

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

RECEIVED

2019 JAN 29 AM 11:10

STATE ENGINEER'S OFFICE

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

**SUPPLEMENTAL OBJECTIONS TO**  
**PRELIMINARY ORDER OF**  
**DETERMINATION**  
**(VERIFICATION ADDED ONLY)**

COMES NOW Ross E. de Lipkau, Esq., of the firm Parsons Behle & Latimer, and files herewith its Supplemental Objections to the Preliminary Order of Determination dated August 18, 2018. This supplemental document is identical to the Objections to Preliminary Order of Determination filed herein on December 13, 2018. The only supplement is the addition of the Verification, as required by NRS 533.145.

The Objectors are Chad D. and Rosie J. Bliss (hereinafter referred to as "Objectors"). For clarity, the specific objections will be set forth as follows:

1. Proof of Appropriation V04497 – China Canyon Spring. This spring is within the Spanish Gulch grazing allotment being shared in part with Mr. Jim Baumann. Proof of Appropriation V04497 has the same source as the Baumann claim of vested right V09770. The discrepancy lies in the fact that State Engineer employees could not locate the spring. This spring is shared jointly by Objectors' livestock and by livestock owned by Mr. Baumann. V04497 must be approved with an identical priority as V09770, as both parties share, at the same time, an overlapping grazing area.

2. Proof of Appropriation V04488 – Gibellini Spring No. 3. This claim is completely valid and was denied upon the claim that State Engineer employees could not locate the spring. Subsequent discussions with both Tony Eng and Dan Taylor, employees of the Nevada State

Engineer, advised Objectors that a mistake was made and V04488 should be approved in its entirety. Photographs and spring flow measurements are available. Proof of appropriation V04488 should be added as an approved claim of vested right to page 358 of the State Engineer's abstract of claims.

3. Objectors assert that Proof of Appropriation V04498, unnamed spring number 1, is valid. A State Engineer inspection could not locate the spring, but such spring has been utilized by Objectors' livestock and their predecessor in interest. This spring is within the shared or joint grazing area of Mr. Baumann and Objectors. The priorities of Objectors' proof of appropriation, and that of Mr. Baumann, shall be identical. This spring may be known as Middle Spring, and Mr. Baumann similarly has the right to graze within the common area. Both proofs of appropriation should therefore have the same priority.

4. Proof of Appropriation V04489 – Gibellini Spring No. 1. This spring, and the claim of vested right, is valid, but is not included within or on page 358 of the abstracts of claims. A Google Earth location is 39.455623 and 115.958903, and correctly depicts the precise location of such spring.

5. Proof of Appropriation V04494, known as Summit Spring No. 3, has been approved by the Nevada State Engineer. However, the appropriate name of this spring is Pinto Summit Spring No. 3, but deeds of conveyance indicate that the springs are named differently. A copy of the corrected deed is attached hereto.

6. Proof of Appropriation V04495, known as Summit Spring No. 2, has been approved by the Nevada State Engineer. However, the appropriate name of this spring is Pinto Summit Spring No. 2, but deeds of conveyance indicate that the springs are named differently. A copy of the corrected deed is attached hereto as Exhibit 1.

7. Proof of Appropriation 04496, Summit Spring No.1, has been determined to be valid. This spring is also known as Pinto Summit Spring No. 1.

8. Proof of Appropriation V04496, Milk Ranch Spring, has been determined by the State Engineer to be valid. Mr. Baumann has a claim to the same spring as depicted on Claim of Vested Right V09768. The grazing areas are shared and Objectors have no objection to both claimants having equal rights to the same grazing area, having equal ownership in the same right(s) and with identical priorities.

9. Proof of Appropriation 04500, Spanish Gulch Spring. Similarly, Mr. Baumann has filed a claim of vested right, V09759, on the same source. Inasmuch as the grazing area is shared by the two claimants, approval of both claims, on an equal basis with identical priority, is requested. As is well known, the water rights pass with the federal government's issuance of a grazing privilege.

10. Objector's Proof of Appropriation V04500, Spanish Springs Gulch, is perfectly valid. Peter J. and Gladys Goicoechea assert claim number V01423 to the same spring. That claim was found to be invalid as neither Mr. or Mrs. Goicoechea have the right to graze livestock of any kind therein. Thus, proof of appropriation V01423 must be denied. See legal points and authorities set forth below.

11. Objectors' Proof of Appropriation V04486, Seabury and Lucky Springs is valid. Mr. Goicoechea's claim to the same spring seeking quasi-municipal purposes, V01068, was found to be invalid. The State Engineer should affirm this rejection.

