

IN THE MATTER OF APPLICATIONS NOS. 11926, 11927,)
 11928, 11929, 11930, 11931, 11932, 11933, 11934,)
 11935, 11936, 11937, 11938, 11977, 12753, 12754,)
 12755 and 12756 IN THE NAME OF MADISON LOCKE AND : RULING
 H.L. TITUS TO APPROPRIATE WATER FOR STOCKWATERING)
 PURPOSES AND WHICH WERE PROTESTED BY VARIOUS PRO-)
 TESTANTS HEREINAFTER NAMED.)

This ruling is concerned with eighteen applications to appropriate water by Madison Locke and H. L. Titus for stockwatering purposes. The locale of these applications is in northeastern Nye County, lying mainly between Townships 5N. and 12 N. and Ranges 50 E. and 53 E. The description of these applications, giving the date of filing, point of diversion, place of use and the protestants follows:

Application 11926 filed July 24, 1947 to appropriate underground water "Pigeon Well" at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 34, T. 6 N., R. 54 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested January 28, 1948 by A. G. McBride.

Application 11927 filed July 24, 1947 to appropriate underground water from proposed Well No. 1 at a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T. 9 N. R. 56 E. The application was made for sufficient water to water 1,000 head of cows and 50 head of horses from Jan. 1 to Dec. 31 of each year. Said application was protested October 6, 1947 by A. G. McBride.

Application 11928 filed July 24, 1947 to appropriate the waters of Burnt Cabin Spring at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 15, T. 11 N., R. 52 E. The application was made for sufficient water to water 1,000 head of cows and 50 head of horses between Jan. 1 and Dec. 31 of each year. Said application was protested Oct. 6, 1947 by A. G. McBride.

Application 11929 filed July 24, 1947 to appropriate the waters of Red Spring at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 36, T. 11 N., R. 50 E. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Brothers, Javier Goyeneche, Pedro Corta, Joe Echegary, and John Laxague.

Application 11930 filed July 24, 1947 to appropriate the waters of Limestone Spring at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 17, T. 11 N., R. 51 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from January 1st to December 31st of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche,

Pedro Corta, Joe Echegary, and John Laxague; and on November 19, 1947 by Frank K. Farnsworth.

Application No. 11931 filed July 24, 1947 to appropriate the waters of Stingler Spring at a point within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 2, T. 12 N., R. 52 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary, and John Laxague.

Application No. 11932 filed July 24, 1947 to appropriate the waters of Bassit Spring at a point within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 33, T. 12 N., R. 52 E. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested October 6, 1947 by A. G. McBride.

Application 11933 filed July 24, 1947 to appropriate the waters of Sand Springs Valley Wash by means of Narrows Catch Basin located at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26, T. 7 N., R. 53 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application No. 11934 filed July 24, 1947 to appropriate the waters of Sand Spring Valley Wash by means of Lava Bed Catch Basin at a point within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4, T. 7 N., R. 53 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1st to Dec. 31st of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary, and John Laxague.

Application No. 11935 filed July 24, 1947 to appropriate the waters of Sand Springs Valley Wash by means of Logan Catch Basin located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 8, T. 8 N., R. 53 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application No. 11936 filed July 24, 1947 to appropriate the waters of Sand Spring Valley Wash by means of the Needles Catch Basin located at a point in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 29, T. 9 N., R. 53 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested November 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application No. 11937 filed July 24, 1947 to appropriate the waters of Sand Springs Valley Wash at a point in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 29, T. 8 N., R. 53 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested Nov. 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application No. 11938 filed July 24, 1947 to appropriate the waters of Tank Springs located at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 33, T. 7 N., R. 52 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested Nov. 15, 1947 by A. G. McBride, Fernando Goicoechea, Smith Bros., Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application No. 11977 filed August 26, 1947 to appropriate the waters of Shale Spring located at a point in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 25, T. 10 N., R. 54 E., unsurveyed. The application was made for sufficient water to water 1,000 head of cows and 50 horses from Jan. 1 to Dec. 31 of each year. Said application was protested Jan. 28, 1948 by A. G. McBride.

Application No. 12753 filed Dec. 7, 1948 to appropriate the waters of "Flood Waters (Crater Tank)" at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 7 N., R. 53 E. The application was made for sufficient water to water 1,000 head of cattle from January 1st to December 31st of each year. Said application was protested by Bertrand Arambel and/or Pete Etchaverry on February 16, 1949 and by A. G. McBride, Fernando Goicoechea, Smith Brothers, Dan Clark, Pedro Corta, Joe Echegary, John Laxague and his successors in interest, Eureka Livestock Company, on February 28, 1949.

Application No. 12754 filed December 7, 1948 to appropriate the waters of "Flood Waters (Playa Tank)" at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 6 N., R. 53 E. Said application was protested February 16, 1949 by Bertrand Arambel and/or Pete Etchaverry and on February 28, 1949 by A. G. McBride, Fernando Goicoechea, Smith Brothers, Dan Clark, Pedro Corta, Joe Echegary, John Laxague and his successors in interest, Eureka Livestock Company.

Application No. 12755 filed December 7, 1948 to appropriate the waters of an underground source "Antelope Well", at a point within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 25, T. 8 N., R. 52 E. Said application was protested February 16, 1949 by Bertrand Arambel and/or Pete Etchaverry and on February 28, 1949 by A. G. McBride, Fernando Goicoechea, Smith Brothers, Dan Clark, Pedro Corta, Joe Echegary, John Laxague and his successors in interest, Eureka Livestock Company.

Application 12756 filed December 7, 1948 to appropriate the waters of Stone House Creek at a point within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 17, T. 9 N., R. 51 E. Said application was protested February 16, 1949 by Bertrand Arambel and/or Pete Etchaverry and on February 28, 1949 by A. G. McBride, Fernando Goicoechea, Smith Brothers, Dan Clark, Pedro Corta, Joe Echegary, John Laxague and his successors in interest, Eureka Livestock Company.

On August 12, 1948 a field investigation was made by Edmund Muth, Deputy State Engineer, accompanied by applicants and representatives of the various protestants.

On December 13, 14 and 15th, 1948 a hearing was held on all of these applications excepting Applications Nos. 12753, 12754, 12755 and 12756 which at that time were not ready for action. However, since these applications lie in the same general vicinity as the other applications, the State Engineer feels that he has sufficient data on which to rule. They are therefore considered as a part of this ruling. Appearances were as follows:

For the office of State Engineer:

Hugh A. Shamberger	Assistant State Engineer
Edmund Muth	Deputy State Engineer

For the applicant:

E. P. Carville, of the firm of Carville and Carville, Attorneys at Law, Reno, Nevada, appearing for Locke and Titus.

For the protestants:

John F. Sexton, Attorney at Law, Eureka, Nevada, appearing for protestant Frank K. Farnsworth.

