

Therese A. Ure, NSB 10255
Laura A. Schroeder, NSB 3595
Schroeder Law Offices, P.C.
10615 Double R Blvd., Ste. 100
Reno, Nevada 89521
PHONE (775) 786-8800; FAX (877) 600-4971
counsel@water-law.com
Attorneys for Claimants Baumann

Affirmation: This document does
not contain the social security
number of any person.

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

IN THE MATTER OF THE
DETERMINATION OF DEFINING THE
RIGHTS IN AND TO ALL WATERS OF
DIAMOND VALLEY, HYDROGRAPHIC
BASIN NO. 10-153, ELKO AND EUREKA
COUNTIES, NEVADA.

**CLAIMANTS JAMES E. AND VERA L.
BAUMANN'S OBJECTIONS TO
PRELIMINARY ORDER OF
DETERMINATION**

INTRODUCTION

COMES NOW, Claimants James E. and Vera L. Baumann ("Claimant" or "Baumann"), by and through their counsel, Laura A. Schroeder and Therese A. Ure, of Schroeder Law Offices, P.C., and hereby files, pursuant to NRS 533.145, the following Objections to the Preliminary Order of Determination, issued in this matter on August 30, 2018, by the State Engineer and Nevada Division of Water Resources ("NDWR"). The following Objections are hereby verified by *Affidavit of Claimant Baumann in Support of Objections to Preliminary Order of Determination* ("Baumann Affidavit") under separate cover, and incorporated herewith.

These objections apply to the following claims:

Page 1 – CLAIMANTS JAMES E. AND VERA L. BAUMANN'S OBJECTIONS TO PRELIMINARY ORDER OF DETERMINATION



10615 Double R Blvd., Ste. 100
Reno, Nevada 89521
PHONE (775) 786-8800 FAX (877) 600-4971

{P0414558: 1515.00 LMM }

Vested No. - Source	Claimant
V-01085 (Simpson Creek)	James E. & Vera L. Baumann
V-01089 (Old Bennet Spring)	James E. & Vera L. Baumann
V-01133 (Simpson Creek and Tribs)	James E. & Vera L. Baumann
V-02324 (Wood Trough Spring)	James E. & Vera L. Baumann
V-02325 (Green Spring)	James E. & Vera L. Baumann
V-02326 (Simpson No. 1 Spring)	James E. & Vera L. Baumann
V-03657 (Four-Eyed Nicks Spring)	James E. & Vera L. Baumann
V-09756 (Poison Canyon Spring)	James E. & Vera L. Baumann
V-09757 (DePaoli Creek Spring)	James E. & Vera L. Baumann
V-09758 (Cottonwood Creek Springs)	James E. & Vera L. Baumann
V-09759 (Spanish Gulch Springs)	James E. & Vera L. Baumann
V-09760 (Poison Spring)	James E. & Vera L. Baumann
V-09761 (Big Rock Spring)	James E. & Vera L. Baumann
V-09762 (Hole in the Wall Spring)	James E. & Vera L. Baumann
V-09763 (Shirt Creek Spring)	James E. & Vera L. Baumann
V-09764 (Rich Creek Spring)	James E. & Vera L. Baumann
V-09765 (Pass Creek Spring)	James E. & Vera L. Baumann
V-09766 (Rose Spring)	James E. & Vera L. Baumann
V-09767 (Seepage Springs Creek)	James E. & Vera L. Baumann
V-09768 (Milk Ranch Spring)	James E. & Vera L. Baumann
V-09769 (Unnamed No. 1 Spring)	James E. & Vera L. Baumann
V-09770 (China Canyon Spring)	James E. & Vera L. Baumann
V-09771 (Eureka Creek)	James E. & Vera L. Baumann
V-09775 (Angelo Belli Flat)	James E. & Vera L. Baumann
V-09776 (South Regli No. 1, 2, 3)	James E. & Vera L. Baumann
V-09777 (Rhyolite Spring)	James E. & Vera L. Baumann
V-09778 (Bullwacker Spring)	James E. & Vera L. Baumann
V-09779 (Richmond Spring)	James E. & Vera L. Baumann
V-10869 (F.G. Spring)	James E. & Vera L. Baumann
V-10870 (Lani Spring)	James E. & Vera L. Baumann
V-10871 (Hornitos Spring)	James E. & Vera L. Baumann



V-10872 (Upper Wood Trough)	James E. & Vera L. Baumann
V-10873 (Landslide Spring)	James E. & Vera L. Baumann
V-10874 (High Pass Spring)	James E. & Vera L. Baumann
V-10875 (Middle Spring)	James E. & Vera L. Baumann
V-10876 (Simpson Spring #2)	James E. & Vera L. Baumann
V-10877 (Fred Spring)	James E. & Vera L. Baumann
V-10878 (Pinto Pass Spring)	James E. & Vera L. Baumann
V-10879 (Pedroli Spring)	James E. & Vera L. Baumann
V-04497 (China Canyon Spring)	Chad D. & Rosie J. Bliss
V-04498 (Unnamed Spring # 1)	Chad D. & Rosie J. Bliss
V-04499 (Milk Ranch Spring)	Chad D. & Rosie J. Bliss
V-04500 (Spanish Gulch Springs)	Chad D. & Rosie J. Bliss
V-04505 (Middle Spring)	Eureka County
V-04506 (Lani Spring)	Eureka County
V-04507 (Fred Spring)	Eureka County
V-04509 (Bullwacker Spring)	Eureka County
V-04510 (Richmond Spring)	Eureka County
V-01423 (Spanish Gulch Springs)	Peter J. and Gladys P. Goicoechea
V-02969 (Held Spring 10)	Chloe Held Trust
V-02893 (Four Eyed Nicks Springs)	United Dressed Beef, Inc.
V-02903 (Held Springs No. 9)	United Dressed Beef, Inc.
R-04233 (Unnamed Spring)	BLM
R-04234 (Unnamed Spring)	BLM
R-04237 (Unnamed Spring)	BLM
R-04238 (Unnamed Spring)	BLM
R-04239 (Bennet Spring)	BLM
R-04240 (Unnamed Spring)	BLM
R-04241 (Unnamed Spring)	BLM
R-04242 (Unnamed Spring)	BLM
R-04243 (Unnamed Spring)	BLM
R-04244 (Unnamed Spring)	BLM
R-04245 (Unnamed Spring)	BLM
R-04246 (Spanish Gulch Spring)	BLM



R-04247 (Milk Spring)	BLM
R-04248 (Unnamed Spring)	BLM

PROCEDURE

Baumann acquired and/or filed thirty nine (39) vested claims¹ in the Diamond Valley Hydrographic Basin number 10-153.

On October 8, 1982, the State Engineer issued an Order Initiating Proceedings pursuant to NRS § 533.080(2) (Order No. 800) and Notice of Order and Proceedings (Order No. 801). On November 18, 1982, the State Engineer issued a Notice of Order for Taking Proofs to Determine Water Rights (Order No. 802) stating all claims were to be filed by February 10, 1984. Between 1982 and 1985 the State Engineer extended the deadline for proofs to be filed based on requests made by various claimants. On August 21, 2015, the State Engineer issued a Notice of Order and Proceedings to Determine Water Rights, both Surface and Underground (Order No. 1263). On October 16, 2015, the State Engineer issued a Notice of Order for Taking Proofs to Determine Water Rights (Order No. 1266), reestablishing the actions initiated by Order 802 setting the May 31, 2016 deadline for all claimants to file proofs of appropriation.

On August 30, 2018, the State Engineer issued the Preliminary Order of Determination in the Matter of the Determination of the Relative Rights in and to All Waters of Diamond Valley, Hydrographic Basin No. 10-153, Elko and Eureka Counties, Nevada ("Preliminary Order").

OBJECTIONS

Baumann makes the following objections to the Preliminary Order pursuant to the information contained within Baumann's Proofs and supplemental evidence contained within the Affidavit of Baumann filed in conjunction herewith.

///

¹ To the extent the Baumann's vested rights are not identified herein, there is no objections to the findings in the Preliminary Order at this time. A list of Baumann's claim files are attached to the Baumann Affidavit at Exhibit 1.



1. Spanish Gulch: Baumann is authorized to use water in the Spanish Gulch Allotment pursuant to their Grazing Permit for the Shannon Station.

Baumann is authorized to graze cattle in the Spanish Gulch Allotment and thereby utilize the water sources therein, including:

V-09756 (Poison Canyon Spring)	V-09758 (Cottonwood Creek Springs)
V-09759 (Spanish Gulch Springs)	V-09761 (Big Rock Spring)
V-09762 (Hole in the Wall Spring)	V-09763 (Shirt Creek Spring)
V-09764 (Rich Creek Spring)	V-09765 (Pass Creek Spring)
V-09767 (Seepage Springs Creek)	V-09768 (Milk Ranch Spring)
V-09769 (Unnamed No. 1 Spring)	V-09770 (China Canyon Spring)
V-09778 (Bullwacker Spring)	V-09779 (Richmond Spring)
V-10870 (Lani Spring)	V-10871 (Hornitos Spring)
V-10873 (Landslide Spring)	V-10874 (High Pass Spring)
V-10875 (Middle Spring)	V-10877 (Fred Spring)

Baumann objects to the State Engineer's finding that Baumann has no authority to graze in the Spanish Gulch Allotment and merely that "[t]he Baumann's have the lease for the Shannon Station Grazing Allotment (NV10051)." Preliminary Order, p. 196. Baumann does not merely lease the grazing rights in the Shannon Station Allotment, rather they are the licensed authorized Permittee for the Shannon Station Allotment Grazing Permit, and through this Grazing Permit for Shannon Station, is authorized to use Spanish Gulch Allotment.

