARCEL A OF SURVEY MAP 4040, AND PARCELS 322A AND 2C1 OF SURVEY MAP 5490		COUNTY RECORDER'S CERTIFICATE FILE NO: <u>4922453</u> FILED FOR RECORD AT THE REQUEST OF <u>C & M Engineering</u> ON THIS DATE <u>12/10/18</u> AT <u>10</u> MIDDAY IN THE OFFICE OF THE COUNTY RECORDER OF WASHOE COUNTY, NEVADA.
WASHOE COUNTY C & M ENGINEERING AND DESIGN, LTD 5488 RENO CORPORATE DR., SUITE 200B RENO, NV 89511 PHONE: (775) 856-3312	J. OBNO. 04-008.3 DATE 12/10/18 SHEET <u>1</u> OF <u>3</u>	COUNTY RECORDER <i>Alie M. Work</i> BY: <i>G. Peaslee</i> DEPUTY THE: <u>86.00</u>

Subdivision Tract Map 5331

CHECK ALL THESE BOXES TO BE EXAMINED FOR ANY SUBSEQUENT CHANGES TO THIS MAP

CHECK ALL THESE BOXES TO BE EXAMINED FOR ANY SUBSEQUENT CHANGES TO THIS MAP

5318

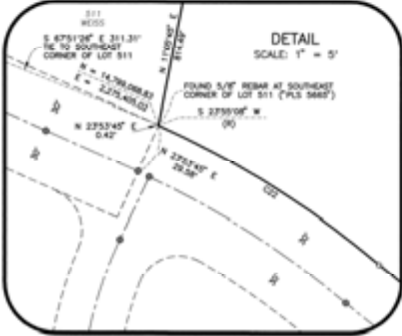


LINE TABLE

LINE	BEARING	DISTANCE
L31	N 90°00'00" W	84.82'
L32	N 87°43'18" W	176.73'
L33	S 87°43'18" E	158.48'
L34	S 18°15'21" W	80.12'
L35	S 08°48'24" E	45.06'
L36	N 10°18'38" E	133.36'
L37	N 87°38'08" E	97.36'

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C14	09°39'28"	279.00'	48.74'
C15	14°00'25"	419.25'	1014.80'
C16	45°04'58"	370.00'	212.40'
C17	145°08'58"	270.00'	212.78794
C18	17°42'01"	530.00'	183.73'
C19	86°15'17"	530.00'	787.88'
C20	27°43'18"	1030.00'	488.53'
C21	77°23'01"	300.00'	430.19'
C22	18°39'02"	530.00'	154.02'
C23	19°40'22"	530.00'	154.2474
C24	24°03'40"	180.00'	87.41'



NOTE:
JOY LAKE ROAD, TIMBERCREST COURT,
AND MOUNT WASHINGTON COURT GRANTED
TO ST. JAMES'S VILLAGE HOMEOWNERS'
ASSOCIATION PER DOCUMENTS NO.
248862 AND 4389748

NOTE:
COORDINATES SHOWN ARE MODIFIED
GRID COORDINATES USING MODIFIED
GRID FACTOR = 1.000187838

NOTE:
SOUTH 1/4 CORNER
OF SECTION 14,
WASHOE COUNTY SURVEY
MONUMENT 5339619682
N = 14,796,856.83
E = 2,274,099.08

OFFICIAL PLAT
HENNINGTON COURT - UNIT 2 AND
ST. JAMES'S VILLAGE - UNIT 2D
 A COMMON INTEREST COMMUNITY SITUATE WITHIN
 SECTION 14 AND NE 1/4 OF SECTION 15, T.17N., R.19E., M.D.M.
 BEING A PORTION OF PARCEL A OF SURVEY MAP 4640,
 AND PARCELS 322A AND 2C1 OF SURVEY MAP 5490
 WASHOE COUNTY NEVADA

C & M ENGINEERING AND DESIGN, LTD
 5488 BEND CORPORATE DR., SUITE 3008
 RENO, NV 89511
 PHONE: (775) 856-5512

JOB NO. 04-008.30
 DATE 12/10/18
 SHEET 3 OF 3



CUMULATIVE INDEXES
 SHOULD BE EXAMINED
 FOR ANY SUBSEQUENT
 CHANGES TO THIS MAP

5331 B

Subdivision Tract Map 5331 B



February 28, 2019

Project: ST JAMES'S VILLAGE UNIT 2D AND
BENNINGTON CT. UNIT 2
JOY LAKE RD. AND BENNINGTON CT.
SFR (7 LOTS)
LANDSCAPING: N/A

Tim Wilson, P.E.
State of Nevada
Division of Water Resources
901 S. Stewart St.
Carson City, NV 89701-5250

Water Rights (AF): 5.57
Demand (AF): 5.57
Permit No(s) (AF): 59330 (5.57AF)

Dear Mr. Wilson:

We have reviewed the plans for the above referenced development ("Project") as submitted to the Truckee Meadows Water Authority (TMWA) and have determined the Project is within TMWA's retail service territory. This letter constitutes a commitment that the applicant for the Project has dedicated sufficient water resources to TMWA to meet the demand described above, and that TMWA has sufficient water resources to deliver water in the amount of the demand to the Project. The water demand stated herein is an estimate based on the information provided by the applicant.

This commitment is made subject to all applicable TMWA Rules. This commitment does not constitute an obligation to provide water service to the Project under NAC 445A or to provide planning, design or construction of the water facilities necessary for service to the project. The provision of water service is conditional upon applicant's satisfaction of all other applicable provisions of TMWA's Rules and Rate Schedules and requirements of the local health authority, including, without limitation and where applicable, the submission of a specific development proposal with a complete Application for Service, payment of fees, review and approval of a water facilities plan, the construction and dedication of water system facilities, final approval of the water facility plan by the local health authority, and approval of and execution of a Water Service Agreement.

Please be advised that completing this process can be time consuming, and there is no guarantee of how long the approval process, including approval from the local health authority, may take or that such approval will be granted. Once final approval is received from the local health authority, TMWA will prepare the Water Service Agreement which includes all fees the applicant must pay TMWA prior to water being delivered to the project.

Since the subject water rights are permitted rights, no guarantee by TMWA is required for these rights.

Should the approval of this Project expire or be terminated by the local governing body, this commitment shall automatically terminate and be deemed void.

Very truly yours,


John R. Zimmerman, Esq.
Water Resources Manager

JZ/dn

cc: ST. JAMES'S VILLAGE, INC.

ST. JAMES'S VILLAGE UNIT 2 & 2D - 7 LOTS
GROUND WATER RIGHTS AND METER FUND CONTRIBUTION
CALCULATION WORKSHEET

Line No.	Lot Number	Lot Size	Demand Calculation	
1	309	63,741	0.80	
2	316	70,900	0.81	
3	317	72,340	0.81	
4	322	65,994	0.80	
5	330	59,310	0.79	
6	507	64,208	0.80	
7	519	45,305	<u>0.76</u>	
			5.57	
	Less: Demand Credits		<u>0.00</u>	
	NET PROJECT DEMAND		5.57	
	TOTAL WATER RIGHTS REQUIRED			5.57

Quote is valid for 10 days
from date of statement.

18-0602, St. James's Village Unit 2 and 2D, 7 Lots, 12-2018
2/28/2019
3:20 PM

Memorandum

To: Files
From: Jon Benedict
Date: November 12, 2020

RE: Review of Serpa Well Aquifer Test Results and Groundwater Assessments in the St. James Village/Sierra Reflections Project Areas

Several documents have been provided to the Nevada Division of Water Resources regarding the assessment of groundwater conditions in the area that encompasses the St. James Village gated community development and the Sierra Reflections proposed housing development. Two of these documents focus on the Serpa Well 10-day aquifer test and are authored by Confluence Water Resources (CWR)¹ and Truckee Meadows Water Authority (TMWA)². They both provide useful information regarding the hydrogeologic character of the area and the potential for developing the water resource for future proposed development. However, the interpretive assessments provide a relatively wide range of results, not all of which are in harmony with each other. The purpose of this memo is to summarize those results in a manner that focuses on the key and pertinent technical findings with respect to water availability in the area.

