



STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: John Enloe, Operational Strategies Manager
DATE: October 6, 2014
SUBJECT: **Public Hearing, Second Reading and Possible Adoption of Resolution No. 213: A Resolution to Adopt Rule 10 – Special Conditions and Programs, including Mt. Rose-Galena Fan Domestic Well Mitigation Program**

Recommendation

Staff submits for Second Reading and adoption by resolution the proposed new Rule 10 governing Special Conditions and Programs, which establishes the Mt. Rose/Galena Fan Domestic Well Mitigation Program under TMWA Rules, to facilitate the implementation of the pending merger with Washoe County as set forth in Exhibit 1 to the attached Resolution.

Possible Motion: "I move to adopt Resolution 213 and to adopt a new Rule governing Special Conditions and Programs: Mt. Rose - Galena Fan Domestic Well Mitigation Program to be effective upon the Closing Date of the consolidation of Washoe County Community Service Water Utility into TMWA."

INTRODUCTION

This report involves only Agenda Item 6.c.iii -- the proposed adoption of a of a new Rule governing Special Conditions and Programs, which establishes the Mt. Rose - Galena Fan Domestic Well Mitigation Program for a second reading and possible adoption.

In preparation for the merger of Washoe County Community Services Department Water Utility ("WCWU") and the South Truckee Meadows General Improvement District ("STMGID"), staff is recommending changes to TMWA's existing rules and rates, by:

Agenda Item 6.c.i. Amending:

1. Table of Contents
2. Introduction to the Rules
3. Rule 1 Definitions
4. Rule 5 Water System Facilities
5. Rule 7 Dedication of Water Resources and Will-Serve Commitments
6. Rule 9 Service Area Boundaries – Retail

7. Rate Schedule Large Volume Service (LVS)
8. Rate Schedule Firm Standby Partial Requirements (FSPR)

Agenda Item 6.c.i Repealing:

Rule 10 Service Area Boundaries - Wholesale

Agenda Item 6.c.ii Amending:

1. Rate Schedule Water System Facility Charges (WSF)

Agenda Item 6.c.iii Adopting:

1. Rule 10 Mt Rose-Galena Fan Domestic Well Mitigation Program

Agenda Item 6.c.iv. Adopting:

1. Rate Schedule FRMSGID – Former South Truckee Meadows General Improvement District Rates and Charges

Agenda Item 6.c.v. Adopting:

1. Rate Schedule FRMWC – Former Washoe County Water Utility Rates and Charges

The proposed amendments are subject to successful merger. Staff proposes that these changes be adopted now, but that they not become effective until the closing of the Merger, anticipated to occur December 31, 2014. Board review, pursuant to the tentative calendar presented below will lead to final approval of the revisions on October 15, 2014, with the revisions becoming effective upon the actual close of merger.

Background

As presented at the July 16, 2014 TMWA Board meeting, Washoe County's Mt. Rose – Galena Fan Domestic Well Mitigation Program provides for reimbursement of specific well deepening costs or water system connection charges incurred by property owners within the Program Area that experienced or will experience an Unreasonable Adverse Effect as a result of municipal groundwater pumping. TMWA's proposed Mt. Rose – Galena Fan Domestic Well Mitigation Program is based on the existing Washoe County program, and is intended to provide continuity after the merger for domestic well owners in the Mt. Rose Galena Fan area.

A public workshop was conducted by TMWA and the Washoe County Community Services Department on August 26, 2014 to present TMWA's proposed Rule 10, Mt. Rose / Galena Fan Domestic Well Mitigation Program. The workshop included information on the planned water system consolidation and its benefits to the region, the history of Washoe County's Domestic Well Mitigation Program, the status and schedule for adoption of TMWA's new Rule 10, and provided an opportunity for public input, comments, and questions and answers regarding the Program. Approximately 80 residents from the Mt. Rose/Galena Fan area were in attendance.

