IN THE OFFICE OF THE NEVADA STATE ENGINEER

IN THE MATTER OF APPLICATIONS FILED BY R. H. AND MARY C. BURNEY, NOS. 12005, AND 12006 FOR STOCKWATERING PURPOSES,	
AND	RULING
APPLICATIONS FILED BY E. L. CORD, OWNER OF CIRCLE L RANCH, NOS. 12408, 12413, 12602, 12603, 12634, 12635, 12636, 12637, 12638 AND 12639 FOR STOCKWATERING PURPOSES.	

FOREWORD

The sources named in all the applications concerned in this ruling are in an isolated area and are so situate that it is deemed proper to consider them as a unit. It is felt that sufficient evidence both in the field, orally, and in the Nevada State Engineer's office is at hand to make a ruling without the necessity of a hearing.

BRIEF DESCRIPTION OF APPLICATIONS

Application No. 12005, filed September 10, 1947 by R. H. and Mary C. Burney to appropriate 0.1 c.f.s. of the waters of Lower Ice House Spring at a point in SE¼ NW¼ Section 15, T. 23., R. 36 E., M.D.M., or at a point from which the NE Corner of Sec. 13, T. 2 S., R. 35 E., M.D.M. bears N. 83° 00' W., 17,370 feet, for domestic and for watering 300 cattle in the same subdivision as the point of diversion during the period January 1st to December 31st. Published in the Goldfield Tribune. Protests against the granting of this application were filed by the following:

March 30, 1948 by J. W. Snodgrass acting in behalf of E. L. Cord, on the grounds of vested rights.

April 10, 1948 by H. R. Humphrey, E. J. Shirley and Stanley Chiatovich on the grounds of interference with their rights to run stock in this area, which has been used for many years and particularly with the natural movement of cattle from Red Mountain area in and out of Fish Lake Valley.

Application No. 12006 filed September 10, 1947 by R. H.

and Mary C. Burney to appropriate 0.10 c.f.s. of the waters of Upper Ice House Spring at a point in SW¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M., whence the NE Corner of Sec. 13, T. 2 S., R. 35 E., M.D.M. bears N. 85° 10' W., 18,300 feet for domestic purposes and for watering 300 cattle in the same subdivision as the point of diversion, during the period January 1st to December 31st of each year. Published in the Goldfield Tribune. Protests against the granting of this application were filed by the following:

March 30, 1948 by J. W. Snodgrass acting in behalf of E. L. Cord, on the grounds of vested rights.

April 10, 1948 by H. R. Humphrey, et al, on the grounds of interference with running and movement of cattle from Red Mountain area in and out of Fish Lake Valley in the spring and fall of the year.

Application No. 12409 filed April 10, 1948 by E. L. Cord, owner of Circle L Ranch to appropriate 0.10 c.f.s. of the waters of Piper Spring at a point in the NW¼ SW¼ Section 34, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the SE Corner of T. 2 S., R. 35 E., M.D.M. bears S. 81° 43' W., 17,062 feet for watering 600 cattle in the NW¼ SW¼ of said Sec. 34 during the period January 1 to December 31 of each year. Protest against the granting of the application was filed by the following:

Aug. 21, 1948 by R. H. Burney on the grounds of Piper Spring being above his Upper Ice House Spring which has been used for forty years, and would infringe and impair vested right to the use of water and surrounding range and that applicant has no access to the spring except by traveling across his (protestant's) lands.

The above protest was withdrawn by R. H. Burney on June 7, 1949.

Application No. 12413 filed April 14, 1948 by E. L. Cord, owner of the Circle L Ranch to appropriate 0.10 c.f.s. of the waters of East Ice House Spring at a point in the SW¼ SW¼ Section 13, T. 2 S., R. 36 E., unsurveyed, or at a point from which the SE Corner of T. 2 S., R. 35 E., M.D.M. bears S. 58° 43' W., 32,710 feet for the watering at the same place 500 Herford cattle during the period January 1 to December 31 of each year. The application was published in the Goldfield Tribune. Protests against the granting of this application were filed by the following:

June 21, 1948 by H. R. and Mary C. Burney on the grounds of use for the past forty years (vested right) and that applicant has no access to spring

except by traveling across protestant lands.

June 29, 1948 by Jacob Daniels on the grounds of invasion of prior existing rights; being within the range of exclusive, customary right to graze; that spring is within three miles of existing watering places owned, held and appropriated by protestant for stockwatering; contrary to public policy of the State of Nevada; would lead to multiplicity of suits and a conflict of interests; detrimental to the public welfare and that protestant has established a right to water at the source which would be destroyed and invaded by the granting of the application.

Application No. 12602 filed August 26, 1948 by E. L. Gard to appropriate 0.25 c.f.s. of the waters of Stone Cabin Spring at a point in the SW NW Section 25, T. 2 S., R. 35 E., M.D.M., unsurveyed, or at a point from which the SW Corner of Sec. 36, T. 2 S., R. 35 E. M.D.M. bears S. 72° 13' E., 29,985 feet for watering in the same subdivision 300 horses cattle during the period January 1st to December 31st of each year. Application was published in Goldfield Tribune. Protests against the granting of this application were filed by the following:

December 11, 1948 by R. H. Burney on the grounds of impairment and invasion of prior existing rights; contrary to provisions of the Stockwatering Act; contrary to public policy in that it would conflict with both water and range already held by protestant and contrary to the range held by customary use. That the granting of the application would lead to a multiplicity suit and extended litigation by reason of encroachment on existing property rights.

December 14, 1948 by Robert E. Taylor for himself and James Daniels and for Desert and Oscar Rudnich on the following grounds: Invadement and impairment of prior existing rights to water and range of protestant; contrary to provisions of the Stockwatering Act of the State of Nevada; contrary to the public policy of the State of Nevada with reference to water for ranging livestock; conflict with both water and range rights already held by protestant and vested in him; granting of application would be contrary to provisions of Nevada Range Law; conflict with range which is held and established customary use by protestant and that the granting of the application would lead to multiplicity

of suits and extended litigation by reason of encroachment upon existing property rights.

December 18, 1948 by E. J. Shirley, S. M. Chiatovich and H. R. Humphrey on the following grounds: That the area in the vicinity of Stone Cabin Spring has been used by protestants and their predecessors in interest for many years last past in traveling from the Red Mountain area to the Fish Lake Valley area and back; that feed in the vicinity of the spring is so limited that the granting of the application will create confusion and hardship on protestants.