Context

These two projects are adjacent to each other, with St. James Village on the northwest side of I-580 and Sierra Reflections on the southeast side (Figures 1 and 2). Both projects straddle the Washoe Valley/Pleasant Valley Hydrographic Area boundary. Brown's Creek roughly bisects each property, running from west to east before feeding into Steamboat Creek in the midpoint of the Sierra Reflections property. Steamboat Creek flows from southwest to northeast though the long dimension of the Sierra Reflections property. St. James currently has about 240 single family homes, with another 220 future lots planned for development. Sierra Reflections is proposed to have 791 single family homes and 147 townhomes. Projected water needs at full build-out is expected to be 396 afy for St. James and 448 afy for Sierra Reflections. Water would be pumped from existing St. James wells 1 and 2 (for St. James) and from the Serpa Well (for Sierra Reflections). Currently demand for the 240 existing single-family homes is about 206 afy and is being served by the St. James wells.³

¹ CWR, 2019, *Serpa Well Pumping Test Report and Assessment of Local Groundwater System*, prepared by Confluence Water Resources, LLC for St. James Village and Mr. Keith Serpa, October 8, 2019 revision (**CWR Report**).

² TMWA, 2019, *Serpa Well Pump Test Analyses, Forward Simulation and Groundwater Modeling*, Memorandum to the Files prepared by Nick White, dated August 2, 2018 (**TMWA Memo**).

³ Banta, Matt, *Serpa Well Testing and Groundwater Analysis*, Project Overview Powerpoint Presentation dated September 3, 2020 and presented to NDWR on October 8, 2020.

Geology

The area lies immediately to the southwest of the Steamboat Hills geothermal complex (Figure 3). Most of the area around St. James and the Sierra Reflections properties is underlain by older Quaternary alluvial fan deposits and Tertiary andesitic lavas. The lavas are intercalated with volcanic debris flow deposits and together represent the principal aquifer. These volcanics are interpreted to be on the order of 500-1000 feet thick and underlain by Mesozoic granite and metasedimentary rock. To the northwest, in the area around Galena and Jones Creek, there is a veneer of glacial outwash sediments that cover much of the bedrock.⁴

Aquifer Characteristics

All three of the wells (Serpa, St James 1 and 2) intended for use as production wells at St. James and Sierra Reflections are constructed in lithology described as a variable mix of black rock, red rock, volcanic rock, andesite, fractured andesite, broken volcanics, clay, and other similar descriptions. Based on these descriptions and the locations of the wells relative to mapped surface geology (Figure 3), all three wells are interpreted to derive their water from Tertiary andesitic volcanics. Static water levels in each of these wells ranged from nearly 200 to 270 feet below land surface (ft bls) when constructed. Static water levels recorded on driller's reports for other wells constructed in the region indicate that the water table generally mimics the land surface topography, having a west-to-east slope with a gradient in the range of 0.02 – 0.07 ft/ft. Although the distribution of data is relatively sparse, water levels tend to indicate that the upper reaches of Brown's Creek and Galena Creek are not physically connected to the water table in the volcanic aquifer system. Well log data suggest that water levels that approach land surface are only observed in wells that are either constructed across younger alluvial material or are at relatively low elevations, nearer to Steamboat Creek. To the extent that the data are representative, this means that there is no hydraulic connection between the volcanic aquifer and surface water flow in the area of interest. **Therefore, while Galena Creek, Brown's Creek, and other tributaries to Steamboat Creek that flow across the area undoubtedly contribute recharge into the volcanic aquifer, pumping in that aquifer does not capture flow to or induce recharge from those surface features.**

Well test data on the driller's reports indicate specific capacities (SC) that were 0.5 gpm/ft drawdown (dd) at the Serpa Well to 3.3 and 3.8 gpm/ft dd at the St. James wells at the time of well construction. Using the method of Thomasson and others (1960) these values yield transmissivity (T) values in the range of between 133 to about 1,000 ft²/day. Prior to the subject 10-day aquifer test, the Serpa well was re-developed and yielded a SC-based T of about 1,500 ft²/day. More detailed data collected during the post-development work suggested a T closer to 2,400 ft²/day.¹

Substantially better data from the Serpa Well 10-day aquifer test indicate that the T in the area around the Serpa well may be as high as 9,000 ft²/day. Estimates reported by CWR and TMWA range from 3,700 – 11,000 ft²/day. Some of the higher estimates

⁴ Carlson, C.W., Koehler, R.D., and Henry, C.D., 2019, *Geologic map of the Washoe City quadrangle, Washoe County, Nevada*, Nevada Bureau of Mines and Geology Open-File Report 19-4, scale 1:24,000, 7 p.

reported by CWR were overestimates that did not account for the long-term rising water levels. CWR estimated T for the pumping well at 3,700 ft²/day. TMWA did not estimate T using the pumping well data. Both CWR and TWMA estimated T using observation wells OWE-3 and OWE-4, two production wells located less than a mile to the southeast and southwest, respectively, of the Serpa well. TMWA estimated a T in the range of 4,000 to 5,000 ft²/day using late time observation well data and the rationale that any increased drawdown due to hydraulic barriers that affected the late-time data needed to be accounted for. Whereas, CWR used early time observation well data to obtain T values that were almost double the magnitude, in the range of 7,300 – 9,200 ft²/day. These may be a better representation of the intrinsic permeability of the aquifer. **While the TMWA and CWR sets of estimates are different, they are consistent with the interpretation that the aquifer system near the Serpa well has a T of about 8,000 ft²/day, but that hydraulic barriers or nearby zones of lower permeability affect the area such that the effective T in the immediate area of the aquifer test is about 4,000 ft²/day.**

Estimates of the aquifer's storage coefficient (S) from the test yielded a range between 0.002-0.005 for CWR and 0.002-0.007 for TMWA. TWMA's estimates are considered effective values due to their use of late-time data late time (post-barrier influence) data instead of earlier (pre-barrier influence) data for the Cooper-Jacob method. **This suggests that a value of 0.003 is a reasonable representative value for the aquifer, with a value of 0.005 reflecting an effective S in the immediate area of the aquifer test.**

Data Limitations Regarding Extent of Cone of Depression

Drawdown associated with the Serpa aquifer test was observed at three of the eleven observation wells instrumented with transducers.⁵ Each of these three wells are to the south or southeast of the Serpa well, with the furthest being OWE-4, located 2,000 feet to the southwest. All of the other instrumented observation wells were to the north or northwest at distances greater than 5,200 feet from the pumping well. At these distances, and assuming uniform radial flow with effective aquifer parameters (T = 4,000 ft²/day, S = 0.005), the cone of depression would extend out to those observation wells, but would cause only about 0.5 ft of drawdown after 10 days, an amount that might be difficult to resolve from the background water level dynamics exhibited in many of these observation wells to the north and northwest. **This means that while the lack of observable drawdown to the north and northwest suggests that the cone of depression does not propagate as effectively in that direction, those data are not conclusive.**

Heterogeneities and Complexities

Despite data limitations that lower the confidence in characterizing drawdown impacts as being either radially uniform or as propagating in preferential directions,

⁵ There were also another five wells that were reportedly monitored and interpreted to have no response (see Table 1, CWR Report). However, for these wells no data were documented in the report. Considering the fact that during the time of the test water levels in portions of the area had a rising trend, these data are discounted.

aquifer test data plotted on a time vs. drawdown chart can provide indicators of complex aquifer characteristics, including hydraulic barriers, recharge boundaries, and/or heterogeneities that cause other deviations in the rate of drawdown over time. These time vs. drawdown indicators can point to aquifer dynamics that serve to 1) qualitatively characterize aquifer conditions that affect aquifer behavior, and 2) expose limitations of using aquifer test results to predict drawdown distribution on a more regional scale.

Heterogeneity and aquifer complexity can be common, if not expected, in range-front-positioned, fracture-controlled aquifer systems such as exists in the St. James-Sierra Reflections area. Both CWR and TMWA acknowledge that structurally controlled heterogeneities including hydraulic barriers, potential compartmentalization, or zones of higher or lower permeability likely exist in the St. James/Sierra Reflections area. CWR also recognizes trends in background water levels and suggests that there are flux-related boundary conditions associated with recharge that may affect drawdown. Below is a brief discussion of aquifer heterogeneities identified and interpreted by CWR and/or TMWA.

- Hydraulic Barriers

Aquifer test data can provide evidence of hydraulic barriers by causing drawdown rates to increase at a rate greater than would otherwise be expected if the aquifer were uniform, homogeneous and regionally expansive. The classic example of this is illustrated when aquifer test data are plotted as a semi-log curve of time vs. drawdown and the slope of the drawdown line doubles in response to the cone of depression encountering a vertical planar no-flow boundary. In this ideal case, the time duration between when the aquifer test starts and when the drawdown slope doubles is dependent on the relative locations of the barrier, the pumping well, and the observation well. If the barrier is relatively near the pumping well but not near the observation well the slope change in drawdown data will be observed sooner at the pumping well than at the observation well⁶. If the barrier is relatively nearer to the observation well but not near the pumping well, the slope change will occur sooner at the observation well than the pumping well. For both ideal cases, once the slope of the drawdown has doubled, it will remain constant. In each of these cases, transmissivity calculated from the drawdown affected by the barrier will be 2x the transmissivity calculated from the post-barrier drawdown.

