

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 77470, )  
77471, 77472, 77473, 77474, 77475, )  
77476, 77477, 77710, 77711, 77712, )  
77713, 77952, 77954, 77955, AND )  
77956, FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF VARIOUS SURFACE )  
SOURCES WITHIN THE DIXIE VALLEY )  
HYDROGRAPHIC BASIN (128), AND JERSEY )  
VALLEY HYDROGRAPHIC BASIN (132), )  
LANDER AND PERSHING COUNTIES, )  
NEVADA. )

RULING

**#6010**

GENERAL

I.

Application 77470 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cubic foot per second (cfs) of water from Seven Devils Springs for stock-water purposes within the NW¼ NE¼ of Section 32, T.26N., R.38E., M.D.B.&M.<sup>1</sup> The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 32, T.26N., R.38E., M.D.B.&M.<sup>2</sup>

II.

Application 77471 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Old Man Canyon Spring for stock-water purposes within the SE¼ NE¼ of Section 34, and N¼ NW¼ of Section 36, T.26N., R.37E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 34, T.26N., R.37E., M.D.B.&M.<sup>3</sup>

III.

Application 77472 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from

<sup>1</sup> Applications 77470, 77471, 77472, 77473, 77474, 77475, 77476, 77477, 77710, 77711, 77713, 77952, 77954, 77955, and 77956 are filed to water the same 1,044 head of cattle.

<sup>2</sup> File No. 77470, official records in the Office of the State Engineer.

<sup>3</sup> File No. 77471, official records in the Office of the State Engineer.

Unnamed Spring A for stock-water purposes within the NE¼ NW¼ and the NW¼ NE¼ of Section 29, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 29, T.27N., R.40E., M.D.B.&M.<sup>4</sup>

IV.

Application 77473 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Jersey Hot Spring-Spring F for stock-water purposes within the S¼ SE¼ of Section 29, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 29, T.27N., R.40E., M.D.B.&M.<sup>5</sup>

V.

Application 77474 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Unnamed Spring E for stock-water purposes within the S¼ SW¼ of Section 28, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 28, T.27N., R.40E., M.D.B.&M.<sup>6</sup>

VI.

Application 77475 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Unnamed Spring D for stock-water purposes within the S¼ SW¼ of Section 28, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 28, T.27N., R.40E., M.D.B.&M.<sup>7</sup>

VII.

Application 77476 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Unnamed Spring C for stock-water purposes within Section 31, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is

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<sup>4</sup> File No. 77472, official records in the Office of the State Engineer.

<sup>5</sup> File No. 77473, official records in the Office of the State Engineer.

<sup>6</sup> File No. 77474, official records in the Office of the State Engineer.

<sup>7</sup> File No. 77475, official records in the Office of the State Engineer.

described as being located within the SE¼ SE¼ of Section 29, T.27N., R.40E., M.D.B.&M.<sup>8</sup>

VIII.

Application 77477 was filed by Joe Saval Co., LLC, on October 13, 2008, to appropriate 0.032625 cfs of water from Unnamed Spring B for stock-water purposes within the SW¼ NE¼ and the NW¼ SE¼ of Section 29, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 29, T.27N., R.40E., M.D.B.&M.<sup>9</sup>

IX.

Application 77710 was filed by Joe Saval Co., LLC, on December 22, 2008, to appropriate 0.032625 cfs of water from Butcher Canyon Spring for stock-water purposes within the SE¼ NW¼ and SW¼ NE¼ of Section 27, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 27, T.27N., R.40E., M.D.B.&M.<sup>10</sup>

X.

Application 77711 was filed by Joe Saval Co., LLC, on December 22, 2008, to appropriate 0.032625 cfs of water from Jersey Canyon Spring for stock-water purposes within the NE¼ SE¼ of Section 33, and the SW¼ of Section 34, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 34, T.27N., R.40E., M.D.B.&M.<sup>11</sup>

XI.

Application 77712 was filed by Joe Saval Co., LLC, on December 22, 2008, to appropriate 1.0 cfs, not to exceed 240 acre-feet annually, of water from an underground source for the irrigation of 80 acres of land located within the NE¼ SE¼ of Section 33, and the NW¼ SW¼ of Section 34, T.27N., R.40E.,

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<sup>8</sup> File No. 77476, official records in the Office of the State Engineer.

