

IN THE MATTER OF APPLICATION NUMBER 81310
FILED BY Gary Snow Livestock and Grain
ON 16th day of November, 20 11

FILED
DEC 16 2011
STATE ENGINEER'S OFFICE

PROTEST

Comes now Wayne N Hage Executor of the Estate of E. Wayne Hage

Printed or typed name of protestant

whose post office address is P.O. Box 513 Tonopah Nevada 89049

Street No. or PO Box, City, State and ZIP Code

whose occupation is Rancher and Executor of the Estate of E Wayne Hage

and protests the granting

of Application Number 81310

, filed on 16th day of November

, 20 11

by Gary Snow Livestock and Grain

for the

waters of Baxter Spring

situated in SW1/4 NW1/4 Sec25, T7N, R43E, MDM

an underground source 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 1" for reasons and grounds the protestant requests that the application be Denied.
United Cattle & Packing Co. v. Smith et al., Decree No. 5038 (Dist. Ct., Nye County, Nevada 1942); Transcript of Proceedings,
United Cattle & Packing Co. v. Smith et al., Decree No. 5038 (Dist. Ct., Nye County, Nevada 1942); Decree issued 28 January 1942.
Chance V. Arcularius, 68 Nev. 51, at, 67, 227 P.2d 198 (1951); Decision,
Chance V. Arcularius, 68 Nev. 51, at, 67, 227 P.2d 198 (1951); Judgment
Hage V. US. Case No. 91-1470L; Final Opinion: Findings of Fact January 29, 2002
U.S. v. Estate of E. Wayne Hage et. al., No. 2:07-cv-01154-RCJ-VCF Order dated May 17, 2011
U.S. v. Estate of E. Wayne Hage et. al., No. 2:07-cv-01154-RCJ-VCF Transcript dated March 11, 2011
Please file court documents in lowest file Application Number 81310

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

Wayne N Hage executor

Agent or protestant

Wayne N Hage Executor of the Estate of E. Wayne Hage

Printed or typed name, if agent

Address

P.O. Box 513

Street No. or PO Box

Tonopah Nevada 89049

City, State and ZIP Code

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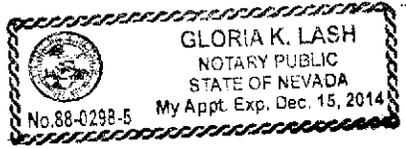
Subscribed and sworn to before me this

16

day of

December

, 20 11



Gloria K. Lash

Notary Public

State of

Nevada

County of

Carson City

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

Attachment 1 of protest

The water to which applicant is applying for is already a vested water right owned by the Estate of E Wayne Hage and the Estate of Jean N. Hage (Estates). The Owners have not sold or allowed the use of any of their water to applicant. Applicant is not filling on new waters but existing springs, owned by the Estates and in the case of underground water applicant is filing on the very wells that the Estates own. He is not proposing to drill new wells and he does not hold any rights to the wells he is filling on.

All said stock water is in use by the current owners. All improvements for the development and use of said water are owned by the above aforementioned Estates. The Improvements have not been sold to applicant, nor has applicant been allowed the use of said improvements.

All of the range surrounding the said water, and the said water itself has been claimed by, put to beneficial use by, and has been in the possession of the Estates and their predecessors in interest since the 1860s. Beginning with the Year 1865 and continuing to the present, the Estates and its predecessors-in-interest ranged livestock in and through the lands at issue in accordance and consistent with the law, customs and decisions of the court applicable during this period in a manner that was open, notorious, peaceable and continuous, extending for a period before March 30, 1931 far longer than five years.

The stock waters to which the Estates have title, including this one, enabled the Estate and its predecessors-in-interest to make full and complete and economic use of the range land at issue and to utilize substantially all that portion of the range. The claim and right to the range and forage on the range land at issue was initiated without protest or conflict to prior use or occupancy thereof as required by and consistent with applicable law, custom, and rules of the court. The use of the water and range at issue in this case was developed, in accordance to the custom of grazers', to improve the beneficial use of the range.

The exterior boundaries of the Estates Pine Creek Ranch, as now defined, are the result of the aforementioned, and were established in accordance to, and under local law and custom. The Estates predecessors-in-interest have filed range claim maps in the State Engineers office pursuant to the request of the Nevada State Engineer outlining the range owned and claimed by the Estates predecessors-in-interest. These maps are File numbers; 611-34, 460-30, 980-34, and the map of the range claim of United Cattle and Packing Co. as depicted on the map "Range Claims in Nevada, as Recorded in the State Engineer's Office to July, 1929." An additional map is recorded in the Nye County Court house as exhibit of the range United Cattle & Packing Co. v. Smith et al., Decree No. 5038 (Dist. Ct., Nye County, Nevada 1942).

For further proof of the ownership of this vested water right and the surrounding range which is the area of beneficial use of the water see the chain of Title of the Estates as filed in the United States Court of Federal Claims or by requesting a copy from Protestant. The Estates chain of title lead the United States Court of Federal Claims to its finding of Fact and Conclusion of Law in its Jan 29, 2002 decision that,

"plaintiffs presented evidence at trial that showed by the preponderance of evidence that the plaintiffs and their predecessors appropriated and maintained a vested water right in the following bodies of water on the Ralston and McKinney allotments. In addition to certificates of appropriation that were entered into evidence, the plaintiffs also submitted an exhaustive chain of title which showed that the plaintiffs and their predecessors-in-interest

had title to the fee lands where the following springs and creeks are located." Below are listed some but not all of the vested water rights the court found the Estates to own.

