



Vera Baumann <simpsoncreekranch@gmail.com>

Eureka Co. Water Collection System ROW Decision Appeal -- Proposed Settlement

Zahedi, Nancy <Nancy.Zahedi@sol.doi.gov>
To: Baumanns <simpsoncreekranch@gmail.com>

Fri, Feb 4, 2011 at 8:24 AM

Dear Mr. Baumann,

Thank you for your e-mail below. I appreciate your getting back to me so quickly.

I reviewed your suggested edits and had a chance to speak with BLM. Although I can't make all of the exact changes you proposed, I have tried to make some additional edits to my earlier Errata Sheet to try to come closer to the points you make. Your suggested edits on pages 29 and 32 are most problematic with respect to the necessary NEPA analysis. Basically, the NEPA document has to analyze the potential impacts on wildlife from the proposed action (p. 29) and the analysis concludes that wildlife may not always have water available. We therefore can't delete language that is an integral part of that bottom-line conclusion. Similarly, the wildlife mitigation section (p.32) is looking at measures aimed at wildlife. Page 31 is the section that applies specifically to livestock grazing, and there I believe I have deleted the language that was problematic since, as you correctly note, livestock will have rights to the water first and foremost.

The County's responsibilities in ensuring that your vested stockwater rights are respected is set forth in Stipulation #21 of the Decision (which is the governing document for compliance with the right-of-way grant, not the EA):

"When the holder (Eureka County) develops Richmond and Bullwacker Springs, each vested claim (V09779 and V09778), by James E. Baumann and Vera L. Baumann on the springs will be recognized. The holder will provide a meter and appurtenances necessary for the Baumann's to divert their vested claim of 1/20 of a cubic foot per second (22.44 gallons per minute), for use during the grazing season of their term grazing permit(s)."

The EA, in contrast, is the document that helps the BLM determine what action/decision to implement. The purpose of an EA is to determine the environmental impacts of different alternative courses of action. In this case, the question was what the impact of the proposed right-of-way might be on wildlife and grazing. I believe the changes in the Errata Sheet address your concerns while providing the necessary environmental impact analysis.

Please review my revised edits and see what you think. It may also be helpful to discuss by phone any remaining concerns you have, but I wanted to give you a chance to receive my revised Errata Sheet. Thanks.

Nancy Zahedi

[\(916\) 978-5689](tel:(916)978-5689)

From: Baumanns [mailto:simpsoncreekbranch@gmail.com]
Sent: Wednesday, February 02, 2011 10:51 AM
To: Zahedi, Nancy
Subject: Re: Eureka Co. Water Collection System ROW Decision Appeal -- Proposed Settlement

Dear Ms. Zahedi,

[Quoted text hidden]

[Quoted text hidden]

 **BLM Draft Errata Sheet for EA (v.2).doc**
25K

ERRATA SHEET FOR:

Eureka County Public Works Department
Right-of-Way Amendment
Rehabilitation of Eureka's Water Collection System

ENVIRONMENTAL ASSESSMENT

October 2010

This errata sheet amends language in the EA as follows, which changes do not modify the analysis in the EA, but more explicitly acknowledge the existence of James E. and Vera L. Baumann's vested stockwater rights at Bullwacker and Richmond Springs:

Page 29 (4.1.11 Wildlife, top paragraph on page):

"To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, Eureka County would pipe water to a trough outside of fences at Bullwacker and Prospect Springs. However, water would only be piped to a trough available for wildlife provided that excess water is available after meeting vested stockwater rights and the water supply demand of Eureka. ~~During~~ Outside the grazing season on dry years, it is possible that ~~insufficient~~ water would ~~may not~~ be available to supply troughs outside the spring fences."

Page 31 (4.1.17 Grazing Management, 2nd paragraph, last three sentences):

~~"While~~ The troughs are intended to benefit wildlife and to provide stockwater during the grazing season, consistent with vested stockwater rights, livestock would also be able to use the troughs. ~~Water would be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During~~ dry years, it is possible that ~~insufficient~~ water would be available to supply troughs outside the spring fences."

Page 32 (4.2 Mitigation Measures, Wildlife)

"To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, and to meet the vested stockwater rights at Bullwacker Springs, Eureka County would pipe water to a trough outside of the exclosures at Bullwacker and Prospect Springs. However, water would only be piped to a trough outside of the grazing season provided that excess water is available after meeting the water supply demand of Eureka."

Page 34: "4.2 Mitigation Measures, Livestock Grazing "

“8. To ensure that vested stockwater rights are protected when Eureka Co. develops Richmond and Bullwacker Springs, Eureka Co. would provide a meter and appurtenances necessary for the Baumann’s to divert their vested claims (V09779 and V09778) for use during the grazing season of their term grazing permit(s).”