Orville R. Wilson, Attorney at Law, Elko, Nevada, appearing for all protestants other than Frank K. Farnsworth, and

C. E. Horton of the firm of Gray and Horton, attorneys, appearing for all protestants other than Frank K. Farnsworth.

During the hearing a number of witnesses were called and for the purpose of the record are herewith listed:

For the Protestants:

Walter Handley	Jess Goicoechea
Leon Ardans	Dan Clark
John L. Brown	Bertrand Arambel
Cadt Anxo	Joe Echegary
Pete Echaverry	Joe Madariaga
J. P. Jacobson	A. G. McBride
Jay Leslie Carter	Tony Herera
Batista Sorhouet	

Frank K. Farnsworth for himself.

For the Applicants:

Sara Locke
Charley Gilbert
Gene Marty
Cornelius Halstead

Diunque Brigham
Madison Locke
Harvey Titus

Following the hearing and on February 14, 1949 Gray and Horton and Orville Wilson, attorneys for protestants, submitted a memorandum in behalf of A. G. McBride, et al, protestants. A reply brief on behalf of the applicants was submitted March 12, 1949 by E. P. Carville of the Law firm of Carville and Carville.

GENERAL STATEMENT OF OPERATIONS:

During the three day hearing at Tonopah on December 13, 14 and 15th a great deal of testimony was taken as to the general operation of the sheep by protestants and of the cattle operation by applicant. A brief statement summarizing the range use, as testified to would, we feel, be pertinent in this ruling.

THE CATTLE OPERATION:

Sara Locke, Witness for Applicant:

It appears that Mr. Locke, the father of applicant, Madison Locke, purchased the squatters right of one Mr. Reynolds at the present location of Locke's ranch in 1883. Later, the Locke's Home Ranch was taken up by means of three homesteads by the Lockes. Sara Locke, the mother of Madison Locke, testified that she moved to the Locke ranch in 1893 when she was married and at that time Mr. Locke had quite a number of cattle that ranged in Sand Springs Valley. She testified that in 1894 she remembers Mr. Locke putting in troughs at Logan Spring about 12 miles west of the Locke ranch. She didn't remember seeing any sheep in Sand Springs Valley until about 1914.

Charlie Gilbert, Witness for Applicant:

That he has lived on and off in the vicinity of Sand Springs Valley since 1895 and that he buckarooed for Billy Moore in 1895 out of Twin Springs. At that time Moore was running cattle. He remembers seeing the cattle of Williams, Lockes, and some from the Duckwater area, all in the lower end of Sand Springs Valley. The witness stated that when it stormed, water would be impounded in this area and the cattle would drift in from both sides to water. He was somewhat uncertain as to when he first saw sheep in the lower end of Sand Springs Valley, but thought it was around 1916 or 1918. Mr. Gilbert stated that in about 1921 and 1922 he filed a homestead land entry at Hicks Station.

Gene Marty, Witness for Applicant:

The testimony of witness Gene Marty was to the effect that he worked for Billy Moore from 1895 through 1898 as a buckaroo. Moore's cattle ranged around Twin Springs, south of Reville and over in Sand Springs Valley and Hot Creek Valleys. That during this period, he saw some of the Locke cattle around Moore's Station. In the winter time

there would be a good many cattle in the Sand Springs area. In the summer time the cattle would range in Hot Creek Valley and the lower end of Railroad Valley. That whenever it stormed there would be water in the dry lakes. For the past 15 years the witness worked on the highway and the only sheep he saw was when they crossed the highway. In the last two or three years he has seen sheep on the Warm Springs Summit on their way to Stone Cabin Valley. He has also noticed sheep in the foothills adjacent to Highway 6 and south of there.

Diunque Brigham, Witness for Applicant:

Applicant's witness, Diunque Brigham, gave the following testimony: He was born on the Hot Creek Ranch (Williams' place) 59 years ago. From the time he was sixteen years old (1905) up to 1938 he worked as a ranch hand and as a rider for Joe Williams. He would ride in the Sand Springs, Duckwater and Hot Creek areas twice a year, fall and spring, looking for cattle. He remembers seeing the Locke cattle as well as other cattle in these areas. In Sand Springs Valley cattle would water at Squaw wells, Johnny Spring, Needles Spring and at little seepages around the range that would show up after the snow melts. He testified to the existence of sloughs in the middle of Sand Springs Valley where, following storms, the water would be about 2 feet deep in places. He remembers seeing sheep for the first time about 1915 or 1916. Under cross examination, the witness testified that the Sand Springs country was used principally for winter range for cattle and in the late spring the cattle were branded and moved. That during December, January and February he stayed at the ranch.

Madison Locke, Co-applicant:

The main points of the testimony of Madison Locke, a co-applicant, was as follows: He is one of the owners of the Locke ranch and of Moore's Station. He remembered back as far as 1902 and at that time his father had cattle. He owned the Locke ranch and, along with Dave Allen and Lorigan, owned Twin Springs. From the period 1902 to 1909 they trailed cattle from the Locke ranch to Twin Springs. In such trailing operation they followed the highway to Black Rock summit, then turned southerly by what is now Narrows Catch Basin, down across Dry Lake which often had water, then past Dry Lake across Mesquite summit into Hot Creek. During this period the Locke cattle probably drifted in Sand Springs Valley north of the highway, but his father developed Logan Spring near Big Round Valley.

In 1909 he left and returned in 1915. During this period his father had sold all his holdings except Warm Springs, Locke ranch and Twin Springs. In 1915 the Martelletti brothers were operating at Moore Station and near Moray with cattle and some sheep. Cattle from the Duckwater country were ranging in Sand Springs Valley. At this time his father was ranging mainly in the vicinity of Big Round and Little Round Valleys, Locke's ranch and Warm Springs. The country around Moore's Station was used by Gene Martelletti. Locke and Titus purchased Moore's Station and appurtenant range and water rights from Egosque and Sorhouet in 1936. The witness made reference to a channel that runs from Dry Lake in the southern end of Sand Springs Valley across the highway up by Needles Catch Basin to near Summit Station and in

one instance (1918) water flowed the entire length. Many times following the breakup in the spring he has seen the channel full of water. That he first saw sheep in Sand Springs Valley, following his return in 1915.

When asked if he had ever seen any change in the condition or operation of the range, the witness replied in the negative except during some years when so many sheep were there that it made it bad for the cattle. That cattle of Lockes, Williams, Tognoni and Martelleti had always used the Sand Spring Valley. He stated that they had some 1500 cattle now.