For the Serpa aquifer test, both CWR and TMWA recognize that semi-log plots from observation wells OWE-3 and OWE-4 both exhibit doubling in slope after about 3,500 minutes into the test. Taken together, these plots are suggested to represent a flow barrier whose effects are exhibited at OWE-3 and OWE-4 at about the same time, even though the observation wells have different locations relative to the pumped well. Assuming an ideal case, in order for this to happen the flow barrier would need to be either entirely south of or entirely north of both the set of observation wells and the pumping well, and the barrier would need to have a southwest-northeast orientation.⁷ If the barrier were south of the observation wells, the increased slope would occur later at

⁶ In this classic case, the increase in rate of drawdown would already be incorporated in measured drawdown at the observation well by the time the cone of depression reaches the observation well.

⁷ The location and orientation of the structure can be constrained using a mirror image well that must be equidistance from both observation wells, while maintaining a planar barrier that is equidistant from the mirror and pumping well.

the pumping well compared to the observation wells. If it were to the north, the increase in slope would be observed at the pumping well before the observation wells. Looking at the semi-log plot for the pumped well, the slope of the drawdown curve is relatively uniform suggesting that either 1) it is so far from the barrier that impacts were not seen during the test, 2) it is so near the barrier that impacts were seen almost immediately, or 3) its more complicated than that. Interestingly, the transmissivity estimated from the pumped well is about ½ of the transmissivity estimated by CWR for the early time slope of the observation wells and about the same as the late time estimates by TMWA. This is more consistent with option #2, that the barrier is near and north of the pumping well and oriented in a north-northeast direction. However, option #3 also probably plays a role here because of the physical improbability, if not near-impossibility to have a planar no-flow barrier that is near the pumping well, while at the same time having the proper orientation that would affect both observation wells at the same time. **Ultimately it is most reasonable to conclude that 1) boundaries do affect drawdown in the area, 2) the data are more consistent with a boundary to the north-northwest of the pumped and observation wells, but 3) boundaries in the St. James/Sierra Reflections area are neither planar nor necessarily continuous in dimension.**

CWR makes very detailed interpretations of slope changes, based on using derivative plots to identify barriers (increases in slope).⁸ A derivative plot is a visual tool that merely superposes a plot of the time vs. drawdown rate on top of the semi-log time vs. drawdown chart. It plots a curve of the relative magnitude of the drawdown rate against time, so that changes in the rate of drawdown with time can be readily quantified and visualized. A uniformly flat derivative curve indicates radial flow, whereas an abrupt doubling of the curve indicates the presence of a planar no-flow barrier. The detailed interpretation of flow barriers documented by CWR are not as compelling as the more general flow barrier interpretation from the drawdown curves for OWE-3 and OWE-4, recognized by both CWR and TMWA, and described above. And as indicated by CWR in their report, most of these interpreted barriers are represented by derivative plot “shifts” that are not persistent. **The lack of persistence suggests that temporally intermittent increases in drawdown rate are may be noise or local effects caused by local aquifer heterogeneities.** This assertion seems more reasonable because under a persistent stress, like this controlled aquifer test, induced impacts caused by the interaction of that stress with a regional scale boundary would also tend to be persistent. **This assertion also applies to CWR’s identification of recharge boundaries based on temporally intermittent reductions in the drawdown rate.**

- Recharge Boundaries

CWR makes the suggestion that there may enhanced permeability in the southwest-northeast direction and state that drawdown is likely to occur predominantly in the direction of OWE-3 and OWE-4 and not in the direction of upgradient wells north of Brown’s Creek.⁹ While no specific data are explicitly detailed to support this conclusion, CWR does describe data indicating that Brown’s Creek is a losing stream that acts as a source of recharge beneath certain reaches that flow across the area; and they point to thermal and chemical data that indicate that deeper geothermal waters contribute to the

⁸ See Charts 12, 13, 16-18 in *Serpa Well Pumping Test Report and Assessment of Local Groundwater System*, prepared by Confluence Water Resources, LLC for St. James Village and Mr. Keith Serpa, October 8, 2019 revision.

⁹ See page 3, bullet 3, CWR Report.

shallow aquifer in the area. **Although the inference that both Brown's Creek and geothermal waters are recharge sources is reasonable, neither source appears available for induced capture by pumping.** This conclusion is based on two lines of evidence. First, and as described previously, Brown's Creek appears to be disconnected from the volcanic aquifer, meaning that even if it is a recharge source, pumping cannot capture any more recharge than what naturally infiltrates through the vadose zone. Similarly, even though geothermal water may up-well into the shallow aquifer, it seems unlikely that pumping in the shallow aquifer would cause an increased vertical gradient sufficient to measurably increase upward flow and buffer drawdown during the test. Second, if either of these sources of recharge were available for capture, a signature reduction in drawdown rate should be recognizable in the drawdown curves at the pumping well and the observation wells. This signature would be characterized by a reduction in the slope of the drawdown curve over time that ultimately would either flatten if sufficient capturable recharge exists to offset pumping amounts (in this case 406 gpm), or stabilize at a new drawdown rate once the limited recharge source is entirely captured. No such signature exists.

Anticipated Drawdown

The key issue with respect to characterizing the aquifer system ultimately focusses on whether additional pumping in the area could have unacceptable adverse impacts. Potential adverse impacts would include 1) "capture" impacts to senior-appropriated surface water resources caused by pumping-derived streamflow depletion, 2) drawdown impacts to nearby, existing wells, or 3) insufficient capacity of the proposed pumped wells to provide a dependable supply of water. Since nearby surface water features do not appear to be hydraulically connected to the volcanic aquifer system, capture impacts to existing surface water resources are limited to streamflow impacts along the Steamboat Ck corridor. This issue is not addressed in either the TMWA or CWR report. The principal concern addressed by TMWA and CWR focused on drawdown impacts and whether the proposed pumping would cause drawdown of a magnitude that is either unsustainable or harmful to nearby existing wells.

Both CWR and TMWA conducted drawdown analyses based on their respective interpretations of the aquifer characteristics. Results from each effort are summarized below.

CWR performed a relatively straightforward analysis that predicts drawdown of 40 feet at the pumped well after 5.5 years of pumping at 400 gpm, and a double of that drawdown if pumped at 800 gpm. Drawdown at distances of 920 and 2,000 ft, equivalent to the locations of the Old Washoe Estates production wells OWE-3 and OWE-4 would be 14 and 11 ft for pumping at 400 gpm and double that for pumping at 800 gpm. CWR notes that the water rights at the Serpa well would only allow for pumping at an annual rate that averages 294 gpm. This means that based on CWR's analysis, drawdown would be about 29, 10, and 8 ft at Serpa, OWE-3, and OWE-4, respectively, after over 5 years of continuous pumping at 294 gpm. They conclude that due to faulting and fracturing and perhaps recharge from Brown's Creek, drawdown would be localized in the southeast and southwest direction, towards OWE-3 and 4, and would not propagate upgradient to the west and northwest. However, they do not support this interpretation with any explicit or thoroughly vetted geologic or hydrologic information.

TMWA also conducted a Theis analysis and used that to predict 7 feet of drawdown at the St. James Well 2, located about 5,570 feet northwest of the Serpa well, after 10 years of pumping at 294 gpm (equivalent to 474 afa). In addition, TMWA updated their regional numerical groundwater model to accommodate the St. James/Sierra Reflection area and to update with interpretive results from the Serpa aquifer test. Predictive simulations using the TMWA model were run under two scenarios. The baseline scenario used pumpage that reflects current demand in the area (using 2015 pumping rates). The predictive scenario added 1,992 afy of pumpage to reflect estimated demand for full build-out of the St. James, Sierra Reflections, and Callamont developments. These results predict a regional increase in drawdown in the 20-50 foot range after 20 years, centered on the St. James wells and extending for about 2 miles in all directions. Unfortunately this prediction does not resolve drawdown contributions associated with individual well pumping, like the Serpa well. However, to the extent that the model is accurate, results do suggest that the St. James wells would be the largest contributors of future regional drawdown impacts.

