

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

IN THE MATTER OF APPLICATIONS 81720 )  
AND 82268 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF THE DIAMOND )  
VALLEY HYDROGRAPHIC BASIN (153), )  
EUREKA COUNTY, NEVADA. )

**RULING**  
**#6371**

**GENERAL**

**I.**

Application 81720 was filed on March 30, 2012, by Sadler Ranch LLC, c/o Doug Frazer, to appropriate 6.0 cubic feet per second (cfs), not to exceed 3,462.38 acre-feet annually (afa), of groundwater for irrigation purposes (supplemental). The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.24N., R.52E., M.D.B.&M. The proposed place of use is described as being located within portions of the NE $\frac{1}{4}$ , SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 13, T.24N., R.52E., M.D.B.&M., portions of the SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 18, T.24N., R.53E., M.D.B.&M., the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T.24N., R.53E., M.D.B.&M., portions of the S $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, T.24N., R.53E., M.D.B.&M., portions of the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , portions of the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 23, T.24N., R.52E., M.D.B.&M., portions of Section 24, T.24N., R.52E., M.D.B.&M., portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 25, T.24N., R.52E., M.D.B.&M., a portion of the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.24N., R.52E., M.D.B.&M., portions of the NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 29, T.24N., R.53E., M.D.B.&M., portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 30, T.24N., R.53E., M.D.B.&M., portions of the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 32, T.24N., R.53E., M.D.B.&M., and portions of the S $\frac{1}{2}$  of Section 25, T.24N., R.52E., M.D.B.&M. (1,731.19 acres). Item 12 of the application, which describes the proposed works of diversion, indicates that a groundwater well will be used to provide supplemental resources when water from Big Shipley Spring and tributaries and Indian Camp Springs and tributaries under Proofs of Appropriation V-03289 and V-03290 are not capable of providing sufficient water to irrigate the place of use under the proofs.<sup>1</sup>

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<sup>1</sup> Exhibit No. 9, public administrative hearing before the State Engineer November 18–22, 2013, official records in the Office of the State Engineer. Hereinafter the exhibits and transcript will be referred to solely by the exhibit number or transcript page.

## II.

Application 82268 was filed on November 2, 2012, by Sadler Ranch LLC, c/o Doug Frazer, to change the point of diversion of water claimed to have been appropriated under Proof of Appropriation V-03289. The application seeks to change “the maximum flow of Big Shipley Spring Complex” - not to exceed 7,457.76 afa of groundwater for irrigation and stockwater purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.24N., R.52E., M.D.B.&M. The existing points of diversion are described as Ditch No. 1, Ditch No. 2 and Ditch No. 3, all within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, T.24N., R.52E., M.D.B.&M. The proposed place of use is described as being located within portions of the NE $\frac{1}{4}$ , SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 13, T.24N., R.52E., M.D.B.&M., portions of the SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 18, T.24N., R.53E., M.D.B.&M., the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T.24N., R.53E., M.D.B.&M., portions of the S $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, T.24N., R.53E., M.D.B.&M., the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , portions of the SE $\frac{1}{4}$  of Section 23, T.24N., R.52E., M.D.B.&M., portions of Section 24, T.24N., R.52E., M.D.B.&M., portions of the NW $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 25, T.24N., R.52E., M.D.B.&M., the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.24N., R.52E., M.D.B.&M., portions of the NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  and portions of the SE $\frac{1}{4}$  of Section 29, T.24N., R.53E., M.D.B.&M., portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 30, T.24N., R.53E., M.D.B.&M., the N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 32, T.24N., R.53E., M.D.B.&M. (1,657.28 acres). Items 15 and 16 of the application indicate that Proof of Appropriation V-03289 was filed for the diversion of all water from Big Shipley Spring and tributaries for the irrigation of 1,657.28 acres of land and asserts a duty of 4.5 acre-feet per acre and a total duty of 7,457.76 afa. It further indicates that a well designed to intercept the Big Shipley Spring Complex has been completed and test pumped and that the well is in direct communication with the geologic features that provide water to the Big Shipley Spring Complex.<sup>2</sup>

## III.

Application 81720 was timely protested by Diamond Natural Resources Protection and Conservation Association; Mark Moyle Farms, LLC; Etcheverry Family, Ltd. Partnership, Diamond Cattle Company and Kenneth Benson (jointly); Eureka County; and James E. Gallagher on grounds previously addressed in State Engineer’s Ruling No. 6290.<sup>3</sup>

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<sup>2</sup> Exhibit No. 28.

<sup>3</sup> Exhibit Nos. 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14.

**IV.**

Application 82268 was timely protested by Diamond Cattle Company, Diamond Natural Resources Protection and Conservation Association, Etcheverry Family Ltd. Partnership, Eureka County, James E. and James T. Gallagher, James L. Moyle, Kenneth Benson and Mark Moyle Farms, LLC on grounds previously addressed in State Engineer's Ruling No. 6290.<sup>4</sup>

**V.**

On August 15, 2014, the State Engineer issued Ruling No. 6290, in which he overruled the protests to Applications 81720 and 82268 and approved Permits 81720 and 82268 each for 3 cfs, but not to exceed 975 afa, and with a total combined duty of 975 afa. Ruling No. 6290 also denied Application 81719 as redundant. The granting of the applications was to mitigate the loss of spring discharge necessary to produce the amount of natural historical crop production as may be produced today using modern and efficient irrigation practices.

On September 12, 2014, Sadler Ranch, LLC filed a petition for judicial review with the Seventh Judicial District Court of Nevada pursuant to Nevada Revised Statute (NRS) § 533.450. After briefing and oral argument, on February 10, 2016, the Court issued Findings of Fact, Conclusions of Law and Order Partially Granting Petition for Judicial Review (Order), partially granting the petition and partially affirming the State Engineer. The Court held that:

1. The State Engineer's use of the modern hay production method of calculation of Applicant's mitigation permits is rejected,
2. The case is remanded to the State Engineer to establish Applicant's mitigation right to be calculated based on the amount of water the Applicant appropriated to beneficial use prior to 1905,
3. The State Engineer immediately initiate the administrative process to establish the Applicant's mitigation right consistent with the Order,
4. All evidence entered into the record for Applications 81719, 81720 and 82268 be used by the State Engineer to establish the Applicant's mitigation right without necessity of further hearings before the State Engineer to have that evidence considered,
5. The denial of Application 81719 by State Engineer's Ruling No. 6290 was affirmed, and

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<sup>4</sup> Exhibit Nos. 29, 30, 31, 32, 33, 34, 35 and 36.

6. Any further administrative hearings to comply with the Order be held on or before August 1, 2016.

## **FINDINGS OF FACT**

### **I.**

#### **Bailey's Water Rights and Precedent**

In the Order of remand, the Court discussed another mitigation water right granted in Diamond Valley that was issued to Wilfred Bailey and noted that the water right granted Bailey, Permit 63497, was issued at 2 cfs, not to exceed 504 afa, for the irrigation of 126 acres, which is a duty of 4 af/acre. This was the amount of water claimed by Bailey to have been appropriated from Bailey Spring under his claim of pre-statutory vested water right filed under Proof of Appropriation V-01104, and this amount was not based on a calculation using modern hay production. The Court saw no difference between this permit and the Sadler Ranch applications and found that the Bailey mitigation permit was a precedent on calculating a mitigation water right in Diamond Valley. The Court found that Sadler Ranch was entitled to a mitigation right to be calculated under Nevada's water law and the State Engineer's precedent established in Diamond Valley in the Wilfred Bailey case. It ordered the State Engineer to determine Sadler Ranch's mitigation right based on the amount of water Sadler Ranch appropriated prior to 1905 based on beneficial use and the doctrine of prior appropriation.

Wallace Bailey for Marietta Bailey filed Proof of Appropriation V-01104 in 1912, claiming a pre-statutory vested water right for the irrigation of 128.5 acres of land with crops of meadow grass, alfalfa and grain, and a season of use claimed as April 1 through September 30 of each year.<sup>5</sup> Proof of Appropriation V-01104 noted that the total flow of the spring was about 2 cfs, that all of the water was used every year, and asserted that the claimant was the only user of the water. On November 18, 1912, H.M. Payne of the State Engineer's office conducted a field investigation of the site and observed 100 or more acres in cultivation and a small reservoir to control the flow from the spring, and he stated that it was an old right with no other user.<sup>6</sup> Based on his recommendation, Certificate 140 was issued by the State Engineer for 105 acres of meadow and Certificate 147 was issued for 21 acres of meadow, alfalfa, and grain, for a total of

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<sup>5</sup> File No. V-01104, official records in the Office of the State Engineer.