Vera Baumann <simpsoncreekkranch@gmail.com>

Eureka Co. Water Collection System ROW Decision Appeal -- Proposed Settlement

Baumanns <simpsoncreekkranch@gmail.com>
To: "Zahedi, Nancy" <Nancy.Zahedi@sol.doi.gov>

Mon, Feb 7, 2011 at 10:11 AM

Hi Nancy,

Our telephone number is [775-237-5452](tel:775-237-5452) and it is okay for you to call us tomorrow....actually better.

We think that the changes you have made are okay with the exception of the language under "Grazing Management" and we are wondering if you could incorporate the language that is written in item #21 of Exhibit B of the Right of Way Grant Amendment. If so, we will drop our appeal. We just want to make sure that our water rights are protected and that we will have water at all times during the grazing season.

Thanks,
Jim and Vera Baumann

[Quoted text hidden]



Vera Baumann <simpsoncreekranch@gmail.com>

Motion to Dismiss and Errata Sheet Attachment

Zahedi, Nancy <Nancy.Zahedi@sol.doi.gov>
To: Baumanns <simpsoncreekranch@gmail.com>

Thu, Feb 10, 2011 at 2:43 PM

Dear Mr. and Mrs. Baumann,

Attached please find the Joint Motion to Dismiss for your signatures. If you can sign and send me a scanned copy of the signed motion, I will file it with the Interior Board of Land Appeals along with the Errata Sheet, with a copy to you.

I have also attached a clean copy of the Errata Sheet so you can see what it will look like without the redline and strike-outs.

Feel free to give me a call if you have any remaining questions.

Nancy Zahedi

[\(916\) 978-5689](tel:(916)978-5689)

2 attachments

 **Joint Motion to Dismiss Appeal.pdf**
16K

 **BLM Draft Errata Sheet for EA (FINAL).doc**
27K

ERRATA SHEET FOR:

Eureka County Public Works Department
Right-of-Way Amendment
Rehabilitation of Eureka's Water Collection System

ENVIRONMENTAL ASSESSMENT

October 2010

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Page 29 (4.1.11 Wildlife, top paragraph on page):

“To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, Eureka County would pipe water to a trough outside of fences at Bullwacker and Prospect Springs. However, water would only be pip~~ed to a trough available for wildlife~~ provided that excess water is available after meeting vested stockwater rights and the water supply demand of Eureka. During Outside the grazing season on dry years, it is possible that ~~insufficient water would-may not~~ be available to supply troughs outside the spring fences.”

Page 31 (4.1.17 Grazing Management, 2nd paragraph, last three sentences):

~~“While t~~The troughs are intended to benefit wildlife and to provide stockwater during the grazing season, consistent with vested stockwater rights, ~~livestock would also be able to use the troughs. Water would be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During dry years, it is possible that insufficient water would be available to supply troughs outside the spring fences.”~~

Page 32 (4.2 Mitigation Measures, Wildlife)

“To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, and to meet the vested stockwater rights at Bullwacker Springs, Eureka County would pipe water to a trough outside of the exclosures at Bullwacker and Prospect Springs. However, water would only be piped to a trough outside of the grazing season provided that excess water is available after meeting the water supply demand of Eureka.”

Page 34: “4.2 Mitigation Measures, Livestock Grazing”

“8. To ensure that vested stockwater rights are protected when Eureka Co. develops Richmond and Bullwacker Springs, Eureka Co. would provide a meter and appurtenances necessary for the Baumann’s to divert their vested claims (V09779 and V09778) for use during the grazing season of their term grazing permit(s).”

ERRATA SHEET FOR:

Eureka County Public Works Department
Right-of-Way Amendment
Rehabilitation of Eureka's Water Collection System

ENVIRONMENTAL ASSESSMENT

October 2010

This errata sheet amends language in the EA as follows, which changes do not modify the analysis in the EA, but more explicitly acknowledge the existence of James E. and Vera L. Baumann's vested stockwater rights at Bullwacker and Richmond Springs:

Page 29 (4.1.11 Wildlife, top paragraph on page):

Replace: "To mitigate for the loss of water for wildlife at bullwhacker, Richmond, and Prospect springs, Eureka County would pipe water to a trough outside of fences at Bullwacker and Prospect Springs. However, water would only be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During dry years, it is possible that insufficient water would be available to supply troughs outside the spring fences."

With: "To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, Eureka County would pipe water to a trough outside of fences at Bullwacker and Prospect Springs. However, water would only be available for wildlife provided that excess water is available after meeting vested stockwater rights and the water supply demand of Eureka. Outside the grazing season on dry years, it is possible that sufficient water may not be available to supply troughs outside the spring fences."

Page 31 (4.1.17 Grazing Management, 2nd paragraph, last three sentences):

Replace: "While the troughs are intended to benefit wildlife, livestock would also be able to use the troughs. Water would be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During dry years, it is possible that insufficient water would be available to supply troughs outside the spring fences."

