

RECEIVED

**OBJECTION of SOLARLJOS LLC and GULLSIL, LLC, to  
The Preliminary Order of Determination dated August 30, 2018,  
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**

Solarljjos LLC (“Solarljjos”), acting directly and by and through Gullsil, LLC (“Gullsil”), hereby provides this objection to the Preliminary Order of Determination dated August 30, 2018, In the Matter of the Determination of the Relative Rights In and To All the Waters of Diamond Valley, Hydrographic Basin No. 10-153, Elko and Eureka Counties, Nevada (the “Preliminary Order”) as it pertains to the findings and conclusions rendered as to Proof of Appropriation V-10881 and V-10882, two of the three proofs filed by Solarljjos for vested rights in Diamond Valley.

**Summary of State Engineer’s Determination:**

The State Engineer approved Proof V-10880 for an allocation of .472 cfs of vested water to Solarljjos but limited the approval to a surface water right from the Einar Spring.

The State denied Solarljjos’ application made under Proofs V-10881 and V-10882 for a recognized vested right in groundwater resulting from two different well sites identified in Solarljjos’ filing as “Prospect Well 1” and “Prospect Well 2” largely on the same basis – which was the State’s contention that there was insufficient evidence of the existence of “rock-lined walls or other modifications” to suggest that either of these were a “hand dug well.”

In denying Proof V-10881, the State Engineer was critical of “the lack of cribbing or a stone lining” at the site of the pipe shown in Prospect Well 1 and suggested that the fact that such was missing in an area adjacent to a mining operation where miners who were well-versed in this type of construction for unstable ground was “suspect.” The State Engineer’s Preliminary Order further hypothesizes, with no evidence indicated to support the hypothesis, that the pipe showing a welded flywheel attached “could be an air gap for a pipeline extending

from the V-10880 spring area to a central storage tank, for serving the former occupied dwellings and mine.” The Preliminary Order does acknowledge, however, both that “[t]he vertical pipe’s purpose remains unclear” and “what the purpose is or was is not known or able to be discerned based on the information provided by the claimant or from what was observed during the field investigation.”

The State Engineer ultimately concludes that there is “*no evidence* to substantiate a claim of vested right.” (Emphasis added.)

Similarly, the State Engineer denied Proof V-10882 on almost identical grounds as those addressed in V-10881, concluding that “the lack of cribbing or a stone lining to support the unconsolidated material is suspect and doesn’t support the theory that the hole is a hand dug well for the exploitation of a water source.” The denial goes on to say that “[t]he State Engineer believes that this claim is the spring source which is the actual source of water for Proof V-10880 and determines that there is *no evidence* to substantiate a claim of a vested right. The State Engineer therefore determines that Proof V-10882 is filed on the actual surface source of water for Proof V-10880 rather than a separate underground source ....”

Summary of Response and Objection:

Solarljós does not object to the amount of water allocated to it under the application for a vested rights claim. Solarljós was seeking a total allocation of .472 cfs, but Solarljós does object to the State Engineer’s determination that there was “*no evidence*” presented to substantiate a claim of a vested right for a groundwater source, and Solarljós believes the State should re-consider and approve Solarljós’ application for a *combined* surface water/groundwater source for either or both V-10881 or V-10882 based on uncontroverted evidence of the existence of the Harrub Well that the State Engineer failed to address entirely.

In addition, the State Engineer’s assumptions were not based on evidence, but there is support for Solarljós contention that the structures in place demonstrate some form of “well” as that term was used in the 1890s and early 1900s, and the existence of the flywheel on the standing pipe suggests that

machinery was intended to be attached to the pipe – belying the “assumption” made by the State Engineer that this was merely a vent stack.

Discussion:

There are several grounds for Solarljós raising an objection to the State Engineer’s determination that there was “no evidence” to support a claim for underground or “groundwater” as part of its vested claim. Those are presented below.