<sup>6</sup> Exhibit No. 145.

126 acres.<sup>7,8</sup> Both certificates allowed for stockwater and domestic uses and limited the irrigation to a season of April 1 through September 30 of each year.

In contrast, when H.M. Payne visited the Sadler Ranch on November 18, 1912, there was no proof of appropriation on file with the Office of the State Engineer for him to evaluate the veracity of any potential claim. While he recorded his observations and discussions, he made no recommendation on what vested water right there may be at that ranch. He also noted the contention between Sadler and Romano over a portion of the water.<sup>9</sup>

Permit 63497 was issued to Wilfred Bailey in 1998 as supplemental to Proof of Appropriation V-01104 and for 2.0 cfs, not to exceed 504.0 acre-feet per season (afs), for the irrigation of 126 acres, with the terms of the permit indicating that the express purpose of issuing the permit was to replace water historically placed to beneficial use under Proof of Appropriation V-01104, Certificates 140 and 147. The use of the water was specifically limited to the spring discharge area, a seasonal duty was limited to 4 af/acre from all sources, and the period of use was limited to April 1 through September 30 of each year.

Based on the Proof of Beneficial Use filed under Permit 63497, Certificate 16935 was issued in 2008 subject to the terms of the permit (including the term that the express purpose of issuing the permit was to replace water historically placed to beneficial use under Proof of Appropriation V-01104) and as totally supplemental to Proof of Appropriation V-01104 for 2.0 cfs, not to exceed 408.3 afs for the irrigation of 120.713 acres, at a seasonal duty rate not to

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<sup>7</sup> The 1903 and 1905 acts relating to the adjudication procedure relevant to determinations of pre-statutory vested water rights was very simple. The Act vested the State Engineer with the authority to collect and prepare for each stream in the state a list of appropriations of water according to priority, based on a hydrographic survey of such stream and cultural survey of the lands irrigated from the stream, and upon the sworn statement of each appropriator of the facts upon which the claim was based. Following the preparation of such a list, it became the duty of the State Engineer to issue certificates of water rights. The acts of 1903 and 1905 were repealed in 1907 and replaced by a new act. In 1909 and 1911, certain amendments were added to the law, but in 1913 that act was repealed and replaced by a new act. In 1921, the Nevada Supreme Court ruled in the case of *Pitt v. Scrugham*, 44 Nev. 418, 195 P. 1101 (1921), that certain sections of the 1913 act relating to the adjudication procedure were unconstitutional, as they gave the State Engineer certain judicial powers. The result of this ruling was that, although it was applied to the 1913 act, it annulled all adjudication proceedings under the older acts insofar as the earlier acts gave the State Engineer judicial powers in determining the magnitude and extent of water rights. The certificates are now used as historical information as to what the State Engineer believed was the water right at the time the certificate was issued.

<sup>8</sup> File No. V-01104, official records in the Office of the State Engineer.

<sup>9</sup> Exhibit No. 145.

exceed 3.39 acre-feet per acre from all sources. It is also notable that the priority date of the appropriation was the date the application was filed, October 10, 1997, in accordance with Nevada water law.<sup>10</sup>

The State Engineer finds that the Bailey mitigation water right, which the Court opined was precedential for the calculation of the Sadler mitigation applications, has a priority date of October 10, 1997; was supplemental to Bailey's Proof of Appropriation V-01104; was limited to water use from any and all sources; and was limited by the flow rate of the Bailey Spring, the acres irrigated, a duty of 3.39 af/acre and an irrigation season of April 1 through September 30 of each year.

## II.

### **Big Shipley Spring Pre-development Flow Rate**

The State Engineer found in Ruling No. 6290 that the likely pre-groundwater development flow for Big Shipley Spring was between 7 and 8 cfs.<sup>11</sup> In order to perform the analysis on the amount of water placed to beneficial use prior to 1905, a more specific estimate of flow must be ascertained regarding the pre-development flow rate. An examination of all potential impacts from the development of nearby water rights is necessary to determine what activity did or did not contribute to the loss of flow at Big Shipley Spring and when such impact occurred. To evaluate the potential impacts, the springs in western Diamond Valley proximate to Big Shipley Spring are examined. See Attachment 1, map of spring locations. Beginning at Sulphur Springs then moving from south to north until reaching the Siri/Brown Ranch, records in the Office of the State Engineer for each spring or spring complex are examined. Through this examination, findings are made as to whether or not the wells drilled at these locations impacted Big Shipley Spring prior to the major groundwater development in southern Diamond Valley.

Sulphur Springs are located at Sulphur Ranch, which in 1912 was owned by Romano. H.M. Payne reported in 1912 that the springs were small and that all of the waters were appropriated in the summer for the irrigation of grain and alfalfa on land that did not exceed an area of 40 acres.<sup>12</sup> Two claims of pre-statutory vested water rights on Sulphur Springs were filed by James W. and Pamela M. Buffham in 1985. Proof of Appropriation V-04473 claims use of

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<sup>10</sup> File No. 63497, official records in the Office of the State Engineer.

<sup>11</sup> State Engineer's Ruling No. 6290, official records in the Office of the State Engineer, pp. 28 and 34.

<sup>12</sup> Exhibit No. 145.

0.014 cfs of water from Sulphur Springs for stockwater purposes<sup>13</sup> and Proof of Appropriation V-04478 claims use of water from Sulphur Springs and tributaries for the irrigation of 36.28 acres of land for harvest meadow hay.<sup>14</sup> Proof of Appropriation V-04478 notes that the springs started going dry in 1965, were dry by 1972, and remained dry as of January 1985. In *Water Resources Bulletin No. 35*, J. R. Harrill measured 0.09 cfs (60 afa) on November 18, 1965.<sup>15</sup> No early well drilling was identified in this area.

Tule Dam Spring is located north of Sulfur Springs. H.M. Payne makes no report of this spring (his report first addressed Sulphur Springs then followed with Romano Ranch further north).<sup>16</sup> Two claims of pre-statutory vested water rights were filed by James W. and Pamela M. Buffham in 1985, being Proof of Appropriation V-04474 claiming 0.014 cfs for stockwater purposes<sup>17</sup> and Proof of Appropriation V-04480 claiming irrigation of 173 acres of land.<sup>18</sup> Proof of Appropriation V-04480 notes that the springs started going dry in 1965, were dry by 1972, and remained dry as of the filing of the claim in 1985. Harrill measured 0.12 cfs (90 afa) on November 16, 1965.<sup>19</sup> No early well drilling was identified in this area.

Moving north, the Romano Springs are located on the home ranch for Romano as of 1912. H.M. Payne reported a single small spring used for irrigation to the extent of 35 acres, mostly in alfalfa and grain, and fenced natural meadow that may be cut but was not irrigated.<sup>20</sup> Four claims of pre-statutory vested water rights were filed by James W. and Pamela M. Buffham in 1985, being Proof of Appropriation V-04471 claiming 0.014 cfs from Romano Springs No. 1<sup>21</sup> and Proof of Appropriation V-04475 claiming 0.014 cfs from Romano Springs No. 2<sup>22</sup> each for stockwater purposes, Proof of Appropriation V-04476 claiming irrigation of 84.15 acres of land from Romano Springs No. 2,<sup>23</sup> and Proof of Appropriation V-04479 claiming irrigation of 16.77 acres of land from Romano Springs No. 1.<sup>24</sup> These claims all noted that the springs started going

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<sup>13</sup> File No. V-04473, official records in the Office of the State Engineer.

<sup>14</sup> File No. V-04478, official records in the Office of the State Engineer.

<sup>15</sup> Exhibit No. 304, p. 31.

<sup>16</sup> Exhibit No. 145.

<sup>17</sup> File No. V-04474, official records in the Office of the State Engineer.

<sup>18</sup> File No. V-04480, official records in the Office of the State Engineer.

<sup>19</sup> Exhibit No. 304, p. 31.

<sup>20</sup> Exhibit No. 145.

<sup>21</sup> File No. V-04471, official records in the Office of the State Engineer.

<sup>22</sup> File No. V-04475, official records in the Office of the State Engineer.

<sup>23</sup> File No. V-04476, official records in the Office of the State Engineer.

