

February 1, 2019

**Black Rock Resource Services, LLC**  
**Report in Support of**  
**James E. and Vera L. Baumann's Vested Water Rights &**  
**Objections to Preliminary Order of Determination**

**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**

Prepared by:



William F. Price  
Brrc2000@aol.com  
Black Rock Resource Services, LLC  
PO Box 360  
Cedarville, CA 96104



2-1-2019

**Black Rock Resource Services LLC.**  
**Report in Support of**  
**James E. and Vera L. Baumann Vested Water Rights &**  
**Objections fo Preliminary Order of Determination**

My name is William Francis Price. I am licensed in California and Nevada as a Professional Land Surveyor and in Nevada as a State Water Right Surveyor. I am also a Professional Landman, specializing in property ownership, with an emphasis on boundary rights, water rights, mineral rights, and easements.

I have been qualified as an expert in Utah, Nevada and California District Courts, and before the adjudication branch of the Nevada State Engineer's Office. I have been practicing as a Landman since 1975 (Utah, Nevada, California), and as a Professional Land Surveyor (Nevada ca. 1983 and California ca.1990) and Nevada State Water Right Surveyor since the early 1980s.

I prepared this report at the request of Schroeder Law Offices, Schroeder Law Offices, PC, 10615 Double R Blvd., Reno, NV 89521, Telephone: (775) 786-8800, email [counsel@water-law.com](mailto:counsel@water-law.com), in support of claims submitted to the Nevada State Engineer's office by the James E. and Vera L. Baumann (Baumann or Baumanns), with respect to the Diamond Valley Adjudication.

**Materials Examined**

1. Data on file at the Nevada Division of Water Resources (NDWR) , Nevada:
  - a. Baumann Water Rights Notebook (Volume 1) Table of Contents, Allotment Grazing Information and Surveys (57 pages).
  - b. Baumann Water Rights Notebook (Volume 1) Simpson Creek Deeds (315 pages).
  - c. Baumann Water Rights Notebook (Volume 1) Edera Ranch Deeds (99 pages).
  - d. Baumann Water Rights Notebook (Volume 1) Four-Eyed Nicks Deeds (99 pages).
  - e. Baumann Water Rights Notebook (Volume 2) Shannon Station, Spanish Gulch Silverado Allotments.
2. Data from the Nevada State Engineer:
  - a. The Diamond Valley Preliminary Order of Determination and its Objections
  - b. Diamond Valley Abstracts and Field Investigation Reports.
3. Data from the US Department of Interior, Bureau of Land Management (BLM):
  - a. Generic Maps of Grazing Allotments, specifically the Black Point Allotment (NV10032), the Shannon Station Allotment (NV10051), and the Spanish Gulch Allotment (NV10054), downloaded from <https://catalog.data.gov/dataset/blm-grazing-allotment-polygons>.
  - b. BLM Range Line Agreement dated July 9, 1981 describing the combined Shannon Station and Spanish Allotments and describing the division of Poison Spring in the NE quarter of Section 12, T19N, R54E, MDM between the Shannon Station and Black Point Allotments.

- c. Letter dated November 14, 2018, with from Douglas W. Furtado, District Manager, Battle Mountain BLM District Office, clarifying that the Shannon Station Allotment and Spanish Gulch Allotment are managed together, as a single Allotment.
  - d. Page 49 of 75 of the most recent BLM Allotment Master Report (January, 2019), indicating that the Shannon Station and Spanish Gulch Allotments are managed together, as a single unit.
  - e. BLM’s Master Title Plats, Historical Indices, General Land Office Survey Notes and Plats from the original Township surveys for Townships 19 and 20 North, Range 54 East, MDM, Lander County, Nevada.
4. Mapping data available from the U.S. Geological Survey (USGS) at <https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map>:
    - a. Hydrographic data, including Hydrographic Basin boundaries, springs, and streams from the National Hydrography Dataset (NHD).
    - b. Geographic names of geographic features from the Geographic Names Information System (GNISS).<sup>1</sup>
    - c. USGS geo-referenced topographic maps from 1983, and geo-PDF (imagery) maps from 2009, each at a scale of 1:24000.<sup>2</sup>
  5. Data available on Google Earth and its accessories:
    - a. Google Earth geo-referenced imagery from 2014 and 2011.
    - b. Earth Point approximations of Public Land Survey System lines (Section Lines), available from [www.earthpoint.us](http://www.earthpoint.us)<sup>3</sup>

## Findings

1. Regarding Baumanns’ cattle grazing privileges on the public lands administered by the US Department of the Interior, Bureau of Land Management (BLM):
  - a. BLM has identified two Grazing Allotments in southeastern portion of the Diamond Valley Hydrographic Basin: the Spanish Gulch and Shannon Station Allotments (Allotments NV10051 and NV10054, the “Combined Allotments”) (Exhibit BAUMANN\_058, current BLM Allotment Master Report, and Exhibit BAUMANN\_057, BLM Range Line Agreement dated July 9, 1981 – the BLM Range Line Agreement).