*First*, Solarljós already provided the Tax Rolls for the Diamond Mine for 1890 and 1910 showing the clear identification of the “Harrub Well” in defining the Diamond Mining Company on the records of the Assessment Roll of the Property of Eureka County, Nevada. Attached hereto as **Exhibit “A,”** once again, are copies of those Tax Rolls that clearly identify the “Harrub Well” on the Assessment Roll of Eureka County under the property description for the Diamond Mining Company. The Assessor would have been considering assessable improvements to the property, and the reference to the “Harrub Well,” by name, was not accidental. There was clearly a “well” associated with the property operated by the Diamond Mining Company. The State Engineer has entirely disregarded this evidence.

The property remained assessed with reference to the “Harrub Well” for the better part of 20 years, yet no recognition of the well was given any weight by the State Engineer. Clearly there was a well in existence on the Diamond Mining Company property during this time.

*Second*, attached hereto – and only recently discovered – is a survey of a plat of a mining claim for property dated and recorded June 14, 1879, specifically for H.W. Harrub and expressly identifying the “Harrub Well” on the recording. The survey uses the Harrub Well as a reference monument, and the survey is signed by the County Surveyor, Thomas J. Read. A copy of the Survey is attached hereto as **Exhibit “B.”** The existence of this survey further solidifies the existence of a well on the property, and further demonstrates that there was a basis for the County Assessor to have indicated the location of the Harrub Well as an identifiable point of reference in the descriptions on the Tax Rolls for the many years in Eureka County.

*Third*, the specific location of the Harrub well as shown on the Harrub survey of 1879 matches up geospatially with the photograph that Solarljøs attached and identified on the original Proof of Appropriation of Water for the Diamond Mine and the Town of Prospect shown in Section 3.2.3 as Prospect Well 2. Though covered by heavy underbrush, the location of that well is close enough to the approximate location shown on the Harrub survey of 1879 so as to conclude that they are, essentially, the same identifiable structures. The existence of the survey and the Assessment Rolls conclusively establish that a well sufficient to be use as a reference monument existed, and the presence on the ground of the significant excavation identified by Solarljøs is in the same approximate location as would be expected if one were searching for that well; it is hard to conclude this occurred by mere coincidence.

*Fourth*, the Biennial Report of the Surveyor-General and State Land Register from 1897-98 attached as Appendix A to Solarljøs' Proof does makes reference to the use of "a Knowles duplex pump, with four 3-inch plungers, *and* a number 7 Cameron pump for pumping water from contiguous *springs* ...." The description is that of two pumps, and of more than one "spring." The existence of a single source of water is thus ruled out by the very language utilized by the Report itself. Clearly the writer of the Report intended to convey that there was more than one source of water.

The State Engineer, however, concluded that the only source of water was the Einar Spring – which was a spring identified by Solarljøs in its Application filed in this matter. That source, by itself, could not have been the only source, given the language of the writer of the Report.

And that, itself, raises the last issue for consideration: which is the use of the word "spring" in the Biennial Report itself, and whether the State Engineer was too narrow in the interpretation of what the writer intended by the use of that term. In 1897 and 1898, the writer of the report was not likely as concerned with defining the sources of *surface water* versus *groundwater* as we, in the year 2018, are because of the issues we now have in determining the relative rights of the owners

of such sources of water. It is only because we are now faced with having to decide the relative priorities of “surface water vs. groundwater” rights in basins that this issue has taken on new meaning and importance; but that was *not necessarily the case in 1897 or 1898*.

Solarljós requests that the State Engineer review the actual definitions used at the time of the writing of the Biennial Report to consider whether, in fact, the writer was actually making reference to the Harrub Well as one of the “sources” of water as a “contiguous spring” that was near the mine site. Attached hereto as **Exhibit “C”** are copies of the actual pages of Webster’s Dictionary from 1910 showing the definition of the words “spring” and “well” as they were defined and understood at that time. These pages, as can be seen, have been digitized by Google but were taken from the original version on file in the Harvard University library.

