

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

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2018 DEC 13 AM 11:04

STATE ENGINEERS 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.

**OBJECTIONS TO PRELIMINARY
ORDER OF DETERMINATION**

COMES NOW Ross E. de Lipkau, Esq., of the firm Parsons Behle & Latimer, and files herewith its Objections to the Preliminary Order of Determination dated August 18, 2018. 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.”

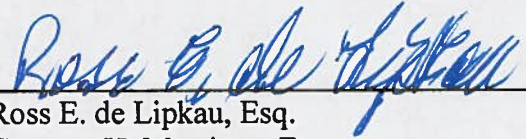
The above-quoted statute is clear and unmistakable. One who claims a water right upon the public domain, for which he has no grazing privileges, has no need whatsoever for a water right. In this case, a decreed surface water right. Accordingly, no party in this entire adjudication

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 11th day of December, 2018.

PARSONS BEHLE & LATIMER



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Attorneys for Objectors

Chad D. and Rosie J. Bliss


CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Parsons Behle & Latimer, and that on this 11th day of December, 2018, 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:

Jason King, P.E., State Engineer
Division of Water Resources
901 S. Stewart St., Suite 2002
Carson City, NV 89701
Email: 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



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

WATER RIGHTS CORRECTION DEED

THIS WATER RIGHTS DEED, made and entered into this 24th 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 Ithurrealde
Robert Jean Ithurrealde, individually and as
Trustee of the Robert and Patricia Ithurrealde Family
Trust, u/d/t dated October 13, 1997

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

James P. Ithurrealde
James P. Ithurrealde, individually

STATE OF UTAH)
) ss.
COUNTY OF ALLIANCE)

The foregoing instrument was acknowledged before me this 26th day of OCTOBER, 2017, by **Robert Jean Ithurrealde**.

[Signature]
Notary Public


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

STATE OF UTAH)
) SS.
 COUNTY OF WILLARD)

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



 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**.



 Notary Public


 **GARNEY DAMELE**
 Notary Public - State of Nevada
 Appointment Recorded in Eureka County
 No: 14-19842-0 - 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

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LATIMER

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2018 DEC 13 AM 11:04

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A Professional
Law Corporation

CIVIL ENGINEERS OFFICE

Ross E. de Lipkau
Direct 775.789.6545
RdeLipkau@parsonsbehle.com

December 11, 2018

Jason King, P.E., State Engineer
Division of Water Resources
901 S. Stewart St., Suite 2002
Carson City, NV 89701

**Re: In the Matter of the Determination of the Relative Rights In and To All
Water of Diamond Valley, Hydrologic Basin No. 10-153, Eureka and Elko
Counties, Nevada**

Dear Mr. King:

Enclosed please find Objections to Preliminary Order of Determination being filed with your office in the above-referenced matter on behalf of our clients, Chad D. and Rosie J. Bliss.

Also enclosed is a copy of the Objections that we request your office date-stamp and return to our office in the provided envelope.

If there are any questions or problems regarding the document, please contact our office.

Best regards,

PARSONS BEHLE & LATIMER



Roni L. Shaffer

Assistant to Ross E. de Lipkau, Esq.

:rs
Enclosure