

**RNNR\_61**

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

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.

**IRA R. RENNER AND MONTIRA RENNER'S OBJECTIONS TO  
THE PRELIMINARY ORDER OF DETERMINATION**

COMES NOW, IRA R. RENNER and MONTIRA RENNER ("Renner"), by and through their counsel, PAUL G. TAGGART, ESQ. and TIMOTHY D. O'CONNOR, ESQ., of the law firm of TAGGART & TAGGART, LTD., and hereby respectfully submits their objections, pursuant to NRS 533.145, to the Nevada State Engineer's August 30, 2018, Preliminary Order of Determination ("Preliminary Order").

**INTRODUCTION**

Diamond Valley is currently the most over-appropriated and over-pumped groundwater basin in the State of Nevada. This over-pumping of the groundwater basin has had a significant impact on the surface water resources in the basin, including the many natural springs along the eastern and western edges of the valley and the ephemeral canyon streams that conduct water from the surrounding mountain ranges to the valley floor. Most of the spring have diminished or completely dried up. Thus, current measurements of springs and streams are likely a fraction of what used to flow freely.

Electricity was not brought to Diamond Valley until the late 1950s. Because of the lack of electricity, most ranching and farming prior to 1905 used water from naturally flowing springs, or levy-opening flood irrigation. These springs irrigated immediately adjacent pasture and meadow land, while water that flowed to the surface from the springs was diverted into open ditches and conveyed (sometimes for miles) to other lands where it was used to flood irrigate crops and

meadow grasses. Conveyance through open ditches and pipes, and flood irrigation of fields and meadows are all beneficial uses of water that were recognized under Nevada's pre-statutory water law as establishing appropriative rights to water.

Renner owns private property, a ranching operation, and water rights from water sources as set forth in the Preliminary Order in the above-referenced matter, and therefore has an interest in the water sources subject to the Preliminary Order in Diamond Valley, Basin No. 153. Renner has reviewed the subject Preliminary Order and objects in part to the Preliminary Order as set forth herein.

The following is a list of general objections and issues Renner has toward the Preliminary Order. These objections should not be interpreted to be a complete list of all objections made or held by Renner toward the Preliminary Order or any final order issued by the State Engineer. Renner withholds the right to put forth more evidence to support the objections listed below, including, but not limited to testimony, documentary evidence, affidavits, and ancient records. Additional evidence will be supplied by Renner during a hearing held by the State Engineer to further prove up the claims made by Renner.

Renner owns 994.19 acres of real property located in Eureka County along the Sadler Brown Road approximately 40 miles north from the town of Eureka, Nevada, currently known as Assessor Parcel Numbers ("APNs") 006-130-05 and 006-220-07. Located on APN 006-130-05 are two water righted springs known as Springs 6 and 7. Located on APN 006-220-07 are five water righted springs known as Springs 1, 2, 3, 4, and 5. Renner also owns several certificated groundwater rights that supplement the water from the springs, as well as some stand-alone groundwater rights, and multiple stock water rights on various springs in the area on or around the private property. Renner's predecessors obtained vested rights to the several springs identified above, and later filed top-filings and subsequent change applications, to modify the vested water rights.

Renner's water claims were largely initiated on what was known as the Scott Ranch in the mid-to-late 1800s. The Scott Ranch and surrounding lands owned or operated by Renner utilize

waters from Lake Dou-Pah-Gate, as well as a number of springs spread throughout the lands. Historically, these springs were used to irrigate local meadows and cultivated lands, including a large vegetable garden, expansive hay fields, and various local irrigation operations. Since that time, Renner has put the same vested water claims to maximum beneficial use by spreading the water out on larger areas of land using modern irrigation techniques. Notably, Renner has not asked for more water than was traditionally used by the Ranch. Rather, the vested claims have remained the same quantity, but have been spread out to utilize the water in a more beneficial way. Thus, all water uses relate back to the original diversion dates of the water in the late 1800s.

Proof V-02432 was originally filed on December 3, 1958, claiming a vested right using the waters from Lake Dou-Pah-Gate to irrigate a total of 102 acres, and was later supplemented and amended by a two-page document which clarified that the original 1916 date on the claim was a reference to the patent date, and that actual occupation and use predated 1871. Proof V04231 was originally filed January 24, 1985, claiming a vested right using the waters of Willow Springs to provide stock water for 300 to 350 cattle. Supplements to these claims have been filed over time to clarify the amount of cattle utilizing the stock water. Additional support information and supplements were filed by Mr. Walter Leberski on March 22, 2016, including a full chain of title and several tax records establishing pre-statutory use. Additional tax records and support of the various proofs were filed May 31, 2016, along with several additional proofs.