With: "The troughs are intended to benefit wildlife and to provide stockwater during the grazing season, consistent with vested stockwater rights."

Page 32 (4.2 Mitigation Measures, Wildlife):

Replace: "To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, Eureka County would pipe water to a trough outside of the exclosures at Bullwacker

and Prospect Springs. However, water would only be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka.”

With: “To mitigate for the loss of water for wildlife at Bullwacker, Richmond, and Prospect Springs, and to meet the vested stockwater rights at Bullwacker Springs, Eureka County would pipe water to a trough outside of the exclosures at Bullwacker and Prospect Springs. However, water would only be piped to a trough outside of the grazing season provided that excess water is available after meeting the water supply demand of Eureka.”

Page 34: Add the following new section as the last item under “4.2 Mitigation Measures”:

“Livestock Grazing

8. To ensure that vested stockwater rights are protected when Eureka Co. develops Richmond and Bullwacker Springs, Eureka Co. would provide a meter and appurtenances necessary for the Baumann’s to divert their vested claims (V09779 and V09778) for use during the grazing season of their term grazing permit(s).”

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Issuing Office

Mount Lewis Field Office

Serial Number

N-007463

RIGHT-OF-WAY GRANT AMENDMENT

1. A right-of-way originally granted on May 16, 1973, under the authority of the Act of February 15, 1901 (31 Stat. 790; 43 U.S.C. 959) is hereby granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761). The right-of-way grant is also amended to allow for the upgrade of the existing permitted springs (Bullwacker and Lanie) and pipeline, and the addition of 8 springs and additional pipeline to connect the spring system to the water supply for the Town of Eureka.

- a. Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).
- b. Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. Other (describe)

2. Nature of Interest:

- a. By this instrument, the holder(s) **Eureka County**, receives a right to construct, operate, maintain, and terminate a series of spring boxes and an underground waterline system ultimately connecting the water system to the Town of Eureka's distribution system described as follows:

Mount Diablo Meridian, Nevada

T. 19 N., R. 53 E.,
Sec. 24, 25, 36;
T. 18 N., R. 53 E.,
Sec. 1, 12;
T. 18 N., R. 54 E.,
Sec. 6, 7;
T. 19 N., R. 54 E.,
Sec. 19, 30, 31;

- b. The right-of-way granted herein is a 60 feet wide pipeline and access road corridor, approximately 11,565 feet long. The right-of-way contains approximately 245.5 acres, more or less, which includes 1,000'x1,000' enclosure at each spring.
- c. This instrument shall terminate on **December 31, 2030**, 20 years and 23 days from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument may be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment,

abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental: §43 CFR 2806.11; 43 CFR 2806.20; 43 CFR 2806.23

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations part 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 120 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) **A - Map, dated February 2010, B- Stipulations, dated October 2010, and C-Legal Description**, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.
- g. Holder agrees to abide by all terms and conditions contained in ROW Grant NVN-007463, originally issued May 16, 1973. In addition, holder agrees to abide by the stipulations listed in exhibit B.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

R. DAMELE JR.
(Signature of Holder) Ronald D. Damele Jr.

[Signature]
Douglas W. Furtado

Director
(Title)

Field Manager, Mount Lewis Field Office
(Title)

November 15, 2010
(Date)

12/8/10
(Effective Date of Grant)

N-007463 November, 2010

EXHIBIT B**RIGHT-OF-WAY STIPULATIONS**

1. The Holder shall construct, operate, and maintain the facilities, improvements, and structures within this Right-of-Way grant in strict conformity with the information contained in Application. Any relocation, additional construction, or use that is not in accord with the terms and conditions of the grant shall not be initiated without the prior written approval of the authorized officer. A copy of the complete Right-of-Way grant, including all stipulations, attachments, and approved plans of development, shall be made available to the authorized officer on the site during construction. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
2. The authorized officer may suspend or terminate in whole, or in part, any notice to proceed which has been issued when, in his judgment, unforeseen conditions arise which result in the approved terms and conditions being inadequate to protect the public health and safety or to protect the environment.
3. The Archaeological Resources Protection Act (ARPA) codified at 43 CFR 7, as well as the Native American Graves Protection and Repatriation Act (NAGPRA) codified as 43 CFR 10, both provide protection for historic properties, cultural resources, and Native American funerary items and/or physical remains located on federal land. In addition, ARPA provides for the assessment of criminal and/or civil penalties for damaging cultural resources. Any unplanned discovery of cultural resources, human remains, items of cultural patrimony, sacred objects, or funerary items, requires that all activity in the vicinity of the find ceases, and notification be made to the Field Manager, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820 (775-635-4000), by phone, with written confirmation to follow, immediately upon such discovery. The location of the find should not be publically disclosed and any human remains must be secured and preserved in place until a Notice to Proceed is issued by the authorized officer.