Baumann is the successor to what was known as the Hunter Allotment. In 1951, James Hunter and John Hunter in their Application for Grazing Permit applied for use of 350 head of cattle and 100 head of horses noting use dating back to 1865.² Baumann Aff. at Ex. 5. Later in 1965, the "Diamond Valley Unit Adjudication and Allotment Agreement" was entered into between Hunter and others. Baumann Aff. at Ex. 6. In this Allotment Agreement, the boundary lines were determined between the Hay Ranch Allotment, the Hunter & Ithurralde Allotment,

² See also documents submitted by Baumann on file with NDWR showing earlier historical use.



and the Ithurralde Spanish Gulch Allotment (within the Hunter Allotment). This document also noted that “The Hunter Ithurralde allotment will be used in common by Hunters’ cattle and the Ithurralde sheep are limited to the Spanish Gulch allotment.” *Id.* Thus, even back in 1965 at the time of the allotment boundary adjudication, Baumann’s predecessors had authorization to use what is today the Spanish Gulch Allotment.

Baumann’s and their predecessors in interest, continue to have authorization to graze in the Spanish Gulch Allotment through the grazing permit as evidenced in the 2002 Term Grazing Permit.³ Baumann Aff. at Ex. 2. The 2002 Bureau of Land Management (“BLM”) Grazing Permit for Shannon Station Grazing Allotment (Allotment No. 10051) was issued to James Baumann authorizing the following Grazing Schedule:

Allotment	Livestock		Grazing Begin	Period End	%PL	Type Use	AUMS
	Number	Kind					
10051 Shannon Station (N6)	142	Cattle	04/01	04/30	97	Active	136
	300	Cattle	05/01	10/14	97	Active	1598
	180	Cattle	10/15	2/28	97	Active	786

The 2002 Grazing Permit states “[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee’s livestock are in the southern end of the Shannon Station Allotment.” *Id.* The term of the Grazing Permit is established for March 1, 2002 through February 28, 2012. *Id.*

The Term Grazing Permit is renewed over time. The current Grazing Permit for Shannon Station Grazing Allotment (Allotment No. 10051) is attached as Exhibit 3 to the Baumann Affidavit. The current Term Grazing Permit to the Baumann Family Trust authorizes the following Grazing Schedule:

³ Baumann was the authorized user in these allotments prior to 2002, however only the most recent term grazing permits are provided herewith so as to not overburden the record.



Allotment	Livestock		Grazing Begin	Period End	%PL	Type Use	AUMS
	Number	Kind					
10051 Shannon Station/ Spanish Gulch	130	Cattle	04/01	05/14	97	Active	182
10051 Shannon Station/ Spanish Gulch	300	Cattle	05/15	12/31	97	Active	2,210
10051 Shannon Station/ Spanish Gulch	68	Cattle	01/01	2/28	97	Active	128

The 2013 Term Grazing Permit states “[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee’s livestock are in the southern end of the Shannon Station Allotment.” *Id.* The term for grazing under this Grazing Permit is March 1, 2013 through February 28, 2021. *Id.*

In the Preliminary Order, the State Engineer found that the following Proofs of Appropriation have sources that lie within the “Spanish Gulch Allotment (NV10054) of which James E. and Vera L. Baumann are not authorized operators according to the BLM Allotment Master Report”:

V-09756 (Poison Canyon Spring)	V-09758 (Cottonwood Creek Springs)
V-09759 (Spanish Gulch Springs)	V-09761 (Big Rock Spring)
V-09762 (Hole in the Wall Spring)	V-09763 (Shirt Creek Spring)
V-09764 (Rich Creek Spring)	V-09765 (Pass Creek Spring)
V-09767 (Seepage Springs Creek)	V-09768 (Milk Ranch Spring)
V-09769 (Unnamed No. 1 Spring)	V-09770 (China Canyon Spring)
V-09778 (Bullwacker Spring)	V-09779 (Richmond Spring)
V-10870 (Lani Spring)	V-10871 (Hornitos Spring)
V-10873 (Landslide Spring)	V-10874 (High Pass Spring)
V-10875 (Middle Spring)	V-10877 (Fred Spring)

See Preliminary Order at pp. 197-204, 206-210.

///



In the Preliminary Order at pp. 197-204, 206-210, the State Engineer found that the above referenced claims are valid claims of vested rights, however,

[B]ecause the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested, the necessity by these claimants to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to divert also ceases (NRS § 533.045), but does not negate the right. Therefore, even though a valid claim of vested right is recognized in this Preliminary Order of Determination, this in no way grants an easement to the claimants for the right of ingress or egress on public lands, nor does it waive the requirements for the claimants to obtain other permits or permissions from State, Federal and local agencies.

As noted above, Baumann is the authorized user of the Spanish Gulch Allotment.

The BLM Master Report for Allotment NV 10054 is not complete, only describing the authorization of use to Permittee "2 Bit Ranch, LLC." Interestingly, and in relating back to prior limiting conditions to use the Allotment, the BLM Authorization Use by Allotment Report for Allotment NV10054, permittee 2 Bit Ranch, LLC is only allowed to use the allotment for 647 sheep from May 1 until September 30. *See* Baumann Aff. at Ex. 4. This authorization is completely separate from the authorization provided to Baumann wherein "[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee's livestock are in the southern end of the Shannon Station Allotment." *See* Baumann Aff. at Ex. 2-3.

Baumann is the Permittee for the grazing permit for the Shannon Station Grazing Allotment and pursuant to its terms are authorized to use the Spanish Gulch Allotment. The necessity of Baumann's (and their predecessors) use of the water has and continues to exist, therefore their right to divert has not ceased.

///

///

///



2. DUTY: Baumanns claim use for 325 head of cattle.⁴

Baumann is authorized to graze up to 325 head of cattle under their Term Grazing Permit, and therefore, all water uses within the Allotment should be confirmed for a total duty of water sufficient to water at least 325 head of cattle. Baumann Aff. at Ex. 2-3.

While the vested proofs relating to this objection claim water use in an amount from approximately 100 – 300 head of cattle, more or less, all vested water use should provide water for up to 325 head of cattle. This amount of water use is evidence in 1951 by James Hunter and John Hunter in their Application for Grazing Permit wherein they applied for use of 350 head of cattle and 100 head of horses. Baumann Aff. at Ex. 5. Interestingly, this document refers to use of this grazing area dating back to 1865. Baumann Aff. at Ex. 5, p. 3.

As noted above, the recent term Grazing Permit authorizes use up to the 325 head of cattle, and thus Baumann should be awarded an amount of water sufficient to water 325 head of cattle from any and all sources.

3. POISON SPRING, V-09760: Baumann is authorized to access and use Poison Spring, V-09760.

Baumann is authorized to access and use Poison Spring, therefore, Baumann objects to the State Engineer's findings concerning Proof of Appropriation V-09760 wherein the State Engineer finds:

[T]hat Poison Spring lies within the Black Point Grazing Allotment (NV10032) of which James E. and Vera L. Baumann are not authorized operators according to the BLM Allotment Master Report. In this Preliminary Order of Determination, a vested right to divert water from Poison Spring, when it is available, for the stockwatering of 100 cattle with a priority date of 1866 is determined to be valid. However, because the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested, the necessity by these claimants to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to divert also ceases (NRS § 533.045), but does not negate the right. Therefore, even though a

⁴ This objection relates to all vested claims/proofs owned by Baumann and addressed in the Preliminary Order.



valid claim of vested right is recognized in this Preliminary Order of Determination, this in no way grants an easement to the claimants for the right of ingress or egress on public lands, nor does it waive the requirements for the claimants to obtain other permits or permissions from the State, Federal and local agencies.

See, Preliminary Order at p. 199.

Poison Spring lies near the boundary of Shannon Station and Black Point Grazing Allotments. Shannon Station was historically known as Hunter Ranch (*see* Preliminary Order at p. 100-101). Poison Spring is a surface source bordering the Shannon Station and Black Point Grazing Allotments and lies on the south side of the border, placing it for use in the Shannon Station Allotment. Baumann Aff. at Ex. 6. The 1965 Allotment Agreement describes the legal boundaries for the Shannon Station Allotment (at that time called the “John & Kay Hunter and James Ithurrealde Allotment”) as running on the north side of Poison Spring:

[T]hence continuing along the district line east and north along the drainage divide of the Diamond Range, a distance of about nine (9) miles to the high point on the drainage divide north of Poison (Summit) Spring in the NW ¼ SE ¼ Sec. 36, T. 20 N., R. 54 E.

See Baumann Aff. at Ex. 6 (Emphasis added). The Allotment Agreement was executed by the parties Hay Ranch (Lucky C), John and Kay Hunter, James Ithurrealde, George Brown and Edward Melka on various dates in March and April 1965. The Allotment Agreement was approved by the Battle Mountain District Advisory Board on June 10, 1965. On December 13, 1965 the District Manager executed concurrence of the Allotment Agreement.

Later in 1981, the use of Poison Spring by both allotments was confirmed pursuant to the Range Line Agreement. Baumann Aff. at Ex. 7. The Range Line Agreement, dated July 9, 1981 for Shannon Station Allotment provides a legal description matching that of the John & Kay Hunter and James Ithurrealde Allotment provided in the 1965 Allotment Agreement and further states “Water will be available from Poison Spring to the troughs on both sides of the boundary fence. Excess water from Held’s tank will go to the trough in Shannon Station.” Baumann Aff. at



Ex. 7. The Range Line Agreement was approved by BLM Authorized Officer Talbot on December 12, 1984.

Gerald E. Robinson, who worked for the Hunter family at the Hunter Ranch, confirms Baumanns' predecessors' historic use of Poison Spring. Baumann Aff. at Ex. 8. Mr. Robinson, in an acknowledged letter dated December 1, 2008, he states:

The Hunter cattle utilized each and every spring in the mountains from the Cottonwood Spring north of the Hunter Ranch; to the Fairbury Well south of the Hunter Ranch; east to the Poison Spring and west to the Rhyolite Spring.

Baumanns have express authority to access and use the water from Poison Spring delivered via trough in Shannon Station Allotment, as well as excess water from Held's tank pursuant to the 1981 BLM Range Line Agreement. Baumann's predecessors have historically used water from Poison Spring.⁵ Therefore, the necessity of Baumann (and their predecessors) use of the water has and continues to exist, and the right to divert has not ceased.