### **PROCEDURAL BACKGROUND**

On October 8, 1982, the State Engineer issued Order 800 commencing the Diamond Valley adjudication proceedings. On November 18, 1982, the State Engineer issued Order 802 setting a deadline of February 10, 1984, for individuals with claims of rights to file their proofs of appropriation. On December 23, 1983, the State Engineer extended this deadline to February 10, 1985. On January 25, 1985, the State Engineer again extended the deadline to August 12, 1985.

On August 21, 2015, the State Engineer issued Order 1263 reviving the dormant basin-wide adjudication proceedings. On October 16, 2015, the State Engineer issued Order 1266

establishing a new deadline for the filing of proofs of May 31, 2016. On March 8, 2016, the State Engineer denied a request from the United States Bureau of Land Management to extend the time for the filing of proofs. On August 30, 2018, the State Engineer issued the instant Preliminary Order. The State Engineer has agreed to issue a final order of determination on the Diamond Valley basin no later than January 31, 2020.

## STANDARD OF REVIEW

### **I. The Adjudication Process**

The adjudication of claims of vested water rights is governed by NRS Chapter 533. Pursuant to NRS 533.085(1), vested rights to take and use water that were initiated in accordance with Nevada’s water laws prior to 1913 cannot be impaired by the State Engineer or by the application or enforcement of any of the provisions contained in NRS Chapter 533. Under NRS 533.090 the State Engineer has authority to initiate proceedings to determine the relative rights of various claimants to the use of water from a particular source. Once that process is initiated, the State Engineer is required to issue an order setting a deadline for the taking of proofs of appropriation from claimants,<sup>1</sup> investigate the sources of water and the proofs of appropriation,<sup>2</sup> and issue a preliminary order of determination “establishing the several rights of claimants to the waters.”<sup>3</sup>

“Any person claiming any interest in the stream system involved in the determination of the relative rights to the use of the water . . . may object to any finding, part or portion of the preliminary order of determination made by the State Engineer.”<sup>4</sup> Such objections must be filed within 30 days after the evidence and proofs have been opened to public inspection and must “state with reasonable certainty the grounds of the objection.”<sup>5</sup>

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<sup>1</sup> NRS 533.110.

<sup>2</sup> NRS 533.100.

<sup>3</sup> NRS 533.140.

<sup>4</sup> NRS 533.145(1).

<sup>5</sup> NRS 533.145(1) & (2).

The requirement to state the grounds of the objections with “reasonable certainty” is similar to the “short and plain statement of the claim” standard used for the filing of a civil complaint.<sup>6</sup> The Nevada Supreme Court has interpreted this to be a “notice pleading” standard.<sup>7</sup> Under notice pleading a petitioner is only required to provide “adequate notice of the nature of the claim.”<sup>8</sup> Such notice must set forth the facts which support a legal theory, but does not need to use precise legalese when describing the grievance.<sup>9</sup> Rather the pleadings are to be “liberally construed to place into issue such matters which are fairly noticed.”<sup>10</sup> Accordingly, as long as objections to a preliminary order of determination provide clear notice of the issues that will be raised at the hearing on the objections, they are legally sufficient.

## **II. Standards For Reviewing Proofs of Appropriation**

Vested rights to surface water sources are those rights for which the construction of the works of diversion were initiated prior to 1905.<sup>11</sup> The quantity of a claim is based on the water actually placed to beneficial use prior to 1905 using the irrigation practices of that time period. The Nevada Supreme Court has held that the adjudication process outlined in the statutory water law cannot impair an established vested right and that such rights “shall not be diminished in *quantity or value*.”<sup>12</sup> Accordingly, the State Engineer is without discretion to recognize a vested appropriation at an amount less than what the evidence in the record shows was beneficially used prior to 1905 or to assign a more junior priority date to such a claim.<sup>13</sup>

If substantial evidence demonstrates that water was placed to beneficial use on a particular property using flood irrigation and open conveyance ditches, the State Engineer must recognize the quantity of water necessary to accomplish this task regardless of whether he believes that such

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<sup>6</sup> See NRCP 8(a).

<sup>7</sup> *Hay v. Hay*, 100 Nev. 196, 198, 679 P.2d 672, 674 (1984).

<sup>8</sup> *Id.*

<sup>9</sup> *Liston v. Las Vegas Metro. Police Dep’t*, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995).