For cultural resources other than Native American human remains, funerary items, sacred objects, or objects of cultural patrimony, this evaluation will determine the significance of the discovery and what mitigation measures are necessary to allow activities to proceed. The holder is responsible for the cost of evaluation and mitigation. Any decision on treatment and/or mitigation will be made by the authorized officer after consulting with the permit holder. Operations may resume only upon written authorization to proceed from the authorized officer.

4. The Holder shall protect all survey monuments found within the Right-of-Way grant area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.
5. Holder shall remove only the minimum amount of vegetation necessary within the Right-of-Way grant area. Temporary surface disturbances created during construction activities will be reclaimed and where possible and if needed, topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.

N-007463

EXHIBIT B (Continued)

6. All design, material, and construction, operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
7. Holder shall limit excavation to the areas of construction. No borrow areas for fill material will be permitted on the site. All off-site borrow areas on public lands must be approved in writing by the authorized officer in advance of excavation. All waste material resulting from construction or use of the site by holder shall be removed from the site. All waste disposal sites on public land must be approved in writing by the authorized officer in advance of use.
8. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
9. The Holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, *et seq.*) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (Sec 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
10. Prior to termination of the Right-of-Way grant, the Holder shall contact the authorized officer to arrange a pretermination conference. This conference will be held to review the termination provisions of the permit.
11. During the period of May 1 through October 1 of each year, Holder should consider using spark arresters on vehicles and equipment in the project area, due to the potential for fire ignition from project related activities. This includes emission of hot carbon particles from diesel powered equipment, improperly equipped or poorly operating exhaust systems on gas powered vehicles and direct contact of wild land fuels with catalytic converters.

Individuals, groups, businesses or corporations found responsible for the ignition of a wild fire may be held liable for the costs associated with the suppression of that fire.
12. When requested by the authorized officer, the Holder, or any person working on their behalf, shall make his equipment already at the site with operators, temporarily available for fighting fires in the vicinity of the project. Payment for such services will be made at rates determined by the authorized officer.
13. Holder will adhere to their weed management program. During construction activities in the area of the Right-of-Way grant, vehicles will avoid areas of weed infestation to the extent possible. To ensure that weed seeds or plant parts are not inadvertently spread, vehicles and construction equipment must be cleaned of all mud, dirt, and plant parts before construction activities begin. Yearly monitoring for invasive species would be part of the holder's routine site inspections. In the event any noxious weeds or other non-native invasive species are observed on the site, the holder would implement a program to eradicate them in accordance with directions from the BLM's Authorized Officer.
14. If construction activities need to occur during the bird nesting season (For Raptors, March 1 through

Page 2

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EXHIBIT B (Continued)

August 31, for all others April 1 through July 31), a pre-construction site survey by a qualified biologist will be required. The survey must be done no more than seven (7) days before start of construction activities. If it is determined that nesting birds are present, a buffer zone (100 feet is recommended for migratory birds) will be established and maintained until the young birds have fledged.

15. Fugitive dust from project related activities shall be controlled by the application of water.
16. In case of change of address, the Holder shall immediately notify the Mount Lewis Field Office authorized officer.
17. It is the Holder's, or their designated construction contractor's responsibility to identify and obtain any other federal, state, or local permits or approvals needed for the construction of the facilities within this right-of-way.
18. All construction on public land for the pipeline and access road is limited to 60 feet in width.
19. Impacts to vegetation shall be minimized by reseeding of disturbed areas at the springs and along the pipeline routes. A BLM-approved seed mix, listed in Section 4.2 of the Environmental Assessment shall be used. Additionally, weed-free hay shall be used if hay balcs are used for erosion control.
20. To mitigate for the loss of water for wildlife at Bullwacker and Prospect Springs the Holder shall pipe water to a trough outside of the enclosures at both springs.
21. When the holder (Eureka County) develops Richmond and Bullwacker Springs, each vested claim (V09779 and V09778), by James E. Baumann and Vera L. Baumann on the springs will be recognized. The holder will provide a meter and appurtenances necessary for the Baumann's to divert their vested claim of 1/20 of a cubic foot per second (22.44 gallons per minute), for use during the grazing season of their term grazing permit(s).
22. The Holder will provide BLM, Mount Lewis Field Office, with either a set of engineering design maps or a set of "as built" maps for those portions of the project located on public lands.
23. The Holder, to protect known cultural resources, shall avoid the arborglyph (tree carving) site during construction. To ensure avoidance, an archaeological monitor shall be present during any ground-disturbing activities within 60 feet of the site. The assigned monitor shall be a qualified archaeologist who meets Nevada BLM standards.
24. The Holder will fence springs to keep large ungulates away from spring sources. The fencing shall be 8 feet high and made of 8-foot commercial game fence or cyclone fencing with minimal spaces between gates and posts.


