

KENNETH D. PAUR  
Assistant Regional Attorney  
United States Department of Agriculture  
Office of the General Counsel  
507 25<sup>th</sup> Street, Room 205  
Ogden, Utah 84401

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STATE ENGINEERS OFFICE

Attorney for the United States Department of Agriculture, Forest Service

IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS IN AND TO  
THE WATERS, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE  
AREA OF THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OWYHEE  
RIVER) AND ITS TRIBUTARIES LOCATED WITH THE EAST FORK OWYHEE RIVER  
AREA, ELKO COUNTY, NEVADA

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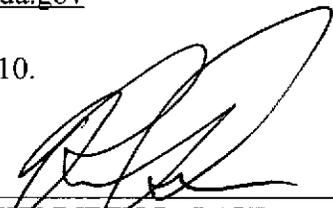
)  
) NOTICE OF APPEARANCE  
) ON BEHALF OF  
) U.S.D.A. FOREST SERVICE  
)

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Comes now, KENNETH D. PAUR, to enter this NOTICE OF APPEARANCE on behalf  
of the the U.S.D.A. Forest Service as its attorney of record and to provide notice that all service  
and notification of matters on interest to the Forest Service may be delivered to:

KENNETH D. PAUR  
Assistant Regional Attorney  
United States Department of Agriculture  
Office of the General Counsel  
507 25<sup>th</sup> Street, Room 205  
Ogden, Utah 84401  
(801)625-5440  
FAX: (801)625-5465  
E-mail: [kenneth.paur@ogc.usda.gov](mailto:kenneth.paur@ogc.usda.gov)

Respectfully submitted this 16<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
KENNETH D. PAUR  
Attorney for U.S.D.A., Forest Service



National Forests were withdrawn, set aside and reserved to improve and protect the forest within its boundaries, to secure favorable conditions of water flows, and to furnish a continuous supply of timber. 16 U.S.C. § 475. Further, the Secretary of Agriculture was charged by Congress to make provisions for the protection against destruction by fire and depredations upon these forests and to regulate their occupancy and use and preserve the forests thereon from destruction. 16 U.S.C. § 551.

As noted in the Preliminary Order of Determination, given the remoteness of National Forest System lands, administrative sites are required to house and support the Forest Service officers and personnel charged with insuring that the purposes of the National Forest reservations are met, to regulate occupancy and use of the National Forests and to meet the primary purposes of the National Forest reservations which are to protect the forests and watersheds and to regulate the use and occupancy of National Forest System land. Waters required to maintain these administrative sites are more than the de minimus amount for bathing and culinary use found by the State Engineer. The United States reserved the right to use the quantity of water necessary to support pack stock and equipment needed to carry out the statutory mission of the Forest Service to regulate and protect National Forest System lands and insure that the purposes of these reservations are met.

There is no provision of federal law exempting groundwater from reservation under the federal reserved water rights doctrine, and therefore the right to use groundwater as necessary to maintain administrative sites was also reserved.

2.) Denial of claims R-07331 and R-08687 for federal reserved water rights for firefighting purposes.

The ability to suppress wildfires to manage and protect forests, lands, and watersheds within the National Forests, and the need for water to do so, are essential to carrying out the primary purposes of National Forest reservations. Under the National Forest Organic Act, National Forests were withdrawn, set aside and reserved to improve and protect the forest within its boundaries, to secure favorable conditions of water flows, and to furnish a continuous supply of timber. 16 U.S.C. § 475. Further, the Secretary of Agriculture was charged to make provisions for the protection against destruction by fire and depredations upon these forests and to regulate their occupancy and use and preserve the forests thereon from destruction.

The quantity and sources of water that may be needed for firefighting is highly variable, depending upon fire occurrence and weather conditions. Forest Service claims are for priority to use all waters from sources on National Forest System lands that were not appropriated prior to the date of reservation of those lands for National Forest purposes as needed for fire suppression.

3.) Denial of the following claims of the United States for vested stockwater rights from water sources located on National Forest System lands:

V-02811	V-03670	V-07434	V-07465	V-07833	V-07858
V-03574	V-03671	V-07435	V-07466	V-07834	V-07859
V-03575	V-03672	V-07438	V-07468	V-07835	V-07860
V-03576	V-03673	V-07439	V-07470	V-07840	V-07861
V-03577	V-04118	V-07441	V-07473	V-07841	V-07862
V-03578	V-04119	V-07442	V-07474	V-07842	V-07863
V-03661	V-07414	V-07445	V-07475	V-07843	V-07864
V-03662	V-07415	V-07446	V-07822	V-07844	V-07865
V-03663	V-07416	V-07448	V-07823	V-07845	V-07866
V-03664	V-07417	V-07454	V-07825	V-07846	V-07867
V-03665	V-07418	V-07455	V-07826	V-07847	V-07870
V-03666	V-07419	V-07456	V-07828	V-07853	V-07871
V-03667	V-07424	V-07461	V-07830	V-07854	V-07874
V-03668	V-07425	V-07462	V-07831	V-07855	V-07875
V-03669	V-07427	V-07463	V-07832	V-07857	V-07876

V-07877	V-08025	V-08092	V-08159
V-07878	V-08026	V-08094	V-08160
V-07880	V-08027	V-08095	V-08161
V-07881	V-08028	V-08096	V-08162
V-07882	V-08030	V-08100	V-08163
V-07883	V-08031	V-08101	V-08164
V-07884	V-08036	V-08102	V-08165
V-07885	V-08038	V-08105	V-08167
V-07886	V-08042	V-08106	V-08169
V-07887	V-08043	V-08107	V-08171
V-07888	V-08047	V-08108	V-08172
V-07889	V-08051	V-08109	V-08173
V-07890	V-08055	V-08112	V-08174
V-07891	V-08057	V-08114	V-08177
V-07893	V-08058	V-08117	V-08178
V-07894	V-08059	V-08118	V-08179
V-07897	V-08060	V-08120	V-08181
V-07898	V-08061	V-08121	V-08182
V-07899	V-08062	V-08122	
V-07901	V-08063	V-08123	
V-07902	V-08064	V-08124	
V-07903	V-08065	V-08126	
V-07904	V-08066	V-08127	
V-07905	V-08068	V-08128	
V-07906	V-08069	V-08130	
V-07907	V-08070	V-08131	
V-07908	V-08071	V-08132	
V-07909	V-08072	V-08133	
V-07910	V-08073	V-08134	
V-07911	V-08076	V-08135	
V-07912	V-08077	V-08136	
V-07913	V-08078	V-08137	
V-07914	V-08079	V-08139	
V-07915	V-08082	V-08140	
V-07916	V-08083	V-08141	
V-07917	V-08084	V-08144	
V-07918	V-08085	V-08145	
V-07919	V-08086	V-08147	
V-07920	V-08087	V-08148	
V-08018	V-08088	V-08149	
V-08019	V-08089	V-08152	
V-08020	V-08090	V-08154	
V-08022	V-08091	V-08157	

These claims are based on the actual beneficial use of water for livestock watering on federal lands that occurred prior to 1905. Under state law, these water rights are presumed to be appurtenant to the land where the beneficial use occurred, absent an express conveyance of water rights which severs the water right from the land. The beneficial use of water for livestock watering on federal land occurs on that land, and therefore is presumed to be appurtenant thereto.

Prior to reservation of federal land for National Forest purposes, the United States made such land available for livestock grazing by acquiescence. Upon creation of the National Forest reserves, the United States placed such land under the administrative jurisdiction of the Forest Service, and charged that agency with regulating all occupancy and use of those lands, including use for livestock grazing. The use of National Forest System land for regulated livestock grazing required the use of water from sources located on those lands, and the utility of National Forest System lands for continued livestock grazing was dependent upon the availability of water.

By including this federal land in the National Forest System by reservation, the United States vested responsibility in the Forest Service for regulation and control of the use and occupancy of the land for all purposes, including livestock grazing and the use of waters by livestock. The ownership of these water rights rests in the United States, as appurtenances to land owned by the United States. The Forest Service is the federal agency charged with administration of these federal property interests since they are appurtenant to lands included in the National Forest System.

4.) Recognition of the claims for livestock watering rights from water sources located on National Forest System lands where it appears from the Preliminary Order of Determination that both diversion and beneficial use of water occurs on NFS lands, including but not necessarily limited to the following:

V-04060	Cal Worthington Trust	V-06616	Wildhorse Cattle Company
V-04062	Cal Worthington Trust	V-06617	Wildhorse Cattle Company
V-04064	Cal Worthington Trust	V-06681	Betty and Ted Conley Baker
V-04071	Cal Worthington Trust	V-06682	Betty and Ted Conley Baker
V-04074	Cal Worthington Trust	V-06683	Betty and Ted Conley Baker
V-04079	Cal Worthington Trust	V-06684	Betty and Ted Conley Baker
V-04083	Cal Worthington Trust	V-06685	Betty and Ted Conley Baker
V-04086	Rancho Grande, Inc	V-06690	M.L. Investment Company
V-04087	Rancho Grande, Inc	V-06691	M.L. Investment Company
V-04132	Mason & Parten	V-06693	M.L. Investment Company
V-04133	Mason & Parten	V-06694	M.L. Investment Company
V-04135	Mason & Parten	V-06709	Simplot Livestock Company
V-04136	Mason & Parten	V-06710	Simplot Livestock Company
V-04137	Mason & Parten	V-06711	Simplot Livestock Company
V-04139	Mason & Parten	V-06712	Simplot Livestock Company
V-04141	Mason & Parten	V-06713	Simplot Livestock Company
V-05185	Peter L. and Karan E. Mori	V-06714	Simplot Livestock Company
V-05189	August Vitale	V-06715	Simplot Livestock Company
V-05193	August Vitale	V-06716	Simplot Livestock Company
V-05933	Petan Company	V-06717	Simplot Livestock Company
V-06520	Shoshone-Paiute Tribes	V-06718	Mason & Parten
V-06521	Shoshone-Paiute Tribes	V-06770	Holland Ranch Partnership
V-06522	Shoshone-Paiute Tribes	V-06771	Holland Ranch Partnership
V-06523	Shoshone-Paiute Tribes	V-06772	Holland Ranch Partnership
V-06524	Shoshone-Paiute Tribes	V-06773	Holland Ranch Partnership
V-06546	Ellison Ranching Company	V-06774	Holland Ranch Partnership
V-06547	Ellison Ranching Company	V-06775	Holland Ranch Partnership
V-06564	Cal Worthington Trust	V-06776	Holland Ranch Partnership
V-06578	Dennis and Marcia Bieroth		
V-06579	Dennis and Marcia Bieroth		
V-06580	Dennis and Marcia Bieroth		
V-06581	Dennis and Marcia Bieroth		
V-06582	Dennis and Marcia Bieroth		
V-06586	Ellison Ranching Company		
V-06588	Cal Worthington Trust		
V-06589	Cal Worthington Trust		
V-06595	Agri Beef Company		
V-06596	Agri Beef Company		
V-06599	Agri Beef Company		
V-06600	Agri Beef Company		
V-06601	Agri Beef Company		
V-06602	Agri Beef Company		
V-06611	Wildhorse Cattle Company		

In some cases, these claims for stockwater rights are for the same sources and same beneficial uses as claims made by the Forest Service on behalf of the United States, and are based on the same historic beneficial use of water. In other cases, the claims conflict or interfere with water rights claimed by the United States, or may adversely affect National Forest System lands. It is the position of the Forest Service that the United States is the owner of vested stockwater rights based on historic beneficial use of water by livestock that occurs on what is now National Forest System land.