<sup>10</sup> *Hay*, 100 Nev. at 198, 679 P.2d at 674.

<sup>11</sup> See page 1 of SUMMARY OF STATUTORY PROCEDURES FOR FILING CLAIMS OF VESTED RIGHTS, MAKING APPLICATION FOR A WATER RIGHT AND A SUMMARY OF FEES OF THE STATE ENGINEER, revised April 2018.

<sup>12</sup> *Ormsby Cty. v. Kearney*, 37 Nev. 314, 352, 142 P. 803, 810 (1914) (emphasis added).

<sup>13</sup> *Id.*

practices are inefficient or that the same quantity of acreage can be adequately irrigated with less water under modern irrigation practices. The key question when evaluating each proof is how much water was used to irrigate the claimed lands under historic conditions.

## OBJECTIONS

### **I. General Objections Related To All Renner Proofs Of Appropriation.**

#### **A. The irrigation duties established in the Preliminary Order are insufficient and do not reflect the irrigation practices in use prior to 1913.**

The State Engineer determined that the duty of water required to be diverted from all of the various water within Diamond Valley is 3.0 acre-feet per acre (“af/a”) for harvest crop, 2.0 af/a for meadow/pasture, and 0.75 af/a for diversified pasture.<sup>14</sup> However, there is no evidence on record to support these duties or to justify the reduction of the duties claimed by the several vested water right owners in their respective proofs. Evidence in the proof files, other State Engineer permit files, and evidence submitted as part of this adjudication indicate a much higher duty of water and a varied duty dependent on soil type and water source and location.

The duty determination in the Preliminary Order does not consider important factors which are necessary to grow the different types of crops. Two of these factors are irrigation efficiency and transmission losses. The Preliminary Order indicates that the duties consider conveyance losses, but in reality, the duty figures appear to be based on 100% irrigation efficiency, or more. These findings do not consider realistic irrigation practices which were in place when the water was first put to beneficial use, nor do the duties take into account actual amounts of water beneficially used – regardless of efficiencies.

All proofs and evidence support that a higher duty was used by vested water right owners. Historical duty calculations should encompass historical water uses and efficiencies. For example, whereas it took hundreds of acre-feet of water to irrigate the meadows associated with V-02432 in the late 1800s, modern methods are able to utilize that same water to irrigate much larger swaths

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<sup>14</sup> Preliminary Order, p. 10.

of land. Limiting vested rights based on what modern technology would allow is unlawful.<sup>15</sup> All evidence of duty in the record supports the duty set forth in the filed proofs, and there is no evidence that these duty numbers are unreasonable.

**B. The State Engineer fails to recognize water placed to beneficial use on pasture and meadow lands immediately adjacent to springs and seeps.**

For meadow and pasture land, the State Engineer set the duty too low for actual irrigation of these crops. The duty set forth in the Preliminary Order is insufficient to irrigate the crop type specified, even if the irrigation practice was 100% efficient. Evidence supplied by Renner supports a duty ranging from 4 af/a or more for grass hay and managed pasture grasses. Notably, the State Engineer has issued permits and certificates to Renner indicating a duty generally of 4af/a for such pasture and meadow irrigation during the irrigation season. As older flood irrigation techniques are not nearly as efficient as current methods, the vested right duty cannot be less than current duties assigned in more recent permits.

**C. Conveyance Losses**

The State Engineer did not rely upon substantial evidence in the record to determine reasonable conveyance losses associated with historical irrigation practices. Rather, the State Engineer's decision severely limits the amount of water Renner is entitled to under Nevada water law. As such, there is insufficient evidence in the record to justify a reduction in duty less than that established in the various proofs of vested water use.

**D. The State Engineer's Over-Reliance on Specific Evidence**

The State Engineer did not base his findings on substantial evidence. Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion."<sup>16</sup> The State Engineer gave the undue weight to uncomprehensive field notes taken by Payne on November 18, 1912. On November 18, 1912, Payne, an Assistant Field Engineer with the Office of the State

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<sup>15</sup> *Ormsby Cty.*, 37 Nev. at 352.

<sup>16</sup> *Bacher v. Office of State Eng'r of State of Nev.*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006).



Engineer, visited six ranches located in the northwestern portion of Diamond Valley. These notes on “The Ranches on the Road Between Eureka and Mineral Hill, Eureka County, Nevada” (“Field Notes”) covered a distance of 19.5 miles from the first ranch visited to the last. Renner takes issue with the weight the State Engineer gave to this line of evidence.