<sup>9</sup> File No. 77477, official records in the Office of the State Engineer.

<sup>10</sup> File No. 77710, official records in the Office of the State Engineer.

<sup>11</sup> File No. 77711, official records in the Office of the State Engineer.

M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 34, T.27N., R.40E., M.D.B.&M.<sup>12</sup>

**XII.**

Application 77713 was filed by Joe Saval Co., LLC on December 22, 2008, to appropriate 0.032625 cfs of water from an underground source for stock-water purposes within the NE¼ SE¼ of Section 33, and the NW¼ SW¼ of Section 34, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 34, T.27N., R.40E., M.D.B.&M.<sup>13</sup>

**XIII.**

Application 77952 was filed by Joe Saval Co., LLC, on January 30, 2009, to appropriate 0.032625 cfs of water from Cow Canyon Spring for stock-water purposes within the S¼ SE¼ of Section 7, the N¼ NE¼ of Section 18, T.27N., R.41E., M.D.B.&M., the S¼ SE¼ of Section 2, T.27N., R.40E., M.D.B.&M., and the S¼ NE¼ of Section 34, T.28N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 18, T.27N., R.41E., M.D.B.&M.<sup>14</sup>

**XIV.**

Application 77954 was filed by Joe Saval Co., LLC, on January 30, 2009, to appropriate 0.032625 cfs of water from Nancy Spring for stock-water purposes within the S¼ NE¼ and N¼ SE¼ of Section 15, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 15, T.27N., R.40E., M.D.B.&M.<sup>15</sup>

**XV.**

Application 77955 was filed by Joe Saval Co., LLC, on January 30, 2009, to appropriate 0.032625 cfs of water from an

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<sup>12</sup> File No. 77712, official records in the Office of the State Engineer.

<sup>13</sup> File No. 77713, official records in the Office of the State Engineer.

<sup>14</sup> File No. 77952, official records in the Office of the State Engineer.

<sup>15</sup> File No. 77954, official records in the Office of the State Engineer.

unnamed spring for stock-water purposes within the SE¼ of Section 23, T.28N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 23, T.28N., R.39E., M.D.B.&M.<sup>16</sup>

XVI.

Application 77956 was filed by Joe Saval Co., LLC on January 30, 2009, to appropriate 0.032625 cfs of water from Indian Springs for stock-water purposes within the NE¼ of Section 10, NW¼ of Section 11, and W¼ of Section 12, T.27N., R.39E., M.D.B.&M., and the NW¼ SW¼ of Section 18, T.27N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 10, T.27N., R.39E., M.D.B.&M.<sup>17</sup>

XVII.

Application 77470 was timely protested by Barbara Stremmler on the following grounds:<sup>1</sup>

- 1) Seven Devils Springs are located on private property.
- 2) The Saval cattle have no legal right of way onto our private property.
- 3) Jersey Valley Cattle Co LLC/Mike & Barb Stremmler own 100% of the water coming [sic] from Seven Devils Springs. We have a vested water right for irr., domestic, and stock water.
- 4) Savals have been cutting our fences to give their cattle access.

The only reason that any water leaves Seven Devils Springs at this time is the drainage ditch that was put in by Rob Lincoln in November of 2007. We paid Mr. Lincoln to drain some of the Marshy area around Seven Devils on our deeded land so that we can get our equipment into that area and fix the existing irrigation ditches. The water runs off of our deeded ground onto Jersey Valley Allotment which is our allotment.

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<sup>16</sup> File No. 77955, official records in the Office of the State Engineer.

<sup>17</sup> File No. 77956, official records in the Office of the State Engineer.

We realize that the Joe Saval Co. LLC needs water to water their livestock and we are willing to sell them water very reasonably. We own 100% of the water at Seven Devils Hot Springs and are not willing to give away our personal property. I've already explained our position to Jerry Annis, Co-owner in the Joe Saval Co. LLC.

We have all the proof necessary to prove our vested claim. Priority date of 1871.

**XVIII.**

Application 77471 was timely protested by Barbara Stremmer on the following grounds:<sup>2</sup>

We have a vested water right to Old Man Canyon with a priority date of 1881. Also the Livestock reservoir site Act of 1897 gives us a 160 acre right of way that can be fenced. This is our right of way. We have the right to exclude other cattle.