For such water rights to exist, there would have to have been actual beneficial use of water for livestock watering purposes prior to 1905. To claim such water rights today, the claimants would have to show that they are successors in interest to those original water users. This is typically demonstrated by documents showing a chain of title expressly conveying the water right to the current claimant, or by documents showing a chain of title to land to which the water rights are appurtenant, which conveys the land to the current claimant.

Since the beneficial use of water for livestock watering from water sources located on National Forest System land occurs on federal property, the water right is presumed to be appurtenant to that property unless expressly severed. Claimants who cannot show ownership of land where beneficial use occurs, or an express chain of title to the water right itself from the original appropriators, do not meet the requirements under state law to show entitlement to the water right.

Due the level of precision of mapping and legal descriptions in the Preliminary Order of Determination, it is not always possible to tell if the diversion and beneficial use of water for livestock watering associated with some claims occurs on National Forest System land. Where both

do not occur, the objection may be resolved by clarification of the legal description.

Wherefore, the Forest Service requests that a hearing of objections be scheduled in accordance with NRS 533.150.

Respectfully submitted this 16<sup>th</sup> day of August, 2010.



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KENNETH D. PAUR  
Attorney for U.S.D.A. Forest Service

**AFFIDAVIT**

JEANNE A. EVENDEN, hereby verifies the foregoing objections of the U.S.D.A. Forest Service in accordance with NRS § 533.145.

*Jeanne A Evenden*

Director of Lands  
Intermountain Region  
U.S.D.A. Forest Service

**ACKNOWLEDGMENT**

STATE OF UTAH            )  
  )ss  
COUNTY OF WEBER        )

On this 16<sup>th</sup> day of August, 2010, before me, Lori Blickfeldt, a Notary Public in and for Weber County, personally appeared JEANNE A. EVENDEN, Director of Lands, Intermountain Region, Forest Service, U.S. Department of Agriculture, the signer of the within instrument, who acknowledged to me that she executed the foregoing instrument, by duly delegated authority.



*Lori Blickfeldt*

Notary Public for the State of Utah  
Residing in Layton, UT  
My Commission Expires 11/30/2011

Before the State Engineer of the State of Nevada

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*In the Matter of the Determination of the Relative Rights in and to  
the Waters, Both Surface and Underground, Within the Drainage Area  
of the Owyhee River (Sometimes Called the East Fork Owyhee River)  
and Its Tributaries Located Within the East Fork Owyhee River Area,  
Elko County, Nevada.*

STATE ENGINEER'S OFFICE

Objections by the United States of America, U.S. Department of the Interior, Bureau of Indian Affairs, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation to the Preliminary Order of Determination (Preliminary Order) prepared and filed by the State Engineer.

Pursuant to NRS 533.145, the United States of America, U.S. Department of the Interior, Bureau of Indian Affairs (BIA), and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation (Tribe) under claim of interest, assert the following objections to the Preliminary Order of Determination to the above named waters, prepared and filed by Jason King, P.E., State Engineer, on April 29, 2010:

1. BIA and the Tribe object to the priority date granted for Proof No. V-02650. Research conducted by BIA revealed that the early owner of this water right, Byington Steel, claimed a priority of 1888. Thus, without more conclusive proof by claimants Philip Mason and Diana Lee Parten to support their alleged 1874 priority, the earlier date should not be granted.
2. BIA and the Tribe object to the priority date granted for Proof No. V-03707. Research conducted by BIA revealed that the original settler on this POU, Thomas Stinton, settled the land in 1908 and began cultivating the land in 1912. Therefore, the priority date for irrigation should be 1912, not 1870.
3. BIA and the Tribe object to the priority date for Proof Nos. V-09460, V-09462, V09-09463, V-09-464, V-09465, V-09467, V-09468, V-09469, V-09470 (5 C Living Trust). A review of the claim files shows no information or documentation supporting the claimed priority date of 1877.
4. BIA and the Tribe object to the priority date for Proof Nos. V-06595, V-06596, V-06599, V-06600, V-06601, V-06602 (Agri Beef Company). A review of the claim files shows no information or documentation supporting the claimed priority date of 1870.
5. BIA and the Tribe object to the priority date for Proof Nos. V-95689 and V-05690 (Rex C. & Susan Y. Claridge). A review of the claim files shows no information or documentation supporting the claimed priority date of 1875.
6. BIA and the Tribe object to the priority date for Proof Nos. V-04086 and V-04087 (Rancho Grande, Inc.). A review of the claim files shows no information or documentation supporting the claimed priority date of 1872.

7. BIA and the Tribe object to the priority date for Proof Nos.V-05187, V-05188, V-05189, V-05190, V-05192, V-05193 (August J. & Marjorie S. Vitale). A review of the claim files shows no information or documentation supporting the claimed priority date of 1870 of the subject land.

8. BIA and the Tribe object to the priority date for Proof Nos.V-04060, V-04062, V-04064, V-04071, V-04073, V-04074, V-04079, and V-04083 (Cal Worthington Trust). A review of the claim files shows no information or documentation supporting the claimed priority date of 1877 for the subject land.

9. BIA and the Tribe object to the priority date for Proof No.V-06715 (Simplot). A review of the claim file shows no information or documentation supporting the claimed priority date of 1872 for the subject land.

10. BIA and the Tribe object to the priority date for Proof Nos.V-06564, V-06565, V-06588, V-0589, V-06590 (Cal Worthington Trust). A review of the claim files shows no information or documentation supporting the claimed priority date of 1877 for the subject land.

11. BIA and the Tribe object to the priority date for Proof Nos.V-04132, V-04133, V-04135, V-04136, v-04137, V-04139, V-04141, V-06718 (Philip Mason & Diana Lee Parten). A review of the claim files shows no justification for the claimed priority date of 1869/1874. The documentation shows a potential date of 1893, 1895 or 1907.

12. BIA and the Tribe object to the priority date for Proof Nos.V-06609, V-06610, V-06611, V-06612, V-06615, V-06616, V-06617 (Wildhorse Cattle Company). A review of the claim files shows no information or documentation supporting the claimed priority date of 1877 for the subject land.

13. BIA and the Tribe object to the priority date for Proof No.V-09406 (Corbari Cred Shelter Trust). A review of the claim file shows no information or documentation supporting the claimed priority date of 1877 for the subject land.

14. BIA and the Tribe object to the priority date for Proof No.V-05933 (Petan Company of Nevada, Inc.). A review of the claim file shows no information or documentation supporting the claimed priority date of 1872 for the subject land.

15. BIA and the Tribe object to the failure of Section IV (Period of Use) and Section VI (Diversion of Water) of the Preliminary Order to conform to Article III.1.d. of the "Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation and the Upstream Water Users, East Fork Owyhee River" (hereinafter "Settlement Agreement"). Article III.1.d. of the Settlement Agreement provides that the Tribe's Period of Use shall be January 1 through December 31 of each year. Sections IV and VI of the Preliminary Order should be revised to include the correct period of use provision for the Tribe under the Settlement Agreement.

16. BIA and the Tribe object to the failure of Section V (Duty of Water) of the Preliminary Order to conform to the Settlement Agreement. There is no specific water duty applicable to the Tribe in the Settlement Agreement. Section V of the Preliminary Order should be revised to clarify this issue.

17. BIA and the Tribe object to the failure of Section VII (Measurement of Water), Section VIII (Stockwatering, Domestic and Mining Uses), and Section IX (Change in Point of Diversion, Manner and Place of Use) of the Preliminary Order to conform to Article III (Shoshone-Paiute Water Rights) and Article VI.1. (Administration of Tribe's Water Right) in the Settlement Agreement. Sections VII, VIII, and IX of the Preliminary Order should be revised to conform to Articles III and VI of the Settlement Agreement.

18. BIA and the Tribe object to the failure of the Preliminary Order to conform to Article V.2. of the Settlement Agreement. Article V.2. of the Settlement Agreement specifically requires:

The State Engineer shall declare the surface waters of the East Fork Owyhee River and tributaries within the State of Nevada fully appropriated, and no additional surface water permits shall be issued, except that changes in point of diversion and manner and place of use may be granted in accordance with Article VI.2 of this Agreement.

The Preliminary Order currently contains no statement declaring the East Fork Owyhee River to be fully appropriated. Therefore, a statement in compliance with the requirement of the Settlement Agreement recognizing that the East Fork Owyhee River is fully appropriated must be added to the Preliminary Order.

19. BIA and the Tribe object to the failure of the Preliminary Order to include in the individual descriptions of the specific stock watering rights the prescriptions that are generally stated in Section VIII, pages 7-8, of the Preliminary Order. The stock watering rights for claimants with multiple watering sources need to be clarified in the Preliminary Order in order to minimize the opportunity for abuse. The Preliminary Order grants water rights for stock watering using a formula based on the number of head of livestock and states that "the total water consumption under individual claims for watering stock in a range area that contain [*sic*] multiple water sources is not additive and is limited by the total number of livestock using all water sources located within a specific grazing area." Preliminary Order at 8 (emphasis added). The Preliminary Order also declares that "[s]tock water shall be administered subject to the limits and provisions set forth under the Duck Valley Settlement." *Id.* However, the individual descriptions of water rights only reference the Settlement Agreement without including a declaration recognizing that the total water consumption for a specific grazing area is "additive" from "all water sources" and is limited by the total number of livestock using all water sources located within a specific grazing area. This limit regarding total water consumption is critical and must be included in the individual water right descriptions to assure that the claimant cannot exhaust a single water source with the cumulative claim, either with specific narrative or by specific reference to Section VIII of the Preliminary Order.

20. BIA and the Tribe object to the failure of paragraph three of “Section VI. Diversion of Water” to conform to Article V.1. of the Settlement Agreement. Paragraph three of Section VI of the Preliminary Order reads:

Priority dates will be recognized as decreed for the Upstream Water Users. This means that *all vested water claims will have the same priority as the Duck Valley Shoshone-Paiute Reservation* and the decreed priority dates will be utilized as a tool by the State Engineer for the resolution of disputes and regulation of diversions between the Upstream Water Users. All permitted and certificated water rights will be subject to the priority dates as established through the appropriation process outlines in NRS Chapter 533. (emphasis added)

This paragraph does not conform to Article V.1. of the Settlement Agreement which states:

For purposes of settling all water rights issues between the Tribe, the Upstream Water Users and the State of Nevada, *the parties agree that the respective water rights of the Tribe and the Upstream Water Users shall be administered without regard to priority dates or specific quantities ultimately decreed by the court, provided that the terms and conditions set forth in Article V of the Settlement Agreement shall be complied with by all parties.* (emphasis added)

As such, each water user covered by the Settlement Agreement has a priority and it will be enforced as between the water users. Article V of the Settlement Agreement sets out the maximum acreage, consumptive use, and procedures during times of shortage which are triggered by reservoir levels. The Preliminary Order should be revised to conform to Article V of the Settlement Agreement.