Application No. 12603 filed August 26, 1948 by E. L. Cord to appropriate 0.25 c.f.s. of the waters of North Ice House Spring at a point in the SE¼ NE¼ Sec. 15, T. 2 S., R. 36 E., M.D.M. unsurveyed, or at a point from which the NW Corner Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 85° 35' W., 25,230 feet for watering at the same place 300 Herford cattle from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests were filed by the following:

December 11, 1948 by R. M. Burney on the following grounds: Invadement and impairment of prior existing rights to water and range; contrary to provisions of the Stockwatering Act of the State of Nevada; contrary to public policy with reference to water and range livestock in that it would conflict with both water and range rights already held by protestant and vested in him; contrary to the Range Law of Nevada; would conflict with range which is already held by established, customary use by protestant; would lead to multiplicity of suits and litigation by reason of the encroachment upon existing property rights.

December 14, 1948 by Robert B. Taylor, James Daniels, Bozart and Oscar Rudnick on the following grounds: Invadement and impairment of prior existing rights to water and range of protestant; that granting of the application would also be contrary to the provisions of the Stockwatering Act of Nevada; also contrary to the public policy of Nevada with reference to water for ranging livestock in that it would conflict with both water and range rights already held by protestants and vested in them; would also be contrary to the provisions of the Range Law of Nevada; would conflict with range already held by established customary use by protestant; and that the granting of the application would lead to a multiplicity of suits and extended litigation by reason of the encroachment upon existing property rights.

December 18, 1948 by E. J. Shirley, S. M. Chiatovich

and H. R. Humphrey on the following grounds: That cattle of protestant and their predecessors in interest have used the area in the vicinity of the spring for many years past in traveling from Red Mountain area to Fish Lake Valley area and return; that feed in the vicinity of the spring is so limited that the granting of the application would create confusion and hardship on protestants.

Application 12634 filed September 14, 1948 by E. L. Cord, owner of the Circle L Ranch, to appropriate 0.10 c.f.s. of the waters of Cottonwood Spring at a point in the SW¼ NW¼ Sec. 11, T. 2 N., R. 36 E., M.D.M., unsurveyed, or at a point from which the SW Corner of Sec. 13, T. 2 S., R. 35 E., M.D.M. bears S. 75° 07' W., 27,555 feet for watering at the same place 300 Herford cattle from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by R. E. Burney on the following grounds; Invadement and impairment of prior existing rights to water and range of protestant; contrary to the provisions of the Nevada Stockwatering Act; contrary to the State public policy with reference to water for livestock in that it would conflict with both water and range already held by protestant and vested in him; contrary to the Nevada Range Law; would conflict with range already held by customary use and that the granting of the application would lead to a multiplicity of suits and extended litigation by reason of encroachment on existing property rights.

December 14, 1948 by Robert E. Taylor, James Daniels, Bonart and Oscar Rudnick on the same grounds as given in Application No. 12602, above described.

December 18, 1948 by E. J. Shirley, S. M. Chistovich and H. R. Humphrey on the same grounds as given in Application No. 12602, above described.

Application No. 12635 filed September 14, 1948 by E. L. Cord, owner of the Circle L Ranch to appropriate 0.10 c.f.s. of the waters of Upper Ice House Spring at a point in the NW¼ SW¼ Section 15, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the NW Corner of Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 83° 25' W., 26,132 feet for watering at the same place 300 Herford cattle from January 1st to December 31st of each year. Application published

in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by R. H. Burney on the same grounds as given under application No. 12602.

December 14, 1948 by Robert E. Taylor, James Daniels, Dezart and Oscar Rudnick on the same grounds as given under Application No. 12602.

December 16, 1948 by E. J. Shirley, G. M. Chiatovich and H. R. Humphrey on the same grounds as given under Application No. 12602.

Application No. 12636 filed September 14, 1948 by E. L. Cord, owner of the Circle L Ranch to appropriate 0.10 c.f.s. of the waters of White Rock Spring at a point in the NW¼ SW¼ Sec. 15, T. 2 S., R. 36 E., M.D.M., unsurveyed or at a point from which the NW Corner of Section 13, T. 2 S., R. 37 E., M.D.M. bears N. 83° 17' W., 54,612 feet, for watering at the same place 300 Horsed cattle from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by R. H. Burney on the same grounds as given in his protest to Application No. 12602.

December 14, 1948 by Robert E. Taylor, James Daniels, Dezart and Oscar Rudnick on the same grounds as given in their protest to Application No. 12602.

December 16, 1948 by E. J. Shirley, G. M. Chiatovich and H. R. Humphrey on the same grounds as given in their protest against Application No. 12602.

Application No. 12637 filed September 14, 1948 by E. L. Cord the owner of the Circle L Ranch, to appropriate 0.10 c.f.s. of the waters of Curve Spring at a point in the SE¼ NE¼ Sec. 23, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the SE Corner of Sec. 36, T. 2 S., R. 35 E., M.D.M. bears S. 60° 14' E., 28,775 feet for watering 300 cattle in the same place as the point of diversion, from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by R. H. Burney on the same grounds as given in his protest against Application No. 12602 above described.

December 14, 1948 by Robert E. Taylor, James Daniels, Dezart and Oscar Rudnick on the same grounds as given

in their protest against Application No. 12602 above described.

December 10, 1948 by E. J. Shirley, G. M. Chiatovich and E. R. Humphrey on the same grounds as given in their protest against the granting of Application No. 12602 above described.

Application No. 12638 filed September 14, 1948 by E. L. Cord, owner of the Circle L Ranch to appropriate 0.10 c.f.s. of the waters of Cave Spring at a point in the NE¼ NW¼ Sec. 26, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the SE Corner of Sec. 36, T. 2 S., R. 35 E., M.D.M. bears S. 75° 34' W., 27,699 feet for watering 300 Herford cattle at the same place as the point of diversion from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by E. E. Burney on the same grounds as given in his protest against the granting of Application No. 12602.

December 14, 1948 by Robert E. Taylor, James Daniels, Desert and Oscar Rudnick on the same grounds as given in their protest against the granting of Application No. 12602.

December 10, 1948 by E. J. Shirley, G. M. Chiatovich and E. R. Humphrey on the same grounds as given in their protest against the granting of Application No. 12602.