1. Ralston Allotments

The plaintiffs have a vested water right to the following bodies of water in the Ralston allotment based either on the date of appropriation or prior beneficial use of their predecessors-in-interest:

- AEC Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- Airport Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of March 19, 1981.
- Baxter Spring: The state engineer issued a certificate of appropriation to United Cattle and Packing Company, a predecessor in interest of the plaintiffs, with a priority date of October 5, 1917.
- Black Rock Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of July 23, 1982.
- Cornell Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- Frazier Spring: The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of February 17, 1927.
- Henry's Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of April 27, 1981.
- Humphrey Spring: The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of December 17, 1917.
- Pine Creek Well: The state engineer issued a certificate of appropriation to Frank Arcularius with a priority date of January 11, 1950.
- Ray's Well: The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of February 17, 1927.
- Rye Patch Channel: The state engineer issued a certificate of appropriation to Frank Arcularius, a predecessor in interest of the plaintiffs, with a priority date of November 12, 1926.
- Saulsbury Well: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of April 27, 1981.
- Silver Creek Well: The state engineer issued a certificate of appropriation to Frank Arcularius with a priority date of February 10, 1950.
- Snow Bird Spring: The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of June 7, 1918.
- Spanish Spring: The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of December 17, 1917.
- Stewart Spring: The state engineer issued a certificate of appropriation to Mrs. O. C. Stewart, a predecessor in interest of the plaintiffs, with a priority date of November 25, 1931.
- Well No. 2: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- Well No. 3: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.

A granting of this application would be inconsistent with rulings of the Nevada

State Engineer, and the files on record in the Engineers office including but not limited to 11066, 12762, 12794, 13918, 13018, 13228, 13262, 13263, 21270, 43015, 43360, 43620, 45977, 4615, 4782, 4783, 13229, 10695, 43016, and 43621.

It will also be inconsistent with the rulings of the several courts, which have addressed the water, property, and rights at issue in this application. It would also result in violations of, but not limited to, NRS's 568.230, 568.240, 568.260, 568.300, 568.340, 533.495, 533.505 and 533.510, if applicant were to put livestock on the range to beneficially use the water applied for.

The said water has been subject to several past, and two ongoing court actions. The rights of the Estates and their predecessors in interest have been consistently upheld by several courts. See *United Cattle & Packing Co. v. Smith et al.*, Decree No. 5038 (Dist. Ct., Nye County, Nevada 1942); *Chance V. Arcularius*, 68 Nev. 51, at 67, 227 P.2d 198 (1951); *Hage V. US. Case No. 91-1470L* and *U.S. v. Estate of E. Wayne Hage et. al.*, No. 2:07-cv-01154-RJ-VCF, currently addressing the extent of the forage right surrounding the said water rights owned by the Estates. Although there is still one court action (*U.S. v. Hage*) addressing the extent of the forage rights owned by the Estates, the ownership of the water has been determined, and is not even disputed by the United States. It is important to note, this court has indicated that Bevin's actions, (holding government employs personally accountable for illegal actions) may be brought against the federal employs, for requiring Estates to obtain a permit for the access and use of a Stock water right taken up under Nevada Law, when such permit is not necessary. See attached Transcript of Motion Hearing March 11, 2001, *U.S. v. Estate of E. Wayne Hage et. al.*, No. 2:07-cv-01154-RJ-VCF.

Applicant does not have any rights and cannot claim any rights in the surrounding rangeland or in the said water right, or in the well and spring developments. If the State of Nevada were to award this water to applicant it would do so in violation of State Law. If the applicant is granted any use of said water, it would substantially impair the use of said water and cause immediate and irreparable damage and harm to the Estates. In other words the granting of this application would be a taking of the Estates vested water right by the State of Nevada.

Protestant is unaware of any law in the State of Nevada, which allows the State to take property from one citizen in order to give the same property to another citizen. Such a law would be repulsive to the laws of a constitutional republic. Granting this application will most certainly result in a court action, for the purpose of restraining applicant from the use of the Estates vested water and range rights. For the reasons set forth above Protestant prays that the State Engineer deny this application. If this application is to be considered Protestant demands a hearing so that protestant may present witnesses, evidence and testimony to prove why this application should be denied.

Wayne N Hage executor
Wayne N. Hage Executor of the Estate of E. Wayne Hage

12-16-11

Date

RECORDED
INDEXED

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
2 STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE.

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THE UNITED CATTLE & PACKING COMPANY,
a Corporation,

Plaintiff,

-vs-

JOHN DOE SMITH, ET AL,

Defendants.

No. 5038.

FILED
MAR 11 1942
Frank E. Bell County Clerk
John J. Hall Deputy

TRANSCRIPT
OF PROCEEDINGS

Honorable Wm. D. Matton District Judge Presiding

Trial held January 19th, 1942

C O U N S E L

For the Plaintiff Lowell Daniels,
Attorney at Law.

Jane Douglass Acting Court Reporter

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I N D E X
ACTION No. 5038.
PLAINTIFF'S CASE.

Witnesses.

	<u>DIRECT</u>	<u>CROSS</u>
Daniel S. Johnson	5	
Lowell Daniels	12	
Margaret Henderson	12	
Jack Humphrey	13	
Jim Hughes	28	
Charles Keough	37	

Exhibits Received in Evidence.

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RECORDED
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1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
2 STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE.

3
4
5 THE UNITED CATTLE & PACKING COMPANY,
6 a Corporation,
7 Plaintiff,
8 -vs-
9 JOHN DOE SMITH, et al,
10 Defendants.

No. 5038.

11
12 TRANSCRIPT
13 OF PROCEEDINGS.

14 BE IT REMEMBERED, that the above entitled action came on
15 regularly for hearing on Monday, January 19th, 1942, at the hour
16 of 10:30 o'clock A.M., before Honorable Wm. D. Hatton, District
17 Judge presiding.