**XIX.**

Applications 77472, 77473, 77474, 77475, 77476, and 77477 were timely protested by Barbara Stremmer on the following grounds:<sup>2</sup>

Spring A [Spring F, E, D, C, and B] is one Jersey hot springs. We have a vested right to Jersey Hot Springs. Also in 1897 Congress passed the Livestock Reservoir Site Act. It gives us a 160 acre right of way around Jersey Hot Springs. We can fence this right of way. There is no unappropriated water.

**XX.**

Application 77710 was timely protested by Barbara Stremmer on the following grounds:<sup>9</sup>

The water is subject to our prior existing rights, which we believe that we can prove in an adjudication.

**XXI.**

Application 77711 was timely protested by Barbara Stremmer on the following grounds:<sup>10</sup>

1. We believe that the water from this source is subject to our prior existing right, and can be proved in an adjudication.

**XXII.**

Application 77712 was timely protested by Barbara Stremmer on the following grounds:<sup>11</sup>

1. Jersey Hot Springs are in close proximity to the proposed underground well, and could effect our vested water rights. 2. Joe Saval Co. LLC has 320 acres of farmland which they have not irrigated for the past 8 yrs, located in Jersey Valley.

**XXIII.**

Application 77713 was timely protested by Barbara Stremmer on the following grounds:<sup>12</sup>

1. The proposed underground source could have a negative impact on Jersey Hot Springs, which we have vested rights to.

**XXIV.**

Application 77952 was timely protested by Barbara Stremmer on the following grounds:<sup>13</sup>

1. The water is subject to our prior existing rights, which we believe that we can prove in an adjudication.

**XXV.**

Application 77954 was timely protested by Barbara Stremmer on the following grounds:<sup>14</sup>

1. The water is subject to our pre existing rights, which we believe we can prove in an adjudication.

**XXVI.**

Application 77955 was timely protested by Barbara Stremmer on the following grounds:<sup>15</sup>

1. We believe that we have prior rights to the water that Joe Saval Co LLC is applying for.
2. All the springs in Jersey Valley are subject to our prior rights.

**XXVII.**

Application 77956 was timely protested by Barbara Stremler on the following grounds:<sup>16</sup>

1. This water is subject to our prior existing rights, which can be proved in an adjudication.

**FINDINGS OF FACT**

**I.**

Three informal field investigations were conducted by Division of Water Resources personnel on April 28-29, May 19, and July 9, 2009, for the purpose of measuring spring flows at the proposed points of diversion for 14 of the 16 subject applications. The results of the field investigations are summarized in Table One (Appendix A).

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of these protested applications, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

**II.**

Application 77470 seeks to appropriate water from Seven Devils Springs, a.k.a. Sou Hot Spring. The Protest indicates that the spring is located on deeded ground and that the Protestant has existing water rights on the source.

The described point of diversion is not located at the Seven Devils Springs, rather it is located at a drainage ditch where water was available at the time the application was filed. There was no water flowing at the proposed point of diversion for Application 77470 during the field investigations on April 28-29, and May 19, 2009.<sup>18</sup> According to the protest, the drainage ditch was constructed in 2007 to drain water from some of the marshy area around the springs and that was the only reason any water was leaving Seven Devils Springs at that time. Recently the trench was back filled by the Protestant and, as a result of returning the land to its prior condition, no water currently flows to the proposed point of diversion. On July 9, 2009, a third field investigation was able to measure an outflow from the springs of 0.0267 cfs, several hundred feet from the described point of diversion of Application 77470.<sup>19</sup>

A review of records on file in the Office of the State Engineer confirms that the Seven Devils Springs are located on the Protestant's deeded ground and that there is an existing water right on the source, Permit 10105 (Certificate 2695) held under the name of Ray Van Marter, which was perfected for 0.19 cfs and 137 acre-feet for irrigation purposes. There are also several unadjudicated claims of pre-statutory vested water rights on the source. Claim of vested right V-04741, owned by the Protestant, is for 0.1 cfs for irrigation purposes, and claim of vested right V-09801, owned by the Applicant, is for 0.047 cfs for stock-water purposes.<sup>20</sup>

The State Engineer finds that the proposed point of diversion is located on public land approximately several hundred feet from the springs, there is no water available at

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<sup>18</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

<sup>19</sup> Report of Field Investigation No. 1115, File No. 77470, official records in the Office of the State Engineer.