In order to more realistically predict the impacts associated with the pumping of the Serpa well alone, an independent Theis analysis was conducted by NDWR and described herein. This analysis uses effective aquifer parameters considered most reasonable based on the Serpa aquifer test ($T = 4,000 \text{ ft}^2/\text{day}$, $S = 0.005$). It also uses a pumping rate of 278 gpm, the amount needed to meet the stated 448 afy demand for the Sierra Reflections build-out. Results are shown on Table 1.

Table 1. Predicted drawdown caused by Serpa Well pumping at 278 gpm, using Theis non-equilibrium equation with $T = 4,000 \text{ ft}^2/\text{day}$ and $S = 0.005$.

WELL	DISTANCE FROM SERPA WELL <i>FT</i>	PREDICTED DRAWDOWN (FT)			
		<i>1 YR</i>	<i>5 YRS</i>	<i>10 YRS</i>	<i>20 YRS</i>
OWE-3	950	6.6	8.7	9.4	10.2
OWE-4	2,080	4.9	7.1	7.8	8.5
ST. JAMES 2	5,570	2.9	5.0	5.7	6.4
ST. JAMES 1	7,860	2.2	4.2	5.0	5.7

The reasonability of these predicted drawdown results is conditioned on the limitations of the method. The principal limitation in this case is the degree to which flow barriers and other heterogeneities, whose location and characteristics are not known, affect the propagation of the cone of depression. A reasonable interpretation is that there is some level of compartmentalization in the area that would cause drawdown proximal to the Serpa well to be reasonably predicted by the “effective” aquifer properties, and drawdown further from, and northwest of the Serpa well, to be less than

predicted by the Theis analysis. This interpretation is suggested based on conceptual grounds that include 1) groundwater flow is more likely to be inhibited across faults, and there is a higher density of north-south to northeast-southwest faults mapped to the west of the Serpa well than east of the Serpa well; 2) there is a greater distance between the pumping well and wells-of-concern to the northwest, providing more opportunity (more space) for heterogeneities to exist and impact drawdown; 3) the observable drawdown at OWE-3 and OWE-4 that indicates an absence of a significant flow barrier between those observation wells and the Serpa well, 4) the possibility that drawdown to the southeast, in the direction of OWE-3 and OWE-4 may become buffered by induced infiltration from Steamboat Creek, and; 5) the conceptual understanding that if partial flow barriers do exist to the northwest, they would enhance drawdown on the pumping-well side of the barrier and limit drawdown on the opposite side of the barrier. **On these grounds, it is more likely that after 20 years of pumping at the Serpa well, attributable drawdown at the OWE wells would be in the 8 to 10 foot range, whereas drawdown at the St. James wells caused by Serpa well pumping would in the 5 foot or less range.**

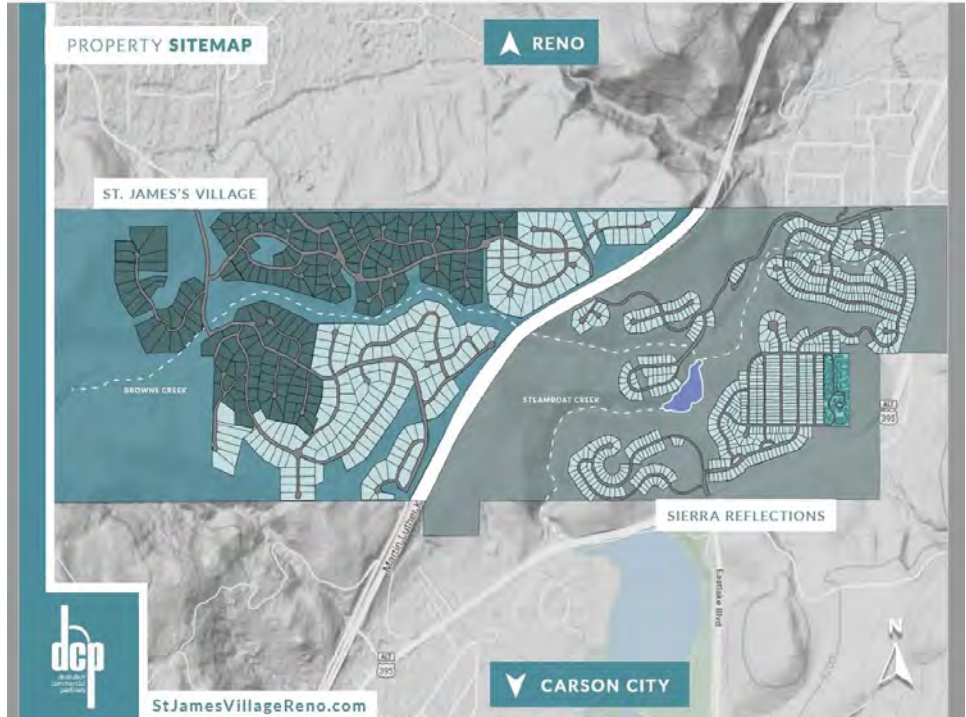


Figure 1. Subdivision map of St. James Village and Sierra Reflections. (Source: Drakulich Commercial Partners website, <https://stjamesvillagereno.com/>)



Figure 2. St. James Village and Sierra Reflections project areas overlain on aerial imagery. (Source: Drakulich Commercial Partners website, <https://stjamesvillagereno.com/>)

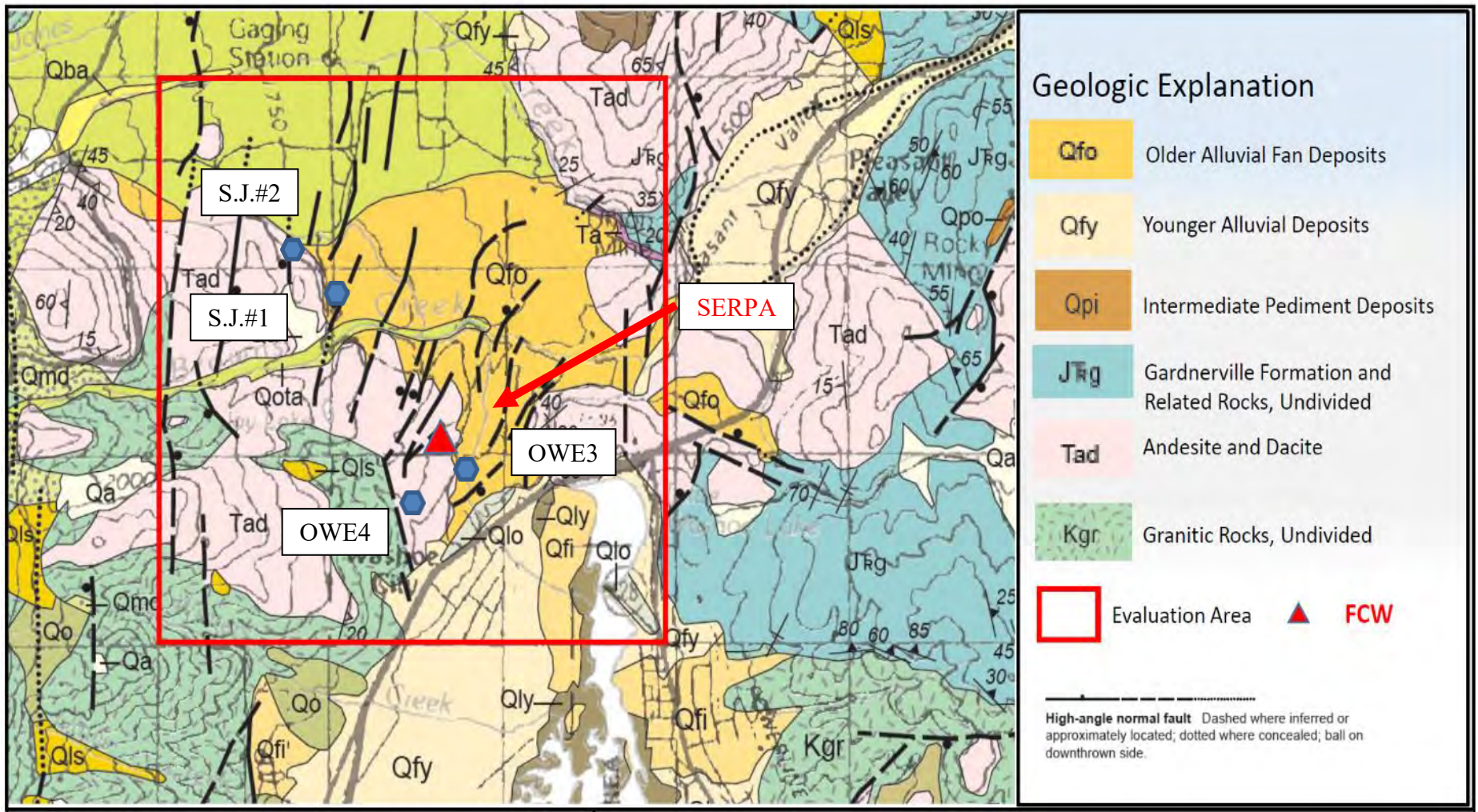


Figure 3. Geology and locations of wells of concern. (Source: CWR; see footnote #1, with Geology from Stewart, 1999)



