

**IN THE FIFTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE**

**FINDINGS OF FACT, CONCLUSION OF LAW, JUDGEMENT  
AND  
DECREE**

**IN THE MATTER OF THE DETERMINATION OF THE RELATIVE  
RIGHTS IN AND TO WATERS OF MONITOR VALLEY  
SOUTHERN PART (140-B), NYE COUNTY, NEVADA**

**JOHN P. DAVIS  
DISTRICT JUDGE**

**JUNE 25, 2003**



IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

FILED

2003 JUN 25 P 1:57

IN THE MATTER OF THE DETERMINATION OF)  
THE RELATIVE RIGHTS IN AND TO WATERS )  
OF MONITOR VALLEY – SOUTHERN PART )  
(140-B), NYE COUNTY, NEVADA )

  
NYE COUNTY CLERK  
BY DEPUTY

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGEMENT AND  
DECREE**

FINDINGS OF FACT

(A) On October 15, 1981, a petition was filed in the office of the State Engineer by E. Wayne Hage requesting a determination of the relative rights of the claimants to the waters of Meadow Creek, Corcoran Creek, Andrew's Creek, Pine Creek, Pasco Creek, Mosquito Creek, Barley Creek, and their tributaries, as well as all other waters flowing into or arising in Monitor Valley south of Township 13 North, Nye County, Nevada.

(B) On February 26, 1982, the State Engineer sent a notice by certified mail to persons identified as owning land within the subject area stating that a petition had been filed requesting an adjudication of the streams in Monitor Valley by persons claiming rights to use the water. The notice set forth that a field investigation would be held to determine if the petition for adjudication was justified.

(C) As a result of a field investigation by the State Engineer on March 19, 1982, it was found that the facts and conditions justified such a determination and on June 15, 1982, the State Engineer issued Order No. 789 granting the petition and thereafter proceeded with the determination of the relative rights of the water users in accordance with NRS 533.090.

(D) On June 15, 1982, the State Engineer issued an Order initiating the proceedings for the determination of the relative rights in and to all the waters in Monitor Valley – Southern Part, Nye County, Nevada.

(E) The State Engineer prepared notice of Order No. 788, setting forth the requirement that all those making claims to the rights and to the waters of Monitor Valley, Nye County, Nevada, were required to make proof of their claims.

**RECEIVED**

JUL - 9 2003

Attorney General CC  
Civil - CNR

(F) The notice was published in the Tonopah Times – Bonanza & Goldfield News on June 24, July 1, 8, 15, and 22, 1982, a newspaper of general circulation within the boundaries of the hydrographic basin.

(G) On September 20, 1982, the State Engineer issued Order No. 791, establishing September 20, 1982, as the date the State Engineer would commence taking proofs of claims of the various rights in and to the waters of Monitor Valley – Southern Part, and established September 23, 1983, as the final date for taking proofs in the office of the State Engineer. The notice was published on August 12, 19, 26, and September 2, and 9, 1982, in the Tonopah Times – Bonanza & Goldfield News, a newspaper of general circulation within the boundaries of the hydrographic basin.

(H) On August 5, 1982, the State Engineer sent by certified mail to each potential claimant that could be reasonably ascertained, a notice equivalent to the published notice setting forth the date the State Engineer would commence taking proofs of claims as to the rights in and to the waters of Monitor Valley – Southern Part and set forth the final date for filing proofs in the office of the State Engineer.

(I) On September 23, 1983, the State Engineer sent by certified mail to each potential claimant that could be reasonably ascertained a notice extending the final date for filing proofs in the office of the State Engineer to September 25, 1984. On February 9, 1990, the State Engineer issued Order No. 1020, based on a request by the United States Department of Agriculture – Forest Service, Toiyabe National Forest<sup>1</sup>, re-opening the period for filing proofs of claims as to the rights in and to the waters of Monitor Valley. On the same date the State Engineer sent by certified mail a copy of the order re-opening the period for the filing of all documents in the subject adjudication in the office of the State Engineer through February 28, 1991. On February 12, 1991, the State Engineer granted a further extension of time until February 28, 1992, for the filing of all documents in the subject adjudication. On February 9, 1993, the State Engineer granted an additional extension of time for the filing of all document in the subject adjudication until February 28, 1994. The State Engineer received and filed in the records of the Division of Water Resources, maps,

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<sup>1</sup> In 1989, Public Law 101-195 created the Alta Toquima and the Table Mountain Wilderness areas and said law directed the U.S. to participate and assert any wilderness claims to water in adjudication of water rights.

statements of claims and supporting documents as to the claims of use of water from said stream systems required under provisions of NRS 533.

(J) Field investigations of the hydrographic system, ditches diverting water, and lands irrigated there from were conducted on November 30, and December 1 through 2, 1993, September 13 through 15, 1994, June 12 through 16, 1995, and November 6 through 8, 1995. The field investigator's observations and measurements were reduced to reports of field investigations. Surveys and their corresponding maps were caused to be executed and submitted for filing by the claimant in the Office of the State Engineer.

(K) The Preliminary Order of Determination and the Abstract of Claims and the notice of Order fixing and setting the time and place of inspection of said documents, as required by NRS § 533.140, were prepared and sent by certified mailed to all interested parties on February 15, 1996. On February 22, 1996, an amended Preliminary Order of Determination was issued and sent by certified mail to all claimants on March 4, 1996.

(L) The minimum 20 day inspection period required by NRS § 533.140 was held April 1, 1996 through April 30, 1996, at the office of the State Engineer in Carson City, Nevada.

(M) Objections to the Preliminary Order of Determination were filed by various parties in a timely manner.

(N) Pre-hearing briefing took place during June and July 1996, and a Pre-hearing Conference was held on August 13, 1996.

(O) After all parties of interest were properly noticed, a public administrative hearing on the objections to the Preliminary Order of Determination was held before the State Engineer on January 7 through 9, 1997, and March 17 through 21, 1997.

(P) After consideration of all the evidence and testimony received at the hearing on the objections to the Preliminary Order of Determination, the State Engineer issued his Order of Determination on September 15, 1998.

(Q) On September 18, 1998, a certified copy of the State Engineer's Order of Determination was filed with this Court in the above titled matter, along with the original evidence and testimony taken before the State Engineer during the

administrative phase of this proceeding. Also, on September 18, 1998, the Court issued its Order Setting Time for Hearing and further ordered that all parties aggrieved or dissatisfied with said Order of Determination of the State Engineer shall file with the Clerk of the Court, notice of exceptions to the State Engineer's Order of Determination on or before April 19, 1999. The hearing was set to commence on May 3, 1999.

(R) Pursuant to NRS 533.170, the following parties filed exceptions to the State Engineer's Order of Determination:

(1) Claimants HRH Nevada Resources, Ltd. (HRH) filed a notice of exception on March 24, 1999, for the correction of the owner of record to Proofs of Appropriation V-04463 and V-05738. The objection to Proofs of Appropriation V-04463 and V-05738 claimed the State Engineer's interpretation of ownership was a "potentially misleading oversimplification" by stating that E. Wayne Hage and Jean N. Hage owned Proof of Appropriation V-04463 jointly with HRH. HRH felt that this interpretation would imply that they were party to the Hage's lawsuit against the Federal government in which Hage alleged the United States violated the U.S. Constitution by taking his property rights. HRH also objected to the State Engineer's inclusion of M.C. and Grace Winfield as owning a portion of Proof of Appropriation V-05738. HRH claim that the Winfield's have not owned any portion of V-05738 for over 50 years, and that the Hages had provided that information to the State Engineer.

(2) Claimants and objectors E. Wayne Hage and the Estate of Jean N. Hage filed with the Court a notice of exception to the Order of Determination on April 15, 1999. The Hages took exception to the following findings of the State Engineer:

(a) The award of domestic and stockwater rights to the United States Forest Service for its Meadow Canyon Creek administrative site as claimed under Proofs of Appropriation R-04176, R-04177, R-04178 and R-04179. The basis of this Hage exception was that there is allegedly no statutory authority, which entitles the United State Forest Service to obtain reserved water rights for administrative sites.

(b) The award of reserved water rights pursuant to Proofs of Appropriation R-04175, R-04180 and R-04181 for the Barley Creek and Scuffe's administrative sites. The basis of this Hage exception was that there is allegedly no statutory authority, which entitles the United State Forest Service to obtain reserved water rights for administrative sites.

(c) The award of reserved water rights to the United State Forest Service Proofs of Appropriation R-07220 and R-07221 for the Alta Toquima and Table Mountain Wilderness areas, on the grounds that there was allegedly no inappropriate water when the Nevada Wilderness Protection Act was enacted in 1989.

(d) The award of the stockwater rights associated with Proof of Appropriation V-05738 to HRH Nevada Resource, Ltd. associated with the 40 acre Warm Springs parcel.

(3) The United States filed a notice of exception to the Order of Determination on April 16, 1999. The United States took exception to the following findings and conclusions of the State Engineer.

(a) The rejection of implied reserved water rights for instream flows under the Organic Administration Act of 1897.

(b) The rejection of public water reserve claims allegedly created pursuant to Executive Order No. 107, dated April 17, 1926.

(c) The award of private rights on public lands. On this issue, the United States alleged the State Engineer erred in the awarding of stockwater rights to a private person on federal lands rather than to the United States. The United States alleged the State Engineer erred in finding a private claimant provided sufficient evidence of use and title to be award stockwater rights. The United State alleged the State Engineer erred by excluding from evidence an exhibit prepared for the United States and by the limiting of testimony by a witness for the United States. The United States alleged the State Engineer erred in awarding irrigation rights to a private person for the irrigation of federal lands, and that the State Engineer erred in the quantifying the historic irrigated acreage on federal lands. The United States alleged the

State Engineer erred in the awarding private water rights for sheep grazing because, according to the United States, there was no basis for the granting of such a right since sheep grazing had not occurred for many decades and thus could not be claimed as a beneficial use. Finally, the United States alleged the State Engineer erred in his determination of the number of animals and period of use for stockwatering grazing because, according to the United States, the State Engineer should have limited the claim to the terms of the current grazing permit, not the historic practices.

(d) The award of water rights under Proofs of Appropriation V01091, V-01183, V-01184, V-01185, V-01186, V-02355, V-02357, V-02359, V-04174, V-04463, V-04465, V-04466, V-05532, V-05694, V-05695, V-05696, V-05697, V-05698, V-05738, V-05739, V-05740, V-05741, V-05742, V05743, V-05744, V-05745, V-05746, V-07044 and Permits/Certificates 767/360, 2213/414, 2244/436, 3361/2606, 3362/2556, 3406/742, 4784/1212, 4785/1213, 26756/10862 and 26757/10863, based on the exceptions set forth above.

(e) The rejection of the United State's claim to vested water rights for stockwatering purposes.

(f) The rejection of the United States' Proofs of Appropriation and claims to Reserved water rights V -03255, V -03256, V -03257, V -03258, V-03259, V-03312, V-03313, V-03745, V-03746, V-03747, V03748, V-03749, V-03750, V-03751, V-03752, V-03753, V-03754, V-03755, V-03756, V-03757, V-03758, V-03772, V-03774, V03775, V-03777, V-03778, V-03779, V-03780, V-03781, V-03782, V-03783, V-03784, V-03786, V-03787, V-03789, V-03790, V-03792, V03793, V-03794, V-03795, V-03796, V-03797, V-03799, V-03800, V-03801, V-03802, V-03804, V-03805, V-03807, V-03808, V-03809, V-03810, V-03811, V-03812, V-03813, V-03815, V-03816, V-03820, V-03821, V-03822, V-03824, V-03825, V-03826, V-03827, V-03828, V-03829, V-03830, V-03831, V-03833, V-03834, V-03835, V03836, V-03841, V-03842, V-03843, V-03844, V-03846, V-03848, V-03854, V-03855, V-03856, V-03857, V-03858, V-03860, V-03861, V-03862, V-03865,

V-03867, V-03868, V03869, V-03870, V-03871, V-03872, V-03875, V-03876, V-03880, V-03881, V-03886, V-03887, V-03888, V-03889, V-03890, V-03891, V-03892, V-03893, V-03894, V-3895, V-03896, V-03897, V-03898, V-03899, V-03900, V-03901, V-03903, V-03904, V-03905, V-03906, V-03907, V-03908, V-03909, V-03910, V-03911, V-03912, V-03913, V-03914, V-03915, V-03916, V-03917, V-03918, V-03919, V-03922, V-03923, V-03924, V-03925, V-03926, V-03929, V-3930, V-03931, V-03932, V-03933, V-03934, V-03938, V-03939, V-03940, V-03942, V-03943, V-03944, V-03945, V-03946, V-03947, V-04024, V-04029, V-04047, V-04048, V-04049, V-04050, V-04051, V-04052, V-04053, V-04054, V-04055, V-04056, V-04057, V-04058, V-04059, V-04093, V-04099, V-04100, V-04101, V-04108, V-04109, V-04110, V-04111, V-04112,, V-04113, V-04114, V-04115, V-04116, V-04126, R-04182, R-04183, R-04185, R-04186, R-04187, R-04188, R-04189, R-04190, R-04191, R-04525, R-04526, R-04527, R-07325, and R-07326.

(4) Claimant James R. Wolfe, representing Barley Creek Ranch, a partnership, filed a claim of adverse possession and a senior right to the waters of Barley Creek on April 19, 1999. Wolfe contended that he and his predecessors in interest had used the water from Barley Creek for the past 100 years in continuous, open, notorious, adverse and exclusive possession against all-the world.

(S) The aforementioned exceptions were heard before this Court on May 3, 1999. At the May 3, 1999, hearing the Court established a briefing schedule to be followed by the parties to these proceedings concerning the historic or vested water rights by private persons on lands owned by the United States (Phase I), the awarding of reserved water rights to the federal government for administrative sites and wilderness areas (Phase II) and the claim of a senior water right based on adverse possession by James R. Wolfe for the water of Barley Creek (Phase III).

(T) The United States filed an Opening Memorandum of Law on June 15, 1999, which addressed the following Phase I issues:

(1) Whether the State Engineer properly ruled that vested stockwater rights on national forests should be granted to private citizens and whether the State Engineer properly rejected all claims filed by the United States for vested stockwater rights.

(2) Whether the State Engineer properly ruled that the private claimant for stockwater rights to be used on public lands presented sufficient evidence to support those claims.

(3) Whether the State Engineer properly excluded certain evidence proffered by the United States at the administrative hearing.

(4) Whether the State Engineer properly awarded private claimants vested irrigation water rights for irrigation on federal lands, and whether the State Engineer's determination of the extent of historical irrigation giving rise to vested rights was accurate.

(5) Whether the State Engineer properly awarded vested water rights to private individuals for watering sheep on public lands.

(6) Whether additional language should be added to the Order of Determination that recognizes that the amount and period of use for watering livestock may be limited by grazing permits issued by the appropriate federal agency.

(U) On October 8, 1999, the Court issued an order that rejected all but one of the United States exceptions that were considered as part of Phase I of this judicial proceeding. (See Exhibit 1 attached hereto). The Court agreed with the United States that the State Engineer erred in not considering the testimony of the United States' historical experts. The Court directed the State Engineer, pursuant to NRS § 533.180, to conduct a further evidentiary investigation by analyzing the evidence and testimony presented by the United States.

(V) As directed by the Court, the State Engineer held a hearing on February 29, 2000, to take further evidence on the historical development and water use within Monitor Valley. The evidence and testimony of the United States concentrated on Proofs of Appropriation V-01091, V-01185, V-01186, V-04465 and V-04466. The

United States contended that the State Engineer awarded more acreage under the aforementioned proofs than was historically justified.

(W) On April 28, 2000, the Court issued an order that rejected the United States exceptions that were considered in Phase II of this judicial proceeding. (See Exhibit 2 attached hereto). The Court affirmed the State Engineer's Order of Determination that awarded reserved water rights to the United States for the Barley Creek, Meadow Canyon and Scuffe's administrative sites and rejected reserved water right claims for the Toquima and Table Mountain Wilderness areas.

(X) On July 12, 2001, the State Engineer issued an Order of Determination on Remand regarding the State Engineer's consideration of evidence that this Court, in its October 8, 1999 Order, directed him to admit and consider. The State Engineer examined each subject proof separately and determined that the United States did not provide substantial evidence to justify reducing the acreage awarded in the Final Order of Determination.

(Y) On November 1, 2001, the Court orally ruled against the claim of adverse possession and claim of senior right filed by James R. Wolfe. The Court also orally affirmed the State Engineer's Order of Determination on Remand. An order was issued on October 28, 2002 that confirmed the Court's oral ruling. (See Exhibit 3 attached hereto).

(Z) There are two existing civil decrees, Decrees 588 and 5038, issued in 1879 and 1942, respectively, within the area of this adjudication. Decree 588 addresses the waters in the Meadow Canyon Creek drainage, including MacAfee (aka Q Spring), Peterson Spring, Box Spring and House Spring. Decree 5038 addresses the waters of Barley Creek, Mosquito Creek, Pine Creek, Pasco Creek, Corcoran Creek and Andrew's Creek drainages, including Scuffe Spring, Upper Scuffe Spring and Unnamed Spring. The State Engineer properly recognized that these existing civil decrees are controlling and any determination made herein was intended to be consistent with those civil decrees.

(AA) In all other respects, the Court hereby affirms each and every finding of fact by State Engineer in the Final Order of Determination in the matter of the

determination of the relative rights in and to the waters of Monitor Valley - Southern Part (140-B), Nye County.

### CONCLUSIONS OF LAW

From the records on file in this proceeding, from the arguments heard by the Court and from the foregoing Findings of Fact, the Court makes the following Conclusions of Law.

(A) The State Engineer had the right, authority, and jurisdiction under chapter 533 of the Nevada Revised Statutes to make the investigations made by him, receive the proofs and maps, enter and file in his office the Order of Determination, file a certified copy of the Order of Determination in this Court, determine the relative rights of the claimants in and to the waters of Monitor Valley – Southern Part, Hydrographic Basin 140-B, Nye County, Nevada, and that the State Engineer duly made all orders necessary and proper in connection therewith and entered the same in his office as required by chapter 533 of the Nevada Revised Statutes.

(B) The sovereign immunity of the United States has been waived by 43 U.S.C. § 666.

(C) Each and every notice required by law to be given herein to the claimants and appropriators was duly served by the State Engineer in the manner and within the time required by law and that the notices contained all the information required by law and that the claimants and appropriators of the waters of Monitor Valley – Southern Part, Hydrographic Basin 140-B, Nye County, Nevada, duly received the information and notices as required by law.

(D) The Fifth Judicial District Court of the State of Nevada in and for the County of Nye has jurisdiction to hear this matter and has the jurisdiction to make and enter the foregoing Findings of Fact and these Conclusions of Law and further enters its Decree as set forth herein. The Fifth Judicial District Court of the State of Nevada also retains exclusive jurisdiction over the enforcement of this Decree and all matters that arise under this adjudication.

(E) The priorities for the proofs in this proceeding are fixed by the years and where the years are the same, the priorities are equal.

(F) All waters allotted under this decree shall be appurtenant to the place of use designated herein. Any water user desiring to change the point of diversion, place of use or manner of use of the waters herein must make application to the State Engineer for permission to make the change pursuant to Nevada water law.

(G) The period of use for all irrigation water rights awarded under this proceeding is from April 1 through October 31, unless otherwise noted. The period of use for irrigation in Decree 588 is from May 1 through October 31. The period of use for irrigation in Decree 5038 is from April 1 through October 31. The period of use for stockwatering, domestic and all other manners of use shall be from January 1 through December 31 of each year, unless otherwise noted.

(H) The State Engineer reserves the right to require the installation of measuring devices. If required, the measurements of diverted water are to be made at a location approved by the State Engineer and the parties will be required to install and maintain, at their own expense, substantial and easily operated regulating diversion structures and measuring devices.

(I) This Decree does not extend to any claimant, or their successors in interest, the right of ingress or egress on public, private or corporate lands.

(J) Because livestock are opportunistic and will consume water at various sources and in varying quantities depending on available feed and season of use, the number of animals specifies the limit and extent of the rights claimed for watering of livestock and not the quantity of water. Therefore, claims for livestock watering are determined for priority date, maximum number of animals, location and ownership.

(K) Any conveyance of title of a water right must be filed with the State Engineer in accordance with NRS § 533.382 - 386. Successors in interest to any of the water rights awarded under this proceeding are subject to the terms and conditions of this Decree.