Application No. 12639 filed September 14, 1948 by E. L. Cord, the owner of the Circle L Ranch to appropriate 0.10 c.f.s. of the waters of Willow Spring at a point in the NW¼ SW¼ Section 25, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the SE Corner of Sec. 36, T. 2 S., R. 35 E., M.D.M. bears S 75° 31' W., 27,616 feet for watering 300 Herford cattle at the same place as the point of diversion from January 1st to December 31st of each year. The application was published in the Goldfield Tribune. Protests against the granting of the application were filed by the following:

December 11, 1948 by E. E. Burney on the same grounds as given in his protest against the granting of Application No. 12602 above described.

December 14, 1948 by Robert E. Taylor, James Daniels, Desert and Oscar Rudnick on the same grounds as given

in their protest against the granting of Application No. 12602, above described.

December 18, 1948 by E. J. Shirley, S. M. Chiatovich and E. R. Humphrey on the same grounds as given in their protest against the granting of application No. 12602, above described.

FIELD INVESTIGATION

A field investigation was made of the above numbered applications on June 7, 1949 by Deputy State Engineer, F. W. Bendore and Office Engineer, E. J. DeRicco, accompanied by S. M. Chiatovich and E. R. Humphrey, both representing protestants E. J. Shirley, S. M. Chiatovich and E. R. Humphrey; J. M. Daniels and Robert B. Taylor, both representing protestants Robert B. Taylor, James Daniels, Bonart and Oscar Rudnick; W. G. Patten, general manager of the E. L. Cord Ranch; Frank E. Gray, attorney for E. L. Cord; and I. H. McNett, cattle foreman for the E. L. Cord Ranch, all representing applicant and protestant E. L. Cord; and R. H. Burney representing himself and Mary C. Burney as applicants and also as protestants against the granting of the E. L. Cord applications.

ICE HOUSE CANYON AND ADJOINING CANYONS

Ice House Canyon, according to the field investigation and according to information in the Nevada State Engineer's office, is about four miles long with almost vertical walls at various places along the lower part, and with gentle to steep slopes at its head. The course is in a northwesterly direction down to its mouth and thence runs down in about the same direction on the alluvium fan forming the westerly slope of the Silver Peak Range of mountains. These mountains extend to the easterly edge of Fish Lake Valley, all in Esmeralda County, Nevada. The distance from the mouth of the canyon to the edge of the valley is approximately one mile.

The drainage area of Ice House Canyon which lies in the westerly slope of the Silver Peak range of mountains is from eight to ten square miles. The canyon rises from about the 5000 feet elevation at its mouth to a maximum of about 9400 feet elevation at Piper Peak. The country is rugged with many small springs. All of the springs involved in the field investigation, with the exception of Cottonwood Spring (E. L. Cord application No. 12634) and Piper Spring (E. L. Cord application No. 12409) are in this area.

Cottonwood Spring is situate in a small canyon immediately northeasterly from Ice House Canyon, but not a tributary. The outlet of this canyon is toward Fish Lake Valley. A low ridge forms the

dividing line between this canyon and Ice House Canyon.

Piper Spring is in a fairly long canyon lying about two miles southwesterly from Ice House Canyon in a separate adjacent drainage area which also drains into Fish Lake Valley.

INVESTIGATION OF SPRINGS

Not all of the springs involved in this investigation were examined on the ground. The location of those which were not investigated were pointed out by I. H. McNett, cattle foreman for the Gard Ranch and no investigation made of them as it was agreed by all present that it was not necessary.

PIPER SPRING - H. L. GORD APPLICATION NO. 12404:-

This spring was pointed out but not investigated. As stated above, Piper Spring is in the adjacent canyon. During the field investigation it was disclosed that H. L. Gord's cattle are driven to this spring; thence over a low pass to Ice House Canyon.

COTTONWOOD SPRING - H. L. GORD APPLICATION NO. 12404:-

This spring was pointed out and not investigated. It is situate in a canyon northeasterly from, and adjacent, to Ice House Canyon, as above described.

NORTH ICE HOUSE SPRING - H. L. GORD APPLICATION NO. 12403:-
UPPER ICEHOUSE SPRING - R. H. AND MARY C. BURNEY APPLICATION NO. 12006:-

North Ice House Spring is on the left side of Ice House Canyon. The spring area is about fifty feet long. It was contributing about 0.05 c.f.s. to the 0.20 c.f.s. flowing by in Ice House Canyon. About twenty-five feet down the canyon there was another spring area, the waters of which, together with the seepage from the almost vertical limestone wall of the canyon, were also contributing water to the flow in Ice House Canyon, the waters of which were flowing a considerable distance down and disappearing in the gravelly bed.

According to Burney, North Ice House Spring is the same source as his and Mary C. Burney's application No. 12006 in which it is called "Upper Icehouse Spring", the location of which appears to have been erroneously given in Burney's application and erroneously shown on the supporting map. The alleged discrepancy, together with the apparent error in the location of Lower Ice House Spring (Burney's application No. 12005) is described further on.

WHITE ROCK SPRING - H. L. GORD APPLICATION NO. 12406:-
(LOWER ICEHOUSE SPRING - R. H. AND MARY C. BURNEY APPLICATION NO. 12005):-

White Rock Spring was pointed out but not examined on the ground.

The canyon in which White Rock Spring rises, is a west tributary of Ice House Canyon. According to R. H. Burney, White Rock Spring

is the same source as his and Mary C. Burney's application No. 12005, in which it is designated as Lower Icehouse Spring. This conflict in name and location of the source is described under the next heading.

APPARENT ERROR IN LOCATION OF BURNEY'S LOWER AND UPPER ICEHOUSE SPRINGS:

During the field investigation confusion arose over the name and location of Lower and Upper Icehouse Springs named in E. H. and Mary C. Burney's applications Nos. 12005 and 12006, respectively.

Map of one sheet filed December 13, 1947 in support of applications Nos. 12005 and 12006 made by Ed. C. Giles, State Water-Right Surveyor, shows the location of Lower Icehouse Spring under Burney's application No. 12005 as being in the SW¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M., and the location of Upper Icehouse Spring as being in the SW¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M. Upon discovery of the errors, Mr. Burney alleged that his and Mary C. Burney's Lower Icehouse Spring, application No. 12005, is the same spring as the E. L. Card White Rock Spring application No. 12636, and that his and Mary C. Burney's Upper Icehouse Spring, application No. 12006, is the same spring as the E. L. Card North Ice House Spring, application No. 12603.