The definition of “spring,” when used as a noun, states:

“a natural fountain; place where water issues from the earth;”

Suggesting they are virtually interchangeable terms, the definition of “well,” used as a noun, taken from that same Dictionary, states:

“An issue of water from the earth; a spring; fountain;”

The similarity is striking and undeniable. The published date of the Dictionary in **Exhibit “C”** is 1910 (as shown on page 2, with copyrights showing 1864, 1906 and 1909 as shown on page 3). The use of the term “spring” as opposed to “well” was more likely a mere choice by the author of the Report attached as Appendix A without regard to whether the source of the water was actually a hand-dug well or a naturally occurring spring. There would have been no need for the author to raise the distinction between what was called the Harrub Well on the survey of 1879 and a “contiguous spring” in his description of the works that were involved.

Indeed, it is questionable whether the author even *looked* at the water sources. The author’s description of the equipment (likely taken from a list showing the brand name and sizing, often shown on invoices or ledger sheets) and the description of rooms that he did, obviously, observe is quite detailed. For example

with regard to the Diamond Mine the author describes in detail the “tongue and groove floor, ceiling, sides and ends” of one particular room, and details the interior of the boarding house and its accommodations, but tells us very little about the interior construction of the shafts of the mine itself (no description of lumber, the “cribbing,” the type of infrastructure used to support the walls and supports, the size of the members, etc.). Whether the author actually ventured *into the mine* is, to use a word the State Engineer used in his denial of Solarljós application, “suspect.” But the “suspect” issue here is based not on just a hunch, but on looking at how the language of one aspect of the report compares with language used in other aspects of the report. This author says nothing about having visited or seen any of the actual water sources, but instead simply describes in detail the pumps used to supply the water, and then says they were supplying water from “contiguous springs” with no description of where, what they looked like, or how those pumps were connected to the water sources and how they were powered and maintained.

Given the proclivity of the times to interchange the word “spring” with “well,” and given that there is demonstrable proof that there existed in the exact location of the Diamond Mining Company operation two identifiable sources that appear to be wells (Prospect 1, which has a flywheel attached pipe that would support a pump attached to it, and Prospect 2, that appears now to be the location of the Harrub Well as defined on the 1879 W. B. Harrub Survey), it is a very real likelihood that the author of the 1897-98 Report of the Surveyor-General and State Land Register was referencing those wells as the source of water.

### CONCLUSION

For all of the foregoing reasons, Solarljós objects to the conclusion that the State Engineer reached that there was “no evidence” to substantiate a claim of a vested right to a groundwater source for the .472 cfs of vested right that Solarljós was awarded. That right should be amended to allow Solarljós a vested right of surface *or* groundwater, at the option of Solarljós, with a total diversion rate of .472 cfs of water for mining, milling and domestic from January 1 through December 31

with a priority date of 1880, from the Einar Spring, Prospect Well 1 and from the Harrub Well, which Solarljøs identified as Prospect Well 2.

As a compromise, Solarljøs recognizes that the elimination of Prospect Well 1 as a point of diversion for groundwater – though it would still appear to be supported by evidence in contrast to the State Engineer’s finding of “no evidence,” and on that basis Solarljøs maintains its objection – Solarljøs would accept the approval of the amendment of the vested right herein if the groundwater right were allocated to the Harrub Well, Prospect 2. If such amendment were granted for the full .472 cfs, Solarljøs would accept the amendment and withdraw further objection to the State Engineer’s determination with regard to Proof V-10881.