Summary

The purpose of the workshop was to inform property owners that (1) TMWA was not proposing to change the current Washoe County Domestic Well Mitigation Program and (2) TMWA's new rule will continue the reimbursement benefits after consolidation. The majority of the public comment received was constructive, and raised reasonable concerns and issues related to impacts to domestic wells and the future management and protection of the shared groundwater resource in the Mt. Rose-Galena Fan area. Copies of the comments received are attached.

Several residents voiced concerns / dissatisfaction with the County's existing Program, such as:

- one time only reimbursement for well deepening;
- the statutory requirement to be hooked up to the municipal water system, if available;
- which cost components are covered / not covered under the Program;
- individual circumstances related to past experiences working under the Program.

Others voiced broad concerns relating to the long-term health of the groundwater aquifer, including:

- what commitments will TMWA make to prevent further impacts to domestic wells;
- how long it will take to bring surface water to the area;
- concerns over past land development approvals;
- what is to prevent TMWA from pumping the wells and sending the water out of the area;
- general concerns about surface water quality compared to groundwater;
- drought, water conservation;
- stabilizing water levels, resource sustainability; and
- lack of transparency.

Several residents also requested that TMWA add language to the Rule to incorporate policy language within the Washoe County Ordinance 1470, Article 7.1, A and B. This comment was also voiced at the July 16 TMWA Board meeting as well as at the August 5 Standing Advisory Committee (SAC) meeting. The specific Washoe County language referred to is as follows:

The Board hereby establishes a program to address claims for domestic well mitigation on an individual or programmatic basis necessary to:

- A. *Improve management and protection of groundwater resources;*
- B. *Prevent over-pumping of the Mt. Rose-Galena fan aquifer.*

Staff's concern is that the County's policy language is vague, and that the current Washoe County Domestic Well Mitigation Program, by itself, is a financial mitigation program and does not set forth plans or operating strategies to "prevent over-pumping of the Mt. Rose-Galena fan aquifer". TMWA is equally committed as the County to addressing the management and protection of the groundwater resources. One significant advantage of the Merger is that TMWA can bring additional resources and assets to this issue that the County does not have available. But time is needed to evaluate the science to determine how best to use those resources to help address the issue. At this time and until additional research can be completed, staff is not in a position to offer specific recommended actions to address some of the issues raised in the public

workshop. However, in an attempt to address the public's concerns based on actions that TMWA can commit to, staff offered the following proposed clarifying language to the Rule:

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.

In general, most residents in attendance voiced favor for the existing Washoe County policy language over that proposed by staff.

Lastly, several of the public raised administrative questions related to TMWA assuming the obligations of Washoe County under this Program, and clarification that the Program does not have a termination provision. In accordance with Section 5.5 of the Interlocal Agreement (ILA) Governing the Merger, the current outstanding and recorded obligations of the County under the County's mitigation program will be assumed by TMWA at the closing. These obligations will be identified in the schedules being prepared for the Addendum to the ILA, which will be presented to the TMWA Board and Washoe County for approval prior to the Merger. With respect to termination, once adopted as a Rule, the mitigation program could not be amended or terminated except by the Board of Directors, which could only occur at a duly noticed public meeting following the same public process as the original adoption.

In conclusion, staff recommends the Board adopt this new Rule (to be numbered Rule 10) to accommodate the merger of Washoe County Community Services Department Water Utility into TMWA and to bring the administration of the existing domestic well mitigation program for the Mt Rose/Galena Fan area under TMWA. Staff has set forth a rule that is consistent with the existing Washoe County Program currently in place that details how each domestic well owner in the Mt Rose area whose well is determined to be impaired will be treated and compensated. The Rule defines how TMWA will administer the program and the various obligations/rights of the eligible property owners.

**NEW RULE 10 –
Mt. Rose-Galena Fan
Domestic Well Mitigation
Program**

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 :
 - 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

Added: 1/1/15

- 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).

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.
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, 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:
 - 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

Added: 1/1/15

- c. 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.