Map of one sheet made by Ed. C. Giles, State Water-Right Surveyor, filed in the Nevada State Engineer's office on December 13, 1947 in support of the Burney applications 12005 and 12006, does not agree with maps made by L. B. Spencer, also a State Water-Right Surveyor, filed September 16, 1948 in support of the E. L. Card applications Nos. 12636, White Rock Spring, and 12603, North Ice House Spring.

L. B. Spencer's maps appeared to be reasonably correct for the reason they showed Ice House Canyon running in a northwesterly direction in accordance with the general topography. Also, Spencer's maps conformed closely to the location as shown on the Silver Peak Quadrangle sheet of the U.S.G.S. survey of 1897-1898.

Giles' map does not conform with the general topography nor to the above named quadrangle sheet. It shows Ice House Canyon running in a southerly direction, and situate some two thousand feet westerly from that as shown by the L. B. Spencer maps.

E. H. and Mary C. Burney's application No. 12005 and supporting map show the point of diversion of the waters from Lower Ice Spring to be in the SW¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M., unsurveyed, or at a point from which the NW Corner Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 83° 0' W., 17,370 feet; whereas, the E. L. Card application No. 12636 and supporting map show the point of diversion of the waters from White Rock Spring (allegedly the same spring as Burney's Lower Icehouse Spring) to be in SW¼ SW¼ Section 15, T. 2 S., R. 36 E., M.D.M. unsurveyed,

or at a point from which the NW Corner of Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 83° 17' W., 24,612 feet.

R. H. and Mary C. Burney's application No. 12606 and supporting map show the point of diversion of the water from Upper Icehouse Spring to be in the SE¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M. unsurveyed, or at a point from which the NW Corner of Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 85° 10' W., 18,300 feet; whereas, the D. L. Cord application No. 12603 and supporting map show the point of diversion of the water from North Icehouse Spring (allegedly the same spring as Burney's Upper Icehouse Spring) to be in the SE¼ NW¼ Section 15, T. 2 S., R. 36 E., M.D.M., unsurveyed or at a point from which the NW Corner of Section 13, T. 2 S., R. 35 E., M.D.M. bears N. 85° 35' W., 25,230 feet.

The records in the Nevada State Engineer's office disclose that a portion of the northwest part of T. 2 S., R. 36 E., M.D.M. is surveyed. The projection of the unsurveyed section lines of this township would not alter to any extent the location of the above springs with reference to the sections and the forty-acre subdivision in which the springs are shown by the maps supporting the respective applications.

During the field investigation, Frank E. Gray, attorney for D. L. Cord, pointed out the actual survey stakes placed by Mr. Spencer in connection with his survey of the springs. While at the Cord ranch, Mr. Spencer explained the method by which the survey was made and the resulting closure of the traverses in accordance with engineering practice.

UPPER ICEHOUSE SPRING - D. L. CORD APPLICATION NO. 12615:-

This spring consists of a small spring area in the bottom of Icehouse Canyon at about one-quarter of a mile up the canyon from North Icehouse Spring. The spring was discharging some water. A spring at about fifty feet up the canyon was contributing most of the water. About 0.03 c.f.s. was flowing in the canyon at this point. There was no water at about one-half mile up the canyon from this spring.

Further on up the canyon, 0.25 c.f.s. was falling over a solid rock formation that extended across the canyon. This is commonly called the "Falls".

EAST ICEHOUSE SPRING - D. L. CORD APPLICATION NO. 12611:-

The spring was pointed out but not examined. It lies in what is called "East Ice House Canyon", a tributary to Ice House Canyon at some distance above the "Falls". The spring has apparently a fairly good flow from the noticeable amount of water (about 0.05 c.f.s.) flowing down and joining with Ice House Canyon.

CREVE SPRING - E. L. CORD APPLICATION NO. 12437:-

The spring was pointed out but not investigated. It lies in Ice House Canyon some distance further up from the junction of East Ice House Canyon.

STONE CABIN SPRING - E. L. CORD APPLICATION NO. 12432:-

The spring was pointed out but not investigated. This spring is in a canyon that is tributary to Ice House Canyon. It is situate near the upper part of the west slope of Silver Peak Range of mountains.

CAVE SPRING - E. L. CORD APPLICATION NO. 12438:-

The spring was pointed out but no investigation made. This spring is tributary to Ice House Canyon from a short distance east. It is in the upper reaches of Ice House Canyon.

WILLOW SPRING - E. L. CORD APPLICATION NO. 12439

The spring was pointed out but not investigated. This spring is also situated in the upper reaches in a tributary canyon.

GENERAL DESCRIPTION OF ICE HOUSE CANYON

Water in Ice House Canyon flowed in long stretches and disappeared in others. Its gravelly bed, sparse vegetation and short growth of willows, indicated that it is subject to many cloud bursts. The surrounding terrain and especially from the mouth of the canyon up to about North Ice House Spring, is very narrow with high almost vertical walls at various places. The upper reaches are hilly with many canyons. General impression is that no livestock will voluntarily graze in its area unless driven there and kept there under some supervision. No cattle were seen during the field investigation. Only a wild mountain sheep and her young were there.

With respect to ranching properties, Ice House drainage area is about five miles in a northeasterly direction from the E. L. Cord, Circle L Ranch; about four and one-half miles in a northeasterly direction from the W. Marco Chiatovich Ranch; about three and one-half miles easterly from the H. H. Burney Ranch; (protest of Mrs. S. H. Kennedy against the granting of the E. L. Cord application No. 11275 for the appropriation of certain waters from Fish Lake, indicate

that she is the predecessor in interest of the Burney ranch). Undetermined vested rights are claimed for the waters of Fish Lake by the above named people.

Robinson or (Lolly) Creek ranch owned by E. L. Card which joins his Fish Lake Ranch on the west, has a decreed water right for irrigation, domestic and stockwatering purposes.

All of the applications covered in the field investigation were published according to law in the Goldfield Tribune, a newspaper of general circulation.

RULING ON APPLICATION NOS. 12205, 12206, 12601 and 12616

This is a ruling on applications Nos. 12205 and 12206 of H. H. and Mary C. Burney to appropriate water from Lower Ice House and Upper Ice House Springs, respectively, for watering 300 cattle and for domestic purposes and applications of E. L. Card, Nos. 12616 and 12601 to appropriate water from White Rock Spring and North Icehouse Spring respectively for watering 300 cattle. These are reportedly the same springs.