18 The plaintiff was represented in Court by Lowell Daniels,
19 Attorney at law.

20 The defendants were not represented in Court by Counsel.

21 The reporter, Jane Douglass, was duly sworn by the Clerk
22 of the Court.

23 WHEREUPON, the following proceedings were had and testi-
24 mony given:

25 THE COURT: This is case No. 5038, United Cattle & Packing
26 Company, against John Doe Smith, and others. You may proceed,
27 Mr. Daniels.

28 MR. DANIELS: If the Court please, I offer in evidence,
29 not as evidence but as a matter of record, original Summons show-
30 ing the various defendants as served by the Sheriff of Nye County,

1 Nevada, being all of the defendants as we were able to ascertain
2 who are residents of Nye County, Nevada, or any section of the
3 State. I also offer as a matter of record the original alias
4 Summons which was served on various other defendants as located
5 in and around Reno, particularly the Monitor Valley Land and
6 Cattle Company, and the Tonopah Banking Corporation, serving the
7 Secretary of State, and also serving James Jensen and Leo F.
8 Schmitt, the former receiver.

9 THE COURT: The Summons first referred to by Mr. Daniels,
10 together with the proof of service attached thereto, may be filed
11 as a part of the record. The second alias Summons referred to,
12 with proofs of service may be filed.

13 MR. DANIELS: If the Court please, you will find in the
14 record a certificate of publication of Summons, which has already
15 been filed, and in connection with the order for publication of
16 Summons, I desire to offer some letters which were addressed to
17 various defendants and were returned. The Affidavit of mailing
18 these will be made by me and made of record.

19 THE COURT: The letters referred to which have been re-
20 turned to the sender may be filed as part of the record in con-
21 nection with the proof of mailing.

22 MR. DANIELS: In connection with the service of Summons,
23 if the Court please, I offer also certificates from the Secretary
24 of State with reference to the United Cattle & Packing Company,
25 which company is the plaintiff, showing its right to do business;
26 that the Nye County Land and Livestock Company was dissolved;
27 that the Monitor Valley Land and Cattle Company is in existence
28 but has not complied with the laws of this State; the return of
29 the alias Summons which shows service on the Secretary of State
30 as the Monitor Valley Land and Livestock Company, also certifi-
cate as to the Tonopah Banking Corporation.

1 THE COURT: I think that had better be marked as an Ex-
2 hibit, Mr. Daniels.

3 MR. DANIELS: Yes, it should be an Exhibit, and it is al-
4 so for the purpose of showing that there are such corporations,
5 and the service on that. I think the statute a little peculiar,
6 but I would like them to be filed.

7 THE COURT: The certificate just referred to be counsel
8 may be filed as plaintiff's Exhibit No. 1, in connection with
9 proof of service and jurisdiction with regards to certain cor-
10 porations.

11 MR. DANIELS: Before entering the default, I have the dis-
12 claimer of J. B. Humphrey, also known as Jacob B. Humphrey, also
13 known as Jake B. Humphrey, which I am also filing; and disclaimer
14 of Frank E. Bell, as ex-officio Treasurer and Trustee of Nye Coun-
15 ty property, which I file in this connection.

16 THE COURT: The disclaimer of J. B. Humphrey, and disclaim-
17 er of Frank E. Bell may be filed.

18 MR. DANIELS: We will ask, if the Court please, in filing
19 the request for Default, that all defendants except those who
20 have filed disclaimers, and likewise, Ellen Kay and James Butler,
21 I will present those matters afterwards, I would ask that Default
22 be entered for all other defendants. Here is the Request for De-
23 fault, and this is the Default.

24 THE COURT: Request for Default mentioned by counsel may
25 be filed. The Default of the parties mentioned in said Request
26 may be executed by the Clerk and entered of record.

27 MR. DANIELS: If the Court please, we will turn to the Com-
28 plaint, Page 13, lines 6 to 9, inclusive, and we have the stipula-
29 tion for James Butler, by and through his attorney, Wm. J. Crow-
30 ell, Esq., and we would ask that that part as set forth in those

1 lines shall be stricken, and that lines 30 to 32, inclusive, on
2 Page 12 may be amended in accordance with the stipulation of
3 Counsel, and we ask for an Order permitting that to be done. As
4 a matter of fact, if the Court please, for the benefit of your
5 Honor, Mr. Butler purchased from the old United Cattle & Packing
6 Company property in Pine Creek, one of the other divisions, and
7 their cattle and spring rights in that vicinity, and that was
8 the reason he made an appearance and filed an answer in the case,
9 and we have stipulated to that effect. There will be no other
10 appearance by Mr. Butler.

11 THE COURT: The stipulation referred to, dated January 19,
12 1942, between the plaintiff and James M. Butler, may be filed,
13 and pursuant to said stipulation, it is ordered that portions of
14 the Complaint may be stricken and portions amended as set forth
15 in the said stipulation. The Complaint will be deemed to be
16 changed and amended accordingly.

17 MR. DANIELS: Ellen May likewise appeared in the action
18 and filed an Answer, and we have made a stipulation to the ef-
19 fect that we recognize under her answer certain water rights
20 which are set forth in the stipulation, and which said water
21 rights will likewise be made a part of the Decree. The water
22 right is a State of Nevada water right by the State Engineer,
23 and as a matter of fact, we do not claim that water right at all,
24 but they seemed to be afraid we would.

25 THE COURT: The stipulation made, dated December 24, 1941,
26 between the plaintiff and Ellen May, may be filed, and the same
27 will be deemed to be in full force and effect in this case.

28 MR. DANIELS: I would like to call Mr. Dan Johnson, for the
29 purpose of offering further documentary proof. He is anxious to
30 get away.

1 MR. DANIEL S. JOHNSON, a witness called on behalf of the
2 plaintiff, after first being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 By Lowell Daniels.