Date: November 15, 2021

To: Nancy Raymond

From: David Nelson *DN*

RE: 21-8275, St. James's Village Unit 1H & 2C Discovery 2, +/- 24 Lots (APNs: 156-040-14 & 156-111-23)

The New Business/Water Resource team will answer the following assumptions on each new discovery:

- Is the property within Truckee Meadows Water Authority's water service territory?
- Does the property have Truckee River water rights appurtenant to the property, groundwater or resource credits associated with the property?
 - If yes, what is the status of the water right: Agricultural or Municipal and Domestic use?
- Estimated water demand for residential and or commercial projects.
- Any special conditions, or issues, that are a concern to TMWA or the customer.

The following information is provided to complete the Discovery as requested:

- A portion of these subject parcels (APNs: 156-040-14 and 156-111-23) are not within Truckee Meadows Water Authority's (TMWA's) service territory. An annexation is required for those outside of our service territory.
- There are no resource credits or Truckee River decreed water rights appurtenant to these properties. The developer will be required to follow TMWA's current rules, specifically Rule 7, and pay all fees for water rights needed in order to obtain a will serve commitment letter.
- Based on the information provided by the applicant this project "St. James's Village Unit 1H and 2C" is estimated to require a domestic demand of **17.30-acre feet (AF)**. Landscaping plans were not provided to TMWA; therefore, a landscaping demand was not determined. Once final plans are submitted, a more accurate demand will be calculated. Please see the attached demand calculation sheet for the **estimated** demand and water resource fees. *Note: Water rights held or banked by the applicant must be dedicated to the project, if acceptable. Applicant does have Area 15 groundwater resources. If applicant also has Whites Creek water, please contact TMWA staff for further clarification on dedication. Area needs to be annexed into TMWA's service area for estimate of demand to be valid.*
- Any existing right of ways and public easements would need to be reviewed, and if needed the property owner will need to grant TMWA the proper easements and/or land dedications to provide water service to the subject properties. Property owner will be required, at its sole expense, to provide TMWA with a current preliminary title report for all subject properties. Owner will represent and warrant such property offered for dedication or easements to TMWA shall be free and clear of all liens and encumbrances. Owner is solely responsible for obtaining all appropriate permits, licenses, construction easements, subordination agreements, consents from lenders, and other necessary rights from all necessary parties to dedicate property or easements with title acceptable to TMWA.

ST. JAMES'S VILLAGE UNIT 1H & 2C
GROUND WATER RESOURCE
CALCULATION WORKSHEET

Line No.	Lot Number	Lot Size	Demand Calculation
1	554	61,203	<u>0.74</u>
2	555	59,023	<u>0.74</u>
3	556	45,305	<u>0.70</u>
4	557	45,024	<u>0.70</u>
5	558	42,883	<u>0.69</u>
6	559	44,724	<u>0.70</u>
7	560	59,373	<u>0.74</u>
8	561	79,135	<u>0.78</u>
9	562	53,477	<u>0.72</u>
10	563	46,243	<u>0.70</u>
11	564	49,425	<u>0.71</u>
12	901	55,390	<u>0.73</u>
13	902	63,312	<u>0.75</u>
14	903	57,743	<u>0.74</u>
15	904	45,383	<u>0.70</u>
16	905	46,436	<u>0.70</u>
17	906	63,323	<u>0.75</u>
18	907	44,382	<u>0.70</u>
19	908	46,495	<u>0.70</u>
20	909	50,784	<u>0.72</u>
21	910	54,317	<u>0.73</u>
22	911	50,557	<u>0.72</u>
23	912	51,741	<u>0.72</u>
24	913	53,152	<u>0.72</u>

17.30

Less: Demand Credits

0.00

NET PROJECT DEMAND

17.30

Water Rights (0.11 AF per AF of total demand)

0.00 NA

Return Flow (based on Permit used for dedication)

0.00 (Estimation Only) NA

TOTAL WATER RIGHTS REQUIRED

17.30

Price of Water Rights per AF

\$7,700

TOTAL COST OF WATER RIGHTS

\$ 0

Water Resource Sustainability (AF of Net Project Demand)

\$1,600

\$ 0

Will Serve Letter Preparation

\$ 150

TOTAL TO TRUCKEE MEADOWS WATER AUTHORITY

\$ 150

=====

SUBMITTED BY: St James Village Inc. PHONE: Ken Krater 775.815.9561

APN: 156-040-14 & 156-111-23 DATE: 11/15/2021

PROJ NO: 21-8275 CALCED BY: David 834-8021

REMARKS: Price of Water Rights is subject to change; please call for current price.

Applicant will dedicate acceptable Area 15 groundwater. If applicant has Whites Creek

water, please contact TMWA staff for further clarification on dedication requirements.

1 Timothy A. Lukas, Esq. (NSB 4678)
 2 Bryce C. Alstead, Esq. (NSB 9954)
 3 Evan J. Champa, Esq. (NSB 14041)
 4 Holland & Hart LLP
 5 5441 Kietzke Lane, 2nd Floor
 6 Reno, Nevada 89511
 7 (775) 327-3000 (Telephone)
 8 (775) 786-6179 (Fax)
 9 BAIstead@hollandhart.com
 10 EJChampa@hollandhart.com

11 *Attorneys for Petitioner*

12 ST. JAMES’S VILLAGE, INC., a Nevada
13 corporation,

14 Petitioner,

15 v.

16 TRUCKEE MEADOWS WATER
17 AUTHORITY; a joint powers authority under
18 NRS 277

19 Respondent.

**ST. JAMES’S VILLAGE, INC.’S
 BRIEF/MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT OF
 PETITION FOR REVIEW OF
 AUTHORITY DECISION**

HOLLAND & HART LLP
 5441 KIETZKE LANE, SECOND FLOOR
 RENO, NV 89511

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION1

 A. Statement of Applicable Law2

 B. Summary of Relief Requested2

II. FACTUAL BACKGROUND.....4

III. ARGUMENT.....6

 A. In General.....6

 B. The Authority Reduces Petitioner’s Beneficial Interest in the Water Rights7

 1. The Authority included excess use of the Water Rights.....7

 2. The Authority demands further water rights to supply the Development8

 C. The Lateral Extent of Area 15 is Not Supported by Any Evidence.....9

 D. The Authority Requires Uneconomic Updates to the Water Facilities.....11

IV. CONCLUSION13

V. ATTACHMENTS14

1 COMES NOW, petitioner ST. JAMES’S VILLAGE, INC., a Nevada corporation
2 (“**Petitioner**”), by and through its attorneys of record, HOLLAND & HART, LLP., and hereby
3 files its Complaint against TRUCKEE MEADOWS WATER AUTHORITY, a joint powers
4 authority under Nevada Revised Statutes (“**NRS**”) Chapter 277 (the “**Authority**”).

5 **I. INTRODUCTION**

6 This Complaint is filed pursuant to Authority Rule 8(B)(1). On November 10, 2021,
7 Petitioner filed its Annexation and Discovery Request for a Portion of St. James Village
8 consisting of twenty-eight (28) lots within Units 1H and 2C (the “**Lots**”), attached hereto as
9 Attachment “1” and incorporated herein by this reference (the “**Application**”). On February 15,
10 2022, the Authority promulgated that certain DISCOVERY-St. James Village Discovery
11 2_Annexation 1H_2C; PLL#21-8275, attached hereto as Attachment “24” (the “**Discovery**”),
12 with that certain St. James Village_Disc_Annex, TMWA WO# 15-4624 (the “**2015 Discovery**”)
13 in attachment to the Discovery. The Discovery is directly contrary to the substantial evidence
14 contained within Petitioner’s Application.