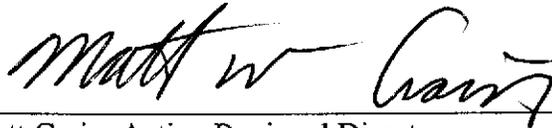
21. BIA and the Tribe identified a clerical error throughout the Preliminary Order. Reference to the Reservation in the various tables in the Preliminary Order should be corrected to read: “Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

22. BIA and the Tribe identified a clerical error at FN 7 of the Preliminary Order. It refers to “Article IV. § 1.F.(Pgs. 11-12)” of the Settlement Agreement; however, pages 11-12 are associated with Article V rather than Article IV.

BIA and the Tribe reserve the right to make additional objections as appropriate.

Wherefore, claimants, Bureau of Indian Affairs and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, request that the Preliminary Order of Proposed Determination of water rights of the East Fork of the Owyhee River, Elko County, Nevada, be amended to conform to the above objections.

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of August, 2010.



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Matt Crain, Acting Regional Director  
Western Region, Bureau of Indian Affairs  
2600 N. Central Avenue, 4<sup>th</sup> Floor  
Phoenix, AZ 85004

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_ date of August, 2010.

---

Robert Bear  
Chairman, Shoshone-Paiute Tribes of the Duck  
Valley Indian Reservation

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_ date of August, 2010.

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Bryan Bowker  
Director, Western Region, Bureau of Indian Affairs

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct. Executed this 12 date of August, 2010.

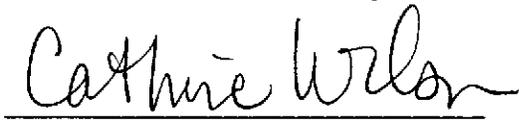


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Robert Bear, Chairman  
Shoshone-Paiute Tribes of the Duck Valley Indian Reservation

Declaration of Service

I certify that on the 16<sup>th</sup> day of August 2010, I placed in the United States mail, first-class, postage pre-paid, to the persons listed on the attached Notice of the Nevada State Engineer dated May 20, 2010, a copy of the Objections by the United States, Bureau of Indian Affairs and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation a copy of the Objections to the Preliminary Order of Determination In the Matter of the Determination of the Relative Rights in and to the Waters, Both Surface and Underground, Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork Owyhee River) and Its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada.

A handwritten signature in cursive script that reads "Catherine Wilson". The signature is written in black ink and is positioned above a horizontal line.

Catherine Wilson  
Supervisory Water Rights Specialist  
BIA, Western Region  
2600 N. Central Avenue, 4<sup>th</sup> Floor  
Phoenix, AZ 85004  
(602) 379-6789

JIM GIBBONS  
Governor

STATE OF NEVADA

LEO DROZDOFF  
Acting Director

JASON KING, P.E.  
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701-5250  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

May 20, 2010

Gary Carrington  
5C Living Trust, Gary Carrington TTE  
P.O. Box 382  
Pioche, NV 89043  
Certified Mail  
#7106 7808 0630 0042 9566

Bill Hall  
Ellison Ranching Company  
HC 32 Box 240  
Tuscarora, NV 89834  
Certified Mail  
#7106 7808 0630 0042 9528

Sharon Bachman  
Baker Bros. Ranch  
2193 Industrial Way  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9634

Holland Ranch Partnership  
HC 31 Box 90  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9382

Dennis and Marcia Bieroth  
HC 31, Box 60  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9351

John and Marjorie Vipham  
HC 35 Box 50  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9399

Doby George LLC  
165 W Liberty St  
Reno, NV 89501  
Certified Mail  
#7106 7808 0630 0042 9368

John W. Marvel Trust  
P.O. Box 2645  
Elko, NV 89803  
Certified Mail  
#7106 7808 0630 0042 9405

M.L. Investment Company  
HC 85 Box 275  
Grandview, ID 83604  
Certified Mail  
#7106 7808 0630 0042 9412

Re: East Fork Owyhee River Adjudication  
May 20, 2010  
Page 2

Masini Investments Llc  
11 N. Main St.  
Yerington, NV 89447  
Certified Mail  
#7106 7808 0630 0042 9429

Mountain City Water & Sewer Users  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9436

Gary D. Aho  
Old Dog LLC  
818 Taughenbaugh Blvd., Suite 105  
Rifle, CO 81650  
Certified Mail  
#7106 7808 0630 0042 9573

Petan Company of Nevada  
HC 32  
Tuscarora, NV 89834  
Certified Mail  
#7106 7808 0630 0042 9443

Philip Mason and Diana Lee Parten  
HC 35 Box 30  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9450

Queenstake Resources  
HC 31 Box 78  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9467

Rancho Grande, Inc.  
P.O. Box 1358  
San Jose, CA 95109  
Certified Mail  
#7106 7808 0630 0042 9474

Duck Valley Shoshone-Paiute Tribes  
P.O. Box 219  
Owyhee, NV 89832  
Certified Mail  
#7106 7808 0630 0042 9375

Simplot Livestock Company  
HC 85 Box 275  
Grandview, ID 83604  
Certified Mail  
#7106 7808 0630 0042 9481

U.S.D.A. Forest Service  
324 25th Street  
Ogden, UT 84401  
Certified Mail  
#7106 7808 0630 0042 9498

U.S.D.I. Bureau of Land Management  
P.O. Box 831  
Elko, NV 89803  
Certified Mail  
#7106 7808 0630 0042 9504

United States of America - Forest Service  
2035 Last Chance Rd.  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9511

Walter I. Leberski  
c/o Vaughn and Hull Ltd.  
530 Idaho St.  
Elko, NV 89803  
Certified Mail  
#7106 7808 0630 0042 9658

Re: East Fork Owyhee River Adjudication  
May 20, 2010  
Page 3

Manuel Vega  
Vega Ranch  
P.O. Box 1630  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9610

Jeanne Whiteing  
Whiteing and Smith  
1136 Pearl St., Suite 203  
Boulder, CO 80302  
Certified Mail  
#7106 7808 0630 0042 9597

John Fraser  
Wildhorse Cattle Company  
P.O. Box 758  
Fernley, NV 89408  
Certified Mail  
#7106 7808 0630 0042 9603

Doris I. Widerburg  
P.O. Box 257  
Osage, KS 66254-0257  
Certified Mail  
#7106 7808 0630 0042 9542

Rex C. Claridge  
P.O. Box 430  
Elko, NV 89801  
Certified Mail  
#7106 7808 0630 0042 9627

Dale W. Hoover  
P.O. Box 117  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9535

James Clark Talley  
12820 Thomas Creek Road  
Reno, NV 89511  
Certified Mail  
#7106 7808 0630 0042 9580

Estella L. Morse  
HC 35 Box 70  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9559

Daniel and Teri Wilson Family Trust  
HC 31 Box 20  
Mountain City, NV 89831  
Certified Mail  
#7106 7808 0630 0042 9344

Re: East Fork Owyhee River Adjudication

Ladies and Gentlemen:

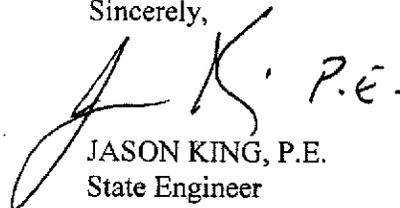
Enclosed are copies of the Abstract of Claims, Preliminary Order of Determination and Notice and Order Fixing Time and Place of Inspection in The Matter of the Determination of the Relative Rights in and to the Waters, both Surface and Underground, within the Drainage Area of the Owyhee River (Sometimes Called the East Fork Owyhee River) and its Tributaries located within the East Fork Owyhee River Area, Elko County, Nevada.

Re: East Fork Owyhee River Adjudication  
May 20, 2010  
Page 4

Any objections to the Preliminary Order of Determination may be filed in this office in accordance with the provisions of NRS § 533.145.<sup>1</sup>

If no objections are received on or before August 18, 2010, the Order of Determination will be prepared and filed in accordance with the provisions of NRS § 533.160 and 533.165.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. King, P.E.', with a large, stylized initial 'J' and 'K'.

JASON KING, P.E.  
State Engineer

JK/sw  
Enclosures

---

<sup>1</sup> **NRS 533.145 Objections to preliminary order of determination; form and contents of objection.**

1. Any person claiming any interest in the stream system involved in the determination of relative rights to the use of water, whether claiming under vested right or under permit from the State Engineer, may object to any finding, part or portion of the preliminary order of determination made by the State Engineer by filing objections with the State Engineer within 30 days after the evidence and proofs, as provided in NRS 533.140, shall have been opened to public inspection, or within such further time as for good cause shown may be allowed by the State Engineer upon application.

2. Such objections shall be verified by the affidavit of the objector, or the objector's agent or attorney, and shall state with reasonable certainty the grounds of objection.

[29:140:1913; A 1921, 171; NCL § 7916]

**NOTICE AND ORDER FIXING AND SETTING  
TIME AND PLACE FOR INSPECTION**

**Before the State Engineer of the State of Nevada**

**oOo**

**IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS  
IN AND TO THE WATERS, BOTH SURFACE AND UNDERGROUND, WITHIN  
THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED  
THE EAST FORK OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED  
WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY,  
NEVADA.**

**TO ALL INTERESTED PERSONS:**

In accordance with the provisions of NRS § 533.140, you are hereby notified that all evidence, maps, plats, proof of claims and related data heretofore taken by or filed with the State Engineer in connection with the Determination of the Relative Rights in and to the Waters, both Surface and Underground, within the Drainage Area of the Owyhee River (Sometimes Called the East Fork Owyhee River) and its Tributaries located within the East Fork Owyhee River Area, Elko County, Nevada will be open for inspection from July 19, 2010, to August 18, 2010, (Saturday, Sunday and legal holidays excepted) from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. of each day in the Office of the State Engineer in Carson City, Nevada.

**BY ORDER OF THE STATE ENGINEER.**

 P.E.  
**JASON KING, P.E.**  
State Engineer

Dated at Carson City, Nevada

this 20th day of May, 2010.

ROBERT B. GOICOECHEA  
rgoicoechea@frontiernet.net

GARY E. DI GRAZIA  
gdigrizia@frontiernet.net

—  
PARALEGAL  
WALTER I. LEBERSKI

LAW OFFICE OF  
**GOICOECHEA, DI GRAZIA,  
COYLE & STANTON, LTD.**  
A PROFESSIONAL CORPORATION

THOMAS J. COYLE, JR.  
tcoyle@frontiernet.net

DAVID M. STANTON  
davidstanton@frontiernet.net

RECEIVED  
2010 AUG 12 AM 10:50  
STATE ENGINEER OFFICE

August 10, 2010

Mr. Jason King  
State Engineer  
Division of Water Resources  
Department of Conservation & Naatural Resources  
901 South Stewart Street, Suite, 2002  
Carson City, Nevada 89701-5250

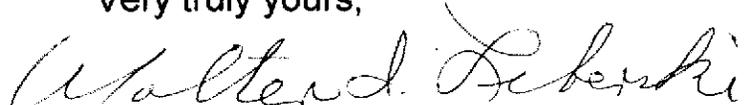
RE: Owyhee River Adjudication

Dear Jason;

Enclosed are objections to the Preliminary Order issued in the matter of the adjudication of the Owyhee River executed by members of the Upstream Water Users.

As I understand these objections will be entered in the court records for consideration at the time of the hearing of the Order.