Holder Initials

12-3-2010
Date

DANIEL G. SHILLITO
Regional Solicitor
NANCY S. ZAHEDI
Assistant Regional Solicitor
U. S. Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825
(916) 978-5689
(916) 978-5694 facsimile
Attorney for the Bureau of Land Management

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

James E. and Vera L. Bauman,)	
)	
Appellants)	
)	
v.)	Appeal from December 8, 2010 Decision
)	Issuing Amended Right-of-Way Grant,
Bureau of Land Management,)	BLM Mount Lewis Field Office, Battle
)	Mountain District, Nevada
Respondent)	
_____)	

JOINT MOTION TO DISMISS

On December 29, 2010, Appellants James E. and Vera L. Baumann filed an appeal from BLM's December 8, 2010 Decision granting Eureka County an amended right-of-way for for rehabilitation of its water collection system. The parties have been engaged in settlement discussions, and as a result of such discussions, have reached a settlement to resolve Appellant's appeal. See Attachment 1.

In light of the settlement agreement that has been reached, the parties jointly move to dismiss the pending appeal.

James E. Baumann 2-11-11
James E. Baumann Date
Appellant

Nancy S. Zahedi Date
Counsel for BLM

Vera L. Baumann 2-11-11
Vera L. Baumann Date
Appellant

Simpson Creek Ranch

James E. & Vera L. Baumann
P.O. Box 308
Eureka, NV 89316



September 7, 2010

Bureau of Land Management
Mount Lewis Field Office
50 Bastian Road
Battle Mountain, Nevada 89820

Certified Mail #7007 2680 0002 5574 1396

RE: Eureka County Spring Rehabilitation Project, NV-B010-2009-0076-EA, Eureka County Public Works Right of Way Amendment #N-007463

Greetings,

As the licensed permittees within the area of the Eureka County Public Works Department Right-of-Way Amendment and Rehabilitation of Eureka's Water Collection System projects, we are respectfully submitting the following comments.

- As Eureka County taxpayers, we certainly question the economics of this project and believe that the expense of this project is not worth the small amount of water that will be generated.
- We understand that the springs, if developed, will only be used for the irrigation of ball fields and parks within the townsite of Eureka and will not be incorporated into the current water system for human consumption.
- Eureka County has alternate sources and avenues to obtain additional water for the townsite of Eureka. Eureka County has an existing water system in southern Diamond Valley and has the option and ability to purchase an additional active irrigation well that would add anywhere from 800-2200 gallons per minute to the existing water system, or the option of drilling an additional new water well that could be integrated into the current system.
- The springs identified in the above projects are the **only** source of water for us as the permittees, to water our livestock and for any and all wildlife or sheep use.
- On page 23 of the August 2010 Environment Assessment relating to the above project, paragraph 3.3.18, the statement "Only sheep are permitted to utilize the Spanish Gulch Allotment" is incorrect. We are the current livestock permittees and have a license to graze cattle in that area. Cattle have grazed that area since 1866 and sheep did not move into the country and use that area until 1914, when A.C. Florio brought in sheep. Please refer to the *Diamond Valley Unit Adjudication and Allotment Agreement* dated 1965, pages two and three, between James Ithurralde and John and Kay Hunter. Please make the correction to the EA to include livestock grazing.
- We feel that if there is ever a loss of AUM's, or the inability to graze livestock due to a lack of water in the areas of the above identified projects, we should receive reasonable monetary compensation from Eureka County for our losses.
- **Even though this water basin has not yet been adjudicated, we can prove that we hold a prior (1866) vested water right to the springs located within the area of Eureka County's proposed projects.**
- Interestingly enough Eureka County has never contacted or included us in any of the discussions involving the above proposed projects on these springs even though they all know that we graze cattle there.

Sincerely,

James E. Baumann
Vera L. Baumann
James E. Baumann
Vera L. Baumann

RECEIVED-MAILROOM
2010 SEP -9 AM 10:47
BUREAU OF LAND MANAGEMENT
BATTLE MOUNTAIN
DISTRICT OFFICE

Simpson Creek Ranch

James E. & Vera L. Baumann
P.O. Box 308
Eureka, NV 89316

H

December 29, 2010

COPY

Department of Interior
Bureau of Land Management
Mount Lewis Field Office
50 Bastian Road
Battle Mountain, Nevada 89820

Attention: Douglas W. Furtado
Nancy Lockridge

Certified Mail #7007 2680 0002 5574 1402

Dear Mr. Furtado & Ms. Lockridge;

Please accept this letter as our appeal to the Eureka County Public Works Department Right-of-Way Amendment Rehabilitation of Eureka's Water Collection System Environmental Assessment dated October 2010; Environmental Assessment DOI-BLM-NV-B010-2009-0076-EA.

