

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

IN THE MATTER OF APPLICATION NUMBER 72997,  
U.S. Dept of the Interior  
FILED BY Bureau of Land Management,  
ON July 7, 2005, TO APPROPRIATE THE  
WATERS OF Elephant Head #1 Spring



PROTEST



Henry Filippini and Marian Filippini, Trustees of the  
Comes now Hank and Marian Filippini Family Trust dated 12-21-03

whose post office address is HC 61 Box 70, Battle Mtn., Nevada 89820  
Printed or typed name of protestant  
Street No. or P.O. Box, City, State and Zip Code

whose occupation is Rancher and protests the granting

of Application Number 72997, filed on July 7, 2005

by United States Department of the Interior  
Bureau of Land Management to appropriate the

waters of Elephant Head #1 Spring situated in Lander  
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment

THEREFORE the Protestant requests that the application be Denied  
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Henry Filippini  
Marian Filippini  
Henry Filippini, Trustee  
Printed or typed name, if agent

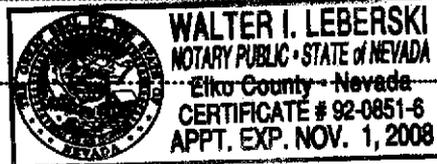
Marian Filippini, Trustee  
Address HC 61, Box 70  
Street No. or P.O. Box No.

Battle Mountain, Nevada 89820  
City, State and Zip Code No.

Subscribed and sworn to before me this 31st day of AUGUST, 2005  
Walter I. Leberski  
Notary Public

State of \_\_\_\_\_

County of \_\_\_\_\_



**\$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

**ATTACHMENT TO PROTEST OF APPLICATION** 72997

Henry Filippini and Marian Filippini, Trustees of the Hank and Marian Filippini Family Trust dated 12-21-03 (hereinafter "Protestant") is an interested person and has standing to pursue this protest because Protestant is in the process of conveying the area of use on the public domain upon which the source is located to Ellison Ranching Company. After completion of the sale, Protestant will have a lien on the grazing preference in that area. This protest is made on the following grounds:

1. The protestant and its successor claim a vested stock water right on the source, because their predecessors have used the area for livestock grazing since prior to 1905. This is an undocumented but valid and enforceable vested water right and the right is for all of the water production of the source.
2. NRS 533.085(1) provides that "nothing contained in (NRS Chapter 533) shall impair the vested water right of any person to the use of the water, nor shall the right of any person to take and use water be impaired or affected by any of the provision of (NRS Chapter 533) where appropriations have been initiated in accordance with law prior to March 22, 1913." The challenged application was filed pursuant to NRS Chapter 533 and will impair the Protestant's water right. Therefore, granting this application would violate NRS 533.085(1).
3. The Nevada Division of Wildlife is responsible for the management of wildlife and granting of this application to the Bureau of Land Management will unduly complicate the role of each agency.
4. NRS 501.181 provides that the Wildlife Commission will prescribe policies for the acquisition of water rights for wildlife management and the Commission has not taken such an action on this source.
5. In the past the Department of Conservation and Natural Resources through the Division of Water Resources has made adequate provisions for wildlife in granting applications to private individuals and such provisions can be included at the time of a final adjudication of the area.
6. NRS 533.367 requires that before a person may obtain a water right from a spring, he must ensure that wildlife which customarily use the water must have access to it. The statute eliminates the need for the Bureau of Land Management to be granted the permit.
7. NRS 533.370(4) provides in pertinent part, that where a proposed use or change conflicts with existing rights, "the State Engineer shall reject the application and refuse to issue the requested permit." In the present case, the application, if approved would conflict with the Protestant's vested water right. Therefore, granting the application would violate NRS 533.370(4).
8. Granting the application will give to the Bureau of Land Management unneeded control over wildlife in the area.
9. The Nevada Supreme Court ruled in that case entitled *State Bd. of Agriculture v. Morros*, 104 Nev. 709, that applications by agencies of the United States to appropriate water for beneficial uses pursuant to their land management functions must be treated on an equal basis with applications by private landowners. Wildlife water is not a land management function.