STATE OF NEVADA

OFFICE OF THE STATE ENGINEER

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HORSE SPRINGS

ADJUDICATION

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IN THE MATTER OF THE DETERMINATION

OF THE RELATIVE RIGHTS IN AND TO THE

WATERS OF HORSE SPRINGS

WASHOE COUNTY, NEVADA

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ORDER OF DETERMINATION

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WILLIAM J. NEWMAN

State Engineer

Carson City, Nevada

C O N T E N T S

CERTIFICATION OF THE STATE ENGINEER

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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 USE)
OF THE WATERS OF HORSE SPRINGS IN)
WASHOE COUNTY, NEVADA.)

I. GENERAL

On February 18, 1972, a petition was filed by M. S. Land and Livestock with the State Engineer requesting the determination of the relative rights of the users in and to the use of the water of Horse Springs in Washoe County, Nevada.

Representatives of the State Engineer made a field investigation of Horse Springs on July 2, 1972. The investigation showed that at that time the waters of Horse Springs were being used beneficially for stock watering purposes. The spring flow was measured and found to be 0.00535 c.f.s. (2.4 g.p.m.).

On July 7, 1972, the State Engineer entered an Order granting the petition and made arrangements to proceed with the determination of the relative rights of the water users of Horse Springs in accordance with Nevada Revised Statutes 533.090.

II. SOURCE

Horse Springs, also known as Horse Spring, is located within the NE¼ SE¼ Section 32, T.25N., R.20E., M.D.B. & M., and in this Order both singular and plural refer to the same source. Horse Spring is located at an elevation of about 7,720 feet above mean sea level on the west slopes of the Virginia Mountains in Washoe County, Nevada, about one mile northwest of Tule Peak. The spring has been excavated and a discharge pipe from the spring leads to a stock watering trough a few feet away.

There are no other springs within one mile of Horse Springs, according to United States Geological Survey topographic maps and maps of the Planning Survey Division of the Nevada Department of Highways.

III. CLAIMANTS

Proof of Appropriation 02731 was filed February 18, 1972, by M. S. Land and

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Livestock claiming vested rights to water for stock watering purposes from Horse Springs. Amended Proof 02731 was filed on September 24, 1973, by Robert W. Marshall and Nanette Marshall, and Robert Dickenson and Dorothy Dickenson, dba Intermountain Land Co., successors in interest to M. S. Land and Livestock. Maps in support of Proof 02731 or Amended Proof 02731 have not been submitted to this office.

Proof of Appropriation 02829 was filed on February 2, 1973, by W. Dalton LaRue, Sr., and Juanita S. LaRue, dba Winnemucca Ranch, claiming vested rights to water for stock watering purposes from Horse Springs. A map in support of Proof 02829 was filed on April 26, 1973.

IV. PRELIMINARY ORDER OF DETERMINATION

A Preliminary Order of Determination was prepared by the State Engineer and filed in his office on October 12, 1977, in accordance with Nevada Revised Statutes 533.140.

In the Preliminary Order of Determination, a vested right was determined to have been established by the predecessors in interest of W. Dalton LaRue, Sr., and Juanita S. LaRue, dba Winnemucca Ranch, in the amount of 0.00156 c.f.s. of water, or sufficient to water 50 head of cattle from Horse Springs, from March 15th through December 15th of each year, under Proof 02829.

In the Preliminary Order of Determination, it was determined that a vested right in and to the water of Horse Springs had not been established by Robert W. Marshall, et al, under Proof 02731 or Amended Proof 02731.

On December 28, 1977, an objection to the State Engineer's Preliminary Order of Determination was filed in the name of Intermountain Land Co., by Robert W. Marshall, partner, in accordance with Nevada Revised Statutes 533.145. The objection is here quoted in full:

> "ROBERT W. MARSHALL, being first duly sworn, deposes and says that he is one of the claimants under Proof No. 02731 and Amended Proof No. 02731, involving the waters of Horse Springs, Washoe County, Nevada, and makes these objections pursuant to NRS 533.145.

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"Affiant states that he objects to the Preliminary Order of Determination of the State Engineer, proposing to adjudicate a vested right in and to Horse Springs to the claimants under Proof No. 02829, and failing to adjudicate a vested right to the claimants under Proof No. 02731 and Amended Proof No. 02731.

"Affiant further objects to the failure of the State Engineer to find use of said Horse Springs by Affiant's predecessors in interest during the period of gaining a vested right and the failure of the State Engineer to give weight to the evidence submitted by affiant's predecessors in interest.

Dated this 27th Day of December, 1977.

INTERMOUNTAIN LAND CO.