The two Burney applications were protested by E. L. Card and by E. R. Humphrey, E. J. Shirley and Stanley Chlotovich and the E. L. Card applications were protested by E. J. Shirley, et al, H. H. Burney and Robert E. Taylor, et al.

ALLEGATIONS MADE AT THE E. L. CARD RANCH - AUG 7, 1962

(These allegations extend to all of the protested applications on which rulings are made.)

Allegations by Jones Daniels:

1. That he operates from Lida, Nevada, at which place he uses much of the land used in connection with his stock operations and that very little of that land is irrigated.

2. That his cattle range all over including the Ice House Canyon area and the spring therein, since 1920, through his predecessors and has vested water right including the use of the waters of the investigated springs.

3. That he has ranged cattle through this area in 1930 and that his brother ran cattle through this area in 1919.

4. That he bought out the Sam Piper rights in Ice House Canyon in either 1926, 1927 or 1928.

5. That Sam Piper has grazing rights in the valley.

6. That before he purchased the Piper's rights he had been infringing on his (Piper's) rights.

7. That his predecessors were V. C. Clark, George R. Shuey and Ivan Burney.

8. That he takes his cattle in from over the top of the range and also from the valley for ranging in the Ice House Canyon area.

9. That the number of cattle ranged is 50, being all that the feed in the Ice House Canyon area will support.

10. That his cattle range through the valley throughout the year.

11. That he does not bring his cattle in during the winter and does not drive his cattle over the range, but lets them wander all over without control.

The above statements were substantiated by R. E. Taylor.

Allegations by R. H. Burney:

1. That he bought the Kennedy ranch about two years ago which is irrigated with the waters from Fish Lake.

2. That he is not grazing stock at the present time.

3. That last year stock of Brewer and Miley ranged in this area under a one year lease of his Fish Lake Ranch.

4. That the Kennedy's ran horses in Ice House Canyon.

5. That he was only interested on the two springs he (Burney) filed on, being applications Nos. 12005 and 12006. In this connection both Burney and Cord representatives agreed to give Chiatovich, et al, a drift right if either party is given a water right on these springs.

6. That N. T. Piper, George Leidy, and John Chiatovich,

Grandfather of Marco Chiatovich, also ranged up into Ice House Canyon and in Fish Lake Valley since 1919.

7. That Sam Piper kept his cattle in Oasis, California, and didn't come as far north as Ice House Canyon; also, that Leidy ran cattle in this area in 1880 and later filed on by M. T. Piper.

8. That the Cord ranch was bought completely out by Molini in 1907; before that, it was owned jointly by Leidy and Molini.

9. That in 1920, Molini drove cattle into Ice House Canyon and fenced the canyon at the "falls" so that the cattle could not come to the Home Ranch.

10. That he drove cattle into Ice House Canyon the first time for Cord in 1942; the number of cows by actual count being 298 and has run Cord's cattle there ever since.

11. That he drove Cord's cattle on an average of 300 yearly, depending on the grazing conditions.

12. That the Cord cattle are herded from the Cord Ranch up to Piper Spring (Application No. 18408) and thence through a low pass to Ice House Canyon.

Allegations by M. R. Humphrey:

1. That his and Chiatovich's cattle drift into this area from the top of the range into Fish Lake Valley to the extent of an average of twenty head during the spring and fall seasons.

2. That cattle are driven through this area in their drive from their Silver Peak range to the Chiatovich Ranch on Fish Lake. (In this connection, protest of Humphrey, et al., indicates that the run is from the Red Mountain area to the Fish Lake area and return).

Allegations by Humphrey, Chiatovich, Daniels and McNett:

1. That Kennedy's cattle never ran in Ice House Canyon.

Allegations by Frank E. Gray:

1. Gray stated that Burney's applications are not proper and that he has no prior rights in Ice House Canyon.

Allegations by R. E. Burney disclose that the names and locations of the springs and points of diversion of water therefrom under applications of R. E. and Mary G. Burney (Nos. 18003 and 18006)

are the same as those under applications of E.-L. Cord (Nos. 12603 and 12636). Burney's applications (Nos. 12605-Lower Ice House Spring, and 12606-Upper Icehouse Spring) are the same as E. L. Cord's applications Nos. 12636 (White Rock Spring), and 12603 (North Icehouse Spring) respectively. Field investigation disclosed that the course of the Canyons, as shown by map in support of the Burney applications, does not conform with the actual physical conditions on the ground. The real location of these sources and points of diversion remain unsolved.

Field investigations, allegations of the various parties and records in the Nevada State Engineer's office indicate that protestants may have certain stockwatering rights. Burney's allegations and those representing protestants H. R. Humphrey, E. J. Shirley, and Stanley Chiatovich, as well as Jim Daniels, were to the effect that Burney and his predecessors in interest had not utilized the area in Icehouse Canyon and adjoining canyons or the waters in question at any time for the watering of range livestock.

It was found that protestant E. L. Cord has herded stock in Icehouse Canyon area, and that his cattle had peacefully, and without hinderance, grazed in the Icehouse Canyon area and the adjoining canyons to substantially utilize this territory since the year 1942. It also appears that E. L. Cord may have a vested right to the waters of what is called "Upper Icehouse Spring" - (E. L. Cord's North Icehouse Spring) and "Lower Icehouse Spring"- (E. L. Cord's White Rock Spring) and the other investigated springs through a succession of title from his predecessors. Records in the Leidy Creek Adjudication Files show that E. L. Cord is now the owner of the Molini Brothers Ranch on Leidy Creek, the water rights of which date back to 1879, and at a time that Sophronia McAfee owned and operated it. This ranch went from her to R. D. McAfee and then from McAfee to Molini Brothers and G. W. Leidy; then from G. W. Leidy to Molini Brothers, and on June 25 and July 24, 1940 from Molini Brothers to E. L. Cord. McNett alleged that Leidy ran cattle in this area in the year 1880.

Records in Application File No. 11813 in connection with the hearing at Tonopah on November 17, 1945 on Adobe Wall and other sources, point out that Molini Brothers, then owners of the new E. L. Cord Ranch, disposed of their cattle between 1907 and 1910 and had no more cattle for some 10 to 15 years when they began building up another herd and that it was not until 1932 that they had an appreciable number of cattle on the range. It appears that the new Cord Ranch, with the exception of a few years, operated in the cattle business with no apparent intentions to abandon the appurtenant range rights. There is a possibility that this ranch may have a vested range right to water cattle in Icehouse Canyon and adjoining canyons herein described, the magnitude and extent of which remains to be determined.