(L) Pursuant to NRS § 533.270, the State Engineer shall appoint a Water Commissioner, subject to the confirmation of the Court, to carry out and enforce the provisions of this Decree and the instructions and orders of the Court. If any proper order, rules or direction of such Water Commissioner, made in accordance with and for the enforcement of this Decree, are disobeyed or disregarded he is hereby

empowered and authorized to suspend delivery of water users so disobeying or disregarding such proper orders, rules or direction. The Water Commissioner shall promptly report to the Court his said action in such case and the circumstances connected therewith and leading thereto. A water distribution account will be established by the State Engineer to pay the expenses and salary of the Water Commissioner.

(M) The State Engineer or a duly appointed Water Commissioner has the right to enter any premise where a water source adjudicated by this Decree is located, or where water awarded by this Decree is used, at any reasonable hour of the day for the purpose of investigating and carrying out the duties required for the administration of this Decree.

(N) The duty of water is as specified in the attached tabulation of the relative rights involved in this proceeding. To the extent water rights that were awarded through Nevada's statutory permit system are listed in that tabulation, they are not decreed water rights. They are included for informational purposes and to reflect their relationship to the water rights determined as a result of this proceeding.

(O) In all other respects, and subject to this Court's Orders that are attached hereto, the Court hereby affirms each and every conclusion of law made by the State Engineer in his Final Order of Determination in the matter of the determination of the relative rights in and to the waters of Monitor Valley - Southern Part (140-B), Nye County.

(P) Rights of Appropriation. The attached tabulation lists the final determination of the relative rights of the claimants in and to the waters of Monitor Valley - Southern Part, Hydrographic Basin 140-B, Nye County.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-01081	E. WAYNE & JEAN N. HAGE	MEADOW CANYON CREEK	NW¼NE¼ SEC. 21, T. 10N., R. 45E., M.D.B.&M., N.40°58'04"W, 19,537.53 FT. FROM THE NE¼ COR. SEC. 2, T. 9N., R. 45E., M.D.B.&M.	MAY 1 TO OCT. 31 PER DECREE 588	IRRIGATION STOCKWATER DOMESTIC 1888	24.0	3.0	450.66

SECTION		TOWN-SHIP	RANGE	PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS			
				N			E			S			W			SE				
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1	T. 9 N., R. 45 E.					0.25		4.65	10.54			13.01	0.48			7.62	5.83	7.96	50.34	
21	T. 10 N., R. 45 E.			4.71		10.62		0.06			2.53	1.84			17.28	8.03	1.89	48.96		
27	T. 10 N., R. 45 E.									6.97	0.40	9.01			3.44	4.53		24.35		
28	T. 10 N., R. 45 E.			12.34	0.57		2.41											15.32		
35	T. 10 N., R. 45 E.														4.91	2.58		10.50		
36	T. 10 N., R. 45 E.													2.75				2.75		
TOTAL ACRES:																			150.22	

REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING.  
 UNDER PROOF NO. V-01081.  
 V-01183, V-01184, V-01185, V-01186, V-04465,  
 V-04486, V-05738 AND V-05739 SHALL BE LIMITED TO 872 HEAD OF CATTLE, 4,722 SHEEP AND 8 HORSES DISTRIBUTED ON ALL SOURCES.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-01183	E. WAYNE & JEAN N. HAGE	SMITH CREEK (AKA WIDOW SMITH CREEK, AND SOUTH FORK WIDOW SMITH CREEK)	SW¼NW¼ SEC. 28, T. 10N., R. 48E., M.D.B.&M., N.83°38'W, 4,616.0 FT. FROM THE E¼ COR. SAID SEC. 28.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER DOMESTIC 1874	4.5	3.0	228.11



V-01185  
(cont.)

PLACE OF USE  
40 ACRE DESCRIPTIONS

ACRES  
PER  
SECTION

REMARKS

SECTION	TOWN-SHIP	RANGE	N E												ACRES PER SECTION	REMARKS				
			NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW						
10	T. 11 N. R. 46 E.		2.76		25.16											28.65	2.01	37.64	96.21	REFER TO REMARKS UNDER PROOF NO. V-01091 REGARDING STOCKWATERING. SHADED ACREAGE IS SUPPLEMENTED BY PROOF NO. V-01188 AND PERMIT 3408, CERT. 742.  REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING.
11	T. 11 N. R. 46 E.			2.29			36.79									36.02			119.37	
14	T. 11 N. R. 46 E.			17.91															56.58	
15	T. 11 N. R. 46 E.		39.08		1.84											23.66	15.07	18.44	232.28	
16	T. 11 N. R. 46 E.															5.28	3.27	39.27	184.04	
17	T. 11 N. R. 46 E.																		22.21	
20	T. 11 N. R. 46 E.		18.34							7.90									44.84	
21	T. 11 N. R. 46 E.		38.71		6.15					17.91									123.51	
22	T. 11 N. R. 46 E.																		25.81	
28	T. 12 N. R. 46 E.															33.54	25.23	103.11		
35	T. 12 N. R. 46 E.															36.41	21.21	147.40		
													TOTAL ACRES:	1157.36						

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW* CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-01186	E. WAYNE & JEAN N. HAGE	ANDREW'S CREEK & TRIBUTARIES	SW 1/4 NW 1/4 SEC. 30, T. 11N., R. 46E., M.D.B. 8M., S. 21 1/2 W. 4,352.00 FT. FROM THE E 1/4 COR. SEC. 19, T. 11N., R. 46E., M.D.B. 8M.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER DOMESTIC 1874	24.0	3.0	3154.14

V-01186  
(cont.)

PLACE OF USE  
40 ACRE DESCRIPTIONS

SECTION	TOWN-SHIP	RANGE	N. E.				N. W.				S. E.				S. W.				ACRES PER SECTION
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10	T. 11 N., R. 46 E.		2.75			25.76													96.21
11	T. 11 N., R. 46 E.						2.29	38.79											119.37
14	T. 11 N., R. 46 E.						39.09	1.93											40.67
15	T. 11 N., R. 46 E.		38.08			37.23													232.28
16	T. 11 N., R. 46 E.																		141.50
21	T. 11 N., R. 46 E.		38.71	31.54	8.15	13.89	13.32	17.91											123.51
22	T. 11 N., R. 46 E.							25.81											25.81
26	T. 12 N., R. 46 E.																		103.11
35	T. 12 N., R. 46 E.					35.88													147.40
TOTAL ACRES:																	1028.86		

REFER TO REMARKS UNDER PROOF NO. V-01091 REGARDING STOCKWATERING. SHADED ACREAGE IS SUPPLEMENTED BY PROOF NO. V-01186 AND PERMIT 3408, CERT. 742

REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING.

REMARKS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-02355	JAMES R. BOYCE & CHRISTINE D. BOYCE	WADSWORTH CREEK	NW¼NE¼ SEC. 27, T.13N., R. 47E., M.D.B.&M. S. 49°28'E. 17,820 FT. FROM THE NW COR. OF SEC. 17, T.13N., R. 47E., M.D.B.&M.	OCT. 1 TO MAY 31	STOCKWATER 1871			

PLACE OF USE  
40 ACRE DESCRIPTIONS

SECTION	TOWN-SHIP	RANGE	N. E.				N. W.				S. E.				S. W.				
			NE	NW	SW	SE													
16	T. 13 N., R. 47 E.																		
21	T. 13 N., R. 47 E.		X	X	X	X													
22	T. 13 N., R. 47 E.		X	X	X	X													
23	T. 13 N., R. 47 E.																		

STOCKWATERING UNDER PROOF NOS. V-02355, V-02357, V-02359, V-04736, V-04742 AND V-04744 AND V-05694 THRU V-05698 INCLUSIVE, SHALL BE LIMITED TO 1,590 HEAD OF CATTLE, 15,500 SHEEP AND 419 HORSES DISTRIBUTED ON ALL SOURCES.

REMARKS

V-02355 (cont.)

PLACE OF USE		ACRES PER SECTION		REMARKS						
40 ACRE DESCRIPTIONS										
SECTION	TOWN-SHIP	RANGE	N		E		S		W	
			NE	NW	SE	SW	NE	NW	SE	SW
25	T. 13 N.	R. 47 E.								
26	T. 13 N.	R. 47 E.	X	X	X	X	X	X	X	X
27	T. 13 N.	R. 47 E.	X	X	X	X	X	X	X	X
36	T. 13 N.	R. 47 E.	X	X	X	X	X	X	X	X
30	T. 13 N.	R. 48 E.								

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-02357	JAMES R. BOYCE AND CHRISTINE D. BOYCE	MILL CANYON CREEK	A POINT ON THE WEST LINE OF SEC. 1, T. 13N., R. 48E., M.D.B.&M., N. 1'38"E. 2,937.5 FT. FROM THE SW COR. OF SAID SEC. 1.	MAY 1 TO NOV. 30	STOCKWATER 1866			

PLACE OF USE		ACRES PER SECTION		REMARKS						
40 ACRE DESCRIPTIONS										
SECTION	TOWN-SHIP	RANGE	N		E		S		W	
			NE	NW	SE	SW	NE	NW	SE	SW
1	T. 13 N.	R. 46 E.								

REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-02359	JAMES R. BOYCE & CHRISTINE D. BOYCE	(LOWER) MORGAN CREEK & TRIBUTARIES	NE 1/4 SEC. 21, T. 12N., R. 47E., M.D.B.&M., S. 84°23'W. 8,613 FT. FROM THE NE COR. OF SEC. 22, T. 12N., R. 47E., M.D.B.&M.	OCT. 1 TO MAY 31	STOCKWATER 1871			

V-02389 (cont.)

PLACE OF USE		ACRES PER SECTION		REMARKS		
40 ACRE DESCRIPTIONS						
SECTION	TOWN-SHIP	RANGE	N E		S W	
			NE	NW	SW	SE
20	T. 12 N., R. 47 E.		X			
21	T. 12 N., R. 47 E.		X	X		
22	T. 12 N., R. 47 E.		X	X		
23	T. 12 N., R. 47 E.		X	X		

REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-04174	STEPHEN C. WILMANS, III	UNNAMED SPRINGS	NE $\frac{1}{2}$ SW $\frac{1}{4}$ SEC. 27, T. 13N., R. 46E., M.D.B. & M., N. 14 $\frac{1}{2}$ S. 1 W. 2, 203 FT. FROM THE SE COR. OF SAID SEC. 27.	APR. 1 TO SEPT. 30	STOCKWATER 1877			

PLACE OF USE		ACRES PER SECTION		REMARKS		
40 ACRE DESCRIPTIONS						
SECTION	TOWN-SHIP	RANGE	N E		S W	
			NE	NW	SW	SE
27	T. 13 N., R. 46 E.			X		

THIS IS THE SAME SPRING AS PROOF NO. V-05745. PROOF NOS. V-04174, V-05532, V-05740, V-05741, V-05743, V-05745 AND V-05746 SHALL BE LIMITED TO 2,055 HEAD OF CATTLE, 15,500 SHEEP AND 410 HORSES DISTRIBUTED ON ALL SOURCES.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
R-04175	UNITED STATES OF AMERICA - FOREST SERVICE	BARLEY CREEK	SE $\frac{1}{2}$ SW $\frac{1}{4}$ SEC. 10, T. 09N., R. 47E., M.D.B. & M., N. 73 $\frac{1}{2}$ W. 12, 700 FT. FROM THE BARLEY HORIZONTAL CONTROL STATION.	MAY 1 TO OCT. 31 MAY 1 TO MAY 31 MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002		0.026



R-04177 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION		REMARKS			
SECTION	TOWN- SHIP	RANGE		N		E		S		W		E		S		E		FEDERAL RESERVED WATER RIGHT UNDER THE ORGANIC ADMINISTRATION ACT OF 1887. WATER IS USED WITHIN CANYON ADMINISTRATIVE SITE FOR WATERSHED PROTECTION	
20	T. 10 N.	R. 45 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
R-04178	UNITED STATES OF AMERICA - FOREST SERVICE	Q SPRING (AKA MACAFEE SPRING)	NE 1/4 SEC. 20, T. 10N., R. 45E., M.D.B. & M., N. 19° 30' E. 15,350 FT. FROM THE SE COR. OF SAID SEC. 31.	APR. 1 TO NOV. 30  APR. 1 TO NOV. 30 MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002  0.001 0.001		0.289  0.123 0.189

R-04177 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION		REMARKS			
SECTION	TOWN- SHIP	RANGE		N		E		S		W		E		S		E		FEDERAL RESERVED WATER RIGHT UNDER THE ORGANIC ADMINISTRATION ACT OF 1887. WATER IS USED WITHIN MEADOW CANYON ADMINISTRATIVE SITE FOR WATERSHED PROTECTION	
20	T. 10 N.	R. 45 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
R-04179	UNITED STATES OF AMERICA - FOREST SERVICE	BOX SPRING	NW 1/4 SEC. 31, T. 10N., R. 45E., M.D.B. & M., N. 27° 00' E. 14,000 FT. FROM THE SE COR. OF SAID SEC. 31.	MAY 1 TO SEPT. 30	WATERSHED PROTECTION APRIL 15, 1907 STOCKWATERING	0.001		0.126

R-04179 (cont.)		PLACE OF USE												ACRES PER SECTION		REMARKS	
40 ACRE DESCRIPTIONS																	
SECTION	TOWN-SHIP	RANGE		N. E.		N. W.		S. E.		S. W.		E.		FEDERAL RESERVED WATER RIGHT UNDER THE ORGANIC ADMINISTRATION ACT OF 1897. WATER IS USED WITHIN MEADOW CANYON ADMINISTRATIVE SITE FOR WATERSHED PROTECTION			
31	T. 10 N., R. 45 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	S	E		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
R-04180	UNITED STATES OF AMERICA - FOREST SERVICE	SCUFFE'S SPRING	NE $\frac{1}{2}$ SW $\frac{1}{4}$ SEC. 07, T. 10N., R. 48E., M.D.B.&M., S.87 $^{\circ}$ 00'E. 4,500 FT. FROM THE SW COR. OF SEC. 31, T11N., R. 48E., M.D.B.&M	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002		0.033

R-04179 (cont.)		PLACE OF USE												ACRES PER SECTION		REMARKS	
40 ACRE DESCRIPTIONS																	
SECTION	TOWN-SHIP	RANGE		N. E.		N. W.		S. E.		S. W.		E.		FEDERAL RESERVED WATER RIGHT UNDER THE ORGANIC ADMINISTRATION ACT OF 1897. WATER IS USED WITHIN SCUFFE'S ADMINISTRATIVE SITE FOR WATERSHED PROTECTION			
7	T. 10 N., R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	S	E		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
R-04181	UNITED STATES OF AMERICA - FOREST SERVICE	UPPER SCUFFE'S SPRING	SE $\frac{1}{2}$ SE $\frac{1}{4}$ SEC. 31, T. 11N., R. 48E., M.D.B.&M., N.78 $^{\circ}$ 00'E. 4,600 FT. FROM THE SW COR. OF SAID SEC. 31.	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002		0.033
								0.0150 0.0184

R-04181 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS										ACRES PER SECTION	REMARKS		
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	FEDERAL RESERVED WATER RIGHT UNDER THE ORGANIC ADMINISTRATION ACT OF 1897. WATER IS USED WITHIN SCUFFES ADMINISTRATIVE SITE FOR WATERSHED PROTECTION
31	T. 11 N., R. 48 E.														

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-04463	HRH NEVADA RESOURCES, LTD.	WARM SPRINGS	SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 06, T. 11N., R. 47E., M.D.B. &M., S 02°00'W, 2,060 FT. FROM THE NE COR. OF SAID SEC. 06.	JAN. 1 TO DEC. 31	STOCKWATER DOMESTIC 1866			

R-04181 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS										ACRES PER SECTION	REMARKS		
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	PROOF NOS. V-04463 AND V-05738 SHALL BE LIMITED TO 1,000 HEAD OF CATTLE, 12,000 SHEEP AND 34 HORSES.
6	T. 11 N., R. 47 E.														

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-04465	E. WAYNE & JEAN N. HAGE	MOSQUITO CREEK & TRIBUTARIES	NW $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 31, T. 12N., R. 47E., M.D.B. &M., N 68°10'E, 1856 FT. FROM THE NE COR SAID SEC. 31.  SW $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 32, T. 12N., R. 47E., M.D.B. &M., S 84°05'E, 3890 FT. FROM THE NW COR. SAID SEC. 32.  SE $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 32, T. 12N., R. 47E., M.D.B. &M., N 79°01'E, 4590 FT. FROM THE SW COR. SAID SEC. 32.	JAN. 1 TO DEC. 31	IRRIGATION STOCKWATER DOMESTIC 1874	22.0	3.0	7131.48



PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-04466	E. WAYNE & JEAN N. HAGE	BARLEY CREEK & TRIBUTARIES (MEADOW CANYON CREEK & WIDOW SMITH CREEK)	NW¼NW¼ SEC. 06, T. 10N., R. 47E., M.D.B. &M., S. 29°41'E. 1183 FT. FROM THE NW COR. SAID SEC. 6.  SW¼SE¼ SEC. 01, T. 10N., R. 46E., M.D.B. &M., N. 88°40'E. 910 FT. FROM THE S¼ COR. SAID SEC. 1.  NW¼SE¼ SEC. 13, T. 10N., R. 46E., M.D.B. &M., S. 14°11'39"E. 3029.63 FT. FROM THE N¼ COR. SAID SEC. 13.  SE¼SW¼ SEC. 36, T. 10N., R. 46E., M.D.B. &M., N. 82°53'E. 1,814.00 FT. FROM THE SW COR. SAID SEC. 36.	JAN. 1 TO DEC. 31	IRRIGATION STOCKWATER DOMESTIC 1874	24.0	3.0	2854.83										
PLACE OF USE 40 ACRE DESCRIPTIONS																		
SECTION	TOWN-SHIP	RANGE	40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS		
			NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW
1	T. 10 N.	R. 46 E.	38.30	7.40	25.60										30.30	0.70	36.30	142.60
12	T. 10 N.	R. 46 E.	39.90	19.31	39.10	39.80									39.39	39.29	39.35	285.49
6	T. 10 N.	R. 47 E.					LOT 4	LOT 5										64.70
7	T. 10 N.	R. 47 E.					LOT 1	LOT 2	LOT 3	LOT 4								115.10
18	T. 10 N.	R. 47 E.					LOT 1											33.88

REFER TO REMARKS UNDER  
PROOF NO. V-01091 REGARDING  
STOCKWATERING.  
SHADED ACREAGE IS  
SUPPLEMENTED BY PERMIT  
3361, CERT. 2606, AND PERMIT 3362, CERT. 2558.  
PERMITS 3361 AND 3362 ARE NOT  
SUPPLEMENTAL TO EACH OTHER.

REFER TO APPENDIX A FOR SPRING SOURCE  
DESCRIPTIONS FOR STOCKWATERING.

V-04486  
(cont.)

PLACE OF USE  
40 ACRE DESCRIPTIONS

SECTION	TOWN-SHIP	RANGE	N. E.				N. W.				S. E.				ACRES PER SECTION	REMARKS			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
36	T. 11 N. R. 46 E.		20.40	39.30	38.80	28.70	14.00			6.90	0.20			35.30	37.00	34.30	39.44	294.54	
31	T. 11 N. R. 47 E.												LOT 4					5.30	
TOTAL ACRES: 951.61																			

V-05532

PLACE OF USE  
40 ACRE DESCRIPTIONS

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.