By/s/ Robert W. Marshall

Robert W. Marshall, Partner"

A hearing on the objections to the State Engineer's Preliminary Order of Determination was held on March 1, 1978, in accordance with Nevada Revised Statutes 533.150. The hearing was not completed on March 1, 1978; and the hearing was continued to March 31, 1978, and concluded on that date.

V. DISCUSSION

A review has been made by the State Engineer of all the evidence and information submitted by M. S. Land and Livestock (predecessors of Robert W. Marshall, et al); Robert W. Marshall, et al; and W. Dalton LaRue, Sr., and Juanita S. LaRue, dba Winnemucca Ranch; and of the testimony and evidence presented at the hearings on objections to the Preliminary Order of Determination.

Horse Spring is located on private deeded land which is now part of the Winnemucca Ranch. The Pyramid Land and Stock Company owned and operated the entire area including those ranches now known as the Winnemucca, Olds, Hardscrabble, and Milk Ranches from about 1900 until April 11, 1922, when a petition in involuntary bankruptcy was filed. On September 19, 1922, Thomas A. Gianella, trustee in bankruptcy, transferred the property to Sierra Nevada Livestock Company.

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The two ranches of the Pyramid Land and Stock Company's original holdings that pertain to this adjudication are those known as the Winnemucca Ranch and the Piute Canyon portion of the Hardscrabble Ranch. Evidence filed in the State Engineer's Office indicates that W. Dalton LaRue, Sr., and Juanita S. LaRue acquired title on December 15, 1966, to the Winnemucca, Olds, and Milk Ranches and the deeded land on which Horse Springs is located.

The Settlemeyer Ranch, now belonging to Robert W. Marshall, et al, is the only other ranch in the area pertaining to this adjudication. However, it was not a part of the Pyramid Land and Livestock Company's holdings.

There were no individual grazing allotments among the various ranches before passage of the Taylor Grazing Act in 1934. The applications for grazing allotments in this area were filed on March 19, 1935, and October 16, 1935, for the Winnemucca Ranch, now owned by LaRue; on October 16, 1935, by E. A. Settlemeyer (now Robert W. Marshall, et al) for the Settlemeyer Ranch; and by Neill H. West on April 5, 1935, for the Hardscrabble Ranch. Horse Spring was included within the grazing allotment application for the Winnemucca Ranch. It was not included within the grazing allotment applications of the Settlemeyer and Hardscrabble Ranches.

However, when the grazing allotment applications were made, there were no fences dividing the range among the ranches or individual allotments, to prevent the drift of cattle across allotment boundaries. A limited amount of drift across allotment boundaries by stock was accepted without penalty for trespass, thus allowing drifting cattle from the Settlemeyer Ranch and the Hardscrabble Ranch access to Horse Spring. In 1958, construction of a range fence was completed dividing the range between the Winnemucca Ranch, then owned by the Horseshoe Cattle Co., on the one side, and the Settlemeyer and Piute Ranches, then owned by M. S. Land and Livestock (Matley), on the other side. The fence traversed the NE¼ SE¼ Section 32 now belonging to LaRue on which Horse Spring is located.

An affidavit sworn to on August 3, 1973, by Jeanne Hill, wife of Elmor Hill,

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deceased, co-owner and operator of Horseshoe Cattle Company, a predecessor of LaRue, states; "Horse Springs was split by the Matleys taking all of the overflow from a six-barrel trough, placing a pipeline underground, and putting the overflow into two troughs with a capacity of, I would say approximately twenty barrels."

An affidavit sworn to by Edwin Ferris, dated June 9, 1972, states that he, Ferris, was foreman for the Matleys at the time the division fence was built, and that he was foreman for Horseshoe Cattle Co. after the death of Elmor Hill who owned the Horseshoe Cattle Co. Mr. Ferris states that the waters of Horse Springs were split so both parties could have water range service. Mr. Ferris also states that: "the fence, the water line, and the tanks were also placed where Mr. Elmor Hill approved them, and they were most satisfactory to both parties."

Testimony of Bill R. Stewart, given at the Hearing of Objections to the Preliminary Order of Determination on March 31, 1978, confirms that he was foreman of the Horseshoe Cattle Co. at the time the fence was built between the Winnemucca Ranch and the Piute Ranch range allotments. In his testimony, Mr. Stewart said that Elmor Hill and Marshall Matley "flagged" or staked out the location of the fence and that he assisted the Bureau of Land Management in clearing the fence line. In his testimony, Mr. Stewart said, "When the fence was built, we agreed to split the water up at Horse Springs. They (referring to the Piute Ranch) took the overflow and it went underneath the fence onto watering troughs on their side."