<sup>24</sup> File No. V-04479, official records in the Office of the State Engineer.

dry in 1965, were dry by 1972, and remained dry as of January 1985. Harrill made no mention of these springs in 1965.<sup>25</sup>

Siri Springs No. 1 is just north of the Romano Springs. H.M. Payne made no report of this spring (his report moved directly from discussing Romano Ranch to discussing Bailey Ranch further north).<sup>26</sup> Two claims of pre-statutory vested water rights were filed by James W. and Pamela M. Buffham in 1985, being Proof of Appropriation V-04472 claiming 0.014 cfs for stockwater purposes<sup>27</sup> and Proof of Appropriation V-04477 claiming irrigation of 61.59 acres of land.<sup>28</sup> Proofs of Appropriation V-04472 and V-04477 noted that the springs started going dry in 1965, were dry by 1972, and remained dry as of the filing of the claims in 1985. In Reconnaissance Series Report 6, neither J. R. Harrill nor Thomas E. Eakin reported on this spring.<sup>29,30</sup>

At least ten wells were drilled in the area of Romano Ranch in the 1940s. Eakin reported in 1962 that several flowing wells were drilled on the Romano Ranch “in about 1943” and stated that six of the wells had an initial combined flow of 600 gpm that diminished by 1962 to about 200 gpm.<sup>31</sup> Eakin also described four other wells in the area,<sup>32</sup> two of which have well logs on file with the Office of the State Engineer.<sup>33</sup> Harrill documented 521 gpm from 11 flowing wells in 1965.<sup>34</sup> In his testimony, Wilfred Bailey remarked that 10 wells drilled at Romano Ranch flowed but “didn’t last.”<sup>35</sup>

The State Engineer finds that the flowing wells at the Romano Ranch are directly responsible for drying up Romano Springs at the ranch, and since the flow does not much exceed the spring flows, the local water budget is balanced and the impacts would not likely propagate significantly past the nearest springs, being Tule Dam and Siri #1 (i.e., the flow from the wells is about equal to the flow loss in the springs, so very little if any water is drawn from outside the

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<sup>25</sup> Exhibit No. 304, p. 31.

<sup>26</sup> Exhibit No. 145.

<sup>27</sup> File No. V-04472, official records in the Office of the State Engineer.

<sup>28</sup> File No. V-04477, official records in the Office of the State Engineer.

<sup>29</sup> Exhibit No. 304.

<sup>30</sup> Exhibit No. 303.

<sup>31</sup> Exhibit No. 303, p. 28.

<sup>32</sup> Exhibit No. 303, pp. 48–49.

<sup>33</sup> Well Driller’s Report Log Nos. 1037 and 3708, official records in the Office of the State Engineer.

<sup>34</sup> Exhibit No. 304, pp. 71–72.

<sup>35</sup> Transcript, p. 976.

vicinity of these springs); therefore, these wells are highly unlikely to have impacted Big Shipley Spring, being more than six miles further to the north and beyond several more springs.

The next spring to the north is Bailey Spring. H.M. Payne reported in 1912 that 100 or more cultivated acres were irrigated from the spring at Bailey Ranch, and recommended that a certificate be issued for the pre-statutory vested water right claim on file.<sup>36</sup> One claim of vested right was filed by Wallace Bailey in 1912, being Proof of Appropriation V-01104 claiming irrigation of 128.5 acres of land.<sup>37</sup> Proof of Appropriation V-01104 noted that the total flow of the spring was about two cfs, that all of the water was used every year, and that the claimant was the only user of the water. Harrill measured this spring at 1.14 cfs (820 afa) on November 19, 1965.<sup>38</sup> Based on H.M. Payne's recommendation, Certificate 140 was issued for 105 acres of meadowland and Certificate 147 was issued for 21 acres of meadow, alfalfa, and grain, for a total of 126 acres. Both certificates allowed for stockwater and domestic uses. There were no wells drilled prior to 1965 in this area. In his testimony, Wilfred Bailey stated that Bailey Spring went dry about 25 years after electricity was brought into the valley.<sup>39</sup>

The State Engineer finds that Bailey Spring flow did not measurably decline in the period prior to the mid-1960s and that Romano's artesian wells did not induce drawdown and an associated reduction in the flow at Bailey Spring; therefore, they are extremely unlikely to have caused drawdown and reduction in flow at Big Shipley Spring, which is another two miles further north.

Continuing north, Big Shipley and Indian Camp Springs are found at the Sadler Ranch. H.M. Payne reported in 1912 that the dam for the reservoir at Big Shipley Spring was breached, so a flow measurement could not be made, but still estimated that its flow was at about 8 cfs or a little more. Edgar Sadler informed him that there was nearly 3,000 acres of land in the ranch, about 250 acres of which was alfalfa, grain and garden and the rest being meadow land, in which a part of unknown size being cut for hay and the remainder used for pasture. Payne made no mention of Indian Camp Spring.<sup>40</sup> One claim of a pre-statutory vested right was filed by Robert E. and William Loudy in 1980, being Proof of Appropriation V-03289 claiming irrigation of 1,657.28 acres of land from the waters of Big Shipley Spring.<sup>41</sup> It was filed concurrently with

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<sup>36</sup> Exhibit No. 145.

<sup>37</sup> File No. V-01104, official records in the Office of the State Engineer.

<sup>38</sup> Exhibit No. 304, p. 31.

<sup>39</sup> Transcript, p. 980.

<sup>40</sup> Exhibit No. 145.

<sup>41</sup> Exhibit No. 26.

Proof of Appropriation V-03290 claiming irrigation of 73.91 acres of land from the waters of Indian Camp Spring.<sup>42</sup> Harrill measured the flow of Big Shipley Spring in 1965 and 1966 and reported measurements of 7.19 cfs, 7.01 cfs, and 6.20 cfs, averaging 6.80 cfs (4,900 afa).<sup>43</sup> Wilfred Bailey testified that Tiny Sadler always treated the flow as 3,200 gpm (7.13 cfs).<sup>44</sup>

Approximately 7,200 feet northeast of Big Shipley Spring lies the well described by Well Log No. 5526, which was drilled in 1960 and flowed 400 gpm when drilled.<sup>45</sup> Harrill reported that this flow had declined to 100 gpm in 1965.<sup>46</sup>

The Siri Ranch, later known as the Brown Ranch, is the next ranch further north and is where Eva Spring is located. H.M. Payne reported in 1912 that 50 to 100 cultivated acres were irrigated from the spring.<sup>47</sup> One claim of pre-statutory vested water right was filed by George W. Brown and Rita I. Brown in 1969, being Proof of Appropriation V-02658 claiming irrigation of 81.4 acres of land for alfalfa, grain and wild hay at a flow rate of 2.1 cfs per 100 acres over a six month season.<sup>48</sup> Harrill measured 0.58 cfs (420 afa) on December 7, 1965.<sup>49</sup>

Two wells were drilled at the Siri/Brown Ranch.<sup>50</sup> The well described by Well Log No. 5527 (under Permit 22885), located approximately 20,000 feet north of Shipley Spring, was drilled in 1960 and flowed 400 gpm when drilled.<sup>51</sup> Harrill reported that this flow had declined to 200 gpm in 1965.<sup>52</sup> Beneficial use was established under Permit 22885, and Certificate 7224 was issued for 2.7 cfs, but not to exceed 454.4 afs for the irrigation of 113.6 acres.<sup>53</sup> The well drilled under Permit 30955 (Well Log No. 16548),<sup>54</sup> located 18,000 feet north of Shipley Spring, was authorized for a total combined duty with Permit 22885 not to exceed 2,002.12 afa (as provided in the terms of Permits 50581 and 50582, which changed the places of use of Permits

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<sup>42</sup> Exhibit No. 27.

<sup>43</sup> Exhibit No. 304, p. 31.

<sup>44</sup> Transcript, p. 975.

<sup>45</sup> Well Driller's Report Log No. 5526, official records in the Office of the State Engineer.

<sup>46</sup> Exhibit No. 304, p. 72.

<sup>47</sup> Exhibit No. 145.

<sup>48</sup> File No. V-02658, official records in the Office of the State Engineer.

<sup>49</sup> Exhibit No. 304, p. 31.

<sup>50</sup> See Exhibit No. 607 for the map showing the location of these wells and the lands irrigated under Permit 50581, Certificate 12378 and Permit 50582, Certificate 12379.

<sup>51</sup> Well Driller's Report Log No. 5527, official records in the Office of the State Engineer.

<sup>52</sup> Exhibit No. 304, p. 73.

<sup>53</sup> File No. 22885, official records in the Office of the State Engineer.

<sup>54</sup> Well Driller's Report Log No. 16548, official records in the Office of the State Engineer.