5 Q. What is your name?

6 A. Daniel S. Johnson.

7 Q. Where do you live, Mr. Johnson?

8 A. Peavine Creek.

9 Q. You have been a resident of Nye County, Tonopah, and
10 vicinity for some time?

11 A. Twenty or thirty years.

12 Q. What is your profession?

13 A. Mining engineer.

14 Q. You are a graduate of what school?

15 A. School of Technology, Boston.

16 Q. Are you familiar with the property known as Line Creek
17 Ranch?

18 A. Yes, Sir.

19 Q. You have been there a great many times?

20 A. Quite a few times.

21 Q. Did you have occasion to make a map of the water rights
22 the topography of that country?

23 A. Yes. This is the map.

24 Q. This is the blueprint. Where is the original?

25 A. Well, Mr. Humphrey must have that.

26 Q. You did make the original?

27 A. Yes.

28 Q. Is that an exact blue print?

29 A. Yes, Sir. I didn't make the print, I made the map.

30 Mr. DANIELS: If the Court please, as soon as we obtain

1 the original, we would like to substitute it for the blue print.

2 THE COURT: That will be satisfactory.

3 Q. (Mr. Daniels): Mr. Johnson, what is that a map of?

4 A. It shows the location of Pine Creek Ranch, and some
5 other land northeast of there, according to the Government sub-
6 divisions; the grazing allotment by the Forest Service; some
7 wells, water wells, springs, and another large grazing allotment
8 by the Forest Service.

9 Q. How did you compile this, from knowledge you obtained
10 from some documents or general information?

11 A. Part from the Forest survey map, and the other marks
12 on here, showing land sections, was taken from the legal titles
13 to those sections of land.

14 Q. In addition to your being a mining engineer, you also
15 do a great deal of surveying?

16 A. Yes, Sir.

17 Q. And have you done much in this country?

18 A. Yes, Sir.

19 Q. Sectional lands?

20 A. Yes, and water rights.

21 Q. Did you ever notice the way the cattle of the United
22 Cattle & Packing Company from the the Pine Creek Ranch grazed,
23 to what vicinity they go?

24 A. You mean from the map?

25 Q. Yes?

26 A. Yes. It is indicated by this green section, going
27 south, and a little west of south, down the Tonopah-Ely road,
28 and a short distance a few miles below. They extended generally
29 along the road between Tonopah and Belmont.

30 Q. Is that in the vicinity of Cactus Range?

1 A. Cactus Range. It is southeast of Pine Creek Well and
2 the area below the Ely-Tonopah road.

3 Q. Referring to the green marks upon this map, if the
4 Court please, we would like to have this admitted in evidence,
5 this copy and the original. Is the original tracing colored
6 that way, Mr. Johnson?

7 A. No, because it would interfere with the print.

8 MR. DANIELS: We would like to have the blue print admit-
9 ted in evidence, as well as the original, if your Honor please.

10 THE COURT: The blue print is admitted in evidence, and
11 may be marked Exhibit No. 2, and the original from which it is
12 made may be filed with the Clerk by Counsel and marked plaintiff's
13 Exhibit No. 2A.

14 Q. (Mr. Daniels): Referring to Exhibit No. 2, being the
15 blue print of the original, there are certain green marks, or
16 shadings, upon that. What does it indicate?

17 A. The grazing area for cattle.

18 Q. For the Pine Creek Ranch?

19 A. For the United Cattle & Packing Company.

20 Q. Is that from the Pine Creek Ranch itself or for the
21 entire holdings, or would you know as to that?

22 A. No, I don't know.

23 Q. But they did graze as far as Salisbury Well and south
24 of that?

25 A. I would say about one-half mile east of Salisbury Well.

26 Q. That would be on the map as what?

27 A. That would be, well, one-half mile east of the east
28 line of Township 46 East, and 2 North.

29 Q. Forty-five is the range instead of sections?

30 A. Township 46 east, and this would be number 2 North,

1 that far up.

2 MR. DANIELS: I think that is all, your Honor.

3 THE COURT: That is all, Mr. Johnson, you may step down.

4 MR. DANIELS: If the Court please, we desire to offer in
5 evidence for Exhibit 2, abstracts of title to the property in
6 question, in the Complaint, down to a certain date, December 23,
7 1941. There is some question in my mind as to whether an ab-
8 stract is sufficient in evidence. In addition to the Abstrac-
9 tor's signature, I have also had the Abstractor, who is also the
10 County Recorder, certify to the abstract itself, as to being a
11 true and correct copy. I would like to have it admitted. I
12 might add in connection with these exhibits there may be several
13 pencil marks which are mine, which I put there when working on
14 them in connection with the tracing of the title.

15 THE COURT: The abstracts of title, consisting of two
16 volumes, are admitted in evidence. One may be marked plaintiff's
17 Exhibit No. 3A, and the other plaintiff's Exhibit No. 3B.

18 MR. DANIELS: If the Court please, the exhibits I just
19 had entered are copies of exhibits as sent to Washington, etc.,
20 and I now offer in evidence, for the purpose of guiding your
21 Honor, showing certain defects, particularly as to patents, and
22 this is the report of the Washoe County Title Guaranty Company,
23 which I offer in evidence. It is badly marked up, but that is
24 the notations I have made on it.

25 THE COURT: The report of the Washoe County Title Guar-
26 anty Company is admitted in evidence, and may be marked plain-
27 tiff's Exhibit No. 4.

28 MR. DANIELS: In this connection there are a number of
29 patents in this document. I ask that this be marked as an ex-
30 hibit.

1 THE COURT: Copies of patents, certified to by the Secre-
2 tary of State, by certificate dated June 23, 1941, are admitted
3 as one exhibit, and may be marked plaintiff's Exhibit No. 5.