Very truly yours,

  
Walter I. Leberski

cc: Dennis Bieroth

**OBJECTIONS**

REC'D

2010 AUG 12 AM 10:50

**IN THE MATTER OF THE PRELIMINARY ORDER OF  
DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS  
WITHIN THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED  
THE EAST FORK OF THE OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED  
WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY, NEVADA**

COMES NOW, the undersigned holders of water rights within the East Fork of Owyhee River and hereby file objections to the subject Preliminary Order dated April 29, 2010, as follows:

**ARTICLE VI. DIVERSION OF WATER.**

While permits and their associated certificates are ordinarily subject to a diversion rate, the Agreement between the Shoshone-Paiute Tribes and the Upstream Water Users provides in Article V (1)(a) that the Upstream Water users shall have the right to divert "without regard to an established diversion rate."

The Preliminary Order specifically limits "the diversions of water by the respective parties to which they are recognized are up to the extent and in the amount determined, or allowed by permits and their associated certificates set forth in this preliminary order or in the permits that have been issued by the State Engineer."

This does not conform with the water right agreement referred to as Duck Valley Settlement. The Order must be revised to agree with that Settlement by specifically stating that all valid water right proofs recognized in the Order shall not be subject to control as to a specified diversion rate or measurement.

**ARTICLE VIII. STOCKWATER, DOMESTIC AND MINING USES.**

The Preliminary Order states that the priority date for stockwater of the Tribes and the Upstream Water Users is April 16, 1877 as set forth in the Settlement Agreement. However, this is not what the Settlement Agreement states. Based upon a review of the Humboldt River Decree,

this priority date should not apply to stockwater rights upon open grazing lands or for open waters and must be so state in the Order.

The undersigned shall continue to have the right to file further objections to the Preliminary Order with the prescribed time period.

DATED this \_\_\_ day of \_\_\_\_\_, 2010

Estelle L. Howe

Phillip Mason

Dated: 7-8-2010

Dated: 7/16/10

Dennis R. Bieroth

Rita Hoover

Dated: 7/10/10

Dated: 18 JULY 2010

J.R. Vif

Michaela Leese

Dated: 7/11/10

Dated: 7/28/10

**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF  
THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE  
RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE  
RIVER AREA, ELKO COUNTY, NEVADA**

**VERIFICATION**

I, ESTELLA L. MORSE, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork of the Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

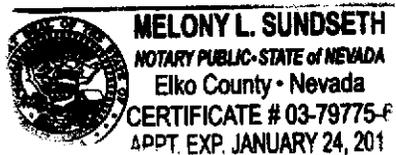
DATED this 12 day of July, 2010.

Estella L. Morse

Estella L. Morse is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 12<sup>th</sup> day of July, 2010.

Melony L. Sundseth  
Notary Public  
State of Nevada



**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY, NEVADA**

**VERIFICATION**

I, Dennis R. Bieroth, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork of the Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 6<sup>th</sup> day of August, 2010.

Dennis R. Bieroth

Dennis Bieroth is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 6<sup>th</sup> day of August, 2010.

Melony L. Sundseth  
Notary Public  
State of Nevada



**MELONY L. SUNDSETH**  
NOTARY PUBLIC - STATE OF NEVADA  
Elko County - Nevada  
CERTIFICATE # 03-79775-6  
APPT. EXP. JANUARY 24, 20

**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF  
THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE  
RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE  
RIVER AREA, ELKO COUNTY, NEVADA**

**VERIFICATION**

I, Phillip Mason, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork of the Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

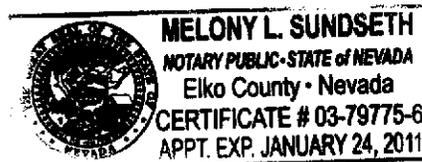
DATED this 23 day of July, 2010.

Phillip Mason

Phillip Mason is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 23 day of July, 2010.

Melony L. Sundseth  
Notary Public  
State of Nevada



**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY, NEVADA**

**VERIFICATION**

I, Mitch Goicoechea/Hollie Panda, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork of the Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 30<sup>th</sup> day of July, 2010.

Mitch Goicoechea

Mitch Goicoechea is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 30<sup>th</sup> day of July, 2010.

Melony L. Sundseth  
Notary Public  
State of Nevada



## **OBJECTIONS**

### **IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY, NEVADA**

COMES NOW, the undersigned holders of water rights within the East Fork of Owyhee River and hereby file objections to the subject Preliminary Order dated April 29, 2010, as follows:

#### **ARTICLE VI. DIVERSION OF WATER.**

While permits and their associated certificates are ordinarily subject to a diversion rate, the Agreement between the Shoshone-Paiute Tribes and the Upstream Water Users provides in Article V (1)(a) that the Upstream Water users shall have the right to divert “without regard to an established diversion rate.”

The Preliminary Order specifically limits “the diversions of water by the respective parties to which they are recognized are up to the extent and in the amount determined, or allowed by permits and their associated certificates set forth in this preliminary order or in the permits that have been issued by the State Engineer.”

This does not conform with the water right agreement referred to as Duck Valley Settlement. The Order must be revised to agree with that Settlement by specifically stating that all valid water right proofs recognized in the Order shall not be subject to control as to a specified diversion rate or measurement.

#### **ARTICLE VIII. STOCKWATER, DOMESTIC AND MINING USES.**

The Preliminary Order states that the priority date for stockwater of the Tribes and the Upstream Water Users is April 16, 1877 as set forth in the Settlement Agreement. However, this is not what the Settlement Agreement states. Based upon a review of the Humboldt River Decree,

this priority date should not apply to stockwater rights upon open grazing lands or for open waters and must be so state in the Order.

The undersigned shall continue to have the right to file further objections to the Preliminary Order with the prescribed time period.

DATED this 23 day of July, 2010

Ellison Ranching Co  
Aileen E. Rath

\_\_\_\_\_

Dated: 7/23/10

Dated: \_\_\_\_\_

Walter J. Leberki

\_\_\_\_\_

Dated: 8/10/10

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE  
RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF  
THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE  
RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE  
RIVER AREA, ELKO COUNTY, NEVADA**

**VERIFICATION**

I, Aulene E RATLIFF, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters Within the Drainage Area of the Owyhee River (Sometimes Called the East Fork of the Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

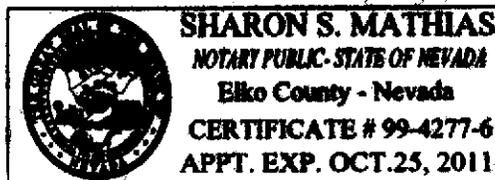
DATED this 23 day of July, 2010.

Aulene E Ratliff

Aulene E Ratliff is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 23 day of July, 2010.

Sharon S. Mathias  
Notary Public  
State of Nevada



**IN THE MATTER OF THE PRELIMINARY ORDER OF DETERMINATION OF THE RELATIVE RIGHTS IN AND TO THE WATERS WITHIN THE DRAINAGE AREA OF THE OWYHEE RIVER (SOMETIMES CALLED THE EAST FORK OF THE OWYHEE RIVER) AND ITS TRIBUTARIES LOCATED WITHIN THE EAST FORK OWYHEE RIVER AREA, ELKO COUNTY, NEVADA.**

**VERIFICATION**

I, Walter I. Leberski, your Affiant, under oath and subject to penalties of perjury, declare that the matters set forth in the Objections in the Matter of the Preliminary Order of Determination of the Relative Rights in and to the Waters within the Drainage Area of the Owyhee River (Sometimes called the East Fork of the Owyhee River) and its Tributaries located within the East Fork Owyhee River Area, Elko County, Nevada are true and correct, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

DATED this 10th of August, 2010

Walter I. Leberski

\_\_\_\_\_ is known to be or satisfactorily proven to be the person whose name is subscribed to the within instrument.

DATED this 10th day of August, 2010

Melony L. Sundseth  
Notary Public  
State of Nevada



## Steve Walmsley

---

**From:** Jennifer Unekis [j\_unekis@hotmail.com]  
**Sent:** Monday, August 16, 2010 11:50 PM  
**To:** Steve Walmsley  
**Cc:** Jason King  
**Subject:** RE: Doris Widerberg - Rio Tinto Water Claims - E. Fork Owyhee River Adjudication.  
**Attachments:** DWiderburg.pdf

Mr. Walmsley and Mr. King,

Here is the response in reference to the preliminary order of determination, as per Mr. Walmsley's request. Please send verification of receiving this. Please let me know if you need any further information or clarification, as well as a possible timeline for further proceedings. I will be mailing you a hard copy of this information as well.

Thank you!

August 16, 2010

Dear Mr. King and/or Mr. Walmsley,

I, Doris Widerburg, am the sole owner of several claims listed in the *East Fork Owyhee River – Abstract of Claims* and the corresponding *Preliminary Order of Determination*. These listings, however, are falsely documented as being under the ownership of several other parties. I have enclosed copies of the relevant listings from the abstract and highlighted the claims in question. Additionally, I have enclosed recent property tax receipts as proof of ownership.

These claims should be documented as being under my sole ownership. The one claim that is solely in my name, V-06679, needs to be clarified or revised as it lacks specific information regarding place or points of diversion. Additionally, any claims that properties under my ownership have not been beneficially used within the last 5 years and therefore qualify for forfeiture are inapplicable.

Currently, all mining or other use has been delayed as part of the ongoing reclamation and stated in the consent agreements with the Nevada EPA and The Working Group. It is not appropriate to void my water rights due to these circumstances. Shortly upon purchase of the property I became aware of the risks and since then my plans for use have been on hold. Including the past 14 years under consent agreements to complete a remediation that has gone far beyond its projected original completion date. At the very least, the five-year activity clock should be viewed as suspended until such time as it is released for my use. I can furnish a copy of this binding agreement upon request.

Whether or not surface water was placed to beneficial use prior to March 1, 1905 needs to be investigated.

Claims have been made on water rights, permits and certificates, on parts of land and water rights that I own. Specifically, the Preliminary Order of Determination lists in Section XII (Conditionally Withdrawn Certificated Water Rights) that Permit 9610, Certificate 2382 has been assigned to Denis R. and Marcia J. Bieroth. This is incorrect. This permit and certificate has since 1968 belonged to me. In addition, in Section X (Water Right Proofs of Appropriation Determined to be Valid), the Bieroths are listed as having the assigned rights to Proof of Appropriation V-06548. This also belongs to me. Both Permit 9610, Certificate 2382 and Proof of Appropriation V-06548 describe the same location, in fact V-06548 is simply the later certificate number assigned to what was originally 9610/2382.

I did not apply for irrigation and livestock permit uses under my vested right because of the hazard posed by the mine tailings area. I am the owner of the land and rightful holder of the water rights under these permits, and do not want to see them assigned to others, whether by mistake or oversight by those in charge of the record keeping.

I contend water is an integral part of mining and therefore cannot be separated without extreme damage to the mining property.

Thank you,

Doris Widerburg  
PO Box 257  
Overbrook, KS 66524  
785-665-7440

---

From: swalmsley@water.nv.gov  
To: j\_unekis@hotmail.com  
Date: Thu, 12 Aug 2010 13:54:56 -0700  
Subject: Doris Widerberg - Rio Tinto Water Claims - E. Fork Owyhee River Adjudication.

Dear Mrs. Unekis:

Attached below is NRS 533.145 that sets forth the rules for filing an objection to a portion of the findings within a Preliminary Order of Determination. As we discussed on the phone, I advise you to receive some type of verification from me that the objection was received and acknowledged prior to August 18, 2010, the final date for filing objections. Please call or Email me at the following address if you have any further questions regarding this matter.