<sup>20</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

the location of the proposed point of diversion, there is an existing water right on the springs and claimed but unadjudicated prestatutory vested water rights on the springs. The State Engineer finds there is no water available to support the application and the spring source is located on the Protestant's deeded land.

### III.

Application 77471 seeks to appropriate 0.032625 cfs, seasonally adjusted, of water from Old Man Canyon Spring for stock-water purposes. The flow of water from Old Man Canyon Spring was measured at 0.0171 cfs (12.37 acre-feet) by adding the water captured by the existing spring box to the water flowing past the spring box.<sup>21</sup> The protest indicates that the Protestant has a claim of vested right on the spring source. In addition, the Protestant claims that the Livestock Reservoir Site Act of 1897 gives her a 160 acre right of way that can be fenced with the right to exclude other cattle.

The State Engineer finds that the Livestock Reservoir Site Act of 1897 does not give the Protestant a water right on the source and any water right permit issued under Application 77471 would not extend to the permittee the right of ingress and egress on public, private, or corporate lands, and would not waive any permitting requirements by other State, Federal, and local agencies.

A determination was made, after an examination of the records of the State Engineer, that the Applicant recently filed a claim of vested right at the point of diversion. There are no other water right permits or proofs filed at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

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<sup>21</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

The Applicant has a valid grazing permit on the South Buffalo Allotment from March 1 to September 14.<sup>22</sup> The Protestant has a valid grazing permit for the adjoining Jersey Valley Allotment from September 15 to February 28.<sup>23</sup> The field investigation indicates that there are two stock-water troughs that could be fed from the spring and the spring box near the spring itself. The Stremler trough is located on the Jersey Valley Allotment and may be disconnected from the spring at this time as evidenced by the lack of water in the trough and a severed black plastic pipe approximately 25 feet below the spring box. The Saval trough is on the South Buffalo Allotment and appears to be newly installed. The piping system to this trough was not clear to the investigators. The Old Man Canyon Spring is also located on the South Buffalo Allotment. The Applicant has filed a Claim of Vested Right V-09800 for 0.047 cfs for stock water purposes on Old Man Canyon Spring. The Protestant has indicated that they also have a claim of vested right; however, as mentioned earlier there are no water right permits, proofs or claims filed at the proposed point of diversion in the name of the Protestant. The State Engineer finds that because the Applicant and Protestant have grazing permits for different time periods that do not overlap, the issuance of a permit would not create a conflict. The State Engineer finds that the Applicant's claim of vested right exceeds the measured diversion rate at the source, which if adjudicated as valid would leave no additional water available for appropriation under Application 77471; however, the application can be considered for the measured diversion rate of 0.0171 cfs.

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<sup>22</sup> File No. 77471, official records in the Office of the State Engineer.

<sup>23</sup> Personal communication, Quentin Broyles, U. S. Dept. of Interior, Bureau of Land Management.

IV.

Six applications 77472 (A), 77473 (F), 77474 (E), 77475 (D), 77476 (C), and 77477 (B) were submitted on the six springs comprising the Jersey Hot Springs complex. The letters after each application number corresponds to each of the six springs, A thru F, for easier identification. Information provided by the United States Bureau of Land Management (BLM) indicates that the proposed points of diversion and places of use are on public lands within the South Buffalo Allotment and the Applicant is the authorized grazing permittee.<sup>24</sup> The protest indicates that the Protestant has a claim of vested right to Jersey Hot Spring (F) and Spring (C). A review of records on file in the Office of the State Engineer shows that the Protestant is listed as the current owner of record of Claim of Vested Right V-05761. The points of diversion for this claim are in the SE¼ SE¼ and SW¼ SE¼ of Section 29, T.27N., R.40E. M.D.B.&M., which corresponds to springs (C) and (F). A review of USGS topographic maps show that Spring (C) is also located in the SE¼ SE¼ of Section 29. Spring (F) is the most prolific of the six springs and is generally referred to as Jersey Hot Spring. The field investigation shows this spring flows at 50 gallons per minute (gpm) or 0.1114 cfs.<sup>25</sup> A measurement of Jersey Hot Spring (Thermal Waters of Nevada, Bulletin 91) made in June 1950 also reported 50 gpm. The claim of vested right is for a diversion rate of 1.0 cfs of water for irrigation purposes, which greatly exceeds the measured diversion rates in 1950 and 2009. The water is currently diverted from an unlined pond approximately 25 feet by 25 feet via a four inch plastic pipe, thence into a three foot square spring box, thence into another four inch plastic pipe that traverses two and a half miles southward to a reservoir at the Protestant's Home Station Ranch. During a

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<sup>24</sup> File No. 77472, official records in the Office of the State Engineer.