4 MR. DANIELS: In connection with these patents, I refer to
5 Exhibit No. 5, Item 3, which is the patent, I believe, for pa-
6 tent No. 5667, as being part of Exhibit No. 5. That is the first
7 missing patent, and the next missing patent is No. 7995, as part
8 of Exhibit No. 5. Under number 6, that is recorded in the office
9 of the County Recorder, S. P. Kincaid. That is the number the
10 United States would have a copy of, and would ask that be marked
11 as an exhibit. It has been recorded.

12 THE COURT: United States patent application No. 79, Home-
13 stead Certificate No. 44, photostatic copy, is admitted in evi-
14 dence, and may be marked plaintiff's Exhibit No. 6.

15 THE COURT: Court will be in recess until 2 o'clock.

16 2:00 o'clock P.M. (After noon recess.)

17 THE COURT: All right, Mr. Daniels, you may proceed.

18 MR. DANIELS: We will proceed with the presentation of
19 documentary evidence, if the Court please. The next will be pa-
20 tent of Mr. Humphrey. We offer in evidence photostatic copy
21 which has been recorded.

22 THE COURT: Photostatic copy of United States Patent No.
23 613396 is admitted in evidence, and may be marked plaintiff's
24 Exhibit No. 7.

25 MR. DANIELS: I refer your Honor to Page 3 of the Com-
26 plaint, lines 22 to 28, inclusive, and I wish to state in connec-
27 tion with that, that is Indian land, known as Allottee No. 1013.
28 This land is to be exchanged by the Allottee with the permission
29 of the Federal Government, for certain land which we will bring
30 him title on. It is impossible to bring the patent here because

1 until we clear up the title on some of this other. But in this
2 connection we tie it into the Complaint wherein we can give
3 title to the United Cattle & Packing Company. The title comes
4 afterwards because it gives all after acquired title. I offer
5 in evidence the Indian contract with the Department of the In-
6 terior, and wish to state that I have the deed transferring the
7 land by the United Cattle & Packing Company, but it has to be
8 transferred to the Indian Allottee. In order to tie this in, I
9 have offered this contract in evidence.

10 THE COURT: Is the contract for the exchange?

11 MR. DANIELS: This is termed the "Hooper" property, being
12 acquired by the United Cattle & Packing Company in exchange for
13 certain land they are bringing suit to quiet title on, but the
14 Washoe Title company desired us to clear the whole thing.

15 THE COURT: Contract dated September 18, 1939, by the Uni-
16 ted Cattle & Packing Company, party of the first part, and Tim
17 Hooper, party of the second part, is admitted in evidence and may
18 be marked plaintiff's Exhibit No. 8.

19 MR. DANIELS: We now offer in evidence photostatic copy
20 of Patent No. 557813, being one of the missing patents to Jake
21 B. Humphrey.

22 THE COURT: Photostatic copy of Patent No. 557813 is ad-
23 mitted in evidence and marked plaintiff's Exhibit No. 9.

24 MR. DANIELS: We now offer in evidence photostatic copy
25 of a certain patent known as Clinton Patent No. 1026640.

26 THE COURT: Photostatic copy of Patent No. 1026640 is ad-
27 mitted in evidence and marked plaintiff's Exhibit No. 10.

28 MR. DANIELS: We offer in evidence photostatic copy of
29 Patent No. 923490, in the name of C. E. Clover.

30 THE COURT: Photostatic copy of Patent No. 923490, in the

1 name of C. E. Glover, is admitted in evidence and marked plain-
2 tiff's Exhibit No. 11.

3 MR. DANIELS: I will further add in connection with plain-
4 tiff's Exhibit No. 5, it contains five missing patents which are
5 enumerated in the preliminary report on the title, therefore I
6 will not repeat them as they have been admitted in evidence. I
7 offer in evidence the two water rights as issued by the State En-
8 gineer, numbers 6175 and 4574 as certified to by the County Re-
9 corder.

10 THE COURT: Certified copies of water appropriations Ap-
11 plication No. 6175 and Application No. 4574, are admitted in ev-
12 idence as one exhibit, and may be marked plaintiff's exhibit No.
13 12.

14 MR. DANIELS: I refer Your Honor to page 13 of the Com-
15 plaint, lines 20 to 23, inclusive, wherein we state "all right,
16 title and interest of plaintiff in Application 7929". That is,
17 your Honor knows, nothing can be issued out of the State Engin-
18 eer's office except a certificate. We could obtain a certified
19 copy of the Application, but I have here a letter, your Honor,
20 from the State Engineer, dated November 19, 1937, which I offer
21 in evidence to set forth what title the United Bottle & Packing
22 Company have in connection with that spring.

23 THE COURT: What is the name of the spring?

24 MR. DANIELS: Application 7929, as appears in the Com-
25 plaint. It has never been settled. There are certain interests
26 now outstanding. The interest of W. A. Marsh has to be settled
27 with the State Engineer. Full data is set forth in this letter
28 which we offer in evidence to show they do have a right to "all,
29 right, title and interest".

30 THE COURT: You mean that this application is enumerated

1 among these?

2 MR. DANIELS: Yes, your Honor, I will show it to you. It
3 appears as Application No. 7929. They have acquired all inter-
4 est except that of Mr. Marsh, but it has never been settled.
5 That gives the status of the claims. It has been standing that
6 way for a good many years last past.

7 THE COURT: Letter dated November 19, 1927, from the of-
8 fice of the State Engineer, to Charles Keough, with list of water
9 applications attached, is admitted in evidence, and may be marked
10 plaintiff's Exhibit No. 13.

