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Other_N/A_

STAFF REPORT

BOARD MEETING DATE: **August 9, 2011**

DATE: July 20, 2011

TO: Board of County Commissioners

FROM: Rosemary Menard, Director, Department of Water Resources
954-4666, rmenard@washoecounty.us

SUBJECT: **Review and adoption of: 1) The recommended Washoe County Domestic Well Mitigation Policy; and 2) The recommended Mt. Rose-Galena Fan Domestic Well Mitigation Program Policies and Implementation Procedures.** (All Commission Districts)

SUMMARY

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

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

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

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

AGENDA ITEM # _____

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

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

Strategic Objective supported by this item: Sustainable Resources

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

PREVIOUS ACTION

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

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

FISCAL IMPACT

No Fiscal Impact

RECOMMENDATION

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

POSSIBLE MOTION

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

RM/lr

Washoe County Domestic Well Mitigation Policy

1. Purpose

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

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

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

2. Connection to Nevada State Water Law

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

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

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

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

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

3. Definition

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

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

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

4. Policy Statement

A. General Provisions

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

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

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

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

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

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

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

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

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

C. Establishment of a Mitigation Program District

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

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

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

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

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

D. Mitigation to Individual Domestic Well Owners

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

E. Appeal

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

APPENDIX 1

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

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

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

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

NRS 533.024 Legislative declaration. The Legislature declares that:

1. It is the policy of this State:

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

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

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

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

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

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

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

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

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

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

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

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

(c) Limit the depth of domestic wells.

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

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

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

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

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

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

(a) A political subdivision of this State; or

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

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

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

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

- (a) Recorded by the well driller on the log the well driller files with the State Engineer pursuant to [NRS 534.170](#); or
- (b) Demonstrated through any other documentation or evidence specified by the State Engineer.

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

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

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

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

[1:178:1939; 1931 NCL § 7993.10]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Definitions

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

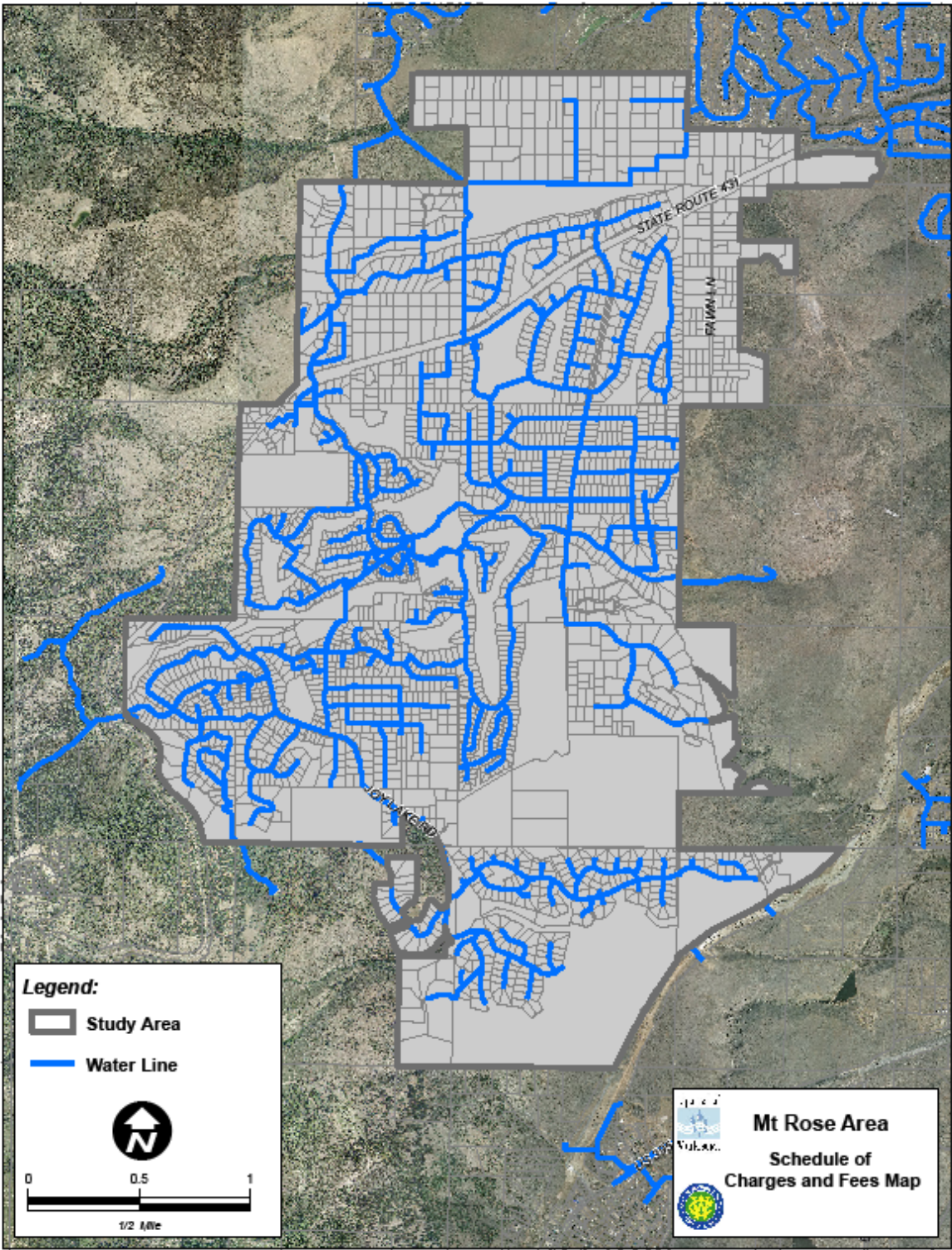
- A. The impacted domestic well must draw from the same source aquifer as the municipal well(s) alleged to be causing the unreasonable adverse effect; and
- B. Objective evidence must exist that clearly connects the municipal pumping to the impairment of the affected domestic well's ability to provide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