4. SOUTH REGLI, V-09776: South Regli is located within the fence line of Shannon Station Allotment, not the Black Point Allotment.

Baumann is the authorized grazer of the Shannon Station and Spanish Gulch grazing allotments. Given the location of the allotment boundary fence, South Regli 1-2-3 is actually within the Shannon Station Allotment. Therefore, Baumann objects to the State Engineer's finding that South Regli 1-2-3 is located within the fence line of the Black Point Allotment.

Pursuant to the correspondence within NDWR files related to V09776, South Regli 1-2-3 is located within the NENE of Section 10, T19N, R54E. Baumann Aff. Ex. 9-10. The BLM Allotment Boundary lines as published placed this water source within the Black Point Allotment. *See* Baumann Aff. Ex. 11. However, since the allotment was split in two back in 1981, the fence line was constructed such that it runs to the north of South Regli, thereby placing

⁵ *See also* Baumann's Poison Spring Proof of Appropriation and documents contained within the Proof file at NDWR.



South Regli within the Shannon Station Allotment. Baumann Aff. ¶ 3; *see also* James E. and Vera L. Baumann, Volume 2 of supporting information to vested proofs on file with NDWR.

Pursuant to BLM's boundary fencing, Baumann has express authority to access and use the water from South Regli 1-2-3 in Shannon Station Allotment. Baumann's predecessors have historically used water from South Regli 1-2-3. Therefore, the necessity of Baumann's (and their predecessors) use of the water has and continues to exist, and the right to divert has not ceased.

5. BLISS - 2 BIT RANCH LLC: V04499 and V04500 should be limited to water use for sheep only⁶.

Baumann objects to the State Engineer's determinations concerning Proofs of Appropriation V04499 and V04500, as Chad & Rosie Bliss and the 2 Bit Ranch LLC's only authorized use is for sheep, not cattle and horses or other livestock. Specifically, Baumann objects to the State Engineer's finding that:

Proof of Appropriation V-04499 was filed claiming to have diverted 0.15 cfs of water from Milk Ranch Spring (POD within the SE1/4 SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a spring box, natural channel and pipeline to water 50 cattle and 2,100 sheep from March 15 through October 31 with a priority date of 1860....In this Preliminary Order of Determination, a vested right to divert water from Milk Ranch Spring, when available, for the stockwatering of 605 horses and cattle with a priority date of 1873 is determined to be valid.

Proof of Appropriation V-04500 was filed claiming to have diverted 0.15 cfs of water from Spanish Gulch Spring (POD within the SE1/4 NE1/4 Section 29, T.19N., R.54E., M.D.B.&M.) via a natural channel to water 50 cattle and 2,100 sheep from March 15 through October 31 with a priority date of 1860....In this Preliminary Order of Determination, a vested right to divert water from Spanish Gulch Spring, when it is available, for the stockwatering of 605 horses and cattle with a priority date of 1873 is determined to be valid.

⁶ In addition, Baumann is concerned that Bliss' interest in Spanish Gulch Springs relies on a clouded chain of title. Specifically, A.C. Florio deeded his interest in Spanish Gulch Spring to Bertrand Arambel, James Ithurrealde and John Iros on March 29, 1950 (see Eureka County Recorder, document number 28320). However, A.C. Florio had already deeded his interest in Spanish Gulch Springs (previously referred to as John T. Baker Springs) to Issac T. Handley and Walter Handley on February 25, 1928 (see Eureka County Recorder document number 17452) and thus, had no interest remaining in 1950 to convey.



See Preliminary Order at p. 221. Baumann objects to any and all claims by Chad Bliss, Rosie Bliss and 2 Bit Ranch, LLC for use of watering cattle or horses from any sources in the Spanish Gulch Allotment as their grazing permit only allows for watering sheep.

The 1965 Allotment Agreement specifies that James Ithurralde's, predecessor to Bliss, use in the Spanish Gulch allotment is for sheep which are to be held above 7,000 feet in elevation. Baumann Aff. at Ex. 6, *noting* that the Hunter Allotment is now Baumanns. Further, the BLM Authorization Use by Allotment Report for the Spanish Gulch Allotment specifies that Chad and Rosie Bliss, officers of 2 Bit Ranch, LLC, who is the owner of the Spanish Gulch grazing allotment, are only authorized to have 647 sheep and no cattle or horses on the Spanish Gulch Allotment. See Baumann Aff. at Ex. 4.

Chad and Rosie Bliss have no authority to run cattle in the Spanish Gulch Allotment. Baumann is the only party authorized to run cattle in the Spanish Gulch Allotment pursuant to the terms of the Shannon Station Grazing Permit as well as the 1965 Allotment Agreement. The use under Proofs of Appropriation V-04499 and V-04500 should be limited to the 647 sheep as authorized under the Bliss/2 Bit Ranch LLC Spanish Gulch Grazing Permit.

6. GOICOECHEA V01423⁷: Pete & Gladys Goicoechea do not have authorization to graze within the Shannon Station and Spanish Gulch Allotments, therefore V01423 should be denied.

Pete and Gladys Goicoechea do not have authorization to graze cattle within the Shannon Station and Spanish Gulch allotments, therefore, V01423 should be denied. In the Preliminary Order, the State Engineer found:

Spanish Gulch Spring lies within the Spanish Gulch Grazing Allotment (NV10054) of which Peter J. and Gladys Goicoechea are not authorized operators according to the BLM Allotment Master Report. In this Preliminary Order of Determination, a

⁷ Baumann asserts the same concern about a clouded chain of title regarding any rights to sheep grazing sources located within the Spanish Gulch allotment as noted in footnote 6 above. Any interest in sources for watering of sheep was improperly deeded to Bertrand Arambel, James Ithurralde and John Iros on March 29, 1950 (see Eureka County Recorder, document number 28320), as A.C. Florio had already deeded his interest to Issac T. Handley and Walter Handley on February 25, 1928 (see Eureka County Recorder, document number 17452).



vested right to divert water from Spanish Gulch Springs, when available, for stockwatering of 300 cattle with a priority date of 1890 is determined to be valid. However, because the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested the necessity by these claimant to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to diver also ceases (NRS § 533.045).

See Preliminary Order at p. 223.

As outlined above in Section 1, Baumann is the party authorized to run cattle in Spanish Gulch Allotment pursuant to the terms of their Shannon Station Grazing Permit and the 1965 Allotment Agreement. And, Chad and Rosie Bliss are the party authorized to run 647 sheep only pursuant to their Spanish Gulch Grazing Permit and the 1965 Allotment Agreement.

While Baumann agrees with the ultimate determination of the Preliminary Order as to V01423, they disagree that Goicoechea ever had authorization to graze to support a vested proof filing. Thus, should there be an objection filed on V01423 by the claimant, Baumann reserves the right to bring forth evidence to disprove this claim.

7. EUREKA COUNTY Vested Claims V-04505, V-04506 and V-04507. These claims must consider Baumann's prior use on the sources whose necessity of use continues to exist and whose right to divert has not ceased.

The Preliminary Order found V-04505, V-04506 and V-04507 were valid claims, specifically stating:

Proof of Appropriation V-04505 was filed claiming to have diverted 0.111 cfs of water from Middle Spring (POD within SE1/4 NEW1/4 Section 36, T.19N., R.53E., M.D.B.M.) via a pipeline to storage tanks to supply water to the town of Eureka, Nevada from January 1 through December 31 with a priority date of 1873. Stockwater Claim V-10875 filed by James E. and Vera L. Baumann also utilize this source as a POD... [t]he State Engineer finds a basis for diversion of 0.027 cfs of water from Middle Spring for municipal use from January 1 through December 31 with a priority date of 1873.

Proof of Appropriation V-04506 was filed claiming to have diverted 0.111 cfs of water from Lani Spring (POD within SW1/4 SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a pipeline to storage tanks to supply water to the town of Eureka, Nevada from



January 1 through December 31 with a priority date of 1870.
Stockwater Claim V-10870 filed by James E. and Vera L.
Baumann also utilize this source as a POD...[t]he State Engineer
finds a basis for diversion of 0.011 cfs of water from Lani Spring
for municipal use from January 1 through December 31 with a
priority date of 1892.

Proof of Appropriation V-04507 was filed claiming to have
diverted 0.111 cfs of water from Fred Spring (POD within NW1/4
SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a pipeline to
storage tanks to supply water to the town of Eureka, Nevada from
January 1 through December 31 with a priority date of 1878.
Stockwater Claim V-10877 filed by James E. and Vera L.
Baumann also utilize this source as a POD...[t]he State Engineer
finds a basis for diversion of 0.004 cfs of water form Fred Spring
for municipal use form January 1 through December 31 with a
priority date of 1878.

The sources listed in the above referenced claims have already been appropriated by
Baumann with a priority date of 1866. Baumann's claims on these sources under V-10870, V-
10875 and V-10877 have a continued necessity to use the water and whose right to divert has not
ceased (see above at Section 1) and must be recognized and considered as the prior senior
appropriator.

**8. EUREKA COUNTY Vested Claims V-04509 and V-04510 should be rejected.
These claims must consider Baumann's prior use on the sources whose
necessity of use continues to exist and whose right to divert has not ceased.**

In the Preliminary Order, the State Engineer rejected claims V-04509 and V-04510 as the
State Engineer found "insufficient evidence submitted or obtained from sources in the public
domain by his office to substantiate a claim to water for municipal use" from the sources.
Preliminary Order at p. 271, 272. The sources listed in the above referenced claims have already
been appropriated by Baumann with a priority date of 1866. Baumann's claims on these sources
under V-09778 and V-09779 have a continued necessity to use the water and whose right to
divert has not ceased (see above at Section 1). While Baumann does not object to this finding in
the Preliminary Order, should these be requested for reinstatement by claimant, Baumann
reserves the right to file objections or otherwise contest the claims to water use.



9. BLM Public Water Reserved ("PWR") Vested Claims R04237, R04238, R04239, R04243, R04244, R04245: BLM's PWR Claims within the Shannon Station and Spanish Gulch Allotments do not meet the criteria for a PWR 107 implied reserved right as the sources are already appropriated by Baumann.