11 MR. DANIELS: I would like to be sworn, your Honor.

12 LOWELL DANIELS, being first duly sworn, testified as fol-
13 lows on behalf of the plaintiff:

14 My name is Lowell Daniels, residence, Tonopah, Nevada; at-
15 torney at law, practicing at Tonopah, Nevada, and admitted to
16 practice under the laws of the State of Nevada, and am now em-
17 ployed by the United Cattle & Packing Company, the plaintiff,
18 in this case. I have examined all of the patents as set forth
19 in the two volumes of abstract, known as 2A and 2B, as well as
20 the various other individual patents which have been placed in
21 evidence, and that in comparison with the Complaint and numbers
22 of patents as set forth in the Complaint, that the same are true
23 and correct as to said patents, and that all of the land, as far
24 as my examination reveals, is now patented of record, with the
25 exception, of course, of the Indian Allottee patent.

26 MR. DANIELS: At this time I would like to call Margaret
27 Henderson.

28 MARGARET HENDERSON, being first duly sworn, called as a
29 witness on behalf of the plaintiff, testified as follows:

30 MR. DANIELS: Please state your name, residence, and offi-

1 cial position of Nye County?

2 A. Margaret Henderson, Tonopah, Nevada, Deputy Auditor
3 and Recorder.

4 Q. In such office do they have records of Lis Fendens?

5 A. Yes, they do.

6 Q. Have you in your possession, that is, in the office
7 of County Recorder, Lis Fendens in case known as the United Cat-
8 tle & Packing Company, a Corporation, plaintiff, vs. John Doe
9 Smith, et al, No. 5038?

10 A. Yes, I have.

11 Q. When was that filed in said office?

12 A. September 5, 1941.

13 Q. And what is the number of it.

14 A. No. 14120.

15 MR. DANIELS: If the Court please, I do not think it is
16 necessary to place this in evidence. It is quite long, and I
17 would like to with draw it and let it remain in the office of
18 County Recorder, and, if necessary, have it copied into the rec-
19 ord.

20 THE COURT: That would be satisfactory. Is that all for
21 Miss Henderson?

22 MR. DANIELS: Yes, that is all. I would like to call
23 Jack Humphrey.

24 JACK HUMPHREY, a witness called on behalf of the plain-
25 tiff, being first duly sworn, testified as follows:

26 MR. DANIELS: Your name is Jack Humphrey?

27 A. Yes.

28 Q. Where do you live?

29 A. I live in Manhattan. That is my home.

30 Q. How old are you, Jack.

1 A. I am 70 years old.
2 Q. What has been your business during your life here in
3 Nye County?
4 A. I was a buckaroo most of the time.
5 Q. Where were you born?
6 A. I was born in Austin.
7 Q. When did you come to Nye County?
8 A. Right after I was born.
9 Q. You lived in Belmont a good many years?
10 A. Yes, and Grantsville and Lone.
11 Q. Are you familiar with what is known as Pine Creek
12 Ranch?
13 A. Yes, I am.
14 Q. Back a great many years ago, did you ever work on that
15 ranch?
16 A. Yes, I have.
17 Q. Who was the first one you worked for?
18 A. Bob Gilbert.
19 Q. He had an interest in the ranch at that time?
20 A. He leased it.
21 Q. Who owned it then?
22 A. Kincaid owned it.
23 Q. How long ago was that?
24 A. In the '80's some time, about '86 or '87.
25 Q. Did you ever work for anyone else?
26 A. Yes. I worked for Oddie and for George Ernst.
27 Q. Did you work for McMonigal?
28 A. He did not own Pine Creek. He owned the Punch Bowl.
29 I never worked for him. I worked for Oddie.
30 Q. I show you plaintiff's Exhibit No. 2, part of a map.

1 Would that sort of describe the various places you have worked?

2 A. Yes. There is Pine Creek, and I worked at Mosquito
3 Creek. That is about the only two places.

4 Q. You are quite familiar with the grazing fields of the
5 Pine Creek Ranch?

6 A. At that time, yes.

7 Q. Do you remember about when Oddie owned the ranch?

8 A. I worked for Oddie in 1902.

9 Q. You worked with the cattle grazing?

10 A. Oddie didn't have any cattle. He just had thorough-
11 bred. There were about 83 head in the field.

12 Q. In connection with the grazing of these various cattle
13 from the Pine Creek Ranch, do you know how far they grazed?

14 A. Which way do you mean?

15 Q. South.

16 A. Well, we would ride down as far as Wild Horse springs,
17 Cactus Flats, and Cactus Peak. They would go that far.

18 Q. Would that be south of the Mount Diablo Base and Meri-
19 dian, do you know about where that is?

20 A. I have heard about it, but don't know where it is.

21 Q. Do you know where Stonewall Mountain is? Did they go
22 that far?

23 A. No, not that far west. Over east of Gold Crater more.
24 I guess that name would be Lud Lakes.

25 Q. Referring to your testimony, on what is known as the
26 map of Nevada, as made by Western States Service Company, copy-
27 righted 1936; we would like to put this in evidence, Your Honor,
28 as it is the only map we have.

29 THE COURT: You can use it to refresh his memory.

30 MR. DANIELS: Q. You say they go down as far as Cactus

1 Flats?

2 A. Yes, and over towards Kawich Range.

3 Q. That is what is known as Ralston Valley?

4 A. Yes. Lower Ralston Valley runs into Stone Cabin Val-

5 ley.

6 Q. Those were the Pine Creek cattle that ran down there?

7 A. When George Ernst owned it.

8 Q. They would go down as far as Gold Crater?

9 A. Not that far east. They steered toward the Kawich

10 Range.

11 Q. Did they go around both sides of Sactus Peak?

12 A. Yes.

13 Q. Do you know where Pahute Mesa is?

14 A. I have heard of it.

15 Q. They didn't go that far down?

16 A. I don't think so.

17 Q. But they did go as far as Gold Crater?

18 A. Opposite Gold Crater.

19 Q. And in that vicinity?

20 A. Yes, but not around Gold Crater, as there was no water

21 there.