22885 and 30955, respectively, to a common commingled place of use).<sup>55</sup> The well described by Well Log No. 16548 did not flow when drilled, but when proof of beneficial use was established for Permits 50581 and 50582 in 1989, Certificates 12738 and 12739 were issued, respectively, for a total combined duty of 2,002.12 afa for the irrigation of a common 500.53 acres.<sup>50</sup>

In his testimony, Wilfred Bailey stated that the reason Loudy sold Sadler Ranch was that when the Brown Ranch turned on the pumps for their two wells, Loudy's pond was reduced and they expected to lose a main part of Big Shipley Springs.<sup>56</sup>

Based on how the other springs in the area reacted to the drilling of wells in the area of said springs, the State Engineer finds that the wells on the Sadler Ranch and Siri/Brown Ranch area likely have a near one-to-one effect on Eva Spring, Big Shipley Spring, and perhaps Indian Camp Spring. Eva Spring still flowed in 1965, and it is unclear what magnitude of effect the Siri/Brown Ranch area wells might have had on the flow of Eva and Big Shipley Spring prior to 1965. The State Engineer further finds that prior to 1965, a decrease in flow in Big Shipley Spring was caused by artesian flow at the closer Sadler Ranch well (Well Log No. 5526), and that the flow of Big Shipley Spring after this impact was 6.8 cfs (being the arithmetic mean of the three measurements made by Harrill in 1965 - 66).<sup>57</sup>

The State Engineer finds that the flow of Big Shipley Spring was depleted by approximately 100 gpm, or 0.22 cfs, by the adjacent flowing well identified by Well Log No. 5526. This estimate is based on continual artesian flow of the well for 5 years, after which equilibrium conditions were likely being reached. The State Engineer finds that the flow from Big Shipley Spring was 7.02 cfs (6.8 cfs + 0.22 cfs) prior to impacts from the Sadler Ranch and Brown Ranch wells and the major development at the farms in the southern Diamond Valley, which is consistent with the State Engineer's original finding in Ruling No. 6290 that the likely pre-development flow was between 7 and 8 cfs. There is insufficient evidence to determine the magnitude of flow loss at Shipley Spring due to wells at the Siri/Brown Ranch. There is certainly very little likelihood that wells elsewhere in the region, including the Romano Ranch area, caused depletion in the flow of Shipley Spring prior to 1965.

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<sup>55</sup> File Nos. 22885 and 30955, official records in the Office of the State Engineer.

<sup>56</sup> Transcript, p. 974.

<sup>57</sup> Exhibit No. 304, p. 31.

### III.

#### **First Beneficial Uses and Priority Dates for Big Shipley Spring**

There is substantial evidence of beneficial use occurring prior to 1905. The first diversion from Big Shipley Spring was in 1873 by Wm. Shipley.<sup>58</sup> The peak recorded number of livestock prior to March 1, 1905, was a total of 718 head of cows, mules, and horses.<sup>59</sup> The tax rolls also indicate hay presses, mowers, and hay rakes, which are all indicative of harvesting a hay crop.<sup>59</sup> The first diversion of the surplus waters from the lands above by Romano was January 1, 1892, for use on Romano's Lower Field (*see* Attachment 2).<sup>58</sup> There was ice production at the Sadler Ranch every winter beginning prior to 1905, but it is not quantified.<sup>60</sup>

On November 18, 1912, H.M. Payne of the State Engineer's office conducted a field investigation of the Sadler Ranch property. He reported that Sadler Ranch had 250 acres of alfalfa, grain, and garden in production and the remainder of the ranch was meadowland, part of which was cut for hay. Romano received waste water from this irrigation, and water was turned down through Sadler Ranch to reach the Romano lands during the winter. Some of the water reaching Romano's lands was used for irrigation, but the rest flowed off his land to the south and east.<sup>61</sup>

The March 5, 1913, stipulation in *Romano v. Sadler* established the priority dates described above. It set a 5 cfs flow to be supplied to Romano from Shipley Springs between January 1 and April 1, inclusive, so long as it did not leave Sadler with insufficient water for stock and domestic purposes.<sup>58</sup>

Application 2679 was filed by the Huntington and Diamond Valley Stock and Land Company, comprised of some members of the Sadler family during the ownership dispute<sup>62</sup> of the Sadler Ranch amongst the heirs of Governor Sadler after his death.<sup>61,63</sup> The application requested 45 cfs, being all surplus water, for the irrigation of 4,500 acres, with a season of use of March to October, the lands being much in common with current Sadler Ranch lands. The application was denied because Sadler Ranch was already being irrigated by Shipley Spring

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<sup>58</sup> Exhibit No. 138.

<sup>59</sup> Exhibit No. 134.

<sup>60</sup> Exhibit No. 133, p. 13.

<sup>61</sup> Exhibit No. 145.

<sup>62</sup> Exhibit No. 139

<sup>63</sup> Transcript, pp. 197-198.

under the pre-1905 water right and, additionally, because no response was received from the Applicant to a request by the State Engineer to provide evidence against denial.<sup>64</sup>

In 1916, Matilda Eccles inquired with the State Engineer how she might appropriate the 5 cfs of waters she received under the 1913 stipulation by Romano and Sadler. Given the recent denial of Application 2679, the State Engineer was concerned that there was no water to appropriate. However, Mrs. Eccles filed Application 4273, which requested an appropriation for the irrigation of 480 acres with a season of use from January 1 through April 1. After a hearing was held in 1917, the State Engineer agreed to allow the appropriation based on the 1913 stipulation and specifically noted that the permit did not confer any additional rights other than already recognized under the stipulation. The waters appropriated were the same waters appropriated in 1892 by Romano, to which she was successor.<sup>65</sup>

In the 1917 hearing for Application 4273, Matilda Eccles testified that of the 5 cfs received from above, 3.6 was used for Romano's Lower field and 1.2 was being diverted to the 120 acres she intended to "take up" (i.e., seek acquisition through Desert Land Entry). Also in this hearing, Edgar Sadler testified that they had been providing the 5 cfs to Eccles and that they could not help but let the water flow onto the government lands. Permit 4273 was used to establish culture on 120 acres of land for Desert Land Entry. After some clarifying correspondence with the water rights surveyor, the State Engineer issued Certificate 964 for the appropriation of 2.342 cfs, or 702.6 afs, of the waters from Big Shipley Spring for the irrigation of 234.2 acres from January 1 to April 1, inclusive; as stated in the certificate, the date of priority is January 2, 1917.<sup>65,66</sup>

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<sup>64</sup> Exhibit No. 437.

<sup>65</sup> Exhibit No. 141.

<sup>66</sup> Section 1, Chapter XXXXI, Statutes of 1909 applies to certificates under applications filed between February 20, 1909, and March 22, 1913. If the season was fewer than 9 months, then the duty rate was 3.0 af/acre, but if the season is 9 months or more, then the duty rate was 3.0 af/acre for first 5 months from May 15 to October 15, plus 1/2 af for each additional month. Section 11, Chapter 140, Statutes of 1913 applies to certificates under applications filed between March 22, 1913, and March 9, 1945. No duty was established, but the maximum diversion rate was 1.0 cfs per 100 acres. Even though a duty requirement was not placed on those certificates issued after 1913, a review of the official records of the Office of the State Engineer found that the duty rate for certificated irrigation rights in Diamond Valley was 3 af/acre during this time period. There are two small exceptions; if, in order to include these two exceptions, the arithmetic mean of those certificates issued for irrigation rights from 1917 to 1931 is taken, the resulting average duty rate is 3.05 af/acre.

The State Engineer finds that there are three priority dates for the water rights appropriating the waters of Big Shipley Springs: 1873 for the original appropriation for the Sadler Ranch (as it existed prior to the addition of Eccles Ranch); January 1, 1892, for the Eccles Ranch; and January 2, 1917, for Permit 4273, Certificate 964, also for the Eccles Ranch.

#### IV.

#### Flow Rate and Beneficial Use

The Applicant asserts that all of the water flowing from Big Shipley Spring was placed to a beneficial use. In order for the argument to be valid, it is necessary to believe that everywhere that water could be applied, even off of the Ranch, was not only applied, but also continuously and beneficially applied.