The Field Notes do not contain the quantitative information customarily gathered under field operation standards as set forth by the State Engineer in the 1913-1914 Biennial Report.<sup>17</sup> The goal of surveying irrigated areas is to have a one percent error, which arises by properly noting the legal subdivision, traversing the ditches, making cross-sections and taking the grade, platting the crops, and segregating the definite areas to each ditch.<sup>18</sup> “In addition to the surveying and mapping, the areas must be checked and compared with the claims.”<sup>19</sup> There is no evidence this work was completed and therefore, the cursory Field Notes cannot rise to the level of being considered among the best evidence. Indeed, Payne admits in the opening page of his notes that the notes are not a comprehensive analysis of all water rights in the area. When the focus of the notes was not the active water rights, the notes should not be relied on as a full accounting of water rights.

Similarly, the Nevada Supreme Court invalidated this process which the State Engineer has apparently used to administer its adjudication power. In *Ormsby County v. Kearney*,<sup>20</sup> the Court held, *inter alia*, that “it is made the duty of the owners of such rights to present their claims and to support the same by proofs, in order that such rights may be determined for administrative purposes under the act.” Importantly, the Court held that “the act gives the State Engineer no discretion to award an appropriator a less amount of water than the facts show he is entitled to.”<sup>21</sup> Here, however, the State Engineer utilized the same line of evidence at issue in *Ormsby*<sup>22</sup> to award

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<sup>17</sup> State of Nevada Biennial Report of the State Engineer 1913-1914, W.M. Kearney, 1915.

<sup>18</sup> 1913-1914 Biennial Report, p. 29.

<sup>19</sup> *Id.*

<sup>20</sup> 37 Nev. 314, 142 P. 803.

<sup>21</sup> *Id.*, 37 Nev. at 314, 142 P. at 809.

<sup>22</sup> The mapping efforts of Field Engineers and their assistants (Payne et al.) resulted in a reduction of water claimed as a pre-statutory use, spawning the litigation which resulted in *Anderson v. Kearney*, a case which was disposed of at the same time as *Ormsby County v. Kearney*.

a lesser amount of water than was claimed by KVR. This action is in direct contravention of the Court's ruling in *Ormsby County* and NRS 533.085.<sup>23</sup>

## **II. Objections Related To Specific Proofs Of Appropriation**

### **A. Doctrine of Relation Back Was Misconstrued By The State Engineer.**

Each vested claim Renner made included a description that the claim relates back to an earlier period. As codified in Nevada Water Law, changes to existing use retain the priority of the original appropriation.<sup>24</sup>

In several Nevada Supreme Court cases prior to the enactment of the Water Law, it was established that the date of priority of an appropriation "related back" to the beginning of the works of diversion for the appropriation. This rule became known as the Doctrine of Relation. It was also established that in order for an appropriator to maintain this early priority, he had to proceed with the appropriation and place the water to beneficial use within a reasonable time period, consistent with the magnitude of the project, good faith and diligent effort.<sup>25</sup>

Throughout the Preliminary Order, the State Engineer has misconstrued Renner's claims for relating back to an earlier priority date. Renner's claims of relation back are correct because the current works and diversions of water utilize the same water as was appropriated pre-1905. Over the years, Renner has improved the diversions and irrigation methods to place his water to maximum beneficial use. Throughout a series of change applications that can all be traced back to the original water, Renner has moved his vested rights to a larger swath of land on his ranch. Because change applications do not alter the priority of the water, and the water has original priorities of pre-1905 (mostly late 1800s), Renner's current water use "relates back" to his vested rights.

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<sup>23</sup> "Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913."

<sup>24</sup> NRS 533.010(2).

<sup>25</sup> See page 8 of SUMMARY OF STATUTORY PROCEDURES FOR FILING CLAIMS OF VESTED RIGHTS, MAKING APPLICATION FOR A WATER RIGHT AND A SUMMARY OF FEES OF THE STATE ENGINEER, revised April 2018.

**B. The State Engineer incorrectly calculated Renner’s irrigation claims.**

**1. V-02432**

Renner filed V-02432, claiming a vested right of 408 afa sourced from Lake Dou-Pah-Gate to irrigate 102 acres. Water was diverted from the lake by a pipe and pipe line, and also diverted through flood techniques for surrounding meadows. The original proof claimed 102 acres of irrigated land. In 1974, Renner “top-filed” Permit 37924 as a placeholder for the vested right. That permit was certificated as Certificate 12333, for 278.38 acres, totaling 403 afa of water rights. The proof for V-02432 was amended in 2016 to include the certificated water rights for the 278.38 acres of irrigated land, as the same water from the original proof was still being utilized on a larger acreage. Thus, the new certificated water relates back to the original vested water right.

