

**VENT\_251**

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**In The Matter Of:**  
*State of Nevada - Division of Water Resources*  
*Applications 81719, 81720 and 81825*

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*Public Hearing*  
*June 03, 2013*

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*Capitol Reporters*  
*515 W. Fourth Street*  
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1 STATE OF NEVADA  
2 DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
3 DIVISION OF WATER RESOURCES  
4 BEFORE SUSAN JOSEPH-TAYLOR, HEARING OFFICER  
5  
6

7 IN THE MATTER OF APPLICATIONS  
8 81719, 81720 and 81825 /

9  
10 TRANSCRIPT OF PROCEEDINGS  
11 PUBLIC HEARING  
12 PRE-HEARING CONFERENCE  
13 MONDAY, JUNE 3, 2013  
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23 Reported by: CAPITOL REPORTERS  
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1 APPEARANCES:  
2 Susan Joseph-Taylor, Chief Hearing Officer  
3 Section of the Division of Water Resources  
4 Malcolm Wilson, Assistant Hearing Officer  
5 Jason King, State Engineer  
6 Kevin Hickenbottom, Deputy State Engineer  
7 Rick Felling, Chief Hydrologist  
8 Steve Walmsley, Water Resource Specialist  
9  
10 For Sadler Ranch, LLC: Taggart & Taggart, Ltd.  
11 By: Paul G. Taggart, Esq.  
12 For Daniel Venturacci: Brent Kolvet, Esq.  
13  
14 For Kenneth Benson,  
15 Diamond Cattle Company  
16 and Etcheverry Family  
17 Limited Partnership: Therese A. Ure, Esq.  
18 For Diamond Natural  
19 Resources Protection and  
20 Conservation Association: Bob Burnham  
21 For James Gallagher: James Gallagher  
22 For Mark Moyle Farms: Mark Moyle  
23 For Eureka County: Karen A. Peterson, Esq.  
24 Also present: Theodore Beutel, Esq.  
25 Chairman Ithurralde  
Vice Chairman Goicoechea  
Dale Bugenig  
Jake Tibbitts

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1 CARSON CITY, NEVADA, MONDAY, JUNE 3, 2013, 1:30 P.M.

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4 THE COURT: Let's be on the record. Good  
5 afternoon. As set forth in the hearing notice of  
6 May 9th, 2013, this is the time and place noticed for a  
7 prehearing conference in the matter of protested applications  
8 81719, 81720 and 81825.

9 For the record, my name is Susan Joseph-Taylor  
10 and I'm a deputy administrator with the Division of Water  
11 Resources. On my left is State Engineer Jason King. On his  
12 left is Deputy State Engineer Kelvin Hickenbottom. And then  
13 chief hydrologist, Rick Felling. I want to introduce those of  
14 you who come here often to Malcolm Wilson, he's our new  
15 assistant hearing officer. And on his right is Steve Walmsley  
16 with our adjudication section.

17 At this time I'll take appearances for the  
18 record. Let's start with the applicant, Sadler Ranches.

19 MR. TAGGART: Good afternoon, Paul Taggart on  
20 behalf of Sadler Ranches.

21 THE COURT: Thank you, Mr. Taggart. For  
22 Daniel Venturacci?

23 MR. KOLVET: Brent Kolvet.

24 THE COURT: Thank you. Welcome back.

25 MR. KOLVET: Thank you.  
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1 THE COURT: Kenneth Benson?  
2 MS. URE: Therese Ure, I'm also representing  
3 Diamond Cattle Company and Etcheverry Family Limited  
4 Partnership.  
5 THE COURT: Thank you. Welcome back, Ms. Ure.  
6 Diamond Natural Resources Protection & Conservation  
7 Association?  
8 MR. BURNHAM: Bob Burnham.  
9 THE COURT: I couldn't hear you, sir.  
10 MR. BURNHAM: Bob Burnham.  
11 THE COURT: Spell your last name, please.  
12 MR. BURNHAM: B-U-R-N-H-A-M.  
13 THE COURT: Thank you. Court reporter has to  
14 hear you too. James Gallagher?  
15 MR. GALLAGHER: Jim Gallagher.  
16 THE COURT: On behalf of yourself. Welcome,  
17 Mr. Gallagher. Dusty Moyle? Hearing no one. James Moyle?  
18 Hearing no one. Mark Moyle Farms?  
19 MR. MOYLE: Mark Moyle representing myself.  
20 THE COURT: Hi, Mr. Moyle. And Mark Moyle  
21 representing yourself also.  
22 MR. MOYLE: Yeah.  
23 THE COURT: As set forth in Nevada Administrative  
24 Code, Chapter --  
25 MS. PETERSON: Excuse me.  
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1 THE COURT: Oh, I'm sorry.  
2 MS. PETERSON: Karen Peterson for Eureka County,  
3 Karen Peterson, Allison MacKenzie law firm. And to my left is  
4 Ted Beutel, the District Attorney. And I also wanted to note  
5 for the record that two of the commissioners are here,  
6 Chairman Goicoechea and Vice Chairman Ithurralde and also  
7 Jake Tibbitts who's the head of natural resources for Eureka  
8 County and also Dale Bugenig, the hydrologist.  
9 THE COURT: I'm not quite sure I have those names  
10 all spelled for the court reporter. Buttel, B-U-T-T-E-L?  
11 MR. BEUTEL: B-E-U-T-E-L, common spelling.  
12 THE COURT: T-E-L. Mr. Ithurralde, is that what  
13 you said, Karen?  
14 MS. PETERSON: Yes.  
15 THE COURT: Could you spell your name for the  
16 court reporter, please?  
17 MR. ITHURRALDE: Yes, I-T-H-U-R-R-A-L-D-E.  
18 THE COURT: Mr. Goicoechea?  
19 MR. GOICOEHEA: G-O-I-C-O-E-C-H-E-A.  
20 THE COURT: Thank you. Do you have one more,  
21 Karen?  
22 MS. PETERSON: Dale Bugenig.  
23 THE COURT: Spell your name for the court  
24 reporter, please?  
25 MR. BUGENIG: B-U-G-E-N-I-G.  
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1 THE COURT: Thank you, gentlemen.  
2 MS. PETERSON: And then Jake Tibbitts.  
3 THE COURT: Jake, hi, you're behind Paul there.  
4 MR. TIBBITTS: T-I-B-B-I-T-T-S.  
5 THE COURT: Welcome. As set forth in Nevada  
6 Administrative Code, Chapter 533 the court reporter will file  
7 an original and one copy of the transcript with the State  
8 Engineer. Anyone wanting a copy of the transcript can make  
9 arrangements with the court reporter. The cost of this  
10 prehearing conference transcript is going to be shared equally  
11 by all the parties.  
12 As provided in Nevada Administrative Code 533,  
13 Section 300 I'll take administrative notice of the files and  
14 records of the office of the State Engineer.  
15 I want to introduce some exhibits to get us  
16 started and it's going to take just a minute, but it will get  
17 us over that hurdle before we ever go to hearing. So we'll  
18 just take a minute, Shellie and I will give you the exhibits.  
19 Exhibit 1 is notice of prehearing conference  
20 dated May 9th, 2013.  
21 Exhibit 2 is State Engineer's order 1226.  
22 Exhibit 3 is application 81719.  
23 Exhibit 4 is Diamond Natural Resources Protection  
24 and Conservation Association protest to application 81719.  
25 Exhibit 5 is the Etcheverry Family Limited  
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1 Partnership, Diamond Cattle Company and Kenneth Benson protest  
2 to application 81719.  
3 Exhibit 6 is Eureka County protest to application  
4 81719.  
5 Exhibit 7 is James Gallagher protest to  
6 application 81719.  
7 Exhibit 8 is Mark Moyle Farms, LLC protest to  
8 application 81719.  
9 Exhibit 9 is application 81720.  
10 Exhibit 10 is Diamond Natural Resources  
11 Protection and Conservation Association protest to application  
12 81720.  
13 Exhibit 11 is a Etcheverry Family Limited  
14 Partnership, Diamond Cattle Company and Kenneth Benson protest  
15 to application 81720.  
16 Exhibit 12 is Eureka County protest to  
17 application 81720.  
18 Exhibit 13 is James Gallagher protest to  
19 application 81720.  
20 Exhibit 14 is Mark Moyle Farms, LLC protest to  
21 application 81720.  
22 Exhibit 15 is application 81825.  
23 Exhibit 16 is Diamond Cattle Company protest to  
24 application 81825.  
25 Exhibit 17 is Dusty Moyle protest to application  
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1 81825.  
2 Exhibit 18 is Etcheverry Family Limited  
3 Partnership, Diamond Cattle Company and Kenneth Benson protest  
4 to application 81825.  
5 Exhibit 19 is Eureka County protest to  
6 application 81825.  
7 Exhibit 20 is James Moyle protest to application  
8 81825.  
9 Exhibit 21, Kenneth Benson protest to application  
10 81825.  
11 Exhibit 22, Mark Moyle protest to application  
12 81825.  
13 Exhibit 23, proof of appropriation number  
14 V-01115.  
15 Exhibit 24, amended proof of appropriation number  
16 V-01115.  
17 Exhibit 25, second amended proof of appropriation  
18 number V-01115.  
19 Exhibit 26, proof of appropriation number  
20 V-03289.  
21 Exhibit 27, proof of appropriation number  
22 V-03290.  
23 I've given everyone a -- for the record, I've  
24 given everyone a copy of this exhibit list and each of the  
25 legal counsel should have found on their table copies of  
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1 Exhibits 1 through 27. Did you all get those?  
2 MR. KOLVET: I did.  
3 THE COURT: Any objection to the admission of  
4 Exhibit 1 through 27?  
5 MR. KOLVET: No objection.  
6 THE COURT: Hearing none, they will be admitted.  
7 (Exhibits 1-27 received.)  
8 THE COURT: I'm training while I'm doing this, so  
9 excuse me one second, Ms. Ure. As you go through a hearing  
10 and anyone identifies an exhibit on the record, I always check  
11 it.  
12 Ms. Ure?  
13 MS. URE: It appears that Exhibit 21 is  
14 duplicative to 18.  
15 THE COURT: No, it's a separate one, Ms. Ure.  
16 MS. URE: Okay. It just -- the reference --  
17 THE COURT: Let's look at 18 and make sure. You  
18 know you filed two.  
19 MS. URE: Oh, okay. I remember.  
20 THE COURT: I remember two.  
21 MS. URE: Thank you.  
22 THE COURT: You're welcome. So we got you all  
23 here to talk about how to proceed with going to hearing on  
24 these applications and protests. Excuse me, I feel like I'm a  
25 little kid down here. Are there any preliminary matters that  
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1 anyone needs to address before we get started talking about  
2 hearing dates, exhibit exchanges?  
3 MS. PETERSON: Yes, I had some preliminary  
4 questions.  
5 THE COURT: Okay.  
6 MS. PETERSON: I was wondering the reason for  
7 having --  
8 THE COURT: You don't need to stand,  
9 Ms. Peterson.  
10 MS. PETERSON: Thank you. Having the hearing on  
11 just the two Sadler applications 81719 and 87120 and the one  
12 Venturacci application 81825 when there have been other  
13 filings.  
14 THE COURT: We discussed that this morning,  
15 Ms. Peterson, if anyone -- I hadn't noticed the Sadler change  
16 app on 82268.  
17 MS. PETERSON: Yes.  
18 THE COURT: And then this morning the State  
19 Engineer brought up applications 82570, 71, 72 and 73. We  
20 have no objection if we want to make it a hearing on all of  
21 those and we anticipated that issue coming up.  
22 MR. KOLVET: That would be our request  
23 subsequently.  
24 THE COURT: Okay.  
25 MR. TAGGART: We -- from the Sadler Ranch we do  
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1 not object to adding 82268 to the hearing. I -- I will point  
2 out though that I think there might be an additional  
3 Protestant to this application in the group that you gave  
4 notice to for this hearing.  
5 MR. KOLVET: I believe that's the same with all  
6 of our applications.  
7 THE STATE ENGINEER: And who would that  
8 Protestant be?  
9 THE COURT: No, they're here this year.  
10 MR. KOLVET: They're here, but they --  
11 THE COURT: She represents Etcheverry.  
12 MR. KOLVET: Right. They're here, but I don't  
13 know that they were noticed on the second application.  
14 THE COURT: Mr. Felling is here --  
15 MR. TAGGART: So I guess if they're here and they  
16 waive any objection to us adding that and any -- you know, I  
17 don't know what rights there are to having notice of a  
18 prehearing conference, but just being careful. I mean, if  
19 they're already here then that can get taken care of.  
20 THE COURT: All those people were noticed. I  
21 have not looked at applications 82570 through 73, but I'm  
22 assuming it would be a lot of the same parties. We would do a  
23 new hearing notice scheduling a hearing and they will be of  
24 course put on that service list and those applications added.  
25 I'm not that concerned about it with everyone having been  
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1 here. Ms. Ure, are you concerned about notice on -- for your  
2 clients on those other applications?