NRS 533.145 Objections to preliminary order of determination; form and contents of objection.

1. Any person claiming any interest in the stream system involved in the determination of relative rights to the use of water, whether claiming under vested right or under permit from the State Engineer, may object to any finding, part or portion of the preliminary order of determination made by the State Engineer by filing objections with the State Engineer within 30 days after the evidence and proofs, as provided in NRS 533.140, shall have been opened to public inspection, or within such further time as for good cause shown may be allowed by the State Engineer upon application.

2. Such objections shall be verified by the affidavit of the objector, or the objector's agent or attorney, and shall state with reasonable certainty the grounds of objection.

[29:140:1913; A 1921, 171; NCL § 7916]

Steve Walmsley  
Staff Engineer III  
Adjudication Section  
Nevada Division of Water Resources  
901 S. Stewart Street, Suite 2002  
Carson City, Nevada 89701

swalmsley@water.nv.gov/  
(775) 684-2820  
(775) 684-2811 FAX

EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECT.	REMARKS											
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE				T.	N.	R.	E.				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
																200 HEAD OF CATTLE CLAIMED FOR 214 DAYS. NO DIVERSION RATE IS CLAIMED.  THE PLACE OF USE IS THE NATURAL CHANNEL OF EAST FORK OWYHEE RIVER AND ITS' TRIBUTARIES.										
PROOF NO.	CLAIMANT	SOURCE		POINT(S) OF DIVERSION				YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.														
V-06678	GUY H. VEGA	HOT CREEK AND TRIBUTARIES		SW $\frac{1}{2}$ SE $\frac{1}{4}$ , SEC. 04, T.43N., R.66E., M. D. B. & M. LOT 3 SEC. 13, T.43N., R.55E., M. D. B. & M.				APR. 1 TO OCT. 31	STOCKWATER 1889																	
PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECT.	REMARKS											
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE				T.	N.	R.	E.				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
4	T. 43 N.,	R. 55 E.					LOT 3																			
13	T. 43 N.,	R. 55 E.																								
																200 HEAD OF CATTLE CLAIMED FOR 214 DAYS. NO DIVERSION RATE IS CLAIMED.  THE PLACE OF USE IS THE NATURAL CHANNEL OF HOT CREEK AND ITS' TRIBUTARIES.										
PROOF NO.	CLAIMANT	SOURCE		POINT(S) OF DIVERSION				YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.														
V-06679	DORIS I. WIDERBURG	OWYHEE RIVER (MILL CREEK)							MINING & MILLING																	
PLACE OF USE 40 ACRE DESCRIPTIONS														ACRES PER SECT.	REMARKS											
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE				T.	N.	R.	E.				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
																NO LEGAL DESCRIPTION OF THE POINT OF DIVERSION OR PLACE OF USE.  NO DIVERSION RATE OR DUTY IS CLAIMED.										

EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
PERMIT 8415 CERT. 2157	JOHN & MARJORIE VIPHAM	TRAIL CREEK AND TRIBUTARIES	NE¼ SE¼ SEC. 16, T.44N., R.53E., M. D. B. & M. S.20°40'W. 3433.00 FT. FROM THE NE COR. OF SAID SEC. 16	APR. 1 TO AUG 15	IRRIGATION DEC. 30, 1927	1.37		373.00											
PLACE OF USE 49 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE				CERTIFICATE WAS ISSUED ON NOV. 23, 1935
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10	T. 44 N.,	R. 53 E.				5.85												5.85	
11	T. 44 N.,	R. 53 E.		17.55			36.05	24.66	32.50	10.83								131.57	
TOTAL ACRES CLAIMED:																	137.42		
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
PERMIT 9551 CERT. 2264	U.S. FOREST SERVICE	UNNAMED SPRING	SW¼ SW¼ SEC. 33, T.48N., R.56E., M. D. B. & M. N.31°36' E. 1218.00 FT. FROM THE SW COR. OF SAID SEC. 33	APR. 1 TO OCT. 1	IRRIGATION & DOMESTIC OCT. 27, 1931	0.025		9.18											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE				CERTIFICATE WAS ISSUED ON SEPT. 16, 1936
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
32	T. 43 N.,	R. 54 E.				0.25												0.25	
TOTAL ACRES CLAIMED:																	0.25		
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
PERMIT 9809 CERT. 2400	MOUNTAIN CITY COPPER COMPANY	UNNAMED SPRING	NW¼ SE¼ SEC. 10, T.45N., R.63E., M. D. B. & M. S.67°44' W. 1772.0 FT. FROM THE E¼ COR. OF SAID SEC. 10	JAN. 1 TO DEC. 31	MINING JUL. 11, 1932	0.02													

U-06548

EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT NO.	PLACE OF USE	ACRES PER SECT.	REMARKS
9809 CERT. 2400 (cont.)	40 ACRE DESCRIPTIONS		
SEC.	TOWN-SHIP	RANGE	NE NW SW SE NE NW SW SE NE NW SW SE NE NW SW SE
11	T. 45 N., R. 53 E.		X X
			WATER WAS USED FOR THE TOWN OF RIO TINTO WATER SYSTEM CERTIFICATE WAS ISSUED ON JULY 7, 1936

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT 9810 CERT. 2382	MOUNTAIN CITY COPPER COMPANY	MILL CREEK	SW 1/4 SE 1/4 SEC. 3, T.45N., R.53E., M. D. B. & M. N.82°08' W. 2404.00 FT. FROM THE SE COR. OF SAID SEC. 3	APR. 1 TO JUL. 31	IRRIGATION JUL. 11, 1932	0.7507		180.30

PERMIT NO.	PLACE OF USE	ACRES PER SECT.	REMARKS
	40 ACRE DESCRIPTIONS		
SEC.	TOWN-SHIP	RANGE	NE NW SW SE NE NW SW SE NE NW SW SE NE NW SW SE
3	T. 45 N., R. 53 E.		
10	T. 45 N., R. 53 E.	13.60	3.00
11	T. 45 N., R. 53 E.	11.30	7.00
12	T. 45 N., R. 53 E.		1.60
			6.70 9.20 0.50 7.50 0.50 11.50 0.07
			1.30 1.30 2.60
			16.60
			34.20
			21.67
			TOTAL ACRES CLAIMED: 79.07
			CERTIFICATE WAS ISSUED ON MAY 20, 1936

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT 9811	MOUNTAIN CITY IMPROVEMENT ASSOCIATION	HARRIS GULCH SPRINGS	SEC. 30, T.46N., R.54E., M. D. B. & M. (UNSURVEYED) N.82°55' E. 6020 FT. FROM THE SE COR. OF SEC. 35, T.46N., R.53E., M. D. B. & M. (UNSURVEYED)	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC July 15, 1932	0.0223		

PERMIT NO.	PLACE OF USE	ACRES PER SECT.	REMARKS
	40 ACRE DESCRIPTIONS		
SEC.	TOWN-SHIP	RANGE	NE NW SW SE NE NW SW SE NE NW SW SE NE NW SW SE
36	T. 46 N., R. 53 E.		
			TOTAL ACRES CLAIMED:
			WATER TO BE USED FOR LAWNS AND DOMESTIC USE IN MOUNTAIN CITY, NEVADA PROOF OF BENEFICIAL USE FILED ON OCTOBER 26, 1943

### EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
PERMIT 10148 CERT. 2677	MOUNTAIN CITY COPPER CO.	UNDERGROUND	SW ¼ NW ¼ SEC. 11, T.45N., R.53E., M. D. B. & M. N.59°20'E. 1252 FT. FROM THE W ¼ COR. OF SAID SEC. 11	JAN. 1 TO DEC. 31	MILLING AND DOMESTIC AUG. 6, 1937	0.35													
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	N E				N W				S W				S E				CERTIFICATE WAS ISSUED ON JANUARY 25, 1943
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11	T. 45 N.,	R. 53 E.			X	X			X	X									
PERMIT 10156 CERT. 2678	MOUNTAIN CITY COPPER CO.	UNDERGROUND	SE ¼ SW ¼ SEC. 12, T.45N., R.53E., M. D. B. & M. S.37°57'E. 2420 FT. FROM THE W ¼ COR. OF SAID SEC. 12	JAN. 1 TO DEC. 31	MILLING AND DOMESTIC AUG. 20, 1937	0.30													
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	N E				N W				S W				S E				CERTIFICATE WAS ISSUED ON JANUARY 25, 1943
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11	T. 45 N.,	R. 53 E.			X	X			X	X									
PERMIT 10203 CERT. 2685	MOUNTAIN CITY COPPER CO.	EAST FORK OWYHEE RIVER	SE ¼ SW ¼ SEC. 12, T.45N., R.53E., M. D. B. & M. S.39°03'E. 2525 FT. FROM THE W ¼ COR. OF SAID SEC. 12	JAN. 1 TO DEC. 31	MILLING AND DOMESTIC OCT. 3, 1932	0.333													

EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT 10203 CERT.		PLACE OF USE 40 ACRE DESCRIPTIONS																ACRES PER SECT.	REMARKS							
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE					REMARKS						
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
11	T. 46 N.,	R. 53 E.			X	X				X	X															CERTIFICATE WAS ISSUED ON JUNE 29, 1943
PERMIT NO.	CLAIMANT		SOURCE		POINT(S) OF DIVERSION				YEARLY: PERIOD OF USE		PURPOSE & PRIORITY		FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
PERMIT 11228 CERT. 13903	COPPER EXPLORATION MINING CO.		UNNAMED SPRINGS		SE¼ SW¼ SEC. 3, T.45N., R.53E., M. D. B. & M. N.28°10'W. 1396.18 FT. FROM THE S¼ COR. OF SAID SEC. 3				JAN. 1 TO DEC. 31		DOMESTIC AUG. 10, 1932		0.0045		1.05 MILLION GALLONS ANNUALLY											
PLACE OF USE 40 ACRE DESCRIPTIONS																ACRES PER SECT.	REMARKS									
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE					REMARKS						
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
3	T. 45 N.,	R. 53 E.															X								CERTIFICATE WAS ISSUED ON JULY 11, 1994 WATER IS USED TO SERVE A CABIN LOCATED ON THE MAYFLOWER NO. 2 LODGE SURVEY NO. 4735 IN THE SE¼SW¼, SEC. 03, T.45N., R.53E., M.D.B.&M. COPE MINING DISTRICT.	
PERMIT NO.	CLAIMANT		SOURCE		POINT(S) OF DIVERSION				YEARLY: PERIOD OF USE		PURPOSE & PRIORITY		FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.											
PERMIT 13908 CERT. 4605	HAPPY TRACKS MINING COMPANY		ROSEBUD SPRING		SE¼ SE¼ SEC. 33, T.45N., R.58E., M. D. B. & M. N.72°45'11"E. 2639.31 FT. FROM THE S¼ COR. OF SAID SEC. 33				JAN. 1 TO DEC. 31		MINING AND DOMESTIC NOV. 15, 1951		0.13													
PLACE OF USE 40 ACRE DESCRIPTIONS																ACRES PER SECT.	REMARKS									
SEC.	TOWN- SHIP	RANGE	NE				NW				SW				SE					REMARKS						
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
33	T. 45 N.,	R. 56 E.															X								CERTIFICATE WAS ISSUED ON DECEMBER 30, 1957.	