First, the State Engineer agrees that there is use of the water throughout the year. The 1913 *Romano v. Sadler* stipulation makes it clear that irrigation was occurring in the months of January, February and March on Romano's Lower Field. It also makes it clear that stockwater and domestic use must have been occurring on Sadler Ranch, because the stipulation explicitly calls out the fact that diversion to Romano's Lower Field could not be to the detriment of these uses on the Sadler Ranch.<sup>67</sup>

Next, an expert witness for Sadler took the position that based on historical accounts, the area of irrigation in his field inspection, and aerial photography that the full flow of the spring was used not only for irrigation, but also ice production, soil augmentation, soil moisture segmentation, and leaching of salts to improve soil chemistry.<sup>68</sup> Also, the witness for Sadler testified that there was leaching to take the salts in the eastern portion of the ranch out into the playa and away from the soils supporting crops, but that this did not have to happen every year.<sup>69</sup> The supporting map for Proof of Appropriation V-03289 was filed by Alan S. Boyack (typically referenced as the Boyack Map).<sup>70</sup> A witness for Sadler testified that on his map Boyack did not include areas outside of the Sadler Ranch property boundary.<sup>71</sup> The witness testified that water flowed off of the deeded lands as depicted in his "Corrected Boyack Map."<sup>72</sup> The witness did not know if irrigation occurred on all lands in the same year.<sup>73</sup>

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<sup>67</sup> Exhibit No. 138.

<sup>68</sup> Transcript pp. 392-3.

<sup>69</sup> Transcript pp. 394-5.

<sup>70</sup> Exhibit No. 112.

<sup>71</sup> Transcript pp. 96-97.

<sup>72</sup> Exhibit No. 114 and Transcript pp. 363-4.

<sup>73</sup> Transcript pp. 472-3.

Further, in a letter dated September 23, 1913, the State Engineer advised the Huntington and Diamond Valley Stock and Land Company that he examined the premises and estimated the amount of water from Big Shipley Springs to be 7 to 8 cfs being transported by ditches to lands irrigated for raising crops, that he was inclined to deny Application 2679 on the grounds that there was no unappropriated water at the source, and that he was allowing 30 days for the applicant to file additional evidence in support of approving the application. In a November 29, 1913, letter from the State Engineer to the Applicant and Protestant to Application 2679, the State Engineer affirmed his decision to deny Application 2679 on the grounds that the waters of Big Shipley Spring were entirely appropriated at that time and also for the reason that the Applicant failed to timely comply with the order to file additional evidence in support of the application.<sup>74</sup> The State Engineer agrees that the waters of Big Shipley Spring are fully appropriated; however, as discussed below, the State Engineer disagrees with the Applicant's interpretation that the diversion rate expanded over the entire year<sup>75</sup> is the amount of water placed to beneficial use by Sadler Ranch prior to 1905.

Finally, there is evidence in the record that water would flow off the ranch or otherwise be rendered unavailable to be placed to beneficial use. In support of the claim that water was used the entire year, the Applicant makes reference to testimony by Reinhold "Reiny" Sadler in his deposition in support of Proof of Appropriation V-03289 in which uses in winter are described. Following the discussion of how the water was applied, a bigger picture begins to develop.

In discussing the springs on Sadler Ranch:<sup>76</sup>

Q ...have they been used for anything other than on the Sadler Ranch?

A No. *I suppose there's [sic] a few places it might run on some government land.*

Q But it's never used by anyone for irrigation or watering stock or anything?

A No. Well, I suppose if it runs clear out of our fields, but any time it hits that alkali flat, the salt changes the water so the cattle don't use it.

Q To your knowledge, no one has ever made a practice to use it?

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<sup>74</sup> Exhibit No. 137.

<sup>75</sup> Diversion rate is the instantaneous volumetric flow rate, expressed in cubic feet per second. When it is "expanded" over a year, it means that a conversion factor of 723.97 acre-feet annually per cubic feet per second is applied. The only way to reach the resulting annual volume is if the water was diverted at that rate every second of the year.

<sup>76</sup> Exhibit No. 340 p. 15.

A No. We have one place where it runs out of our fence, but we own 80 acres of land there, and we have a big pond that cattle water on, but it's on our land.  
(Emphasis added.)

Discussing Big Shipley Spring and that it is located on deeded land:<sup>77</sup>

Q Does it ever flow off deeded land?

A On wet winters....

Q ...in wet winters, it will flow out into the valley and just sit there?

A Uh-huh. Well, that alkali flat most every winter has a pond in it.

Q Yes.

A And it dries up probably in June.

Q Okay.

A But it's *not all* from Big Shipley Spring. It's all from the mountain and everything else."

(Emphasis added.)

They go on discussing Big Shipley Spring.<sup>78</sup>

Q Let's say you don't have a wet winter; where does it normally flow?

A Stays on the ranch all the time.

Q What is it used for?

A This ranch is more or less natural meadows. They are what we call sloughs. The water stays in those sloughs. It's all irrigated. In the winter it gets anywhere from a foot to two feet. When that water evaporates in July and August, we cut the hay."

In discussing what happens with the water after irrigating the fields:<sup>79</sup>

Q And you mentioned a pond. Now before you said it went into sloughs. Is there a pond below the sloughs?

A There's a pond way out on the end of the field where we own 80 acres, if that's the one you are talking about.

Q You mentioned a pond. Are there any other ponds?

A Well, the whole ranch is a pond in the winter.

Q But I mean this is a pond that you use for cattle to water?

A Well, it just overflows on our land on the sides of the fence, but that's like I say, the water winter irrigated, we got to [do] something with that water, it runs all the time. It's not like these creeks coming out of the Rubys, and they dry up. This runs all the time....

Q This pond is a low or pretty shallow pond?

A I suppose two or three feet deep, maybe....

Q ...do you think it was just a natural dip?

A It's a natural dip.

Q Just a natural dip in the ground where the water collects?

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<sup>77</sup> Exhibit No. 340 p.9.

<sup>78</sup> Exhibit No. 340 pp. 10-11.

<sup>79</sup> Exhibit No. 340 pp. 18-19.

A Uh-huh.  
(Emphasis added.)

Then revisiting the topic later:<sup>80</sup>

Q Now prior to 1918 or 1920, when certain portions of the Shipley Springs water was sent down to the Eccles Ranch, had all the Shipley Springs water been used on the Sadler Ranch by your father?

A Yes.

Q By you and your father?

A Uh-huh.

Q Is it true that all the water that now comes out of the same Shipley Spring is used; any water that goes beyond your ranch is just runoff water?

A Yes.

From this deposition it is clear that there were times when water flowed off the Sadler Ranch and was not always beneficially used. Indeed, when discussing that water flows off of fenced land and into a pond on 80 acres they owned, Mr. Sadler states that “we got to [do] something with that water, it runs all the time” and that “it’s not like these creeks coming out of the Rubys” that will dry up, implying that at times the continuous flow becomes a nuisance, and they needed to send it somewhere when it was not being used.

This is corroborated by the proof of beneficial use filing on Permit 4273, Certificate 964, in correspondence between the water right surveyor and the State Engineer. In the course of proving beneficial use for Permit 4273, a map prepared by C.F. De Armond was filed in support of the Proof of Application of Water to Beneficial Use. In a letter dated December 29, 1923, the State Engineer sought clarification about a note on the map that read:<sup>81</sup>

The Area within the dotted line and fence is flooded with water from Big Shipley Spring during the months of January, February and March. The soil is such that the moisture is then held until time for haying.

It was unclear to the State Engineer whether the note referred to the colored area of the map depicting the culture or the area that was not colored. In response, Mr. De Armond sent a letter dated December 31, 1923, that explained how the water was used in this area that would become known as John’s Field:<sup>81</sup>

The entire area within the dotted line and fence is flooded as shown on the map, both the colored and uncolored portions. However the entire area does not consist of meadow, much of it being a short salt grass.

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<sup>80</sup> Exhibit No. 340 p. 29.

<sup>81</sup> File No. 4273, official records in the Office of the State Engineer.

The culture shown does not result from irrigation during months other than those named in the permit and proof. The land is adobe and it is necessary to divert the water away from it after March so that it will be dry enough to cut by haying time. The land is practically level, being a part of the old lake bed.

If the water being delivered was of such quantity that it had to be diverted off of the field to allow for haying, then this was excess beyond the requirement for beneficial use. Likewise, spreading water out on salt grass lying outside the place of use of the water rights is not a beneficial use.

The evidence demonstrates that it is more likely than not that while the water was placed to use over much of the Ranch and throughout the year, the full flow could not always be used beneficially; therefore, the State Engineer finds that the duty of water placed to beneficial use is not the full diversion rate expanded over the entire year, but a lesser amount based on when and how the water was applied.

## V.

### **Quantification of Duty for Big Shipley Spring**

To estimate the duty of water placed to beneficial use prior to 1905, the State Engineer considers a year of irrigation and other uses. See Attachment 2, map illustrating the areas described below.