3 MS. URE: No, Your Honor.

4 THE COURT: Thank you. So, Ms. Peterson,  
5 anything else?

6 MS. PETERSON: I do have some questions.

7 THE COURT: Okay.

8 MS. PETERSON: I was wondering because of the  
9 nature of Diamond Valley and it being over appropriated and  
10 these applications being all in the 8100 series or later,  
11 what -- what the priority of these applications would be?

12 THE COURT: Well, you're just reading my mind of  
13 everything I talked about this morning. I think that's a  
14 topic for discussion, I don't know if it's a topic for  
15 briefing for legal argument. For right now under the statute  
16 their priority date is the date of their filing, but if  
17 they're too -- you know, take care of -- I can't think of the  
18 word --

19 THE STATE ENGINEER: Mitigate.

20 THE COURT: -- mitigate some lost senior rights I  
21 think that's a topic that's going to be argued about in this  
22 proceeding. And that's one of the questions we wanted to ask  
23 you is how do you want to approach that issue? I mean, do we  
24 want legal briefing on it, do we want oral argument on it?

25 MR. TAGGART: Well, if the issue's contested.  
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1 THE COURT: Which it is.

2 MR. TAGGART: I assume it is, I'm not sure,  
3 but -- but we definitely are going to take the position that  
4 this is a mitigation water right and that we get the priority  
5 and the duties of the right that's being substituted. And --  
6 and so we anticipate that a large amount of the hearing will  
7 be about the origin of the right, the date, the priority,  
8 the -- the duty, the actual place of use, all of that  
9 information to establish what the original nature of the right  
10 was.

11 And then that was what we're going to be asking  
12 become the -- it's the same right just from a different --  
13 from a pipe instead of a -- from an artesian source. So -- so  
14 our position is going to be it's a substitute right and it has  
15 the same priority.

16 MR. KOLVET: And I would concur in all of that.

17 MS. URE: And we object. I think the underlying  
18 rights are vested claims if I'm not mistaken and those have  
19 not been adjudicated yet. So, in order to establish anything  
20 on the mitigated rights, the duty, the priority I believe that  
21 the underlying rights need to be adjudicated first.

22 THE COURT: So, how do you want to approach  
23 putting that issue into your record? I mean, we just had a  
24 little bit of argument here.

25 But, do you want to wait till we finish the  
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1 hearing to see where you're at on that, to see if you could  
2 come to some agreement on that, to -- is there some way you  
3 want to preserve it in just oral argument? Do you want a  
4 brief, that would be fair or -- I want to make sure you  
5 preserve that issue because you obviously object to it so I  
6 want some ideas on how you'd like to approach it.

7 MR. KOLVET: Well, in our case we submitted proof  
8 of at least -- most of proof, there may be some supplemental  
9 evidence submitted with respect to the basis of our claim for  
10 vested claim, and I don't know what the number is on that.  
11 That evidence is already presented in substantial form to the  
12 State Engineer, it forms the basis of our application. So  
13 it's all kind of tied together, I don't know that it needs a  
14 separate adjudication per se.

15 THE COURT: Well, I'm just trying to focus on the  
16 priority date of the application right now.

17 MR. KOLVET: Right. And that would be part of  
18 the proof that would be supported in the vested claim, so.

19 MS. PETERSON: So, the concern is I know with the  
20 Venturacci vested -- vested claims is that, you know, the  
21 claims were originally filed by Taft and then they were  
22 amended by Thompson and then further amended by Venturacci.  
23 So I don't know which claims the Applicants would be going  
24 forward on and I am not sure without some more formal  
25 procedure how somebody can just keep on amending their claims  
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1 because they -- they could be amending their claims and vested  
2 right all through the hearing. So, that's kind of the issue  
3 of, you know, what they're trying to replace, we need some  
4 definite quantification I guess of what that would be.

5 THE COURT: We don't disagree with you. I saw in  
6 this proceeding that the Applicants are going to have to be  
7 going first. They're going to have to justify the quantities  
8 claimed for put on their evidence as to what supports those  
9 claims and that you Protestants have an opportunity to dispute  
10 that.

