

NEVADA DIVISION OF
WATER RESOURCES



Diamond Valley Groundwater Management Plan

199th Western States Water Council Meetings

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Presented by:

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DIAMOND VALLEY, NEVADA

A BRIEF HISTORY



Original inhabitants were the Shoshone & Paiute Indians who utilized the natural resources in the valley and establish encampments near spring sites



Settlement and irrigation utilizing surface water flows from various springs commenced prior to statehood, with many rights from 1860 and into the 1870's for stockwater and irrigation.



Groundwater development began in earnest in 1960 and continued into the late 1970s



Many rights were the result of Desert Land Entries.

DIAMOND VALLEY – THE GOOD, THE BAD & THE UGLY



The Good?

High rate of successful Desert Land Entries

Conditions create high quality hay & alfalfa exported around the world



The Bad.

Success rate of Desert Land Entries resulted in severe over-appropriation

Perennial Yield = 30,000 acre-feet annually

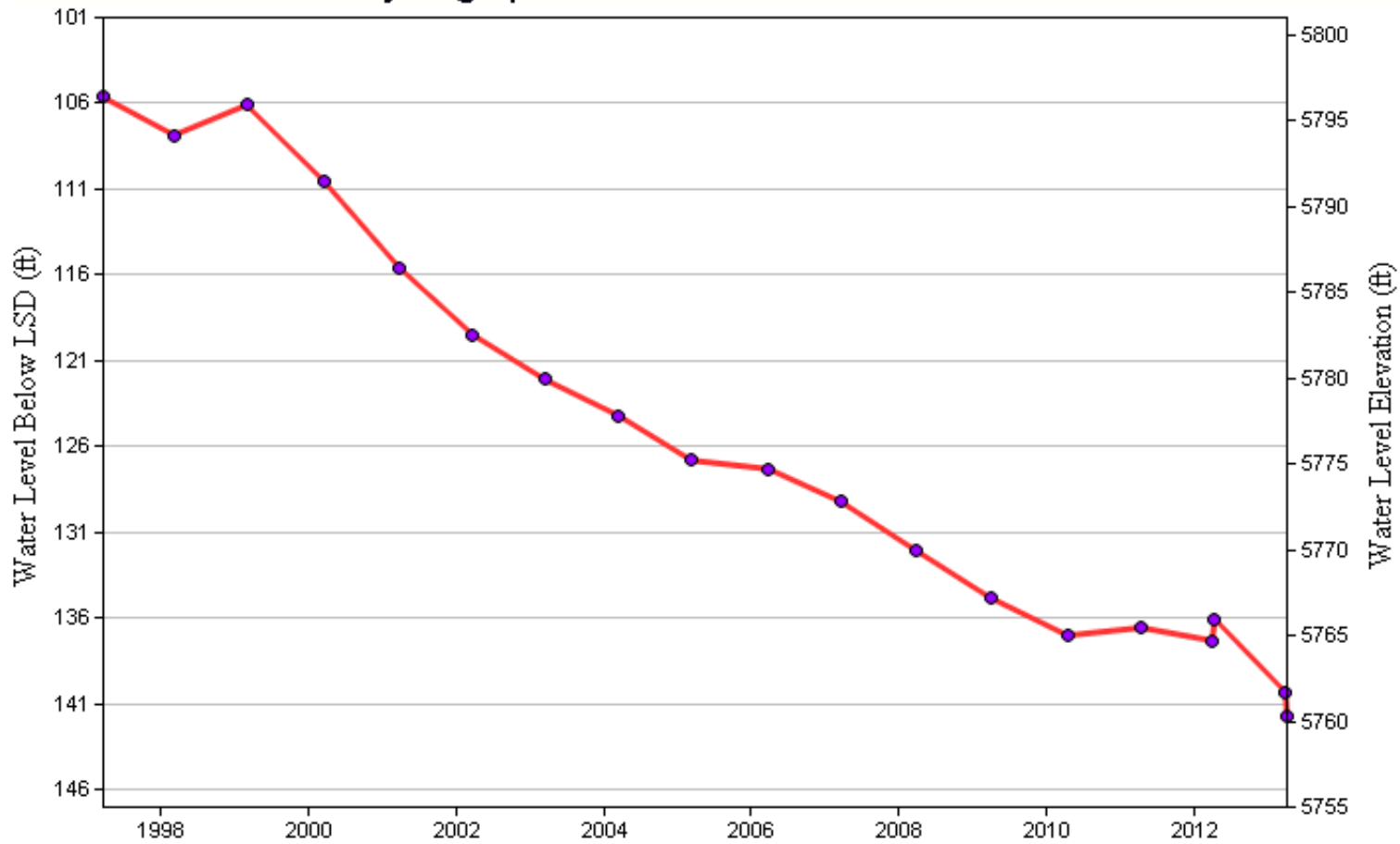
Committed Groundwater Resources ≈ 136,000 acre-fee



The Ugly!