Under cross-examination, he testified that his father had between 80 and 100 head of cattle in 1915 following the sale in 1910 to the Reed brothers. That in 1931 they had 231 cattle and in 1942 they owned about 800 cattle. Following the purchase of Moore's Station they moved 400 cattle there. Some of the 1500 cattle were leased from others.

In 1927 the witness stated they developed Twin Springs and put in the Narrows Catch Basin. That their operations of late years have extended as far north as Stingler Spring and cattle drift over from Moore's Station to the channel in Upper Sand Springs. That in 1915 his father's principal operation was around Little and Big Round Basins and south of Warm Springs.

Further examination was to the effect that during the years between 1920 and 1925 his father ran about 200 head of cattle. That between the years 1917 to 1936 Moore's Station was a sheep operation.

Under further direct examination he was asked if he had ever ordered any sheepman off the range during the time his father was alive and the reply was "a number of times. A couple of times in the Round Valleys and other times right close to the ranch." When asked about Sand Springs Valley the witness replied that "they didn't get in there much in the winter time so didn't have a dispute with the sheepmen". The same question was asked in reference to south of Lockes, and the reply was that the sheep didn't get in that country - that once Handley trailed through on his way to the Red Bluff country. The witness recalled that in 1944 some sheepmen wanted to lease in Sand Springs Valley north of the highway.

Harvey Titus, Co-applicant:

Co-applicant, Harvey Titus, testified as follows: He has lived at Lockes since 1925 to date and has had active charge of the cattle operation. That in 1936 they purchased Moore's Station from Gardner who had purchased from Sorhouet and Egosque. From 1925 to 1936 the cattle were run around Locke's ranch, starting at Abel and Warm Springs and in Sand Springs Valley along the sloughs and over to Tank Spring. After acquiring Moore's Station range and water rights in 1936, the cattle were moved there in the spring and summer, going through Sand Springs. In the spring the cattle were gathered around Stormy and Abel Springs, Warm Springs, Locke's Ranch and Sand Springs Valley, then moved

to the mountains around Moore's Station where they ranged during May, June, July, August and September. In the fall the cattle were moved back into Sand Springs country where they had cattle now (December).

During the summer months the following springs were used: Stingler, Bassit, Prichard Canyon, Squaw Wells, Needles, Stormy, Ellis Creek, Red Spring, Limestone and the waters at Moore's Station. Narrows Catch Basin and Lava Spring were used during the fall and winter. That when snow comes, the cattle water on snow. That Narrows Catch Basin is filled about six months each year. That in 1925 the Lockes had about 150 head of cattle and were moved into the Sand Springs Valley in 1926. In 1936 they had 400 cattle on the Moore Station range and now have about 1500 head. Their cattle graze about 6 or 7 miles west of Moray Peak.

The witness stated that he made many protests to the various sheep outfits in connection with grazing the sheep on their range. That they have 900 cattle of their own and are leasing 500 head. That for about 7 years they had leased the range north of Squaw Well to Mr. Hachquet when he owned the Snowball outfit. Also, some range in the vicinity of Locke ranch was leased to a Mr. Chipman, a sheepman from Utah. He testified that in 1944 Nick and Jess Goicoechea approached him about leasing his range rights north of the highway in Sand Springs Valley and the Locke ranch. Also, a Mr. Gulley of Ely, representing the Elko sheepmen wanted to lease or buy this range. Mr. Titus testified to the case "The State of Nevada vs. Fermini Espinol and Fernando Segura" which was a trespass action brought by Locke and Titus against the two sheepmen, Espinol and Segura, who paid a fine of \$100.00. The alleged trespass was south of the highway in lower Sand Springs Valley.

Under cross examination in describing the range operation between 1925 and 1936, the witness testified that they ran exclusively from Lockes as a base and their operations were north and south of the ranch and also in Sand Springs Valley. In Sand Springs Valley, the operations extended north to Logan Catch Basin and taking in Big and Little Round Valleys and to the southern portion of Sand Springs Valley extending about six miles south of U.S. 6. That during this period they protested the use of the range by sheep as far north as Logan Catch Basin, but not Needles Catch Basin as they felt this belonged to the Moore Station operation of Sorhouet.

At Locke's ranch, the witness stated that in 1948 they baled 350 tons of hay and at Moore's Station they baled 45 to 50 tons. In addition they purchased 55 tons of hay from Emery Garrett at Currant.

The witness, in describing improvements on certain springs purchased with Moore's Station, testified that at Squaw Wells there was a trough about 170 feet long and south of Indian Spring there was a trough and at Stone House there were troughs and at Prichard Canyon there was a running stream. At Bassit Spring there was a corral and at Stingler and Red Rock there were no improvements. At Burnt Cabin there had been a little work done and at Needles there was a trough.

THE SHEEP OPERATION:

A number of sheepmen testified as witnesses of protestants and briefly their testimony was as follows:

Walter Handley, Witness for Protestant Sheepmen:

During 1906 to 1910 he worked for the Eureka Land and Livestock Company who ran about 20,000 head of sheep. That their usual operation was to start south from Fish Creek about December 1, depending on snow conditions. When snow was available, part of the sheep come over Brown's summit into Sand Spring Valley; others went over Moody Summit into Sand Springs Valley or Dry Lake. When there was plenty of snow they would drift south past the Needles into Hot Creek Valley or through Sand Pass or across the highway by the lava beds towards Mesquite Flat. Mainly the sheep wintered in the vicinity of the Needles and the summit that goes into Hot Creek Valley. The sheep that come from Bull Creek would go down on the east side of Sand Springs Valley.

In 1910 to 1918 the witness ran sheep of his own and came down from Deep Well over Moody Summit into Sand Springs Valley. In 1918 the Handley Brothers changed their route and came down Railroad Valley, south from Duckwater. They would come down the west side of the valley and sometimes crossing over Black Rock Summit and go down into Mesquite flat. This operation was continued until the winter of 1932-1933. From 1934 until 1938 they had no sheep on the desert. In 1938-1939, and 1940-1941, the sheep traveled the same route south. In 1943 they sold their sheep to Mr. Bates of Ely and Ray Labarra. The witness stated that during the time his sheep were going into the Sand Springs area and when he was with the Eureka Land and Livestock Company he saw, in addition to his own sheep, those of the Eureka Land and Cattle Company, Smith and Noble outfit, Carter and Smith sheep, in addition to others. To his knowledge, the witness stated that none of these sheep outfits had any wafer rights and that the sheep depended entirely on snow and their operations in the Sand Springs area and south depended on whether or not there was any available snow.