11 MS. PETERSON: Well, not --

12 THE COURT: That's one of the things we're going  
13 to talk about is, you know, all these issues and how we go  
14 forward on them.

15 MS. PETERSON: Right. And I guess another issue  
16 if they are going to go forward on replacement claims, then do  
17 they still have their new appropriations for supplemental  
18 claims? These applications are so kind of overlapping and  
19 commingled, I'm not quite sure really what we're going forward  
20 on and what we're not going forward on. Because the first  
21 three that were noticed -- the first three applications, two  
22 for Sadler, one for Venturacci that were noticed for this  
23 are -- are new appropriations but appear to be just  
24 supplemental.

25 THE COURT: I understand that, Ms. Peterson, and  
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1 I have a problem with the word supplemental in these  
2 applications also. And see, the applications were filed  
3 before order 1226 came out which provided for these  
4 replacement waters for vested rights that had gone away. I'm  
5 not sure so sure I see them really as supplemental as opposed  
6 to replacement. Mr. Taggart?

7 MR. TAGGART: I agree with that. Supplemental  
8 groundwater, that term has a specific meaning and the word was  
9 used here not -- you know, it's not supplemental groundwater  
10 rights, but, I mean, it's clearly stated that it's intended to  
11 be a replacement for basically spring and tributary.

12 I think the application's clear what the intent  
13 is. There is the use of the word supplemental resources.  
14 That doesn't say supplemental groundwater, but I -- I -- I  
15 would intend on being very specific that this is not looking  
16 for a supplemental groundwater right. Because that is  
17 something less -- less substantial, less of a priority, less  
18 enforceable than what we need which is a replacement of -- on  
19 Sadler Spring.

20 THE COURT: Well, and one of the things that I  
21 see as a little different in Venturacci applications than the  
22 Sadler, and you can correct me if I'm wrong, Venturacci has  
23 springwater rights that were supplemental to a surface water  
24 source. So that's a little different and that's why I  
25 don't -- I'm not envisioning one hearing where we're all here.  
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1 I'm envisioning we do Sadler and then we go to  
2 Venturacci and then maybe back to back during the same stretch  
3 of time period because all the parties are really the same.  
4 But Venturacci is not part of your hearing, it's your hearing  
5 and your Protestant. So I think I want the record separated  
6 there because some of these issues aren't quite the same. So  
7 I think Mr. Taggart just made clear on the Sadler applications  
8 he doesn't believe they are supplemental in the term of art  
9 that we're used to using, Ms. Peterson, a groundwater right  
10 supplemental to a surface water or supplemental to each other.

11 My understanding it's a -- really what they're  
12 applying for is a standalone water right replacement.

13 THE STATE ENGINEER: I call it -- I call it a  
14 mitigation right. If that's not the right terminology that's  
15 fine, we can come up with the terminology we like. But yeah,  
16 it's not a supplemental right, it's a mitigation right. And  
17 I'm trying -- go ahead, Mr. Kolvet.

18 MR. KOLVET: I was just going to say that I echo  
19 what has just been said about that. Our intent was to apply  
20 for groundwater rights to replace the vested claims that have  
21 been lost in the context of mitigating those losses. And so  
22 from our standpoint those rights are basically the same as  
23 what's being sought on the Sadler side.

24 So again, when some of these applications went  
25 out the order had not been yet issued and so we were limited  
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1 as to what we could apply for. Now, I think it's clear what  
2 we're seeking is what is being allowed under that order.

3 THE STATE ENGINEER: Back to your original  
4 question, Ms. Peterson, so wouldn't your client be looking --  
5 understanding what was just discussed, wouldn't your client  
6 then be looking at the most recent I guess amended claim in  
7 terms of what they're asking for and how you're going to  
8 prepare your case? You're asking which one you should be  
9 looking at; is that correct?

10 MS. PETERSON: For Venturacci, right. That's --

11 THE STATE ENGINEER: Right.

12 MS. PETERSON: I mean, it's -- I don't know, they  
13 keep on amending it. So I don't know if they're going to file  
14 another amended claim. I think that's the concern.

15 THE COURT: I think that's real fair, Ms.  
16 Peterson, if we're going to hearing on the second amended  
17 proof of appropriation V01115, which is Exhibit 25, there has  
18 to be a cutoff point on amending these from going forward.

19 MR. KOLVET: I believe that the last amendment is  
20 what you have to have a target for. It's my intent to put on  
21 additional proof related to that amended claim as to  
22 justifying the amount of water being sought at any point. At  
23 this point I have no intent of amending it further as to the  
24 amount of water.

25 THE COURT: Yeah, and I don't think I'd allow it  
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1 at this point, we're going forward on --

2 MR. KOLVET: Well, and that's fine because we  
3 don't intend to do anything different. But the proof that  
4 will be presented is subject to being fleshed out as we go  
5 forward.

6 THE COURT: Correct. But that's a fair question,  
7 you can't have an amendment in the middle of a hearing.

8 MR. KOLVET: We won't do that.

9 THE COURT: Thank you.

10 MR. KOLVET: And you won't let me do that.

11 THE COURT: That's correct.

12 MS. URE: So in a sense then we're going to  
13 adjudicate that vested claim within the hearing because my  
14 concern is that so you won't let them amend it during the  
15 hearing but sometime in the future if the basin gets called  
16 for adjudication on the stream water then at that time are  
17 they going to amend it?

18 THE COURT: They might be able to. We're going  
19 to look at the quality, the evidence that supports that claim.  
20 It is not a formal adjudication so if an adjudication were  
21 started I would think --

22 THE STATE ENGINEER: Right.

23 THE COURT: -- they could amend the claim.

24 THE STATE ENGINEER: And if, if these  
25 applications move forward and they happen to get permitted  
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1 there will be a permit term that we will say that they're  
2 subject to future adjudications. And everything that process  
3 brings to it.

4 MS. PETERSON: So, is there an intent, just so  
5 I'm clear, I don't know if there's other users on any of these  
6 streams or springs. Is everybody going to be called in or is  
7 it just these applications?

8 THE COURT: Just these applications. We're not  
9 starting basin wide adjudication calling for proofs.

10 THE STATE ENGINEER: I don't know if this helps  
11 or not, but our office has issued change permits before on  
12 vested claims on adjudicated rights, depending on the strength  
13 of those vested claims. So, this is another -- I don't know  
14 how many times you've done it, not a whole lot, but we have  
15 done it and this is another one of those before us that have  
16 been protested.

17 MS. PETERSON: And it was a change application?

18 THE STATE ENGINEER: Oh, yes.

19 MS. PETERSON: Okay. And just another question.

20 THE STATE ENGINEER: Sure.

21 MS. PETERSON: Is it -- was it a change  
22 application for a groundwater source to be used to replace the  
23 surface water source or was it a change -- a change  
24 application to change a point of diversion on a surface water  
25 source to a different, you know, point of diversion on the  
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1 surface water?

2 THE STATE ENGINEER: That's a good question,  
3 Ms. Peterson, I -- the ones that I remember were changes of  
4 like points of diversion.

5 MS. PETERSON: On the same surface water source?

6 THE STATE ENGINEER: Correct.

7 MS. PETERSON: Right. Yeah, I just was wondering  
8 what the procedure was going to be because these are so  
9 unusual, these applications.

10 THE COURT: We agree, that's why we're all here  
11 trying to talk about it and figure out how we're moving  
12 forward. There have been -- I -- I don't think we can answer  
13 in a vacuum what few changes on vested sources there have  
14 been, but they must have had a pretty high standard of  
15 evidence to convince that they were valid claims and the  
16 quantities requested and they weren't adjudicated.

17 MS. PETERSON: I would like an opportunity to  
18 raise some legal issues regarding, you know, whether you can  
19 grant a replacement on a claim that hasn't been adjudicated.

20 THE COURT: Um-hum.

21 MS. PETERSON: Those kind of issues.

22 THE COURT: Okay.

23 MS. PETERSON: And so I would like that  
24 opportunity, because I don't know if for some reason the legal  
25 issues would maybe take away the need for an evidentiary  
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1 hearing. So, I just throw that out there as it seems  
2 procedurally that would be the way to go is to try to get  
3 those legal issues out of the way.

4 THE COURT: I wouldn't disagree with you. So, I  
5 don't know if we want to try and work backwards then from if  
6 we go to hearing, here's a hearing date and I have some  
7 proposed hearing dates in October, November and then work  
8 backwards to legal briefing before then. Because I  
9 anticipated you were going to want to do some legal briefing  
10 on some of these issues.