15 **A. Statement of Applicable Law**

16 “A Person disputing an action taken by the Authority pursuant to [the] Rules may obtain
17 administrative review of the matter by filing a written Complaint with the Authority as provided
18 in this Rule.”¹ Petitioner disputes the Authority’s action because the Authority’s Discovery
19 constitutes a taking, violates the Authority’s contractual obligations, and is arbitrary, capricious,
20 and an abuse of discretion.

21 The Authority is public agency of Nevada created under the provisions of NRS Chapter
22 277 and is therefore a state actor. Petitioner is a person as defined in NRS 0.039. “Water rights
23 are a separate ‘stick’ in the bundle of property rights.”²

24 The Takings Clauses of the United States and Nevada Constitutions prohibit the state
25 from taking private property for public use without just compensation.³ A state may effectuate a

26 ¹ See Authority Rule 8(B).

27 ² *Adaven Mgmt. v. Mt. Falls Acquisition Corp.*, 124 Nev. 770, 191 P.3d 1189 (2008).

28 ³ U.S. Const. amend. V; Nev. Const. art. 1, § 8(6); see also *Chicago, Burlington & Quincy R.R. Co. v.*

1 taking through a “direct government appropriation or physical invasion of private property.”⁴
2 When determining whether a regulation constitutes a compensable regulatory taking, the
3 following factors must be considered: “(1) the regulation’s economic impact on the property
4 owners, (2) the regulation’s interference with investment-backed expectations, and (3) the
5 character of the government action.”⁵

6 An arbitrary or capricious exercise of discretion is one “founded on prejudice or
7 preference rather than on reason.”⁶ An abuse of discretion is “[a] clearly erroneous interpretation
8 of the law or a clearly erroneous application of a law or rule.”⁷

9 **B. Summary of Relief Requested**

10 Petitioner requests that the Hearing Officer vacate the following Authority’s
11 determinations in the Discovery:

- 12 • that Petitioner must construct and dedicate to the Authority the offsite water
13 mains shown in the Discovery;
- 14 • that Petitioner must construct and dedicate to the Authority water mains to “loop”
15 the existing water facility system which would cross Browns Creek;
- 16 • that Petitioner is located within Area 15 and subject to the Area 15 Facility
17 Charge;
- 18 • that Petitioner must dedicate further water rights for the Development; and

19
20 *Chicago*, 166 U.S. 226, 238-41, 17 S. Ct. 581, 41 L. Ed. 979 (1897)

21 ⁴ *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005); *see also*
22 *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 662, 137 P.3d 110, 1121-22 (2006).

23 ⁵ *Sisolak*, 122 Nev. at 663, 137 P.3d at 1122; *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124,
24 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978).

25 ⁶ Black’s Law Dictionary, 119 (9th ed. 2009) (defining “arbitrary”), or “contrary to the evidence or
26 established rules of law,” *id.* at 239 (defining “capricious”). *See generally City Council v. Irvine*, 102 Nev. 277, 279,
27 721 P.2d 371, 372 (1986) (concluding that “[a] city board acts arbitrarily and capriciously when it denies a license
28 without any reason for doing so”).

⁷ *Steward v. McDonald*, 330 Ark. 837, 958 S.W.2d 297, 300 (Ark. 1997); *see Jones Rigging and Heavy*
Hauling v. Parker, 347 Ark. 628, 66 S.W.3d 599, 602 (Ark. 2002) (stating that a manifest abuse of discretion “is one
exercised improvidently or thoughtlessly and without due consideration”); *Blair v. Zoning Hearing Hd. of Tp. of*
Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996) (“[M]anifest abuse of discretion does not result from a mere error
in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly
unreasonable or the result of partiality, prejudice, bias or ill will.”).

- that the Wells are incapable of producing sufficient water for the Development.

The relief Petitioner requests herein constitutes an appropriate remedy because the Authority has issued a Discovery that violates the United States and Nevada Constitutions, breaches the Authority’s contractual obligations, is erroneous in view of the reliable, probative, and substantial evidence on the record, and the Authority has acted arbitrarily, capriciously, and in violation of its authority in doing so. Therefore, the Hearing Officer should set aside the Authority’s Discovery in its entirety.

II. FACTUAL BACKGROUND

The St. James’s Village Development (“**Development**”) is located on the hydrographic boundary of Washoe Valley and Pleasant Valley in Washoe County, Nevada, off Joy Lake Road, as more specifically set forth in the various deeds attached hereto as Attachment “2” (the “**Land**”). Appurtenant to the Land are 720 acre-feet of the beneficial interest in groundwater rights, as more specifically set forth in Attachment “3” (the “**Water Rights**”), which had been dedicated to Washoe County (the “**County**”) pursuant to that certain Purchase Agreement, attached hereto as Attachment “4”. Petitioner purchased the Land and Water Rights in 1992⁸ with plans to develop the Land with a high-class residential development and other amenities.

To facilitate its planned development, Petitioner began its engineering design and submitted its Tentative Map Application (with all amendments and supplements, the “**TM**”), attached hereto as Attachment “6”, to Washoe County, which was subsequently reviewed by the Washoe County Department of Water Resources. The Washoe County Department of Water Resources reviewed and subsequently approved the Development’s TM (as more fully set forth in Attachment “7”, attached hereto), and, upon TM approval, the County included the Land in its municipal service area. (*See, e.g., Attachment “8”*, attached hereto). Petitioner then began moving forward with its phased Development by completing and recording in the official records of the Washoe County Recorder twelve (12) Final Maps identified in Attachment “9”. Upon completion of the improvements required by each Final Map, the Petitioner dedicated, and

⁸ See Attachment “2”.

1 Washoe County accepted, the applicable infrastructure to the County, including water wells and
2 pump houses, water storage tanks, transmission lines and other pertinent infrastructure.

3 Particular to the water facilities, in 1996 Petitioner constructed a 1,010,000 gallon water
4 storage tank and two production wells as shown in Attachment “10”, attached hereto, to provide
5 water service to the entire Development. Well No. 1 is a 10-inch diameter production well,
6 constructed to a depth of 520 feet (see Attachment “11”, “**Well No. 1**”) and Well No. 2 is a 10-
7 inch diameter production well, constructed to a depth of 510 feet (see Attachment “12”, “**Well**
8 **No. 2**” and, together with Well No. 1, the “**Wells**”). The water distribution facility pipelines
9 were constructed according to the County’s approved “Tree system” (as shown in Attachment
10 “10”, attached hereto). Petitioner rightfully anticipated that it could continue its development of
11 the remaining tentatively-mapped lots without substantial changes to the approved water supply
12 system.

13 However, on January 29, 2010, pursuant to that certain *Interlocal Agreement Governing*
14 *the Merger of the Washoe County Department of Water Resources Water Utility into the Truckee*
15 *Meadows Water Authority*, the Authority acquired the County’s municipal purveyor obligations
16 and, as a part of that acquisition, acquired the Water Rights and the Development’s existing
17 water facilities. Instead of relying on the expertise and professional judgment of the Washoe
18 County Department of Water Resources, the Authority chose to not include the remaining
19 County-approved TM lands associated with the Development, which included areas with
20 recorded final maps.⁹

21 Particular to the Development, the Authority’s action was substantial, as the entire TM
22 area was approved for water service according to the conditions of approval for the TM and
23 acceptance of the constructed water infrastructure. As such, the undeveloped Land which was
24 considered annexed into the County’s water service area was thereafter not considered annexed
25 into the Authority’s Water Service Area (as shown in Attachment “13”, attached hereto).

26
27
28 _____
⁹ Due to the economic impact on the real estate market from the recession of 2008, the rest of the County-
approved TM lands reverted to acreage (see Attachment “9”).

1 Seemingly, this subjected the Petitioner to begin its mapping process anew, but only in regards to
2 the Authority's approval process.

3 During Petitioner's earnest development of the Development, the Authority constructed
4 the White's Creek Surface Water Treatment Facility which, according to the Authority, is used
5 as a conjunctive management tool to rectify the groundwater drawdown on the Mt. Rose alluvial
6 fan caused by extensive groundwater pumping from numerous domestic wells. To pay for the
7 costs of construction, the Authority subjected all lands within Area 15 (the map of which is
8 attached hereto as Attachment "1", Exhibit E) to a Water Service Facility Fee ("**WSF Charge**").
9 According to the Authority, the undeveloped Land associated with the Development is subjected
10 to this WSF Charge.