Allegations indicate that E. L. Cord's cattle, to the extent of 300, have been herded and have peacefully grazed in the Icehouse

Canyon and adjoining canyons since 1942. The State Engineer feels that the range use, under the Nevada Range law, is of some value and should be taken into consideration in acting on applications. It is therefore the opinion of the State Engineer that such use has been established.

During the field investigation, and from records in the Nevada State Engineer's office, it was found that Shirley, Chiatovich and Humphrey, through their predecessors in interest, have established a range use in the Red Mountain and the Silver Peak areas which lie immediately easterly from Ichhouse Canyon, and were granted permits under applications filed by them for stockwatering purposes over the protests of Jim Daniels. It is within reason to believe that their cattle, to the extent of about 20, drifted into the Ichhouse Canyon area and that they herd their cattle through Ichhouse Canyon from their Red Mountain area to the Chiatovich Ranch in Fish Lake Valley and return which is permissable by law. Allegations made by Humphrey were not denied and such use was recognized by the E. L. Cord representatives to the end that Humphrey, et al, were in accord to settle this right by written agreement. However, it is the opinion of the State Engineer that such agreement is not necessary. Burney was also agreeable. There is no evidence or records that Humphrey, et al, have established a vested right for watering stock in the Ichhouse Canyon area.

In connection with the R. H. and Mary C. Burney applications, Nos. 12605 and 12606, and the E. L. Cord applications, Nos. 12603 and 12636, purportedly to be for the waters from the same sources, it is found that Robert E. Taylor for himself, and James Daniels and Bessart and Oscar Rudnick filed protests against the E. L. Cord applications but did not file protests against the Burney applications. The Cord applications, 12603 and 12636, were protested by R. H. Burney, H. R. Humphrey, et al, and Robert E. Taylor, et al. In view of these facts, it seems only proper that the Daniels, et al, protests against the Cord applications be considered now in connection with the Burney applications.

Records in the Nevada State Engineer's office and hearing held at Tonopah May 14, and 15, 1948 on Application 10877 and others, disclose that Daniels' cattle operations were in the Lida, Nevada and Oasis, California areas, both about 17 to 25 miles southeasterly and south from the Ichhouse Canyon area, and also operated in the Emigrant Pass area, some several miles northerly of the Ichhouse Canyon area. Humphrey, et al, operate their cattle business easterly of the Ichhouse Canyon area and easterly of the Silver Peak Range of mountains, in a territory known as the Red Mountain and Silver Peak areas.

It was found (Bacock and Oscar Gallagher testimony) that Sam Piper, from whom Daniels allegedly purchased the range rights,

operated mostly in the [illegible] area as well as H. T. Piper, a brother of Sam Piper, who, according to allegations of Rebuttal (H. T. Piper), ceased in [illegible] canyon [illegible] ago.

Records (Relating to [illegible] and others) in the Nevada State Engineer's office, do not [illegible] whatever little vested right Jerome Vidovich (now claimed by Daniels) may have had to the use of the waters of springs in the vicinity of Lida, the magnitude and locations of which have never been determined.

It was found (Humphreys file [illegible]) that in 1915 the estate of Jerome Vidovich was distributed to his heirs and in 1916 most of the heirs sold out to J. E. Collins, who at the time was operating his cattle business near Lida, Nevada. On October 7, [illegible] Collins sold out to George E. [illegible] and then shortly thereafter, on October 10, [illegible], from George E. [illegible] to Archie A. Daniels and on September 17, [illegible] from Archie A. Daniels to Jesse H. Daniels. On July 7, [illegible] Jesse Daniels acquired by quit claim deeds the balance or 1/3 of the Jerome Vidovich (deceased) property from Mary, George and Jerome Vidovich, the remaining heirs. This shows a succession of title to Jesse Daniels of the Jerome Vidovich rights.

Whatever rights the Pipers and the [illegible] of the old [illegible] ranch may have had in [illegible] Canyon which appear to have long ago been abandoned from all indications. There appears to be no title to these rights down to Daniels or Humphreys, et al.

Records show that [illegible] Gunney was issued Certificate [illegible] under Application No. [illegible]. This certificate was issued for the waters of [illegible] Wash to irrigate [illegible] acres of land in Section [illegible], T. 6 S., R. [illegible] E., M.D.B.&M. unsurveyed, with a priority of appropriation of November 1, 1917. There is no information as to whether or not Gunney ran stock north of his ranch. Records in his file indicate that he ran about [illegible] head of stock in the surrounding hills which would be some [illegible] to [illegible] miles southwest of Lida, the base of Daniels' operations. There is nothing to show that Gunney operated anywhere near his ranch. Transcript of testimony and proceedings at hearings held at Tonopah November 17, [illegible] (Nevada State Engineer's File No. [illegible]) in the matter of Applications No. [illegible] and others, and May 16 and 17, [illegible] (Nevada State Engineer's File No. [illegible]) in the matter of Application No. [illegible] and others clearly list [illegible] the range and stock water use in the [illegible] Canyon area.

The allegations as to the years or number of years Humphreys, et al, ran cattle in the [illegible] Canyon area are somewhat indefinite, and not sufficient to entirely substantiate their rights other than

the allegations of the various interested parties to the extent that whatever their (Humphrey, et al) alleged rights may be, were to a certain degree recognized. The allegations of I. N. McNett that John Chiatovich, grandfather of Marco Chiatovich, also ranged in Icehouse Canyon since 1919, is not clear and definite as to whether or not Humphrey, et al, had any connections with the range used by John Chiatovich. However, transcript of hearing (Nevada State Engineer's File 983-33) discloses that Humphrey, et al went into the cattle business in 1941 in connection with their dealings with J. A. and Nellie Coughlin, his wife, who were in the cattle business since the year 1915 but not operating in Icehouse Canyon. The transcript shows that Coughlin operated until his death and then, through dealings with Nellie Coughlin, the business is being continued through legal transactions between Humphrey, et al.

Humphrey, et al's rights for grazing stock in the Silver Peak and Red Mountain areas were recognized by the State Engineer by the approval of applications over the protests of Daniels, and it is within reason to believe that some of their cattle drift over into Icehouse Canyon.