11 MS. PETERSON: Okay.

12 THE COURT: And we completely understand this is  
13 novel, but we're trying to deal with an unusual situation too.

14 MS. PETERSON: Right. So of course being from  
15 Eureka we would request that any hearing not be held during  
16 the irrigation season.

17 THE COURT: That's why I have October, November.

18 MS. PETERSON: Thank you.

19 THE COURT: And it's going to be here, so.

20 MS. PETERSON: Oh, it's not going to be in  
21 Eureka?

22 THE COURT: No, it's here.

23 MS. PETERSON: I did want to ask for that as  
24 well.

25 THE COURT: You already did. It's in your  
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1 protest. No, it will be here.

2 MS. PETERSON: Okay.

3 THE COURT: So let me give you some dates that I  
4 have proposed. October 14th through -- October 7th through 9,  
5 14 to 16, 21st to 23rd and then if we need a whole week I have  
6 to go all the way to November 18th through 22nd, my hearing  
7 room has kind of gotten booked. And that's right before  
8 Thanksgiving. I seem to do things with you right before  
9 Thanksgiving. He's shaking his head, my wife is going to kill  
10 me.

11 MR. TAGGART: This was going to be the year we  
12 weren't going.

13 MR. KOLVET: The October dates don't work on my  
14 calendar. I've got trial the first week of October, that is a  
15 carryover from a trial starting in September. So if it goes  
16 it's going to be a five-week trial. I've got a wedding for my  
17 son on October 19th down at Santa Barbara so I will not be  
18 available that week.

19 The November 18th date looks great for me on my  
20 calendar.

21 THE COURT: How many days do you think we need to  
22 set this for hearing?

23 MR. KOLVET: Well, I was going to comment on what  
24 you said earlier as being two separate. We'd kind of like to  
25 be part of that, especially if there's no hydrology, we get to  
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1 back it with respect to the proofs on the vested claims.  
2 THE COURT: You lost me there.  
3 MR. KOLVET: Well, there doesn't appear to be an  
4 issue in this case that there's an impact on our water rights,  
5 the vested claims system in pumping in the valley; right? If  
6 there's going to be an issue about that then that takes into  
7 account some hydrology testimony and things like that. If  
8 that's not going to be a serious objection in this case we  
9 could probably shorten it up to the vested portion and we  
10 could just basically go one right after the other, Sadler  
11 first, Thompson second.

12 THE COURT: Actually, Eureka County's protest  
13 said they do not challenge the existence of the vested right  
14 claims. And Eureka County, are you going to be challenging  
15 that the groundwater pumping affected these vested right  
16 claims? I don't know if you heard what Mr. Kolvet was saying,  
17 Ms. Peterson.

18 MS. PETERSON: You know what, I didn't hear what  
19 he said.

20 MR. KOLVET: I'm sorry.

21 THE COURT: Yeah, go ahead and repeat it.

22 MR. KOLVET: Yeah, my point was we were talking  
23 about the time how long this hearing would take, one of the  
24 issues is what's going to be involved in the hearing. And  
25 I -- in looking and quickly, I didn't study all of the  
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1 protests, but it doesn't appear that there's a whole lot of  
2 contention that the pumping hasn't had an effect on the vested  
3 claims. If that's going to be the case we could concentrate  
4 on the nature of the vested claim and the amount as to a  
5 hearing and that would dictate how long it would be.

6 If we have to bring in the hydrology experts and  
7 do all of that testimony that lengthens that out. And I was  
8 just curious as to whether that was going to be the case or  
9 not.

10 THE COURT: I'm not sure that was even raised as  
11 a protest issue.

12 MR. KOLVET: I don't think it really was.

13 THE COURT: That anyone was disputing that, so.

14 MR. KOLVET: So if that's the case we're dealing  
15 primarily with the amount of vested claim that each of the  
16 Applicants has and I was suggesting that we have those back to  
17 back. I mean --

18 THE COURT: That's what I was planning.

19 MR. KOLVET: Yeah, one right after the other, so.

20 THE COURT: Or just you're not part of Sadler's  
21 case.

22 MR. KOLVET: No, but we'd be very interested in  
23 Sadler's case obviously.

24 MS. PETERSON: I -- you know, today is the first  
25 I've heard about them putting on all their evidence about  
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1 their claims of vested rights. And I think there are --  
2 there's a lot of history here. I think there's a long time  
3 period when these water rights weren't pumped or used at all.  
4 And so there's probably going to be a lot of information  
5 related to that. And there might be some issues as to what  
6 groundwater pumping you're saying impacted your rights.  
7 Because I don't know that these rights have been used very  
8 frequently.

9 THE COURT: Which rights, Ms. Peterson?

10 MS. PETERSON: These claims of vested rights.

11 THE STATE ENGINEER: Both?

12 MS. PETERSON: Yes.

13 THE COURT: Well, the only abandonment claim is  
14 an abandonment claim to the Sadler Ranches, ones in the  
15 protest. I don't believe there's any claim of abandonment to  
16 the Venturacci vested rights in any protest.

17 MS. PETERSON: I think our protest is pretty  
18 broad. But we didn't even know exactly what -- because of  
19 these applications the way they were filed, we didn't even  
20 know for sure exactly what the points of diversion were or  
21 what the amounts of diversion were, what the quantity of water  
22 was. They're pretty broad. We can -- we can show that to you  
23 if you need to know that.

24 THE COURT: Well, application 81719 has a  
25 diversion rate and a total duty, so --  
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1 MS. PETERSON: That's one of the supplemental --  
2 notwithstanding what -- what State Engineer just said today  
3 about what we're going to call these. I mean, they were filed  
4 as a new appropriation supplemental divested 32893290. So of  
5 course when we were drafting our protest we had to assume that  
6 that's what they meant, the water was supplemental to the  
7 vested claims.

8 And we raised a lot of issues about the quantity  
9 of water that really should be subject to the vested claims.  
10 And I think there is some language in there about if it had  
11 been used.

12 THE COURT: Yeah, Venturacci just filed for a  
13 diversion rate and acreage. And -- and the remark says it  
14 would be applied to the land in a supplemental manner. So I  
15 can -- I can see with that one, let me look at your protest  
16 here real quickly.

17 MS. PETERSON: I mean, if you're taking into  
18 account all the records that are in State Engineer's office,  
19 there's -- there's plenty of information there about the use  
20 and nonuse.

21 THE COURT: I'm just trying to see if you raised  
22 the forfeiture claim on abandonment -- it wouldn't be  
23 forfeiture, an abandonment claim. And I don't really see it  
24 in your protest. You do talk about the quantity being applied  
25 for --