The State Engineer erroneously concludes that V-02432 is limited to 90 afa. In the Preliminary Order the State Engineer found that Payne’s notes only indicate 25 acres of cultivation at this location, and therefore awarded a duty of 3 afa over 30 acres of land (of which the duty is objected to above). The remaining portions of V-02432 were denied because Payne’s notes did not contain information corroborating the proof.

However, the evidence in the record demonstrates clear water usage for the full amount of water claimed in V-02432. The State Engineer appears to have ignored all evidence outside of Payne’s notes. The State Engineer incorrectly interpreted Payne’s notes as a complete recordation of all water being used, as discussed above.

First, the State Engineer misinterpreted the Scott Ranch deed to say that only 25 acres of land were being irrigated. The Scott Ranch consisted of 160 acres, 20 acres of which were a vegetable garden.<sup>26</sup> The Scott Ranch deed states that 20 acres of land were “already broken up and fenced” in 1880, and the remaining land was open.<sup>27</sup> However, it is notable that in those early times, pastures and meadows were irrigated but not tilled or fenced. Land did not need tilling for hay growth in the late 1800s or early 1900s.<sup>28</sup> The Scott Ranch deed states that the conveyance

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<sup>26</sup> Scott Ranch Deed.

<sup>27</sup> Scott Ranch Deed.

<sup>28</sup> See Diamond Valley Dust Bowl (Sligovski); Crowfoot.

was for the 160 acres of Scott Ranch “*consisting of hay and tillable land*, including about twenty acres already broken up and fenced.”<sup>29</sup> Stated differently, the Scott Ranch deed conveys 160 acres of land, including 20 acres of broken up and fenced land, and other hay and tillable land.<sup>30</sup> Thus, Payne’s notes regarding 25 acres of “cultivated” land refer to only the vegetable garden, and do not include the land being used for hay to feed the cattle.

Second, the Scott Ranch was also taxed as both agricultural land and grazing land.<sup>31</sup> Notably, the Scott Ranch was home to 212 total animals in 1875,<sup>32</sup> 177 animals in 1876,<sup>33</sup> and 302 animals in 1877.<sup>34</sup> These animals would not be eating from the fenced vegetable garden, but rather would likely be grazing on the unfenced hay fields. As such, V-02432 should not be limited to just the vegetable garden, as water from Lake Dou-Pah-Gate was also used to flood irrigate the lands surrounding the home for hay.

Third, evidence in the record demonstrates that flooding from Lake Dou-Pah-Gate was used to irrigate fields surrounding the lake for hay, in addition the vegetable garden. The GLO Plat from 1869 indicates a meadow forming around the lake.<sup>35</sup> The notes on the GLO Plat state that there is “rank growth of vegetation” and “splendid agricultural land” in the area.<sup>36</sup> The State Engineer recognized in the Preliminary Order that the “water from the lakes flows out on the northeast flank and saturates a small area” next to the lake.<sup>37</sup> Additionally, maps on file with the State Engineer for permit 50075 depict controlled flooding from Lake Dou-Pah-Gate into the meadow area.<sup>38</sup> Levying in this manner was common practice for irrigating.<sup>39</sup> This map is an accurate depiction of the land use in the late 1800s and early 1900s because it was created before the Diamond Valley groundwater issues were prevalent and the map has the same water

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<sup>29</sup> Scott Ranch Deed (emphasis added).

<sup>30</sup> See Scott Ranch Deed.

<sup>31</sup> Tax Rolls.

<sup>32</sup> Tax Rolls, 1875.

<sup>33</sup> Tax Rolls, 1876.

<sup>34</sup> Tax Rolls, 1877.

<sup>35</sup> GLO Plat

<sup>36</sup> GLO Plat notes.

<sup>37</sup> Preliminary Order, p. 135.

<sup>38</sup> Map for P50075.

<sup>39</sup> See Sadler; Thompson.

characteristics as described in the Field Notes and GLO Plat. Payne's notes likely ignore the grazing land because he arrived after the irrigation season in November.<sup>40</sup> The irrigated hay would have been cut and dried before winter, and would not have been irrigated in November. Thus, Payne's notes are not an accurate source of information for the irrigated area.