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

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

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

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



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

A. General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

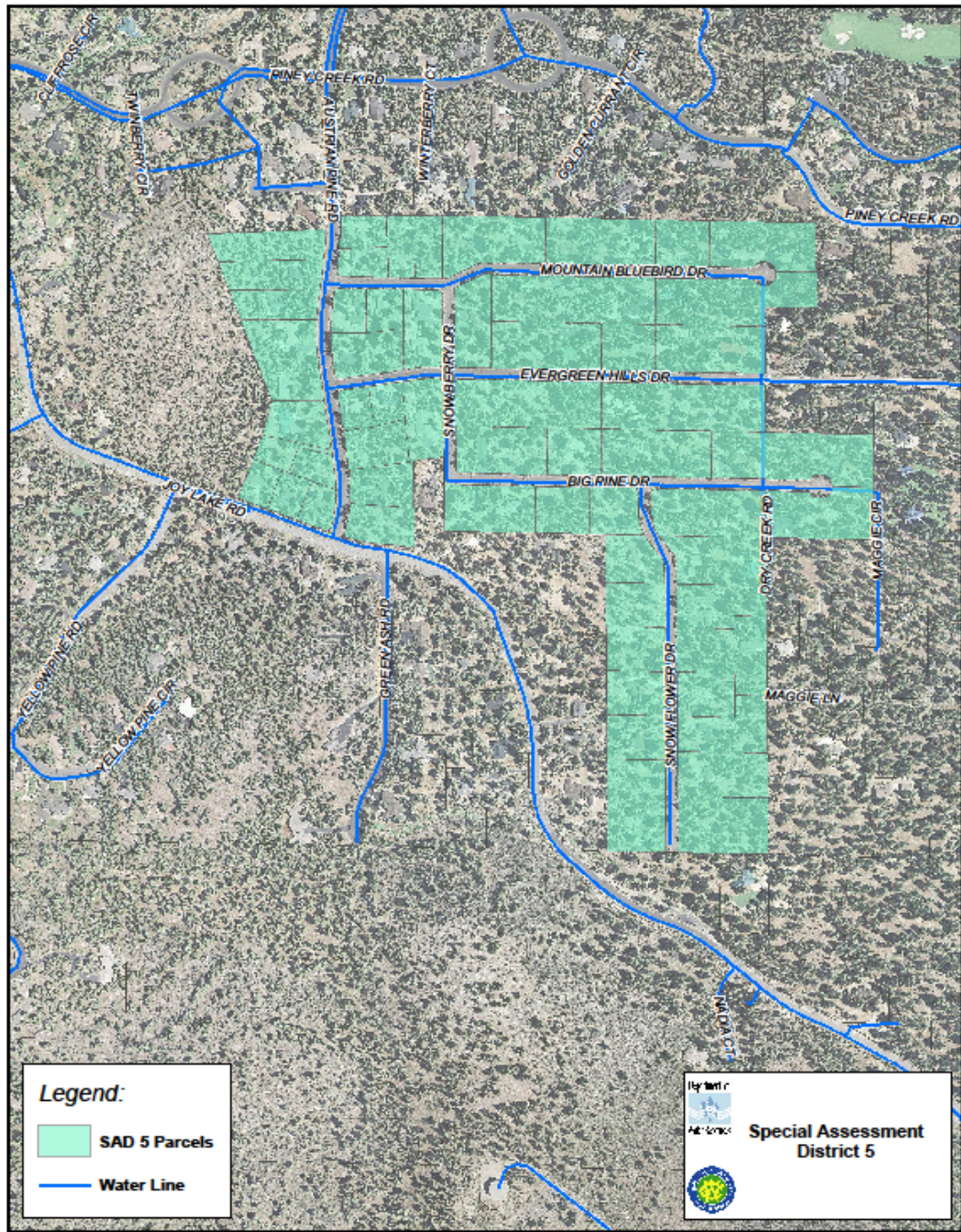
Property owners converting from domestic wells to community water service have the option to apply for financing of their on-site costs through the DWR’s Water and Sanitary Sewer Financial Assistance Program.⁵

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

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

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

Figure 2
Special Assessment District 5 Boundary Map



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

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

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

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

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

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

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

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

anticipated, including the local concentration of other domestic wells.

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

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

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

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

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

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

A. Notice

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

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

B. Procedures for Reimbursement of Fees Paid or Costs Incurred

(1) Eligible Properties

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

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

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

(2) Application for Reimbursement

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

(3) Processing of Applications for Reimbursements

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

(4) Documentation of Mitigation Received

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

C. Procedures for Properties to Receive Future Mitigation

(1) Eligible Property Owner

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

(2) Application for Future Mitigation

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

(3) Processing of Applications for Future Mitigation

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

(4) Documentation of Eligibility for Future Mitigation

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

(5) Exercising a Commitment for Future Mitigation

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

(6) Documentation of Mitigation Received

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

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

D. Property Owners Requesting Individual Review Due to Special Circumstances

(1) Eligible Property Owner

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

(2) Application for Individual Review Due to Special Circumstances

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

(3) Processing of Applications for Individual Review

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

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

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

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

(5) Documentation of Eligibility for Future Mitigation

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

(6) Exercising a Commitment for Future Mitigation

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

(7) Documentation of Mitigation Received

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