11 On June 21, 2019, the Petitioner recorded a Final Map for Unit 2D (attached hereto as
12 Attachment "15") which was approved by the Authority. Even though the Authority issued a
13 will-serve letter (*see* Attachment "16", the "**Will-Serve**") and the Nevada Department of
14 Conservation and Natural Resources, Department of Water Resources (the "**State Engineer**")
15 confirmed utilization of the Water Rights for Unit 2D (*see* Attachment "17"), the Authority
16 failed to annex in the applicable Unit 2D land, further failed to have a Water Service Agreement
17 executed, and did not obtain the applicable WSF Charge prior to issuance of the Will-Serve.
18 Petitioner justifiably assumed the WSF Charges were inapplicable based on issuance of the Will-
19 Serve and rightfully continued its development of the Development.

20 **III. ARGUMENT**

21 **A. In General**

22 Petitioner challenges the Authority's Discovery because: (A) the Authority effectively
23 forfeits Petitioner's beneficial interest in the Water Rights because the Authority (1) based its
24 findings on data which included Authority utilization of Water Rights for residential
25 developments outside the Development and (2) arbitrarily and capriciously disregarded its own
26 previous decision to utilize available water sources for water service to the Development; (B)
27 subjected the Petitioner to the WSF Charge based on an abuse of discretion; and (C) arbitrarily
28

1 vacated the County’s findings regarding the infrastructure required to supply municipal water to
2 the Development’s future residents.

3 **B. The Authority Reduces Petitioner’s Beneficial Interest in the Water Rights**

4 At no small expense, Petitioner purchased Water Rights so that it could have a sufficient
5 and reliable supply of water for its Development. The purchased Water Rights are among the
6 most senior in priority in the Pleasant Valley Hydrographic Basin (see Attachment “5”), thereby
7 adding protection in the event of curtailment. The Water Rights are also of a quantity capable of
8 supplying the Development with the necessary water so future water right dedications would be
9 unnecessary. Similarly, the groundwater Wells used as points of diversion for the Water Rights
10 have the necessary hydrogeologic characteristics to actually develop the aquifer and satisfy the
11 Development’s water needs.

12 The Authority, however, cuts against these simple facts. In its Discovery, the Authority
13 incorrectly based its findings on faulty data and an erroneous interpretation of the controlling
14 law. These determinations contemplate reducing Petitioner’s Water Rights without following the
15 proper statutory procedures under NRS Chapter 533 and turning a blind eye to its contractual
16 obligations. If approved, the Authority will be reducing Petitioner’s property rights, as “water
17 rights are a separate ‘stick’ in the bundle of property rights.”¹⁰ Most alarming is the Authority’s
18 decision will not only be done without just compensation,¹¹ but actually required the Petitioner to
19 pay to the Authority added fees.

20 1. The Authority included excess use of the Water Rights

21 The Authority’s Discovery utilized hydrologic data which purported to show a decline in
22 depth-to-water in the Wells. The Authority used its interpretation of its monthly metered data –
23 supplied to Petitioner, but not its supervisory control and data acquisition information
24 (“SCADA”) – to decide the Wells could not supply the future Development with a reliable water
25 supply because of the groundwater drawdown. However, engineering reports authored by
26 Michael Hardy, P.E., P.G., WRS, of Lumos and Associates (“Lumos”), regarding *St. James*
27

28 ¹⁰ *Adaven Mgmt. v. Mt. Falls Acquisition Corp.*, 124 Nev. 770, 191 P.3d 1189 (2008).

1 *Village Water System Analysis for 12 Additional Lots*, attached hereto as Attachment “1”,
2 Exhibit B (the “**Technical Memorandum**”), and the *St. James Village Water System*
3 *Preliminary Engineering Report*, dated November 1, 2021, attached hereto as Attachment “1”,
4 Exhibit C (“**PER**” and, together with the Technical Memorandum, the “**Lumos Reports**”), show
5 that the Authority had opened a valve to supply neighboring developments with a water supply.
6 This extra water supply, which the Authority still has not yet quantified and not allowed
7 Petitioner to review the SCADA data, resulted in an added increase to the withdrawal of
8 groundwater from the Wells and, therefore, an overall drawdown in the surrounding aquifer.

9 The Authority relies on this erroneous data notwithstanding it being the actual cause for
10 the apparent overdraft.

11 With the valve potentially closed (based on Petitioner’s review of current Authority
12 SCADA data) and the Wells pumping at a capacity which is sufficient to supply the current
13 Development, the Authority’s skewed data cannot be used in support of its finding that the
14 aquifer is inadequate as a sole source of supply for further development. In fact, the Lumos
15 Report identifies that current groundwater pumping will adequately supply the Development for
16 not only the existing residences, but for 111 future planned lots. The Authority’s findings in the
17 Discovery, which are based on plainly erroneous data and bear no rational nexus to any
18 substantial evidence, cannot be used to reduce Petitioner’s beneficial interest – and indeed, its
19 property right – in its water rights.

20 2. The Authority demands further water rights to supply the Development

21 The Authority unabashedly said in its discovery that it is “unwilling to supply the [current
22 subject lots] or any future additional development solely from the [Wells] as proposed without
23 additional supply capacity...” (see Attachment “24”). As set forth in the Section above, the
24 Authority’s justification is based on blatantly faulty data and, without any further substantial
25 evidence to support its claim, is the definition of an arbitrary and capricious decision. Also, at
26 the forefront is the Authority’s breach of its contractual obligation “to provide water service as
27

28 ¹¹ See Nev. Const. art. I, § 8(3); see also U.S. Const. amend. V.

1 designated by [Petitioner].”¹² As shown in this Petition, the Authority anticipates violation its
2 contractual obligations, Nevada law, the Nevada Constitution, and the U.S. Constitution.

3 Based on the Lumos Reports, the Development can be sustainably supplied using the
4 Water Rights from the Wells. In the unlikely event an added supply should be required for
5 distant development, other water rights could be utilized – a point which was abundantly clear in
6 the 2015 Discovery. However, the Authority attempts to erase this previous finding as the
7 Discovery no longer identifies these alternative water rights as usable for the Development. In
8 an abrupt and unforeseen fashion, the Authority now demands more water rights to provide
9 municipal service to the Development, all with no rational nexus or substantial evidence
10 supporting its demands. Curiously, the Authority provides no justification as to why its 2015
11 Discovery was incorrect regarding the alternative source and supply, nor does the Authority
12 mention its findings in the Discovery. Without any cited data or documentation justifying the
13 Authority’s change in its position, the Authority’s findings in the Discovery are again the
14 definition of a Capricious decision.

15 Further, the Authority’s decision effectively nullifies a large portion of the Petitioner’s
16 Water Rights. This act, if upheld, is a per se forfeiture of the certificated portion and a
17 cancellation of remaining permitted portion of the Water Rights. Both forfeiture and
18 cancellation of any water right must follow the applicable notice and hearing provisions set forth
19 in NRS Chapters 533 and 534. Most importantly, the State Engineer must preside over either of
20 these proceedings as the Nevada Legislature delegated to the State Engineer the powers
21 necessary to control all the water resources of Nevada. The State Engineer did not delegate any
22 of its powers to the Authority and, therefore, the Authority cannot sua sponte take action which
23 results in a reduction to a person’s property right without following the proper statutory and
24 constitutional framework. The Authority’s willingness to take action to the contrary of both the
25 controlling Statutes and Constitution is cause for concern.

26
27
28

¹² See Attachment “4”.

1 If upheld, the Authority is given the power to take a person’s property right without just
2 compensation – the most chilling outcome imaginable.

3 **C. The Lateral Extent of Area 15 is Not Supported By Any Evidence**

4 The Authority determined that it would initiate an aquifer supply recovery program due
5 to the extensive aquifer drawdown on the Mt. Rose alluvial fan caused by domestic well
6 pumping.¹³ The Authority’s plan consisted of constructing a water treatment plan on White’s
7 Creek (“WCTP”) which the Authority assumed could be used for conjunctive management
8 purposes or a source of supply. To recoup the costs associated with the construction of the
9 WCTP, the Authority chose to identify lands which it would subject to the WSF Charge. The
10 Authority established the “Area 15” service area (*see Attachment “1”, Exhibit E, “Area 15”*),
11 which represents the lands the Authority ultimately subjected to the WSF Charge. Most notably,
12 Area 15 represents land in private ownership but does not include any land owned by the United
13 States of America, the County, or portions of Unit 2D. Also, it includes lands not within the
14 Authority Service Area and includes lands in not only in the Pleasant Valley Hydrographic
15 Basin, but also the Washoe Valley and Truckee Meadows Hydrographic Basins.