<sup>25</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

field investigation, cattle were seen drinking from the pond, which is not fenced. Although it is apparent that the Applicant's cattle are benefiting from the water at the pond site, the field investigation shows that there is no additional water available for appropriation by the Applicant at Jersey Hot Spring (F). Spring (C) flows at a rate of 0.0045 cfs.<sup>26</sup> The State Engineer finds that the Protestant has a claim of vested right on Spring (C) and Jersey Hot Spring (F), and if adjudicated as valid, is for a duty of water that greatly exceeds the measured diversion rate and, thus, no additional water would be available for appropriation from these sources. The Applicant recently filed claims of vested right for 0.046875 cfs (each) for stock water purposes on both Spring (C) and Spring (F).<sup>27</sup>

The other four springs comprising the Jersey Hot Spring complex (A, B, D, and E), flow at rates ranging from 0.0017 to 0.0064 cfs (See, Appendix A, Table One). A determination was made, after an examination of the records of the Office of the State Engineer, that the Applicant recently filed four claims of vested right for springs, (A), (B), (D), and (E)<sup>28</sup> for stock water purposes in the amount of 0.047 cfs.

Based on the measured flow rates, the State Engineer finds that the water available for appropriation under Applications 77472, 77474, 77475, and 77477 is as follows; 0.0064 cfs at Spring (A) (Application 77472), 0.0017 cfs at Spring (E) (Application 77474), 0.0022 cfs at Spring (D) (Application 77475), and 0.0022 cfs at Spring (B) (Application 77477).

The State Engineer finds that the Livestock Reservoir Site Act of 1897 does not give the Protestant a water right on the

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<sup>26</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

<sup>27</sup> File Nos. V09795 and V09798, official records in the Office of the State Engineer.

<sup>28</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

source and any water right permit issued under Applications 77472, 77474, 77475, and 77477 would not extend to the permittee the right of ingress and egress on public, private, or corporate lands, and would not waive any permitting requirements by other State, Federal, and local agencies.

V.

The point of diversion for Application 77710 (Butcher Canyon Spring) had a measured flow of 0.153 cfs,<sup>29</sup> which exceeds the requested amount of 0.032625 cfs. Claim of Vested Right V-09793, recently submitted by the Applicant for 0.047 cfs, is the only claimed existing water right on this source. The State Engineer finds that there is sufficient water at this source to satisfy Application 77710.

The Protestant claims that the water is subject to her prior existing rights, which she believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that the Protestant does not own water right permits, proofs or claims filed at the proposed point of diversion.

Information provided by the BLM indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>30</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77710.

VI.

A flow of 2.7 cfs was obtained at the proposed point of diversion of Application 77711, known as Jersey Canyon Spring, a.k.a. Old Town Canyon Spring.<sup>31</sup> Permit 5234, Certificate 1093, owned by the original permittee Joseph Hermelien, allows for the

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<sup>29</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

<sup>30</sup> File No. 77710, official records in the Office of the State Engineer.

<sup>31</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

appropriation of 0.147 cfs (44.16 acre-feet to irrigate 14.72 acres) from Jersey Canyon Spring. Permit 2372, Certificate 242 owned by the Jersey Valley Mines Company has a right for 0.2 cfs for mining and domestic purposes. The State Engineer finds that there is sufficient water at this source to satisfy an additional appropriation of water under Application 77711.

The protest indicates that the water is subject to the Protestant's prior existing rights, which the Protestant believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.<sup>32</sup> The State Engineer finds that no other uses of water are permitted at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

Information provided by the United States Bureau of Land Management (BLM) indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>33</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77711.