V-05532

PLACE OF USE  
40 ACRE DESCRIPTIONS

SECTION	TOWN-SHIP	RANGE	N. E.				N. W.				S. E.				ACRES PER SECTION	REMARKS			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
22	T. 12 N. R. 47 E.		6.70															6.70	REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING
23	T. 12 N. R. 47 E.					0.20	11.20											11.40	
TOTAL ACRES: 18.10																			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS.	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
V-05694	JAMES R. BOYCE & CHRISTINE D. BOYCE	BRANDY'S SPRING	SE $\frac{1}{2}$ SW $\frac{1}{4}$ SEC. 36, T. 13N., R. 46E., M.D.B.&M., N.58°51'W, 17,180 FT. FROM THE W $\frac{1}{4}$ COR. SEC. 9, T. 12N., R. 46E., M.D.B.&M.	MAY 1 TO NOV. 30	STOCKWATER 1865				
PLACE OF USE									
40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W S W SE NE NW SW SE NE NW SW SE						REMARKS
36	T. 13 N.	R. 45 E.	X						REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS.	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
V-05695	JAMES R. BOYCE & CHRISTINE D. BOYCE	KIP'S SPRING	SW $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 15, T. 13N., R. 46E., M.D.B.&M., S.70°19'W, 7,540 FT. FROM THE NE COR. OF SEC. 14, T. 13N., R. 46E., M.D.B.&M.	MAY 1 TO NOV. 30	STOCKWATER 1865				
PLACE OF USE									
40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W S W SE NE NW SW SE NE NW SW SE						REMARKS
15	T. 13 N.	R. 46 E.	X						REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-05686	JAMES R. BOYCE & CHRISTINE D. BOYCE	JT'S SPRING	NW¼SW¼ SEC. 5, T. 13N., R. 46E., M.D.B.&M., N.33°35'W, 28, 100 FT. FROM THE SE COR. OF SEC. 27, T. 13N., R. 46E., M.D.B.&M.	MAY 1 TO NOV. 30	STOCKWATER 1865			
PLACE OF USE 40 ACRE DESCRIPTIONS								
SECTION	TOWNSHIP	RANGE	N E N W S E		N E N W S E		S E	
5	T. 13 N.	R. 46 E						
REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING								

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-05687	JAMES R. BOYCE & CHRISTINE D. BOYCE	BARBARA'S SPRING	NE¼SE¼ SEC. 6, T. 13N., R. 46E., M.D.B.&M., N.32°56'W, 28, 600 FT. FROM SE COR. OF SEC. 27, T. 13N., R. 46E., M.D.B.&M.	MAY 1 TO NOV. 30	STOCKWATER 1865			
PLACE OF USE 40 ACRE DESCRIPTIONS								
SECTION	TOWNSHIP	RANGE	N E N W S E		N E N W S E		S E	
6	T. 13 N.	R. 46 E						
REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING								







PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-05742	JAMES R. BOYCE & CHRISTINE D. BOYCE	UPPER MORGAN CREEK & TRIBUTARIES	A POINT ON THE NORTH-SOUTH CENTER SECTION LINE, SEC. 23, T. 12N., R. 47E., M.D.B. & M., S 01°00'E, 1,138 FEET FROM THE N¼ COR. OF SAID SEC. 23.	MAY 1 TO NOV. 30	STOCKWATER 1871			

SECTION		TOWN-SHIP		RANGE		N. E.			N. W.			S. W.			S. E.			ACRES PER SECTION	REMARKS
		NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW		
23	T. 12 N., R. 47 E.	X	X																REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING
24	T. 12 N., R. 47 E.	X	X	X	X														
19	T. 12 N., R. 48 E.	X	X	X	X					X	X	X	X	X	X	X	X		
20	T. 12 N., R. 48 E.									X	X	X	X	X	X	X	X		
28	T. 12 N., R. 48 E.					X	X	X	X	X	X	X	X	X	X	X	X		
30	T. 12 N., R. 48 E.	X	X	X	X					X	X	X	X	X	X	X	X		
31	T. 12 N., R. 48 E.	X	X	X	X					X	X	X	X	X	X	X	X		
32	T. 12 N., R. 48 E.	X	X	X	X					X	X	X	X	X	X	X	X		
33	T. 12 N., R. 48 E.					X	X	X	X	X	X	X	X	X	X	X	X		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-05743	STEPHEN C. WILMANS, III	WADSWORTH CREEK & TRIBUTARIES (UPPER)	A POINT ON THE WEST LINE SEC. 31, T. 13N., R. 48E., M.D.B. & M., S. 17°14'40"W., 19,204.2 FEET FROM THE E¼ COR. SEC. 7, T. 13N., R. 48E., M.D.B. & M.	MAY 1 TO NOV. 30	STOCKWATER 1871			

V-05743  
(cont.)

SECTION		TOWN-SHIP		RANGE		N E			N W			S E			S W			ACRES PER SECTION	REMARKS
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
5	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING	
6	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
7	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
8	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
9	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
16	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
17	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
20	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
21	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
22	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
28	.T. 12 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
29	.T. 13 N. .R. 48 E.																		
30	.T. 13 N. .R. 48 E.																		
31	.T. 13 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
32	.T. 13 N. .R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
V-05744	JAMES R. BOYCE & CHRISTINE D. BOYCE	NORTHUMBERLAND SPRING	NE 1/4 SEC. 8, T. 12N., R. 48E., M.D.B. & M., S. 35° 37' W., 438 FT. FROM THE E 1/4 COR. OF SAID SEC. 8	JAN. 1 TO DEC. 31	STOCKWATER 1874			

SECTION		TOWN-SHIP		RANGE		N E			N W			S E			S W			ACRES PER SECTION	REMARKS
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
8	.T. 12 N. .R. 46 E.																	REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
V-05745	STEPHEN C. WILMANS, III	WATER CANYON SPRINGS	NE $\frac{1}{2}$ SE $\frac{1}{4}$ SEC. 27, T.13N., R.46E., M.D.B.&M., S.70°44'W. 739 FT. FROM THE E $\frac{1}{2}$ COR. OF SAID SEC. 27.	JAN. 1 TO DEC. 31	STOCKWATER 1888				
PLACE OF USE 40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W S E N E N W S W S E N E N W S W S E			S E S E S E			REMARKS REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING
26	T. 13 N.	R. 46 E.							
27	T. 13 N.	R. 46 E.				X			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
V-05746	STEPHEN C. WILMANS, III	MORGAN SPRING	SW $\frac{1}{2}$ NE $\frac{1}{4}$ SEC. 21, T.12N., R.48E., M.D.B.&M., S.29°30'W. 28,510 FT. FROM THE NE COR. OF SEC. 36, T.13N., R.48E., M.D.B.&M.	MAY 1 TO NOV. 30	STOCKWATER 1871				
PLACE OF USE 40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W S E N E N W S W S E N E N W S W S E			S E S E S E			REMARKS REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING
21	T. 12 N.	R. 48 E.				X			



PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																								
R-0721	UNITED STATES OF AMERICA FOREST SERVICE	ALL WATERS WITHIN THE BOUNDARIES OF THE TABLE MOUNTAIN WILDERNESS	NO DIVERSION ALLOWED	JAN. 1 TO DEC. 31	WILDERNESS DEC. 5, 1989		SEE REMARKS																																																									
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">SECTION</td> <td style="width: 10%;">TOWN-SHIP</td> <td style="width: 10%;">RANGE</td> <td style="width: 10%;">N</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> </tr> <tr> <td></td> <td></td> <td></td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td></td> </tr> </table> <p>TABLE MOUNTAIN WILDERNESS ESTABLISHED BY THE NEVADA WILDERNESS PROTECTION ACT OF 1989, (PUB. L. 101-195, 103 STAT. 1784) "VOLUME AND DIVERSION RATES OF WATER ARE NOT QUANTIFIED. THIS IS A NON-CONSUMPTIVE USE OF ALL WATER FLOWING IN ITS NATURAL STATE EXCLUDING ADMINISTRATIVE SITES.</p>									SECTION	TOWN-SHIP	RANGE	N	E	N	W	S	E	N	W	S	E	N	W	S	E				NE	NW	SW	SE																																
SECTION	TOWN-SHIP	RANGE	N	E	N	W	S	E	N	W	S	E	N	W	S	E																																																
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																																														

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																								
R-0730	U.S.D.I. BUREAU OF LAND MANAGEMENT	UNNAMED SPRING (8N46-1)	LOT 6 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) SEC. 1, T.08N., R.46E., M.D.B. & M., S.41°53'W, 1,840 FT. FROM THE NE COR. OF SAID SEC. 1.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1928	0.010																																																										
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">SECTION</td> <td style="width: 10%;">TOWN-SHIP</td> <td style="width: 10%;">RANGE</td> <td style="width: 10%;">N</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> <td style="width: 10%;">N</td> <td style="width: 10%;">W</td> <td style="width: 10%;">S</td> <td style="width: 10%;">E</td> </tr> <tr> <td>1</td> <td>T. 8 N.</td> <td>R. 46 E.</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td></td> </tr> </table> <p>PUBLIC WATER RESERVE.</p>									SECTION	TOWN-SHIP	RANGE	N	E	N	W	S	E	N	W	S	E	N	W	S	E	1	T. 8 N.	R. 46 E.	NE	NW	SW	SE																																
SECTION	TOWN-SHIP	RANGE	N	E	N	W	S	E	N	W	S	E	N	W	S	E																																																
1	T. 8 N.	R. 46 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																																														

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
R-07321	U.S.D.I. BUREAU OF LAND MANAGEMENT	UNNAMED SPRING (13N47-17)	SW $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 17, T. 13N., R. 47E., M.D.B.&M., N.28 $\frac{1}{2}$ °E. 19,540 FT. FROM THE SW COR. OF SAID SEC. 31.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1926	0.010		
PLACE OF USE								
40 ACRE DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	N E N W SW SE NE NW SW SE			S E S E S E		
17	T. 13 N., R. 47 E.							
REMARKS								
PUBLIC WATER RESERVE.								

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
R-07323	U.S.D.I. BUREAU OF LAND MANAGEMENT	MONITOR LAKE 4	SW $\frac{1}{4}$ SE $\frac{1}{4}$ SEC. 08, T. 13N., R. 47E., M.D.B.&M., N.80 $\frac{1}{2}$ °E. 8,160 FT. FROM THE SW COR. SEC. 8, T. 13N., R. 47E., M.D.B.&M.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1926	0.010		
PLACE OF USE								
40 ACRE DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	N E N W SW SE NE NW SW SE			S E S E S E		
9	T. 13 N., R. 47 E.							
REMARKS								
PUBLIC WATER RESERVE.								



767 CERT.: 360 (cont.)	PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS		
SECTION	TOWN- SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
16	T. 9 N.	R. 47 E.	N $\frac{1}{2}$			14.60			S $\frac{1}{2}$			14.60			14.60	1st PRIORITY BY
17	T. 9 N.	R. 47 E.	8.80												8.80	
															TOTAL ACRES:	66.50

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
2213 CERT.: 414	E. WAYNE & JEAN N. HAGE	PASCO CREEK (AKA COOK OR TUCKER CREEK)	SW $\frac{1}{4}$ NW $\frac{1}{4}$ SEC. 8, T. 11N., R. 46E.,	APR. 1 TO AUG. 1	IRRIGATION STOCKWATER & DOMESTIC SEPT. 19, 1911	0.318	2.44	77.56

PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS			
SECTION	TOWN- SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
32	T. 12 N.	R. 46 E.	14.82			4.33			14.82			4.64			31.81	SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-01184 AND PROOF V-05736.
															TOTAL ACRES:	31.81

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT: 2244 CERT.: 436	E. WAYNE & JEAN N. HAGE	MEADOW CREEK	400 FT. DUE SOUTH OF THE 1/4 SEC. CORNER ON THE NORTH BOUNDARY OF SEC. 7, T. 9N., R. 46E., M.D.B.&M.	MAY 1 TO OCT. 1	IRRIGATION & DOMESTIC OCT. 16, 1911	0.35	3.0	105.0
PLACE OF USE								
40 ACRE DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	N. E. N. W. S. E. S. W. S. E. S. W. S. E.			S. E. S. W. S. E.		
7	T. 9 N. R. 46 E.		10.00					10.00
8	T. 9 N. R. 46 E.		15.00					25.00
TOTAL ACRES: 35.00								
REMARKS								
DUTY IS PER STATUTE								

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT: 3361 CERT.: 2606	E. WAYNE & JEAN N. HAGE	BARLEY CREEK AND TRIBUTARIES (MEADOW CREEK & WIDOW SMITH CREEK)	SW 1/4 SEC. 1, T. 10N., R. 46E., M.D.B.&M., S. 88°40'W, 910.0 FT. FROM S 1/4 COR. SAID SEC. 1.	APR. 1 TO JUL. 31	SUPPLEMENTAL IRRIGATION & DOMESTIC APR. 23 1915	1.205	2.44	294.0
PLACE OF USE								
40 ACRE DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	N. E. N. W. S. E. S. W. S. E. S. W. S. E.			S. E. S. W. S. E.		
1	T. 10 N. R. 46 E.		3.10					3.10
6	T. 10 N. R. 47 E.		4.60	7.50				12.10
TOTAL ACRES: 120.50								
REMARKS								
SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04468								



PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 3440 CERT.: 3212	WARREN C. HUNT, ETHELYN HUNT, DONALD B. HUNT AND ESTHER CECILIA HUNT	NORTHUMBERLAND SPRINGS	NE 1/4 SEC. 08, T. 12N., R. 46E., M.D.B. & M., S. 08° 08' E. 2,313.7 FT. FROM THE SEC. COR. SAID SEC. 08.	MAR. 1 TO OCT. 31	IRRIGATION JUN. 15, 1915	0.124	4.86	60.15			
PLACE OF USE											
40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	N E S W				S E				
9	T. 12 N.	R. 46 E.	NE	NW	SW	SE	NE	NW	SW	SE	
							12.40			12.40	
			TOTAL ACRES:			12.40			12.40		
REMARKS											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 4784 CERT.: 1212	E. WAYNE AND JEAN N. HAGE	MOSQUITO CREEK	SW 1/4 SEC. 32, T. 12N., R. 47E., M.D.B. & M., S. 64° 05' E. 3,890 FT. FROM THE NW COR. SAID SEC. 32.	MAR. 1 TO NOV. 1	IRRIGATION DEC. 17, 1917	2.3626	4.8	1134.05			
PLACE OF USE											
40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	N E S W				S E				
29	T. 12 N.	R. 47 E.	NE	NW	SW	SE	NE	NW	SW	SE	
32	T. 12 N.	R. 47 E.					40.00	40.00	40.00	40.00	
			17.42					4.53	14.31	178.84	
			TOTAL ACRES:			57.42			236.26		
REMARKS											
SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04485.											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																								
PERMIT: 4785 CERT.: 1213	E. WAYNE AND JEAN N. HAGE	MOSQUITO CREEK	NW $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 31, T. 12N., R. 47E., M.D.B.&M., S. 68 $\frac{1}{2}$ W., 1,856 FT. FROM THE NE COR. SAID SEC. 31	MAR. 1 TO NOV. 1	IRRIGATION DEC. 17, 1917	3.2	4.8	1536.0																																																																								
PLACE OF USE																																																																																
40 ACRE DESCRIPTIONS																																																																																
SECTION	TOWN-SHIP	RANGE	PLACE OF USE			ACRES PER SECTION	REMARKS																																																																									
30	T. 12 N., R. 47 E.		N	E	SW	SE	NE	NW	SW	SE																																																																						
31	T. 12 N., R. 47 E.				40.00				40.00																																																																							
										120.00	SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04465.																																																																					
										200.00																																																																						
										320.00	TOTAL ACRES:																																																																					
PERMIT NO.									CLAIMANT									SOURCE									POINT(S) OF DIVERSION									YEARLY PERIOD OF USE									PURPOSE & PRIORITY									FLOW CFS									DUTY AC.-FT./ACRE									TOTAL AC.-FT.								
PERMIT: 5609 CERT.: 2628									M.C. AND GRACE WINFIELD									COMBINATION SPRINGS									SE $\frac{1}{4}$ NE $\frac{1}{4}$ SEC. 25, T. 09N., R. 45E., M.D.B.&M., N. 18 $\frac{1}{2}$ W., 3,798 FT. FROM THE SE COR. OF SAID SEC. 25									JAN. 1 TO DEC. 31									STOCKWATER OCT. 18, 1919									0.003																										
PLACE OF USE									40 ACRE DESCRIPTIONS									SECTION									REMARKS																																																					
SECTION	TOWN-SHIP	RANGE	PLACE OF USE			ACRES PER SECTION	REMARKS																																																																									
25	T. 9 N., R. 45 E.		N	E	SW	SE	NE	NW	SW	SE																																																																						
											0.003 CFS OR SUFFICIENT TO WATER 80 HEAD OF CATTLE AND HORSES																																																																					

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
PERMIT: 10606 CERT.: 2914	UNITED STATES OF AMERICA, FOREST SERVICE	UNNAMED SPRING	M.D.B.&M., N.45°42'W, 26,652 FT. FROM SE COR. OF SEC. 1, T.9N., R.45E., M.D.B.&M.	APR. 1 TO DEC. 1	MEADOW CR. RANGER STATION DOMESTIC DEC. 28, 1940	0.001		0.55	
PLACE OF USE									
40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W SW SE NE NW SW SE NE NW SW SE						REMARKS
21	T. 10 N.	R. 45 E.	X						DOMESTIC USE FOR THE MEADOW CREEK RANGER STATION. SAME AS PROOF R-04176.

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.	
PERMIT: 10689 CERT.: 2879	UNITED STATES OF AMERICA, FOREST SERVICE	UNNAMED SPRING	NW/4SE/4 SEC. 13, T.11N., R.45E., M.D.B.&M., S.74°18'E, 8,742.8 FT. FROM THE 3/4 COR. OF SEC. 17, T.11N., R.45E., M.D.B.&M.	MAY 1 TO OCT. 31	RECREATIONAL & DOMESTIC JULY 1, 1941	0.001		0.55	
PLACE OF USE									
40 ACRE DESCRIPTIONS									
SECTION	TOWN-SHIP	RANGE	N E N W SW SE NE NW SW SE NE NW SW SE						REMARKS
13	T. 11 N.	R. 45 E.	X						DOMESTIC USE FOR THE USFS PINE CREEK CAMPGROUND

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																												
20632 CERT.: 0316	UNITED STATES OF AMERICA, FOREST SERVICE, REGION 4	PINE CREEK	NW/4SE/4 SEC. 13, T.11N., R.45E., M.D.B.&M., S.38°10.8'E. 3,965.7 FT. FROM THE COMMON CORNER OF THE SE COR. OF SEC. 12, & NE COR. OF SEC. 13, T.11N., R.45E., M.D.B.&M.	APR. 15 TO NOV. 15	DOMESTIC AUG. 10, 1962	0.004		1.71																																												
<p style="text-align: center;">PLACE OF USE</p> <p style="text-align: center;">40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td rowspan="2">SECTION</td> <td rowspan="2">TOWN-SHIP</td> <td rowspan="2">RANGE</td> <td colspan="12">ACRES PER SECTION</td> <td rowspan="2">REMARKS</td> </tr> <tr> <td>N</td><td>E</td><td>SE</td><td>SW</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td> </tr> <tr> <td>13</td> <td>T. 11 N., R. 45 E.</td> <td></td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> <td>DOMESTIC USE FOR THE USFS PINE CREEK CAMPGROUND</td> </tr> </table>									SECTION	TOWN-SHIP	RANGE	ACRES PER SECTION												REMARKS	N	E	SE	SW	NE	NW	SW	SE	NE	NW	SW	SE	13	T. 11 N., R. 45 E.														DOMESTIC USE FOR THE USFS PINE CREEK CAMPGROUND
SECTION	TOWN-SHIP	RANGE	ACRES PER SECTION												REMARKS																																					
			N	E	SE	SW	NE	NW	SW	SE	NE	NW	SW	SE																																						
13	T. 11 N., R. 45 E.														DOMESTIC USE FOR THE USFS PINE CREEK CAMPGROUND																																					
28756 CERT.: 10862	E. WAYNE AND JEAN N. HAGE	PINE CREEK	SW/4NW/4 SEC. 18, T.11N., R.48E., M.D.B.&M., N.00°W, 385.72 FT. FROM THE W/4 COR. SAID SEC. 18.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC JUN. 2, 1972	5.4	HARVEST: 4.0 MEADOW PASTURE: 2.0 DIVERS PASTURE: 1.5	487.26																																												

26756 CERT.: 10862 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS	
SECTION	TOWN- SHIP	RANGE	N. E.			N. W.			S. E.			S. W.				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 11 N.	R. 46 E.														
9	T. 11 N.	R. 46 E.	39.39				40.00					40.00				160.00
10	T. 11 N.	R. 46 E.														39.39
															78.78	
															278.17	

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.
PERMIT: 26757 CERT.: 10863	E. WAYNE AND JEAN N. HAGE	PINE CREEK	SW $\frac{1}{4}$ NW $\frac{1}{4}$ SEC. 18, T. 11N., R. 46E., M.D.B. & M., N.00°W. 385.72 FT. FROM THE W $\frac{1}{4}$ COR. SAID SEC. 18.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC JUN. 2, 1972	5.4	HARVEST: 4.0 MEADOW PASTURE: 2.0 DIVERS. PASTURE: 1.50	778.53

26756 CERT.: 10862 (cont.)		PLACE OF USE 40 ACRE DESCRIPTIONS												ACRES PER SECTION	REMARKS	
SECTION	TOWN- SHIP	RANGE	N. E.			N. W.			S. E.			S. W.				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
3	T. 11 N.	R. 46 E.														
4	T. 11 N.	R. 46 E.					40.00					40.00				80.00
9	T. 11 N.	R. 46 E.									40.00	22.88	36.48	40.00		139.36
															39.39	
															258.75	