Baumann objects to vested claims for reserved rights R04237, R04238, R04239, R04243 and R04244 claimed by BLM for stockwatering purposes on sources located in Shannon Station Allotment.

In the Preliminary Order the State Engineer notes BLM filed Public Water Reserve (PWR) 107 Reserved Right Claims under Executive Order dated April 17, 1926. The Executive Order allows:

Every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or waterhole and all land within one quarter mile of every spring or waterhole, located on unsurveyed public land, be and the same is hereby withdrawn from settlement, location, sale or entry, and reserved for public use in accordance with the provisions of Section 10 of the Act of December 29, 1916.

See Preliminary Order, pp. 278-279.

The State Engineer made the following determinations for the reserved rights discussed herein:

- a) BLM R-04237 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 288.*
- b) BLM R-04238 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 289.*
- c) BLM R-04239 (Bennet Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 289.*

///



- d) BLM R-04243 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source...[t]he State Engineer finds the evidence indicates the spring has a discrete natural flow, the daily flow is in excess of 1,800 gpd and the claim will serve human consumption and stock-watering purposes. The State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 290.*
- e) BLM R-04244 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source...[t]he State Engineer finds the evidence indicates the spring has a discrete natural flow, the daily flow is in excess of 1,800 gpd and the claim will serve human consumption and stock-watering purposes. The State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 291.*

Baumann has valid vested claims for stockwatering of cattle on sources located within the Shannon Station Allotment pursuant to their Shannon Station Grazing Permit (see Sections 1, 3 and 4 above). The PWR Executive Order dated April 17, 1926, allows for filing on unappropriated sources. The sources located in the Shannon Station and Spanish Gulch were appropriated prior to 1926 and therefore are prior existing rights. These sources were already appropriated for stockwatering of cattle by Baumann:

- 1) Baumann contends that the Unnamed Springs identified in BLM's R-04237 and R-04238 do not exist and if a water source is located at those locations, they are tributaries of Green Spring and/or Old Bennett Spring appropriated by Baumann under V-02324 and/or V-02325.
- 2) Baumann contends that the Bennet Spring water source identified under BLM R-04239 is a tributary of Baumann's prior V-02324.
- 3) Baumann contends that the Unnamed Spring identified by BLM R-04243 is the same source as DePaoli Spring appropriated by Baumann under V-09757.
- 4) Baumann contends that the Unnamed Spring identified by BLM R-04244 is a source within Baumann's Simpson Spring #1 Complex, already appropriated by Baumann under V-02326.



There is no excess unappropriated water available for BLM to acquire under the PWR 107 implied reserved water for any sources located in the Shannon Station Allotments.

10. BLM Public Water Reserved ("PWR") Vested Claims R04233, R04234, R04240, R04241, R04242, R04245, R04246, R04247, R04248: The PWR Claims within the Spanish Gulch Allotments determined not valid.

Baumann objects to vested claims for reserved rights R04233, R04234, R04240, R04241, R04242, R04245, R04246, R04247 and R04248, as claimed by BLM for stockwatering purposes on sources located in Spanish Gulch Allotment. The water sources located in the Spanish Gulch Allotment are already appropriated by Baumann for stockwater pursuant to the Shannon Station Grazing Permit and as evidenced in the 1965 Allotment Agreement. Furthermore, water for sheep is already appropriated by Chad and Rosie Bliss under their Spanish Gulch Grazing Permit. The State Engineer correctly determined the rights to be invalid finding:

- a) BLM R-04233 (Unnamed Spring located within the Spanish Gulch Allotment): The spring does not meet the criteria for a PWR 107 implied reserved water right, even though it shares a POD with valid claim of vested right V-04495, which does not fully appropriate the waters from the source, and determines there is sufficient additional water available for PWR Claim R-04233 to be valid. *See* Preliminary Order p. 287.
- b) BLM R-04234 (Unnamed Spring located within the Spanish Gulch Allotment): The spring does not meet the criteria for a PWR 107 implied reserved water right as it shares a POD with valid claim of vested right V-04496, which fully appropriates all the available waters from this source, and determines that PWR Claim R-04234 is not valid. *See* Preliminary Order p. 305.
- c) BLM R-04240 (Unnamed Spring located within the Spanish Gulch Allotment): Stockwater Claim V-09761 owned by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd and shares the POD with valid claim of vested right V-09761, which fully appropriates all the available waters from this source, and determines that PWR claim R-04240 is not valid. *See* Preliminary Order p. 307.
- d) BLM R-04241 (Unnamed Spring located within the Spanish Gulch Allotment): The BLM did not file a supporting map. The State Engineer finds the lack of a supporting map makes the claim incomplete and the lack evidence presented indicates the spring does not meet the criteria for a PWR 107 implied reserved water right, and determines that PWR Claim R-04241 is not valid. *See* Preliminary Order p. 307.



- e) BLM R-04242 (Unnamed Spring located within the Spanish Gulch Allotment):
The State Engineer finds the evidence indicates the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum 1,800 gpd, and determines that PWR Claim R-04242 is not valid. *See* Preliminary Order p. 308.
- f) BLM R-04245 (Unnamed Spring within the Spanish Gulch Allotment):
Stockwater Claim V-10871 owned by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd, and shares the POD with claim of vested right V-10871, which fully appropriates all the waters of the source, and determines that PWR Claim R-04245 is not valid. *See* Preliminary Order pp. 308-309.
- g) BLM R-04246 (Spanish Gulch Spring within the Spanish Gulch Allotment):
Stockwater Claim V-01423 owned by Peter J. and Gladys P. Goicoechea, stockwater Claim V-04500 owned by Chad D. and Rosie J. Bliss and stockwater Claim V-09759 filed by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right even though it produces approximately 18,000 gpd, as it shares a POD with valid claims of vested right V-01423, V-04500 and V-09759, which fully appropriates all the waters of the source, and determines that PWR Claim R-04246 is not valid. *See* Preliminary Order p. 309.
- h) BLM R-04247 (Milk Ranch Spring within the Spanish Gulch Allotment):
Stockwater Claim V-04499 owned by Chad D. and Rosie J. Bliss also utilizes this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd and it shares a POD with valid claim of vested right V-04499, which fully appropriates all the waters of the source, and determines that PWR Claim R-04247 is not valid. *See* Preliminary Order pp. 309-310.
- i) BLM R-04248 (Unnamed Spring within the Spanish Gulch Allotment):
There are no other water right claims on this source... [t]he State Engineer determines the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum 1,800 gpd, and determines that PWR Claim R-04248 is not valid. *See* Preliminary Order, pp. 310-311.

While Baumann does not object to these findings in the Preliminary Order, should these be requested for reinstatement by claimant, Baumann reserves the right to file objections or otherwise contest the claims to water use.

///

///



11. All Rights Reserved.

Baumann agrees with the Preliminary Order of Determination as to V-01423, V-02969, V-02893, V-02903, V-04497, V-04498, V-04509, V-04510, R-04234, R-04240, R-04241, R-04242, R-04245, R-04246, R-04247 and R-04248 and should these be reinstated, Baumann reserves the right to file objections or otherwise contest the claims to water use.

CONCLUSION

The evidence submitted with Baumann's Proofs, the Affidavit of Baumann in Support of Objections and exhibits thereto sufficiently establish all the assertions made in these objections. Baumann vested water claims in the Spanish Gulch Allotment should be granted based on a valid determination pursuant to the authority to graze in the Spanish Gulch Allotment as outlined in Baumann's Shannon Station Grazing Permit and as further evidenced by the 1965 Allotment Agreement. Baumann proofs should recognize the historical use of watering up to 325 head of cattle as evidenced in the 1951 Grazing Permit Application and recent grazing permits. Baumann's use of the water from Poison Spring should be validated pursuant to the authority granted in the 1965 Allotment Agreement and 1981 Range Line Agreement and as evidenced in the 2008 letter from Gerald Robinson. Baumann's use of the water from South Regli 1, 2, 3 should be validated pursuant to their authorized use within the 1965 Allotment Agreement and acknowledgment in the Baumann Affidavit. Chad and Rosie Bliss' Proofs of Appropriation V-04499 and V-04500 should be limited to their authorized use of grazing 647 sheep pursuant to their Spanish Gulch Grazing Permit or rejected based on an insufficient chain of title. Any claims made by Goicoechea to sources in the Spanish Gulch and/or Shannon Station Allotments should be denied based on insufficient chain of title and due to lack of authorization to graze in the



allotments. BLM Public Water Reserved Vested Claims should be re-evaluated to consider Baumanns' prior vested rights on the sources located within the Shannon Station and Spanish Gulch grazing allotments to determine if any water is available at the source after Baumann's prior vested rights are satisfied.

DATED this 6th day of November, 2018.

SCHROEDER LAW OFFICES, P.C.



Laura A. Schroeder, NSB #3595

Therese A. Ure, NSB #10255

counsel@water-law.com

10615 Double R Blvd., Ste. 100

Reno, NV 89521

Phone: (775) 786-8800

Fax: (877) 600-4971

Attorneys for Claimants Baumann



CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2018, I caused a copy of the foregoing

***CLAIMANTS JAMES E. AND VERA L. BAUMANN'S OBJECTIONS TO PRELIMINARY
ORDER OF DETERMINATION*** to be served on the following parties as outlined below:

VIA PERSONAL SERVICE:

Nevada State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

Dated this 6th day of November, 2018.



Laura A. Schroeder, NSB # 3595
Therese A. Ure, NSB #10255
10615 Double R Blvd., Ste. 100
Reno, NV 89521
PHONE: (775) 786-8800
FAX: (877) 600-4971
counsel@water-law.com
Attorneys for Claimants Baumann



Therese A. Ure, NSB 10255
Laura A. Schroeder, NSB 3595
Schroeder Law Offices, P.C.
10615 Double R Blvd., Ste. 100
Reno, Nevada 89521
PHONE (775) 786-8800; FAX (877) 600-4971
counsel@water-law.com
Attorneys for Claimants Baumann

Affirmation: This document does
not contain the social security
number of any person.