Dated: November 5, 2018

Alex J. Flangas  
Nevada Bar No. 664  
[Alex@AlexFlangasLaw.com](mailto:Alex@AlexFlangasLaw.com)  
**Alex Flangas Law**  
36 Stewart Street  
Reno, NV 89501  
Phone: (775) 788-1222  
Fax: (775) 403-1775

*Attorney for Objector Solarljøs LLC  
and Gullsil, LLC*

State of Nevada  
County of Washoe

Subscribed and sworn to before me on

Nov 7, 2018 by  
Alex J. Flangas

Wendy Gesualdo  
Notary Public



# Exhibit "A"

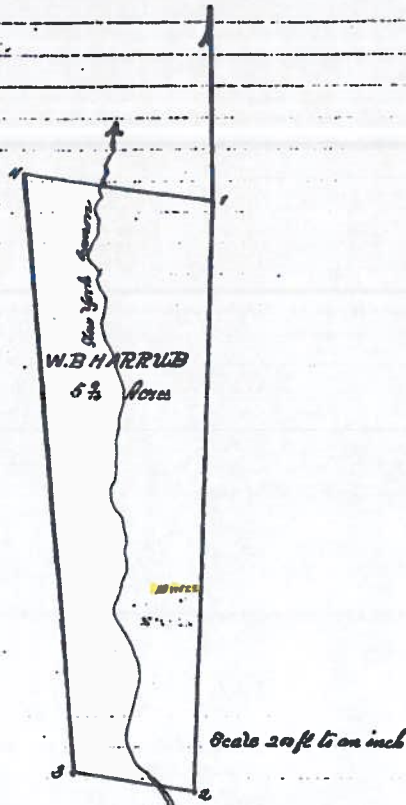






# Exhibit "B"

W.B. HARRUB



Plat and field notes of the survey of a tract of Land in Coconino County, State of Nevada, situated near the head of New York Canon in Coconino Mining District. Surveyed for W.B. Harrub

June 14<sup>th</sup> 1879

John W. Harrub & Thos J. Read. Courses expressed from the true Meridian Magnetic Variation 16 1/2° East.

Beginning at a point marked W.B. Harrub N.E. corner, whence Harrub's well near the head of New York Canon bears S 8 1/2° W. 780 feet, thence running S 2 1/2° W. 1175 feet, to point marked W.B. Harrub S.E. corner. Thence N 8 1/2° W. 260 feet, to point marked W.B. Harrub S.W. corner. Thence N 4 1/4° W. 120 feet to point marked W.B. Harrub N.W. corner and thence S 8 1/2° E 390 feet to the place of beginning containing 5 1/2 Acres

I hereby certify the foregoing plat and field notes to be correct

Thos J. Read  
County Surveyor

Recorded at the Request of Thos J. Read June 14<sup>th</sup> A.D. 1879  
At 15 minutes past 3 P.M.

Prof. G. Levy Recorder Reg. C. Colwellman Deputy

# Exhibit "C"





# Webster's Condensed Dictionary

## A CONDENSED DICTIONARY

OF THE  
ENGLISH LANGUAGE  
GIVING THE CORRECT  
SPELLING, PRONUNCIATION AND DEFINITIONS OF WORDS

BASED ON  
THE UNABRIDGED DICTIONARY  
OF  
NOAH WEBSTER, LL.D.  
EDITED UNDER THE SUPERVISION OF  
NOAH PORTER, D.D., LL.D.  
*President of Yale College*

BY  
DORSEY GARDNER  
WITH NEARLY FIFTEEN HUNDRED ILLUSTRATIONS  
ALSO AN

APPENDIX COMPRISING  
A PRONOUNCING GAZETTEER OF THE WORLD; SPECIAL DICTIONARIES OF  
CHRISTIAN, CLASSICAL AND MYTHOLOGICAL, AND FAMOUS HISTORICAL  
NAMES AND FAMILIAR PHRASES; LISTS OF BUSINESS AND LAW  
TERMS, OF FOREIGN WORDS AND PHRASES, OF ABBREVIATIONS;  
A VARIETY OF INFORMATION AS TO WEIGHTS AND  
MEASURES, COINS, UNITED STATES HISTORY  
AND STATISTICS, PARLIAMENTARY ORDER,  
PATENTS, COPYRIGHT, DECLARATION  
OF INDEPENDENCE, CONSTITUTION,  
SIMPLIFIED SPELLING, ETC., ETC.