RULING - (Applications Nos. 12005 and 12006)

It definitely appears that the locations of the sources of water and the points of diversion of these waters are doubtful and under no consideration can permits be issued until this condition is clarified.

It is the opinion of the State Engineer that protestant E. L. Cord is using the surrounding range to the extent that he has established customary use.

It is the opinion of the State Engineer that protestant E. L. Cord, through a succession of title, may have to some extent a vested stockwatering right, the extent and magnitude of which is legally undetermined. It appears that Daniels, et al, run their cattle at large with no definite system of controlling their cattle which drift from one cattle range to another. It is the opinion of the State Engineer that such system cannot be recognized other than the unavoidable drift and that no other right has been established by Daniels, et al.

Therefore the protests against the granting of Applications Nos. 12005 and 12006 of R. H. and Mary C. Burney are overruled. However, the issuance of permits will be withheld until a new survey is made by an independent competent State Water-Right Surveyor, and maps of such survey filed in the Nevada State Engineer's office at Carson City, Nevada, on or before April 1, 1950. Surveys and maps are to be in accordance with the existing water laws and rules and regulations of the Nevada State Engineer. In the event the original survey named in this ruling is found to be in error,

then applicants R. H. and Mary C. Burney, upon the approval of their applications Nos. 12005 and 12006, must immediately proceed to correct the errors by filing within the sixty day period allowed herein applications for permission to change the points of diversions and places of use of the waters appropriated under their Applications Nos. 12005 and 12006 which will then be processed in accordance with the Water Law. In the further event that these conditions and terms are not met within the stated date, Applications Nos. 12005 and 12006 will then be denied.

It is to be strictly understood that the granting of these applications will not in any way affect the use of the surrounding range established by customary use and existing rights of E. L. Cord.

The area surrounding these springs is such that it will not support many cattle and therefore any permits that may be granted under these two applications is hereby limited to 10 head of cattle under each application.

RULING - (Applications 12603 and 12636)

These two applications are for the same waters and points of diversion as purportedly named and described in the R. H. and Mary C. Burney applications Nos. 12005 and 12006.

The same conditions exist under these two applications as are given under ruling on the R. H. and Mary C. Burney applications Nos. 12005 and 12006. There is no alternative other than to deny E. L. Cord's applications on the grounds that the Burney applications are prior in time. However, in view of the fact that the Burney applications Nos. 12005 and 12006 are being held for approval pending the satisfaction of certain conditions, it is deemed proper to withhold action on the E. L. Cord applications Nos. 12603 and 12636, pending the fulfillments of these conditions. In the event of default of these conditions by R. H. and Mary C. Burney, the Cord applications will thereafter be approved with the understanding that new survey be made by an independent State Water Right Surveyor to determine the accuracy of the present survey. If in error, then the same procedure to correct the errors must be followed as required under the Burney applications.

RULING ON APPLICATIONS Nos. 12403, 12413, 12602, 12634, 12635, 12637, 12638, and 12639 ALL FILED BY E. L. CORD.

APPLICATION NO. 12608 - PIPER SPRING

E. L. Cord	-	Applicant
R. H. Burney	-	Protestants

APPLICATION NO. 12613 - EAST ICE HOUSE SPRING

E. L. Cord	-	Applicant
R. H. and Mary C. Burney	-	Protestants
James Daniels	-	Protestant

APPLICATIONS NOS. 12602, 12604, 12605, 12607, 12608, and 12609 STONE CABIN SPRING, COTTONWOOD SPRING, UPPER ICE HOUSE SPRING, CURVE SPRING, CAVE SPRING AND WILLOW SPRING, RESPECTIVELY:

E. L. Cord	-	Applicant
R. H. Burney	-	Protestant
Robert E. Taylor, James Daniels, Bozart and Oscar Rudnick	-	Protestants
E. J. Shirley, D. H. Chlotovich and H. R. Humphrey	-	Protestants.

FINDINGS

R. H. Burney's protest to the granting of Application No. 12608 on Piper Spring was verbally withdrawn on June 7, 1949. James Daniels, et al, did not file a protest to the granting of this application but during the field investigation it was taken into consideration because of his request that it be include with his protests to the other applications on the same grounds. Humphrey, et al, did not file a protest against application 12608. In this connection, it appears that the spring is not in the confines of the Humphrey, et al, cattle operations.

Relative to the protests of R. H. Burney against the granting of the E. L. Cord applications, it appears that he has no valid grounds on which to base a protest. His claim to the water is considered under the ruling of his and Mary C. Burney's applications Nos. 12605 and 12606, and E. L. Cord applications Nos. 12603 and 12636, and therefore his protests are overruled.

As to the ruling on the protests of H. R. Humphrey, et al, against the granting of the remaining E. L. Cord applications, the same conditions exist as given in the ruling under the Burney applications Nos. 12605 and 12606 and E. L. Cord applications Nos. 12603 and 12636.

Regarding the protests of James Daniels, et al, and his

allegations and the allegations of others made at the meeting, there seems to be some conflict as to which Piper ranged in Ice House Canyon. I. H. McNett refers to the Piper cattle as the N. T. Piper cattle, and James Daniels as the Sam Piper cattle. McNett alleged that he had not seen anyone's cattle in Ice House Canyon excepting the cattle of Daniels, Chiatovich, and E. L. Cord since 1917. This date is doubtful as Chiatovich, et al, were not in the cattle business until 1941 and Daniels, et al, until 1919. He also alleges that N. T. Piper, George Leity and John Chiatovich (grandfather of Marco Chiatovich) also ranged up into Ice House Canyon and also alleges that Daniels' cattle have drifted into Ice House Canyon area since 1919. McNett also alleges that Sam Piper kept his cattle in Oasis, California, and did not come as far north as Ice House Canyon, and also that Leity ran cattle in 1880 and later filed on by N. T. Piper. McNett also alleged that he (McNett) drove Cord's cattle, 296 by actual count, into Ice House Canyon by the way of Piper Spring since the year 1942 and every year thereafter, the number depending on the range condition. James Daniels alleged that he bought the Sam Piper rights in Ice House Canyon in 1926, 1927 or 1928 and that his (Daniels) predecessors were V. G. Clark, George R. Shuey and Ivan Dunney. Although the above named people may have vested water rights, the State Engineer's records do not show such rights under applications with the exception of Certificate 1084 issued under Permit No. 4701 to Ivan W. Dunney for Palmetto Wash for 29.67 acres in Sec. 1, T. 6 S., R. 38 E., unsurveyed. As herein above stated Dunney did not range north of his ranch. These allegations are somewhat confusing and conflicting.