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

IN THE MATTER OF THE
DETERMINATION OF DEFINING THE
RIGHTS IN AND TO ALL WATERS OF
DIAMOND VALLEY, HYDROGRAPHIC
BASIN NO. 10-153, ELKO AND EUREKA
COUNTIES, NEVADA.

**CLAIMANTS JAMES E. AND VERA L.
BAUMANN'S OBJECTIONS TO
PRELIMINARY ORDER OF
DETERMINATION**

INTRODUCTION

COMES NOW, Claimants James E. and Vera L. Baumann ("Claimant" or "Baumann"), by and through their counsel, Laura A. Schroeder and Therese A. Ure, of Schroeder Law Offices, P.C., and hereby files, pursuant to NRS 533.145, the following Objections to the Preliminary Order of Determination, issued in this matter on August 30, 2018, by the State Engineer and Nevada Division of Water Resources ("NDWR"). The following Objections are hereby verified by *Affidavit of Claimant Baumann in Support of Objections to Preliminary Order of Determination* ("Baumann Affidavit") under separate cover, and incorporated herewith.

These objections apply to the following claims:

Page 1 – CLAIMANTS JAMES E. AND VERA L. BAUMANN'S OBJECTIONS TO PRELIMINARY ORDER OF DETERMINATION



10615 Double R Blvd., Ste. 100
Reno, Nevada 89521
PHONE (775) 786-8800 FAX (877) 600-4971

{P0414558; 1515.00 LMM }

Vested No. - Source	Claimant
V-01085 (Simpson Creek)	James E. & Vera L. Baumann
V-01089 (Old Bennet Spring)	James E. & Vera L. Baumann
V-01133 (Simpson Creek and Tribs)	James E. & Vera L. Baumann
V-02324 (Wood Trough Spring)	James E. & Vera L. Baumann
V-02325 (Green Spring)	James E. & Vera L. Baumann
V-02326 (Simpson No. 1 Spring)	James E. & Vera L. Baumann
V-03657 (Four-Eyed Nicks Spring)	James E. & Vera L. Baumann
V-09756 (Poison Canyon Spring)	James E. & Vera L. Baumann
V-09757 (DePaoli Creek Spring)	James E. & Vera L. Baumann
V-09758 (Cottonwood Creek Springs)	James E. & Vera L. Baumann
V-09759 (Spanish Gulch Springs)	James E. & Vera L. Baumann
V-09760 (Poison Spring)	James E. & Vera L. Baumann
V-09761 (Big Rock Spring)	James E. & Vera L. Baumann
V-09762 (Hole in the Wall Spring)	James E. & Vera L. Baumann
V-09763 (Shirt Creek Spring)	James E. & Vera L. Baumann
V-09764 (Rich Creek Spring)	James E. & Vera L. Baumann
V-09765 (Pass Creek Spring)	James E. & Vera L. Baumann
V-09766 (Rose Spring)	James E. & Vera L. Baumann
V-09767 (Seepage Springs Creek)	James E. & Vera L. Baumann
V-09768 (Milk Ranch Spring)	James E. & Vera L. Baumann
V-09769 (Unnamed No. 1 Spring)	James E. & Vera L. Baumann
V-09770 (China Canyon Spring)	James E. & Vera L. Baumann
V-09771 (Eureka Creek)	James E. & Vera L. Baumann
V-09775 (Angelo Belli Flat)	James E. & Vera L. Baumann
V-09776 (South Regli No. 1, 2, 3)	James E. & Vera L. Baumann
V-09777 (Rhyolite Spring)	James E. & Vera L. Baumann
V-09778 (Bullwacker Spring)	James E. & Vera L. Baumann
V-09779 (Richmond Spring)	James E. & Vera L. Baumann
V-10869 (F.G. Spring)	James E. & Vera L. Baumann
V-10870 (Lani Spring)	James E. & Vera L. Baumann
V-10871 (Hornitos Spring)	James E. & Vera L. Baumann



V-10872 (Upper Wood Trough)	James E. & Vera L. Baumann
V-10873 (Landslide Spring)	James E. & Vera L. Baumann
V-10874 (High Pass Spring)	James E. & Vera L. Baumann
V-10875 (Middle Spring)	James E. & Vera L. Baumann
V-10876 (Simpson Spring #2)	James E. & Vera L. Baumann
V-10877 (Fred Spring)	James E. & Vera L. Baumann
V-10878 (Pinto Pass Spring)	James E. & Vera L. Baumann
V-10879 (Pedroli Spring)	James E. & Vera L. Baumann
V-04497 (China Canyon Spring)	Chad D. & Rosie J. Bliss
V-04498 (Unnamed Spring # 1)	Chad D. & Rosie J. Bliss
V-04499 (Milk Ranch Spring)	Chad D. & Rosie J. Bliss
V-04500 (Spanish Gulch Springs)	Chad D. & Rosie J. Bliss
V-04505 (Middle Spring)	Eureka County
V-04506 (Lani Spring)	Eureka County
V-04507 (Fred Spring)	Eureka County
V-04509 (Bullwacker Spring)	Eureka County
V-04510 (Richmond Spring)	Eureka County
V-01423 (Spanish Gulch Springs)	Peter J. and Gladys P. Goicoechea
V-02969 (Held Spring 10)	Chloe Held Trust
V-02893 (Four Eyed Nicks Springs)	United Dressed Beef, Inc.
V-02903 (Held Springs No. 9)	United Dressed Beef, Inc.
R-04233 (Unnamed Spring)	BLM
R-04234 (Unnamed Spring)	BLM
R-04237 (Unnamed Spring)	BLM
R-04238 (Unnamed Spring)	BLM
R-04239 (Bennet Spring)	BLM
R-04240 (Unnamed Spring)	BLM
R-04241 (Unnamed Spring)	BLM
R-04242 (Unnamed Spring)	BLM
R-04243 (Unnamed Spring)	BLM
R-04244 (Unnamed Spring)	BLM
R-04245 (Unnamed Spring)	BLM
R-04246 (Spanish Gulch Spring)	BLM



R-04247 (Milk Spring)	BLM
R-04248 (Unnamed Spring)	BLM

PROCEDURE

Baumann acquired and/or filed thirty nine (39) vested claims¹ in the Diamond Valley Hydrographic Basin number 10-153.

On October 8, 1982, the State Engineer issued an Order Initiating Proceedings pursuant to NRS § 533.080(2) (Order No. 800) and Notice of Order and Proceedings (Order No. 801). On November 18, 1982, the State Engineer issued a Notice of Order for Taking Proofs to Determine Water Rights (Order No. 802) stating all claims were to be filed by February 10, 1984. Between 1982 and 1985 the State Engineer extended the deadline for proofs to be filed based on requests made by various claimants. On August 21, 2015, the State Engineer issued a Notice of Order and Proceedings to Determine Water Rights, both Surface and Underground (Order No. 1263). On October 16, 2015, the State Engineer issued a Notice of Order for Taking Proofs to Determine Water Rights (Order No. 1266), reestablishing the actions initiated by Order 802 setting the May 31, 2016 deadline for all claimants to file proofs of appropriation.

On August 30, 2018, the State Engineer issued the Preliminary Order of Determination in the Matter of the Determination of the Relative Rights in and to All Waters of Diamond Valley, Hydrographic Basin No. 10-153, Elko and Eureka Counties, Nevada ("Preliminary Order").

OBJECTIONS

Baumann makes the following objections to the Preliminary Order pursuant to the information contained within Baumann's Proofs and supplemental evidence contained within the Affidavit of Baumann filed in conjunction herewith.

///

¹ To the extent the Baumann's vested rights are not identified herein, there is no objections to the findings in the Preliminary Order at this time. A list of Baumann's claim files are attached to the Baumann Affidavit at Exhibit 1.



1. Spanish Gulch: Baumann is authorized to use water in the Spanish Gulch Allotment pursuant to their Grazing Permit for the Shannon Station.

Baumann is authorized to graze cattle in the Spanish Gulch Allotment and thereby utilize the water sources therein, including:

V-09756 (Poison Canyon Spring)	V-09758 (Cottonwood Creek Springs)
V-09759 (Spanish Gulch Springs)	V-09761 (Big Rock Spring)
V-09762 (Hole in the Wall Spring)	V-09763 (Shirt Creek Spring)
V-09764 (Rich Creek Spring)	V-09765 (Pass Creek Spring)
V-09767 (Seepage Springs Creek)	V-09768 (Milk Ranch Spring)
V-09769 (Unnamed No. 1 Spring)	V-09770 (China Canyon Spring)
V-09778 (Bullwacker Spring)	V-09779 (Richmond Spring)
V-10870 (Lani Spring)	V-10871 (Hornitos Spring)
V-10873 (Landslide Spring)	V-10874 (High Pass Spring)
V-10875 (Middle Spring)	V-10877 (Fred Spring)

Baumann objects to the State Engineer's finding that Baumann has no authority to graze in the Spanish Gulch Allotment and merely that "[t]he Baumann's have the lease for the Shannon Station Grazing Allotment (NV10051)." Preliminary Order, p. 196. Baumann does not merely lease the grazing rights in the Shannon Station Allotment, rather they are the licensed authorized Permittee for the Shannon Station Allotment Grazing Permit, and through this Grazing Permit for Shannon Station, is authorized to use Spanish Gulch Allotment.

Baumann is the successor to what was known as the Hunter Allotment. In 1951, James Hunter and John Hunter in their Application for Grazing Permit applied for use of 350 head of cattle and 100 head of horses noting use dating back to 1865.² Baumann Aff. at Ex. 5. Later in 1965, the "Diamond Valley Unit Adjudication and Allotment Agreement" was entered into between Hunter and others. Baumann Aff. at Ex. 6. In this Allotment Agreement, the boundary lines were determined between the Hay Ranch Allotment, the Hunter & Ithurralde Allotment,

² See also documents submitted by Baumann on file with NDWR showing earlier historical use.

and the Ithurralde Spanish Gulch Allotment (within the Hunter Allotment). This document also noted that “The Hunter Ithurralde allotment will be used in common by Hunters’ cattle and the Ithurralde sheep are limited to the Spanish Gulch allotment.” *Id.* Thus, even back in 1965 at the time of the allotment boundary adjudication, Baumann’s predecessors had authorization to use what is today the Spanish Gulch Allotment.