The State Engineer wholly ignores the irrigated lands used to operate the ranch and feed the hundreds of animals living there. Additionally, the State Engineer lists the priority date as 1873, but the GLO survey was conducted in 1870 and indicates that this land had already been settled. Thus, the priority date must be prior to 1870. The State Engineer should also revisit his determinations about the "relation back" issues for the Renner permits. All spring waters in this area were appropriated and used for irrigation of pastures and crops, but were later improved and used to irrigate more advanced crops, such as alfalfa. Any relation back claims merely indicate that many modern uses are the same water which was vested as a right before 1905, and therefore relate back to the vested priority date.

## **2. V-10883**

Renner filed V-10883, claiming a vested right of .713 cfs, totaling 61.52 afa from Spring #3. As stated in the proof, this water was used for irrigation dating back to 1887. Bailey, the then-owner, filed a water claim in 1887 for "all water running from spring 3" being put to use through various ditches and pipes. The State Engineer rejected this claim solely on the basis of Payne's notes, finding that "Mr. Flynn would have mentioned the other water sources other than Lake Dou-Pah-Gate and additional acreage under cultivation" if they existed at the time of Payne's visit.<sup>41</sup> This logic is deeply flawed, as described above regarding the uncomprehensive nature of the Field Notes. Additionally, other evidence supports V-10883.

Bailey filed a water claim for "all water running from [Spring # 3]" in 1887. Water claims required both time and money to file, and therefore a rancher would not file a claim on a remote spring unless that rancher was indeed utilizing that spring. Here, Bailey would have rode

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<sup>40</sup> Field Notes, November.

<sup>41</sup> Preliminary Order, p. 137.

approximately 40 miles to town to file and pay to protect the waters of Spring #3. Bailey then proceeded to pay taxes on the land irrigated by the Spring #3 water. The 1892 tax rolls indicate “farming land” for Bailey, which includes northern springs listed in Section 31. Therefore, Bailey was undoubtedly paying for and farming from all the waters from Spring #3 in 1892 and beyond.

Certificate 14026 was granted for the water from Spring #3 in 1995. This Certificate originated as Permit 37916, which was a ‘top filing’ as a placeholder for V-10083. That permit specifically indicates that it does not jeopardize, hinder, or interfere with the underlying vested right.<sup>42</sup> Under Certificate 14026, Renner has a duty of 61.52 afa, at .713 cfs. Thus, Spring #3 was flowing at .713 cfs at the time of the certification. The Preliminary Order should have found that the flow rate of .713 cfs would be the same, if not greater, at Spring #3 in 1887 when the water claim was filed.

### **3. V-10884 through V-10886**

Renner filed V-10884, claiming a vested right of .04 cfs, totaling 28.96 afa from Spring #6. Renner filed V-10885, claiming a vested right of .02 cfs, totaling 14.48 afa from Spring #7. The Preliminary Order rejected these claims solely on the basis of Payne’s notes, finding that “Mr. Flynn would have mentioned the other water sources other than Lake Dou-Pah-Gate and additional acreage under cultivation” if they existed at the time of Payne’s visit.<sup>43</sup> This logic is deeply flawed as described above regarding the uncomprehensive nature of the Field Notes. Additionally, other evidence supports the claims.

The tax rolls from 1891 include taxes Bailey paid for farming land in Section 6. Spring #6 is the only spring located in Section 6, T.25N., R53E. Thus, Bailey must have been utilizing Spring #6 in order to have farming land in Section 6. Additionally, Certificate 11890 was issued with a duty of .04 cfs, totaling 28.96 afa. Thus, Spring #6 was flowing at .04 cfs at the time of the certification, and would have been flowing at least that rate in 1891 when Bailey was diverting that water. Therefore, the Preliminary Order should have found that the flow rate of .04 would be

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<sup>42</sup> Permit 37926.

<sup>43</sup> Preliminary Order, p.137.

the same, if not greater, at Spring #6 when Bailey was farming land in Section 6, T.25N., R53E. The tax rolls from 1891 indicate Bailey's farming throughout Section 5, T.25N., R53E. Spring #7, the subject spring of V-10885, is located within Section 5, T.25N., R53E.

Finally, the State Engineer states that "Spring Number8 under this proof and Lake Dou Pah Gate under V-02432 are the same POD."<sup>44</sup> This statement is false. Spring #8 was a separate and distinct water source from Lake Dou-Pah-Gate and therefore should not have been rejected as a duplicate filing. Spring #8 was originally a hand-improved sump near Lake Dou-Pah-Gate. Lake Dou-Pah-Gate (which is its own source of water) is still full and utilized for irrigation. Thus, the State Engineer's rejection on of V-10886 on the basis of a duplicate filing is erroneous.