Pumping has been consistently in excess of 70,000 acre-feet annually

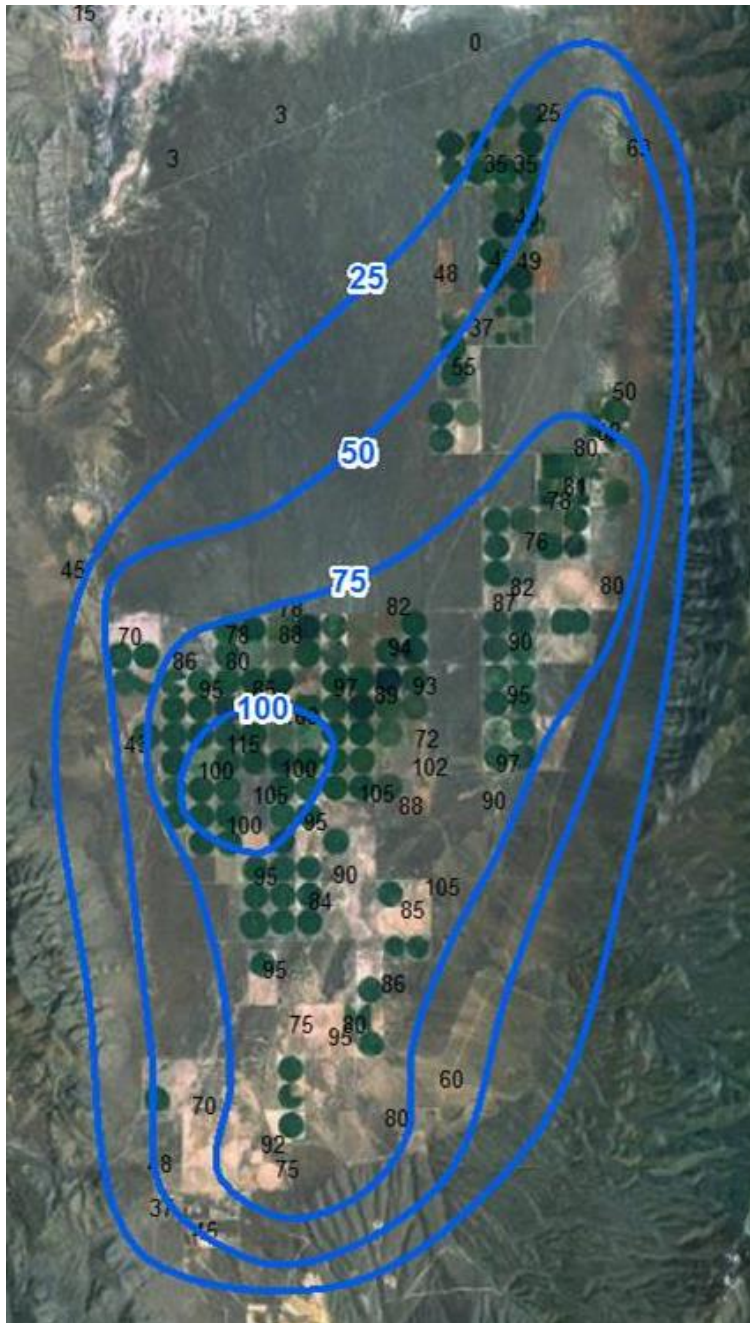
Hydrograph For Site 153 N21 E53 14CACC2



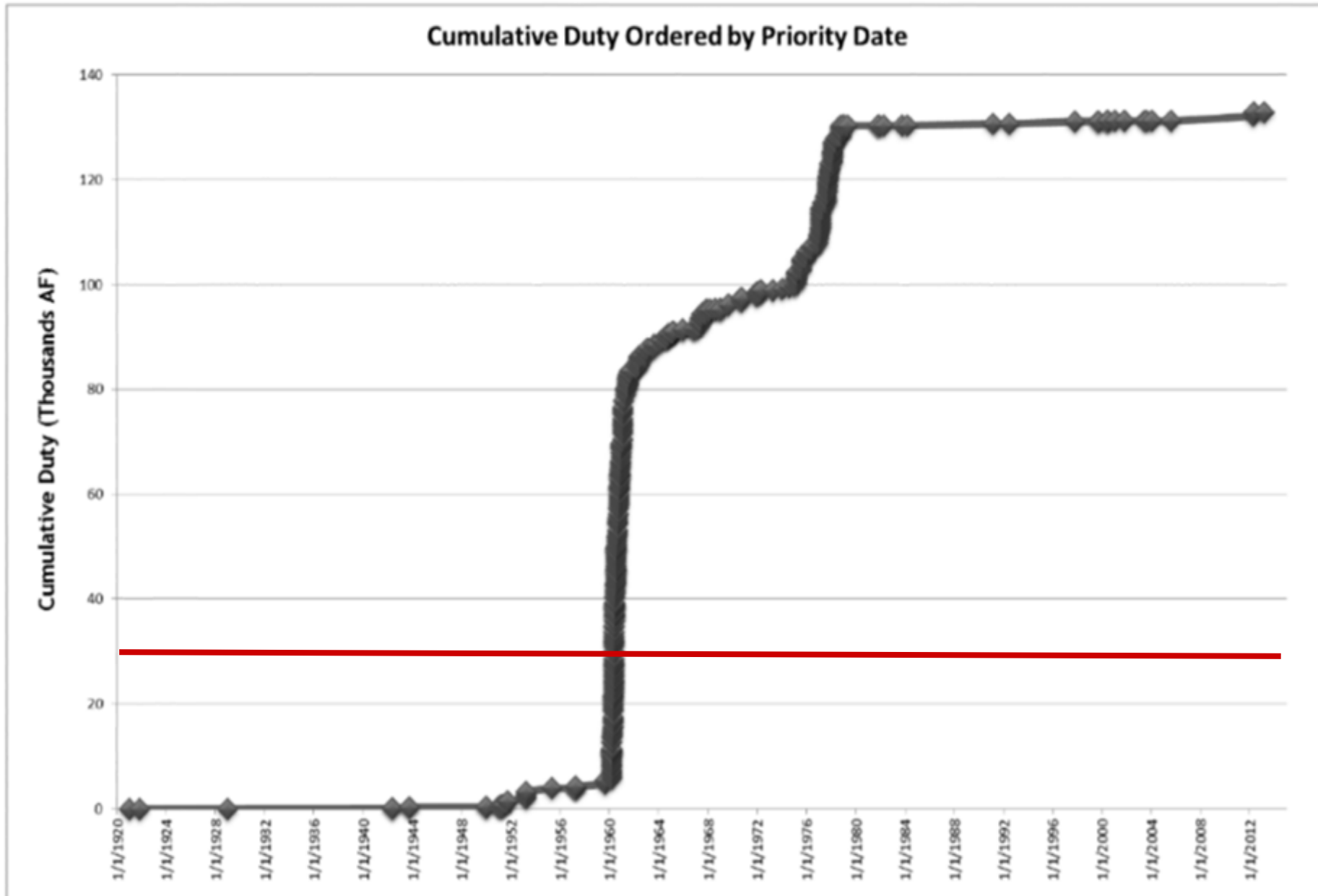
35 feet

2-1/3 feet
per year

15 years



Estimated Groundwater Level Declines Due to Pumping



IT'S UGLY, NOW WHAT?

Nevada Revised Statute (NRS) § 534.110(7) authorizes the State Engineer to designate a Critical Management Area

- Where withdrawals *consistently* exceed perennial yield via petition or by order of the State Engineer.
- Critical Management Area (CMA) designation starts a 10-year clock to develop an approved Groundwater Management Plan
- CMA Designated 2015

WHAT ARE THE REQUIREMENTS FOR A GMP?

State Engineer is *required* to consider:

- Hydrology of the basin
- Physical characteristics of the basin
- Geographic spacing and location of withdrawals of groundwater in the basin
- Water quality in basin
- Wells located in basin, including domestic (non-permitted) wells
- Whether a GMP already exists for the basin
- Any other factor deemed relevant by the State Engineer

THE DIAMOND VALLEY GROUNDWATER MANAGEMENT PLAN

Objectives:

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

The How:

- Water right (and attendant shares) stay tied to a specific piece of land (i.e., not unbundled). Priority (i.e., seniority) considered in number of shares issued.
 - Accomplished using formula: $WR * PF = SA$
 - WR = Total groundwater right volume as recognized by DWR accounting for total combined duty
 - PF = Priority factor based on seniority*
 SA = Total Groundwater share allotment
*20% "spread" between most senior PF and most junior PF
- Annual reductions in the number of issued shares annually to meet benchmark reductions.