Leon Ardans, Witness for Protestant Sheepmen:

Mr. Ardans started working for the Eureka Land and Livestock in 1913 and in 1933 took over management of the company until 1941. The operations were about as described by witness Handley. The sheep would be in two units, one at Deep Well and one at Bull Creek. The Deep Well sheep would follow straight south between Moody and Willow Creek, south to Dry Lake. Then sometimes turning west at Summit Station going by Moore's Station south to Hot Creek, Tybo and Warm Springs, sometimes by Needles and to Black Rock. The Bull Creek sheep would cross Brown's Summit and travel down Sand Springs. The average operation in this area was about three months. The sheep would be brought back in one unit past Deep Well.

Mr. Ardans purchased 2200 sheep in 1946 and since has been operating his own sheep. In his operation to the south he travels westerly of the Division of Grazing boundary line, past Needles and Squaw Wells. He would come by Moore's Station south through Sand Springs to Black Rock.

The witness testified that he had no water rights, nor did the Eureka Land and Livestock Company, but depended entirely on snow.

In testifying to the heretofore mentioned trespass action, the witness identified the location as being the lake southwest from Black Rock and being in the lower end of Sand Springs Valley near the Narrows Catch Basin.

John Brown - Protestant:

Mr. Brown could only testify as to conditions since he, together with his partners, Sam and Oscar Rudnick, purchased the Eureka Livestock Company from John Laxague in February of 1948. At that time he stated the sheep were scattered through the southern country. That they had a license to graze 15000 sheep within District 4 and that at this time (December 1948) his sheep were starting south to Reville Mountains; that their license calls for going on the Grazing District by November 1st and leaving it to go south by January 1st.

Cadt Anxo, Witness for Protestant Sheepmen:

In 1919 he purchased 4000 sheep from the Marteletti Brothers and ran his sheep operations until 1945 which consisted of between 4500 and 5000 sheep, which would come down through Antelope Valley and get to the Nye County line about December 1st. Some years they would come down through Sand Springs Valley to Mesquite Flat. On some occasions the Lockes would tell him to keep his sheep on the west side of Black Rock Summit. He sold his sheep in 1945 to Martin Hachquet. When Hachquet sold the Snowball outfit to McBride, the sheep were not a part of the sale. He sold his ranch holdings, 49 miles north of Eureka, to Ogden people who sold to Dan Clark, who also acquired the Anxo sheep.

Pete Echaverry, Witness for Protestant Sheepmen:

He testified that he operated 2000 sheep starting in 1917 up to 1922. During that time he ran south from Deep Wells through Sand Springs and down towards Reville. He sold out in 1924 but later went back into the sheep business but hasn't been down in the Sand Springs area since 1931. That he acquired two springs from Jacobson, and that later he sold them to Espinol and in 1924 he sold his outfit to J. P. Jacobson, but not the springs.

J. P. Jacobson, Witness for Protestant Sheepmen:

Mr. Jacobson operated a sheep outfit from 1921 on and off until 1936 when he sold his sheep only to John Laxague. That he owned three springs, i.e., Martin, Olive, and Marteletti Springs, but retained only Martin and Olive Springs. These springs were sold to a man by the name of Estannella (probably meant Espinol) in 1940. That during his operation he ran from his ranch 30 miles north of Eureka down through Fish Lake, sometimes by Deep Well south to his springs and then on south to Mesquite Flat. On some occasions he leased water from Lockes. The witness stated that none of the protestants in this hearing purchased any of his range rights.

Jay Leslie Carter, Witness for Protestant Sheepmen:

Mr. Carter's testimony is to the period between 1920 to 1927 and then again between about 1933 to 1936 when they sold the outfit. In their operation they would come from Elko County to Newark Valley and as snow conditions permitted, they would drift south. When they would reach the flat above Duckwater, the sheep would often be divided, some going across Brown's Summit into Sand Springs Valley, and some going west of Duckwater and on south. As far south as they would get would be Black Rock, seldom did they get south of the highway. They ran about eight thousand sheep. Their outfit was sold to the Smith Brothers known as the Nevada Sheep Company.

In referring to the operation of the Smith Creek Company which Mr. McBride owns, the witness stated their operations were about parallel.

Jess Goicoechea, Witness for Protestant:

Mr. Goicoechea's testimony applied to the period subsequent to 1930. Their sheep are brought down from Elko County to Pancake. Some years when the grazing was good they stayed in the Pancake area. Other years they come to Bull Creek near Duckwater and follow the east side of Pancake Range which is the west side of Railroad Valley. In 1930 they brought about 7 or 8000 sheep south and when they attempted to go by Locke's ranch, Mr. Titus objected and they turned back. Some years they got into Sand Springs Valley near Black Rock. They had a permit for 6500 sheep in the Grazing District, 80% in and 20% outside.

The witness stated that their sheep coming from further north didn't get as far south as those of the Eureka Livestock Company and others whose headquarters were in Eureka County.

Dan Clark, Witness for Protestant Sheepmen:

Mr. Clark was the successor of Cadt Anxo. His sheep come south along the boundary of District 4 into Sand Springs Valley and then drift to Hot Creek Valley, Tybo and Stone Cabin.

Bertrand Arambel, Protestant:

Mr. Arambel worked for Cadt Anxo in 1919 and his description of the Anxo operation was about as described by Mr. Anxo. In 1924 he purchased his own sheep and operated then until 1928 when he sold 2000 head. In his operation he wintered around Duckwater and Sand Springs. In 1929 he purchased another bunch of sheep and wintered in Utah. In 1932 he again bought sheep south of Stone Cabin. In 1933 he moved his operation to Churchill County and in 1943 returned to Austin and leased the Ferguson ranch and purchased a share of the Willow Creek. Since that time he has been into and through the Sand Springs area every year to Stone Cabin, Warm Springs and Nyala. He stated he leased certain Sand Springs water from Espinol. The witness stated that Locke told him to move a couple of times when his sheep were near to the Locke ranch.

Joe Echegary, Protestant:

Mr. Echegary purchased the Noble-Smith outfit in 1936 and has been operating it ever since then. He brings down about 4500 sheep as far south as Round Fields and into east side of Sand Springs Valley. He stays less than two months.

Joe Madariaga, Witness for Protestant Sheepmen:

Madariaga, employed by the J & H Sheep Company who purchased the Pete Olivera outfit, licensed for 3200 in District 4, comes down through Pancake to Duckwater and some years go over Brown Summit and other years follow Duckwater Valley back over Brown Summit. Their stay in Sand Springs Valley depends on snow - sometimes 15 days and as much as 40 days. Never got south of the highway.

