

Jason King, Nevada State Engineer
Office of the State Engineer
901 S. Stewart St., Suite 2002
Carson City, NV 89701

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2018 NOV -5 PM 2: 07

STATE ENGINEERS OFFICE

RE: Objections to Preliminary Order of Determination for Diamond Valley Adjudication

Dear Mr. King:

We, Norman C. Fitzwater and Kindy L. Fitzwater, object to the August 30, 2018 Preliminary Order of Determination (POOD) In the Matter of the Determination of the Relative Rights In and To All Water of Diamond Valley where the State Engineer found that an implied reserved water right under Public Water Reserve No. 107 will be recognized on, R-04249, "Coreales Spring." This objection is based on the following.

1. The State Engineer did not complete the necessary field work or evidence review to justify this source being a PWR. It appears that there were no field investigations by the State Engineer's office on this spring whatsoever not a thorough investigation of the other rights that already exist on this same source. This creates an undue burden on us to now have to spend our resources to provide this information to the State Engineer.
2. We agree with and adopt by reference the objections made by Eureka County to the BLM PWR claim on this spring.
3. The State Engineer found that "There are no other water right claims on this source" (p. 291). This is incorrect. We own a certificated water right, Certificate 43 (Application 1937), on this same source with a priority date of January 25, 1911, more than fifteen years prior to PWR 107. This water right is for domestic, stockwatering, and irrigation at a diversion rate of 0.43 cfs. The irrigation portion of this right is for 126.48 acre-feet per season (afs) and the domestic and stockwatering portion of this right are in addition to this 126.48 afs. This water right is for the waters of Preston Creek in which the spring under R-04249 is part of.
4. BLM's spreadsheet referenced in the POOD ("2016 Battle Mountain, Diamond Valley, Basin 153, PUBLIC WATER RESERVES") provides a description of "Spring head is fenced for about 50 meters, riparian vegetation is developed within fence." Based on the spreadsheet and POOD description on page 291, BLM measured the spring flow on May 16, 2016 at only 3.00 gpm. BLM failed to identify for the State Engineer that the spring area is only a few feet beyond the boundary of our private property. Extensive spring development has taken place at the source by us and our predecessors according to our water rights. See the map

associated with Application 1937 that identifies a reservoir immediately adjacent to the spring where all the water of the spring was previously impounded before being piped. Remnants of this reservoir still remain today.

BLM did not identify that most of the water is actually captured and piped approximately one-quarter mile west-southwest to our pond/reservoir on our private property. A small portion of the spring discharge expresses at the source. It appears that BLM only measured this small portion that is not captured in the pipe. On October 16, 2018, Eureka County Department of Natural Resources and Contract Hydrogeologist correctly measured the flow at two locations – in the channel approximately 250 feet west of the GPS location in the BLM spreadsheet and at the outfall of the pipe at the pond approximately ¼ mile to the west-southwest. Flow was measured at 3.5 gpm in the channel at the source and 20 gpm at the outfall to the pond, for a total of 23.5 gpm. This equates to 0.052 cfs, well below the certificated amount of 0.43 cfs. So even with a flow much higher than what BLM measured, there is not enough flow to satisfy the preexisting certificated right that we own. Also, based on the conditions of the spring development outlined above, there is no way that BLM could have obtained a flow measurement at the GPS location provided in their spreadsheet. The only location available to actually measure any of the flow at the spring that is not captured in the pipe is at the location 250 feet west of the BLM GPS point where Eureka County measured.

5. The spring is identified by the BLM PWR claim and the POOD description as being in SE ¼ NW ¼ of Section 3, T20N, R54E. This is correct, for the most part, but some of the spring discharge area also exists in the adjacent 40 acres subdivision just to the north, Lot 3 of Section 3, T20N, R54E. The spring development area tied to our water right is in both 40 acre subdivisions. The 1926 Executive Order for PWR 107 is actually a land reservation of the every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or water hole....” Yet, SE ¼ NW ¼ of Section 3, T20N, R54E (and also Lot 3 of the same section) are not “vacant” or “unappropriated” and were not in 1926. As noted in the maps associated with our water right Certificate 43 that are records of the State Engineer, in 1911, and when this right was certificated, there were identified private reservoirs, ditches, and development on these 40 acre subdivision. Further, a review of the General Land Office (GLO) records for this 40 acre subdivision (through <https://glorerecords.blm.gov/search/default.aspx#searchByTypeIndex=1&searchTabIndex=0>) reveal GLO survey and survey notes from 1906 identify the spring, a ditch from the spring to the main stem of Preston Creek, reservoir, a “House” on the adjacent 40 acre subdivision, and a fence around the entire homestead, and roads and trails. This area was not reserved from Homestead Entry because the infrastructure to eventually complete the homestead patent was included extensively on the entire Section 3 including the 40 acres in question. These ditches, reservoirs, and roads all are valid existing rights under federal Revised

Statutes 2477, 2339, and 2340 among others. These infrastructure and rights-of-way prove that the 40 acres in question and each of the adjacent 40 acres can in no way be "vacant" or "unappropriated."

STATE OF Nevada)
) :ss In the Matter of the Determination of
County of Eureka) the Relative Rights in and To All Water
 of Diamond Valley

OFFICE OF THE NEVADA STATE ENGINEER

AFFIDAVIT

Regarding Objection to Finding on Bureau of Land Management Public Water Reserve R-04249 COMES NOW Norman C. Fitzwater and Kindy L. Fitzwater do hereby swear under penalty of perjury that the assertions of the above objections are true within our personal knowledge and belief.

Date this 2nd day of November, 2018

Affiant's Signature: Norman Fitzwater

Affiant's Printed Name: Norman Fitzwater

Affiant's Signature: Kindy Fitzwater

Affiant's Printed Name: Kindy Fitzwater

PO Box 15

Eureka, NV 89316

SUBSCRIBED AND SWORN TO before me this 2 day of November, 2018,

by Norman and Kindy Fitzwater.

Ashley E. Adams

Notary Public Signature



Notary Stamp