Remarks

EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
PERMIT 22760 CERT. 7547	JAMES H. AND CATHERINE DINSDALE AS JOINT TENANTS, AN UNDIVIDED 1/2 INTEREST, AND RICHARD L. AND DORIS I. WIDERBURG AS JOINT TENANTS, AN UNDIVIDED 1/4 INTEREST.	UNDERGROUND (MINE SHAFT)	SE 1/4 NW 1/4 SEC. 11, T.45N., R.53E., M. D. B. & M. N. 87°47'07"W. 1501.67 FT. FROM THE W 1/4 WITNESS COR. OF SAID SEC. 11	JAN. 1 TO DEC. 31	MINING AND MILLING SEPT. 7, 1965	3.32	NA	788.4 MILLION GALLONS ANNUALLY											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE				CERTIFICATE WAS ISSUED ON FEBRUARY 3, 1971
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10	T. 45 N.,	R. 53 E.																	
11	T. 45 N.,	R. 53 E.																	
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
APP. 23420	LORRAINE E. IRLAND	A SPRING	NE 1/4 SW 1/4 SEC. 10, T.44N., R.53E., M. D. B. & M. N. 18°28'W. 2,259.30 FT. FROM THE S 1/4 CORNER OF SAID SEC. 10.	JAN. 1 TO DEC. 31	STOCKWATER & DOMESTIC SEPT. 28, 1966	0.10													
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE				300 CATTLE ARE PROPOSED TO BE WATERED WITHIN H.E.S. 74.  APPLICATION READY FOR ACTION MAY 1, 1967
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10	T. 44 N.,	R. 53 E.															X		
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
APP. 23601	DENNIS AND MARCIA BIEROTH	OWYHEE RIVER	SW 1/4 NE 1/4 SEC. 30, T.45N., R.54E., M. D. B. & M. S. 60°28'E. 4,038 FT. FROM THE NW CORNER OF SAID SEC. 30.	APR. 1 TO DEC. 31	IRRIGATION & DOMESTIC JAN. 12, 1967	0.25													

## EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

APP. 23801 (cont.)	PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECT.	REMARKS										
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE									
30	T. 46 N.,	R. 54 E.				X																		

10.4 ACRES ARE PROPOSED TO BE IRRIGATED WITHIN THE DELINEATED ACREAGE.

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
APP. 23802	DENNIS AND MARCIA BIEROTH	VAN DUZER CREEK	SW 1/4 NW 1/4 SEC. 30, T.46N., R.54E., M. D. B. & M. S.43°13'E. 1,872 FT. FROM THE NW CORNER OF SAID SEC. 30.	APR. 1 TO DEC. 31	IRRIGATION & DOMESTIC JAN. 12, 1967	0.6		

PLACE OF USE 40 ACRE DESCRIPTIONS													ACRES PER SECT.	REMARKS										
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE									
19	T. 45 N.,	R. 54 E.																						
30	T. 45 N.,	R. 54 E.							X	X	X	X												

34 ACRES ARE PROPOSED TO BE IRRIGATED WITHIN THE DELINEATED ACREAGE.  
THIS APPLICATION IS FILED TO SUPPLEMENT PERMIT 6003, CERTIFICATE 1133.

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
APP. 23803	DENNIS AND MARCIA BIEROTH	VAN DUZER CREEK	SE 1/4 NW 1/4 SEC. 2, T.44N., R.53E., M. D. B. & M. S.37°28'E. 15,098 FT. FROM THE NE CORNER OF SEC. 28, T.45N., R.53E., M.D.B.M.	APR. 1 TO DEC. 31	IRRIGATION & DOMESTIC JAN. 12, 1967	1.00		

PLACE OF USE 40 ACRE DESCRIPTIONS													ACRES PER SECT.	REMARKS										
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE									
25	T. 44 N.,	R. 53 E.				X																		
										X	X							X	X	X	X			

45.6 ACRES ARE PROPOSED TO BE IRRIGATED WITHIN THE DELINEATED ACREAGE. THIS APPLICATION IS FILED TO SUPPLEMENT THE SEASONAL FLOW OF CHICKEN CREEK. THIS WATER WILL BE SUBORDINATE IN PRIORITY BY AGREEMENT TO THAT CLAIMED BY AND BENEFICIAI LY USED BY THE BAKER BROTHERS FROM VAN DUZER CREEK ON THE BRANCH SOUTHWEST OF THE PLACE OF USE.



## EAST FORK OWYHEE RIVER - ABSTRACT OF CLAIMS

PERMIT		PLACE OF USE												ACRES PER SECT.	REMARKS					
25625		40 ACRE DESCRIPTIONS																		
CERT.																				
8405 (cont.)															CERTIFICATE WAS ISSUED ON JANUARY 2, 1975					
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
10	T. 45 N.,	R. 53 E.																		
11	T. 45 N.,	R. 53 E.																		
												PORTIONS								
												PORTIONS								
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION												YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
PERMIT 27107 CERT. 8183	MARK T. BYRNES AND VALERIE L. BYRNES	SPRING NO. 1	8E¼ SW¼ SEC. 32, T.45N., R.56E., M. D. B. & M. N.08°63'W. 778.17 FT. FROM THE S¼ COR. OF SAID SEC. 32												JAN. 1 TO DEC. 31	DOMESTIC NOV. 2, 1972	0.00245	NA	0.365 MILLION GALLONS ANNUALLY	
PLACE OF USE												ACRES PER SECT.	REMARKS							
40 ACRE DESCRIPTIONS																				
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
32	T. 45 N.,	R. 56 E.															X			CERTIFICATE WAS ISSUED ON NOVEMBER 9, 1977
																	SERVES ONE SINGLE FAMILY DWELLING.			
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION												YEARLY: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
APP. 26336	AUGUST J. VITALE AND MARJORIE S. VITALE	OWYHEE RIVER	5E¼ 5E¼ SEC. 26, T.48N., R.53E., M. D. B. & M. N.89°55'47"E. 2,658.5 FT. FROM THE S¼ CORNER OF SAID SEC. 26.												APR. 1 TO DEC. 1	IRRIGATION & DOMESTIC MAY 16, 1974	1.00			
PLACE OF USE												ACRES PER SECT.	REMARKS							
40 ACRE DESCRIPTIONS																				
SEC.	TOWN-SHIP	RANGE	NE				NW				SW				SE					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
26	T. 46 N.,	R. 53 E.	X	X	X	X									X	X	X	X	0.00	100 ACRES ARE PROPOSED TO BE IRRIGATED WITHIN THE DELINEATED QUARTER SECTION(S).
35	T. 46 N.,	R. 53 E.	X																0.00	
												TOTAL ACRES CLAIMED:				100.00	APPLICATION READY FOR ACTION OCT. 7, 1974			

**PRELIMINARY ORDER OF DETERMINATION  
EAST FORK OWYHEE RIVER**

82597-1  
11-1-18

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
V-06848	DENNIS R. AND MARCIA J. BIEROTH	MILL CREEK AND TRIBUTARIES	SW $\frac{1}{4}$ SE $\frac{1}{4}$ , SEC. 03, T.46N., R.63E., M. D. B. & M. BEARS N.82°08'W. 2,404.0 FT. FROM THE SE COR. OF SAID SEC. 03.	APRIL 15 - OCT. 15	IRRIGATION 1095		2.8	72.18											
PLACE OF USE 40 ACRE DESCRIPTIONS						ACRES PER SECT.	REMARKS												
SEC.	TOWNSHIP	RANGE	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11	T. 45 N.	R. 63 E.	3.89																3.89
12	T. 45 N.	R. 63 E.			1.00		0.50	7.50	0.50	11.50	0.07					0.22			21.09
TOTAL ACRES:																		25.78	
ACREAGE ADJUSTED BASED UPON FIELD INVESTIGATION																			
STOCK WATERING IS ACCEPTED AS SET FORTH IN THE SETTLEMENT AGREEMENT, ATTACHED AS APPENDIX A, AS DESCRIBED UNDER ARTICLE V, § 1.F. STOCK WATER PP. 11-12.																			
ACREAGE REDUCED BECAUSE OF MILL TAILINGS.																			

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ELKO COUNTY REAL PROPERTY AND SPECIAL TAXES FOR FISCAL YEAR

OPM-110-070

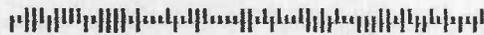
1.0

27

July 1, 2010 thru June 30, 2011

PATENTED MINES  
COPE MINING DISTRICT

\*\*AUTO\*\*MIXED AADC 913 71 MAAD 62459RB09-A-5  
18664 1 MB 0.382



WIDERBURG, DORIS  
PO BOX 257  
OVERBROOK KS 66524-0257

YOUR CHECK IS YOUR RECEIPT  
IF RECEIPT IS NEEDED CHECK HERE AND  
RETURN ENTIRE BILL WITH YOUR PAYMENT



NOTE: IF PAYMENT IS MADE BY CHECK,  
RECEIPT IS VOID IF NOT HONORED BY BANK.

Real Estate	3,500	County	0.6082	21.30	0.00	21.30
		Juvenile Prob	0.0558	1.95	0.00	1.95
		Sr Citizen Sv	0.0200	0.70	0.00	0.70
		Jail Operatns	0.0190	0.66	0.00	0.66
		Med Indigent	0.0400	1.40	0.00	1.40
		Co Captl Proj	0.0500	1.75	0.00	1.75
		School Dist.	0.7500	26.25	0.00	26.25
		School Cap Pr	0.7500	26.25	0.00	26.25
		State	0.1700	5.95	0.00	5.95
		Hosp Indigent	0.0150	0.52	0.00	0.52
		Youth Service	0.0117	0.41	0.00	0.41
		Museum	0.0189	0.66	0.00	0.66

3,500

2.5086

87.80

0.00

87.80

IF YOUR TAXES ARE INCLUDED IN YOUR  
MORTGAGE PAYMENT, DO NOT PAY THIS BILL.

CHANGE OF ADDRESS? PLEASE INDICATE ON REVERSE SIDE OF STUB

4TH  
INSTALLMENT

3RD  
INSTALLMENT

2ND  
INSTALLMENT

1ST  
INSTALLMENT

August 16, 2010

\$0.00

\$0.00

\$0.00

\$87.80



OPM-110-070

OPM-110-070

OPM-110-070

OPM-110-070



SPECIAL LANDS  
 SEC 10,11 TWP 45N RGE 53E MDB&M

\*\*AUTO\*\*MIXED AADC 913 81 MAAD 62459RB09-B-1  
 21593 2 MB 0.507

WIDERBURG, DORIS I  
 PO BOX 257  
 OVERBROOK KS 66524-0257

YOUR CHECK IS YOUR RECEIPT  
 IF RECEIPT IS NEEDED CHECK HERE AND  
 RETURN ENTIRE BILL WITH YOUR PAYMENT



NOTE: IF PAYMENT IS MADE BY CHECK,  
 RECEIPT IS VOID IF NOT HONORED BY BANK.