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 27971 CERT.: 11169	WESTERN STATES MINERALS CORPORATION	UNDERGROUND	NE $\frac{1}{4}$ SEC. 24, T. 13N., R. 45E., M.D.B.&M., N.29 $\frac{33}{100}$ W. 23,028.53 FT. FROM E $\frac{1}{4}$ COR. OF SEC. 8, T. 12N., R. 46E., M.D.B.&M.	JAN. 1 TO DEC. 31	MINING MILLING AND DOMESTIC DEC. 26, 1973	0.0689		15.77 MGA*			
PLACE OF USE											
40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	N E S W			N W S E			REMARKS		
			NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 13 N.	R. 45 E.	X								
19	T. 13 N.	R. 46 E.		X	X						
THE TOTAL COMBINED DUTY OF WATER ISSUED UNDER THIS CERTIFICATE AND ANY CERTIFICATES ISSUED UNDER PERMITS 27973, CERT. 11170, 43786, CERT. 12604; AND 47602, CERT. 12624 SHALL NOT EXCEED 40.0 MILLION GALLONS ANNUALLY. *MGA - MILLION GALLONS ANNUALLY											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 27973 CERT.: 11170	WESTERN STATES MINERALS CORPORATION	SPRING-FED POND	NW $\frac{1}{4}$ SEC. 19, T. 13N., R. 46E., M.D.B.&M., N.29 $\frac{33}{100}$ W. 23,028.53 FT. FROM E $\frac{1}{4}$ COR. OF SEC. 8, T. 12N., R. 46E., M.D.B.&M.	JAN. 1 TO DEC. 31	MINING DEC. 26, 1973	1.0		15.77 MGA*			
PLACE OF USE											
40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	N E S W			N W S E			REMARKS		
			NE	NW	SW	SE	NE	NW	SW	SE	
24	T. 13 N.	R. 45 E.	X								
19	T. 13 N.	R. 46 E.		X	X						
THE TOTAL COMBINED DUTY OF WATER ISSUED UNDER THIS CERTIFICATE AND ANY CERTIFICATES ISSUED UNDER PERMITS 27971, CERT. 11169; 43786, CERT. 12604; AND 47602, CERT. 12624 SHALL NOT EXCEED 40.0 MILLION GALLONS ANNUALLY. *MGA - MILLION GALLONS ANNUALLY											





PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS.	DUTY AC.-FT./ ACRE	TOTAL AC.-FT.																																																																																						
47602 CERT.: 12624	WESTERN STATES MINERALS CORPORATION	UNDERGROUND	NE 1/4 NE 1/4 SEC. 24, T. 13N., R. 45E., M.D.B. & M., N. 25° 37' 56" W., 26, 134.37 FT. FROM E 1/4 COR. OF SEC. 8, T. 12N., R. 46E., M.D.B. & M.	JAN. 1 TO DEC. 31	MINING MILLING AND DOMESTIC JAN. 25, 1984	0.426		52,394 MGA*																																																																																						
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1"> <thead> <tr> <th rowspan="2">SECTION</th> <th rowspan="2">TOWN-SHIP</th> <th rowspan="2">RANGE</th> <th colspan="3">N</th> <th colspan="3">E</th> <th colspan="3">S</th> <th colspan="3">W</th> </tr> <tr> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>SW</th> <th>NW</th> <th>SE</th> <th>NE</th> <th>SW</th> <th>NW</th> <th>SE</th> </tr> </thead> <tbody> <tr> <td>13</td> <td>T. 13 N.</td> <td>R. 45 E.</td> <td></td> </tr> <tr> <td>24</td> <td>T. 13 N.</td> <td>R. 45 E.</td> <td>X</td> <td></td> </tr> <tr> <td>18</td> <td>T. 13 N.</td> <td>R. 46 E.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>X</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>19</td> <td>T. 13 N.</td> <td>R. 46 E.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>X</td> <td>X</td> <td>X</td> <td>X</td> <td>X</td> <td></td> </tr> </tbody> </table> <p style="text-align: center;">ACRES PER SECTION</p> <p>REMARKS</p> <p>THE TOTAL COMBINED DUTY OF WATER ISSUED UNDER THIS CERTIFICATE AND ANY CERTIFICATES ISSUED UNDER PERMITS 27971, CERT. 11169; 43766, CERT. 12804; AND 47602, CERT. 12624 SHALL NOT EXCEED 40.0 MILLION GALLONS ANNUALLY. *MGA - MILLION GALLONS ANNUALLY</p>									SECTION	TOWN-SHIP	RANGE	N			E			S			W			NE	NW	SW	SE	SW	NW	SE	NE	SW	NW	SE	13	T. 13 N.	R. 45 E.													24	T. 13 N.	R. 45 E.	X												18	T. 13 N.	R. 46 E.							X						19	T. 13 N.	R. 46 E.							X	X	X	X	X	
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7	T. 12 N.	R. 47 E.	X																																																																																											



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E. WAYNE & JEAN N. HAGE	PERMIT: 3361 CERT.: 2606	BARLEY CREEK AND TRIBUTARIES (MEADOW CREEK & WIDOW SMITH CREEK)	38
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M.C. AND GRACE WINFIELD	PERMIT: 5809 CERT.: 2628	COMBINATION SPRINGS	42

**DECREE**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the relative rights of the users in and to the waters of Meadow Creek, Corcoran Creek, Andrew's Creek, Pine Creek, Pasco Creek, Mosquito Creek, Barley Creek, and their tributaries, as well as all other waters flowing into or arising in Monitor Valley south of Township 13 North, Nye County, Nevada, are determined as stated above.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED,** that each and every water user and claimant to the waters of Meadow Creek, Corcoran Creek, Andrew's Creek, Pine Creek, Pasco Creek, Mosquito Creek, Barley Creek, and their tributaries, as well as all other waters flowing into or arising in Monitor Valley south of Township 13 North, Nye County, Nevada, and each of their agents, attorneys, servants, and employee and their successors in interest and every person or persons acting in aid or assistance of the said parties and each of them is hereby perpetually enjoined and restrained as follows:

- A. From at any time diverting or using any water of Meadow Creek, Corcoran Creek, Andrew's Creek, Pine Creek, Pasco Creek, Mosquito Creek, Barley Creek, and their tributaries, as well as all other waters flowing into or arising in Monitor Valley south of Township 13 North, Nye County, Nevada, herein above-mentioned except to the extent and amount and in the manner and at the time or times set by this decree for each claim or that which is allowed by permits which have been or may hereafter be granted by the State Engineer of Nevada.
- B. From diverting in excess of the amounts as specified and provided in this Decree or allowed by permits which have been or may hereafter be granted by the State Engineer of Nevada.
- C. From diverting from the natural channel and from using any of the said water in any other manner or for any other purpose or purposes or upon any other land or lands than as provided and prescribed by the term of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of Nevada.

- D. From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by permits that may hereafter be granted by the State Engineer of Nevada.
- E. From, in any manner, meddling with, opening, closing, changing, injuring, or otherwise interfering with any headgates, weirs, water boxes, flume or other measuring device placed, installed or established by the State Engineer or under his authority or direction unless such act be done by the permission or authority of the Water Commissioner or the State Engineer, and during the period of regulation or control of said water by the State Engineer or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of Nevada.

**IT IS HEREBY ORDER, ADJUDGED AND DECREED**, that all enforcement rights set forth in this Court's Decree affirming the Order of the State Engineer dated September 15, 1998, are fully incorporated herein and this Court expressly reserves sole and continuing jurisdiction over any disputes arising under this Decree and over the continuing administration of this Decree.

Dated this 25 day of JUN, 2003.

*John P. Damm*  
District Judge

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date: June 30, 2003

Sandra L. Martino, clerk of the Fifth Judicial District Court, in and for the County of Nye, State of Nevada.

By [Signature], Deputy

## **APPENDIX A**

### **Stockwater Source Description**

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	01091	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
CLAIMANT:	E. WAYNE & JEAN N. HAGE	SOURCE NAME
DRAINAGE AREA:	MEADOW CANYON CREEK	SECTION: 9 .T. 10 N. .R. 45 E. NW ¼ SW ¼
USE:	STOCKWATER	SECTION: 16 .T. 10 N. .R. 45 E. SE ¼ NE ¼
PRIORITY DATE:	1868	SECTION: 15 .T. 10 N. .R. 45 E. SW ¼ NW ¼
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	SECTION: 15 .T. 10 N. .R. 45 E. SW ¼ NW ¼
		SECTION: 14 .T. 10 N. .R. 45 E. SW ¼ NE ¼
		SECTION: 20 .T. 10 N. .R. 45 E. SE ¼ NE ¼
		SECTION: 20 .T. 10 N. .R. 45 E. NE ¼ NE ¼
		SECTION: 21 .T. 10 N. .R. 45 E. NW ¼ SW ¼
		SECTION: 21 .T. 10 N. .R. 45 E. SW ¼ SE ¼
		SECTION: 23 .T. 10 N. .R. 45 E. NE ¼ SE ¼
		SECTION: 29 .T. 10 N. .R. 45 E. SW ¼ SE ¼
		SECTION: 27 .T. 10 N. .R. 45 E. NW ¼ NE ¼
		SECTION: 27 .T. 10 N. .R. 45 E. SW ¼ NE ¼
		SECTION: 27 .T. 10 N. .R. 45 E. NE ¼ NE ¼
		SECTION: 26 .T. 10 N. .R. 45 E. SW ¼ NE ¼
		SECTION: 26 .T. 10 N. .R. 45 E. NW ¼ NE ¼
		SECTION: 32 .T. 10 N. .R. 45 E. NE ¼ SW ¼
		SECTION: 33 .T. 10 N. .R. 45 E. NE ¼ SW ¼
		SECTION: 33 .T. 10 N. .R. 45 E. SE ¼ NE ¼
		SECTION: 33 .T. 10 N. .R. 45 E. NE ¼ SE ¼
		SECTION: 34 .T. 10 N. .R. 45 E. SW ¼ SE ¼
		SECTION: 5 .T. 9 N. .R. 45 E. NE ¼ SW ¼
		SECTION: 5 .T. 9 N. .R. 45 E. NW ¼ SE ¼
		SECTION: 3 .T. 9 N. .R. 45 E. SW ¼ NW ¼

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
01183	RUTH'S SPRING	SECTION: 2 .T. 10 N. .R. 45 E. SW ¼ SE ¼
E. WAYNE & JEAN N. HAGE	CORCORAN DIVIDE SPRING	SECTION: 13 .T. 10 N. .R. 45 E. SE ¼ SW ¼
DRAINAGE AREA:	ARKANSAS SPRING	SECTION: 13 .T. 10 N. .R. 45 E. NE ¼ SE ¼
SMITH CREEK AKA WIDOW SMITH CREEK, SOUTH FORK WIDOW SMITH CREEK	SMITH SPRING	SECTION: 18 .T. 10 N. .R. 46 E. NW ¼ SW ¼
USE:	CORCORAN SPRING	SECTION: 18 .T. 10 N. .R. 46 E. NE ¼ SW ¼
STOCKWATER	BROWN TROUT SPRING	SECTION: 18 .T. 10 N. .R. 46 E. SE ¼ SW ¼
PRIORITY DATE:	SHEEP SPRING	SECTION: 24 .T. 10 N. .R. 45 E. NW ¼ NW ¼
1874	HOOPER SPRING	SECTION: 24 .T. 10 N. .R. 45 E. SE ¼ NE ¼
REMARKS:	RODEAR SPRING	SECTION: 19 .T. 10 N. .R. 46 E. NW ¼ NW ¼
STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	STONE HOUSE SPRING	SECTION: 20 .T. 10 N. .R. 46 E. NE ¼ NW ¼
	GARDEN SPRING	SECTION: 28 .T. 10 N. .R. 46 E. SW ¼ NW ¼

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
01185	
CLAIMANT: E. WAYNE & JEAN N. HAGE	
DRAINAGE AREA: PINE CREEK AND TRIBUTARIES	SECTION: 9 .T. 11 N. .R. 45 E. SW ¼ NW ¼
USE: STOCKWATER	SECTION: 10 .T. 11 N. .R. 45 E. SE ¼ NW ¼
PRIORITY DATE: 1874	SECTION: 10 .T. 11 N. .R. 45 E. NE ¼ SE ¼
REMARKS: STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	SECTION: 11 .T. 11 N. .R. 45 E. SW ¼ SW ¼
	SECTION: 17 .T. 11 N. .R. 45 E. SE ¼ SE ¼
	SECTION: 15 .T. 11 N. .R. 45 E. SW ¼ SW ¼
	SECTION: 15 .T. 11 N. .R. 45 E. SE ¼ SE ¼
	SECTION: 18 .T. 11 N. .R. 46 E. SE ¼ SE ¼
	SECTION: 21 .T. 11 N. .R. 45 E. SW ¼ SW ¼
	SECTION: 22 .T. 11 N. .R. 45 E. NW ¼ SW ¼
	SECTION: 22 .T. 11 N. .R. 45 E. NW ¼ SW ¼
	SECTION: 23 .T. 11 N. .R. 45 E. SE ¼ NW ¼
	SECTION: 24 .T. 11 N. .R. 45 E. NE ¼ SE ¼
	SECTION: 29 .T. 11 N. .R. 45 E. NE ¼ NW ¼
	SECTION: 29 .T. 11 N. .R. 45 E. SW ¼ SE ¼
	SECTION: 28 .T. 11 N. .R. 45 E. SW ¼ NE ¼
	SECTION: 25 .T. 11 N. .R. 45 E. NW ¼ NW ¼

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.: 01186	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
CLAIMANT: E. WAYNE & JEAN N. HAGE	COOK SPRING	SECTION: 26 T. 11 N. R. 45 E. SE 1/4 SW 1/4
DRAINAGE AREA: ANDREW'S CREEK AND TRIBUTARIES	TRAIL CROSSING SPRING	SECTION: 26 T. 11 N. R. 45 E. SE 1/4 SE 1/4
	BIG ANDREWS SPRING	SECTION: 34 T. 11 N. R. 45 E. SE 1/4 NW 1/4
	WHITE ROCK SPRING	SECTION: 33 T. 11 N. R. 45 E. SE 1/4 SE 1/4
	LITTLE ANDREWS SPRING	SECTION: 34 T. 11 N. R. 45 E. NW 1/4 SE 1/4
USE: STOCKWATER	TRAIL CANYON SPRING	SECTION: 31 T. 11 N. R. 46 E. SW 1/4 SE 1/4
	WINDY PASS SPRING	SECTION: 3 T. 10 N. R. 45 E. NE 1/4 NW 1/4
	MAHAGONY SPRING	SECTION: 3 T. 10 N. R. 45 E. NE 1/4 SE 1/4
PRIORITY DATE: 1874	DEER HOLLOW SPRING #1	SECTION: 3 T. 10 N. R. 45 E. SE 1/4 NE 1/4
	DEER HOLLOW SPRING #2	SECTION: 3 T. 10 N. R. 45 E. SE 1/4 NE 1/4
REMARKS: STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	LAURA'S SPRING	SECTION: 2 T. 10 N. R. 45 E. SW 1/4 NE 1/4

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	04465	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
CLAIMANT:	E. WAYNE & JEAN N. HAGE	SOURCE NAME
DRAINAGE AREA:	MOSQUITO CREEK AND TRIBUTARIES	SECTION: 33 .T. 11 N. .R. 47 E. NE ¼ SE ¼
USE:	STOCKWATER	SECTION: 36 .T. 11 N. .R. 47 E. NW ¼ SW ¼
PRIORITY DATE:	1874	SECTION: 1 .T. 10 N. .R. 47 E. NE ¼ NW ¼
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	SECTION: 3 .T. 10 N. .R. 47 E. SE ¼ NW ¼
		SECTION: 2 .T. 10 N. .R. 47 E. SE ¼ NE ¼
		SECTION: 1 .T. 10 N. .R. 47 E. SE ¼ NW ¼
		SECTION: 1 .T. 10 N. .R. 47 E. SW ¼ SE ¼
		SECTION: 13 .T. 10 N. .R. 47½ E. NE ¼ SW ¼
		SECTION: 11 .T. 10 N. .R. 47 E. NW ¼ SW ¼
		SECTION: 13 .T. 10 N. .R. 47½ E. NE ¼ NW ¼
		SECTION: 11 .T. 10 N. .R. 47 E. SE ¼ NW ¼
		SECTION: 36 .T. 12 N. .R. 47 E. NE ¼ NW ¼
		SECTION: 36 .T. 12 N. .R. 47 E. SE ¼ NE ¼
		SECTION: 36 .T. 12 N. .R. 47 E. NW ¼ SW ¼
		SECTION: 35 .T. 12 N. .R. 47 E. SE ¼ NE ¼
		SECTION: 2 .T. 11 N. .R. 47 E. NE ¼ SE ¼
		SECTION: 1 .T. 11 N. .R. 47 E. SW ¼ NE ¼
		SECTION: 1 .T. 11 N. .R. 47 E. NE ¼ SE ¼
		SECTION: 33 .T. 11 N. .R. 47 E. SE ¼ SE ¼
		SECTION: 11 .T. 11 N. .R. 47 E. NE ¼ NW ¼
		SECTION: 11 .T. 11 N. .R. 47 E. NW ¼ SE ¼
		SECTION: 12 .T. 11 N. .R. 47 E. NE ¼ NE ¼
		SECTION: 12 .T. 11 N. .R. 47 E. NE ¼ SE ¼
		SECTION: 13 .T. 11 N. .R. 47 E. NW ¼ SW ¼
		SECTION: 13 .T. 11 N. .R. 47 E. SE ¼ SW ¼
		SECTION: 13 .T. 11 N. .R. 47 E. SE ¼ SW ¼
		SECTION: 23 .T. 11 N. .R. 47 E. SE ¼ SW ¼
		SECTION: 24 .T. 11 N. .R. 47 E. SE ¼ SE ¼
		SECTION: 24 .T. 11 N. .R. 47 E. NW ¼ NE ¼
		SECTION: 24 .T. 11 N. .R. 47 E. SW ¼ NE ¼
		SECTION: 28 .T. 11 N. .R. 47 E. NE ¼ SE ¼
		SECTION: 26 .T. 11 N. .R. 47 E. NW ¼ NE ¼

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SECTION:	T.	N.	R.	E.	SW	NW
04465	ASPEN SPRING	31	12	12	48	SW	1/4 NW 1/4
	DARK HORSE SPRING	31	12	12	48	SW	1/4 NE 1/4
	SHEEP TROUGH SPRING	32	12	12	48	SW	1/4 SW 1/4
	KINCAIDE SPRING	6	11	11	48	SE	1/4 SW 1/4
	SLEET STORM SPRING	6	11	11	48	SW	1/4 NE 1/4
	UNITED SPRING	8	11	11	48	SE	1/4 NW 1/4
	STOEDICK SPRING #1	8	11	11	48	SE	1/4 SE 1/4
	STOEDICK SPRING #2	8	11	11	48	SW	1/4 SE 1/4
	KEOUGH SPRING	18	11	11	48	NW	1/4 NW 1/4
	WEIR SPRING	17	11	11	48	SW	1/4 NW 1/4
	GEORGE'S SPRING	17	11	11	48	SE	1/4 NW 1/4
	NORWAY SPRING	17	11	11	48	NE	1/4 NW 1/4
	NICHOLS SPRING	17	11	11	48	NE	1/4 NW 1/4
	CLAYTON SPRING	17	11	11	48	NW	1/4 NE 1/4
	GEORGE CAMP SPRING	17	11	11	48	NE	1/4 SW 1/4
	TYBO SPRING	19	11	11	48	NW	1/4 NE 1/4
	UPSET SPRING	19	11	11	48	NW	1/4 SE 1/4
	GLOVER SPRING	19	11	11	48	SW	1/4 SE 1/4
	MARSH SPRING	20	11	11	48	NW	1/4 NE 1/4
	DANVILLE SPRING	20	11	11	48	SE	1/4 NE 1/4
	CLINTON SPRING	30	11	11	48	SE	1/4 NE 1/4
	TIGHTSPOT SPRING	30	11	11	48	NE	1/4 NE 1/4
	WATERFALL SPRING	29	11	11	48	NW	1/4 NW 1/4
	KAISER SPRING	29	11	11	48	SW	1/4 NW 1/4
	HARDWAY SPRING	31	11	11	48	NW	1/4 NE 1/4
	DUTCHMAN SPRING	31	11	11	48	NE	1/4 NE 1/4
	UNCLE BILL'S SPRING	25	11	11	47	SE	1/4 NW 1/4
	HARDROCK SPRING	25	11	11	47	NW	1/4 NE 1/4
	SURVEYOR SPRING	25	11	11	47	SE	1/4 SW 1/4
	ANDY'S SPRING	36	11	11	47	NE	1/4 NE 1/4
	UPPER COFFEE POT SPRING	35	11	11	47	NW	1/4 SE 1/4
	COFFEE POT SPRING	35	11	11	47	SE	1/4 SW 1/4
	LAST CHANCE SPRING	35	11	11	47	E.	SW 1/4 SW 1/4
	SMOKEY SPRING	24	11	11	47 1/2	E.	NE 1/4 SW 1/4
	LOWER HAYSTACK SPRING	16	10	10	47	E.	NE 1/4 NW 1/4