Baumann’s and their predecessors in interest, continue to have authorization to graze in the Spanish Gulch Allotment through the grazing permit as evidenced in the 2002 Term Grazing Permit.³ Baumann Aff. at Ex. 2. The 2002 Bureau of Land Management (“BLM”) Grazing Permit for Shannon Station Grazing Allotment (Allotment No. 10051) was issued to James Baumann authorizing the following Grazing Schedule:

Allotment	Livestock		Grazing Begin	Period End	%PL	Type Use	AUMS
	Number	Kind					
10051 Shannon Station (N6)	142	Cattle	04/01	04/30	97	Active	136
	300	Cattle	05/01	10/14	97	Active	1598
	180	Cattle	10/15	2/28	97	Active	786

The 2002 Grazing Permit states “[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee’s livestock are in the southern end of the Shannon Station Allotment.” *Id.* The term of the Grazing Permit is established for March 1, 2002 through February 28, 2012. *Id.*

The Term Grazing Permit is renewed over time. The current Grazing Permit for Shannon Station Grazing Allotment (Allotment No. 10051) is attached as Exhibit 3 to the Baumann Affidavit. The current Term Grazing Permit to the Baumann Family Trust authorizes the following Grazing Schedule:

³ Baumann was the authorized user in these allotments prior to 2002, however only the most recent term grazing permits are provided herewith so as to not overburden the record.



Allotment	Livestock		Grazing Begin	Period End	%PL	Type Use	AUMS
	Number	Kind					
10051 Shannon Station/ Spanish Gulch	130	Cattle	04/01	05/14	97	Active	182
10051 Shannon Station/ Spanish Gulch	300	Cattle	05/15	12/31	97	Active	2,210
10051 Shannon Station/ Spanish Gulch	68	Cattle	01/01	2/28	97	Active	128

The 2013 Term Grazing Permit states “[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee’s livestock are in the southern end of the Shannon Station Allotment.” *Id.* The term for grazing under this Grazing Permit is March 1, 2013 through February 28, 2021. *Id.*

In the Preliminary Order, the State Engineer found that the following Proofs of Appropriation have sources that lie within the “Spanish Gulch Allotment (NV10054) of which James E. and Vera L. Baumann are not authorized operators according to the BLM Allotment Master Report”:

V-09756 (Poison Canyon Spring)	V-09758 (Cottonwood Creek Springs)
V-09759 (Spanish Gulch Springs)	V-09761 (Big Rock Spring)
V-09762 (Hole in the Wall Spring)	V-09763 (Shirt Creek Spring)
V-09764 (Rich Creek Spring)	V-09765 (Pass Creek Spring)
V-09767 (Seepage Springs Creek)	V-09768 (Milk Ranch Spring)
V-09769 (Unnamed No. 1 Spring)	V-09770 (China Canyon Spring)
V-09778 (Bullwacker Spring)	V-09779 (Richmond Spring)
V-10870 (Lani Spring)	V-10871 (Hornitos Spring)
V-10873 (Landslide Spring)	V-10874 (High Pass Spring)
V-10875 (Middle Spring)	V-10877 (Fred Spring)

See Preliminary Order at pp. 197-204, 206-210.

///



In the Preliminary Order at pp. 197-204, 206-210, the State Engineer found that the above referenced claims are valid claims of vested rights, however,

[B]ecause the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested, the necessity by these claimants to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to divert also ceases (NRS § 533.045), but does not negate the right. Therefore, even though a valid claim of vested right is recognized in this Preliminary Order of Determination, this in no way grants an easement to the claimants for the right of ingress or egress on public lands, nor does it waive the requirements for the claimants to obtain other permits or permissions from State, Federal and local agencies.

As noted above, Baumann is the authorized user of the Spanish Gulch Allotment.

The BLM Master Report for Allotment NV 10054 is not complete, only describing the authorization of use to Permittee “2 Bit Ranch, LLC.” Interestingly, and in relating back to prior limiting conditions to use the Allotment, the BLM Authorization Use by Allotment Report for Allotment NV10054, permittee 2 Bit Ranch, LLC is only allowed to use the allotment for 647 sheep from May 1 until September 30. *See* Baumann Aff. at Ex. 4. This authorization is completely separate from the authorization provided to Baumann wherein “[t]he Spanish Gulch Allotment will be grazed in conjunction with the Shannon Station Allotment when the Permittee’s livestock are in the southern end of the Shannon Station Allotment.” *See* Baumann Aff. at Ex. 2-3.

Baumann is the Permittee for the grazing permit for the Shannon Station Grazing Allotment and pursuant to its terms are authorized to use the Spanish Gulch Allotment. The necessity of Baumann’s (and their predecessors) use of the water has and continues to exist, therefore their right to divert has not ceased.

///

///

///



2. DUTY: Baumanns claim use for 325 head of cattle.⁴

Baumann is authorized to graze up to 325 head of cattle under their Term Grazing Permit, and therefore, all water uses within the Allotment should be confirmed for a total duty of water sufficient to water at least 325 head of cattle. Baumann Aff. at Ex. 2-3.

While the vested proofs relating to this objection claim water use in an amount from approximately 100 – 300 head of cattle, more or less, all vested water use should provide water for up to 325 head of cattle. This amount of water use is evidence in 1951 by James Hunter and John Hunter in their Application for Grazing Permit wherein they applied for use of 350 head of cattle and 100 head of horses. Baumann Aff. at Ex. 5. Interestingly, this document refers to use of this grazing area dating back to 1865. Baumann Aff. at Ex. 5, p. 3.

As noted above, the recent term Grazing Permit authorizes use up to the 325 head of cattle, and thus Baumann should be awarded an amount of water sufficient to water 325 head of cattle from any and all sources.

3. POISON SPRING, V-09760: Baumann is authorized to access and use Poison Spring, V-09760.

Baumann is authorized to access and use Poison Spring, therefore, Baumann objects to the State Engineer's findings concerning Proof of Appropriation V-09760 wherein the State Engineer finds:

[T]hat Poison Spring lies within the Black Point Grazing Allotment (NV10032) of which James E. and Vera L. Baumann are not authorized operators according to the BLM Allotment Master Report. In this Preliminary Order of Determination, a vested right to divert water from Poison Spring, when it is available, for the stockwatering of 100 cattle with a priority date of 1866 is determined to be valid. However, because the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested, the necessity by these claimants to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to divert also ceases (NRS § 533.045), but does not negate the right. Therefore, even though a

⁴ This objection relates to all vested claims/proofs owned by Baumann and addressed in the Preliminary Order.



valid claim of vested right is recognized in this Preliminary Order of Determination, this in no way grants an easement to the claimants for the right of ingress or egress on public lands, nor does it waive the requirements for the claimants to obtain other permits or permissions from the State, Federal and local agencies.

See, Preliminary Order at p. 199.

Poison Spring lies near the boundary of Shannon Station and Black Point Grazing Allotments. Shannon Station was historically known as Hunter Ranch (*see* Preliminary Order at p. 100-101). Poison Spring is a surface source bordering the Shannon Station and Black Point Grazing Allotments and lies on the south side of the border, placing it for use in the Shannon Station Allotment. Baumann Aff. at Ex. 6. The 1965 Allotment Agreement describes the legal boundaries for the Shannon Station Allotment (at that time called the “John & Kay Hunter and James Ithurrealde Allotment”) as running on the north side of Poison Spring:

[T]hence continuing along the district line east and north along the drainage divide of the Diamond Range, a distance of about nine (9) miles to the high point on the drainage divide north of Poison (Summit) Spring in the NW ¼ SE ¼ Sec. 36, T. 20 N., R. 54 E.

See Baumann Aff. at Ex. 6 (Emphasis added). The Allotment Agreement was executed by the parties Hay Ranch (Lucky C), John and Kay Hunter, James Ithurrealde, George Brown and Edward Melka on various dates in March and April 1965. The Allotment Agreement was approved by the Battle Mountain District Advisory Board on June 10, 1965. On December 13, 1965 the District Manager executed concurrence of the Allotment Agreement.

Later in 1981, the use of Poison Spring by both allotments was confirmed pursuant to the Range Line Agreement. Baumann Aff. at Ex. 7. The Range Line Agreement, dated July 9, 1981 for Shannon Station Allotment provides a legal description matching that of the John & Kay Hunter and James Ithurrealde Allotment provided in the 1965 Allotment Agreement and further states “Water will be available from Poison Spring to the troughs on both sides of the boundary fence. Excess water from Held’s tank will go to the trough in Shannon Station.” Baumann Aff. at



Ex. 7. The Range Line Agreement was approved by BLM Authorized Officer Talbot on December 12, 1984.

Gerald E. Robinson, who worked for the Hunter family at the Hunter Ranch, confirms Baumanns' predecessors' historic use of Poison Spring. Baumann Aff. at Ex. 8. Mr. Robinson, in an acknowledged letter dated December 1, 2008, he states:

The Hunter cattle utilized each and every spring in the mountains from the Cottonwood Spring north of the Hunter Ranch; to the Fairbury Well south of the Hunter Ranch; east to the Poison Spring and west to the Rhyolite Spring.

Baumanns have express authority to access and use the water from Poison Spring delivered via trough in Shannon Station Allotment, as well as excess water from Held's tank pursuant to the 1981 BLM Range Line Agreement. Baumann's predecessors have historically used water from Poison Spring.⁵ Therefore, the necessity of Baumann (and their predecessors) use of the water has and continues to exist, and the right to divert has not ceased.

4. SOUTH REGLI, V-09776: South Regli is located within the fence line of Shannon Station Allotment, not the Black Point Allotment.

Baumann is the authorized grazer of the Shannon Station and Spanish Gulch grazing allotments. Given the location of the allotment boundary fence, South Regli 1-2-3 is actually within the Shannon Station Allotment. Therefore, Baumann objects to the State Engineer's finding that South Regli 1-2-3 is located within the fence line of the Black Point Allotment.