## VII.

Application 77712 is a request to appropriate 1.0 cfs of ground water for the irrigation of 80 acres on the south side of Jersey Canyon Creek. Application 77713 is a request to appropriate 0.032625 cfs of ground water for stock-water purposes from the same point of diversion as Application 77712. The proposed point of diversion for these applications is described as an existing well located on private property owned

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<sup>32</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>33</sup> File No. 77711, official records in the Office of the State Engineer.

and controlled by the Applicant. A review of records on file in the Office of the State Engineer shows that there is an existing water right in the well, temporary Permit 78187-T for industrial use. The temporary permit is a change of Permit 44081, Certificate 11196, which was issued for 0.0412 cfs or sufficient to water 1500 head of cattle. The temporary permit was granted on May 26, 2009, and will expire in 1 year from that date. Permit 78187-T contains a term that Applications 77712 and 77713, and Permit 78187-T "...will be subject to additional determination and evaluation with respect to permanent effects on existing rights."<sup>34</sup>

The perennial yield of Jersey Valley is 250 acre-feet, of which, 27.25 acre-feet has been appropriated.<sup>35</sup> Application 77712 requests an additional 240 acre-feet and Application 77713 requests the equivalent of 12.62 acre-feet. The State Engineer finds both applications can be considered for approval without the consumptive use of water under the permits exceeding the perennial yield of the ground-water basin.

The Protestant claims the well would be in close proximity (1¼ miles) to her Claim of Vested Right V-05761 on Jersey Hot Spring (F) and Spring (C) and would adversely affect this vested claim. The State Engineer finds that the approval of Applications 77712 and 77713 will contain a monitoring provision that will require regular flow measurements to be taken at Jersey Hot Spring (F) and Spring (C) to determine if there are any adverse impacts from pumping under the permits.

The Protestant also alleges that the Applicant has not irrigated 320 acres of farm land held under the existing certificated irrigation permit in the past eight years in Jersey Valley. The State Engineer finds that this protest issue is not

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<sup>34</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>35</sup> Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 21, Oct. 1971.

relevant to the issue before him of ruling on these specific applications.

#### VIII.

The point of diversion for Application 77952 (Cow Canyon Spring) had a measured flow of 0.013 cfs,<sup>36</sup> which is less than the requested amount of 0.032625 cfs. The State Engineer finds that Application 77952 may be considered for an amount equal to the measured flow of the spring, 0.013 cfs.

The protest claims that the water is subject to the Protestant's prior existing rights, which she believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.<sup>37</sup> The State Engineer finds that no other uses of water are permitted at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

Information provided by the BLM indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>38</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77952.

#### IX.

The point of diversion for Application 77954 (Nancy Spring) had a measured flow of 0.0004 cfs,<sup>39</sup> which is less than the requested amount of 0.032625 cfs. The State Engineer finds that Application 77954 may be considered for an amount equal to the

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<sup>36</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

<sup>37</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>38</sup> File No. 77952, official records in the Office of the State Engineer.

<sup>39</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

measured flow of the spring, 0.0004 cfs. The protest claims that the water is subject to the Protestant's prior existing rights, which she believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or claims filed at the proposed point of diversion.<sup>40</sup> The State Engineer finds that no other uses of water are permitted at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

Information provided by the BLM indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>41</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77954.

X.

The point of diversion for Application 77955 (unnamed spring) had a measured flow of 0.012 cfs,<sup>42</sup> which is less than the requested amount of 0.032625 cfs. The State Engineer finds that Application 77955 may be considered for an amount equal to the measured flow of the spring, 0.012 cfs.

The protest claims that the water is subject to the Protestant's prior existing rights, which she believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or

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<sup>40</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>41</sup> File No. 77954, official records in the Office of the State Engineer.

<sup>42</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

claims filed at the proposed point of diversion.<sup>43</sup> The State Engineer finds that no other uses of water are permitted at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

Information provided by the BLM indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>44</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77955.

#### XI.

The point of diversion for Application 77956 (Indian Spring) could not be measured. There is a spring box-culvert about 3 feet in diameter, sunk approximately 8 feet into the ground. The standing water level is about 18 inches deep. The piping system is connected to the spring box at a depth of approximately 10 feet, which is lower than the measured water level. However, there was no flow from the pipe at its terminus.<sup>45</sup> The application requests 0.032625 cfs from the source and the field investigation recommends approval of the application for this amount. The State Engineer finds that Application 77956 may be considered for the requested amount of water.