#### ***Eccles Ranch Irrigation***

A vested water right was established in 1892 for the Romano's Lower Field. Some of that water flowed off onto government land, and in 1917 Matilda Eccles made a "top filing"<sup>82</sup> for use of the same water allowed under the vested water right. This was necessary in order to demonstrate to the land agency that the land entry applicant held a water right that supported the land entry application. Permit 4273 was issued for 4.8 cfs for the irrigation of 480 acres, being the 360 acres of Romano's Lower Field and the 120 acres of Desert Land Entry land for which she was seeking to gain entry. On the supporting map for Application 4273 a note reads, "These lands are irrigated chiefly by flooding during winter and early spring....A vested right is claimed for most of the land so irrigated." With this as evidence of a water right, she was able to gain entry on 120 acres of public land.

With plenty of diversion rate and duty to spare under the permit, there was no reason to prove up on less than the full acreage on Eccles Ranch, so the limit of the beneficial use must

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<sup>82</sup> It is clear from the deposition by Matilda Eccles in File No. 4273 and from the terms of Permit 4273 that Permit 4273 did not confer a new right to the applicant, but only those rights already held in accordance with the *Romano v. Sadler* stipulation (Exhibit No. 138).

have been for 702.6 afs for the irrigation of 234.2 acres as attested to in the Proof of Application of Water to Beneficial Use filed under Permit 4273 and thence reflected on Certificate 964.

The State Engineer finds that Permit 4273 was filed for the same water first appropriated in 1892 for the Romano Lower Fields, and that the Proof of Beneficial Use filing and Certificate 964 issuance confirmed the quantity of water beneficially used, and that additional flow rate allowed under the vested right as established by the *Romano v. Sadler* stipulation was necessary to meet the irrigation requirement of 702.6 acre-feet (af) over 91 days.

### ***Original Sadler Ranch Irrigation***

One approach to determine the plausible beneficial use of water is to consider the growing season for crops in Diamond Valley. The amount of water that could be diverted over the length of time in the growing season would be the limit of the water that could be placed to beneficial use. In *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, growing seasons were determined using weather station data; the values used here are the mean of the growing seasons for the 27 years of record from 1980 to 2006, inclusive.

The lands irrigated by Sadler were between 227.85 acres<sup>83</sup> to 250 acres<sup>58,61</sup> in alfalfa, grain and garden. The remaining lands were in pasture grass or grass hay. Alfalfa hay has the longest growing season at 163 days, while various grains range from 104 to 125 days and garden vegetables are at 101 days. Pasture grass has the next longest season at 158 days, while grass hay is at 144 days.<sup>84</sup> The vast majority of the water was applied to pasture grass and grass hay in the sloughs, so the larger of the two growing seasons is used, being 158 days. The diversion rate of 7.02 cfs is multiplied by 1.98348 AF/cfs/day<sup>85</sup> and then multiplied by 158 days to equal 2,200 af for the season.

### ***Original Sadler Ranch, Pond Storage and Stockwater Use***

In Mr. Sadler's 1976 deposition he discussed a pond:<sup>86</sup>

Q And you mentioned a pond. Now before you said it went into sloughs. Is there a pond below the sloughs?

A There's a pond way out on the end of the field where we own 80 acres, if that's the one you are talking about.

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<sup>83</sup> Exhibit No. 112.

<sup>84</sup> *Evapotranspiration and Net Irrigation Water Requirements for Nevada*, Huntington and Allen, 2010, available online at [http://water.nv.gov/mapping/et/et\\_general.cfm](http://water.nv.gov/mapping/et/et_general.cfm).

<sup>85</sup> The diversion rate of 1 cfs is equal to 723.97 acre-feet per year (afa). To get the diversion rate per day, 723.97 afa is divided by 365 days per year for 1.98348 af/day.

<sup>86</sup> Exhibit No. 340, pp. 18–19.

- Q You mentioned a pond. Are there any other ponds?  
A Well, the whole ranch is a pond in the winter.  
Q But I mean this is a pond that you use for cattle to water?  
A Well, it just overflows on our land on the sides of the fence, but that's like I say, the water winter irrigated, we got to [do] something with that water, it runs all the time....  
Q This pond is a low or pretty shallow pond?  
A I suppose two or three feet deep, maybe....  
Q ...do you think it was just a natural dip?  
A It's a natural dip.  
Q Just a natural dip in the ground where the water collects?  
A Uh-huh.

This is also supported by Mr. Bailey's testimony, where he described how it would take 30 days to fill what he characterized as a "duck pond." This pond was described as outside the fenced area but still on Sadler land. Rather than as a means to store water for irrigation on lower lands, Mr. Bailey characterized this diversion to the pond as waste, but necessary waste when irrigation was not needed "because you had to go someplace with your water" from the continuously flowing spring.<sup>87</sup> Mr. Bailey's testimony stated that it took thirty days to fill that pond and that this occurred prior to beginning to irrigate the alfalfa fields, because it was possible that due to the warm water that the alfalfa would begin growing too soon, making it vulnerable to a frost.<sup>88</sup> In Mr. Sadler's 1976 deposition, he discussed the water flowing outside the fence but onto 80 acres that they owned, and that it was used for stockwater, but he did not provide a particular timing for when this occurred.<sup>89</sup>

There is evidence of stockwater use prior to 1905, including winter consumption.<sup>58,59</sup> The peak recorded number of livestock prior to March 1, 1905, was a total of 718 head of cows, mules, and horses.<sup>59</sup> Assuming these animals were watered over the entire year solely from Big Shipley Springs, the most that they could have consumed at the standard accepted value of 20 gallons per day per head is 16.1 afa.

The State Engineer finds that water filling the pond at the extreme of the ranch was only minimally placed to beneficial use, and that this use is accounted for under the stockwater use.

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<sup>87</sup> Transcript, p. 959.

<sup>88</sup> Transcript, pp. 959-60.

<sup>89</sup> Exhibit No. 340, pp. 15, 18-19.

***Total Beneficial Use Prior to 1905***

Summing the values for the Sadler Ranch irrigation (2,200 afs), Eccles Ranch irrigation (702.6 afs), and stockwater (16.1 afa) uses, the possible beneficial use prior to 1905 is 2,918.7 afa.

The State Engineer finds that 2,918.7 afa is the duty of water from Big Shipley Spring applied to beneficial use prior to 1905, including any conveyance losses. Of this, a 702.6 afs portion has a priority date of January 1, 1892, and the other 2,216.1 afa portion has a priority date of 1873.

The State Engineer finds that 2,918.7 afa constitutes the total amount of water appropriated from Big Shipley Springs; therefore, the total combined duty of water for all water rights with Big Shipley Spring as the source and those underground water rights for mitigation for loss of Big Shipley Spring flow shall not exceed 2,918.7 afa, and the total combined rate of diversion shall not exceed the pre-development flow rate of 7.02 cfs.

This quantification of vested claims on Big Shipley Springs does not constitute an adjudication of the claims that would be found in any matter of determination of the relative rights of the Big Shipley Spring source as provided under NRS §§ 533.090, et seq., but only serves to best estimate the historical use for the purpose of determining the amount of mitigation water to be considered in deciding Applications 81720 and 82268.

**VI.**

**Indian Camp Spring**

Application 81720 requests mitigation for loss of flows not only from Big Shipley Spring and tributaries but also Indian Camp Springs and tributaries under Proofs of Appropriation V-03289 and V-03290.<sup>90</sup>

In State Engineer's Ruling No. 6290, the State Engineer found that there was insufficient evidence to support that 40 acres or more of land was irrigated prior to 1905, and that, at best, only 15 acres were irrigated sometime prior to 1961.

In the Sadler Ranch Opening Brief supporting the petition for judicial review, the Applicant argues that Indian Camp Spring flows should be included in the replacement amounts and denial of replacement for this right was arbitrary.

The State Engineer's finding that there was insufficient evidence to support that any number of acres of land was irrigated prior to 1905 was based on evidence in the record, being the statement by Reiny Sadler that the field irrigated from Indian Camp Spring was 40 acres

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<sup>90</sup> Exhibit No. 9.

since the irrigation was improved in 1961,<sup>91</sup> the confirming statements by Wilfred Bailey in his testimony,<sup>92</sup> and the further statement by Mr. Sadler about 10 to 15 acres being irrigated prior to the 1961 improvements and about some irrigation occurring by Native Americans prior to that.<sup>91</sup>

The Court in its Order of remand did not directly address this State Engineer's finding. However, there is repeated reference to both Big Shipley Spring and Indian Camp Spring in the Order, and the State Engineer finds that some clarification is necessary.