**One Without Grazing Privileges Cannot Place Water, Arising Within The Grazing Area To A Beneficial Use.**

The foundation of Nevada's water law is found in NRS 533.035, which reads:

“Beneficial use shall be the basis, the measure and the limit of the right to the use of water.”

The action entitled *Preferred Equities v. State Engineer*, 119 Nev. 384, 75 P.3d 380 (2003), ruled:

“The preeminent public policy concern in Nevada regarding water rights is beneficial use.” Citing *Desert Irrigation, Ltd. v. State Engineer*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997).

It is absolutely certain that only the holder of grazing license or privilege may place water to a beneficial use within the area of his grazing allotment. That assumes, of course, that the source is arising upon the public domain. The Nevada Supreme Court, in the action entitled *U.S. v. State Engineer*, 117 Nev. 585, 27 P.3d 51 (2001), ruled:

“We conclude that the phrase ‘legally entitled to place the livestock on the public lands for which the permit is sought’ in NRS 533.503 is unambiguous. It simply requires an applicant for a stockwater permit to have a legal right to graze livestock on the public land . . .”

Accordingly, only the licensee may place the water arising within his grazing area to a beneficial use, which, of course, means that the permit, claim of vested right, or decreed water right follows the land and subsequent licensees.

A prior holder of a grazing permit, a water source, whether it be in his name or a prior name. Such claim amounts to speculation, a doctrine not sanctioned in Nevada. *Batcher v. State Engineer*, 122 Nev 1110, 143 P.3d 793 (2006).

NRS 533.045 reads:

“When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters of this State except as such times as the water is required for a beneficial purpose.”

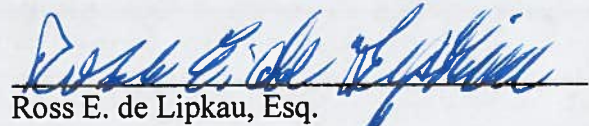
The above-quoted statute is clear and unmistakable. One who claims a water right upon the public domain, for which he has no grazing privileges, has no need whatsoever for a water

right. In this case, a decreed surface water right. Accordingly, no party in this entire adjudication shall be authorized a stock-watering right unless he/she has the appropriate grazing license as issued by the appropriate federal agency.

It is fully acknowledged that the United States government has filed a series of PWR (Public Watering Hole) proofs of appropriation. All of objectors' claims of vested right have a priority earlier than the PWRs. Thus, the approval of any and all PWRs by the State Engineer must be approved subject to existing and prior rights.

Respectfully submitted on this 20th day of January, 2019.

PARSONS BEHLE & LATIMER



Ross E. de Lipkau, Esq.

Gregory H. Morrison, Esq.

50 West Liberty Street, Suite 750

Reno, Nevada 89501

Telephone: 775.323.1601

Facsimile: 775.348.7250

[rdelipkau@parsonsbehle.com](mailto:rdelipkau@parsonsbehle.com)

[gmorrison@parsonsbehle.com](mailto:gmorrison@parsonsbehle.com)

*Attorneys for Objectors*

*Chad D. and Rosie J. Bliss*

IN THE OFFICE OF THE NEVADA 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, HYDROLOGIC  
BASIN NO. 10-153, EUREKA AND ELKO  
COUNTIES, NEVADA.

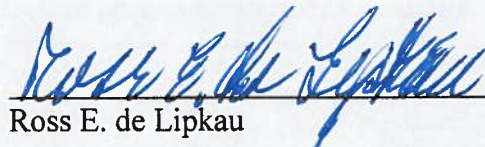
**VERIFICATION TO OBJECTIONS  
TO PRELIMINARY ORDER OF  
DETERMINATION**

STATE OF NEVADA                    )  
  )  
COUNTY OF WASHOE                )

I, ROSS E. de LIPKAU, hereby swear or affirm under the penalty of perjury that the following assertions are true and correct to the best of my knowledge.

1. I am the agent and attorney of record for Chad D. and Rosie J. Bliss, Objectors herein.
2. The statements contained in the OBJECTIONS TO PRELIMINARY ORDER OF DETERMINATION are true and correct to the best of my knowledge and belief.
3. The exhibit attached to the OBJECTIONS TO PRELIMINARY ORDER OF DETERMINATION in support of the OBJECTIONS was obtained by me, or under my direction, and is a true and correct copy thereof.
4. This verification is based upon several telephone calls and meetings with Chad D. and Rosie J. Bliss. All facts contained within the OBJECTIONS have been approved by Objectors.