**C. Stock water Claims (V-10845 through V-10852)**

Renner filed eight claims for vested stock water rights. The State Engineer erroneously states that "the number of animals the predecessors to [Renner] possessed based on supporting documentation associated with the irrigation claims states that there were 150 cattle and 90 horses."<sup>45</sup> The documentation provided clearly indicates many more animals than found in the Preliminary Order. The State Engineer also misconstrues Renner's claims of relation back in the Preliminary Order, as the State Engineer failed to take into account that filings made with his office were merely "top-filings" as placeholders for the vested rights, and did not act as separate appropriations. The State Engineer ultimately concluded that a total combined duty from all sources would be 5.43 afa based on the calculation of 240 animals. However, the State Engineer also found each individual vested right to be valid, each claim being for 420 or 500 head of cattle. Thus, to the extent that the State Engineer has found has that less than the claimed amount of water is valid, Renner objects.

The State Engineer also incorrectly found that V-10852 was a duplicate filing to V-02432, and rejected the claim. As explained above, Spring #8 is not the same spring as Lake Dou-Pah-

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<sup>44</sup> Preliminary Order, p. 139.

<sup>45</sup> Preliminary Order at 233.

Gate. Spring #8 is a separate and distinct spring that is now dry. Notably, though Spring #8 is dry, Lake Dou-Pah-Gate remains flowing and full. Thus, the rejection based on the duplicate filing is erroneous.

**CONCLUSION**

For the foregoing reasons, and other reasons to be determined during hearing and at district court, Renner objects to the Preliminary Order.

Respectfully submitted this 7th day of November, 2018.

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EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>
1.	Affidavit of Timothy D, O'Connor, Esq.
2.	Supporting Documents

# **EXHIBIT 1**

# **EXHIBIT 1**

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

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.

**AFFIDAVIT OF TIMOTHY D.  
O'CONNOR IN SUPPORT OF IRA  
R. RENNER AND MONTIRA  
RENNER'S OBJECTIONS TO THE  
PRELIMINARY ORDER OF  
DETERMINATION**

STATE OF NEVADA                    )  
  ) ss:  
COUNTY OF CARSON CITY        )

I, TIMOTHY D. O'CONNOR, being duly sworn depose and say:

1. I am a citizen of the United States, over 18 years old, and have knowledge of the following facts.

2. I am the attorney for Ira R. Renner and Montira Renner ("Renner") in the above-referenced matter, and make this affidavit in support of Renner's Objections to the Preliminary Order of Determination ("Objections").

3. On August 30, 2018, the State Engineer entered a Preliminary Order of Determination and Abstract of Claims ("Preliminary Order") in the above-referenced matter.

4. My client, Renner, is the owner of water rights from water sources as set forth in the Preliminary Order and Abstract of Claims.


5. On behalf of my client, I have prepared Renner's Objections and verify that all the objections stated therein are true and accurate to the best of my knowledge.

6. Further affiant sayeth naught.

DATED this 7 day of November, 2018.

  
TIMOTHY D. O'CONNOR, ESQ.

SWORN to and SUBSCRIBED before  
me this 7<sup>th</sup> day of November, 2018,  
by TIMOTHY D. O'CONNOR.

  
NOTARY PUBLIC



# **EXHIBIT 2**

# **EXHIBIT 2**

# Assessment Book of the Property of Eureka

ASSESSED TO ALL OWNERS WHEN KNOWN.