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1 MS. PETERSON: Right.  
2 THE COURT: -- those sorts of things. So I don't  
3 know that I'd --  
4 MS. PETERSON: The new applications I'm pretty  
5 sure it says the State Engineer doesn't have authority to  
6 grant these applications.  
7 THE COURT: And I have not looked at those  
8 protests, so --  
9 MS. PETERSON: Those are the replacement water  
10 applications.  
11 THE COURT: At --  
12 MS. PETERSON: 70 -- 82570 through 82573.  
13 MS. URE: We also raised a lot of issues about  
14 just the groundwater table in general and the lowering on the  
15 new applications thinking they were supplemental. So I think  
16 based on that there may be some hydrology questions.  
17 THE COURT: I don't think anybody's disputing the  
18 groundwater levels dropping this year, I don't know that we  
19 really need a lot of testimony or evidence on that. Why would  
20 we need that?  
21 MS. PETERSON: Well, don't you think they need to  
22 show that their water rights have been impacted so that this  
23 is truly replacement water? I think part of their application  
24 in the order, if we're going to go by Diamond Valley order  
25 1226, it says that the applications have to satisfy their  
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1 criteria found in NRS Chapter 533 and 534.  
2 THE COURT: Good point.  
3 MS. PETERSON: And then you're only going to  
4 grant applications to mitigate senior surface water rights  
5 that have been impacted by groundwater pumping under junior  
6 water rights. It would seem to me if they're relying on  
7 number 4 exceptions under the order they would have to prove  
8 that.  
9 MR. TAGGART: Well, if it's contested we'll have  
10 to prove it.  
11 MS. PETERSON: At this point it's contested.  
12 MR. KOLVET: Well, then in that case --  
13 THE COURT: Guys, don't talk over each other  
14 please, we've got a court reporter.  
15 MR. KOLVET: I'm sorry. Then in that case I  
16 would ask that they go first to show how it is not impacted,  
17 that's their basis of their -- their protest. We're  
18 contending it is impacting and we're asking for those water  
19 rights so as to hydrology I'd ask that they go first.  
20 THE COURT: I don't think so. So I'm back to  
21 we're going to go back to November and we're going to take the  
22 full week. So our hearing dates are November 18th through  
23 22nd. You're smiling at me, you haven't opened your mouth  
24 yet.  
25 MR. TAGGART: That's fine with me.  
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1 THE COURT: Okay. I try to work with you all,  
2 you haven't said anything. I know you try a vacation with  
3 your family then, Mr. Taggart, isn't it usually after  
4 Thanksgiving?  
5 MR. TAGGART: Well, it's that week but --  
6 THE COURT: I've worked with you before, I'm  
7 willing to work with you.  
8 THE STATE ENGINEER: When is Thanksgiving?  
9 THE COURT: The week after that.  
10 MS. PETERSON: I mean, is there any -- I don't  
11 know how long the vacation is, but, I mean, is there time in  
12 December?  
13 THE COURT: I -- I didn't go out that far because  
14 we were planning on doing it this fall, but, you know, I'm  
15 going to work with you guys.  
16 MS. PETERSON: I mean, if it's better for  
17 everybody.  
18 THE COURT: But I've been having problems with my  
19 hearing room getting booked by other people and finding a  
20 whole week. Would you please go grab the hearing room  
21 calendar, Malcolm? Thank you, Malcolm.  
22 MR. KOLVET: Are there any other dates in  
23 November?  
24 THE COURT: Not if I'm going to go a full week,  
25 unless I try to kick somebody out of here the week before  
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1 that.  
2 MR. TAGGART: We can do the 18th through the 22nd  
3 of November.  
4 THE COURT: I have the same problems in December.  
5 I've let people book this room in the middle of the week and  
6 that's not happening anymore. That first week in December is  
7 wide open, does that work better for you, Mr. Taggart, the 2nd  
8 to the 6th?  
9 MR. TAGGART: Not really, I mean, I think the  
10 18th through the 22nd is fine. If I'm the only reason I'm the  
11 problem and we don't have a problem with that.  
12 THE COURT: Okay.  
13 MS. URE: Either is fine with me.  
14 MR. KOLVET: We prefer the November date.  
15 THE COURT: Oh, you already told me you're busy,  
16 I'm not going to do October.  
17 MR. KOLVET: No, no, no. I said I prefer the  
18 November date as opposed to the December date.  
19 THE COURT: Oh, okay. Okay. November 18th  
20 through 22nd. If we go to hearing that's when we're going to  
21 hearing. Depending on prehearing motions.  
22 So now let's work our -- okay. Mac, I got to  
23 make sure I have a calendar. So now let's work our way  
24 backwards. I'd like to work from evidentiary -- did I say  
25 18th through the 22nd?  
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1 MR. TAGGART: Could I ask for a clarification if  
2 you're going to talk about evidence submittals?

3 THE COURT: Sure.

4 MR. TAGGART: I just want -- want to make sure  
5 I'm clear on the discussion that happened earlier, is we're  
6 going to submit evidence that goes to the vested claim. We've  
7 submitted a vested claim, it's in your records, but the point  
8 of the hearing is to establish that information. I don't  
9 think we can change the quantity that we're asking for, but  
10 we're going to have information that's going to support that  
11 vested claim that's been filed.

12 I want to make sure we're all comfortable with  
13 that and we don't get a motion in limine or something when we  
14 file what we intend to file. So that's why I'm asking for  
15 clarity on that right now.

16 THE COURT: Well, I think we need clarity on  
17 several issues. Ms. Peterson raised the point that under the  
18 order if it's a replacement water she wants to see evidence  
19 that proves that it's truly replacement water that the pumping  
20 impacted it.

21 MR. TAGGART: Um-hum.

22 MR. KOLVET: And we're prepared to do that. That  
23 portion of the hearing would be primarily the same kind of  
24 evidence for both applications and I was going to suggest that  
25 that portion of the hearing at least be combined.  
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1 THE COURT: I agree.

2 MR. KOLVET: For that purpose. And then as to  
3 the vested portions that would be separated out.

4 THE COURT: That would be fine. So -- well,  
5 let's -- let's finish with how the hearing goes first then.  
6 First two days evidence, joint evidence on how the vested  
7 rights were impacted?

8 MR. KOLVET: That's fine.

9 THE COURT: I'll take suggestions, is that enough  
10 time, is that --

11 MR. KOLVET: That would be plenty, I think.

12 MR. TAGGART: And then one day each for vested I  
13 would think.

14 THE COURT: That only leaves one day for a  
15 rebuttal.

16 MS. PETERSON: For all of us.

17 THE COURT: For all the Protestants, I don't  
18 think that's enough. I don't know that you're going to each  
19 need a whole day on your vested --

20 MR. TAGGART: I'm sorry, I anticipated they would  
21 do most of their case in cross-examination.

22 MR. KOLVET: I did as well.

23 MR. TAGGART: But you're right that they are  
24 entitled to the time as well.

25 MR. KOLVET: We could do a day and a half on  
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1 hydrology. Of course they've got their own evidence.

2 THE COURT: Well, let's say days one and two is  
3 hydrology because they have to have cross-examination.

4 MR. TAGGART: And then they'd put on their case  
5 in chief on hydrology --

6 MR. KOLVET: On those days.

7 THE COURT: I'm just sitting here going you guys  
8 have turned -- weeks go by.

9 MR. TAGGART: I mean, this is only one week so I  
10 don't see you forgetting what you hear on Monday and  
11 Tuesday --

12 THE COURT: No, no, no, I'm seeing are we  
13 expanding into more than one week.

14 MR. KOLVET: I hope not.

15 THE COURT: That's what that case was. Me too.  
16 Paul and I did a six-week trial together and I'm not doing  
17 another one of those. So do you anticipate, Ms. Peterson?

18 MS. PETERSON: Do I anticipate?

19 THE COURT: Well, you were talking so I didn't  
20 know. I didn't know if you anticipated putting on a case in  
21 chief or just cross-examination as to the evidence of the  
22 pumping impact of the groundwater, the surface water rights,  
23 the vested claims.

24 MS. PETERSON: The hydrology section?

25 THE COURT: Right.  
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1 MS. PETERSON: Yeah, I don't know.

2 THE COURT: Did you anticipate your own hydrology  
3 evidence?

4 MS. PETERSON: You know what, we might have some  
5 hydrology, a direct case.

6 THE COURT: So I think I'd like to keep those  
7 together different than we have done before and follow up with  
8 your hydrology.

9 MS. PETERSON: In the middle of their case?  
10 That's the part I'm not quite sure what you want to do.

11 THE COURT: Well, I'm just trying to figure it  
12 out.

13 MS. PETERSON: Yeah.

14 THE COURT: That's why I'm talking to you about  
15 it. I mean, I don't know that I want to go through all  
16 their -- here's my impact, here's my vested right and then I  
17 come back to your hydrology, no, it didn't impact, I've been  
18 asked before to try and group some of these issues in cases.  
19 We haven't really done it before, but I think that's what I'm  
20 asking about, is that a way to proceed? Mr. Taggart?

21 MR. TAGGART: One of the advantages is that my  
22 expert will be here to testify and then -- in our case in  
23 chief. And then we'll undergo cross-examination. And then if  
24 they put their case in chief on hydrology right away then he  
25 can be here for that and he can help me prepare for  
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1 cross-examination. Otherwise, he's going to have to come back  
2 at the end of the week. And I think all parties benefit if  
3 you do it that way because then you don't have to have that  
4 expert hydrologist here all week, he's only here the first two  
5 days and that's a cost savings for my client. So -- so that's  
6 why it makes sense at least in my view.

7 MR. KOLVET: I would concur in that I think  
8 having both parties put on their hydrology case since that's  
9 going to be an issue in this case makes sense. And it's the  
10 same type of evidence being related to the same basin, so.

11 THE COURT: Shall I set aside two days for  
12 hydrology, one's yours and one's yours?

13 MS. PETERSON: Oh, I think probably one and a  
14 half yours.

15 MR. TAGGART: One and a half, yeah.

16 MS. PETERSON: And a half -- half mine.

17 THE COURT: Okay. We agree upon that?

18 MR. KOLVET: Yes.

19 MS. PETERSON: Yep.

20 THE COURT: One and a half Applicants, half  
21 Protestants.

22 MS. PETERSON: And that's just Eureka, I don't  
23 know if somebody else has something else, I don't want to  
24 speak for anybody else.

25 THE COURT: Therese would be chiming in. Go  
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1 ahead, Therese.

2 MS. URE: I have not spoken with my clients about  
3 that yet and so I would need to, but I would anticipate being  
4 able to work with Eureka County to consolidate some time.