---

<sup>1</sup> Modern Geographic names often differ from historic names of the same geographic features. Users are advised to use the actual position of each feature rather than the geographic names to distinguish between each of the individual features.

<sup>2</sup> Map Accuracy Standards - As applied to the USGS 7.5-minute quadrangle topographic map, the horizontal accuracy standard requires that the positions of 90 percent of all points tested must be accurate within 1/50th of an inch (0.05 centimeters) on the map. At 1:24,000 scale, 1/50th of an inch is 40 feet (12.2 meters) <https://pubs.usgs.gov/fs/1999/0171/report.PDF>

<sup>3</sup> Earth Point PLSS lines are not based on field surveys of the actual Section Lines. They are based on BLM’s Geographic Coordinate Data Base (GCDB). Multiple fields tests indicate that GCDB data can be accurate to a few feet, but often disagree with the actual positions of the Section Lines by several hundred feet. GCDB data are useful for regional planning only, and should not be used to identify actual positions of Section Lines.

- b. As permittees of BLM grazing permit, Authorization 2703673, with a term from 3/1/2013 to 2/28/2021 for Shannon Station and Spanish Gulch Allotments (Exhibit BAUMANN\_053), Baumanns are the sole graziers within the Shannon Station Allotment, and share the portion of the Spanish Gulch Allotment above 7000 feet with one other party that is allowed to graze sheep (collectively the Combined Allotments). The permit allows Baumanns to graze up to 300 cattle within the Combined Allotments.
- c. The most comprehensive description of the Combined Allotments is the description provided by BLM in the BLM Range Line Agreement dated July 9, 1981 (Exhibit BAUMANN\_057):

“Beginning at the narrows of Devils Gate on U.S. Highway 50 near the SW corner of section 24, T. 20 N., R. 52 E., M.D.M., thence in an easterly and southerly direction along U.S. Highway 50 which is the Diamond Valley Unit boundary, a distance of about eighteen (18) miles to the district line near the SE corner of section 32, T. 18 N., R. 54 E., M.D.M., thence due north along the section line, a distance of five and three quarters (5-3/4) miles to a point on the drainage divide near the NE corner of section 5, T. 18 N., R. 54 E., M.D.M., thence continuing along the district line east and north along the drainage divide of the Diamond Range to Poison Spring in the NE corner of section 12, T. 19 N., R. 54 E., thence in a north-westerly direction up the canyon on the SW side of the road along the fence to the saddle south of Alpha Peak in the center of T. 19 N., R. 54 E., section 12, NENW, thence in a southwesterly direction following the high ridges, old bladed line and fence to a point near the center of section 11, T. 19 N., R. 54 E., thence west and northwest along the ridge south of Pastorino Canyon, thence across Pastorino Canyon and around the west side of the private ground in Pastorino Canyon, thence in a northerly direction to the east quarter corner of section 33, T. 20 N., R. 54 E., M.D.M., thence in a northwesterly direction across Dry Canyon going halfway between the patented lands containing Four-eyed Nick's Spring and the Eunice Place, thence in a north and westerly direction along the Alpha fence to a point in section 19, T. 20 N., R. 54 E., where the Alpha fence meets the fence around the crested wheat grass seeding used by Edward Melka, thence southwesterly around this seeding and Melka's patented ground and northerly around the Desert Land Entry and north along the fence dividing Melka's seeding from Hunter's seeding to the fence corner along the fence dividing Hunters seeding from Cottonwood seeding, thence in a straight line, a distance of about one (1) mile to the SW corner of section 1, T. 20 N., R. 53 E., M.D.M., thence north one and one quarter (1-1/4) miles to the NW corner of this same section, thence westward along the section line through the Desert Land Entries and excluding the Desert Land

Entries from the allotment to the NW corner of section 4, T. 20 N., R. 53 E., M.D.M., thence in a straight line in a westerly direction, a distance of four (4) miles .to the top of Whistler Mountain at a point in the SE1/4NE1/4 section 3, T. 20 N., R. 52 E., M.D.M., thence in a southerly direction along the drainage divide, a distance of about four (4) miles to the Narrows at Devils Gate, the point of beginning.