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
04466	E. WAYNE & JEAN N. HAGE	
CLAIMANT:	TRAGEDY SPRING	SECTION: 33 .T. 11 N. .R. 48 E. NW ¼ NW ¼
DRAINAGE AREA:	UPPER SCUFFE SPRING	SECTION: 31 .T. 11 N. .R. 48 E. SE ¼ SE ¼
BARLEY CREEK AND TRIBUTARIES (MEADOW CANYON AND WIDOW SMITH CREEK)	LEE'S CAMP SPRING	SECTION: 32 .T. 11 N. .R. 48 E. NW ¼ SW ¼
CAVENAUGH SPRING	CAVENAUGH SPRING	SECTION: 12 .T. 10 N. .R. 47½ E. SE ¼ SE ¼
SCUFFE SPRING	SCUFFE SPRING	SECTION: 7 .T. 10 N. .R. 48 E. NE ¼ SW ¼
HIDE OUT SPRING	HIDE OUT SPRING	SECTION: 8 .T. 10 N. .R. 48 E. NE ¼ SW ¼
HOLD UP SPRING	HOLD UP SPRING	SECTION: 13 .T. 10 N. .R. 47½ E. SE ¼ SW ¼
WILSON SPRING	WILSON SPRING	SECTION: 18 .T. 10 N. .R. 48 E. SW ¼ SW ¼
RIM SPRING	RIM SPRING	SECTION: 19 .T. 10 N. .R. 48 E. NW ¼ NE ¼
MERLINO SPRING	MERLINO SPRING	SECTION: 25 .T. 10 N. .R. 47½ E. NW ¼ NE ¼
SWITCHBACK SPRING	SWITCHBACK SPRING	SECTION: 30 .T. 10 N. .R. 48 E. SE ¼ SW ¼
RED ROCK SPRING	RED ROCK SPRING	SECTION: 30 .T. 10 N. .R. 48 E. NE ¼ NE ¼
SOUTH POINT SPRING	SOUTH POINT SPRING	SECTION: 29 .T. 10 N. .R. 48 E. SE ¼ SW ¼
LOWER HAYSTACK SPRING	LOWER HAYSTACK SPRING	SECTION: 16 .T. 10 N. .R. 47 E. NE ¼ NW ¼
PRIORITY DATE:	1874	
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	

## **EXHIBIT 1**

**Order Affirming State Engineers Conclusion Regarding Federal Governments Exceptions A, B, D, E and F and Remand to State Engineer Exception C.**

FILED

No. CV14906

1999 OCT 12 P 1:27

*M. J. Robb*

NYE COUNTY CLERK

**IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE**

**IN THE MATTER OF THE DETERMINATION  
OF THE RELATIVE RIGHTS IN AND TO THE  
WATERS OF MONITOR VALLEY - SOUTHERN  
PART(140-B), NYE COUNTY, NEVADA**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**Introduction.**

In reviewing the exceptions to the order of determination, this Court will follow the United States' Opening Brief (A-F). As Hage et al accepted the Order of Determination, the court will address only the issues raised in the United States' Opening Brief.

**A. The State Engineer Properly Granted Vested Water Rights on Federal Lands to Private Citizens and Rejected the United States' Claims to Such Water.**

The federal government claims vested water rights superior to Hage et al. It argues neither federal nor state law permit private parties to obtain stock water rights on public lands: "...the United States will demonstrate that a private stock watering right on the national forests is not authorized under either federal or state law and is antithetical to Congressional directives." United States' Opening Brief at.5.

The federal government contends Congress' intentions support its claims. Parties utilizing water on public land for grazing purposes in the 19<sup>th</sup> Century obtained only implied, revokable, licenses to use that water.

**FIFTH JUDICIAL DISTRICT COURT**  
ESMERALDA, MINERAL AND NYE COUNTIES



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“However, the government’s tacit consent to grazing on public domain did not deprive the United States of the power of recalling any implied license under which the land had been used for private purposes. During this time, Congress sought to prevent any individual or company from monopolizing the use of the range by acquiring exclusive rights to the use of the land or water...”. Id. at 5.

The federal government argues state law supports its claims. Owners and managers of public land can get water rights on that land rather than the users of water. The State of Nevada v. Morros, 104 Nev. 709, 766 P.2d 263 (1988). The United States’ acquired the land in question from Mexico in the 1840’s, and previous adjudications have awarded water rights to the federal government based on such ownership. The United States’ Opening Brief at 23. Hence, the federal government contends it owns the water rights in issue as the predecessor in interest to the private parties that originally applied the water to beneficial use: “It is therefore presumed that the priority dates were calculated based on the date of application of water to beneficial use for stockwatering purposed on what are now national forests by the first stockmen on the public domain. According to the Nevada Attorney General’s argument, these were the predecessors in interest, or the ones that, by virtue of putting the water to beneficial use, gave rise to the stock water rights of the United States.” Id.

The federal government also contends that under Nevada law, water rights are appurtenant to the land where water is used. The United States’ Opening Brief at 7-10. Since it owns the land where the water was used, and did not convey it, it claims the water rights. Id.

This Court rejects these arguments and believes Congress wanted state law to govern water rights and allowed private individuals to obtain vested stock water rights on public

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



1 land. California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L.  
 2 Ed. 1356 (1935); Broder v. Natoma Water & Mining Co., 101 U.S. 274, 25 L Ed. 790  
 3 (1879); Atchison v. Peterson, 87 U.S. 507, 22 L. Ed. 414 (1874).

4  
 5 Nevada law does not support the federal government. Owners and managers of public  
 6 land can get water rights, but only after adjudication by the state engineer pursuant to  
 7 state statute. The State of Nevada v. Morros, 104 Nev. 709, 766 P.2d 263 (1983). The  
 8 state engineer properly found that the federal government has not established vested  
 9 water rights.

10 The Nevada doctrine of appurtenance does not support the federal government. Under  
 11 Nevada law, stock water rights can be appurtenant to base ranches rather than the land  
 12 where livestock drink. Steptoe Livestock Company v. Gulley, 53 Nev. 163, 295 P.772  
 13 (1931).

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 16 *1. Though Ownership and Management of Federal Public Land for Livestock Grazing*  
 17 *may Constitute Beneficial use and Appropriation, Ownership and Management of Public*  
 18 *Land Alone does not Create Valid Water Rights Under Nevada State Law; Adjudication*  
 19 *by the State Engineer Does.*

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 22 The federal government submits its ownership and management of federal land  
 23 constitutes beneficial use sufficient for appropriation under Nevada law. The United  
 24 States' Opening Brief at 6. The government contends The State of Nevada v. Morros,  
 25 104 Nev. 709, 766 P.2d 263 (1988) justifies this position:  
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27 "Thus, the United States acts in its proprietary capacity as a landowner when federal  
 28 agencies seek to appropriate water under state law for livestock and wildlife watering.

FIFTH JUDICIAL DISTRICT COURT  
 ESMERALDA, MINERAL AND NYE COUNTIES





1 Although the United States owns no livestock and does not 'own' wildlife, it owns land  
2 and may appropriate water for application to beneficial uses on its land. The district  
3 court erred in deciding that the United States could not obtain water rights for stock  
4 watering and wildlife watering..." The State of Nevada v. Morros, 104 Nev. 709, 718,  
5 766 P.2d 263, 269 (1988).

7 The federal government contends its ownership of the land in question establishes its  
8 claim to vested water rights: "Because the United States is the owner and manager of the  
9 federal public land, and because the United States has allowed livestock to continue to  
10 graze on that land, the United States should be considered the party with the requisite  
11 'intent to appropriate' these stock water rights, which are often simply instream uses of  
12 the water. Such use of water for livestock is recognized as a beneficial use of water in  
13 Nevada, NRS 533.490. As such, the elements for a valid water right have been satisfied  
14 and such rights should be decreed to the United States." The United States Opening Brief  
15 at 7.

17 This Court agrees that ownership and management of land may constitute beneficial  
18 use sufficient for appropriation under Nevada law. The State of Nevada v. Morros, 104  
19 Nev. 709, 718, 766 P.2d 263, 269 (1988). Though this case concerned applications for  
20 water right under the modern statutory system, this principle applies to adjudications of  
21 vested water rights.

23 This Court does not believe the United States' ownership of land in this case creates  
24 vested water rights. The state engineer determines the validity of claims to vested stock  
25 water by federal and private parties alike according to state statute. The State of Nevada  
26 v. Morros, 104 Nev. 709, 766 P.2d 263 (1988). In this process, the state engineer's  
27 factual determinations are valid if supported by substantial evidence. In Re Waters of  
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Barber Creek, 46 Nev. 254, 259, 205 P. 518, 519-520 (1922); Waters of Horse Springs v. State Engineer, 99 Nev. 776, 67 P.2d 1131 (1983).

The federal government has not shown the state engineer's factual determinations on the validity of its claims to vested water rights lacked substantial evidence. The State of Nevada v. Morros, 104 Nev. 709, 766 P.2d 263 (1988) may not apply to this case. The federal government's management of public land was central Morros' holding, but the federal government has not shown it was administering the public land in the mid 1850's in the same proprietary capacity and as in that case. Further, when the water rights in issue were perfected, Congress intended private individuals to appropriate water on public land according to state law. California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L.Ed. 1356 (1935).

2. *Nevada's Appurtenance Doctrine Does not Prefer that Water Rights be Held by the Owner of the Land on which those Waters are Beneficially Used.*

Under the appurtenance doctrine, water rights pass with the land on which they are beneficially used unless expressly severed in the deed conveying the land. Zolezzi v. Jackson, 72 Nev. 150, 153, 297 P.2d 1081, 1082 (1952); Prosole v Steamboat Canal Co., 37 Nev. 154, 164, 140 P. 720, 723 (1914). The Federal Government strictly applies this definition appurtenance. In this case, the place of beneficial use is the land where the cattle drank. The United States' Opening Brief at 7. Since the federal government owned this land and never conveyed it, it claims vested water rights. Id. at 10.

This Court rejects the federal government's argument. A water right is not necessarily appurtenant to the land where the water is used. Smith v. Logan, 18 Nev. 149, 154, 1 P. 678, 681 (1883). In that case, a trespasser (Smith) used water on land he did not own. Id. at 149, 1 P. at 678. A subsequent purchaser of the land (Logan) where the trespasser had



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used the water claimed he bought the water right when he bought the land. Id. at 154, 1 P. at 681. The presumption of this claim was that water rights are always appurtenant to the land where the water is used. Id.

The Court rejected Logan's argument. The Court held a trespasser can obtain a water right without owning the land where he uses the water and that the water rights did not automatically attach to the land where the trespasser used the water:

"Plaintiff, Smith, and defendant Logan each endeavored to purchase this tract from the railroad company. In the year 1880 the company entered into a sale with Logan. Prior thereto Smith had occupied and irrigated the land, and appellant now claims that the waters of the stream had become appurtenant to the land, and went with it when Smith lost and Logan acquired it. We cannot admit this claim. Smith, as to the true owner of the land, was a trespasser. Logan has not connected himself with Smith's right to the use of the water, and he could have changed its use to other lands." Id. at 154, 1 P. at 681.

The court clearly holds that water rights are not automatically appurtenant to the place of use. The rationale seems to be that since an appropriator can change the place of use, water rights are not always appurtenant to place of use.

Stock water rights can be appurtenant to the livestock owner's land rather than the land where they drink. In Steptoe Live Stock Co. v. Gulley, 53 Nev. 163, 169, 295 P. 773, 773(1931), Steptoe claimed a vested water right from a predecessor in interest. Gulley, contesting Steptoe's claim, argued Nevada law did not recognize stock water rights: prior appropriation requires physical diversion from the source of the water to the point of use. Id. at 163, 295 P. at 773. Since stock watering does not employ physical diversions, Gulley contended Steptoe's was invalid. Id. at 163, 296 at 773.



1 In deciding the issue, the Court established two principles of prior appropriation.  
2 Beneficial use and local customs constitute central elements in determining whether  
3 vested water rights exist:  
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5 "...it would not seem necessarily to follow that it would be necessary to do so [to  
6 physically divert water] where it could be put to beneficial use without such diversion,  
7 and where there was a practice of appropriating the waters of the streams to a beneficial  
8 use without such diversions..." Id. at 173, 295 P. at 774-775

9 The State of Nevada v. Morros, 104 Nev. 709, 766 P.2d 263 (1988) confirms this  
10 interpretation of Steptoe:  
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12 "This court opined in Steptoe...that beneficial use was the only indispensable  
13 requirement to appropriate water, and that any pre-statutory diversion requirement arose  
14 from the practical necessity for a diversion in agriculture, mining, and similar uses of  
15 water. The court stated that under certain conditions it could recognize an appropriation  
16 of water without a diversion when no diversion was needed to put the water to beneficial  
17 use." Id. at 714, 766 P.2d at 266.

18 An additional principle governs the application of the elements needed under prior  
19 appropriation to establish a valid water right. Courts must consider "conditions" in  
20 determining the validity of water rights under prior appropriation: "Courts are bound to  
21 take notice of the conditions of the country which they judicially rule." Steptoe Livestock  
22 Co. v. Gulley, 53 Nev. 163, 171, 295 P. 772, 774 (1931).  
23

24 "Conditions" include the nature of the land and economics. Though standard rules of  
25 prior appropriation had required a physical diversion, the court held stock waterers do not  
26 necessarily need to construct physical diversions to establish valid water rights. Steptoe  
27 Livestock Co. v. Gulley, 53 Nev. 163, 175-176, 295 P. 772, 775-776 (1931). Ranchers  
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let cattle drink straight from streams rather than build diversions for pragmatic, economic reasons:

“It is certainly true that the owner cannot make cattle drink; if he built the most expensive pipe line conceivable and the most beautiful trough that human ingenuity could produce for the cattle to drink out of, there would be no way of compelling the cattle to drink out of the trough, instead of out of a puddle made by the overflow from the trough. No doubt it was this consideration which lead the hardy and practical live stock men of a half a century ago to adopt the well and widely established custom which the court found to prevail.” Id. at 175-176, 295 P. at 775-776.

This holding means that if it is inefficient and risky for ranchers to construct diversions to water live stock, they don't need to do so to obtain a water right regardless of traditional elements prior appropriation. Practical considerations, like economics and the nature of the land influence the elements needed for a valid appropriation of water.

Similarly, water rights can be appurtenant to the land that owns the cattle. The ranchers could have built diversion works to their land and hence made the place of use land they owned. Id. Since doing so is inefficient and risky, Nevada law does not require it to satisfy the traditional elements of prior appropriation. Id.

This Court finds the water right perfected by Hage et all's predecessors in interest appurtenant to the base ranches .

*3. Private Vested Stock Water Rights on the Federal Lands are not Fundamentally Inconsistent with the Historic Congressionally Mandated "Grazing Common".*

The United States contends Congress did not grant private stock water rights on public land. Congress intended the law of range land management to govern stock water rights: “As will be seen, Congress repeatedly acted to prevent individuals from monopolizing



1 land and water resources needed for grazing on public land.” The United States Opening  
 2 Brief at 11. The Unlawful Enclosures Act of 1885, the Stock Water Reservoir Act of  
 3 1897, and the Stock Water Raising Homestead Act of 1916 demonstrate this intention.

4 Id.

5  
 6 This Court rejects these claims because the latter two acts were subsequent to the  
 7 perfection of the rights which Hage et all now claim. The Unlawful Enclosures act of  
 8 1885 concerns access, not stock water rights.

9 Congress intended that state law and local custom determine the acquisition of water  
 10 rights by private individuals on public land in the mid-19<sup>th</sup> century. California Oregon  
 11 Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L. Ed. 1356 (1935). The  
 12 court wrote

13  
 14 “What we hold is that following the act of 1877, if not before, all non-navigable  
 15 waters then a part of the public domain became publici juris, subject to the plenary  
 16 control of the designated states...with right in each to determine for itself the extent of  
 17 the rule of appropriation or the common-law rule of riparian rights should obtain”

18 California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 163-164, 79  
 19 L. Ed. 1356, 1364.

20  
 21 The phrases “All non-navigable waters in any part of the public domain” and “plenary  
 22 control” indicate Congressional intent to grant states control of all waters, without  
 23 exception. Water for stock is not included in or preempted by rangeland management  
 24 policy. Other statements reiterate this point:

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 26 “Congress recognized and assented to the appropriation of water...the obvious  
 27 purpose was to give its assent to so far as the public lands were concerned, to any system,  
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1 although in contravention to the common law rule, which permitted the appropriation of  
2 those waters for legitimate industries." *Id.* at 159- 160, 79 L. Ed. at 1362.

3  
4 The phrases "any system" and "as far as the public lands were concerned" show Congress  
5 gave states control over water on public lands. The phrase "legitimate industries" does  
6 not except stock water or cattle industries from the grant to the states to manage water for  
7 stock on public lands.

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9 *4. The State Engineer Properly Read and Applied the Mining Act of 1866 and the*  
10 *Desert Land Act of 1877.*

11  
12 The federal government contends the state engineer misconstrued the Mining Act of  
13 1866 and the Desert Lands Act of 1877.

14 Case law supports the state engineer's reading of the Desert Lands Act of 1877 and  
15 the General Mining Law of 1866. *California v. U.S.*, 438 U.S. 645, 57 L. Ed.2d 1018  
16 (1978) stated the General Mining Law of 1866 and the Desert Lands Act of 1877 show  
17 Congress' intent to allow states to administer water on public lands:  
18

19 "In 1862 Congress for the first time opened the public domain to homesteading.  
20 Homestead Act of 1862, 12 Stat. 392. And in 1866, Congress for the first time expressly  
21 opened the mineral lands of the public domain to exploration and occupation by miners.  
22 Mining Act of 1866, ch. 262, 14 Stat.251. Because of the fear that these Acts might in  
23 some way interfere with the water rights and systems that had grown up under state and  
24 local law, Congress explicitly recognized and acknowledged the local law: 'Whenever,  
25 by priority of possession, rights to the use of water for mining, agricultural, or other  
26 purposes, have vested and accrued, and the same are recognized and acknowledged by  
27 the local customs, laws, and the decisions of courts, the possessors and owners of such  
28





1 vested rights shall be maintained and protected in the same.” The Mining Act of 1866”  
2 Id. at 655-656, 57 L. Ed. 2d at 1026-1027.

3  
4 Hunter v. U.S., 388 F.2d 148 (1967) confirms the state engineer’s reading of the  
5 Mining Act of 1866 and the Desert Land Act of 1872. Hunter claimed stock water rights  
6 in Death Valley National Monument from predecessors in interest. Id. The central issue  
7 was whether Congress intended to allow private individuals to obtain water rights on  
8 public land or had granted a license to use water. Id. The Court held for Hunter. Id.  
9 Before 1866, the Congress acquiesced to individuals obtaining water rights on federal  
10 land under state law. Id. at 152. The General Mining Law of 1866 overtly confirmed this  
11 intention to allow private individuals to obtain such rights. Id. Subsequent changes in  
12 mining law preserved this policy:

13  
14 “And in order to make it clear that the grantees of the United States would take their  
15 lands charged with the existing servitude [the General Mining Law of 1866], the Act of  
16 July 9 1870...amending the act of 1866 provided that ‘all patents granted or preemption  
17 of homesteads allowed shall be subject to any vested and accrued water rights, or rights  
18 to ditches and reservoirs used in connection with such water rights, as may have been  
19 acquired under or recognized by the act of which this act is amendatory [The General  
20 Mining Law of 1866].’ The effect of these acts is not limited to rights acquired before  
21 1866. They reach into the future as well, and approve and confirm the policy of  
22 appropriation for a beneficial use, as recognized by local rules and customs.” Id. at 152.  
23 As Hunter claimed vested stock water rights, the holding and language clearly indicate  
24 that the General Mining Law of 1866 and the Desert Lands Act of 1877 apply to stock  
25 water uses.  
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1 The language of the General Mining Law of 1866 supports the state engineer. When  
2 interpreting a statute, a court must first examine its plain language. Smith v. Crown  
3 Financial Services of America, 111 Nev. 277, 890 P.2d 769 (1995). The Mining Law of  
4 1866 contains plain language:  
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7 *"Whenever by priority of possession, rights to the use of water for mining,*  
8 *agricultural, manufacturing, or other purposes have vested and accrues, and the same*  
9 *are recognized and acknowledged by local customs, laws, and the decisions of courts the*  
10 *possessors and owner of such vested rights shall be maintained and protected in the*  
11 *same."* Section 9 of the Mining Act of 1866.  
12

13  
14 The plain meaning of 'Agriculture' likely includes stock watering as well as farming:  
15 most farms have some animals on them like cattle and sheep, and these animals need  
16 water. Further, 'Other purposes' certainly includes stock watering. Finally, the federal  
17 government contends the doctrine of *ejusdem generis* excludes stock watering from the  
18 definition of 'other purposes'. If the terms preceding 'other purposes' define that term,  
19 agriculture, manufacturing and mining reflect a wide range of uses. Stock watering falls  
20 within that range. Finally, the statute refers to 'vested rights'. The unrestricted use of  
21 that term show Congress' intent to allow state regulation of a wide variety of vested  
22 rights. A large part of water rights are denominated 'vested'.  
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26 . 5. *The State Engineer Properly Rejected of All the Claims Filed by the United States*  
27 *for Vested Stock Water Rights.*  
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The United States contends it reserved stock water rights on public land for itself. The United States' Opening Brief at 21. The United States argues just as the state engineer has given it water rights in previous adjudications, the state engineer should do so in this case. Id. at 22-23. For example, the Hunt's Creek adjudication gave the United States vested water rights as "successor in interest to the owners of livestock who initially applies water to beneficial use on the public domain for stock watering purposes." United States' Opening Brief at.22. Ownership of land can constitute a basis for a water right. The State of Nevada v. Morros, 104 Nev. 709, 718, 766 P.2d 263, 269 (1988). The United States claims its water rights vested when it acquired the land: "...the lands upon which the springs are located have been in continuous United States ownership since acquired from Mexico in 1848." United States' Brief at.23.