A. G. McBride, Protestant:

McBride owns the McBride Sheep Company, Snowball Diversion, and the Smith Creek Livestock Company. His father acquired half interest in the Smith Creek outfit in 1904. In 1939, when his father passed away, he bought all the partner's interest including 9000 sheep. The Snowball outfit was purchased from Charley Bell who bought it from Hachquet in 1944. 5000 sheep had been running on this unit. The Smith Creek sheep come down through Duckwater and by Locke's ranch on the east. In mentioning Pete Corta's operation, he stated they trailed through Snowball to Black Rock. At times Corta leased water at Moore's Station and at Lockes. Mr. McBride purchased the Goyeneche rights and sold to Corta.

Frank K. Farnsworth, Protestant Cattleman:

Mr. Farnsworth lives at Hicks Station located in the SW SW Sec. 15, T. 12 N., R. 51 E., which is covered by his homestead entry. He operates about 30 head of cattle. He lived there since 1935 and has seen Anxo's and the Eureka Livestock sheep go through and sometimes Hachquet's sheep.

Jean Batista Sorhouet, Witness for Protestant Sheepmen:

Testified that his partner, Phillip Egosque, and himself purchased Moore's Station in 1918 and operated it as a sheep outfit. They wintered in 1925 and around Moore's Station and summered in Reowawe and continued this practice up to 1931. They purchased Moore's Station from Etchemendy Brothers and sold to a Mr. Gardner the ranch and water rights, etc. From 1918 to 1925 they kept their sheep in the vicinity of Moore's Station. He testified that he filed some applications to appropriate water near Moore's Station in which certain claims to vested water rights were made.

EXISTING WATER RIGHTS:

From the testimony submitted and the records of the office of State Engineer, none of the protestant sheepmen had any existing water

rights in the area covered by the Locke-Titus applications with the exception of the following:

- Rock Spring - Permit 5036, Cert. 534, in name of Hachquet, et al, probably now A. G. McBride. Located in Sec. 17, T. 12 N., R. 53 E., unsurveyed and is within the Grazing District 4.
- White Rock Spring - Permit 5039, Cert. 537, for stockwater. Located in Sec. 12, T. 11 N., R. 53 E., unsurveyed, within Dist. 4. Cert. in name of Hachquet, et al, but probably now owned by A. G. McBride.
- Dry Lake Well - Permit 5038, Cert. 536 for stockwater. The certificate gives its location in Section 17, T. 11 N., R. 53 E., unsurveyed; however this appears to be in error as it is really located about $1\frac{1}{2}$ miles northeast of the described location and within District 4. Certificate in name of Hachquet, et al, but probably owned by A. G. McBride.
- Martin Spring - Permit 5035, Cert. 533 for stockwater, located in Sec. 23, T. 10 N., R. 54 E., unsurveyed. This is shown on the records of the State Engineer as being in the name of J. P. Jacobson but supposedly purchased by Ferme Espinol. It is within District 4.
- Olevia Well Spring - Permit 6554, Cert. 1098 for stockwater, located about $3\frac{1}{2}$ miles southwest from Martin Spring and near the southerly boundary of District 4. The description under the certificate gives the location as being in Sec. 24, T. 8 N., R. 54 E. which would place it about three miles west of Locke's ranch. The testimony, as well as the field investigation, places it about as herein described. This was a Jacobson permit and now supposedly owned by Ferme Espinol.
- Application No. 11699 was filed by Bertrand Arambel to appropriate water from a well located in Sec. 6, T. 11 N., R. 53 E. for stockwater. The well is located on the westerly edge of Dry Lake and apparently within three miles of Dry Lake Well owned by McBride. The application was protested by McBride and no action has been taken on it.

The testimony of the witness for protestant sheepmen clearly indicated that they depended almost exclusively on snow water in their operations and the extent of their travels south and the distance traveled depended upon the availability of snow.

Existing water of applicants, Locke and Titus, are as follows:

Pritchard Canyon - Permit 9384 located in Sec. 19, T. 11 N., R. 52 E. This is for irrigation and now owned by Locke and Titus. It was originally filed by Sorhouet.

Pritchard Canyon - Permit 4432 located in Section 19, T. 11 N., R. 52 E. now owned by Locke and Titus. Permit for irrigation and stockwater. Application originally filed by Gene Marteletti.

Squaw Valley Spring - Permit 2816, Cert. 211 for stockwater. This was originally filed by Tony Marteletti and now is owned by Locke and Titus. The location in the certificate shows this spring to be about 8 miles northeast of Moore's Station which would place it in about Sec. 12, T. 10 N., R. 52 E.

Squaw Valley Spring - Permit 5226, Cert. 579, for stockwater. This application was filed by Martin Etchemendy and now owned by Locke and Titus. The location as described in the certificate and shown on the exhibit map is wrong as it is actually the same source as appropriated under Permit 2816 and located in about Sec. 12, T. 10 N., R. 52 E.

Unnamed Wash - Permit 2817, Cert. 212 for irrigation and stockwater. This application was filed by Tony Marteletti and now owned by Locke and Titus. The location is at Moore's Station and probably within Sec. 36, T. 10 N., R. 51 E.

Stone House Creek - Permit 4573, for irrigation. This application was filed by Tony Marteletti and subsequently assigned to Martin Etchemendy. This is probably now owned by Locke and Titus although the deeds do not specifically assign it. The location is in about Sec. 17, T. 9 N., R. 51 E. The proof of beneficial use was for stockwater.

Stone House Creek - Permit 8774, Cert. 2120 for stockwater. This application was filed by J. B. Sorhouet and subsequently assigned to Locke and Titus. Location is in Sec. 17, T. 9 N., R. 51 E., unsurveyed.

Needles Spring No. 2, Permit 5033, Cert. 531 for stockwater. Location in Sec. 11, T. 9 N., R. 52 E., unsurveyed. This right still stands in name of Martin Etchemendy although is probably owned by Locke and Titus.

Needles Spring No. 1, Permit 5034, Cert. No. 532 for stockwater. The status is the same as Cert. No. 531 and is in the same location.

Warm Spring - Permit 7603, Cert. 1351 for stockwater. This application was filed in 1925 by Madison & Locke and the source is located in about Sec. 16, T. 7 N., R. 55 E., unsurveyed.

Abel Spring - Permit 5661, Cert. 948 for stockwater. Located about Sec. 24, T. 6 N., R. 54 E., unsurveyed. This was a United Cattle and Packing Company application and now belongs to Locke and Titus.

Stormy Spring - Permit 5663, Cert. 950 for stockwater. Located about in Sec. 12, T. 6 N., R. 54 E., unsurveyed. Application by United Cattle & Packing Company and now owned by Locke and Titus.

In addition to the above water rights owned by Locke and Titus they also are the assignees of applications to appropriate water and these are briefly as follows:

Sorhouet Well No. 1 - Application No. 9190 to appropriate water for stockwater. The applicant was J. B. Sorhouet and was assigned to Locke and Titus. The location is in Sec. 13, T. 10 N., R. 51 E. and about one-half mile northerly of Moore's Station.

