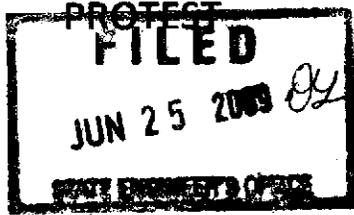


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

In the Matter of Application No. 78369)
Filed by THE HONKER RANCH, INC.)
On 23 April 2009 to appropriate the)
Waters of HINDS OR NEVADA HOT SPRING)



STATE ENGINEER'S OFFICE
2009 JUN 25 PM 3:40

Comes now BENTLY FAMILY LIMITED PARTNERSHIP whose post office address is P.O. Box 127, Minden, Nevada, 89423, whose occupation is _____ and protests the granting of Application Number 78369, filed on 23 April 2009 by THE HONKER RANCH, INC. to appropriate the waters of HINDS OR NEVADA HOT SPRING situated in Lyon County, State of Nevada, for the following reasons and on the following grounds, to wit:

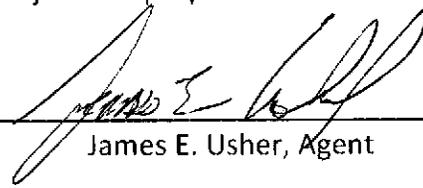
Application 78369 was filed to change the point of diversion of a portion of Permit 16753 – Certificate 5636 to the point of diversion of Nevada Hot Spring covered under Permit 28995 – Certificate 9379 a portion of which is owned by the Protestant.

Permit 16753 was issued for drain and wastewaters which are not subject to appropriation under statutory procedures relating to the appropriation of non-drain waters. See letter dated 05 July 2006 from Kelvin Hickenbottom (copy enclosed).

The granting of Application 78369 would adversely affect the existing Water Rights under Permit 28995.

In addition, there is no unappropriated water in the source.

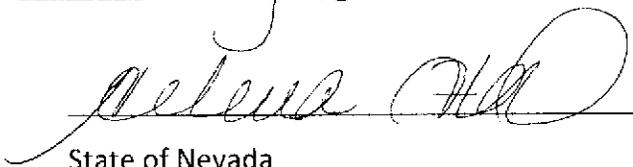
THEREFORE the Protestant requests that the application be DENIED and that an order be entered for such relief as the State Engineer deems just and proper.

Signed 
James E. Usher, Agent

Address: P.O. Box 127
Minden, NV 89423

Subscribed and sworn to before me this 23rd day of June, 2009.




State of Nevada
County of Douglas

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

JY



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701
(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>
July 5, 2006

Honker Gun Club
P.O. Box 52516
Reno, Nevada 89505

Re: Permits 16689, 16753 and 16754

Subject: Honker Gun Club Water Rights

Dear Mr. Buschelman:

This letter is in regards to the regulation and distribution of drain and wastewater permits that have been issued by the Office of the State Engineer. This office has determined that unlike direct diversion rights, drain and wastewater permits cannot be regulated by priority dates. By its very nature drain and wastewater is not always available or in such quantity that it will be present at the downstream users place of use. The primary upstream water right holder has no obligation to continue or maintain the flow of drain or wastewater to an appropriator of wastewater. In the case of water right permits issued for drain and wastewater rights the Nevada Revised Statutes (NRS) fails to address the regulation of this type of permit based solely upon priority dates. However, guidance in this matter is provided by the Nevada Supreme Court in *Ryan vs. Gallio* (1930), which determined that drain and wastewaters are subject to capture and use, but drain and wastewaters are not subject to appropriation under statutory procedures relating to the appropriation of non-drain waters of a watercourse.

More specifically in regards to the Honker Gun Club's existing surface water rights, a stipulated agreement was reached between the Honker Gun Club and the Hunnewill Land and Livestock Company in 1955 that specifically excluded any obligation on the part of Hunnewill to deliver drain and wastewater to the Honker Gun Club.

The source of water described under Certificate 5636, Permit 16753, is stated as being from an unnamed drainage channel and tributaries, Certificates 5635 and 5237,

Honker Gun Club
July 5, 2006
Page 2 of 2

Permits 16689 and 16754, respectively, describe their source as being the Burke Channel and tributaries. All three certificates further describe the sources as drainage water from the West Walker River, springs, seeps and natural runoff from West Walker River Basin, with no mention of direct diversions from specific springs or tributary systems.

If you have any questions, please feel free to call me at (775) 684-2817.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Hickenbottom', with a long horizontal stroke extending to the right.

Kelvin Hickenbottom
Surface Water and Adjudication Section

KH/sam
cc. Michael Buschelman