5 THE COURT: Okay. So we've agreed upon Monday  
6 and Tuesday is hydrology impact to existing rights, a day and  
7 a half for the Applicants. You're sharing the time,  
8 gentlemen; do you agree to that?

9 MR. TAGGART: Yes.

10 MR. KOLVET: Yes.

11 THE COURT: Thank you. And half a day for you,  
12 Ms. Peterson, and Protestants on the 19th.

13 So, then the 20th would be Sadler Ranches  
14 supporting their claim of vested right. The 21st, Mr. Kolvet,  
15 would be Venturacci. And then Friday the 22nd, Ms. Peterson,  
16 for any case in rebuttal to that; does that work for you?

17 MS. PETERSON: Or as part of our protest, yeah.

18 THE COURT: And I'm running out of time.

19 Mr. Gallagher, Mr. Moyle, do you plan on putting on cases in  
20 this or are you just observing, are you testifying on behalf  
21 of yourselves, what are you planning?

22 MR. MOYLE: Mark Moyle from Mark Moyle Farms and  
23 I just plan on testifying for myself.

24 THE COURT: I'm just going to see if I have  
25 Monday and Tuesday of next week. Deep sighs. I can roll to  
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1 Monday and Tuesday of the next week.

2 MR. TAGGART: I -- I can't make that, I have  
3 plane tickets.

4 THE COURT: I have to give these guys sufficient  
5 time.

6 MR. TAGGART: We're talking about the  
7 Thanksgiving week now, right, Monday and Tuesday?

8 THE COURT: Yes, Thanksgiving is Thursday. I'm  
9 wondering if I cut back hydrology time.

10 MR. KOLVET: Can I just consult briefly on what  
11 we look like on the time for hydrology?

12 THE COURT: Let's be off the record.

13 (Short recess.)

14 THE COURT: Okay. Let's everybody take their  
15 seats, please. Did you sign in, sir?

16 MR. SHODA: Yes, I did.

17 THE COURT: Thank you. Don't recognize your  
18 face.

19 THE STATE ENGINEER: I do.

20 MR. SHODA: Easily I'm recognizable.

21 THE COURT: I know, the way he said it you must  
22 be trouble.

23 THE STATE ENGINEER: No, not at all.

24 THE COURT: What's your name?

25 MR. SHODA: Levi Shoda.  
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1 THE COURT: Nice to meet you. Welcome. They're  
2 coming.

3 MR. TAGGART: We actually --

4 MR. KOLVET: Worked something out.

5 THE COURT: Good. Because we're going to do this  
6 week.

7 MR. KOLVET: So are we.

8 MR. TAGGART: So are we. Look at that, that's a  
9 good place to start.

10 THE COURT: We're trying to get these hearings  
11 back to more reasonable, their hearing people think it's too  
12 expensive.

13 MR. KOLVET: I hear that as well.

14 THE COURT: Yeah.

15 MR. KOLVET: I think after discussion -- are we  
16 bak on the record?

17 THE COURT: Let's go back on the record, please.

18 MR. KOLVET: After discussing it Paul and I have  
19 agreed that we can split up three days amongst us and cover  
20 both of our cases in that three days. And we talked with  
21 Karen and she agrees that she can do her stuff in two days and  
22 we'll not worry about who does what when, we'll just work it  
23 out, all the Protestants in two days.

24 THE COURT: Now, you left out a lot of

25 Protestants --  
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1 MR. KOLVET: No, I have not.  
2 THE COURT: So was Mr. Moyle part of this  
3 conversation?  
4 MR. KOLVET: He was not. I've talked to Karen,  
5 but that's our discussion and I'm proposing it as a solution  
6 to the time crunch.  
7 THE COURT: Let's be off the record.  
8 (Short off the record.)  
9 THE COURT: Let's be on the record. It's my  
10 understanding that the parties graciously have come to an  
11 agreement that the Applicant puts on whatever case they have  
12 on the 18th, 19th and 20th of November. And all Protestants  
13 including those you represent, Ms. Ure, Mr. Moyle,  
14 Mr. Gallagher and Ms. Peterson will have the 21st and the  
15 22nd; do I understand that agreement correctly?  
16 MS. PETERSON: Yes.  
17 MS. URE: Correct.  
18 MR. KOLVET: Yes.  
19 THE COURT: So, we're just separating, Applicants  
20 do their case, Protestants do their case.  
21 MS. PETERSON: Yes.  
22 THE COURT: Okay. So, now, let's work backwards  
23 from there. I'm going to finish with legal arguments, legal  
24 briefs, Ms. Peterson, so I want to work back on evidentiary  
25 exchanges now. For those of you who haven't really joined us  
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1 for a hearing before, Mr. Gallagher, Mr. Moyle, I like to do  
2 evidentiary exchanges in advance so people know what witnesses  
3 they're going to be, what documents they're going to be, so  
4 people aren't walking in here and being surprised by some  
5 report.  
6 So, how much time before the hearing do you want  
7 the second evidentiary exchange, two weeks, a month?  
8 MS. PETERSON: Two weeks.  
9 MR. KOLVET: I'm sorry, you said the second  
10 evidentiary?  
11 THE COURT: Right. How much time do you need  
12 before the hearing to get the second evidence, second set of  
13 evidence?  
14 MR. TAGGART: Actually, I was just thinking we  
15 needed one evidence exchange.  
16 THE COURT: Really?  
17 MR. KOLVET: Yeah, one joint exchange, mutual  
18 exchange.  
19 MR. TAGGART: That way it's not that complicated.  
20 THE COURT: Okay. I mean, Ms. Peterson, are you  
21 aware, Ms. Ure, Mr. Moyle, Mr. Gallagher that the Venturacci  
22 consultant has been filing reports here substantiating their  
23 vested right claim?  
24 MS. PETERSON: I know of one filing that was made  
25 for those applications 82570 through 82573 that was in the  
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1 file.  
2 THE COURT: Okay. So, first of all, Mr. Kolvet,  
3 you're going to make sure within two weeks from today's date  
4 that Ms. Peterson and all the Protestants have the copies of  
5 Mr. Teal's reports that support their --  
6 MR. KOLVET: This one, is that what you're  
7 referring to, the one that was filed March -- around  
8 March 16th?  
9 THE COURT: There were two in the file. So,  
10 Malcolm, can you give me a date two weeks from today, please?  
11 There was one filed March 16th, 2013, and I thought there was  
12 one before that. Am I mistaken? Is there just one?  
13 MR. WALMSLEY: There's two.  
14 MR. KOLVET: That's the only one I'm aware of,  
15 but there may have been --  
16 THE COURT: Yeah, there was one April 12th that  
17 supplemented it.  
18 MR. KOLVET: Okay.  
19 THE COURT: And so all Protestants are to have  
20 copies of those reports within -- what's two weeks from today,  
21 by June 17th. Because that establishes a lot of the basis I  
22 believe of the testimony the Protestants are going to hear  
23 on --  
24 MR. KOLVET: But I don't want anybody to be  
25 misunderstanding that there will be supplements to that as  
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1 part of this hearing, we will have additional evidence on some  
2 of those points.  
3 THE COURT: Sure. I'm just trying --  
4 MR. KOLVET: That doesn't limit us to what we've  
5 already filed --  
6 THE COURT: No.  
7 MR. KOLVET: -- those two files.  
8 THE COURT: No.  
9 MR. KOLVET: Okay.  
10 THE COURT: Just getting documents in their hands  
11 you've already filed.  
12 MR. KOLVET: Fine.  
13 THE COURT: Mr. Taggart, I don't believe your  
14 client has filed any such documents yet supporting their  
15 vested right claims?  
16 MR. TAGGART: We have not.  
17 THE COURT: Okay. So that will be in your  
18 evidentiary exchange?  
19 MR. TAGGART: Yes.  
20 THE COURT: Protestants, do you have an issue  
21 with one evidentiary exchange or do you want to do two?  
22 MS. PETERSON: I think we should do two.  
23 MS. URE: Two would be my preference.  
24 THE COURT: Okay. I'm inclined also. So back to  
25 how many weeks before the hearing do you need the final  
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1 evidentiary exchange, two weeks, four weeks?  
2 MR. TAGGART: I was going to say three.  
3 MR. KOLVET: I was going to say three and half.  
4 No, three is fine.  
5 THE COURT: Are you fine with three,  
6 Ms. Peterson? Ms. Ure?  
7 MS. PETERSON: I was going to say two. I just  
8 don't know how the rest of your days are going to work back,  
9 so.  
10 THE COURT: Well, if they don't work we'll --  
11 we'll jiggle them. So let's say if we went one, two, three  
12 that puts us October 28th. So if we go a month before that --  
13 oh, we have plenty of time here, folks.  
14 MR. TAGGART: Are we talking about the second  
15 exchange being a rebuttal exchange where both sides put into  
16 evidence in the first exchange and then both sides can have  
17 the opportunities to make rebuttal evidence in the second?  
18 THE COURT: Yes.  
19 MR. TAGGART: So we'll see their evidence in the  
20 first exchange and the only thing we can put into the second  
21 exchange are things that respond to what they've presented?  
22 THE COURT: Yes.  
23 MR. KOLVET: And same for them?  
24 THE COURT: Yes, normal -- normal course of  
25 proceedings how we do it here.  
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1 MR. KOLVET: Okay.  
2 THE COURT: So since we do have a fair amount of  
3 time here, I want to make sure everybody's fine. Okay.  
4 October 28th -- no, Friday, October 25th?  
5 MS. PETERSON: That might be a holiday. Maybe  
6 you should check Nevada Day.  
7 MR. KOLVET: Yeah, Nevada Day comes in there  
8 someday, sometime.  
9 THE COURT: Thursday, October 24th is your second  
10 exchange. So then let's go -- how much time do you want in  
11 between them since we have fair amount --  
12 MR. KOLVET: We have plenty of time, how about  
13 four weeks?  
14 THE COURT: Oh, at least, I was going to give you  
15 a little more if you wanted it.  
16 MR. KOLVET: Then six.  
17 THE COURT: One, two, three, Friday,  
18 September 12th for your first exchange. Protestants all right  
19 with that?  
20 MS. URE: September 13th?  
21 THE COURT: 13th, sorry, my finger is on the  
22 wrong --  
23 MR. TAGGART: Friday the 13th?  
24 THE COURT: Lucky day. Works for me. Always a  
25 lucky day for me, you guys are just -- do beautifully. So,  
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1 now -- that's a good question, Mr. Moyle and Mr. Gallagher,  
2 you're not used to being in a trial like setting like this.  
3 MR. MOYLE: There's a reason for that.  
4 THE COURT: Well, I'm wondering if I need you to  
5 present what your statements were going to be so that the  
6 Applicant has an opportunity to respond to those.  
7 MR. MOYLE: You want us to adhere to the same  
8 dates?  
9 THE COURT: Oh, yeah, you are subject to the  
10 same --  
11 MR. MOYLE: Right, right.  
12 THE COURT: You're allowed to put on a whole case  
13 in chief just like these --  
14 MR. MOYLE: Right.  
15 THE COURT: -- these lawyers. Your rights don't  
16 go away just because you're not represented by legal counsel.  
17 MR. MOYLE: I'm good with it.  
18 THE COURT: Mr. Gallagher?  
19 MR. GALLAGHER: Same, yeah.  
20 THE COURT: Did you get that on the record?  
21 THE REPORTER: (Nodded head.)  
22 THE COURT: Thank you. So now to legal briefing.  
23 I guess I really kind of want to get a feel for -- do we need  
24 to set forth the issues we're going to be briefing, do we wait  
25 until we have the first brief come in? I know you want to  
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1 talk about priority date. Do you have other issues that you  
2 have on the list that you want to brief?  
3 MS. PETERSON: I do. So what I would propose is  
4 if we have legal issues that we want to raise that we go ahead  
5 and raise those at a certain time. I mean, if the Applicants  
6 have something they want to raise they can raise it and we  
7 raise that and then they can give -- they can have a chance to  
8 respond to that legally.  
9 THE COURT: Oh, absolutely.  
10 MS. PETERSON: Yeah. So if they raise something  
11 that in their briefs, their initial opening briefs that we  
12 want to respond to we can also.  
13 THE COURT: Yeah, no, I wasn't going there,  
14 Ms. Peterson, I didn't know if you had a list of issues now so  
15 everybody can start thinking about them. I don't want to cut  
16 you off on that, so I want to give you time to think about it.  
17 MS. PETERSON: Right.  
18 THE COURT: So this is June 3rd. How about --  
19 I'm in a two-week hearing there. So how about Wednesday,  
20 July 3rd before the holiday, legal briefs? You all right with  
21 that?  
22 MR. TAGGART: I'm -- I'm just confused about  
23 whether I'm even going to file one because I'm not sure --  
24 THE COURT: You don't have to.  
25 MR. TAGGART: -- what -- I mean, if I know what  
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1 an issue is, I think I do know that an issue is priority. And  
2 an issue is -- well, abandonments have been discussed, seems  
3 like that's an issue to me. Whether it can be raised, maybe  
4 that's an issue.