This Court has already rejected the federal government's first argument. The United States granted the states control over water rights on public land. California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L. Ed. 1356 (1935). The United States did not except stock water from this grant. Id.

This Court rejects the United States' second claim. Congress granted to the states control over water rights. California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L. Ed. 1356 (1935). Under the McCarran Amendment, 43 U.S.C. Section 666, state regulations apply to federal agencies. Federal agencies may and must obtain water rights under state statutes just as private individuals must:

"Under NRS 533.010, therefore, applications by the Unites States agencies to appropriate water for application to beneficial uses must be treated on an equal basis with applications by private landowners." The State of Nevada v. Morros, 104 Nev. 709, 718,

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766 P.2d 263, 269 (1988). Federal agencies must conform to state statutes regarding water right adjudications. Id.

The United States has not satisfactorily demonstrated their vested water rights under Nevada statutes and cases. The state engineer determines the relative rights of claimants to vested water rights. NRS 533.090 The state engineer must take proofs of the relative claims. NRS 533.125. Parties claiming vested water rights from a predecessor in interest must connect themselves to that predecessor in interest by title: "the law is well settled that the respondents cannot avail themselves of the rights of these early settlers, with whom they have in not manner connected themselves by title." Union Mill & Mine Co. v. Dangberg, 81 F.73, 103 (D.Nev. 1897). Other cases reiterate this point. A water right is an interest in land: "That the right to the enjoyment of the dam, and to have the water flow through the ditch in question, is an interest in land, is fully supported by the following authorities...". Lobdell v. Hall, 3 Nev. 507, 522 , (1868). As such, demonstrating a water right claim requires proof just as other property interests do: "The defendants do not claim as lessees; hence, there being no deed or conveyance in writing, as required by the statute, they acquired nothing from the Indian." Id. Vested water right claims from predecessors in interest require documents connecting that current claimant to that predecessor. Id.

The federal government has not presented any documents or chain of title connecting it to the predecessors in interest. It claims its right from its status as owner of the land on which private parties in the mid 19<sup>th</sup> century perfected water rights. The United States' Opening Brief at 24. The state engineer properly denied the United States' claim.

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



Fifth Judicial District Court  
ESMERALDA, MINERAL AND NYE COUNTIES



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6. U.S. v. New Mexico, 438 U.S. 696, 57 L. Ed. 2d 1052 (1978) is Relevant to  
*Ownership of Vested Stock Water Rights under Nevada Law.*

The federal government contends U.S. v. New Mexico, 438 U.S. 696, 57 L. Ed. 2d 1052 (1978) does not apply. As the issue in the case concerned the federal reserved rights, statements regarding the ability of private individuals to obtain stock water rights on public land are dicta and thus inapplicable. The United States' Opening Brief at 25. The federal government also contends "The state engineer's order is anchored on the language by the Supreme Court in New Mexico that the New Mexico courts held any stock watering rights must be allocated under state law to individual stock waterers". Id. The federal government thus concludes that since New Mexico does not apply, the state engineer's position crumbles. Id.

U.S. v. New Mexico, 438 U.S. 696, 57 L. Ed. 2d 1052 (1978) is persuasive, though not controlling authority. Statements on which the state engineer relies are necessarily related to the central issue. Though the primary issue concerned reserved rights, in deciding this issue the court by necessity had to consider alternative methods for perfecting water rights:

"Where water is necessary to fulfill the very purposes for which a federal reservation was created, it is reasonable to conclude, even in the face of Congress express deference to state water law in other areas, that the United States intended to reserve the necessary water. Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator." Id. at 702, 57 L. Ed. 2d at 1058.

1 The phrase "...Even in the face" indicates how in deciding a question of reserved rights,  
 2 the court must confront the necessarily related issue of Congress' general water policy;  
 3 the phrase "Where water..." indicates how in analyzing implied reservation the court  
 4 must confront how the federal government appropriates water in the absence of implied  
 5 reservation. Since such statements do not constitute the central issue in the case, they are  
 6 not controlling. However, the necessary and logical connection of the issues makes such  
 7 statements, in the absence of other authority, persuasive.

9 Ample authority besides U.S. v. New Mexico, 438 U.S. 696, 57 L. Ed. 2d 1052 (1978)  
 10 supports the state engineer's order. State law governs the acquisition of water rights on  
 11 public land in the mid 19<sup>th</sup> century. California Oregon Power Co. v. Beaver Portland  
 12 Cement Co., 295 U.S. 142, 79 L. Ed. 1356 (1935). Under Nevada law, statutes govern  
 13 water law applications and vested water right claims by private individuals and federal  
 14 agencies. The State of Nevada v. Morros, 104 Nev. 709, 766 P.2d 263 (1988). NRS  
 15 533.90-320 instruct the state engineer on how to adjudicate claims to vested water rights.  
 16

17  
 18 *7. Public Policy Supports Issuing the Decrees for Vested Stock Water Rights to Hage*  
 19 *et all.*

21  
 22 The federal government contends the state engineer's holding violates public policy.  
 23 Private water rights on public land may obstruct the federal government's ability to  
 24 manage the public rangeland: "Awarding stock water rights to the owner of livestock,  
 25 rather than the owner of the land upon which stock are grazed and watered, interferes  
 26 with the ability of the United States to manage and administer public grazing lands, as  
 27  
 28

1 directed by Congress, for the people of the whole country.” The United States’ Opening  
2 Brief at .27.

3  
4 This Court disagrees. The statutes governing the adjudication of vested water rights  
5 do not give the state engineer the authority to consider public policy in adjudicating  
6 vested water rights. NRS 533.090-533.320 The statutes give the state engineer the  
7 authority to consider only “proofs”. See NRS 533.125, NRS 533.100, NRS 533.110.  
8 The state engineer thus acted appropriately.

9  
10 **B. The State Engineer Properly Found the Private Claimants for Stock Water**  
11 **Rights on Public Land Presented Sufficient Evidence to Support their Stock Water**  
12 **Claims.**

13  
14  
15 The federal government contends sufficient evidence does not support Hage et all’s  
16 claims. The United States Opening Brief at 29-34. The Federal Government presents  
17 two elements of this argument. Since water rights are appurtenant to federal land, they  
18 cannot pass in conveyances of private, base ranches. Id. at 31. Second, Hage et all have  
19 not satisfactorily connected themselves to their predecessors in interest. Id. at 32.

20  
21 This Court has already addressed and dismissed the federal government’s first claim.  
22 Under Nevada state law, vested stock water rights can be appurtenant to the base ranches.  
23 Steptoe Livestock Company v. Gulley, 53 Nev. 163, 295 P.772 (1931).

24  
25 The state engineer properly determined Hage et all sufficiently established their  
26 claims. A court must not substitute its judgment for that of an agency as to a question of  
27 fact. NRS 233B.135 (1). Courts can remand administrative decisions for exceeding  
28 statutory authority, error of law, clearly erroneous determinations, or arbitrary and

**Fifth Judicial District Court**  
ESMERALDA, MINERAL AND NYE COUNTIES



1 capricious abuse of discretion. NRS 233B.135 (2). The administrative act augments,  
 2 rather than supplants, specific statutory rules. NRS 233B.020(2).

3  
 4 A vested water rights adjudication proceeds as follows. Upon petition by "users" of a  
 5 stream, the state engineer must determine the relative rights of the users. NRS 533.090.  
 6 After investigation, the state engineer makes a preliminary order of determination. NRS  
 7 533.140. The state engineer must hear objections to the order. Id. The state engineer  
 8 then files an order of determination in his office and with the county clerk. NRS 533.160  
 9 and NRS 533.165. This order constitutes a complaint until confirmed by a court. NRS  
 10 533.165 and NRS 533.185. All parties dissatisfied with the order of determination may  
 11 file an exception to the order and request another hearing. NRS 533.170. At this hearing,  
 12 the state engineer rules on the validity of the exceptions. Id. The state engineer's ruling  
 13 at this hearing becomes final only after confirmed by mandatory review of the court:  
 14 "After the hearing, the court shall enter a decree affirming or modifying the order of the  
 15 state engineer." NRS 533.185.

16  
 17 The state engineer has both administrative and judicial functions. Bergman v.  
 18 Kearney, 241 F. 884 (D.Nev.1917). The statutes confirm the state engineer's quasi-legal  
 19 and administrative role in adjudicating vested water rights claims. NRS 533.125(1) allow  
 20 and instructs him to "takes proofs"; NRS 533. 100 instructs the state engineer to make  
 21 surveys and maps, and NRS 533.105 allows the state engineer to obtain the necessary  
 22 surveys and maps from the geological survey. The state engineer can make legal  
 23 determinations regarding as the admissibility of evidence under the Nevada Rules of  
 24 Civil Procedure: "All proceedings thereunder, including the taking of testimony, shall be  
 25 as nearly in accordance with the Nevada Rules of Civil procedure." NRS 533.170 (5).  
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Fifth Judicial District Court  
ESMERALDA, MINERAL AND NYE COUNTIES



1 Different standards of review apply to the state engineer's determinations of fact and  
2 law. Review of purely legal questions do not receive deference: "...it is true that the  
3 district court is free to decide purely legal question without deference to an agency  
4 determination." Jones v. Rosner, 102 Nev.215, 217, 719 P.2d 805, 806 (1986).

5  
6 The state engineer's determinations of fact receive deference: "The findings are gathered  
7 from the proceedings before the state engineer and must be read in connection with his  
8 order, which is the complaint. The findings are entitled to the presumption of correctness  
9 and that they support the decree." In Re Waters of Barber Creek, 46 Nev. 254, 259, 205  
10 P. 518, 519-520 (1922).

11  
12 Waters of Horse Springs v. State Engineer, 99 Nev. 776, 671 P.2d 1131 (1983)  
13 supports and refines this view. Waters claimed a vested water right from acts done by his  
14 predecessors in interest. The validity of the claim depended upon an analysis of the  
15 historical basis of these vested claims. The district court confirmed an order of  
16 determination and Waters appealed the decision. The Supreme Court stated that a court  
17 must determine whether or not

18  
19 "...the record reveals substantial evidence reflecting the fact that historically cattle from the  
20 ranches now owned by the parties have continuously shared the springs. Id. at 777, 671 P.2d at  
21 1132.

22  
23 This language clearly indicates that the court in reviewing the Order of Determination must  
24 review the state engineer's decisions to determine whether or not it is supported by substantial  
25 evidence. The court finds substantial evidence supports the state engineer's factual  
26 determinations.  
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28 **C. Evidence Issues.**

Fifth Judicial District Court  
ESMERALDA, MINERAL AND NYE COUNTIES



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*1. The State Engineer Properly Excluded Exhibit 75.*

The federal government contends the state engineer improperly excluded exhibit 75. The federal government contends the report is not hearsay, it was duly authenticated, and properly admissible and an expert report of opinion.

The court disagrees. Each element of proffered evidence must not constitute hearsay or fit an exception. NRS 51.067. Some of the documents in the report may be exceptions to hearsay or are not hearsay. Some may be ancient documents, public records, or statements affecting an interest in property. However, Exhibit 75 itself as a report does not satisfy hearsay requirements.

*2. The State Engineer Improperly Excluded Mr. Gallacher's Testimony; Mr Gallacher is not an Expert Witness.*

The federal government contends Mr. Gallacher is an expert witness. The court finds the state engineer may have improperly excluded some of Mr. Gallacher's testimony. The state engineer's determination that Hage et al presented valid claims for water rights is supported by substantial evidence. However, the state engineer erred in excluding all of Gallacher's testimony: some of the testimony is relevant, and either not hearsay or an exception to the hearsay rules.

The court does not find that Mr.. Gallacher is an expert witness in water law.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge may testify to matters within the scope of such knowledge." NRS 50.275.

Mr.Gallacher is a historical expert. His testimony may help the trier of fact only to the extent that it remains within the scope of that expertise. He is not, however, an expert in law, vested water rights, or title research.

*3. Mr.Gallacher's Resume is Hearsay.*



1 The federal government offered Mr. Gallacher's resume to show he is an expert. The  
 2 document is not in itself admissible with out testimony on the points contained therein.

3  
 4 *4. Mr. Newell's Report Contains Hearsay, but his Testimony may be Admissible. Again, the*  
 5 *Court Would not Recognize him as an Expert in Water Law.*

6 The federal government makes arguments regarding Mr. Newell's report similar to those  
 7 concerning Mr. Gallacher.

8 Mr. Newell is a historical expert, not an expert in water law or reading titles. His testimony  
 9 should thus remain in the scope of his expertise. His resume is admissible to the extent it is  
 10 corroborated by his testimony.

11  
 12 Though the federal government did not offer Mr. Newell's testimony in the hearing on the  
 13 exceptions to the order, this Court finds this testimony admissible to the extent consistent with the  
 14 Nevada rules of evidence. NRS 533.180 ("The Court may refer case to state engineer for further  
 15 evidence.")

16 *5. The Transcript Should be Excluded as Irrelevant.*

17 The state offers the transcript from a previous hearing (Hage v. United States, case No. 91-  
 18 1470L). The federal government contends it did not offer the transcript to prove the truth of the  
 19 matter asserted but to assist the court in understanding the testimony and the evidence.

20  
 21 If the transcript is offered merely to assist the court in understanding the context from which  
 22 the United States cited, it is redundant an/or irrelevant and inadmissible. NRS 48.025 (2).

23  
 24 **D. The State Engineer Properly Recommended that Private Claimants Should Be**  
 25 **Decreed Vested Irrigation Water Rights for Irrigation on Federal Lands, and he Properly**  
 26 **Determined the Extent of Historical Irrigation Giving Rise to Vested Rights.**  
 27  
 28



1 The federal government challenges the state engineer's decisions regarding the validity of  
 2 vested water rights for irrigation. The United States' Opening Brief at 41. The federal  
 3 government contends it never authorized private individuals to obtain vested water rights for  
 4 irrigation on the public lands. Id. at 42. The present claims thus stem from trespassers, and  
 5 trespassers cannot obtain water rights: "Such use was never authorized and cannot form a proper  
 6 basis for a water right. The state engineer agreed that such use was established by settlers who  
 7 were 'trespassers', Order at 85; however, he found that the private claimants should nonetheless  
 8 receive the benefit of that trespass. There is simply no basis for such finding that one can trespass  
 9 on federal lands and obtain a water right for the unauthorized actions taken on such land." Id. In  
 10 the alternative, the federal government argues the rights in issue have been abandoned since they  
 11 have not been used for over 50 years. Id.

14 The federal government contends the state engineer erred with the amount of water rights he  
 15 granted to the claimants. The United States' Opening Brief at 43. It argues the amount of water  
 16 the predecessors in interest used is less than granted by the state engineer and Mr. Newell's study  
 17 supports this claim. Id. at 44.

19 This Court finds the state engineer properly awarded vested irrigation water rights. Congress  
 20 let private individuals obtain vested water rights for irrigation and stock watering on the public  
 21 land. California v. United States, 438 U.S.645, 57 L. Ed. 2d 1018 (1978); California Oregon  
 22 Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 79 L. Ed. 1356 (1935); Atchison v.  
 23 Peterson, 87 U.S. 507, 22 L. Ed. 414 (1874); Basey v. Gallacher, 87 U.S. 670, 22 L. Ed. 452  
 24 (1875).

26 The federal government has not demonstrated abandonment. Abandonment must be  
 27 intentional. In Re Waters of Manse Springs, 60 Nev. 280, 287, 108 P.2d 311, 315 (1940). All the  
 28 circumstances, including non-use, may be evaluated in determining whether abandonment has



1 occurred: "...in determining such intent, as to whether abandonment has taken place, [the court]  
 2 may take such nonuse and other circumstances into consideration." Id. at 290, 108 P.2d 311 at  
 3 316 "Abandonment is a question of fact to be determined from all the surrounding  
 4 circumstances." Revert v. Ray, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). The party alleging an  
 5 abandonment must demonstrate it through clear and convincing evidence. Town of Eureka v.  
 6 State Engineer, 108 Nev. 163, 169, 826 P.2d 948, 951-952 (1992); United States Alpine Land and  
 7 Reservoir Company, 983 F.2d 1487, 1495 N.8. The state engineer's determinations of fact are  
 8 given deference and the test is whether such determinations are supported with substantial  
 9 evidence. In Re Waters of Barber Creek, 46 Nev. 254, 259, 295 P.518, 519-520 (1922); Waters of  
 10 Horse Springs v. State Engineer, 99 Nev. 776, 671 P.2d 1131 (1983). In the adjudication of vested  
 11 water rights, the state engineer takes a quasi-judicial as well as an administrative role. Bergman v.  
 12 Kearney, 241 F.884 (D.Nev.1917). Factual determinations receive greater deference than legal  
 13 conclusions. Jones v. Rosner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

14 The federal government has not surmounted the court's deference to the state engineer's factual  
 15 determination regarding an intent to abandon.

16 The court affirms the amount of water the state engineer granted to each permit subject to a  
 17 reconsideration upon the remand. Courts must determine whether substantial evidence supports  
 18 the state engineer's decisions. In Re Waters of Barber Creek, 46 Nev. 254, 259, 205 P. 518, 519-  
 19 520 (1922); Waters of Horse Springs v. State Engineer, 99 Nev. 776, 671 P.2d 805, 806 (1983).

20 The state engineer considered crop needs, seasonal variations, efficiency of diversion process, and  
 21 the history of crops grown. Order of Determination at 124-128. The court finds this  
 22 determination supported by substantial evidence.

23 **E. The State Engineer Properly Granted Vested Water Rights to Private Individuals for**  
 24 **Watering Sheep on Public Lands.**

1 The federal government contends the state engineer should not have granted water rights for  
 2 grazing sheep and that any rights to graze sheep have been abandoned "...as there has been no  
 3 such beneficial use of water in Monitor Valley for almost 50 years." United States' Opening Brief  
 4 at 48.

5  
 6 This Court disagrees. The party alleging abandonment of rights must showing by clear and  
 7 convincing evidence the intent to surrender that right. Town of Eureka v. State Engineer, 108  
 8 Nev. 163, 169, 826 P.2d 948, 951-952. Intent to abandon depends on all the circumstances. In Re  
 9 Waters of Manse Springs, 60 Nev. 280, 287, 108 P.2d 311, 315 (1940). Non-use may constitute  
 10 one of the circumstances. Id. A determination of abandonment is a factual issue. Revert v. Ray,  
 11 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). Courts must grant the state engineer deference on its  
 12 factual determinations. Jones v. Rossner, 102 Nev. 215, 217, 719 P.2d 805, 806 (1986).

13  
 14 This Court affirms the state engineer's determination that any rights to graze sheep have not  
 15 been abandoned.

16 **F. Additional Language Should Not Be Added to the Order of Determination that**  
 17 **Recognizes that the Amount and Period of Use for Watering Livestock May Be Limited by**  
 18 **Grazing Permits Issued by the Appropriate Federal Agency.**

19  
 20  
 21 The federal government contends the state engineer should recognize that federal grazing  
 22 permits limit the amount and period of use. The United States' Opening Brief at 30.