The protest claims that the water is subject to the Protestant's prior existing rights, which she believes can be proven in an adjudication. A determination was made, after an examination of the records of the Office of the State Engineer, that there are no additional water right permits, proofs or

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<sup>43</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>44</sup> File No. 77955, official records in the Office of the State Engineer.

<sup>45</sup> Report of Field Investigation No. 1112, File No. 77470, official records in the Office of the State Engineer.

claims filed at the proposed point of diversion.<sup>46</sup> The State Engineer finds that no other uses of water are permitted at the proposed point of diversion and the Protestant has not filed a claim of vested right on the source.

Information provided by the United States Bureau of Land Management (BLM) indicates that the proposed point of diversion and place of use are on public lands and the Applicant is the authorized grazing permittee.<sup>47</sup> The State Engineer finds that the Applicant is entitled by the proper federal agency to place livestock upon the public range that is serviced by the spring source described under Application 77956.

#### XII.

The Applicant, Joe Saval Company, LLC is the grazing permit holder for the South Buffalo Allotment and Jersey Valley, which encompasses the northern portion of Dixie Valley. It possesses a proprietary interest in the livestock via an agreement with Shawn and Misty Goemmer.<sup>1</sup> The State Engineer finds that the Applicant meets the provisions of NRS § 533.503.

#### XIII.

The State Engineer finds that sufficient water must be retained at all spring sites, as required under NRS § 533.367, to support a customary use of the water by wildlife.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>48</sup>

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>49</sup>

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<sup>46</sup> Nevada Division of Water Resources' Water Rights Database, Special Hydrographic Abstract, June 15, 2009, official records in the Office of the State Engineer.

<sup>47</sup> File No. 77956, official records in the Office of the State Engineer.

<sup>48</sup> NRS chapter 533 and 534.

<sup>49</sup> NRS § 533.370(5).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that there is no additional water available for appropriation at the proposed point of diversion of Application 77470 and that the application would conflict with a certificated water right, both the Applicant and Protestant's claims of vested rights and would threaten to prove detrimental to the public interest.

IV.

The State Engineer concludes that Application 77471 can be approved for 0.0171 cfs and would not prove detrimental to the Applicant's claim of vested right.

V.

The State Engineer concludes that there is no additional water available for appropriation for Applications 77473 and 77476 from either Jersey Hot Spring (F) or Spring (C) and the approval of any additional water would conflict with the Applicants and Protestant's existing claims of vested right and threaten to prove detrimental to the public interest.

VI.

The State Engineer concludes that Applications 77472, 77474, 77475 and 77477 can be approved for 0.0064 cfs, 0.0017 cfs, 0.0022 cfs and 0.0022 cfs, respectively.

VII.

The State Engineer concludes that Applications 77710, 77711, 77952, 77954, 77955 and 77956 can be approved for

0.032625 cfs, 0.032625 cfs, 0.013 cfs, 0.0004 cfs, 0.012 cfs and 0.032625 cfs, respectively.

VIII.

The State Engineer concludes that Applications 77712 and 77713 are seeking to appropriate water from an existing well for irrigation and stock-water purposes on the Applicant's private ground and these applications can be approved for 240 acre-feet and 12.62 acre-feet, respectively.

IX.

The State Engineer concludes that stock watering is a beneficial use and the Applicant is the authorized grazing permittee for the associated grazing allotments for each application requesting a stock-water right on public land managed by the BLM; therefore, the approval of Applications 77471, 77472, 77474, 77475, 77477, 77710, 77711, 77952, 77954, 77955 and 77956 would not threaten to prove detrimental to the public interest.

X.

The State Engineer concludes there is unappropriated water at the proposed source, as limited in the findings, for Applications 77471, 77472, 77474, 77475, 77477, 77710, 77711, 77712, 77713, 77952, 77954, 77955 and 77956 and the proposed use will not conflict with existing rights.

XI.

The State Engineer concludes that the protest claims to Applications 77471, 77472, 77474, 77475, 77477, 77710, 77711, 77712, 77713, 77952, 77954, 77955 and 77956, are unsupported by the evidence and may be overruled.