The reasons for our appealing this project are as follows:

1. On page 29 of the EA, your document states that "Bullwacker and Richmond Springs are side by side" which is not true. **The two springs are approximately 1000 feet apart and should be fenced separately to provide better movement for the wild life and livestock.**
2. Also on page 29, first paragraph, last four lines, your document states "However, water would only be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During dry years, it is possible that insufficient water would be available to supply troughs outside the spring fences." We objected to this language during the draft EA and our letter is included in that document and states that we claim a prior vested water right to those springs. In the final EA, Eureka County was granted the Right-of-Way with an Amendment. In Exhibit B, on page 3, #21, of the Amendment it states "When the holder (Eureka County) develops Richmond and Bullwacker Springs, each vested claim (V09779 and V09778) by James E. Baumann and Vera L. Baumann on the springs will be recognized. The holder will provide a meter and appurtenances necessary for the Baumann's to divert their vested claim of 1/20 of a cubic foot per second (22.44 gallons per minute) for use during the grazing season of their term grazing permit (s)." **The language on page 29 of the EA contradicts the language in the Amendment, Exhibit B, #21. Please remove the last four lines of paragraph 1, page 29 of the EA as we hold a prior vested water right claim and have a right to guaranteed water at all times.**
3. On page 31, under 4.1.17 Grazing Management, paragraph 2, in the last three lines, the EA states "Water would be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka. During dry years, it is possible that insufficient water would be available to supply troughs outside the spring fences." **Please remove this language as we hold a prior vested water right claim and have a right to guaranteed water at all times.**
4. On page 32, under Wildlife, #2, the last two lines, the EA states, "However, water would only be piped to a trough provided that excess water is available after meeting the water supply demand of Eureka." **This language should also be removed as the wild life will use the water that the livestock will use and our livestock have a prior vested right to use the water.**

Sincerely,

James E. Baumann
Vera L. Baumann
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Vera L. Baumann

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EUREKA COUNTY BOARD OF COMMISSIONERS
JUNE 6, 2012

10:50 - PUBLIC WORKS – Ron Damele, Director

1. Discuss, approve, or deny Change Order #5 for two pressure reducing valves for Eureka Canyon Subdivision, Single Family, not to exceed \$75,704.00. **(Action)**
2. Discuss, approve, or deny a commercial ¾-inch water application from Jim Baumann. **(Action)**
3. Update report on all Public Works projects. (Discussion)

PUBLIC WORKS

Len; Public Works, Ron Damele, director; d,a,d, CO #5 for two pressure reducing valves for Eu Cyn Subdiv SF not to exceed \$75,704.00

Ron; these pressure reducing valves, one of them goes on the 8-in line that comes down from Ridgetop goes on the east side of 50; the other one will go in the vicinity of the FG, adjacent to the utility corridor between the BLM and the FG; these are very large pressure reducing valves, we are running pretty close to right around 130 lbs there at the subdivision and we need to reduce that back to probably about 75; and in order to accomplish that, we need to purchase these and install them, and we've rec'd this change from legacy construction & development for \$75,704

Len; q's c's mot

Jim; I make a mot we appr this CO #5 for two pressure reducing valves for eu cyn subdivision, not to exceed \$75,704; Mike sec; all were in favor. 11.08

Ron; thank you 11.08.20

Len; item #2, dx, appr, or deny commercial ¾-in water application from Jim Baumann; Jim you want to come up; I tried calling you but I couldn't make a connection

Jim B; oh really

Len; I had to take a shower before, I just tried once

Jim I; I talked to Jim and he gave me a little different story that what I thought it would be

Jim B: yeah ...

Ron; Jim's asked to hook into Lanie Spring; Lanie Spring is one of the springs that we recently rehabilitated; and it's not connected into the system yet because we wanted to connect the two that we've just done along with the four that we're gonna do this summer; so it's not a typical application to serve a house or to serve a commercial endeavor; this is a, this would be a temporary, he's gonna use the water temporary until probably the end of October

Jim B; well it'll be less than that; I'd say six weeks at the most there

Ron; okay, so less than six weeks, so I think the best way to accomplish this would be to serve Jim the water that's coming out of Lanie temporarily and do it under the construction and

industrial portion of the ordinance, it's a little bit of a stretch, but it's more applicable than a residential or a commercial, and just charge him \$15 a mo for that service; if that's okay w/ him

Jim B; I realize that \$15 is just kind of a, it's well worth it, but I believe it would establish a dangerous precedent here, when you own something you don't pay for it; the water is a vested water, we haven't filed on those three springs down there because it was fairly close to the Milk Ranch; but that doesn't mean we can't do it; we can still do it; and we have a water right there, and you don't pay for something that you own

Jim I; so Jim how do you figure you have the water rights there, at Lanie Spring

Jim B; it's on our allotment,

Jim I: okay, I understand that

Jim B: and we filed on all of the springs except those last three down there because the Milk Ranch, we always had plenty of water there; we're not trying to squeeze anybody or try to steal anybody's water right, but we, the matter still remains that we still own the water right there; I mean we can still go back, even tho we didn't file on them on the first go around, we can still file on those; and beings this is a bad year, its drought