23 There is not a case and controversy before the court on upon which the court must take any  
 24 action.

25  
 26 **ORDER**

27 The Court affirms for the reasons stated the state engineer's conclusions regarding the federal  
 28 governments exceptions A,B,D,E, and F. The court agrees in part with the federal government



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regarding issue C. It appears the state engineer did not consider the testimony of Newell and Gallacher and he should have done so. NRS 533.180 grants the court the power to remand the case to the engineer for further evidentiary investigations. The court remands the case to the state engineer to consider those portions of the testimony of Mr. Newell and Mr. Gallacher regarding the historical evidence of Hage et al's claim to vested water rights that are not hearsay. Although the reports may be hearsay, documents cited in the reports may be admissible to the extent they are not hearsay. Mr. Newell and Mr. Gallacher are historical experts and their testimony should be restricted to those areas that constitute evidence which would be admissible pursuant to established hearsay exceptions. In considering this additional evidence, opposition should be allowed to meet the federal government's arguments. NRS 533.180. The state engineer should analyze each water right separately in light of the admissible evidence which he improperly excluded to see if it alters his order of determination.

DATED this 9 day of October 1999.

  
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



CERTIFICATION OF SERVICE

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The undersigned hereby certifies that on the 12 day of October, 1999, she mailed  
(or hand delivered) copies of the foregoing FINDINGS OF FACT AND CONCLUSIONS

OF LAW to the following:

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\_\_\_\_\_  
GERIE CLIFFORD, Secretary to  
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



**EXHIBIT 2**

Order State Engineer order of Determination.

EXHIBIT  
2  
PAGE

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NYE COUNTY CLERK  
BY DEPUTY

Case No. CV 14906

**IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE**

**IN THE MATTER OF THE DETERMINATION  
OF THE RELATIVE RIGHTS IN AND TO  
THE WATERS OF THE MONITOR VALLEY  
SOUTHERN PART (140-B),  
NYE COUNTY, NEVADA.**

**ORDER**

**1. Introduction.**

The conflicts between the parties will be addressed in the following manner. (1) Did the state engineer properly determine Congressional purpose in reserving the Toiyabe National Forest and the amount of water needed to achieve that purpose? (2) Did the state engineer properly define the regulations governing the distribution of water rights in the PWR's? (3) Did the state engineer properly grant the federal government water rights on the administrative sites? (4) Did the state engineer properly grant the federal government in stream water rights on the wilderness areas?

**2. The State Engineer properly determined Congress purpose in reserving the National Forests under the Organic Act of 1897 and the Toiyabe National Forest and the state engineer properly determined the amount of water to achieve those purposes.**

**RECEIVED**

**FIFTH JUDICIAL DISTRICT COURT**  
ESMERALDA, MINERAL AND NYE COUNTIES



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**A. The legal framework and resulting issues.**

As the parties agree on the legal framework and the resulting issues, this court will only briefly state them. Under the implied water rights doctrine, the federal government when reserving land automatically reserves the amount of unappropriated, appurtenant water necessary to achieve the primary purpose of that reservation. US v. New Mexico, 438 US 696, 57 L Ed 2d 1052, 98 S Ct 3012 (1078); Cappaert v. U.S., 426 U.S. 128 (1976). In determining the primary purpose of the reservation, courts examine both the purpose of the reservation of the National Forests under the Organic Act of 1897 as well as Congressional purposes for making specific reservations. US v. New Mexico, 438 US 696, 700, 57 L Ed 1052, 1057 (1978). To grant the Federal Government water under the implied water rights doctrine, a court must find the purpose of the reservation would be entirely defeated without the claimed water. US v. New Mexico, 438 US 696, 700 L Ed 1052, 1057 (1978).

This framework generates the following issues: (1) What was Congress primary purpose in reserving National Forests under the Organic Act of 1897? (2) What was Congress primary purpose in reserving the Toiyabe National Forest? (3) How much water is absolutely needed to achieve the primary purpose of the reservation in question?

**B. The State Engineer properly determined that Congress did not under the Organic Act reserve the National Forests to create in stream flows to preserve stream channel integrity.**

The Organic Act of 1897 states "No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States..." Organic Administration Act of June 4, 1897, 30 Stat.34, 16 USC 473 et seq. (1976).

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1 The Federal Government contends it needs instream water rights to achieve the primary  
 2 purpose for which Congress reserved the National Forests under the Organic Act of 1897. The  
 3 federal government concedes that the Organic Act of 1897 reserved National Forests primarily to  
 4 allow people downstream from National Forests to economically use the water flowing through  
 5 the National Forests. The federal government contends when Congress reserved the National  
 6 Forests to "secure favorable conditions of water flows", Congress intended to protect stream  
 7 channel integrity. By protecting instream channel integrity, water would flow constantly through  
 8 the National Forests and through such flows allow people downstream to economically employ the  
 9 water. The government contends it needs instream water rights to promote periodic flushing to  
 10 keep the stream beds free from debris to "secure favorable conditions of flow" and hence allow  
 11 economic use of water flowing from the National Forests. US Opening Memorandum of Law, 7-  
 12 9.

15 The State Engineer agrees with the Federal Government that Congress reserved the  
 16 National Forests to promote economic use of water. However, the state engineer argues Congress  
 17 did not intend to promote economic activity by preserving the integrity of the stream bed channels  
 18 but rather to promote timber and forest ground cover and stream side vegetation. Such stream  
 19 side vegetation would adequately promote the favorable conditions of flow which were needed to  
 20 supply downstream water users an amount of water needed to promote economic activity. State  
 21 Engineer's Answering Brief, at 12.

23 The Court must first define the standard of review. "The decision of the state engineer  
 24 shall be prima facie correct, and the burden of proof shall be upon the party attacking the same."  
 25 NRS 533.450 (9). The language the statute employs confirming this deferential standard of  
 26 review. The statute describes the hearing challenging the state engineer's findings as "in the  
 27 nature of an appeal." NRS 533.450 (1). The statute contemplates that this deference applies to all

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1 decisions the state engineer makes. The statute states "Any person feeling himself aggrieved by  
 2 any order or decision of the state engineer...may have the same reviewed by a proceeding for that  
 3 purpose..." NRS 533.450.(1).  
 4

5 Case law confirms and expands these conclusions. A party aggrieved by a state engineer's  
 6 order of determination does not receive a de novo review but rather must bring his case in the  
 7 nature of appeal bearing the burden of proof to over come the prima facie correctness of the state  
 8 engineer's order. Revert v. Ray, 95 Nev. 783, 786, 603 P.2d 262, (1979). The court should  
 9 determine whether or not the State Engineer's finding is supported by "substantial evidence":  
 10 "With respect to the a limited review in the nature of an appeal, neither the district court nor this  
 11 court will substitute its judgment for that of the State Engineer; we will not pass upon the  
 12 credibility of the witnesses nor reweigh the evidence, but limit ourselves to a determination of  
 13 whether substantial evidence in the record supports the State Engineer's decision." Id.  
 14

15 This deferential standard of review applies all the state engineer's decisions in preparing  
 16 the order of determination. Id. at 787. The deferential standard of review presupposes the fairness  
 17 of the proceedings. For the proceedings to be fair, the state engineer must give all the parties a full  
 18 opportunity to be heard and "must clearly resolve all crucial issues presented." Id. The State  
 19 Engineer's duty to resolve "all crucial issues" indicates that the deferential standard of review  
 20 applies to all the decisions the State Engineer must make to prepare his order and determine water  
 21 rights.  
 22

23 The record indicates substantial evidence supports the State Engineer's decision regarding  
 24 the primary purpose of Congress reservation of the National Forests under the Organic Act of  
 25 1897 and that the federal government has not met its burden of overcoming the presumption that  
 26 the State Engineer's decision is prima facie correct.  
 27

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1 The State Engineer presented substantial evidence that Congress reserved the National  
2 Forests to protect forest cover and timber rather than the integrity of the stream channels  
3 themselves. Order of Determination, 43-45.  
4

5 US v. New Mexico, 438 US 696, 706, 57 L Ed 1052, 1061 (1978) supports the State  
6 Engineer's conclusion that Congress reserved the National Forests to provide for favorable  
7 conditions of water flow via timber and forest cover rather than by creating instream water rights  
8 to maintain stream channel integrity. The court stated Congress was concerned that destruction of  
9 the forests would not only deplete the nation's supply of timber but destroy the watersheds which  
10 regulate water flow and prevent floods. To support this claim, the court cited the Creative Act of  
11 March 3, 1891, 24, 26 Stat 1103, as amended, 16 USC 471 [16 USCS 471] (repealed 1976). That  
12 act "set apart and reserve, in any State or Territory having public land bearing forests, in any part  
13 of the public lands wholly or in part covered with timber or undergrowth, whether of commercial  
14 value or not, as public reservations." US v. New Mexico, 438 U.S. 696, 705, 57 L Ed 2d 1052,  
15 1060 (1978). In discussing the shortcomings of the Creative Act of 1891, the court stated "fires  
16 and indiscriminate timber cutting continued their toll." US v. New Mexico, 438 U.S. 696, 706, 57  
17 L Ed 2d 1052, 1060 (1978). The court's discussion in language indicates Congress' intention to  
18 regulate the flow of water by establishing National Forests to promote timber and forest growth  
19 along the side of water channels rather than by maintaining the integrity of stream channels  
20 through instream water rights. This court agrees with the State Engineer that "Congress enacted  
21 the Organic Act to allow the headwaters to be protected so they could act as the natural sponge  
22 that created reliable, perpetual stream flows downstream. Congress never considered stream  
23 channel maintenance. It assumed stream channels would operate properly if the forest cover were  
24 protected from over grazing, logging, and fires." State Engineer's Reply Brief, at 12.  
25  
26  
27



1           The Federal Government hasn't presented evidence sufficient to rebut the presumption that  
 2 the State Engineer has properly determined Congressional purpose in reserving the National  
 3 Forests. The Federal Government can establish that Congress established the National Forests to  
 4 preserve the watershed, but it cannot demonstrate that Congress sought to protect the watershed  
 5 through in stream water flows in addition to stream side vegetation and forest regulation.  
 6

7           For example, the Federal Government attempts to demonstrate its position with the  
 8 following evidence citation: "The increase in the number of forest fires raging in the mountains of  
 9 Colorado is alarming in a region where the forest once destroyed cannot easily reproduce itself,  
 10 and upon the mountains where forest covering is necessary to preserve the integrity of the  
 11 channels and the constant flow on numerous important streams essential to irrigation of wide areas  
 12 of arid territory." Federal Government's Reply Brief, at 13. Though the Federal Government  
 13 relies on the phrase "integrity of the channels" to establish its point, it fails to link integrity of the  
 14 channels to instream water rights which should flush the stream beds. Rather, the citation the  
 15 Federal Government offers clearly indicates Congressional intent to regulate watersheds, or stream  
 16 channels, by forest cover: "where forest covering is necessary to preserve the integrity of the  
 17 channels." Federal Government's Reply Brief, at 13.  
 18

19           Some of the evidence the Federal Government offers establishes a link between watershed  
 20 protection an instream water flows. Bulletin No.2, Report on the Forest Conditions of the Rocky  
 21 Mountains does contend that deforestation was requiring the forest service to spend money  
 22 dredging streams. Federal Government's reply bricf, at 14. Bernhard E. Fernow's Report of the  
 23 Chief of the Division of Forestry for 1889 does discuss the problems of sediment accumulations to  
 24 water flow. Federal Government's reply brief, 14-15. These documents do discuss watershed  
 25 maintenance and the preservation of channel integrity via water flow. However, this court does  
 26  
 27

FIFTH JUDICIAL DISTRICT COURT  
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1 not find that they establish Congressional intent regarding the purpose of the reservation of  
2 National Forests sufficient to rebut the presumption that the State Engineer's findings are correct.

3  
4 The State Engineer has substantial evidence to show that Congress did not intend instream  
5 water rights to exist on the National Forests. The implied reservation water rights doctrine  
6 requires a party to establish Congressional purpose in making the reservation at the time it made  
7 the reservation. The State Engineer contends that the concept of in stream water rights did not  
8 enter prior appropriation water law until the mid 1970's. A review of water law confirms this  
9 claim. The Federal Government's own witnesses also admit this claim: "In fact, Mr. Schmidt  
10 testifies that it was not until the 1970's that the USFS began to even think about instream flows,  
11 and the term itself is a modern term." Order, at 52.

12  
13 US v. New Mexico, 438 U.S. 696, 57 L Ed 2d 1052 (1978) confirms that instream water  
14 rights do not exist on National Forests absent Congress clearly stated intent to create such rights.  
15 In that case, the Federal Government claimed in stream water rights to achieve the alleged  
16 recreational purposes for which Congress reserved the Gila National Forest. US v. New Mexico,  
17 438 U.S. 696, 709, 57 L Ed 2d 1052, 1062 (1978). The court showed the historical context  
18 demonstrated that Congress in reserving National Forests was primarily concerned about  
19 efficiently, economically exploiting National Forests. US v. New Mexico, 438 U.S. 696, 706, 57  
20 L Ed 2d 1052, 1060 (1978). Hence, when Congress reserved National Forests for recreational  
21 purposes, it explicitly so stated. US v. New Mexico, 438 U.S. 696, 709, 57 L Ed 2d 1052, 1062  
22 (1978). Likewise, "When it was Congress' intent to maintain minimum instream flows within the  
23 confines of a national forest, it expressly so directed, as it did in the case of the Lake Superior  
24 National Forest." US v. New Mexico, 438 U.S. 696, 710, 57 L Ed 2d 1052, 1063 (1978).

25  
26 Congress did not expressly create an in stream water right.  
27  
28



1 C. THE STATE ENGINEER PROPERLY DETERMINED CONGRESSIONAL INTENT  
2 IN RESERVING THE TOIYABE NATIONAL FOREST.  
3

4 To determine the primary purpose of any Congressional reservation of a national forest, a  
5 court must examine not only the Congress' primary purpose in reserving the national forests under  
6 the Organic Act of 1897 as well as the specific purposes of the particular reservation in issue.  
7 U.S. v. New Mexico, 438 U.S. 696, 700, 57 L Ed 2d 1052, 1054 (1978). To determine the specific  
8 purposes of the reservation, the court in New Mexico relied upon Forest Service Manuals and  
9 Handbooks. US v. New Mexico, 438 US 696, 57 L Ed 2d 1052, footnotes 7 and 16, (1978).

10 The State Engineer's determination of Congressional reservation of the Toiyabe National  
11 Forest is supported by substantial evidence. The State Engineer considered the primary purposes  
12 for which Congress reserved all national forests under the Organic Act of 1897. Order of  
13 Determination, 42-45. The State Engineer then analyzed Congressional purpose in reserving the  
14 Toiyabe National Forest. Order of Determination, 45-55. Since evidence of Congressional intent  
15 in reserving the Toiyabe National Forest is scant, the State Engineer based analyzed three items: a  
16 letter from the Toiyable Forest Supervisor to the Chief Forester, parts of an Annual Forest Plan,  
17 and a 1933 Technical bulletin. He concluded Congress reserved the Toiyabe National Forest to  
18 prevent overgrazing by sheep and to regulate conflicts between cattlemen and sheep ranchers. The  
19 State Engineer then synthesized this conclusion with the general purposes for which Congress  
20 authorized the general reservation of national forests. He concluded that timber production did not  
21 constitute a primary purpose of the reservation of the Toiyabe National Forest and that "the only  
22 watershed protection issue regarding these National Forests was protection of the forest forage  
23 cover in support of cattlemen who had base home ranches downstream which supported their  
24 operations." Order of Determination, at 49.  
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ESMERALDA, MINERA, AND NYE COUNTIES



1           The Federal Government raised three objections to the State Engineer's analysis. The  
 2 Federal Government contends the evidence on which the State Engineer relied upon does not  
 3 demonstrate that the Toiyabe National Forest was reserved to prevent overgrazing nor do the  
 4 documents in themselves show Congressional intent. The Federal Government also contends the  
 5 State Engineer ignored the general purposes for which Congress reserved the National Forest  
 6 system under the Organic Act. United States' Opening Brief, 19-20.

8           The State Engineer properly determined the purpose of the reservation of the Toiyabe  
 9 National forest. The record shows substantial evidence supports the State Engineer's conclusions.  
 10 Given the lack of other information concerning the reservation of the Toiyabe National Forest, the  
 11 State Engineer properly relied upon the available evidence. Further, US v. New Mexico, 438 U.S.  
 12 696, 57 L Ed 2d 1052, (1978) employed documents similar to those the State Engineer employed  
 13 in the present case to determine the purpose of the reservations of the National Forests. The  
 14 content of the documents also supports the State Engineer. The Forest Supervisor's letter  
 15 indicates that uncontrolled grazing of sheep was destroying the forest ground cover. Such  
 16 overgrazing was creating conflicts between cattlemen and sheep ranchers. Finally, the Federal  
 17 Government has not presented evidence regarding the purpose of the reservation of the Toiyabe  
 18 National Forest sufficient to rebut the presumption that the State Engineer is correct.

19  
 20  
 21 **D. THE STATE ENGINEER PROPERLY DETERMINED THE AMOUNT OF WATER**  
 22 **NEEDED TO ACHIEVE THE PURPOSES OF THE RESERVATION.**

23           Considering Congress' primary purpose in reserving the National Forests under the  
 24 Organic Act and Congress' primary purpose in reserving the Toiyabe National Forests, the State  
 25 Engineer determined that the snow and rain that fell upon the forest would sufficiently protect the  
 26 watershed as it supports forage for grazing. Order of Determination, at 55.  
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FIFTH JUDICIAL DISTRICT COURT  
 ESMERALDA, MINERAL AND NYE COUNTIES



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1 Engineer determined that the snow and rain that fell upon the forest would sufficiently protect the  
2 watershed as it supports forage for grazing. Order of Determination, at 55.

3  
4 The Federal Government contends that instream water rights are necessary to achieve the  
5 primary purpose of Congress' reservation of the Toiyabe National Forest. It presented four expert  
6 witnesses to support its claim: Mr. Larry Smith, a hydrologist; Dr. Chambers, and expert in  
7 streamside ecology; Mr. Potyondy, and expert in surface water hydrology; and Rick Jameson, a  
8 Forest Service staff specialist charged with administering Forest Service water uses and water  
9 rights for the Humboldt-Toiyabe National Forest. The Federal Government contends the  
10 testimony of these experts showed how instream water rights were necessary to achieve the  
11 primary purpose of the reservation. United States' Opening Memorandum, 24-28.

12  
13 The State Engineer heard the testimony of the Federal Government's witnesses, and  
14 concluded that the testimony established the value of streamside vegetation but did not establish a  
15 connection between instream water rights, streamside vegetation, and benefit to downstream water  
16 users like cattlemen. "The State Engineer concludes that the USFS did not provide sufficient  
17 evidence that these instream flow claims are essential to the primary purpose of these particular  
18 reservations which was watershed protection, which included forage that had been overgrazed."  
19 Order of Determination, at 55.

20  
21 The State Engineer's Order of Determination is in the nature of an appeal and the court  
22 will not "substitute its judgment for that of the State Engineer: we will not pass upon the  
23 credibility of the witnesses nor reweigh the evidence, but only limit ourselves to a determination of  
24 whether substantial evidence in the record supports the State Engineer's decision." Revert v. Ray,  
25 95 Nev. 782, 786, 603 P.2d 262, (1979). To establish a water right under the implied reservation  
26 of water doctrine, the Federal Government must show that "without the water the purposes of the  
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1 reservation would be entirely defeated.” US v. New Mexico, 438 US, 696, 700, 57 L Ed 2d 1052,  
 2 1057 (1978).

3  
 4 The record reveals that substantial evidence supports the State Engineer’s determination  
 5 regarding that the Federal Government’s witnesses did not establish a connection between  
 6 instream water rights and the primary purpose for which Congress reserved the Toiyabe National  
 7 Forest.

8  
 9 The Federal Government’s witnesses did not provide a sufficient basis for their  
 10 interpretation of how the Organic Act of 1897 employed the phrase “secure favorable conditions  
 11 of water flow.” Mr. Schmidt testified that he understood the Organic Act of 1897 required the  
 12 Forest Service to practice watershed management as including stream system and stream bed  
 13 integrity. Order., at 51. The State Engineer concluded however, that Mr.Schmidt did not provide  
 14 any basis for his interpretation of the Organic Act of 1897. Id.