5 THE COURT: Yours -- yours is really responding I  
6 think to their questions, but I don't want to cut you off. If  
7 you come up with some issue. So I'm going to say Wednesday,  
8 July 3rd, are you with me, Ms. Peterson?

9 MS. PETERSON: Yes.

10 THE COURT: Any legal briefs -- or any briefs  
11 raising legal issues. And I'm going to give you a month to  
12 respond.

13 MR. KOLVET: Would it be possible to do that  
14 first briefing in the second week of July? It's not so much  
15 that I would be doing any briefing and the response to that,  
16 it just gives me the time after that to reply, I'm kind of  
17 jammed up in part of that first part of July.

18 THE COURT: Well, we are too, we're in a two-week  
19 hearing then. So I'd like to actually have read these briefs  
20 to be able to think about them.

21 MR. KOLVET: Fine. The 3rd is fine.

22 THE COURT: Okay.

23 MR. KOLVET: I'll go with that.

24 THE COURT: We have the whole week of the 8th  
25 through the 19th we're in a hearing, that two-week period,  
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1 so --

2 MR. KOLVET: That's fine.

3 THE COURT: -- I'll be juggling. But I'll give  
4 you plenty of time to respond, Mr. Kolvet.

5 MR. KOLVET: Yeah, I got to rethinking my  
6 concerns.

7 THE COURT: Okay. So then let's go -- our first  
8 exchange is the 13th, how about Friday, August 2nd for reply  
9 briefs?

10 MR. KOLVET: That's fine.

11 THE COURT: And since the first evidentiary  
12 exchange is on the 13th, I'm not really inclined to do a -- or  
13 for answering briefs, reply briefs because if there's an order  
14 that cuts this off you need to know that before we ever go to  
15 evidentiary exchanges.

16 MS. PETERSON: Agreed.

17 THE COURT: Are you comfortable with that?

18 MS. PETERSON: Right. Yes.

19 THE COURT: Ms. Ure?

20 MS. URE: Yes.

21 THE COURT: Mr. Moyle? You have to talk out  
22 loud.

23 MR. MOYLE: Yes.

24 THE COURT: Mr. Gallagher?

25 MR. GALLAGHER: Yes.  
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1 THE COURT: Okay. So, I'm going to run through  
2 this again. Wednesday, July 3rd, any briefs raising legal  
3 issues. Friday, August 2nd, answering briefs to those legal  
4 issues. Friday, September 13th, the first evidentiary  
5 exchange. Friday, Oct --

6 MR. KOLVET: Thursday.

7 THE STATE ENGINEER: Yeah, Nevada Day.

8 THE COURT: Yeah, but I missed the second  
9 evidentiary exchange -- oh, the 4th. Friday -- it's my  
10 handwriting.

11 MS. PETERSON: Friday.

12 THE COURT: Thursday, the 3rd. Oh, that's right.

13 MR. KOLVET: Thursday, October 24th.

14 THE COURT: Thursday, October -- sorry, guys.

15 Thursday, October 24th is the second evidentiary exchange.  
16 18th, 19th, 20th is the Applicant's case. 21st and 22nd of  
17 November are the Protestants' cases. Are we all on the same  
18 page?

19 Anything else I need -- oh, order -- no, I will  
20 put out a hearing notice, I'll assign you exhibit numbers in  
21 the hearing notice to -- so we're all on the same page so I  
22 can come back with one of my lists all prepared for you. Two  
23 copies of any exhibit.

24 Anything else we need to address? Do you have a  
25 game plan? Mr. Bushman, you need to go through legal counsel,  
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1 you're not a party and if you need something --

2 MR. BUSHMAN: Yes.

3 THE COURT: -- talk to whoever you're agent for.

4 MR. TAGGART: Well, there is just a point of  
5 clarification I think is that earlier we had a discussion  
6 about these are vested claims and we're going to be  
7 establishing evidence about those vested claims, but we're not  
8 completing an adjudication of the rights. But the water  
9 rights if granted would be granted subject to any future  
10 adjudication.