Jim I; well, I understand that; that's why I'm in favor of doing this because its drought condition; I understand it

Jim B; right

Jim I: how bad it is out there

Jim B: right, and the reason I didn't file on those springs is because its close to the Milk Ranch and we have always had water there, but this years a little different situation;

Jim I; yeah

Jim B: and I'm just afraid if, I don't what our Dist Attorney thinks, but if you pay for something you're kind of, means that you don't own it

Ted; well this is a construction water application, so where the water comes from is different from ownership; the issue is applying to these guys for that, for that water; it's convenient, it's convenient to divert it from that spring area that's being developed, that's clearly true; but it's kind of a leap on both ends if you didn't get, if you didn't have to pay for it and you rec'd it, would that prove you owned it? No; if you did pay for it, and you paid for it in terms of the system rec'ving some money for water that could have come from anywhere within the system, does that prove that you don't own it? No

Jim B; you don't think so

Ted; no I don't; so, and the other, Jim the other issue I would throw out to everybody to consider is clearly there's the ability to go to the State Eng's office and file the paperwork to show that historical claim

Jim; that's right

Ted; the problem that's gonna cause for everybody is it's not resolution of the issue, cuz the resolution of that issue as you know is a very long drawn out process by the State Eng that has been called for in this basin including that area since when, since the 70s?

Len; 82

Ted; 82 and w/ no action taken; so we, what I'm offering to you is we'd be in the same spot; even had you field the paperwork, we'd be in the same spot, is there wouldn't be a resolution

Jim B; right, yeah if we'd have already filed on it, we're still, I mean, but our cows have always drank there

Ted; m-hmm

Jim B: they drink out of the ditch there; a little water comes out, but if you don't put it in the trough it's really not gonna do you much good; I mean you have 4 or 5 cows that are gonna drink there and then they'll tromp, actually they'll do worse tromping down below there where the rip rap is right there and they'll tromp that worse if you don't have it in a pipe, and putting it in the trough

Len; I understand [inaudible]

Jim B; I'm not asking for a trough right there; we can move it down the ditch a ways; I don't know

Len; I'm like Jim, I completely support it, because of the drought conditions, and the waters there available; it's not in our system

Jim B: yeah, it's just running down the ditch

Len; I also kind of agree w/ the \$15 charge because it is public water, it's not Lenny's to give away; it's, and I completely understand your issue too, so if we're at an impasse or not, I really don't know Jim

Jim B: yeah

Mike; what is the usage of the water; for livestock

Jim B; yeah it's for, yeah cows there

Jim I; yeah, and like Jim said there's water from Milk Ranch, but I mean that's almost drying up this year too

Jim B; that's the scary part, is the spring that we've always depended on is drying up

Jim I; right, big time, I understand that

Jim B; but I was just a little reluctant on the \$15 that it would, and I guess, this is in the record, but I'm saying that if I'm paying the \$15 it's not gonna relinquish my water right there

Ted; this board has no authority over your ability to file a claim with the Engineer, and for the Engineer to make that determination; that's two separate agencies, two separate authorities, two separate, that why I said, it doesn't, it doesn't determine ownership for that

Jim B; yeah it's just a piddly amount, it's well worth it like I say, yes; but that was just my only concern; now is the County gonna help me hook it up or is that, am I on my own on that

Len; I would think that the county would put a back flow preventer in and just to protect that...

Ron; it should be done this afternoon

Jim B; it could be done this afternoon

Ron; it's getting done right now

Jim B; putting a backflow preventer there

Ron; m-hmm, and a valve; so all you'll have to do is hook on and, there's a little flat spot down below the spring where you could put a trough and I think they're gonna pipe it down to right there; so

Jim B: oh well that'd be good

Mike; so for a few months you've talking about less than \$50 bucks right

Jim B: right, it's, well [inaudible]... just a little concerned that

Ron; you know we can't; what I would tell Jim is if you feel you have a vested claim on the spring then you should file it so we can this worked out, because we don't want to be going around, we have 8 more springs that we want to develop, and we need to get that resolved before we proceed

Jim B: yep, so yeah, well I can file on it, that means just, I didn't file on it because, I knew that

Len; milk ranch is right there within 100 yards

Jim B; it's on our allotment

Ron; right

Jim B: and we have the

Ron; but you guys need to understand, you have a vested claim on that spring and you also have a certificated claim on that spring, and your priority date is 1873

Jim B: well ours is 1866

Ron; yeah, but ours is proven thru the chain of title, so

Jim B: so is ours

Ron; no yours isn't

Jim I; we can look at that later

Len; well this isn't the place to argue about that; it's at the State Water Eng and I'm sure the county will get involved when Jim files on it

Jim B; yeah we do have a chain of title there that's...