16 The Authority’s decision to establish Area 15 is not based on established hydrogeologic
17 principles, but rather title ownership as the sole basis to recoup costs for the WCTP. Had the
18 Authority utilized any scientific evidence, it would have first not included the Truckee Meadows
19 and Washoe Valley Hydrographic Basins in its Area 15, as the Authority has not identified any
20 interbasin flows between the respective basins. Contrary evidence – known all too well to the
21 Authority – are a series of documents relating to a pump test at the Falcon Capital Well (*see*
22 *Serpa Well Pumping Test Report and Assessment of Local Groundwater System* prepared by
23 Confluence Water Resources, LLC, dated June 2018 and further revised October 2018, attached
24 hereto as Attachment “18”, the *Serpa Well Pump Test Analyses, Forward Simulation and*
25 *Groundwater Modeling* Memorandum prepared by the Authority, dated August 2, 2018, attached
26 hereto as Attachment “19”, and the *Review of Serpa Well Aquifer Test Results and Groundwater*

27 ¹³ See 2015-2035 Water System Facility Plan Update, available at [https://tmwa.com/wp-](https://tmwa.com/wp-content/uploads/2019/11/2035-WFP-5-1-19.pdf)
28 [content/uploads/2019/11/2035-WFP-5-1-19.pdf](https://tmwa.com/wp-content/uploads/2019/11/2035-WFP-5-1-19.pdf)

1 *Assessments in the St James Village/Sierra Reflections Project Areas* Memorandum, prepared by
2 Jon Benedict, dated November 12, 2020, attached hereto as Attachment “20”).

3 Further adhering to this known and substantial scientific evidence would have reduced
4 the lateral extent of Area 15 due to boundary conditions in the area of the Development, as
5 identified in the Confluence Water Resources Groundwater Supply and Development (see
6 Attachment “1”, Exhibit F). In disregard to the evidence, the Authority instead demands that the
7 Petitioner pay the Area 15 fee to make up for the Authority’s shortfall in its own funding of the
8 WCTP, brought about only by the Authority’s failure to engage in its own cost-benefit analysis.
9 Subjecting the Petitioner to pay for the WCTP when data shows that pumping from the Wells has
10 no impact on the drawdown associated with the Mt. Rose alluvial fan is yet another arbitrary
11 decision that is an abuse of discretion.

12 **D. The Authority Requires Uneconomic Updates to the Water Facilities**

13 In 1992, Petitioner submitted its TM to the Washoe County Department of Water
14 Resources, whose staff conditioned the Petitioner to either participate monetarily for the major
15 infrastructure that the county would use to serve the entire project or pay water connection fees.
16 Petitioner chose to participate by building and dedicating the major water infrastructure required
17 by the Department of Water Resources, thus eliminating any water connection fees owed to
18 Washoe County. The Department of Water Resources’ Hydrologists then found two wells that
19 would produce sufficient water to meet the demands for the entire project. Washoe County’s
20 Engineering Division contracted out the water storage tank design and two wells and then put the
21 projects out for construction bids. During this approval process, the Department of Water
22 Resources was aware that the Development would be located on the north and south sides of
23 Browns Creek and, using sound engineering judgment, approved a separate water main on each
24 side of the creek. Relying on the County’s engineering justifications, the Petitioner has been
25 developing in accordance with these approved plans ever since.

1 This existing public water system¹⁴ was designed using the accepted engineering
2 judgment of the County as required by the NAC 445A.6673(2). It was not until 1997 that certain
3 provisions of NAC 445A were amended, which included a “Tree system” definition,¹⁵ and
4 generally prohibited new public water systems from utilizing a Tree system design. However,
5 Tree systems would be allowed if sound engineering could be used to justify such system’s
6 construction.¹⁶ Because of the Land’s topography, the County’s Utility Engineering Division
7 utilized sound engineering judgement and a cost/risk and cost/benefit analysis in its TM review
8 to ultimately approve the Tree system.

9 The County’s Engineers determined that constructing a transmission main from one
10 arterial main to the other arterial main, thereby crossing Browns Creek and creating a looped
11 system – as the Authority now demands – could potentially do more harm to the existing wildlife
12 and habitat than it would provide a benefit to the Development. Among other negative aspects,
13 the County’s Engineers found that should the transmission main rupture or break, it would
14 release chlorinated water into Browns Creek and cause unnecessary environmental harm. The
15 County’s Engineers also determined that the exorbitant costs associated with constructing such a
16 transmission main could not be justified simply to ensure a limited number of homes with a
17 guaranteed water supply. In utilizing a Tree system, any required repairs and/or maintenance
18 causing a shut-off in water supply would be resolved in a reasonable time with minimal and
19 negligible impacts to users of the applicable water system.

20 In order to provide added safety mechanisms, the County’s Engineers required internal
21 looping within each arterial main to allow District Health Department approval.¹⁷ Based on the
22 totality of the circumstances present during its review, the County’s engineers determined that
23
24

25 ¹⁴ See NAC 445A.6591.

26 ¹⁵ See NAC 445A.6653.

27 ¹⁶ See NAC 445A.6712.

28 ¹⁷ See NAC 445A.6712(1).

1 the Tree system was able to meet average day demand, maximum day demand, peak hour
2 demand, and the requirements for fire flow and fire demand as required by the NAC.¹⁸

3 Adhering to the County’s previous findings, the Petitioner provided to the Authority the
4 Lumos Reports which specifically identified that the existing public water system could still
5 meet the all the demand requirements for the Lots without abandoning the Tree system design.
6 Surprisingly, the Authority did not provide any information disputing the findings in the Lumos
7 Report and the Confluence Water Resources Report. Most surprisingly, the Authority failed to
8 make any mention of the Lumos Reports or the Confluence Water Resources Report in its
9 Discovery. Instead, the Authority treated the Discovery as its carte blanche opportunity to make
10 unnecessary changes to an existing public water system. This is in opposition to other municipal
11 purveyors who have approved the Lots, notwithstanding the design of the existing public water
12 system. (*See Sewer Will-Serve Letter for St James’s Village 2C-2 and 1H* from the Washoe
13 County Community Services Department Engineering and Capital Projects, dated February 16,
14 2022, attached hereto as Attachments “21” and “22”, respectfully).

15 The Authority failed to use rational engineering judgement in promulgating its Discovery
16 because it did not consider a cost-benefit analysis as was previously performed by the County.
17 For this simple fact, the Development is now uneconomical as the costs associated with the
18 Authority’s demands equate to \$129,096 for each Lot. (*See the Authority’s Retail Water Service*
19 *Area Annexation Agreement*, attached hereto as Attachment “23”). The inability for the
20 Petitioner to continuously develop the Development in an economically viable manner has
21 consequences the reach beyond the Petitioner. Multiple municipal purveyors and agencies
22 anticipate constructing various improvements contingent only upon the Development. With the
23 Authority acting as a stalwart based only upon its whim, the Development’s progress will now be
24 stagnant.

25 **IV. CONCLUSION**

26
27
28


¹⁸ See NAC 445A.6673.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For the reasons stated herein, Petitioner respectfully requests that the Discovery be vacated in its entirety and the Development be subject to the County's approved TM requirements.

Respectfully submitted this 28th day of March, 2022.

HOLLAND & HART LLP

By: 

Timothy A. Lukas, Esq. (NSB 4678)
Bryce C. Alstead, Esq. (NSB 9954)
Evan J. Champa, Esq. (NSB 14041)
5441 Kietzke Lane, 2nd Floor
Reno, Nevada 89511

Attorneys for Petitioner

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Holland & Hart LLP and not
3 a party to, nor interested in, the within action; that on March 28, 2022, a true and correct copy of
4 the foregoing document was served by email, addressed as follows:

5 Stefanie Morris, Esq.
6 TMWA Water Resources Manager
7 1355 Capital Blvd.
8 Reno, NV 89502
9 SMorris@tmwa.com


10 Mark Foree
11 TMWA General Manager
12 1355 Capital Blvd.
13 Reno, NV 89502
14 MForee@tmwa.com

15 *Attorney and General Manager for Truckee Meadows Water Authority*

16 Bonnie Drinkwater, Esq.
17 Drinkwater Eaton Law Offices
18 5421 Kietzke Lane, Ste. 100
19 Reno, NV 89511
20 bdrinkwater@drinkwaterlaw.com

21 *Hearing Officer pursuant to TMWA Rule 8.*

22 Dated this 28th day of March, 2022.

23 
24 _____
25 DIANE TSCHOPP, Legal Specialist,
26 an employee of Holland & Hart LLP

27 18495391_v2