11 I think the concern or one concern is just that  
12 any -- if this is a quasi adjudication or a pseudo, I mean,  
13 it's a lot like an adjudication, we're putting on a lot of  
14 evidence that we put during a preliminary or a determination  
15 type of hearing. And -- and so I think it will be -- I guess  
16 the concern is that what we do here is going to really pave  
17 the way for what those adjudicated rights would look like if  
18 they were adjudicated in the future.

19 But -- but I think you indicated, Mr. King, that  
20 this would be -- everything would be subject to a future  
21 adjudication which could cut it back or add to it either way,  
22 but -- but whatever we do here is certainly going to influence  
23 any future adjudication because of the amount of evidence in  
24 this case. And I think that was the point that -- that we  
25 wanted to make clear.

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1 MS. PETERSON: What was the point?  
2 THE COURT: I didn't get the point.  
3 MS. PETERSON: I didn't get the point.  
4 THE COURT: What was the actual point?  
5 MR. TAGGART: Just -- just that -- that whatever  
6 evidence put on here is going to be influential on any future  
7 adjudication.  
8 THE COURT: Maybe, maybe not. Someone could  
9 raise it as an objection in that adjudication or they could  
10 ask to adopt the record from the previous hearing. Cross that  
11 bridge when we come to it.  
12 THE STATE ENGINEER: The other point, as far as  
13 that, the evidence that's going to be presented is akin to  
14 what you would hear in an adjudication process in terms of  
15 trying to substantiate historical beneficial use.  
16 THE COURT: Um-hum.  
17 THE STATE ENGINEER: That's what I -- that's what  
18 I believe we're going to hear in that week long hearing a  
19 decision will be made. But it's not a -- it's not  
20 adjudicating the right in terms of it becoming a decreed  
21 right.  
22 MR. TAGGART: And -- and no one is foreclosed  
23 from whatever rights they might have in a future adjudication  
24 to put on whether, you know, someone challenging the right or  
25 supporting the right. If you go to adjudication in the future  
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1 that process is going to occur.  
2 THE COURT: I wouldn't answer that question here,  
3 I'd wait for that to be argued in that adjudication. Because  
4 you may not be their lawyers and they may not like to work  
5 with you. I -- I wouldn't ever want to make an advisory  
6 opinion on a future proceeding on how it's going to be  
7 constrained, but I could certainly see the arguments being we  
8 came in and put on a case, can I adopt it. But I wouldn't  
9 rule on that here because I'm not even in that adjudication  
10 proceeding and we're not noticed for it.  
11 Do we need -- we've been doing a lot of our  
12 exhibits digitally. Do we have any preference to have them  
13 scanned like we've been doing at hearings lately?  
14 MR. TAGGART: I -- I would agree to service by  
15 electronic means so all documents would be scanned and served  
16 by e-mail. At least I -- I would -- I would be willing to  
17 take service that way.  
18 THE COURT: And I know Therese likes her  
19 electronic stuff. So I'm just going to put it in the order  
20 that besides the paper exhibits we're going to do scanned  
21 exhibits like we've been doing lately.  
22 MR. KOLVET: Yeah, but what I think Mr. Taggart  
23 was referring to is the exchanges. For example, on the  
24 exchange dates that we can exchange via electronic means  
25 rather than serving paper exhibits.  
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1 THE COURT: If you agree I'll agree to that here,  
2 I have no problem with it. Except for what's filed here.  
3 MR. TAGGART: The hard copy will be filed with  
4 the State Engineer's office --  
5 THE COURT: Two hard copies and an electric --  
6 electronic, that will all be in your hearing notice.  
7 MS. PETERSON: That's fine with me. You can  
8 serve me electronically.  
9 MR. KOLVET: I don't know whether the gentlemen  
10 behind us can accept them that way or not.  
11 THE COURT: Let me go through each person.  
12 Ms. Ure, would you agree to electronic service?  
13 MS. URE: Yes.  
14 THE COURT: Mr. Kolvet, do you agree to  
15 electronic service?  
16 MR. KOLVET: Yes.  
17 THE COURT: Mr. Taggart already has. Mr. Moyle?  
18 MR. MOYLE: That would be fine.  
19 THE COURT: Mr. Gallagher?  
20 MR. GALLAGHER: That's fine.  
21 THE COURT: Great. Thank you. That saves a lot  
22 of money.  
23 MR. MOYLE: Ms. Taylor, and DNRP, CA's part of  
24 that too. And Mr. Burnham. So yeah, we could still -- DNRP,  
25 CA could get it that way also.  
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1 MS. PETERSON: So we just need your e-mail  
2 address.  
3 MR. MOYLE: Okay.  
4 MR. KOLVET: Did that get put on the sign-up  
5 sheet, if it did --  
6 THE COURT: I'm just going there.  
7 MR. KOLVET: -- that needs to be supplied.  
8 THE COURT: I'm just going there. MarkMoyleNHC,  
9 Nancy, Henry, Charles, .Moyle@gmail.com?  
10 MR. MOYLE: That's correct.  
11 THE COURT: Jim Gallagher is JG, George, Edward,  
12 Eunice --  
13 MR. GALLAGHER: EU, Eureka.  
14 THE COURT: JGEU45@gmail.com?  
15 MR. GALLAGHER: Yes.  
16 THE COURT: And I think we don't have any other  
17 parties -- let me just do them all on the record. Karen, you  
18 get to do yours, I can't read your handwriting.  
19 MS. PETERSON: KPeterson, P-E-T-E-R-S-O-N,  
20 @Allison, A-L-L-I-S-O-N, MacKenzie, M-A-C-K-E-N-Z-I-E, .com.  
21 THE COURT: Mr. Beutel, do you want to put yours  
22 for the record?  
23 MR. BEUTEL: T as in Ted, B as in boy, E-U-T-E-L.  
24 ECDA@EurekaNV, for Nevada, .org.  
25 THE COURT: Mr. Taggart, I have all the sign-in  
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1 sheets.

2 MR. TAGGART: I actually wasn't able to sign in,

3 it was -- there was a line when -- it's Paul@legalTNT.com.

4 THE COURT: Mr. Kolvet?

5 MR. KOLVET: B as in boy, T as in Tom, K as in

6 king, @Thorndal, T-H-O-R-N-D as in David, AL.com.

7 THE COURT: Did I get all the parties on record

8 with their e-mails? Therese, I'm sorry.

9 MS. URE: Mine is -- for Therese Ure, it's

10 capital C-O-U-N-S-E-L, @Water, W-A-T-E-R-Law, LAW.com.

11 THE COURT: Now did I get everybody? Okay.

12 Okay. That's great. That saves people a lot of money. I

13 appreciate you bringing that up.

14 Any other matters we need to address?

15 Mr. Beutel, you got anything?

16 MR. BEUTEL: No.

17 THE COURT: Do you have anything, nice English,

18 Susan. My mother would be appalled. Ms. Peterson, anything

19 else we need to bring up?

20 MS. PETERSON: Nothing further.

21 THE COURT: Ms. Ure?

22 MS. URE: Nothing further.

23 THE COURT: Mr. Moyle?

24 MR. MOYLE: No.

25 THE COURT: Mr. Gallagher?  
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1 MR. GALLAGHER: No.

2 THE COURT: Mr. Kolvet?

3 MR. KOLVET: No.

4 THE COURT: Mr. Taggart?

5 MR. TAGGART: No.

6 THE COURT: Great. Thank you all very much for

7 your time.

8 (Proceedings concluded at 2:44 p.m.)

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1 STATE OF NEVADA )  
2 CARSON CITY ) ss.  
3 )  
4 )  
5 )  
6 I, MICHEL DOTY LOOMIS, a Certified Court  
7 Reporter, do hereby certify;  
8 That on the 3rd of June, 2013, in Carson City,  
9 Nevada, I was present and took stenotype notes of the hearing  
10 held before the Nevada Department of Conservation and Natural  
11 Resources, Division of Water in the within entitled matter,  
12 and thereafter transcribed the same into typewriting as herein  
13 appears;  
14 That the foregoing transcript, consisting of  
15 pages 1 through 57 hereof, is a full, true and correct  
16 transcription of my stenotype notes of said hearing.  
17  
18 Dated at Carson City, Nevada, this 17th day of  
19 June, 2013.  
20  
21  
22 MICHEL DOTY LOOMIS, CCR #228  
23  
24  
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State of Nevada - Division of Water Resources  
Applications 8179, 81720 and 81825

Public Hearing  
June 03, 2013

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