Examining the evidence on record, a few more pertinent facts were identified that were not explicitly called out in State Engineer's Ruling No. 6290. First, in Reiny Sadler's deposition in support of the Proofs of Appropriation V-03289 and V-03290, he states during the discussion of irrigation from Indian Camp Spring:<sup>93</sup>

Then my uncle, when he lived up there, of course, I bought the Eccles Ranch from him. Of course, this land has always been ours. He used this water to irrigate maybe ten or 15 acres of wheat there. Then my earliest memory of it, there used to be a tribe of Indians that lived up there, and they used that water to irrigate some of this land which belonged to our ranch.

The uncle that Reiny Sadler must be referring to is John Eccles, his mother's brother, since that is from whom in 1947 he and Tiny Sadler purchased the Eccles Ranch.<sup>94</sup> John Eccles had acquired it in 1920 from Matilda Eccles.<sup>95</sup> Matilda Eccles acquired the Romano Ranch in 1916<sup>96</sup> prior to filing Application 4273 in 1917.<sup>65</sup>

In her narrative "This Is Grandma," Ethyl Eccles Sadler makes mention of the Native Americans who were living there. They were there at least since her first boy was a baby and a few years after she married Edgar Sadler.<sup>97</sup> She married Edgar Sadler in 1907 and never met Edgar's father, Governor Reinhold Sadler, because he died before they were married in 1906.<sup>98</sup> Thus, Reiny Sadler was born after 1907. Also supporting this date is Reiny Sadler's deposition in which he states that he was born October 27, 1908.<sup>99</sup> These facts mean that in Reiny Sadler's

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<sup>91</sup> Exhibit No. 340, pp.12-13.

<sup>92</sup> Transcript pp. 957, 965-966.

<sup>93</sup> Exhibit No. 340, p. 13.

<sup>94</sup> Exhibit No. 340, pp. 20-22.

<sup>95</sup> File No. 4273, official records in the Office of the State Engineer.

<sup>96</sup> Exhibit No. 103 p. 18 and Transcript p.188.

<sup>97</sup> Exhibit No. 133, pp. 11-13.

<sup>98</sup> Exhibit No. 133, p. 10.

<sup>99</sup> Exhibit No. 340, p. 6.

“earliest memory” of the tribe of Native Americans at Indian Camp Spring had to have been after 1908.

Thus the Native Americans were living at the camp until sometime after 1905, and John Eccles was irrigating from the spring *after* this time, so the 10 to 15 acres he irrigated must have been after 1905.

The State Engineer renews his finding that there is insufficient evidence of beneficial use of water appropriated from Indian Camp Spring prior to 1905; therefore, no mitigation right can be granted for the diminished flows at Indian Camp Spring.

## VII.

### Priority Dates and Total Combined Duty

In State Engineer’s Ruling No. 6290, the State Engineer found that the priority date of the new appropriation mitigation water right, being Permit 81720, is the date the application was filed in the Office of the State Engineer, otherwise the State Engineer would be in violation of NRS §§ 533.355 and 534.080(3) and would be exceeding his authority by adjudicating the water right. The State Engineer also found that the permit terms should reflect the preliminary finding as to the date of priority of the pre-statutory right they mitigate or change.<sup>100</sup>

On remand to the State Engineer, the Court stated that if the Applicant effectively loses its priority date, then it would result in an impairment of the vested rights in violation of NRS § 533.085(1). The State Engineer finds he will continue to take exception to this portion of the Court’s decision as it is not in accordance with the law. While a permit issued under the mitigation application can reflect the priority date of the original appropriation, the court’s instruction to give the permit the original priority is in conflict with the law.

In State Engineer’s Ruling No. 6290, the State Engineer acknowledged the Sadler Ranch position that Permit 82268 is an application to change Proof of Appropriation V-03289 and should retain its priority date, but did not clarify that he agreed that priority dates of change applications retain the priority date of their base right, pursuant to NRS § 533.040(2).<sup>101</sup> The State Engineer finds that when issued, Permit 82268 will retain the priority dates of the base right, Proof of Appropriation V-03289, being 1873 for a 2,216.1 afa portion and January 1, 1892, for the other 702.6 afs portion.

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<sup>100</sup> State Engineer’s Ruling No. 6290, pp. 58–9.

<sup>101</sup> In issuance of Permit 82268, the line on the permit for “Priority Date” showed the date of filing of the application and not the priority date of the base right. This was a typographical error in the generation of the permit and not a determination of the State Engineer.

Permit 81720 is seeking to appropriate groundwater to *mitigate the loss of spring water due to impacts from junior rights*. Since there was insufficient evidence to support the mitigation of Proof of Appropriation V-03290 on Indian Camp Spring, this water right can only serve to mitigate the impacts to Big Shipley Spring water rights. Therefore, the State Engineer finds that Permit 81720 is wholly supplemental to Permit 82268 (the same relationship shared between Bailey's Permit 63497, Certificate 16935 and V-01104). An expert witness for the Applicant testified that Application 81720 would have a total combined duty with Application 82268.<sup>102</sup> The State Engineer finds that although Permit 81720 has a priority date established as its filing date as required by Nevada water law, it acts as an alternate point of diversion for Permit 82268; therefore, the holder of Permit 81720 will be permitted to divert water whenever Permit 82268 is in priority, but not to exceed the total combined duty of all rights on the source. This unique circumstance of being able to divert water under a complementary water right's priority date will be reflected in the terms of Permit 81720.

The State Engineer finds that the total combined duty of water for Permit 4273, Certificate 964 (which still allows for a diversion from Big Shipley Spring from January 1 through April 1 of each year); Permit 81720; Permit 82268; and any remaining discharge from Big Shipley Spring shall not exceed 2,918.7 afa, and the total combined rate of diversion shall not exceed 7.02 cfs and that the priority dates for Permit 4273, Certificate 964 is January 2, 1917, Permit 81720 is March 30, 2012, and Permit 82268 is 1873 for a 2,216.1 afa portion and January 1, 1892, for the remaining 702.6 afa portion.

### CONCLUSIONS OF LAW

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>103</sup>

#### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>104</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or

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<sup>102</sup> Transcript pp. 288 and 443.

<sup>103</sup> NRS Chapters 533 and 534.

<sup>104</sup> NRS § 533.370(2).

D. the proposed use or change threatens to prove detrimental to the public interest.

### III.

Nevada water law provides that nothing contained in Chapter 533 shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.<sup>105</sup>

### IV.

The State Engineer concludes that since the State Engineer must act in accordance with NRS §§ 533.355 and 534.080(3), the priority date for Permit 81720 must be the date of filing, being March 30, 2012. Nevertheless, the permit terms will specifically reflect the priority dates of the rights being mitigated, and if the basin is regulated the mitigation right can be exercised in conformity with the dates of the rights being mitigated. In contrast, the priority date for Permit 82268 must retain the dates of the base right it seeks to change, Proof of Appropriation V-03289, being 1873 for a 2,216.1 afa portion and January 1, 1892, for the remaining 702.6 afs portion, subject to any matter of determination of the relative rights of the of the Big Shipley Spring source as provided under NRS §§ 533.090, et seq.

The State Engineer concludes that since Permit 81720 is totally supplemental to Permit 82268 and will serve as an alternate point of diversion for Permit 82268, a permit term reflecting that water may be diverted under Permit 81720, provided that Permit 82268 is in priority, will function to mitigate any loss of flow to Big Shipley Spring by junior appropriators.

### V.

The State Engineer concludes that the groundwater the Applicant seeks under Application 81720 is water that the Applicant demonstrated was placed to beneficial use prior to 1905 under its senior water right, which has been diminished by groundwater pumping under junior water rights, and that the approval of Application 81720 will not conflict with existing rights.

### RULING

Applications 81720 and 82268 are approved with the following conditions:

1. Subject to any matter of determination of the relative rights of the Big Shipley Spring source as provided under NRS §§ 533.090, et seq.

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<sup>105</sup> NRS § 533.085(1).

2. Permit 82268 is issued to change the point of diversion of all of the waters appropriated under Proof of Appropriation V-03289, for 7.02 cfs, not to exceed 2,918.7 afa, and approval of Permit 82268 abrogates said base right.
3. The priority dates for Permit 82268 are 1873 for a 2,216.1 afa portion and January 1, 1892, for the remaining 702.6 afs portion.
4. The Permit 81720 is issued as a mitigation right for the requested 6.0 cfs for supplemental irrigation purposes, but the duty shall not exceed 2,918.7 afa, and it is issued with the understanding that the point of diversion cannot be moved outside of the spring discharge area as determined by the State Engineer.
5. The priority date for Permit 81720 is March 30, 2012, but Permit 81720 is totally supplemental to Permit 82268 and may be exercised as an alternate point of diversion whenever Permit 82268 is in priority due to the unique nature of Permit 81720 as a mitigation right.
6. The total combined duty of water under Permit 4273, Certificate 964; Permit 81720; and Permit 82268 and of any remaining discharge from Big Shipley Spring shall not exceed 2,918.7 afa.
7. Subject to existing rights and payment of the statutory permit fees.