**WE CAME, WE HELD A PUBLIC
HEARING, AND . . .**

WE GOT SUED

DIAMOND VALLEY GMP LITIGATION – DISTRICT COURT

- Court found that the State Engineer's approval was arbitrary and capricious, as the GMP violated:
 - The doctrine of prior appropriation
 - The beneficial use statute
- The Court also found that the effect of the GMP was that it impaired vested rights (senior surface water rights)
- Found that the State Engineer did not violate due process through the public hearing held to consider the GMP and followed the required considerations.

DIAMOND VALLEY GMP LITIGATION – SUPREME COURT (MAJORITY)

4-2-2 OPINION

- Reading the CMA & GMP together, the State Engineer is authorized to approve a GMP that will result in removal of CMA status so long as the articulated factors are considered
- Because NRS 534.110(7) requires curtailment by priority if a GMP is not approved, the plain reading of the statute allows for deviation from the prior appropriation doctrine.
- Interpretation supported by existing precedent that statutes may impair non-vested water rights
- The GMP did not impair vested rights

DIAMOND VALLEY GMP LITIGATION – SUPREME COURT (MAJORITY)

We recognize that our opinion will significantly affect water management in Nevada. We are of the belief, however, that—given the arid nature of the state—it is particularly important that we effectuate the plain meaning of a statute that encourages the sustainable use of water. The GMP here is a community-based solution to the long-term water shortages that befall Diamond Valley. Because the GMP complies with NRS 534.037 and NRS 534.110(7), it is valid. Thus, we reverse the district court order granting respondents' petitions for judicial review and reinstate Order No. 1302.

Diamond Valley Natural Resources Protection & Conservation Ass'n, et al. vs. Diamond Valley Ranches, LLC, et al., 138 Nev. Adv. Op. 43 (2022)

DIAMOND VALLEY GMP LITIGATION – SUPREME COURT (DISSENTS)

2 SEPARATE DISSENTS

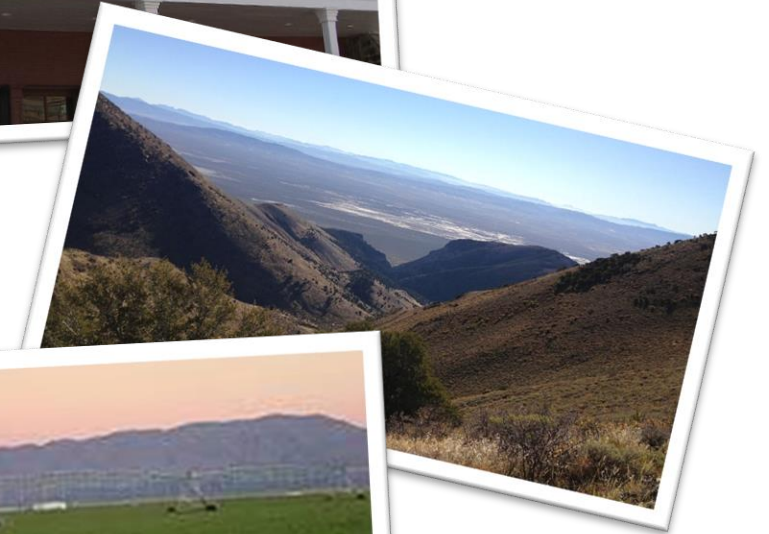
- NRS 534.037 and 534.110(7) do not unambiguously permit a GMP to depart from the doctrine of prior appropriation.
 - Subject to more than one reasonable interpretation
 - No express declaration to allow deviation from prior appropriation
- Statute places the onus on junior users to reduce water use
- GMP does not account for vested rights (depleted spring flow)
- Reallocates senior rights to junior users
- Prior, unpassed, legislation demonstrates that GMPs are not permitted to deviate from prior appropriation
- Impairs property rights without just compensation

AND . . .

WE DON'T HAVE A SETTLED DECISION

WHERE DO WE GO FROM HERE?

- Upcoming Legislative Session
- Potential for legislative clarification
- Acknowledgement of limited application to specific statutory provisions
- Focus on maintaining locally driven solutions – CMA designations based upon localized circumstances
- Acknowledgement that community-based solutions need to be the focus.



Questions?



Contact

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