Moore's Station Creek - Application No. 9379 for irrigation. Applicant J. B. Sorhouet and assigned to Locke and Titus. Location - Sec. 36, T. 10 N., R. 51 E.

Moore's Station Creek - Application No. 9380 for stockwater. Applicant - J. B. Sorhouet, and assigned to Locke and Titus. This application was protested by Elizabeth Wittenberg. Source located in Sec. 36, T. 10 N., R. 51 E.

Six Mile Canyon Spring - Application No. 9308 for stockwater. Application by J. B. Sorhouet and assigned to Locke and Titus. This application was protested by Elizabeth Wittenberg. Location in Sec. 11, T. 9 N., R. 50 E., unsurveyed.

South Canyon Spring - Application No. 9382 for stockwater. Application by J. B. Sorhouet and assigned to Locke and Titus. Said application is to appropriate water in Sec. 7, T. 9 N., R. 51 E., unsurveyed and was protested by Elizabeth Wittenberg.

Hobble Canyon Spring - Application 9383 by J. B. Sorhouet for stockwater. Assigned to Locke and Titus. Location Sec. 32, T. 9 N., R. 51 E., unsurveyed. Protested by Elizabeth Wittenberg.

Needle Spring #1 - Application 9381 by J. B. Sorhouet for stockwater. Location in Sec. 12, T. 9 N., R. 52 E., unsurveyed. Now owned by Locke & Titus.

Sorhouet Well #2 - application 9191 filed by J. B. Sorhouet for stockwater. Assigned to Locke and Titus. Location Sec. 11, T. 8 N., R. 51 E. Application was informally protested by Elizabeth Wittenberg.

In connection with applications Nos. 9380, 9308, 9382, 9383 and 9191 protested by Elizabeth Wittenberg, it should be mentioned that in recent years a range line between the Moore's Station operation of Locke and Titus and the Hot Creek operations of Williams, formerly Wittenberg, has been agreed upon and no doubt these protests will be withdrawn and assignments made to conform to this range line. Sources applied for under applications Nos. 9380 and 9382 lie within the Locke and Titus range and the others would be in the Williams area.

THE AREA INVOLVED:

The applications by Locke and Titus extend as far north as Stinger Spring filed for under Application No. 11931 and located in T. 12 N., R. 52 E., unsurveyed, as far south as Pigeon Well under Application No. 11926 and located in T. 6 N., R. 54 E., unsurveyed, which is also the most easterly one. The application farthest west is No. 11929 to appropriate water from Red Spring which is located in T. 11 N., R. 51 E. The country covered by these applications is therefore about 40 miles north and south and about 24 miles east and west. However it must be remembered that the testimony by protestants as to their winter range extends from Deep Wells in the north which is near the Eureka-Nye County Line to the Cedar pipe lines in T. 2 S., or about 102 miles northerly and southerly. Easterly, the range use extended to Duckwater in R. 56 E. and westerly as far as Tybo located in R. 49½ E., or a distance of over 42 miles easterly and westerly. Some of the sheep, especially those of Arambel and Clark, go still further west to the Stone Cabin Country.

In recent years, the Division of Grazing, Bureau of Land Management, have extended the westerly boundary line of District 4 westerly into Nye County and it is as shown on the accompanying map.

THE ISSUES:

Section 63, Chap.140, Statutes of 1913 (Sec. 7948 NCL 29) provides in part as follows:

"It shall be the duty of the State Engineer to approve all applications made in proper form where all fees, as in this act provided, have been paid, which contemplate the application of water to beneficial use, and where the proposed use or change does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. - - - - -
But where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interests, it shall be the duty of the state engineer to reject said application and refuse to issue the permit asked for."

Section 2, Chapter 201, Statutes of 1925 (1925 Stockwatering Act) provides as follows:

"Whenever one or more persons shall have a subsisting right to water range live stock at a particular place, and in sufficient numbers to utilize substantially all that portion of the public range readily available to live stock watering at that place, no appropriation of water from either the same or a different source shall subsequently be made by another for the purpose of watering range live stock in such numbers and in such proximity to the watering place first mentioned, as to enable the proposed appropriator to deprive the owner or owners of the existing water right of this grazing use of said portion of the public range, or to substantially interfere with or impair the value of such grazing use and of such water right."

Section 3 of the same act contains the following language:

"Before approving any application for the right to use water for watering live stock, the state engineer shall determine, by examination on the ground or otherwise, that the right and use applied for will not contravene the policy of Section 2 of this act. If he shall determine that the right applied for will contravene such policy, he must reject the application. If the water applied for shall be along the course of or in the immediate vicinity of an established or customary driving route for moving live stock from one range to another, the state engineer may reject the application even if no previous right shall exist for any portion of such water, if he shall determine that such water will best subserve the public interests by being reserved for the watering of livestock while so being driven along such customary driving route."

In acting on the applications herein under consideration the State Engineer must determine whether or not the granting of each application would, in his opinion, contravene the policies set forth in the above quoted acts and his rulings must be in accord with such findings.

In the Memorandum in behalf of the protestants, and the Reply Brief of the applicants, submitted subsequently to the hearing in December, the application of the 1931 Nevada Range Law (Section 5581 NCL Supp. 1931-41) and the 1925 stockwater act was argued.

The 1931 Range Law provides in part as follows:

Sec. 1. "It shall be unlawful to graze live stock on any part of the unreserved and unappropriated public lands of the United States in the State of Nevada, when such grazing will or does prevent, restrict or interfere with the customary use of such land for grazing live stock by any person who, by himself or his grantors or predecessors, shall have, become established, either exclusively or in common with others, in the grazing use of such lands by operation of law or under and in accordance with the customs of the graziers of the region involved;----- Customary or established use as graziers, otherwise than under the operation of law, as herein used, shall be deemed to include the continuous, open, notorious, peaceable and public use of such range seasonally for a period of five years or longer immediately prior to the approval of this act by the person or his grantors and/or predecessors in interest except in cases where initiated without protest or conflict to prior use or occupancy thereof. It is further provided that any change in such customary use so established shall not be made hereafter so as to prevent, restrict or interfere with the customary or established use of any other person or persons."

Section 2 of this act provides as follows:

Sec. 2. "This act shall not be construed to prohibit any such established user from continuing his grazing use, as established by operation of law or in accordance with such customs."