Jim I; so I make a motion that we approve this temporary water use out of Lanie Spgs, cuz of drought condition we have out there this year, and its definitely there; this 3/4-inch water application for Jim, and then

Ron; it's not an application

Len; it's not an application Jim

Jim I; not an application, it's a use;

Ron; m-hmm, all you're doing is setting the rate; all your gonna do is set the rate for \$15 a month

Jim; right, temporary use of water application for Jim

Ron; and it expires on, let's just call it on October 31st so if you have to stay there longer, then we don't have to come back, but it expires and then if this happens again then we have to come back before the board

Jim I; okay, expiring the Oct 31st, and we won't charge him the \$15 if he's out there in six weeks or something

Ron; no as soon as he's done he'll let us know

Jim I; right

Ron; and that's it

Jim I; that okay

Jim B; alright

Jim I; that's my motion

Mike; second

Len; okay

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Jim B; okay thank you

Len; ... go get a drink

Jim I; ask for a vote

Len; oh excuse me; I'll ask for a vote on that

Mike; aye

Jim; aye

Len; I'll vote aye for the record

11.18.30

Len; item 3, update report on all public works projects

Ron; CV road shop, the entire floor been poured; footings are being poured yesterday and today for the wash pad; we expect to have the bldg here by the end of June and start erecting that; the remodel of the existing shop bldg for EMS has begun; they've demo'd a lot of the plumbing and replaced it and poured the floor back; ball park RRs being over-excavated; the footings are being dug as we speak; airport Tom has a rep't on the airport; we had a construction mt'ng this morning, and do you want to talk about that

Tom; we did, so work is ongoing, the apron has been pulverized and cement treated, and we did a test strip on it, so what we did, for the airport work you do a small section of asphalt so you can test it in place before you start production; that just barely failed the specification, and so that's being redone, it's probably, that was redone this morning; and so hopefully that will pass, and then we'll continue on paving the apron; that sets us up to pave the runway next week; it's being pulverized as we speak; it was pulverized completely yesterday and they're working on their second pass; they'll be cement treating it tomorrow, and then like I said, start paving next week; they anticipate being done at the end of next week on paving, then we'll have saw cutting and striping and crack filling; and we're a couple days ahead of schedule overall; we're a little bit behind on the apron, but overall ahead of schedule

Jim; so when we're done w/ the runway, that'll; will it take a heavier load of aircraft

Tom; it's still the same design; it's for light aircraft 12,500 on a continuous basis; it can handle heavier aircraft on a non-daily basis; what that weight is I'm not sure; we don't publish it; it's not published; it's up to the person landing; the co doesn't have a restriction as far as I know of on the runway

Len; not that I know of

Jim; I was just curious

Tom; the method that we did to build it, its stronger than it was before, considerably

Len; well [inaudible]

Jim; emergency

Len; emergency yeah

Ron; courthouse HVAC controls, we've asked one of the control companies in Reno that's currently working at the schools to come and look the system over and give us a proposal on telling us what's wrong, how it needs to be fixed; and we're evaluating that right now; subdivision, all the electrical and utility conduits are in; they're currently setting the boxes for those; they're grading final grade for curb and gutter and we expect that that paving w/ start the end of the month

Len; any q's for Ron on the projects

Jim; no

Tom; a few more projects if I could jump in

Len; sure

Tom; is the 2011 last year's street maint project, the slurry seal, actually not slurry seal this year but a microseal, it's a diff product that we're experimenting w/; on 101 is occurring last week and this week; Ray is inspecting that; once that's done then that project will be finished and we'll wrap it up; the 2012 proj, those plans are being advertised; the anticipated bid opening, published, is the 20th; however we're thinking about issuing an addendum to; at the airport proj last year, the successful contractor didn't have right to the pit when they put in their bid; they subsequently got that right, so we have the right to use that; it's a BLM pit; NDOT is the permittee to use that pit, so we'd like to add that into the bid so we make sure the contractor has the right to use the material at the time of the bid so the county doesn't get stuck in that unfortunate situation; so we're thinking about extending the bid opening by a wk to make sure the contractor has enough time to get that; and so I'd like, if we get a nod of heads that its okay to do the bid opening outside of this mt'ng perhaps on Friday the 29th, and then we'll have your consideration for award on July 6th

Ron; we did that for the main st water and sewer proj and Jackie was here to; she took notes, so

Tom; so if we need to; I will do that

Jim; we can put that on the agenda for

Ron; we can put it on for the 20th

Jim; the 20th right; I have no prob w/ that

Tom; and lastly today is 30 days since you apprvd our contract to design the four springs and submit those to the bureau of safe drinking water, so that was, those plans were delivered to Ron this morning and submitted to the bureau; once we get comments from the county and the bureau we will make those changes and give those to the contractor for negotiating for change order