Back to [in this item results](#)

[Back to catalog record](#)

**About this Book**  
A condensed dictionary of the English language giving the correct ... Webster, Noah, 1758-1843.

[View full catalog record](#)  
Rights: Public Domain. Google digitized.

**Get this Book**  
[Find in a library](#)  
[Download this page \(PDF\)](#)  
[Download whole book \(PDF\)](#)  
*Partner login required*

**Text Only Views**  
[Go to the text-only view of this item.](#)

[See the Hathitrust Accessibility page for more information.](#)

**Add to Collection**  
[Login to make your personal collections permanent](#)

Select Collection  
Add

**Share**  
f t w p

Permanent link to this book  
<https://hdl.handle.net/2027/hvd.1>

Link to this page  
<https://hdl.handle.net/2027/hvd.1>

Embed this book

**SPELLING, PRONUNCIATION AND DEFINITIONS OF WORDS**

BASED ON

**THE UNABRIDGED DICTIONARY**

OF

**NOAH WEBSTER, LL.D.**

EDITED UNDER THE SUPERVISION OF

**NOAH PORTER, D.D., LL.D.**

*President of Yale College*

BY

**DORSEY GARDNER**

**WITH NEARLY FIFTEEN HUNDEED ILLUSTRATIONS**

ALSO AN

**APPENDIX COMPRISING**

**A PRONOUNCING GAZETTEER OF THE WORLD; SPECIAL DICTIONARIES OF CHRISTIAN, CLASSICAL AND MYTHOLOGICAL, AND FAMOUS HISTORICAL NAMES AND FAMILIAR PHRASES; LISTS OF BUSINESS AND LAW TERMS, OF FOREIGN WORDS AND PHRASES, OF ABBREVIATIONS; A VARIETY OF INFORMATION AS TO WEIGHTS AND**

**MEASURES, COINS, UNITED STATES HISTORY AND STATISTICS, PARLIAMENTARY ORDER, PATENTS, COPYRIGHT, DECLARATION OF INDEPENDENCE, CONSTITUTION, SIMPLIFIED SPELLING, ETC., ETC.**



**CHICAGO**  
**THE REILLY & BRITTON CO.**  
**SPRINGFIELD, MASS.: G. & C. MERRIAM CO.**

1910

[Back to "In this item" results](#)

[Back to catalog record](#)

**About this Book**

A condensed dictionary of the English language giving the correct ... Webster, Noah, 1758-1843.

[View full catalog record](#)

Rights: Public Domain, Google digitized.

**Get this Book**

[Find in a library](#)

[Download this page \(PDF\)](#)

[Download whole book \(PDF\)](#)

[Partner login required](#)

**Text Only Views**

[Go to the text-only view of this item.](#)

[See the Hathitrust Accessibility page for more information.](#)

**Add to Collection**

[Login to make your personal collections permanent](#)

Select Collection

Add

**Share**

Facebook | Twitter | LinkedIn | Email | Print

Permanent link to this book

<https://hdl.handle.net/2027/hvd.1>

Link to this page

<https://hdl.handle.net/2027/hvd.1>

Embed this book

9242.25.10 ✓



Copyright, 1864, By G. & C. MERRIAM & CO. Copyright, 1908, By G. & C. MERRIAM CO. Copyright, 1909, By G. & C. MERRIAM CO.

Web. Cond. Dict.

Electretyped by Houghton Mifflin Company

Back to in this item results

Back to catalog record

About this Book

A condensed dictionary of the English language giving the correct... Webster, Noah, 1758-1843.

View full catalog record

Rights: Public Domain, Google digitized.

Get this Book

Find in a library

Download this page (PDF)

Download whole book (PDF)

Partner login required

Text Only Views

Go to the text-only view of this item.

See the HathTrust Accessibility page for more information.

Add to Collection

Login to make your personal collections permanent

Select Collection

Add

Share



Permanent link to this book

https://hdl.handle.net/2027/hvd.1

Link to this page

https://hdl.handle.net/2027/hvd.1

Embed this book