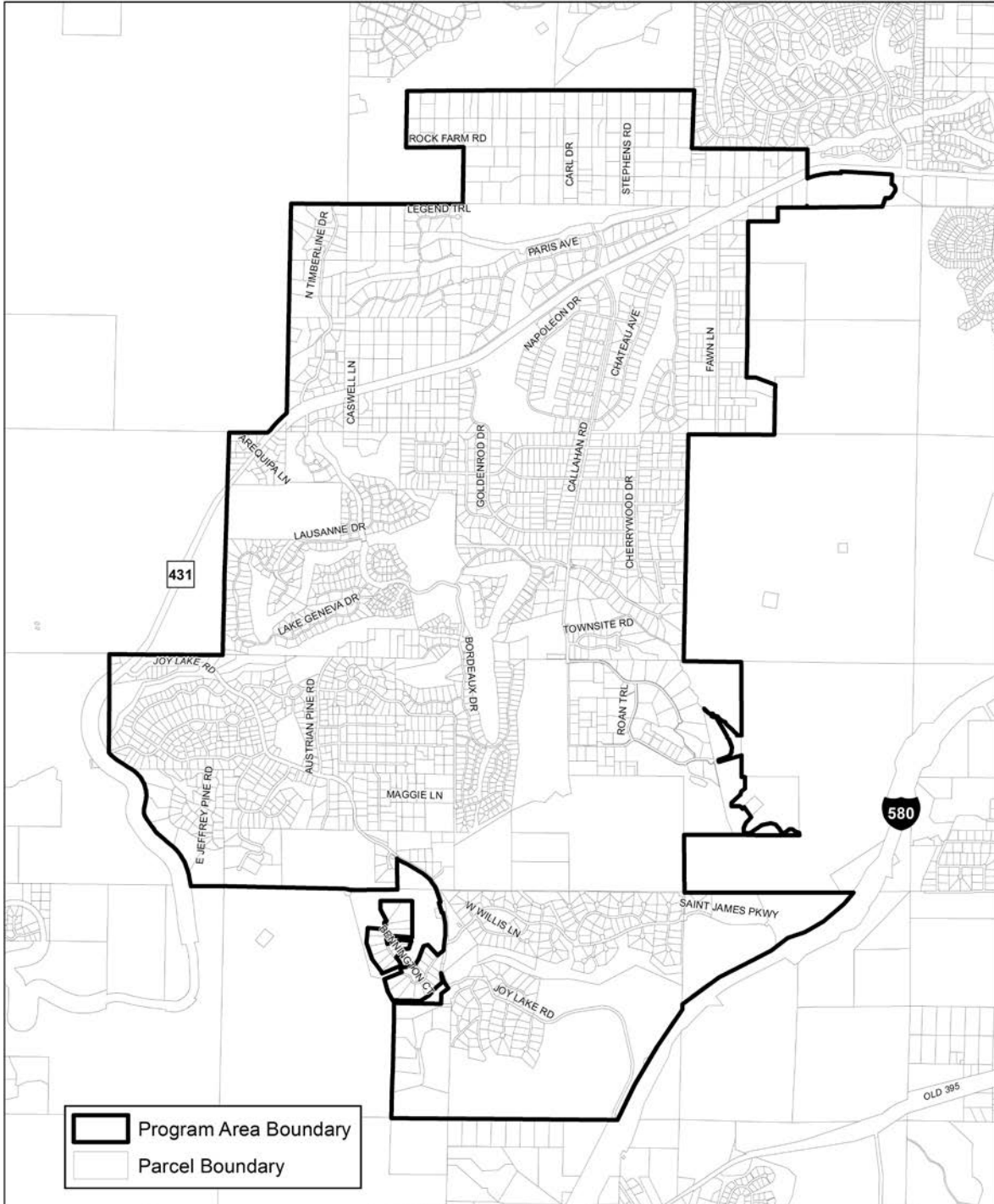
1. Upon the Authority's determination that a property is eligible to receive a mitigation award, the property owner must execute and the Authority shall record in the Office of the County Recorder, Official Records, a document identifying the property or properties entitled to such mitigation award. 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.
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.

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