SPECIAL TAXES ARE IN ADDITION TO YOUR TAX RATE

Real Estate	1,060	County	0.6082	6.46	0.00	6.46
		Juvenile Prob	0.0558	0.59	0.00	0.59
		Sr Citizen Sv	0.0200	0.21	0.00	0.21
		Jail Operatns	0.0190	0.20	0.00	0.20
		Med Indigent	0.0400	0.42	0.00	0.42
		Co Captl Proj	0.0500	0.53	0.00	0.53
		School Dist.	0.7500	7.95	0.00	7.95
		School Cap Pr	0.7500	7.95	0.00	7.95
		ECVA	0.0392	0.42	0.00	0.42
		State	0.1700	1.80	0.00	1.80
		Hosp Indigent	0.0150	0.16	0.00	0.16
		Youth Service	0.0117	0.12	0.00	0.12
		Museum	0.0189	0.20	0.00	0.20
	1,060		2.5478			
				27.01	0.00	27.01

IF YOUR TAXES ARE INCLUDED IN YOUR  
 MORTGAGE PAYMENT, DO NOT PAY THIS BILL.

CHANGE OF ADDRESS? PLEASE INDICATE ON REVERSE SIDE OF STUB

4TH INSTALLMENT	3RD INSTALLMENT	2ND INSTALLMENT	1ST INSTALLMENT
\$0.00	\$0.00	\$0.00	August 16, 2010 \$27.01
005-40A-003	005-40A-003	005-40A-003	005-40A-003

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SPECIAL LANDS  
 SEC 11 TWP 45N RGE 53E MDB&M

\*\*AUTO\*\*MIXED AADC 913 81 MAAD 62459RB09-B-1  
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WIDERBURG, DORIS I  
 PO BOX 257  
 OVERBROOK KS 66524-0257

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Real Estate	120	County	0.6063	0.74	0.00	0.74
		Juvenile Prob	0.0558	0.07	0.00	0.07
		Sr Citizen Sv	0.0200	0.02	0.00	0.02
		Jail Operatns	0.0190	0.02	0.00	0.02
		Med Indigent	0.0400	0.05	0.00	0.05
		Co Captl Proj	0.0500	0.06	0.00	0.06
		School Dist.	0.7500	0.90	0.00	0.90
		School Cap Pr	0.7500	0.90	0.00	0.90
		ECVA	0.0392	0.05	0.00	0.05
		State	0.1700	0.20	0.00	0.20
		Hosp Indigent	0.0150	0.02	0.00	0.02
		Youth Service	0.0117	0.01	0.00	0.01
		Museum	0.0189	0.02	0.00	0.02

120

2.5459

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CHANGE OF ADDRESS? PLEASE INDICATE ON REVERSE SIDE OF STUB

4TH  
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August 16, 2010

\$0.00

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SPECIAL LANDS  
 SEC 11 TWP 45N RGE 53E MDB&M

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SPECIAL TAXES ARE IN ADDITION TO YOUR TAX RATE

Real Estate	1,570	County	0.6082	9.55	0.00	9.55
		Juvenile Prob	0.0558	0.88	0.00	0.88
		Sr Citizen Sv	0.0200	0.31	0.00	0.31
		Jail Operatns	0.0190	0.30	0.00	0.30
		Med Indigent	0.0400	0.63	0.00	0.63
		Co Captl Proj	0.0500	0.78	0.00	0.78
		School Dist.	0.7500	11.77	0.00	11.77
		School Cap Pr	0.7500	11.77	0.00	11.77
		ECVA	0.0392	0.62	0.00	0.62
		State	0.1700	2.67	0.00	2.67
		Hosp Indigent	0.0150	0.24	0.00	0.24
		Youth Service	0.0117	0.18	0.00	0.18
		Museum	0.0189	0.30	0.00	0.30

1,570

2.5478

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CHANGE OF ADDRESS? PLEASE INDICATE ON REVERSE SIDE OF STUB

4TH  
 INSTALLMENT

3RD  
 INSTALLMENT

2ND  
 INSTALLMENT

1ST  
 INSTALLMENT

August 16, 2010

\$0.00

\$0.00

\$0.00

\$40.00



005-40A-002

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005-40A-002



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 WHEN PAYING 2ND INSTALLMENT

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SPECIAL LANDS  
 SEC 11 TWP 45N RGE 53E MDB&M

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Real Estate	250	County	0.6063	1.49	0.00	1.49
		Juvenile Prob	0.0558	0.14	0.00	0.14
		Sr Citizen Sv	0.0200	0.05	0.00	0.05
		Jail Operatns	0.0190	0.05	0.00	0.05
		Med Indigent	0.0400	0.10	0.00	0.10
		Co Captl Proj	0.0500	0.13	0.00	0.13
		School Dist.	0.7500	1.88	0.00	1.88
		School Cap Pr	0.7500	1.88	0.00	1.88
		ECVA	0.0392	0.10	0.00	0.10
		State	0.1700	0.43	0.00	0.43
		Hosp Indigent	0.0150	0.04	0.00	0.04
		Youth Service	0.0117	0.03	0.00	0.03
		Museum	0.0189	0.05	0.00	0.05

250 2.5459 6.37 0.00 6.37

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CHANGE OF ADDRESS? PLEASE INDICATE ON REVERSE SIDE OF STUB

4TH INSTALLMENT	3RD INSTALLMENT	2ND INSTALLMENT	1ST INSTALLMENT
			August 16, 2010
\$0.00	\$0.00	\$0.00	\$6.37
005-40A-006	005-40A-006	005-40A-006	005-40A-006

DETACH AND MAIL THIS STUB  
 WHEN PAYING 4TH INSTALLMENT

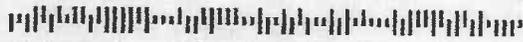
DETACH AND MAIL THIS STUB  
 WHEN PAYING 3RD INSTALLMENT

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Real Estate	940	County	0.6082	5.71	0.00	5.71
		Juvenile Prob	0.0558	0.52	0.00	0.52
		Sr Citizen Sv	0.0200	0.19	0.00	0.19
		Jail Operatns	0.0190	0.18	0.00	0.18
		Med Indigent	0.0400	0.38	0.00	0.38
		Co Captl Proj	0.0500	0.47	0.00	0.47
		School Dist.	0.7500	7.05	0.00	7.05
		School Cap Pr	0.7500	7.05	0.00	7.05
		ECVA	0.0392	0.37	0.00	0.37
		State	0.1700	1.60	0.00	1.60
		Hosp Indigent	0.0150	0.14	0.00	0.14
		Youth Service	0.0117	0.11	0.00	0.11
		Museum	0.0189	0.18	0.00	0.18
	940		2.5478			
				23.95	0.00	23.95

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4TH INSTALLMENT	3RD INSTALLMENT	2ND INSTALLMENT	1ST INSTALLMENT
\$0.00	\$0.00	\$0.00	August 16, 2010
\$23.95			
005-40A-004	005-40A-004	005-40A-004	005-40A-004

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Nevada State Office  
P.O. Box 12000 (1340 Financial Blvd.)  
Reno, Nevada 89520-0006  
<http://www.nv.blm.gov>



In Reply Refer To:  
7250 (NV930)

**AUG 16 2010**

Jason King  
Department of Conservation and Natural Resources  
Division of Water Resources  
901 S. Stewart Street, Suite 2002  
Carson City, NV 89701

Dear Mr. King:

By notice dated May 20, 2010, your office released the Preliminary Determination for the East Fork of the Owyhee River Adjudication. Objections to the preliminary determination are due to the Nevada State Engineer's Office on or by August 18, 2010.

In reviewing the preliminary determination, the Bureau of Land Management (BLM) had some concerns, specifically with the rejection of 47 PWR 107 claims. Please accept the enclosed objections to the preliminary determination.

If you have any questions, please contact Sarah Peterson, NV State Lead for Soil, Water, Air and Riparian Resources, at 775-861-6516.

Sincerely,

Ron Wenker  
State Director, Nevada

Enclosure

cc:  
Elko District Office

RECEIVED  
2010 AUG 17 PM 3:41  
STATE ENGINEER'S OFFICE

**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 the Waters, Both Surface and Underground, Within the Drainage Area of the Owyhee River (Sometimes called the East Fork Owyhee River) and its Tributaries Located Within the East Fork Owyhee River Area, Elko County, Nevada*

**Objections by the United States of America, U.S. Department of the Interior, Bureau of Land Management, to the Preliminary Order of Determination (Preliminary Order) made by the State Engineer.**

Pursuant to NRS 533.145, the United States of America, U.S. Department of the Interior, Bureau of Land Management (BLM), under claim of interest, hereby objects to the Preliminary Order of Determination to the above named waters, filed by Jason King, P.E., State Engineer, on April 29, 2010. Specifically, the United States objects to the following portions of the Preliminary Order of Determination:

**Objections to “VIII. Stock Watering, Domestic and Mining Uses”**

The BLM objects to the failure of the Preliminary Order to include in the individual descriptions of the specific stock watering rights the prescriptions that are generally stated in Section VIII, pages 7-8, of the Preliminary Order. The stock watering rights for claimants with multiple watering sources need to be clarified in the Preliminary Order in order to minimize the opportunity for abuse. The Preliminary Order grants water rights for stock watering using a formula based on the number of head of livestock and states that “the total water consumption under individual claims for watering stock in a range area that contain [sic] multiple water sources is not additive and is limited by the total number of livestock using all water sources located within a specific grazing area.” Preliminary Order at 8 (emphasis added). However, the individual descriptions of water rights do not include a declaration recognizing that the total water consumption for a specific grazing area is “additive” from “all water sources” and is limited by the total number of livestock using all water sources located within a specific grazing area. This limit regarding total water consumption is critical and must be included in the individual water right descriptions to assure that the claimant cannot exhaust a single water source with the cumulative claim, either with specific narrative or by specific reference to Section VIII of the Preliminary Order.

**Objections to “X. Water Right Proofs of Appropriation determined to be Valid”**

The BLM objects to vested claims for stock watering on public lands asserted by a private individual, company or other entity, to the extent that insufficient proof has been provided to justify the priority date of, or quantity of water for, such claims found to be valid in the Preliminary Order. In addition, the BLM adopts the objections by the Bureau of Indian Affairs as to such vested stock watering claims that were found to be valid in the Preliminary Order.

**Objections to “XV. Applications to Appropriate the Public Waters Denied in this Proceeding”**

**“Federal Claims**

**United States Department of the Interior, Bureau of Land Management Claims for Public Water Reserves Pursuant to Executive Order Dated April 17, 1926.”**

The BLM objects to the rejection of all of the PWR 107 claims, including Claim Nos. R-05347, R-05348, R-05349, R-05350, R-05351, R-05352, R-05353, R-05354, R-05355, R-05356, R-05357, R-05358, R-05359, R-05360, R-05361, R-05362, R-05363, R-05388, R-05389, R-05390, R-05391, R-05392, R-05393, R-05394, R-05395, R-05396, R-05397, R-05398, R-05399, R-05400, R-05401, R-05402, R-05403, R-05404, R-05405, R-05406, R-05407, R-05408, R-05409, R-05410, R-05411, R-05412, R-07989, R-07990, R-08014, R-08015, and R-08016. The Preliminary Order states that these claims for PWR 107 were rejected because “the State Engineer finds that no evidence exists that proves the importance and necessity of the [listed] PWR 107 claims. No proof of land withdrawals for public water reserves exist that would support any of these claims.” Preliminary Order at 63. BLM will address each of the bases for rejection of these claims below, demonstrating why the State Engineer is in error and that each of these claims should be found to be valid.