PAYEE'S NAME	DESCRIPTION OF PROPERTY <small>Set boundaries that City and West Leg-Additions of Section and Block or Blocky City and West Leg-Improvements Bound Property.</small>	ACRES				VALUE				PROPERTY TAX	VALUE OF THE PROPERTY	
		Block	Lot	Block	Lot	Block	Lot	Block	Lot			
15 <i>Baldeseder C.D.</i>	<i>General Property, American Railway, in interest necessary interest in and to the lot 20-530 in block 21 of the town of Eureka in Humboldt County and State of Nevada</i>			21	51							50
	<i>Improvements, Frame House</i>											150
16 <i>Baldeseder Robert</i>	<i>General Property, Lumbering Co. of Humboldt Co. 2 1/2 acres in Humboldt County Nevada</i>											
	<i>Subtract in and to a tract of land situate on the N. W. side of Diamond Valley and is more or less bounded by the town of Eureka in Humboldt County Nevada, more or less as follows to wit, being the:</i>											
	<i>Block Section 1 T. 24 N. R. 52 E. S. 20</i>	5	25	50				200	320			160
	<i>21 - 200</i>	5	25	50				20	20			40
	<i>22 - 200</i>	6	25	50				20	20			40
	<i>23 - 200</i>	6	25	50				40	40			200
	<i>24 - 200</i>	6	25	50				160	160			80
	<i>25 - 200</i>	7	25	50				20	20			20
	<i>26 - 200</i>	8	25	50				20	20			20
	<i>27 - 200</i>	8	25	50				20	20			20
	<i>28 - 200</i>	31	25	50				20	20			20
	<i>29 - 200</i>	31	25	50				20	20			20
	<i>30 - 200</i>	31	25	50				20	20			20
	<i>31 - 200</i>	31	25	50				20	20			20
	<i>32 - 200</i>	32	25	50				20	20			20
	<i>33 - 200</i>	32	25	50				160	160			80
	<i>34 - 200</i>	32	25	50				20	20			20
	<i>Improvements, Wooded Grove, Frame House</i>							20	1200			700
	<i>Subtract in and to a tract of farming land on west side of Diamond Valley, situated more or less bounded by Eureka in Humboldt County and of Humboldt County on the Bailey Road and being as follows to wit, being the:</i>											
	<i>Block Section 1 T. 24 N. R. 52 E. S. 20</i>	1	25	50				40	40			200
	<i>21 - 200</i>	1	25	50				20	20			20
	<i>22 - 200</i>	25	25	50				20	20			20
	<i>23 - 200</i>	25	25	50				20	20			20
	<i>24 - 200</i>	26	25	50				20	20			20
	<i>25 - 200</i>	26	25	50				20	20			20
	<i>26 - 200</i>	26	25	50				20	20			20
	<i>27 - 200</i>	26	25	50				20	20			20
	<i>28 - 200</i>	26	25	50				20	20			20
	<i>29 - 200</i>	26	25	50				20	20			20
	<i>30 - 200</i>	26	25	50				20	20			20
	<i>31 - 200</i>	26	25	50				20	20			20
16 <i>Baldeseder Robert</i>	<i>General Property, Frame House</i>							20	20			20









1876

VALUATION OF ASSESSORS.

DATE OF PAYMENT.	NAMES OF TAXPAYERS.	DESCRIPTION OF PROPERTY.	REAL ESTATE No. Acres.	Personal Property No. Acres.	No. of Sections.	TOWNSHIP.	RANGE.	LOT.	BLOCK.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF PERSONAL PROPERTY.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	VALUE OF Real Estate on Assessed Value of Land in Column 3.	
	William W. Choate	Personal Property at Union	1.420																	
		So head South	100																	
		One Bell	100																	
		45 head Red Bull	1000																	
		Reservory interest in and to a tract or parcel of land situated on the West side of Diamond Valley about 40 miles Northwesterly from the town of Eureka in Cassia County State of Nevada, and Charles Taylor with accompanying at a stake standing about 1/2 mile West of the house occupied by Robert and Jennings, thence South 80 or 90 degrees to a Stake, thence East 90 or 90 degrees to a Stake, thence North 80 or 90 degrees to a Stake, thence West 80 or 90 degrees to the place of beginning, containing 100 acres and known as the Fox Ranch Improvement, located in the 10th and 11th																		
	W. C. Choate	Personal Property, Furniture, etc	100																	
		Subway	100																	
		Watch	100																	
		Reservory interest in and to																		
		Lot 104 and 105 on Block 92 of the																		
		Mineral Property of the town																		
		of Eureka, Cassia County																		
		State of Nevada																		
		Improvements, Brown Street																		
		Reservory interest in and to																		
		1/2 on Block 108 of the town																		
		of the town of Eureka, Cassia County																		



728

VALUATION OF ASSETS

DATE OF PAYMENT	NAMES OF THE PAYEE	DESCRIPTION OF PROPERTY	REAL ESTATE VALUE	PROPERTY VALUE	No. of Shares	NAME of Trustee	LOT	BLOCK	Year of Real Estate Investment Class	Value of Investment	Value of Personal Property	Value of Trust Property
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										
Paid Nov 17/77	David L. Lawrence	Personal Property - \$2000 - in the name of David L. Lawrence										