**RULING**

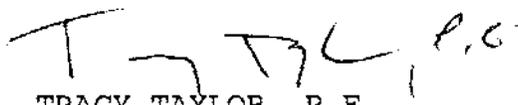
The protests to Applications 77470, 77473 and 77476 are upheld in part and the applications are hereby denied on the grounds that no water is available at the source, approval of

the applications would conflict with existing rights and thereby would threaten to prove detrimental to the public interest.

The protests to Applications 77471, 77472, 77474, 77475, 77477, 77710, 77711, 77712, 77713, 77952, 77954, 77955 and 77956 are overruled and the applications are hereby approved subject to:

1. Existing rights; and
2. NRS § 533.367 (surface water only); and
3. Limitations on diversion and seasonal duty as detailed in this ruling; and
4. An approved monitoring plan (Applications 77712 and 77713 only); and
5. Payment of the statutory permit fees; and
6. The total combined duty for 77472, 77474, 77475, 77477, 77710, 77711, 77713, 77952, 77954, 77955, and 77956 shall be limited to 12.62 acre-feet seasonally.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer

Dated this 3rd day of  
September, 2009.

# APPENDIX A

| <b>Jersey Valley Spring Measurements</b> |        |                    |            |     |                    |               |                |         |           |        |                |          |               |
|--|--------|--------------------|------------|-----|--------------------|---------------|----------------|---------|-----------|--------|----------------|----------|---------------|
| Application                              | Status | Owner              | Protestant | Use | Source             | CFS           | Acre-feet      | GPM     | acre-feet | Basin  | Name           | CFS      | Period of Use |
|  |        |                    |            |     |                    | Measured Flow |                |         | season    |        |                |          |               |
| 77472                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring A           | 0.0064        | 4.66           | 2.88    | 2.50      | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
| 77473                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring F           | 0.03625       | 80.64          | 50.00   | 14.16     | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
| 77474                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring E           | 0.0017        | 1.21           | 0.75    | 0.66      | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
| 77475                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring D           | 0.0022        | 1.61           | 1.00    | 0.86      | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
| 77476                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring C           | 0.0045        | 3.23           | 2.00    | 1.76      | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
| 77477                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring B           | 0.0022        | 1.61           | 1.00    | 0.86      | Jersey | Jersey H. S.   | 0.032625 | 3/1-9/14      |
|  |        |                    |            |     | actual measurement | Spring F      | 0.1114         | 80.64   | 50.00     |        |                |          | 197 days      |
| 77710                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 0.153         | 110.77         | 69.12   | 59.78     | Jersey | Butcher Canyon | 0.032625 | 3/1-9/14      |
| 77711                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 2.7           | 1954.72        | 1211.84 | 1055.02   | Jersey | Jersey Canyon  | 0.032625 | 3/1-9/14      |
| 77712                                    | RFP    | Joe Saval Co., LLC | Stremler   | Irr | UG                 |               |                |         |           | Jersey | Jersey Canyon  | 1.00     | 1/1-12/31     |
| 77713                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | UG                 |               |                |         |           | Jersey | Jersey Canyon  | 0.032625 | 3/1-9/14      |
| 77952                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 0.013         | 9.68           | 6.00    | 5.08      | Jersey | Cow Canyon     | 0.032625 | 3/1-9/14      |
| 77954                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 0.0004        | 0.30           | 0.19    | 0.16      | Jersey | Nancy          | 0.032625 | 3/1-9/14      |
| 77955                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 0.012         | 8.71           | 5.40    | 4.69      | Jersey | unnamed        | 0.032625 | 3/1-9/14      |
| 77956                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             |               | no measurement |         | 0.00      | Jersey | Indian         | 0.032625 | 3/1-9/14      |
|  |        |                    |            |     |                    |               |                |         |           |        |                |          |               |
| <b>Dixie Valley Spring Measurements</b>  |        |                    |            |     |                    |               |                |         |           |        |                |          |               |
| 77470                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | no flow       | 0.00           | no flow | 0.00      | Dixie  | Seven Devils   | 0.032625 | 9/15-2/28     |
| 77471                                    | RFP    | Joe Saval Co., LLC | Stremler   | Stk | Spring             | 0.0171        | 12.37          | 7.67    | 5.66      | Dixie  | Old Man Canyon | 0.032625 | 9/15-2/28     |
|  |        |                    |            |     |                    |               |                |         |           |        |                |          | 167 days      |

Table One