Water will be available from Poison Springs to the troughs on both sides of the boundary fence.”

- d. In light of all the evidence, the BLM Grazing Permit, the BLM Allotment Master Report, the 1981 Range Line Agreement describing the Combined Allotments, and the letter of clarification from BLM, Baumanns are fully entitled to graze cattle within the Combined Allotments including the Spanish Gulch Allotment, with no restrictions as to elevation. All of the findings in the Preliminary Order of Determination with respect to Proofs V09756, V09758, V09759, V09761, V09762, V09763, V09764, V09765, V09767, V09768, V09769, V09770, V09778, V09779, V10870, V10871, V10873, V10874, V10875, and V10877, are incorrect. These findings should be replaced by findings acknowledging Baumanns’ grazing privileges on said Proofs, with an 1866 priority date, accordingly.
2. With respect to Baumanns’ right to use the spring known as Poison Spring (Proof V09760, Exhibit BAUMANN\_020) within the NE1/4 of Section 12, T20N, R54E, MDM, and South Regli Spring No. 1,2,3 (South Regli Springs) (Proof V09776, Exhibit BAUMANN\_033):
    - a. BLM’s generic maps of Grazing Allotments show the boundary between Black Point Allotment (NV10032) and the Shannon Station Allotment (NV10051) to be anywhere from several hundred feet to almost a mile south of where the boundary is actually fenced in the vicinity of Poison and South Regli Springs.
    - b. In fact, Poison Spring and its related diversions and tanks are divided, with tanks in both the Shannon Station Allotment and the Black Point Allotment.
    - c. With regard to South Regli Springs, there are no tanks, but the springs themselves are situated well south of BLM’s range line fence, in the Shannon Station Allotment.
    - d. These facts are further articulated in the BLM Range Line Agreement (Exhibit BAUMANN\_057).
    - e. A graphic illustrating the relationship between the existing tanks and the actual fence line at Poison Spring is included as Exhibit BAUMANN\_085.
    - f. A graphic illustrating the relationships between Poison Spring, South Regli Spring, and BLM’s range line fence is included as Exhibit BAUMANN\_096.
    - g. The findings in the Preliminary Order of Determination with respect to Proofs V09760 and V09776, that both springs fall entirely within the Black Point Allotment, are incorrect. These findings should be replaced

- by findings acknowledging Baumanns' grazing privileges on Proofs V09760 and V09776, with an 1866 priority date.
3. With respect to historic cattle numbers:
    - a. It was commonplace to under report livestock number in tax assessments in the late 1800s and early 1900s.
    - b. Given all the graziers in the area that were utilizing the rangeland that is today the Shannon Station and Spanish Gulch allotments, the livestock head count was likely much greater than 100 head of cattle evidenced in some of Baumann's predecessor's vested filings.
    - c. The Taylor Grazing Act in 1935 was put in place to reduce livestock head on the range, not increase them. Given that the current BLM Grazing Permit for Shannon Station and Spanish Gulch allows for livestock grazing of up to 300 head of cattle, and 600 head of sheep above 7,000 feet in the Spanish Gulch Allotment, Baumanns should receive at least 300 head (cattle equivalent) with respect to their vested claims.

### **Summary and Conclusions**

1. Baumanns are fully entitled to graze up to 300 cattle in both the Shannon Station and Spanish Gulch BLM Grazing Allotments.
2. Baumanns are fully entitled to have the rights in Proofs V09756, V09758, V09759, V09760, V09761, V09762, V09763, V09764, V09765, V09767, V09768, V09769, V09770, V09776, V09778, V09779, V10870, V10871, V10873, V10874, V10875, and V10877 recognized on their behalf.
3. The actual fences of the BLM Grazing Allotments in the NE1/4 of Section 12, T.19N., R54E., (Poison Spring V09760) and the NE1/4 of Section 10, T.19N., R54E., (South Regli Springs V09776) are significantly different than the BLM Allotment Maps available for this area. Thus the water from Poison Spring is divided between the Black Point and Shannon Station grazing allotments, and the water from South Regli Springs falls entirely in the Shannon Station Allotment, just as provided in the 1981 BLM Range Line Agreement.
4. Nineteenth century livestock numbers within the area now known as the Shannon Station and Spanish Gulch Allotments were much higher than the 300 cattle and 600 sheep that BLM allows to graze there today. Baumanns are entitled to have the numbers allowed by their BLM permit recognized.

Respectively submitted,

William F. Price,  
PLS, WRS, Landman