A. PWR 107 withdrawals not identified on BLM land status maps

There is no requirement for any PWR 107 to be identified on the BLM land status maps or otherwise. BLM, and the Department of the Interior, have consistently determined that a PWR 107 is valid as of the date of the Executive Order on April 26, 1926, the date of the withdrawal, and that no further action on its behalf is necessary to document the withdrawal. This was reaffirmed by the Interior Board of Land Appeals in 1976, *Robert L. Berry*, 25 IBLA 287, June 28, 1976, after the U.S. District Court decision in *Hyrup v. Kleppe*, cited by in the Preliminary Order. IBLA determined that there is no requirement to note a PWR 107 on the land office records as the PWR 107 is a matter of public record based on the Executive Order, citing to Circular 1066 and subsequent regulations and noting the contrary discussion by the Court. *See* 51 I.D. 457, May 26, 1926. Circular 1066 required any filing for homestead or other entry on the public lands to provide by affidavit that no spring or water hole exists. It did not require BLM to document every spring or water hole, as these were all withdrawn upon issuance of the Executive Order in 1926, assuming that the spring or water hole otherwise qualified under the Executive Order. In sum, all springs or water holes, needed or used by the public for watering purposes, were withdrawn as of April 26, 1926. The Executive Order was “sweeping” and “broad” and was “effective in all instances whenever it appeared that the land involved was public at the date of the order, contains water holes or other bodies of water needed or used by the public for watering purposes, and which water had not been appropriated and pursuant to the appropriation put to a beneficial use at the date of the order.” *The State of the Law: Public Water Reserves: the Metamorphosis of a Public Land Policy*, 21 J. Land Resources & Environmental L. 67, pages 111-112, 2001 (citing GLO letter dated February 7, 1928). In the past, the State Engineer has accepted notice of the PWR 107 claims as adequate for his records. In addition, in Ruling No. 5729, the most recent ruling in which the State Engineer discussed PWR 107 claims in the context

of a water rights protest, the State Engineer held that “It is not necessary that the source has been identified or designated by an official finding to accomplish the withdrawal.” Ruling 5729, page 18, April 27, 2007. *See also, United States v. Idaho*, 959 P.2d 449 (1996) and Memorandum of Decision and Order on Challenge (Scope of PWR 107 Reserved Rights), Case No. 39576, Fifth Judicial District, Idaho (2001). Thus, there is no support for the rejection of the PWR 107 claims based on the lack of notation on land status maps or similar notice. For each of the PWR 107 claims in this adjudication, the BLM maps designate that the land reserved supporting each PWR 107 is open and vacant public land.

## B. Other “Guidelines” adopted by the State Engineer

The State Engineer did not provide any details as to the basis for the rejection of each PWR 107 claim, only the general statement noted above. The State Engineer merely stated that “no evidence exists that proves the importance and necessity of the [listed] PWR 107 claims.” Preliminary Order at 63. In past rulings, the State Engineer has stated various guidelines that he follows in determining, in his opinion, whether a PWR 107 claim is valid. *See, e.g. Ruling 5729, pages 18-19.* BLM has objected to certain of these guidelines in the past. It appears that while the State Engineer has not identified “guidelines” per se in the Preliminary Order, he appears to be relying on many of the same reasons previously identified by the State Engineer. BLM comments on these below and objects to the State Engineer’s rejection of the above PWR 107 claims to the extent the State Engineer relied on these grounds.

### 1. Existence of spring prior to 1926

The State Engineer has maintained in the past that there can be no PWR where the spring or waterhole did not exist prior to 1926, the date of the reservation that established the PWRs. It is unclear whether the State Engineer continues to maintain this view. While the United States disputes this guideline, it is not relevant to this adjudication as there has been no claim by BLM for a PWR that “came into existence” after 1926. Even so, this guideline is flawed. It is possible that a spring or waterhole could exist at a particular location in 1926, but by natural events the location or other aspect of the spring or waterhole could shift. The United States should not lose its PWR water right under such circumstances. Thus, there is no basis for this limiting guideline and it should be rejected.

### 2. Artificially developed springs

While the United States agrees in general that PWRs should be “naturally” occurring, there is no basis for rejecting a PWR that has been artificially developed. Again, this guideline is not relevant to the PWR claims filed by BLM in this adjudication as BLM did not base any of its PWR claims on an artificially developed spring or waterhole. Thus, this guideline should not be included in any Final Order of Determination or any final decree in this matter. If, however, the State Engineer

determines that this guideline is relevant, the United States maintains its objections to it.

As a general matter, there is nothing in the statute, Executive Order, regulations or case law that supports the State Engineer's position that a PWR cannot be artificially developed. The legislative history does not support the State Engineer's view. The purpose of PWR was to prevent the available supply of water in a given area from being controlled by only a few. For example, it is not unreasonable to assume that if a "seep or wet spot" was the only water available in a given area, that it could be developed into a useable supply of water and qualify as a PWR. Additionally, if a "seep or wet spot" existing as such today could be "artificially" developed to provide additional water, that alone would not preclude it from being a PWR. Thus, there is no basis for this limiting guideline and it should be rejected.

3. One spring or waterhole per 40-acre tract

The State Engineer maintains that there can only be one spring or waterhole withdrawn per 40 acre subdivision. The State Engineer does not provide any support for this assertion. There is no such limitation. The establishing statute and executive order for PWRs refer to "important waterholes, springs and other bodies of water that are necessary for large surrounding tracts of country." This language does not limit those sources to only one per 40 acre subdivision. That Order states as follows:

Every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or waterhole and all land within one quarter of a mile of every spring or waterhole, located on unsurveyed public land, be and the same is hereby withdrawn from settlement, location, sale or entry, and reserved for public use in accordance with the provisions of Section 10 of the Act of December 29, 1916.

Public Water Reserve No. 107, 43 C.F.R. 292.1 (1938), reprinted in 29 F.R. 4302 (March 31, 1964). The language of the Executive Order does not limit the number of springs or waterholes in the "smallest legal subdivision" (i.e., 40 acre tract) to one. It merely reserves every 40 acre tract that contains a spring or waterhole without specifying whether it is limited to only one. This Executive Order reserved federal water rights sufficient to fulfill the primary purposes of the reservation. In many instances, more than one spring or waterhole per 40 acre subdivision may be needed to fulfill these primary purposes. Thus, there is no basis for this limiting guideline and it should be rejected.

It should also be noted that a federal reserved water right considers future uses as well as past or current uses of water. Thus, whether only one spring may have satisfied the purposes of the reservation in the past, more than one spring or waterhole may be required to meet the purposes of the reservation in the future. See Arizona v. California, 373 U.S. 546, 600- 601 (1963).

In any event, for each of the PWR 107 claims in this adjudication, no more than one spring is claimed in each 40 acre tract or closer than one-quarter of a mile apart. Thus, there is no basis to reject any of these PWR 107 claims for this reason.

#### 4. Sufficient Quality

The State Engineer also asserts that a PWR must be of sufficient quality to be fit for human and animal consumption. Again, this guideline, to the extent relied upon, is not relevant to this adjudication. All of the PWRs claimed by BLM are of sufficient quality to be fit for use by either or both humans or animals. Additionally, as discussed above, PWRs are for future purposes as well as those in the past. It may be necessary to treat water of less than desirable quality to fulfill the purposes of the PWRs. Simply because this was not done in the past, does not preclude it in the future. This guideline should be rejected.

#### 5. Free Flowing or Wet Spot

The State Engineer also has asserted in the past that a seep or wet spot cannot qualify as a PWR because the original settlers used a canteen or dipper to get water. The Preliminary Order makes reference to wet areas and filling a canteen. It appears that the State Engineer is still maintaining these guidelines for PWR 107 claims. BLM objects to this guideline, as a seep or wet spot may properly qualify as a PWR 107. It is certainly not impossible to imagine a settler improving on a water source to make it easier to obtain water. Additionally, animals could presumably get water from seeps or wet spots at various times and certainly did not depend on the use of a canteen or dipper. Also, as stated above, the purposes of PWRs are those in the future as well as the past. A seep or wet spot may fulfill a future use of a PWR even if it did not do so in the past. If a discharge measurement can be taken, then the spring qualifies as free flowing. Each of the PWR 107 claims in this adjudication is free flowing as a discharge measurement was taken. Thus, there is no basis for this limiting guideline and it should be rejected.

#### 6. Purpose of PWR

The State Engineer refers to the purpose of the withdrawal. In fact, withdrawal supporting the PWR 107 is based on the purposes of the withdrawal, not merely one purpose. When the federal government withdraws land from the public domain and reserves it for a federal purpose the government by implication also reserves appurtenant water then unappropriated to the extent needed to accomplish the purposes of the reservation. *Cappaert v. United States*, 426 U.S. 128, 138 (1976). For PWR 107, the purposes are human and animal consumption and general watering purposes for the public. Animal consumption is not limited to livestock and may include other animals such as wild horses and burros; wildlife is included as an incidental use. Thus, there is no basis for this limiting guideline and it should be rejected.

#### 7. Tributary to stream

BLM does not agree that a spring does not qualify as a PWR 107 if it is tributary to a stream as stated by the State Engineer that springs alongside and tributary to perennial streams do not qualify as a PWR 107 source. This determination is contrary to earlier State Engineer rulings prior to 1999 and to the holding by the Colorado Supreme Court in *United States v. City and County of Denver*, 656 P.2d 1, 32-33 (1982). Whether or not a spring is tributary to a perennial stream is not a qualification for determining the existence of a PWR. This is not mentioned in the Executive Order or other documents interpreting the basis for PWR 107. Even assuming that this may be a valid basis for determining whether a particular spring qualifies as a PWR 107, that determination must be made on a case-by-case basis on the particular circumstances of each spring. There is no justification for this as a general rule to invalidate a PWR 107 claim. Thus, there is no basis for this limiting guideline and it should be rejected.

#### 8. Quantity

The State Engineer also states in the Preliminary Order that to qualify as a PWR 107, the spring source must be capable of producing at least 2.0 acre-feet annually. The State Engineer also states that the purposes, and thus, the quantity is limited to that amount necessary for the “public to go to these sources to get a drink or fill his canteen, for his horse or pack string to get a drink” and this “would consume a very small quantity of water, and as would stock roaming over a large area of land.” Preliminary Order at 63. The purposes of the PWR 107 are for human and animal consumption which includes general watering purposes for the public, livestock and other animals as noted above. The quantity to fulfill those purposes is to be determined on a case-by-case basis depending on the area in which the spring occurs and the specific purposes, both past and future, that the spring will serve to meet those purposes. To the extent a minimum quantity applies, it would also be determined on a case-by-case basis based on that amount needed for use by one family and its domestic livestock in the area in which the spring occurs. Each of the PWR 107 claims in this adjudication is for flow that is necessary to meet the purposes of the reservation and there is no basis to reject any of these claims on that basis. Thus, there is no basis for this limiting guideline and it should be rejected.

#### C. Conclusion

For all of the above stated reasons, the purported PWR 107 guidelines in the Preliminary Order should be rejected and the all of the PWR 107 claims should be determined to be valid.

The BLM reserves the right to make additional objections as appropriate.

Wherefore, claimant, Bureau of Land Management, requests that the proposed determination of water rights of the East Fork of the Owyhee River, Elko County, Nevada, be amended to conform to the above objections and that each PWR 107 claim is determined to be valid.

Pursuant to 28 U.S.C. 1746 I declare under penalty of perjury that the foregoing is true and correct. Executed this 16 date of August, 2010.

A handwritten signature in cursive script, appearing to read "Ron Wenker", is written above a horizontal line.

Ron Wenker  
State Director, Nevada