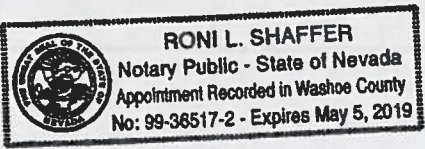
DATED this 19 day of January, 2019.

  
\_\_\_\_\_  
Ross E. de Lipkau

STATE OF NEVADA )  
 )  
COUNTY OF WASHOE )

SUBSCRIBED and SWORN to before me on this 28th day of January, 2019, by Ross E. de Lipkau.

Roni L. Shaffer  
Notary Public




**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Parsons Behle & Latimer, and that on this 28th day of January, 2019, I caused a true and correct copy of the foregoing document to be served U.S. Mail, at Reno, Nevada, in a sealed envelope, with first class postage fully prepaid, addressed as follows:

Tim Wilson, P.E., Acting State Engineer  
Division of Water Resources  
901 S. Stewart St., Suite 2002  
Carson City, NV 89701  
Email: [jking@water.nv.gov](mailto:jking@water.nv.gov)

Peter J. and Gladys Goicoechea  
P.O. Box 97  
Eureka, NV 89316

Therese A. Ure, Esq.  
Schroeder Law Offices, P.C.  
10615 Double R Blvd., Suite 100  
Reno, NV 89521  
Email: [t.ure@water-law.com](mailto:t.ure@water-law.com)

  
\_\_\_\_\_  
Employee of Parsons Behle & Latimer



**Index to Exhibits**

<u>Exhibit</u>	<u>Document</u>	<u>Pages</u>
1	Water Rights Correction Deed recorded on November 9, 2017	4

Exhibit 1

Exhibit 1

The undersigned hereby affirms that there is no Social Security number contained in this document

No APN (Water Rights Only)

WHEN RECORDED MAIL TO:  
Resource Concepts, Inc.  
340 N. Minnesota St.  
Reno, NV 89703

EUREKA COUNTY, NV  
RPTT:\$0.00 Rec:\$35.00  
\$35.00 Pgs=4  
COPENHAVER & MCCONNELL, PC  
LISA HOEHNE, RECORDER  
2017-234101  
11/09/2017 08:21 AM  
E99

## WATER RIGHTS CORRECTION DEED

THIS WATER RIGHTS DEED, made and entered into this 26th day of October 2017, between Robert Jean Ithurralde and Patricia Ann Ithurralde, co-Trustees of the Robert and Patricia Ithurralde Family Trust, w/d/t dated October 13, 1997 as to an undivided one-half interest and James P. Ithurralde, a widower, as to an undivided one-half interest, Grantors, and Chad D. Bliss and Rosie J. Bliss, husband and wife as joint tenants with right of survivorship, Grantees, whose address is P.O. Box 585, Eureka, NV. 89316;

WHEREAS, a Grant, Bargain, Sale Deed from the Grantors to the Grantees was filed on January 24, 2017, as Document No. 232575 in the office of the Eureka County Recorder, and;

WHEREAS, Exhibit "A" of said Grant, Bargain, Sale Deed contained an inaccurate description of the water rights being conveyed with the land, and;

WHEREAS, the Grantors desire to correct the description of said water rights;

NOW THEREFORE, this deed is being executed and recorded to correct the description of said water rights being conveyed with the land.

### WITNESSETH:

That said Grantors, for good and valuable consideration, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey to Grantees, and to their successors, heirs and assigns forever, all of their right, title, and interest in and to the following water rights in the County of Eureka, State of Nevada, more particularly described in EXHIBIT A, attached hereto.

TO HAVE AND TO HOLD, all and singular, the said Water Rights together with the appurtenances, unto the said Grantee, and its successors, heirs and assigns forever.

IN WITNESS WHEREOF, the Grantors have executed this Water Rights Correction Deed the day and year first hereinabove written.

GRANTORS:

*Robert Jean Ithurralde*  
 Robert Jean Ithurralde, individually and as  
 Trustee of the Robert and Patricia Ithurralde Family  
 Trust, u/d/t dated October 13, 1997

*Patricia Ann Ithurralde*  
 Patricia Ann Ithurralde, individually and as  
 Trustee of the Robert and Patricia Ithurralde Family  
 Trust, u/d/t dated October 13, 1997.

*James P. Ithurralde*  
 James P. Ithurralde, individually

UNOFFICIAL COPY

STATE OF UTAH )  
 ) ss.  
 COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 26th day of October, 2017, by Robert Jean Ithurralde.