The State Engineer is of the opinion that in acting on applications to appropriate water for stockwatering purposes, he must take into consideration the provisions of the 1931 Range Law. This has long been the practice in similar situations. In describing the methods of establishing customary use, it is provided that such use can be acquired by the open, notorious, peaceable and public use of the range seasonally for a period of five years or longer immediately prior to the passage of the act. The act was approved on March 30, 1931. The language was silent as to the necessity of having a valid water right. It therefore is our opinion that such customary use may be acquired without a water right. While it wouldn't give such

customary user the right to water at a watering place of another, it would render him immune from any trespass action as provided for in Section 4 of the 1925 Stockwater Act.

It has always been the policy of this office that a valid water right cannot be acquired from the use of snow. Since the protesting sheepmen testified that they had never acquired any water right by process of law, with the exception of McBride whose water rights are northerly from the area under consideration, it follows that the rights of the sheepmen must be predicated solely upon whether or not they have acquired a customary use as provided for in the 1931 Range Law.

Therefore, in considering these applications we must view the operation of the protestant sheepmen subsequent to the year 1925, and determine as best we can the extent of their operation. As we understand the 1931 Range Law, a customary use can be established by a continuous, seasonal use for at least five years which has been initiated without protest or conflict to prior use or occupancy since 1925.

Due to the uncertainty of snow conditions in Sand Springs Valley and also to the interrupted and intermittent operations of many of the sheep operators, we are of the opinion that with the possible exception of the Eureka Livestock Company, no customary use has been established by the sheepmen south of U. S. Highway No. 6 in southern Sand Springs Valley. The operation of the Eureka Livestock Company has been continuous for fifty or more years and it is reasonable to assume that subsequent to 1925 there was a period of five continuous years when their operations extended to this area. However, it appears that due to objections of Locke and Titus, the sheep have generally grazed westerly of Logan Catch Basin, crossing the highway several miles westerly of Black Rock Summit. It does not appear that any customary right has been established by any of the sheepmen in the Moore's Station area.

The sheep of Arambel and Carrica have, according to testimony, been coming into Dry Lake and then southerly by the Needles and swinging southwesterly via Warm Springs to the Stone Cabin country continuously since 1943. It is questionable in our minds if this protestant has acquired any customary use in the area south of Highway 6, unless it be in the Stone Cabin country which is not within the range area involved here.

It would appear that in the operation of the Smith Creek Livestock Company owned by A. G. McBride, no customary use has been established in Sand Springs Valley although they probably have such use along the easterly side of Duckwater Valley. The McBride Sheep Company (Snowball Unit) is the successor of the rights of Martin Hachquet et al, and operate out of Willow Creek in T. 14 N., R. 51 E. Mr. McBride apparently owns several water rights all lying within District 4. There is no doubt a customary use established in portions of Sand Springs Valley lying northerly of U. S. Highway 6.

The evidence would indicate that the sheep of protestant Goicoechea, Corta, Smith Brothers and Echegary have established a customary use in Sand Springs Valley north of U. S. Highway 6 and westerly of Black Rock Summit. In addition, it is quite possible that other non-protesting sheepmen have certain customary use in Sand Springs Valley northerly of Highway 6, namely Raymond Labarra and the J and H Livestock Company.

In general it is our opinion, based on the testimony submitted, that with the exception of the Eureka Livestock Company and the Smith Creek Livestock Company, no customary use has become established by any of the protestant sheepmen in the area south of U. S. Highway 6 and in areas in which the proposed applications cover. However, there has been certain definite use established in Sand Springs Valley north of U. S. Highway 6 with the exception of the areas near Locke's ranch and Black Rock Summit. No customary use seems to have been established in the Moore's Station area.

In considering the applications of Locke and Titus we must also consider the provisions of the 1931 Range Law and determine whether or not they have obtained a customary use as graziers in the areas appurtenant to the sources of water applied for. If a cattleman has been and is now a customary user in an area surrounding a water source upon which he has made an application to appropriate water, and in such customary use his stock used the water from such source and the use therefrom did not conflict with other graziers under the provisions of Section 2 of the 1925 Stockwatering Act, we see no reason why a permit to appropriate water shouldn't be issued. We find no evidence that at any time have any of protestant sheepmen made objection to the method and extent of range use as practiced by applicants, Locke and Titus.

The evidence at hand indicates clearly that the use of the waters applied for are seasonal. The applications called for the watering of 1000 head of cattle at each source. This appeared to cause considerable worry among the sheepmen. Cattle do not water in the same manner as sheep, but scatter out over the grazing area used and seldom concentrate in any large groups.

RULINGS:

(Note:()) When the protestants are described as A. G. McBride, et al, it means A. G. McBride, Fernando Goicoechea, Smith Brothers, Javier Goyeneche, Pedro Corta, Joe Echegary and John Laxague.

Application 11926 - Pigeon Well - Sec. 34, T. 6 N., R. 54 E. This is on the winter range of applicants and lies about 2½ miles southwesterly of Abel Spring owned by applicants. The protest of A. G. McBride is overruled and a permit will be issued upon receipt of the statutory fee. However, the permit will be limited to 150 head of cattle from November 1st to April 1st of each year.

Application 11927 - Well No. 1 - Sec. 29, T. 9 N., R. 56 E. This well lies easterly from Locke's Ranch near the highway and is used mainly during the winter months. Other stock from the Current Creek area may also use this range at different times of the year and

it is possible that this area may be used by the Smith Creek Live-stock Company.

The protest of A. G. McBride is overruled and a permit will be issued subject to other possible customary range use in the area. The permit will be limited to 150 head of cattle between November 1st and April 1st of each year.

Application 11928 - Burnt Cabin Spring - Sec. 15, T. 11 N., R. 52 E. The location of this source is about three miles westerly of Dry Lake in the hills. It is about two miles east of an existing stockwater right of applicants in Pritchard Canyon. The applicants have used the area surrounding this source during the late spring and summer and have no doubt acquired a customary use.

The protest of A. G. McBride is overruled and a permit granted following receipt of the statutory fee. However, such permit will be limited to 150 head of cattle between June 1st and September 15th of each year.

Application 11929 - Red Spring - Sec. 36, T. 11 N., R. 50 E. This application was protested by A. G. McBride, et al as heretofore noted. This spring is located high up in the mountains in the Hot Creek Range and has since 1936 been used as a summer range by applicants. It is obviously not a winter sheep range.

The protests are therefore overruled and a permit will be granted following receipt of the statutory fee. The permit, however, will be limited to 200 head of cattle between June 1st and September 15th of each year.

Application 11930 - Limestone Spring - Sec. 17, T. 11 N., R. 51 E. This spring is located about four miles northeasterly from Red Spring and the conditions set forth under Application 11929 apply here.

The protests of A. G. McBride, et al, are herewith overruled.