22 Q. How about their going down on snow?

23 A. They might drift if there was snow.

24 Q. Cattle drift where there is snow and feed?

25 A. Yes.

26 Q. All through the sections?

27 A. Yes.

28 Q. Have you ever been there when the snow was there?

29 A. No, Sir. I never rode down in the snow.

30 Q. Did you ever go down there in the Spring roundup in

1 order to round up the cattle from that district?

2 A. Yes. Every spring they would drift down there them-
3 selves.

4 Q. Just about how far east would they go?

5 A. Over to the Kawich Range. What they call Wild Horse
6 spring.

7 Q. Would that be near Silver Bow?

8 A. That is the Kawich Range, at Silver Bow.

9 Q. They would drift that far?

10 A. Yes.

11 Q. Going to Monitor Valley, do you know where that is?

12 THE COURT: Do you recall, Mr. Humphrey, what year it was
13 when you were working there?

14 A. The first time was in the '20's. I don't remember when
15 it was when we moved cattle from White Pine County for George
16 Ernst.

17 Q. You worked there for many succeeding years?

18 A. Yes, nearly every year. Every spring lots of them ran
19 in Monitor Valley.

20 Q. (Mr. Daniels): Other persons' cattle would also drift
21 down there?

22 A. Everybody's from up in that country.

23 Q. Was Oddie the last one you worked for at that ranch?

24 A. No, I worked for W. S. Johnson when he had it. That
25 was in 1913, when I worked there last.

26 Q. Did you ever work for the United Cattle & Packing Com-
27 pany?

28 A. I guess they were not with him. I worked for Charlie
29 Leough, haying and on the mowing machine. I was riding after
30 cattle when I worked for Johnson.

1 Q. In 1913? As late as that?
2 A. Yes. He had cattle all over the country.
3 Q. You were riding in Lower Ralston Valley?
4 A. Yes. Me and Jim Hughes.
5 Q. Do you know where Punch Bowl Spring is there?
6 A. Yes, I know where Punch Bowl Spring is.
7 Q. Did the United Cattle & Packing Company, or its prede-
8 cessors, use that water?
9 A. They used some for the meadow.
10 Q. Did Ernst use that water for cattle?
11 A. I don't know if he did or not.
12 Q. Where is that located in Monitor Valley.
13 A. Two or three miles this side of Fotts' place.
14 Q. Did you ever use that when driving cattle there?
15 A. No. We usually got what we could and came back in a
16 day.
17 Q. Did your cattle use that spring?
18 A. Yes, they must have.
19 Q. Do you know whether or not the people connected with
20 the Pine Creek Ranch, the old predecessors, claimed that water?
21 A. Oddie claimed it. He bought it from McMonigal.
22 Q. And he claimed the water right at that time, in 1902?
23 A. Yes.
24 Q. Do you know where McMonigal Spring is?
25 A. At the mouth of the canyon where he lived.
26 Q. Where McMonigal lived?
27 A. Yes.
28 Q. Did Oddie buy that?
29 A. Yes, I understand he bought all of McMonigal's hold-
30 ings.

1 Q. Did you ever go to that spring?
2 A. Yes, several times.
3 Q. Did cattle use that spring?
4 A. I don't think so. It was used for irrigation when
5 McMonigal lived there.
6 Q. When McMonigal lived there?
7 A. Oddie bought him out in 1902. He left there in 1901
8 or '02, when Oddie bought him out. He owned it at the time I
9 worked for him.
10 Q. Do you know anything about McMonigal? Did you ever
11 go to his place?
12 A. Yes. When he was living there.
13 Q. Do you know whether he was making use of McMonigal
14 Spring?
15 A. Yes.
16 Q. Was it used for domestic purposes?
17 A. Yes.
18 Q. It was part of his ranch at that time?
19 A. Yes.
20 Q. Do you remember the first time you were there?
21 A. No, I don't, Daniels; well, along in the '90's.
22 Q. A long time ago?
23 A. Yes, a long time ago.
24 Q. In regard to Northumberland Spring, do you know where
25 that is located? Is that connected with Pine Creek Ranch?
26 A. I understand it is.
27 Q. Did Oddie ever claim that?
28 A. The Mosquito Creek people owned that. Kaiser.
29 Q. You have been there?
30 A. Yes.

1 Q. It was used for what purpose?
2 A. For domestic and irrigation.
3 Q. Did they own Pine Creek Ranch?
4 A. No. They owned the spring.
5 Q. Were you ever there while Oddie was there?
6 A. Yes. I don't think he claimed it then, but I am not
7 sure. I think Mosquito Creek, Kaiser, owned it, and Scuffe and
8 the Dutchman lived there.
9 Q. Scuffe had ranch land?
10 A. He lived on Mosquito Creek ranch.
11 Q. How long ago was that?
12 A. That was in '90. His range was turned over to Kaiser.
13 Q. What about Bach Springs? Do you know anything about
14 that?
15 A. Bach Springs is the other side of Punch Bowl Spring.
16 Q. Where is Punch Bowl Spring?
17 A. They are the other side of Potts, up this way about
18 two miles.
19 Q. Is that in any way connected with Pine Creek Ranch?
20 A. I don't know.
21 Q. Who had it?
22 A. I couldn't tell. I don't know, but I heard it belong-
23 ed to Pine Creek Ranch.
24 Q. Do you know what it was used for?
25 A. For watering stock.
26 Q. Do you know whether Ernst's cattle watered there?
27 A. Horses watered there that belonged to the Pine Creek
28 Ranch.
29 Q. What was before Oddie's time?
30 A. When Ernst lived there.