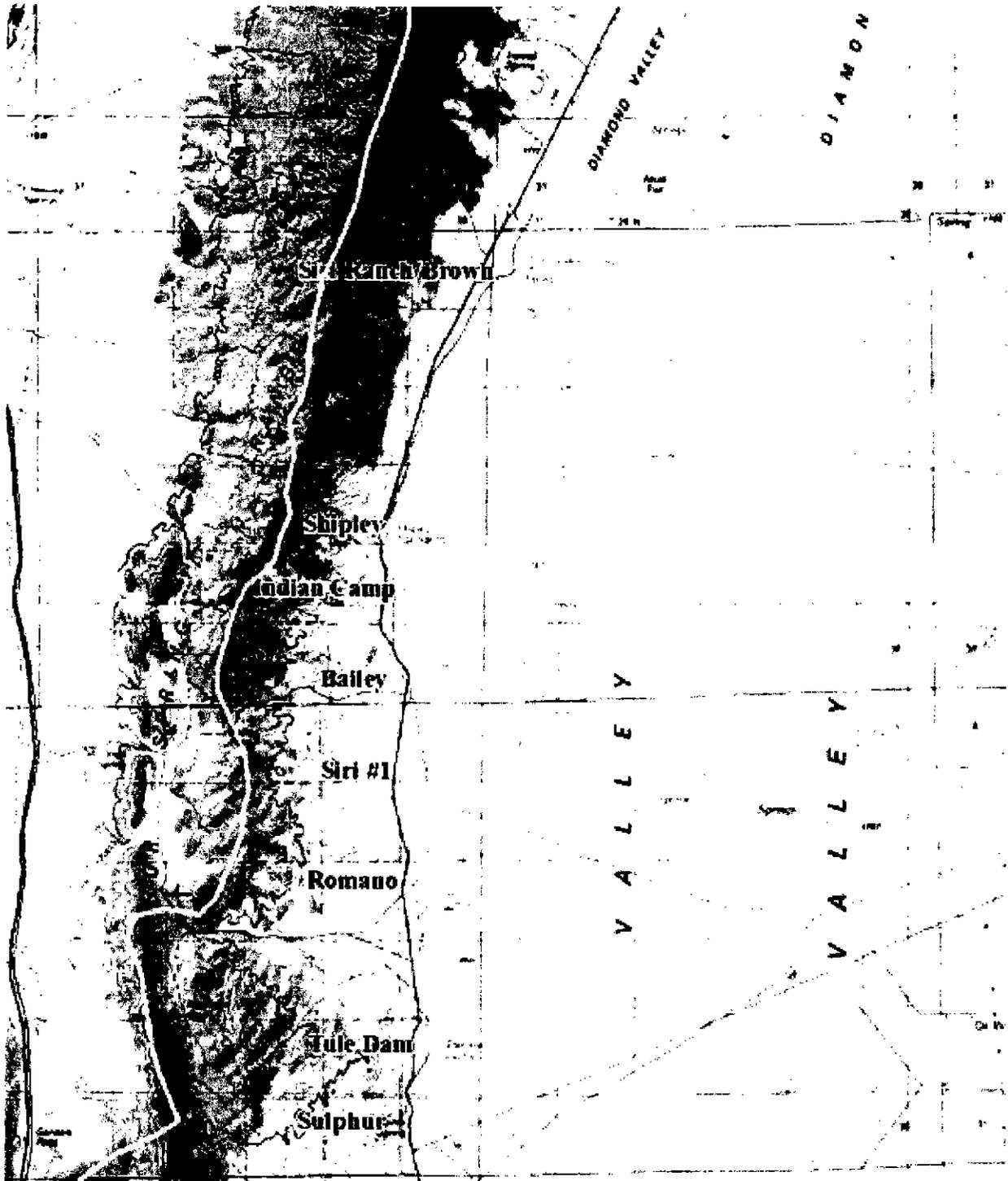
Respectfully submitted,



JASON KING, P.E.  
State Engineer

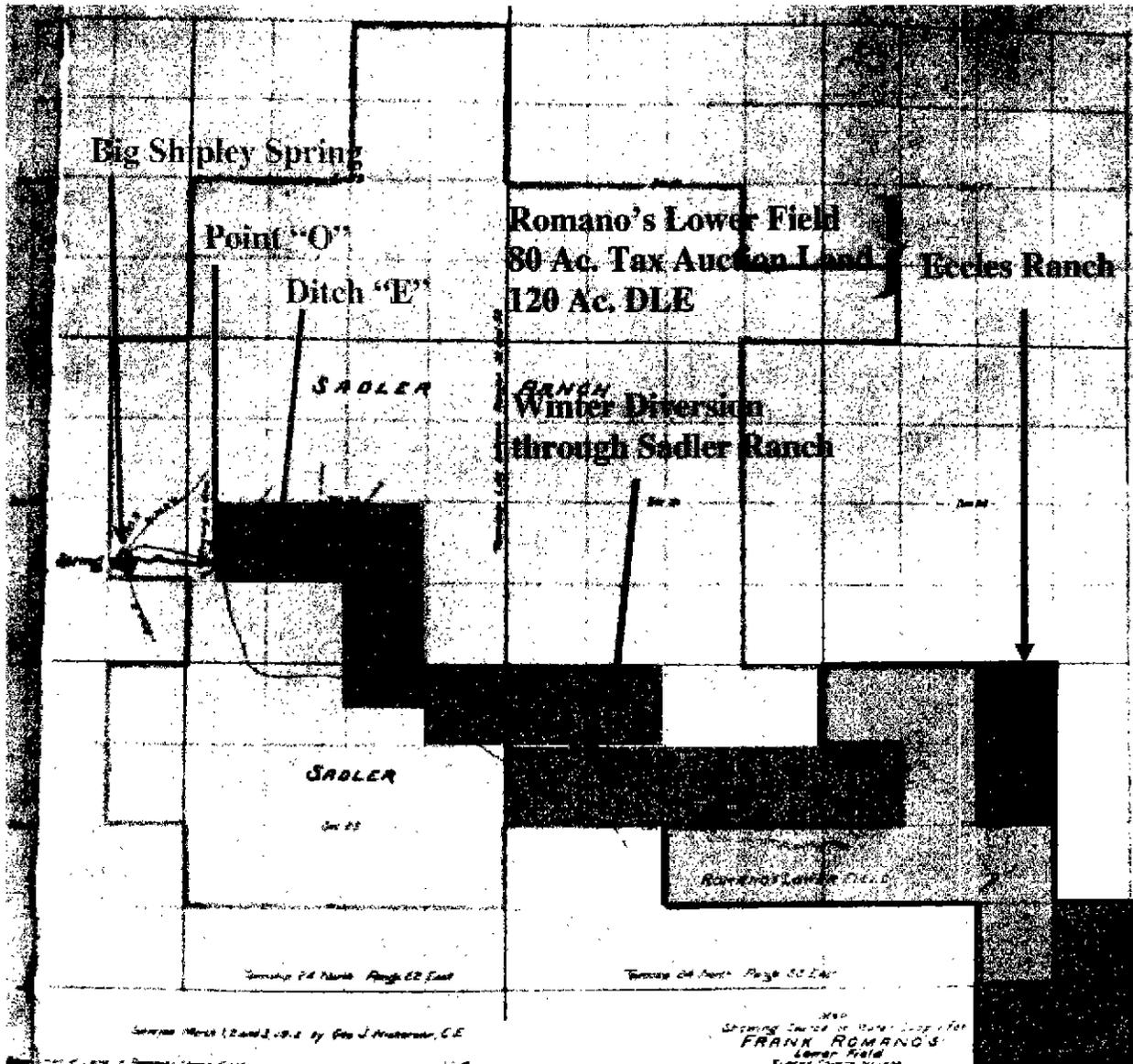
Dated this 1st day of  
November, 2016.

**Attachment 1: Springs and Ranches on the West Side of Diamond Valley**



Labels placed on portion of USGS Topographic Maps

Attachment 2: Components of the Sadler and Eccles Ranches



Composite figure based on Exhibit Nos. 112 and 138, File No. 4273, and the supporting map for Application 4273.