Pursuant to the correspondence within NDWR files related to V09776, South Regli 1-2-3 is located within the NENE of Section 10, T19N, R54E. Baumann Aff. Ex. 9-10. The BLM Allotment Boundary lines as published placed this water source within the Black Point Allotment. *See* Baumann Aff. Ex. 11. However, since the allotment was split in two back in 1981, the fence line was constructed such that it runs to the north of South Regli, thereby placing

⁵ *See also* Baumann's Poison Spring Proof of Appropriation and documents contained within the Proof file at NDWR.



South Regli within the Shannon Station Allotment. Baumann Aff. ¶ 3; *see also* James E. and Vera L. Baumann, Volume 2 of supporting information to vested proofs on file with NDWR.

Pursuant to BLM's boundary fencing, Baumann has express authority to access and use the water from South Regli 1-2-3 in Shannon Station Allotment. Baumann's predecessors have historically used water from South Regli 1-2-3. Therefore, the necessity of Baumann's (and their predecessors) use of the water has and continues to exist, and the right to divert has not ceased.

5. BLISS - 2 BIT RANCH LLC: V04499 and V04500 should be limited to water use for sheep only⁶.

Baumann objects to the State Engineer's determinations concerning Proofs of Appropriation V04499 and V04500, as Chad & Rosie Bliss and the 2 Bit Ranch LLC's only authorized use is for sheep, not cattle and horses or other livestock. Specifically, Baumann objects to the State Engineer's finding that:

Proof of Appropriation V-04499 was filed claiming to have diverted 0.15 cfs of water from Milk Ranch Spring (POD within the SE1/4 SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a spring box, natural channel and pipeline to water 50 cattle and 2,100 sheep from March 15 through October 31 with a priority date of 1860....In this Preliminary Order of Determination, a vested right to divert water from Milk Ranch Spring, when available, for the stockwatering of 605 horses and cattle with a priority date of 1873 is determined to be valid.

Proof of Appropriation V-04500 was filed claiming to have diverted 0.15 cfs of water from Spanish Gulch Spring (POD within the SE1/4 NE1/4 Section 29, T.19N., R.54E., M.D.B.&M.) via a natural channel to water 50 cattle and 2,100 sheep from March 15 through October 31 with a priority date of 1860....In this Preliminary Order of Determination, a vested right to divert water from Spanish Gulch Spring, when it is available, for the stockwatering of 605 horses and cattle with a priority date of 1873 is determined to be valid.

⁶ In addition, Baumann is concerned that Bliss' interest in Spanish Gulch Springs relies on a clouded chain of title. Specifically, A.C. Florio deeded his interest in Spanish Gulch Spring to Bertrand Arambel, James Ithurrealde and John Iros on March 29, 1950 (see Eureka County Recorder, document number 28320). However, A.C. Florio had already deeded his interest in Spanish Gulch Springs (previously referred to as John T. Baker Springs) to Issac T. Handley and Walter Handley on February 25, 1928 (see Eureka County Recorder document number 17452) and thus, had no interest remaining in 1950 to convey.



See Preliminary Order at p. 221. Baumann objects to any and all claims by Chad Bliss, Rosie Bliss and 2 Bit Ranch, LLC for use of watering cattle or horses from any sources in the Spanish Gulch Allotment as their grazing permit only allows for watering sheep.

The 1965 Allotment Agreement specifies that James Ithurralde's, predecessor to Bliss, use in the Spanish Gulch allotment is for sheep which are to be held above 7,000 feet in elevation. Baumann Aff. at Ex. 6, *noting* that the Hunter Allotment is now Baumanns. Further, the BLM Authorization Use by Allotment Report for the Spanish Gulch Allotment specifies that Chad and Rosie Bliss, officers of 2 Bit Ranch, LLC, who is the owner of the Spanish Gulch grazing allotment, are only authorized to have 647 sheep and no cattle or horses on the Spanish Gulch Allotment. See Baumann Aff. at Ex. 4.

Chad and Rosie Bliss have no authority to run cattle in the Spanish Gulch Allotment. Baumann is the only party authorized to run cattle in the Spanish Gulch Allotment pursuant to the terms of the Shannon Station Grazing Permit as well as the 1965 Allotment Agreement. The use under Proofs of Appropriation V-04499 and V-04500 should be limited to the 647 sheep as authorized under the Bliss/2 Bit Ranch LLC Spanish Gulch Grazing Permit.

6. GOICOECHEA V01423⁷: Pete & Gladys Goicoechea do not have authorization to graze within the Shannon Station and Spanish Gulch Allotments, therefore V01423 should be denied.

Pete and Gladys Goicoechea do not have authorization to graze cattle within the Shannon Station and Spanish Gulch allotments, therefore, V01423 should be denied. In the Preliminary Order, the State Engineer found:

Spanish Gulch Spring lies within the Spanish Gulch Grazing Allotment (NV10054) of which Peter J. and Gladys Goicoechea are not authorized operators according to the BLM Allotment Master Report. In this Preliminary Order of Determination, a

⁷ Baumann asserts the same concern about a clouded chain of title regarding any rights to sheep grazing sources located within the Spanish Gulch allotment as noted in footnote 6 above. Any interest in sources for watering of sheep was improperly deeded to Bertrand Arambel, James Ithurralde and John Iros on March 29, 1950 (see Eureka County Recorder, document number 28320), as A.C. Florio had already deeded his interest to Issac T. Handley and Walter Handley on February 25, 1928 (see Eureka County Recorder, document number 17452).



vested right to divert water from Spanish Gulch Springs, when available, for stockwatering of 300 cattle with a priority date of 1890 is determined to be valid. However, because the claimants are not authorized users of the grazing allotment which was created pursuant to the Taylor Grazing Act after the water right vested the necessity by these claimant to exercise the water right for stockwatering has ceased. When the necessity for the use of the water does not exist, the right to diver also ceases (NRS § 533.045).

See Preliminary Order at p. 223.

As outlined above in Section 1, Baumann is the party authorized to run cattle in Spanish Gulch Allotment pursuant to the terms of their Shannon Station Grazing Permit and the 1965 Allotment Agreement. And, Chad and Rosie Bliss are the party authorized to run 647 sheep only pursuant to their Spanish Gulch Grazing Permit and the 1965 Allotment Agreement.

While Baumann agrees with the ultimate determination of the Preliminary Order as to V01423, they disagree that Goicoechea ever had authorization to graze to support a vested proof filing. Thus, should there be an objection filed on V01423 by the claimant, Baumann reserves the right to bring forth evidence to disprove this claim.

7. EUREKA COUNTY Vested Claims V-04505, V-04506 and V-04507. These claims must consider Baumann's prior use on the sources whose necessity of use continues to exist and whose right to divert has not ceased.

The Preliminary Order found V-04505, V-04506 and V-04507 were valid claims, specifically stating:

Proof of Appropriation V-04505 was filed claiming to have diverted 0.111 cfs of water from Middle Spring (POD within SE1/4 NEW1/4 Section 36, T.19N., R.53E., M.D.B.M.) via a pipeline to storage tanks to supply water to the town of Eureka, Nevada from January 1 through December 31 with a priority date of 1873. Stockwater Claim V-10875 filed by James E. and Vera L. Baumann also utilize this source as a POD... [t]he State Engineer finds a basis for diversion of 0.027 cfs of water from Middle Spring for municipal use from January 1 through December 31 with a priority date of 1873.

Proof of Appropriation V-04506 was filed claiming to have diverted 0.111 cfs of water from Lani Spring (POD within SW1/4 SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a pipeline to storage tanks to supply water to the town of Eureka, Nevada from



January 1 through December 31 with a priority date of 1870. Stockwater Claim V-10870 filed by James E. and Vera L. Baumann also utilize this source as a POD...[t]he State Engineer finds a basis for diversion of 0.011 cfs of water from Lani Spring for municipal use from January 1 through December 31 with a priority date of 1892.

Proof of Appropriation V-04507 was filed claiming to have diverted 0.111 cfs of water from Fred Spring (POD within NW1/4 SW1/4 Section 30, T.19N., R.54E., M.D.B.&M.) via a pipeline to storage tanks to supply water to the town of Eureka, Nevada from January 1 through December 31 with a priority date of 1878. Stockwater Claim V-10877 filed by James E. and Vera L. Baumann also utilize this source as a POD...[t]he State Engineer finds a basis for diversion of 0.004 cfs of water from Fred Spring for municipal use from January 1 through December 31 with a priority date of 1878.

The sources listed in the above referenced claims have already been appropriated by Baumann with a priority date of 1866. Baumann's claims on these sources under V-10870, V-10875 and V-10877 have a continued necessity to use the water and whose right to divert has not ceased (see above at Section 1) and must be recognized and considered as the prior senior appropriator.

8. EUREKA COUNTY Vested Claims V-04509 and V-04510 should be rejected. These claims must consider Baumann's prior use on the sources whose necessity of use continues to exist and whose right to divert has not ceased.

In the Preliminary Order, the State Engineer rejected claims V-04509 and V-04510 as the State Engineer found "insufficient evidence submitted or obtained from sources in the public domain by his office to substantiate a claim to water for municipal use" from the sources. Preliminary Order at p. 271, 272. The sources listed in the above referenced claims have already been appropriated by Baumann with a priority date of 1866. Baumann's claims on these sources under V-09778 and V-09779 have a continued necessity to use the water and whose right to divert has not ceased (see above at Section 1). While Baumann does not object to this finding in the Preliminary Order, should these be requested for reinstatement by claimant, Baumann reserves the right to file objections or otherwise contest the claims to water use.



9. BLM Public Water Reserved ("PWR") Vested Claims R04237, R04238, R04239, R04243, R04244, R04245: BLM's PWR Claims within the Shannon Station and Spanish Gulch Allotments do not meet the criteria for a PWR 107 implied reserved right as the sources are already appropriated by Baumann.

Baumann objects to vested claims for reserved rights R04237, R04238, R04239, R04243 and R04244 claimed by BLM for stockwatering purposes on sources located in Shannon Station Allotment.