15 The testimony of Mr. Schmidt and Dr. Chambers did not sufficiently establish how the  
 16 purpose of the Toiyabe National Forest would be defeated without streamside vegetation and the  
 17 water needed to promote it. Testimony indicates that “ Streamside vegetation maintains and  
 18 restores stream channel form and function, provides protection from stream bank and flood plain  
 19 erosion, can increase water storage thereby moderating flood impacts, and creates perennial  
 20 streams and improves water quality. Like Mr. Schmidt, Dr. Chambers’ testimony never made a  
 21 link between floods being an issue or streamside vegetation being part of the primary purpose for  
 22 which these forests were reserved, nor did she refute that vegetation was historically removed to  
 23 increase the water yield if the system for downstream users. Dr. Chambers’ testimony did not  
 24 sufficiently demonstrate how this streamside vegetation increases water yield to the downstream  
 25 user in any significant quantity outside the forest boundary or prevents destructive floods in the  
 26 area of the lands of the downstream citizen in this adjudication. Although the State Engineer  
 27  
 28

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1 believes there may be some benefit to wildlife and fisheries by providing streamside vegetation, he  
2 has a difficult time tying these goals to the primary purpose for which the Toiyabe National Forest  
3 was created." Order of Determination, at 53.  
4

5 Neither Mr. Schmidt nor Mr. Potyondy established that without implied water rights for  
6 instream flows to promote periodic flooding so as to keep stream beds clear from sediment and  
7 debris the primary purpose of the reservation of the Toiyabe would be defeated.

8 Testimony demonstrated "high flows were needed for channel maintenance to convey sediment  
9 through the stream system....but did not provide any evidence of how this flushing benefitted the  
10 downstream user." Order, at 53. Natural high water flows will accomplish any flushing needed to  
11 achieve the purpose of the Toiyabe reservation, protection of forage for grazing.  
12

13 The State Engineer concluded that "It is perfectly clear that the historical concern was  
14 forest cover, ie grasses and shrubs, and not the new concept of streamside vegetation for stream  
15 channel maintenance or high flushing flows. The evil that congress sought to prevent in 1897 was  
16 the denuding of forests in conjunction with the forage cover which when in place regulated water  
17 flows for downstream use and provided trees for the prosperity of the nation. The concern was not  
18 riparian vegetation to stabilize stream banks, to hold water, and to flush pollutants. While the  
19 State Engineer personally believes the goals the USFS now seeks to implement are valuable, he  
20 does not believe they were part of the concept for which national forests were reserved and do not  
21 warrant the granting of an implied reserved water right. The State Engineer concludes that the  
22 USFS did not provide sufficient evidence that these instream flow claims are essential to the  
23 primary purpose of these particular reservations which was watershed protection, which included  
24 forage which had been overgrazed." Order Of determination, at 55.  
25  
26

27 **E. THE FOREST SERVICE SHOULD NOT RECEIVE DEFERENCE IN**  
28 **INTERPRETING THE ORGANIC ACT OF 1897.**



13th JUDICIAL DISTRICT COURT  
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1           The Federal Government contends this court should give it deference on its interpretation  
 2 of the Organic Act of 1897. The Federal Government contends that if "a statute is silent or  
 3 ambiguous with respect t the specific issues, the question for the court it whether the agency's  
 4 answer is based on permissible construction of the statute." United States' Opening Brief, at 10,  
 5 citing Chevron U.S.A., Inc. v. NRDC, Inc., 476 U.S. 837, 842-42 (1984). As the phrase "securing  
 6 favorable conditions of flow" is unclear, the Federal Government contends its view that the phrase  
 7 includes stream bed maintenance via instream water rights should receive deference.

8           This Court disagrees. The Federal Government admits a court must find that the agency's  
 9 interpretation of the statute is sufficiently rational. The State Engineer observed, "As noted by Mr.  
 10 Potyondy, the understanding of what constitutes favorable conditions of flow is changing over  
 11 time because our scientific understanding changes over time. It is not what we in the modern  
 12 world believe that determines an implied reserved water right, but rather it was the intent of  
 13 Congress at the time the Organic Administration Act of 1897 was enacted, and at the time these  
 14 forest rservations were set aside in 1907." Order of Determination, at 54. The Federal  
 15 Government does not reasonably connect "secure favorable conditions of water flow to benefit  
 16 downstream users" to instream flow rights. It uses biological concepts to link conditions of flow  
 17 to watershed protection to stream channel protection to instream flow rights. This interpretation is  
 18 unreasonable because biological concepts Congress did not employ when it passed the Organic  
 19 Act of 1897 establish the connections. Further, the concept of "instream flow" did not exist in  
 20 prior appropriation law until the mid 1970's. Hence, Congress could not have contemplated that  
 21 to scve purposes of its reservation it would require an instream flow. Even if Congress had held  
 22 some of the concepts the Federal Government now asserts to support its claim, the Federal  
 23 Government does not indicate why an instream flow reservation, as opposed to other activities (ie  
 24 stream dredging or vegetation control) might not promote the purpose of the reservation.

1 the Federal Government's interpretation is unreasonable because it has not shown had the purpose  
2 of the Toiyabe reservation would be defeated without an implied water right.

3  
4 **3.THE STATE ENGINEER PROPERLY ESTABLISHED REGULATIONS FOR PWR**  
5 **107.**

6 The State Engineer adopted guidelines to help determine claims to water rights at public  
7 water reserves. Based upon these guidelines, the State Engineer denied four of the Federal  
8 Government's claims to water in public water reserves.

9 Congress has traditionally allowed state law to govern prior appropriation doctrine.  
10 California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 163-164 (1935) in  
11 construing the 1877 Desert Lands Act, stated that "The Desert Land Act does not bind or purport  
12 to bind the state to any policy. It simply recognizes and gives sanction, in so far as the United  
13 States and its future grantees are concerned, to the state and local doctrine of appropriation, and  
14 seeks to remove what otherwise might be an impediment to its full and successful operation." In  
15 California v. United States, 438 U.S. 645, 57 L Ed 2d 1018, the Supreme Court held that the  
16 Federal Government, though acting pursuant to the Reclamation Act of 1902, as amended, 43  
17 U.S.C.A 372, 383, had to comply with State Law regarding prior appropriation: "The Legislative  
18 history of the Reclamation Act of 1902 makes it abundantly clear that Congress intended to defer  
19 to the substance, as well as the form, of state water law." U.S. v. New Mexico, 438 U.S. 696, 701,  
20 57 L. Ed. 2d 1052, 1058 (1078) reiterates this view: "Where Congress has expressly addressed the  
21 question of whether federal entities must abide by state water law, it has almost invariably  
22 deferred to state law."  
23  
24

25 When Congress created PWRs, it followed the general Federal policy of allowing state and  
26 local custom of prior appropriation to govern the allocation of water.  
27  
28

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



1 Nevada law of prior appropriation allows the State Engineer to establish "reasonable rules  
 2 and regulations as may be necessary for the proper and orderly execution of the powers conferred  
 3 by law." NRS 532.120 (1).  
 4

5 Each of the regulations the State Engineer established to govern PWR's complies with  
 6 NRS 532. 120 (1).  
 7

8 The State Engincer bases his regulations on his interpretation of the purposes of the PWR  
 9 107. Congress sought to provide public access to water holes and springs but to allow the law of  
 10 prior appropriation to govern the allocation of excess waters in the springs and water holes the  
 11 PWRs control. Order of Determination, at 69, citing U.S. v. City and County of Denver, 656 P.2d  
 12 1. 31-32 (Colo. 1983). The State Engineer shows that the water court has held that PWRs contain  
 13 restrictions on use: they were created to prevent monopolization of vast land areas in the arid  
 14 states by providing a source of drinking water for animal and human consumption. Order of  
 15 Determination, at 68. The State Engineer also presents evidence to show that the PWRs contains  
 16 restriction in quantity: as the PWR is intended to provide public access to watering holes, it  
 17 applies only to sources capable of providing enough water for the general public.  
 18

19 The first guideline states that a right created by PWR 107 has a priority date commencing  
 20 with the executive order establishing PWR 107 and that PWR 107 does not establish rights for  
 21 water holes or springs which came into existence after that date. The Federal Government  
 22 contends the guideline is unclear and ambiguous. United States' Opening Memorandum, at 34.  
 23 This court disagrees. The State Engineer has properly grounded his regulation in the language of  
 24 PWR 107. It refers to land which contains a water hole, and not to land which might contain a  
 25 water hole. Hence, the State Engineer's regulation complies with NRS 532.120 (1).  
 26

27 The third guideline states that PWR 107 guidelines do not apply to artificially developed  
 28 water sources and apply only to human and animal consumption. The Federal Government

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 ESMERALDA, MINERAL AND NYE COUNTIES



1 contends the term "artificial" is not defined and that PWR 107 should apply to waterholes which  
2 have been partially developed. United States' Opening Memorandum of Law, at 34. The Federal  
3 Government does not offer any argument to support its claim that "artificial" is an unclear term or  
4 that PWR 107 applies to artificially developed water holes. The State Engineer contends the  
5 guideline comports with the purpose of PWR 107: securing public access to naturally occurring  
6 water holes. As PWR 107 creates public access to land which "contains a spring or water hole",  
7 this court finds the State Engineer's regulation reasonable per NRS 532.120 (1).  
8

9 The fourth guideline limits PWRs to one per 40 acre subdivision of land and that contain  
10 water fit for human or animal consumption. The Federal Government contends PWR 107 does  
11 not contain any such limitations. The State Engineer's regulations, however, are reasonably  
12 related to Congressional purpose in establishing PWRs. As shown, Congress established PWRs to  
13 prevent the monopolization of water sources on public lands and it did so by reserving the  
14 minimum amount of water necessary to do so. Hence, the State Engineer's limit on the number of  
15 PWRs available reasonably accomplishes this goal. Congress created PWRs for human and  
16 animal consumption. Requiring PWRs to contain potable water reasonably promotes this goal.  
17

18 **4. SUBSTANTIAL EVIDENCE SUPPORTS THE STATE ENGINEER'S REJECTION OF**  
19 **FEDERAL GOVERNMENT'S PROOFS NOS. R-04525, R-07325 AND R 07326.**  
20

21 The Federal Government contends the State Engineer improperly denied proof R-07325  
22 because he relied on his fourth regulation in doing so. The State Engineer properly established the  
23 regulations, and he properly relied on it in denying the permit.

24 The Federal Government contends the State Engineer denied proof R-04525 without  
25 adequately stating why and without finding there was no water available. The State Engineer  
26 contends he rejected this claim pursuant to his fourth guideline and because the water had been  
27 appropriated by the Hages pursuant to decree 5038.  
28



1 The Federal Government contends the State Engineer improperly rejected proof R-07326  
 2 because its evidence shows this proof does not refer to the same water source or the same 40 acre  
 3 subdivision as that claimed by Hage. The State Engineer contends evidence showed the source of  
 4 this PWR was the same as that claimed by the Hages pursuant to decree 5038.  
 5

6 This Court agrees with the State Engineer's decisions regarding the 3 contested permits.  
 7 The validity of decree 5038 constitutes substantial evidence for his rejection of permits R-04525  
 8 and R-07326. The validity of his regulations justify his rejection of permit R-07325.  
 9

10 **5. THE STATE ENGINEER PROPERLY GAVE THE FOREST SERVICE WATER**  
 11 **RIGHTS FOR THE MEADOW CREEK ADMINISTRATIVE SITE, THE BARLEY**  
 12 **CREEK ADMINISTRATIVE SITE, AND SCUFFE'S ADMINISTRATIVE SITE.**

13 Pursuant to the implied water rights doctrine, the State Engineer awarded the Forest  
 14 Service water rights for the administrative sites it uses to manage the Toiyabe National Forest.

15 Under the implied water rights doctrine when Congress reserves land for a specific  
 16 purpose, it impliedly reserves the amount of unappropriated, appurtenant water necessary to  
 17 achieve that purpose. U.S. v. New Mexico, 438 U.S., 696, 700 57 L Ed 2d, 1052, 1056 (1978).  
 18 For unappropriated, appurtenant water to be necessary, the primary purpose of the reservation  
 19 must fail without the implied reservation of water. U.S. v. New Mexico, 438 U.S., 696, 700, 57 L  
 20 Ed 2d, 1052, 1057 (1978).  
 21

22 Hage objects to the State Engineer's grant of water rights at the Barley Creek, Meadow  
 23 Creek, and Scuffe's site. Hage contends that there was no unappropriated, appurtenant water  
 24 available when Congress reserved the Toiyabe National Forest. Hage's Opening Brief, 3-4. Hage  
 25 contends civil decrees 558 and 5058 establish this fact. Id. Hage argues that though the  
 26 administrative sites help achieve the primary purpose of the Toiyabe National Forest, the  
 27 administrative sites are not necessary to achieve that purpose. Id. To support this claim, Hage  
 28

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 ESMERALDA, MINERAL AND NYE COUNTIES



1 contends that administrative sites occupy undefined, variable locations and claims the Forest  
2 Service is seeking to expand its water right via the administrative sites. Id.

3  
4 The State Engineer properly awarded the Forest Service water rights for administrative  
5 sites. The minimal amount of water the administrative sites use show unappropriated water was  
6 available at the time Congress reserved the Toiyabe. As shown, Congress reserved the Toiyabe  
7 National Forest to regulate the conflicts between sheep and cattle ranchers. It seems inconceivable  
8 to accomplish this goal without rangers and horses, and it seems impossible to have rangers and  
9 horses without water.

10  
11 **6. THE STATE ENGINEER PROPERLY AWARDED WATER RIGHTS ON THE**  
12 **WILDERNESS AREAS.**

13 The State Engineer awarded the Federal Government an implied water right to all  
14 unappropriated water in the Alta Toquima and Table Mountain Wilderness Areas. State  
15 Engineer's Answering Brief, at 27. The Nevada Wilderness Act seeks to keep the environs under  
16 its ambit in a pristine, untrammled state. Id. To accomplish this goal, the Act expressly reserved  
17 the amount of water sufficient to fulfill the purposes of the wilderness areas created. Id.

18  
19 Hage contends the water right the State Engineer awarded to the Forest Service is junior to  
20 the Hage's water right. Hage contends that the Forest Service is attempting to expand its water  
21 right and is concerned that the State Engineer cannot prevent the Forest Service from attempting to  
22 expand its right. Hage also contends that the purpose of the Nevada Wilderness Act will not fail  
23 without the water right. As the Nevada Wilderness Act itself prohibits future diversions of the  
24 water in the Wilderness Area, an award of an implied water right is superfluous to the purposes of  
25 the Nevada Wilderness Act. Hage contends the Forest Service claimed the water right as  
26 necessary to manage the stream and stream side ecology. Such active management, says Hage,  
27 does not preserve the wilderness areas in a pristine condition or natural state. Finally, Hage  
28

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1 contends the Wilderness Act did not create and implied right, but rather removed from  
2 appropriation the waters in the wilderness areas.  
3

4 Substantial Evidence supports the State Engineer's decision. The Nevada Wilderness Act  
5 expressly reserved "a quantity of water sufficient to fulfil the purpose for the wilderness areas  
6 created" by the Act. 103 Stat.1784 (2) (1)-(11), (4) (1989). This sentence negates Hage's claim  
7 that the Wilderness Act does not need water to achieve the purposes of the reservation or that  
8 Congress intended withdraw the water in the wilderness areas from the prior appropriation system.  
9 The State Engineer has presented substantial evidence to show that the Forest Service needs an  
10 implied water right in all unappropriated water to achieve the purpose of the reservation. Finally,  
11 Hage must address any attempts by the Forest Service to expand its water permit as they occur.  
12

13 **ORDER.**

14 For the aforementioned reasons, this court confirms all the State Engineer's Order of  
15 Dctermination.

16 DATED this 28 day of April, 2000

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19 DISTRICT JUDGE  
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FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 28th day of April, 2000, she mailed (or hand delivered) copies of the foregoing Order to the following:

LYMAN D. BEDFORD, ESQ.  
McQUAID, METZLER, BEDFORD AND VAN ZANDT  
221 MAIN STREET, 16<sup>TH</sup> FLOOR  
SAN FRANCISCO, CA. 94105-1936

STEVEN BARTELL, ESQ.  
U.S. DEPARTMENT OF JUSTICE  
GENERAL LITIGATION SECTION  
P.O. BOX 663  
WASHINGTON, D.C. 20044-0663

PAUL G. TAGGART, ESQ.  
OFFICE OF THE ATTORNEY GENERAL  
CONSERVATION AND NATURAL RESOURCES  
100 N. CARSON STREET  
CARSON CITY, NV. 89701-1100

Gerie A. Clifford  
GERIE CLIFFORD, Secretary to  
DISTRICT JUDGE

ESMERALDA, MINERAL AND NYE COUNTIES



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### **EXHIBIT 3**

Order Rejecting Exception Filed by James R. Wolfe Affirming the State Engineer's  
Order of Determination on Remand.

1 Case No. 14906

2 Dept. No.

FILED

2002 OCT 28 A 11:39

NYE COUNTY CLERK  
BY DEPUTY

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4  
5  
6 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF NYE**

9 IN THE MATTER OF THE DETERMINATION )  
10 OF THE RELATIVE RIGHTS IN AND TO THE )  
11 WATERS OF MONITOR VALLEY - SOUTHERN )  
PART (140-B), NYE COUNTY, NEVADA )

**ORDER**

12 Having conducted a hearing in this matter on November 1, 2001, pursuant to NRS 533.170, and  
13 having considered the arguments presented, the Court ORDERS as follows:

14 1. Having reviewed the issues and arguments raised by the exception filed by James R.  
15 Wolfe, the Court rejects that exception and affirms the State Engineer's Order of Determination  
16 regarding Mr. Wolfe's claim.

17 2. On October 8, 1999, this Court entered an order that, in part, directed the State Engineer  
18 to take additional evidence regarding the historical evidence of water use in the southern Monitor  
19 Valley and determine whether the additional evidence would alter the State Engineer's Order of  
20 Determination. The State Engineer entered an Order of Determination on Remand on July 12, 2001.  
21 Having reviewed the Order of Determination on Remand, the Court hereby affirms that Order.

22 Dated this 28 day of Oct., 2002.

23  
24 **JOHN P. DAVIS**

25 DISTRICT JUDGE

26  
27 **RECEIVED**

28 **OCT 31 2002**

Attorney General CC  
Civil - CNR

CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 23rd day of October, 2002, I deposited for mailing at Carson City, Nevada, postage prepaid, a true and correct copy of the PROPOSED ORDER, addressed as follows:

Lyman D. Bedford, Esq.  
McQuaid, Metzler, Bedford & Van Zandt  
221 Main Street, 16th Floor  
San Francisco, California 94105-1936

Stephen G. Bartell, Esq.  
Environment & Natural Resources  
U.S. Department of Justice  
Post Office Box 663  
Washington, D.C. 20044-0663

James R. Wolfe  
Post Office Box 133  
Manhattan, Nevada 89022-0133

Pamela Young  
Pamela Young

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OFFICE OF THE ATTORNEY GENERAL

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1 Case No. 14906

2 Dept. No.

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4  
5  
6 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF NYE**

8  
9 IN THE MATTER OF THE DETERMINATION  
10 OF THE RELATIVE RIGHTS IN AND TO THE  
11 WATERS OF MONITOR VALLEY - SOUTHERN  
12 PART (140-B), NYE COUNTY, NEVADA

**NOTICE OF ENTRY OF ORDER**

13 TO: LYMAN D. BEDFORD, ESQ., Attorney for the Hages; STEPHEN G. BARTELL, ESQ.,  
14 Attorney for the United States; and JAMES R. WOLFE

15 PLEASE TAKE NOTICE that an Order was entered by the Court on October 28, 2002. A copy  
16 of said order is attached hereto.

17 DATED this 1st day of November, 2002.

18 FRANKIE SUE DEL PAPA  
19 Attorney General

20 By:

  
21 PAUL G. TAGGART  
22 Nevada State Bar #6136  
23 Deputy Attorney General  
24 100 North Carson Street  
25 Carson City, Nevada 89701-4717  
26 (775) 684-1232  
27 Attorneys for State Engineer  
28

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CERTIFICATE OF SERVICE

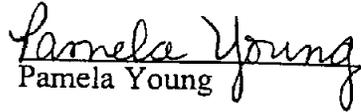
I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this day I deposited for mailing, postage prepaid, a true and correct copy of the foregoing document, addressed as follows:

Lyman D. Bedford, Esq.  
McQuaid, Metzler, Bedford & Van Zandt  
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James R. Wolfe  
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Dated: November 1, 2002.

  
Pamela Young

Attorney General's Office  
100 N. Carson Street  
Carson City, Nevada 89701-4717

STATE ENGINEERING OFFICE  
61 JOHN D. ARCHER  
DEPARTMENT