This application was also protested by Frank K. Farnsworth, a cattleman. Mr. Farnsworth lives at Hick's Station, about six miles northerly from Limestone Spring. It would appear that this protestant has acquired a customary use for about forty head of cattle operating out of Hick's Station. It is our opinion that a permit could be granted under this application for a limited number of livestock. The protest is therefore overruled and a permit will be granted subject to existing rights upon payment of the statutory fee. The permit will be limited to 100 head of cattle between June 1st and September 15th of each year.

Application 11931 - Stingler Spring - Sec. 2, T. 12 N., R. 52 E. This spring is located rather high in the Park Mountain area and lies about four miles westerly of McBride's Rock Spring and being well within Grazing District No. 4. The application was protested by McBride, et al. Due to the fact that applicants have no license to graze within the District, we hereby deny same.

Application 11932 - Bassit Spring - Sec. 33, T. 12 N., R. 52 E. Bassit Spring lies within the Park Mountain area and westerly of Pritchard Canyon. The application was protested by A. G. McBride. Apparently, it is within the confines of District 4 and for the reasons set forth under Application 11931 it is denied.

Application No. 11933 - Narrows Catch Basin - Sec. 26, T. 7 N., R. 53 E. This source is located just south of U. S. Highway 6 and is in an area in which applicants have undoubtedly established a customary use. It is also near the location of the asserted trespass action filed by Locke and Titus against Espinol and Segura. This application was protested by A. G. McBride, et al, heretofore noted.

It appearing that this area has been used almost exclusively by applicants, the protests are herewith overruled. A permit will be granted following payment of the statutory fee. Such permit will be limited to 200 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 11934 - Lava Bed Catch Basin - Sec. 4, T. 7 N., R. 53 E. This source is located just north of U. S. Highway 6 and about five miles west of Black Rock Summit. The conditions set forth under the ruling on Application No. 11933 apply here.

The protest of A. G. McBride, et al, is herewith overruled and a permit will be granted following receipt of the statutory fee to water 200 head of cattle between April 1st and June 1st and September 1st and December 1st of each year.

Application 11935 - Logan Catch Basin - Sec. 8, T. 8 N., R. 53 E. This source is located about five or six miles northerly of Lava Bed Catch Basin. A customary use has no doubt been established here by applicants. The application was protested by A. G. McBride, et al. In line with the ruling under application 11934, the protests are herewith overruled and a permit will be granted upon payment of the statutory fee, in sufficient amount to water 200 head of cattle between April 1st and June 1st and September 1st and December 1st of each year.

Application 11936 - Needles Catch Basin - Sec. 29, T. 9 N., R. 53 E. This source is located about three miles northerly from Logan Catch Basin. It appears that a customary use has been made in this area by applicants. It also appears that some customary use has been made by the sheep operators nearby. The source lies about four and one-half miles southeasterly from the Needle Springs, apparently owned by Locke and Titus.

We are of the opinion that this application should be granted and therefore overrule the protest of A. G. McBride, et al. The permit, when issued, will be limited to 150 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 11937 - Sand Springs Valley Wash - Sec. 29, T. 8 N., R. 53 E. This source is located between Lava Bed Catch Basin and Logan Catch Basin and the rulings on Applications 11934 and 11935 will apply here. Accordingly, the protest of A. G. McBride, et al, are overruled and a permit will be granted following receipt of the statutory fee, in the amount sufficient to water 200 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 11938 - Tank Spring - Sec. 33, T. 7 N., R. 52 E. Tank Spring is located about two miles south of U. S. Highway No. 6 and near the westerly edge of lower Sand Springs Valley. There is no question in our minds but what the applicants have established a customary use here. Protests were filed by A. G. McBride, et al.

The protests are overruled and a permit will be granted. The permit will be limited to 150 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 11977 - Shale Spring - Sec. 25, T. 10 N., R. 54 E. This spring is within Grazing District No. 4 and apparently is located in an area in which customary use has been established by sheep operators. The application was protested by A. G. McBride.

Due to the fact that the applicants are not licensed within the District and further that this source apparently lies outside of the area on which they have become established by customary use, the said application is denied.

Application 12753 - Crater Tank - Sec. 32, T. 7 N., R. 53 E. This application was protested by A. G. McBride, et al, and in addition was protested by Arambel and Etchaverry.

The location is about three miles southwesterly from Narrows Catch Basin under Application 11933. The conditions set forth under the ruling under Application 11933 apply here. In addition, we fail to find where protestant Arambel and Etchaverry had established a customary use here since their operation started in 1943. The protests are therefore overruled and a permit will be issued subject to any existing rights and will be limited to 200 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 12754 - Playa Tank - Sec. 10, T. 6 N., R. 53 E. The same protestants appear here as in the previous application and the conditions set forth there apply here. The location of this source is about two and one-half miles southeasterly from Crater Tank.

The protests are herewith overruled and a permit will be granted but will be limited to sufficient water to water 200 head of cattle between April 1st and June 1st and between September 1st and December 1st of each year.

Application 12755 - Antelope Well - Sec. 25, T. 8 N., R. 52 E. This application was protested by A. G. McBride, et al, and by Arambel and Etchaverry.

The source is located about one and one-half miles westerly of Sand Springs Valley Wash under Application No. 11937. The same conditions apply here as set forth under Application 11937. However, the use of Sand Springs Valley Wash, Logan Catch Basin and Lava Bed Catch Basin, all located near the proposed point of diversion under Application 12755, is subject to climatic conditions, while, should a permit be granted here, the well water could be pumped continuously

during the spring and fall use period and the stock would be able to make a much greater use of the range within the use area of such well. While ordinarily this is good range practice, we feel that in this instance such use might be detrimental to other customary use in the area westerly from the proposed well. However, we feel justified in granting a permit to appropriate water at this source to the extent that water be used only in connection with trailing between the winter and summer ranges. Therefore to this extent, the protests are overruled and a permit will be granted to appropriate water only for trailing purposes.

Application 12756 - Stone House Creek - Sec. 17, T. 9 N., R. 51 E. The source applied for under this application lies high in the Hot Creek Range and is in an area in which a customary use has no doubt been established by Locke and Titus. Also, they have a water right on this source under Certificate No. 2120. However, in this application the applicants propose to transport the water by pipe line some eight or nine miles to a point approximately in Sec. 10, T. 8 N., R. 52 E., unsurveyed.

This application has been protested by A. G. McBride, et al, and by Arambel and Etchaverry.

The water is proposed to be obtained in a different watershed than where it is to be used. The proposed place of use is in an area apparently where no customary use has been made by Locke and Titus, at least not to any great extent, but where no doubt the sheepmen have developed a customary use.

The protests are therefore sustained and said application denied on the grounds that the approval therefore would be detrimental to the public welfare.

Respectfully submitted,

Alfred Merritt Smith, State Engineer

Dated July 25, 1949.