*Tara Truscott*  
 Notary Public

NOTARY PUBLIC  
 TARA TRUSCOTT  
 595743  
 COMMISSION EXPIRES  
 JULY 22, 2021  
 STATE OF UTAH

STATE OF UTAH )  
 )  
 ) SS.  
COUNTY OF WALTON )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 2017, by Patricia Ann Ithurralde.

Tara Truscott  
Notary Public

NOTARY PUBLIC  
TARA TRUSCOTT  
695743  
COMMISSION EXPIRES  
JULY 22, 2021  
STATE OF UTAH

STATE OF Nevada )  
 )  
 ) SS.  
COUNTY OF Eureka )

The foregoing instrument was acknowledged before me this 31 day of October, 2017, by James P. Ithurralde.

Garney Damele  
Notary Public

GARNEY DAMELE  
Notary Public - State of Nevada  
Appointment Recorded in Eureka County  
No: 14-15942-8 - Expires May 28, 2018

**EXHIBIT A - WATER RIGHTS DESCRIPTION**

All surface and groundwater rights appurtenant to Eureka County APN 007-340-20, a 155.41-acre base property, or appurtenant to public lands controlled by the U.S. Bureau of Land Management and associated with said base property, located within Diamond Valley Hydrographic Groundwater Basin 10-153. Such rights consisting of the following individual water right permits and claims, and rights to water, if any, associated with springs included under Eureka County APN 411-000-17:

Permit:	cfs:	afa:	Description:	Use:
73629	0.502	1.875	Stockwater - Original Well	1,000 sheep and 4 horses
80797	0.834	123.306	Ruby Hill Mine, Well PW-13	Milling, Mining, and Domestic
80799	0.834	123.306	Ruby Hill Mine, Well PW-14	Milling, Mining, and Domestic
81229	0.266	39.200	Ruby Hill Mine, Well PW-13	Milling, Mining, and Domestic
81230	0.198	32.800	Ruby Hill Mine, Well PW-13	Milling, Mining, and Domestic
83503	0.500	162.840	Ruby Hill Mine, Well PW-16	Milling, Mining, and Domestic
83504	0.677	100.000	Ruby Hill Mine, Well PW-16	Milling, Mining, and Domestic
V04482	0.150		Stockwater - Unnamed Spring #5	50 cattle and 2,100 sheep
V04484	0.150		Stockwater - Unnamed Spring #4	50 cattle and 2,100 sheep
V04486	0.150		Stockwater - Unnamed Spring #3	50 cattle and 2,100 sheep
V04487	0.150		Stockwater - Unnamed Spring #2	50 cattle and 2,100 sheep
V04492	0.150		Stockwater - Lucky Spring #2	50 cattle and 2,100 sheep
V04493	0.150		Stockwater - Lucky Spring #1	50 cattle and 2,100 sheep
V04498	0.150		Stockwater - Unnamed Spring #1	50 cattle and 2,100 sheep
V04499	0.150		Stockwater - Milk Ranch Spring	50 cattle and 2,100 sheep

**APN 411-000-17**

V04483	0.150		Stockwater - Goodwin Canyon (Diamond Mine Rd Spring)	50 cattle and 2,100 sheep
V04488	0.150		Stockwater - Gibellini Spring #3	50 cattle and 2,100 sheep
V04489	0.150		Stockwater - Gibellini Spring #1	50 cattle and 2,100 sheep
V04490	0.150		Stockwater - Gibellini Spring #2	50 cattle and 2,100 sheep
V04491	0.150		Stockwater - Leonard Springs #1 & 2	50 cattle and 2,100 sheep
V04494	0.150		Stockwater - Pinto Summit #3 (Mud Springs)	50 cattle and 2,100 sheep
V04495	0.150		Stockwater - Pinto Summit #2 (Mud Springs)	50 cattle and 2,100 sheep
V04496	0.150		Stockwater - Pinto Summit #1 (Mud Springs)	50 cattle and 2,100 sheep
V04497	0.150		Stockwater - China Canyon Spring	50 cattle and 2,100 sheep
V04500	0.150		Stockwater - Spanish Gulch Spring	50 cattle and 2,100 sheep
			Baby Alice Spring	
			Clover Spring	
			Dave Smith Spring	
			Hole In Ground Spring	
			Lamb Canyon Spring	
			Mountain Boy Spring	
			Rock Spring at top of summit	
			Secret Canyon Spring (aka Murry Spring)	
			Snow Ravine Spring	
			Summit Reservoir Spring	
			Zunino Spring	

Eureka County APN 411-000-17 is a series of 22 springs and water rights on the Eureka Co. Assessor's rolls