In the Preliminary Order the State Engineer notes BLM filed Public Water Reserve (PWR) 107 Reserved Right Claims under Executive Order dated April 17, 1926. The Executive Order allows:

Every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or waterhole and all land within one quarter mile of every spring or waterhole, located on unsurveyed public land, be and the same is hereby withdrawn from settlement, location, sale or entry, and reserved for public use in accordance with the provisions of Section 10 of the Act of December 29, 1916.

See Preliminary Order, pp. 278-279.

The State Engineer made the following determinations for the reserved rights discussed herein:

- a) BLM R-04237 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 288.*
- b) BLM R-04238 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 289.*
- c) BLM R-04239 (Bennet Spring located within the Shannon Station Allotment): There are no other water right claims on this source... [t]he State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 289.*

///



- d) BLM R-04243 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source...[t]he State Engineer finds the evidence indicates the spring has a discrete natural flow, the daily flow is in excess of 1,800 gpd and the claim will serve human consumption and stock-watering purposes. The State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 290.*
- e) BLM R-04244 (Unnamed Spring located within the Shannon Station Allotment): There are no other water right claims on this source...[t]he State Engineer finds the evidence indicates the spring has a discrete natural flow, the daily flow is in excess of 1,800 gpd and the claim will serve human consumption and stock-watering purposes. The State Engineer determines that a PWR 107 implied reserved water right will be recognized on this source for human consumption and stock-watering purposes. *See Preliminary Order p. 291.*

Baumann has valid vested claims for stockwatering of cattle on sources located within the Shannon Station Allotment pursuant to their Shannon Station Grazing Permit (see Sections 1, 3 and 4 above). The PWR Executive Order dated April 17, 1926, allows for filing on unappropriated sources. The sources located in the Shannon Station and Spanish Gulch were appropriated prior to 1926 and therefore are prior existing rights. These sources were already appropriated for stockwatering of cattle by Baumann:

- 1) Baumann contends that the Unnamed Springs identified in BLM's R-04237 and R-04238 do not exist and if a water source is located at those locations, they are tributaries of Green Spring and/or Old Bennett Spring appropriated by Baumann under V-02324 and/or V-02325.
- 2) Baumann contends that the Bennet Spring water source identified under BLM R-04239 is a tributary of Baumann's prior V-02324.
- 3) Baumann contends that the Unnamed Spring identified by BLM R-04243 is the same source as DePaoli Spring appropriated by Baumann under V-09757.
- 4) Baumann contends that the Unnamed Spring identified by BLM R-04244 is a source within Baumann's Simpson Spring #1 Complex, already appropriated by Baumann under V-02326.



There is no excess unappropriated water available for BLM to acquire under the PWR 107 implied reserved water for any sources located in the Shannon Station Allotments.

10. BLM Public Water Reserved ("PWR") Vested Claims R04233, R04234, R04240, R04241, R04242, R04245, R04246, R04247, R04248: The PWR Claims within the Spanish Gulch Allotments determined not valid.

Baumann objects to vested claims for reserved rights R04233, R04234, R04240, R04241, R04242, R04245, R04246, R04247 and R04248, as claimed by BLM for stockwatering purposes on sources located in Spanish Gulch Allotment. The water sources located in the Spanish Gulch Allotment are already appropriated by Baumann for stockwater pursuant to the Shannon Station Grazing Permit and as evidenced in the 1965 Allotment Agreement. Furthermore, water for sheep is already appropriated by Chad and Rosie Bliss under their Spanish Gulch Grazing Permit. The State Engineer correctly determined the rights to be invalid finding:

- a) BLM R-04233 (Unnamed Spring located within the Spanish Gulch Allotment): The spring does not meet the criteria for a PWR 107 implied reserved water right, even though it shares a POD with valid claim of vested right V-04495, which does not fully appropriate the waters from the source, and determines there is sufficient additional water available for PWR Claim R-04233 to be valid. *See Preliminary Order p. 287.*
- b) BLM R-04234 (Unnamed Spring located within the Spanish Gulch Allotment): The spring does not meet the criteria for a PWR 107 implied reserved water right as it shares a POD with valid claim of vested right V-04496, which fully appropriates all the available waters from this source, and determines that PWR Claim R-04234 is not valid. *See Preliminary Order p. 305.*
- c) BLM R-04240 (Unnamed Spring located within the Spanish Gulch Allotment): Stockwater Claim V-09761 owned by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd and shares the POD with valid claim of vested right V-09761, which fully appropriates all the available waters from this source, and determines that PWR claim R-04240 is not valid. *See Preliminary Order p. 307.*
- d) BLM R-04241 (Unnamed Spring located within the Spanish Gulch Allotment): The BLM did not file a supporting map. The State Engineer finds the lack of a supporting map makes the claim incomplete and the lack evidence presented indicates the spring does not meet the criteria for a PWR 107 implied reserved water right, and determines that PWR Claim R-04241 is not valid. *See Preliminary Order p. 307.*



- e) BLM R-04242 (Unnamed Spring located within the Spanish Gulch Allotment):
The State Engineer finds the evidence indicates the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum 1,800 gpd, and determines that PWR Claim R-04242 is not valid. *See* Preliminary Order p. 308.
- f) BLM R-04245 (Unnamed Spring within the Spanish Gulch Allotment):
Stockwater Claim V-10871 owned by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd, and shares the POD with claim of vested right V-10871, which fully appropriates all the waters of the source, and determines that PWR Claim R-04245 is not valid. *See* Preliminary Order pp. 308-309.
- g) BLM R-04246 (Spanish Gulch Spring within the Spanish Gulch Allotment):
Stockwater Claim V-01423 owned by Peter J. and Gladys P. Goicoechea, stockwater Claim V-04500 owned by Chad D. and Rosie J. Bliss and stockwater Claim V-09759 filed by James E. and Vera L. Baumann also utilize this source...the spring does not meet the criteria for a PWR 107 implied reserved water right even though it produces approximately 18,000 gpd, as it shares a POD with valid claims of vested right V-01423, V-04500 and V-09759, which fully appropriates all the waters of the source, and determines that PWR Claim R-04246 is not valid. *See* Preliminary Order p. 309.
- h) BLM R-04247 (Milk Ranch Spring within the Spanish Gulch Allotment):
Stockwater Claim V-04499 owned by Chad D. and Rosie J. Bliss also utilizes this source...the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum of 1,800 gpd and it shares a POD with valid claim of vested right V-04499, which fully appropriates all the waters of the source, and determines that PWR Claim R-04247 is not valid. *See* Preliminary Order pp. 309-310.
- i) BLM R-04248 (Unnamed Spring within the Spanish Gulch Allotment):
There are no other water right claims on this source... [t]he State Engineer determines the spring does not meet the criteria for a PWR 107 implied reserved water right as it does not produce a minimum 1,800 gpd, and determines that PWR Claim R-04248 is not valid. *See* Preliminary Order, pp. 310-311.

While Baumann does not object to these findings in the Preliminary Order, should these be requested for reinstatement by claimant, Baumann reserves the right to file objections or otherwise contest the claims to water use.

///

///



11. All Rights Reserved.

Baumann agrees with the Preliminary Order of Determination as to V-01423, V-02969, V-02893, V-02903, V-04497, V-04498, V-04509, V-04510, R-04234, R-04240, R-04241, R-04242, R-04245, R-04246, R-04247 and R-04248 and should these be reinstated, Baumann reserves the right to file objections or otherwise contest the claims to water use.

CONCLUSION

The evidence submitted with Baumann's Proofs, the Affidavit of Baumann in Support of Objections and exhibits thereto sufficiently establish all the assertions made in these objections. Baumann vested water claims in the Spanish Gulch Allotment should be granted based on a valid determination pursuant to the authority to graze in the Spanish Gulch Allotment as outlined in Baumann's Shannon Station Grazing Permit and as further evidenced by the 1965 Allotment Agreement. Baumann proofs should recognize the historical use of watering up to 325 head of cattle as evidenced in the 1951 Grazing Permit Application and recent grazing permits. Baumann's use of the water from Poison Spring should be validated pursuant to the authority granted in the 1965 Allotment Agreement and 1981 Range Line Agreement and as evidenced in the 2008 letter from Gerald Robinson. Baumann's use of the water from South Regli 1, 2, 3 should be validated pursuant to their authorized use within the 1965 Allotment Agreement and acknowledgment in the Baumann Affidavit. Chad and Rosie Bliss' Proofs of Appropriation V-04499 and V-04500 should be limited to their authorized use of grazing 647 sheep pursuant to their Spanish Gulch Grazing Permit or rejected based on an insufficient chain of title. Any claims made by Goicoechea to sources in the Spanish Gulch and/or Shannon Station Allotments should be denied based on insufficient chain of title and due to lack of authorization to graze in the



allotments. BLM Public Water Reserved Vested Claims should be re-evaluated to consider Baumanns' prior vested rights on the sources located within the Shannon Station and Spanish Gulch grazing allotments to determine if any water is available at the source after Baumann's prior vested rights are satisfied.

DATED this 6th day of November, 2018.

SCHROEDER LAW OFFICES, P.C.



Laura A. Schroeder, NSB #3595

Therese A. Ure, NSB #10255

counsel@water-law.com

10615 Double R Blvd., Ste. 100

Reno, NV 89521

Phone: (775) 786-8800

Fax: (877) 600-4971

Attorneys for Claimants Baumann



CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2018, I caused a copy of the foregoing
***CLAIMANTS JAMES E. AND VERA L. BAUMANN'S OBJECTIONS TO PRELIMINARY
ORDER OF DETERMINATION*** to be served on the following parties as outlined below:
VIA PERSONAL SERVICE:

Nevada State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

Dated this 6th day of November, 2018.



Laura A. Schroeder, NSB # 3595
Therese A. Ure, NSB #10255
10615 Double R Blvd., Ste. 100
Reno, NV 89521
PHONE: (775) 786-8800
FAX: (877) 600-4971
counsel@water-law.com
Attorneys for Claimants Baumann