Ruling dated October 24, 1947 in application File No. 11213 of Basil Brewer and George A. Riley and transcripts of hearing hereinabove referred to, seems to clarify the allegations. The ruling discloses that Jim Daniels testified that after Chiatovichs' (Old Chiatovich Ranch) sold their cattle and apparently abandoned the range in the vicinity of Lookout Well (Application No. 11286 of Daniels Bros.), Archie Daniels and Flint started ranging in this area in about 1922 or 1923. In 1930 Jim Daniels purchased Flint's interest and the Daniels Bros. continued to range in this area and water their stock at Lookout Well. Jim Daniels testified that they ranged their cattle on the east side of the valley and down towards Oasis, California. (This substantiates I. H. McNett's allegation that Sam Piper ranged in Oasis). From the contents of this ruling, it appears that Daniels' rights were recognized as grazing southerly from Lookout Well (SE¼ NW¼ Section 14, T. 4 S., R. 36 E., M.D.M.) to Oasis and Lida. Waters of Lookout Well are held by Daniels Brothers (A. A. & J. M. Daniels) under Permit No.

11266 on which an agreement exists with Brewer and Riley relative to its use and use of the surrounding range.

From Lodgepole Hill, running northerly in Pine Lake Valley among Ice House Canyon, the ridge, it seems, left an open area for public use and it may be possible that some of the Jason Daniels' cattle wander or stray northerly to Ice House Canyon. Jason Daniels alleges that 50 of his cattle go to Ice House Canyon. He herein referred to ability denied several applications in this open area, among which were applications Nos. 10379 of Daniels Brothers (A. A. and J. H. Daniels) and 11230 of H. R. Coughlin, E. J. Shirley, S. H. Gildersleeve and H. R. Murphey, both for the waters of Thirty Spring in the SW SW Section 10, T. 3 S., R. 37 E., M.D.B.M. for stockwatering purposes. Applications of Allen, Lindberg, Vega of E. L. Card and Brewer and Riley in this immediate vicinity were also denied. From the foregoing, it appears that Daniels and Murphey, et al, do not have an established right in this area. From the fact that Daniels testified that his cattle range northerly from Lodgepole Hill to Cecil and Lida it seems possible that he did not intend to go further north in his cattle business other than to some territory on the eastern side of the Silver Peak Range of mountains in which Daniels Brothers were granted permit No. 10379 for the waters of Ground Spring in the SW SW Section 19, T. 3 S., R. 38 E., M.D.B.M. which appears to be the northern limit of their Lida-Cecil territory. From this point northerly on the eastern side of the Silver Peak Range of mountains, to about Coyote Hole in the SW SW Section 1, T. 2 S., R. 37 E. on which Daniels Brothers hold permit No. 10378 and H. R. Murphey, et al, hold permit No. 11230, both for stockwatering purposes, there appears to be an area which includes Red Mountain in which H. R. Murphey, et al, operate their cattle business. This area apparently is bounded on the west by the Silver Peak range of mountains and is situate easterly from Ice House Canyon. Records in the Nevada State Engineer's office disclose that Arnold Daniels and Di Percel Hunt filed on August 27, 1928, Application No. 7203 to appropriate waters of Jack Davis Spring at a point approximately in the SW SW Section 30, T. 2 S., R. 37 E., M.D.B.M. unnurveyed for stockwatering and domestic purposes. This spring is located immediately easterly from the Ice House Canyon area on the easterly slope of the Silver Peak Range of mountains. The fact that the permit under this application was not perfected and was abandoned which resulted in its cancellation on February 20, 1941, leads one to believe that at that period Alex Daniels was not interested in this immediate area.

From the foregoing it seems that Jim Daniels, et al, have not established rights in the Ice House Canyon area, southerly or in that area immediately east over the ridge of the Silver Peak range of mountains from Ice House Canyon toward Red Mountain. The area in Pine Lake Valley is apparently grazed by E. L. Card and Rex D. Clark by virtue of permits that have been issued to each of them.

Undoubtedly the cattle of James Daniels, et al, have by their method of ranging cattle, drifted into Ice House Canyon and other areas. No denial was made during the field investigation that these cattle did not feed in Ice House Canyon, but the fact remains as to whether or not James Daniels, et al, have acquired either vested rights, stockwatering rights or Nevada Range rights by the manner they allegedly operate their cattle business. Whatever vested stockwatering right E. L. Card may have in Ice House Canyon has not been legally determined.

It is our opinion that R. U. and Mary C. Burney do not have a vested water right to springs in the Ice House Canyon area or in the two adjoining canyons, nor stockwatering or range rights according to the Nevada laws; therefore, their protests are overruled.

It is our opinion that James Daniels, Robert E. Taylor, James Daniels, Bozart and Oscar Rudnick have no vested water rights, stockwatering rights or range rights according to the Nevada laws to the waters and range in Ice House Canyon and the two adjoining canyons covered by the field investigation. It is admitted that cattle drift, to a certain extent, from one grazing area to another adjoining area over unfenced territory. As to James Daniels and Robert Taylor, et al, their right to graze the entire country is questionable and therefore the protest of James Daniels, and of Robert E. Taylor, James Daniels, Bozart and Oscar Rudnick are hereby overruled.

It is our opinion that H. R. Humphrey, B. J. Shirley and S. M. (Stanley Chiatovich) have not a vested stockwatering right, or a range right under the Nevada laws. Driving their cattle from their Red Mountain area to the Fish Lake Ranch (perhaps the V. Marco Chiatovich Ranch) and return is permissible by law.

It is the opinion of the State Engineer that this area be considered as a unit and therefore action on all applications be taken as a unit.

There appears to be sufficient evidence as stated herein to make it mandatory for the State Engineer to grant the applications in question.

The protests to the granting of Applications Nos. 12400, 12413, 12602, 12634, 12635, 12637, 12638 and 12639 are hereby overruled, and permits will be issued upon the receipt of the statutory fees.

Respectfully submitted,

Alfred Merritt Smith

[illegible]
State Engineer

Dated this 30th day of January, 1950.