Testimony of W. Dalton LaRue, Sr., at the Hearing of Objections to the Preliminary Order of Determination, held March 1, 1978, confirms that at the time he acquired the Winnemucca Ranch, there were stock watering troughs on both sides of the fence at Horse Springs.

The evidence and testimony indicate that Horse Springs has historically been continuously used in common by cattle belonging to the various ranch units, including the Winnemucca, Piute, and Settlemeyer Ranches.

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VI. RIGHTS OF CLAIMANTS

After consideration of the above evidence and all of the other evidence and documents submitted and the testimony and evidence presented at the Hearing on the Preliminary Order of Determination, the Objection of Robert W. Marshall, et al, dba Intermountain Land Co., is sustained; and in this Order vested rights to the waters of Horse Springs have been granted to the Winnemucca Ranch (Proof 02829) and to the Settlemeyer and/or Piute Canyon Ranches (Amended Proof 02731).

The application for a grazing permit for the Winnemucca Ranch filed on March 19, 1935, by J. B. and Anna M. Matley lists 50 head of cattle as being watered at Horse Spring and this Order grants vested rights for sufficient water (0.00156 c.f.s.) to water that number of cattle at the spring under Proof of Appropriation No. 02829.

Marshall Matley in his testimony at the Hearing on Objections to the Preliminary Order of Determination stated that about 50 or 60 head of Neill West cattle used Horse Spring in common with the Matley's at the time they owned the Winnemucca Ranch. The application for a grazing permit for the Settlemeyer Ranch filed on October 16, 1935, by E. A. Settlemeyer lists 50 head of cattle grazing on the Settlemeyer allotment which is near Horse Spring. This Order grants vested rights for sufficient water (0.00156 c.f.s.) to water 50 head of cattle from Horse Spring under Amended Proof of Appropriation No. 02731.

VII. PERIOD OF USE

Water for stock watering is allowed to be used from Horse Springs from March 15th to December 15th of each year.

VIII. DUTY OF WATER

The seasonal duty of water from Horse Springs for stock watering purposes is herein fixed at:

0.00003125 c.f.s. per head of cattle.

IX. CHANGE OF PLACE OR MANNER OF USE

All water allotted under this Order shall be appurtenant to the place of use designated herein. Any water user desiring to change the manner of use or

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place of use of the waters allotted herein, must make application to the State Engineer for permission to make the change pursuant to Nevada Revised Statutes 533.345.

X. RIGHTS OF APPROPRIATION

The following tabulation lists the rights as determined by this order:

PROOF NO:	Amended 02731
CLAIMANT:	Robert W. Marshall and Nanette Marshall, Robert Dickenson and Dorothy Dickenson, dba Intermountain Land Co.
SOURCE:	Horse Springs
USE:	Stock Watering
MEANS OF DIVERSION:	Collection Box, Pipeline, and Troughs
*POINT OF DIVERSION:	NE¼ SE¼ Section 32, T.25N., R.20E., M.D.B. & M., or at a point from which the NE corner of Section 28, T.25N., R.20E., M.D.B. & M., bears N. 35° 23' E., a distance of 10,713 feet.
PERIOD OF USE:	March 15th through December 15th of each year.
PRIORITY:	1860
AMOUNT OF APPROPRIATION:	0.00156 c.f.s. or sufficient to water 50 head of cattle.
DESCRIPTION OF WORKS OF DIVERSION, MANNER, AND PLACE OF USE:	A pipe conveys water from a collection box at the spring, under the range fence, to two troughs located in the SE¼ SE¼ Section 32, T.25N., R.20E., M.D.B. & M., where cattle are watered.

*A map in support of Amended Proof of Appropriation No. 02731 has not been received. The Point of Diversion in this Order has been determined to be the same as described under Proof of Appropriation 02829.

PROOF NO:	02829
CLAIMANT:	W. Dalton LaRue, Sr., and Juanita S. LaRue, dba Winnemucca Ranch.
SOURCE:	Horse Springs
USE:	Stock Watering
MEANS OF DIVERSION:	Collection Box, Pipeline, and Trough
POINT OF DIVERSION:	NE¼ SE¼ Section 32, T.25N., R.20E., M.D.B. & M., or at a point from which the NE corner of Section 28, T.25N., R.20E., M.D.B. & M., bears N. 35° 23' E., a distance of 10,713 feet.

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PERIOD OF USE: March 15th through December 15th of each year.

PRIORITY: 1860

AMOUNT OF APPROPRIATION: 0.00156 c.f.s. or sufficient to water 50 head of cattle.

DESCRIPTION OF WORKS OF DIVERSION, MANNER, AND PLACE OF USE:
A pipe conveys water from a collection box at the spring to a nearby trough where cattle are watered in the same subdivision as the point of diversion.

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