1 Q. The horses belonged to Pine Creek Ranch?
2 A. Yes.
3 Q. What about Pablo Canyon Creek?
4 A. Pablo? I don't think I know of that.
5 MR. KEOUGH: Perhaps you would recognize it by Pasquel.
6 I think it was also called Pasquel Spring.
7 A. Up in Smokey?
8 MR. KEOUGH: Yes.
9 A. Yes, I know where that is.
10 Q. (Mr. Daniels): Do you know whether Pine Creek Ranch
11 used that for any purpose?
12 A. They used it for everything.
13 Q. Does that flow into Losquito Creek?
14 A. It flows into Barley Creek.
15 Q. Did Ernst ever use that?
16 A. Yes.
17 Q. Did Oddie use it?
18 A. Not the year I was there, but afterwards.
19 Q. Was it used for irrigation?
20 A. Yes.
21 Q. Is that in connection with Pine Creek Ranch?
22 A. Five or six miles north.
23 Q. It has been connected with that ranch as far as you
24 know for years?
25 A. Yes, as far as I know.
26 Q. During Ernst's time?
27 A. I am not sure if Oddie bought it or a man by the name
28 of Cook.
29 Q. In regards to another water right, known as Pine Creek,
30 where is that?

1 A. At Pine Creek Ranch.

2 Q. Did you ever see any of the owners use Pine Creek for
3 any purpose?

4 A. All the time, for irrigation, and domestic purposes,
5 and for stock.

6 Q. Did Ernst use it?

7 A. Yes.

8 Q. Did Oddie use it?

9 A. Yes.

10 Q. Do you know anything about Warm Springs, which connec-
11 ted with the Scuffe ranch?

12 A. Yes, I know where it is, but I don't know who owns it,
13 whether it belongs to Scuffe or not.

14 Q. Did you ever see Scuffe and those people use it?

15 A. Yes, for domestic purposes and for stock.

16 Q. The Scuffe people?

17 A. Yes.

18 Q. The Scuffe ranch became Kaiser's afterwards?

19 A. Kaiser owned the ranch, Scuffe was living there.

20 Q. What do you know about Larley Creek?

21 A. The overflow was used on what is called the Haystack
22 flat.

23 Q. Is that used by the Pine Creek Ranch?

24 A. By that field.

25 Q. How long ago do you remember using it at Pine Creek
26 Ranch?

27 A. He bought it from the old man in 1902.

28 Q. Did Ernst use the overflow?

29 A. Yes, for irrigation and for stock purposes.

30 Q. Do you know where Corcoran Creek is?

1 A. Yes.
2 Q. Where?
3 A. At what is called "Stone House", on the main road into
4 Belmont.
5 Q. Was that used by Oddie?
6 A. Yes.
7 Q. For what purpose?
8 A. Irrigation and stock purposes.
9 Q. Was it used by Ernst and his predecessors?
10 A. No, Ernst didn't own it, Corcoran owned it.
11 Q. You say him using it?
12 A. Yes, I helped put up hay there.
13 Q. The hay was irrigated by Corcoran Creek?
14 A. Yes.
15 Q. Coming down to Antelope Spring, in what is known as
16 Ralston Valley, do you know where that is?
17 A. Yes.
18 Q. Did you ever see cattle using that?
19 A. Yes, Sir.
20 Q. What cattle?
21 A. Pine Creek and everybody.
22 Q. Did you ever see Ernst's cattle using it?
23 A. Yes, I rode for Ernst, and camped there, and had cattle
24 of his there.
25 Q. Did Oddie have cattle there?
26 A. Oddie just had thoroughbreds.
27 Q. Did Johnson's cattle go down there?
28 A. Yes.
29 Q. Do you know whether or not the old Pine Creek Ranch
30 claimed that as a right?

1 A. I think it did at that time.

2 Q. In regard to Pine Creek Well, do you know anything

3 about that?

4 A. No, it wasn't there when I was riding.

5 Q. Do you know anything about who used it?

6 A. The Pine Creek outfit did, as I understand it, when

7 Owens was there.

8 Q. Have you ever been at the place?

9 A. Yes, when I went by there.

10 Q. In Stone Cabin Valley, do you know where Salisbury Well

11 is?

12 A. Yes.

13 Q. Do you know whether they ever used it or not?

14 A. I couldn't tell about that.

15 Q. That was after your time, to you think?

16 A. Yes, after I quit riding.

17 Q. Do you know where Andrews Creek is?

18 A. Yes.

19 Q. Where is that?

20 A. It runs into Pine Creek about one-half mile from the

21 upper field.

22 Q. Do you know whether they used that or not?

23 A. Yes, they used the water from there.

24 Q. How about Trail Canyon Creek?

25 A. Trail Canyon is the first canyon south of Andrews

26 Creek.

27 Q. Where does the creek run into?

28 A. I don't believe I ever saw any water come ^{out} of Trail

29 Canyon Creek.

30 Q. Referring to Pine Creek Well, do you remember who put

1 the well down?
2 A. That was in Owens' time, if I remember. Owens was the
3 foreman.
4 Q. For the United Cattle & Packing Company?
5 A. Yes.
6 Q. Do you remember of them digging that well?
7 A. No, I don't remember. It was just what I heard. I
8 wasn't there when it was being put down. I was there after it
9 was completed.
10 Q. Referring to Salisbury well, do you know anything about
11 that?
12 A. No.
13 Q. In regard to various people who were operating there,
14 do you remember the Kaisers?
15 A. Charlie Kaiser, yes.
16 Q. Remember Pasquel?
17 A. No, I don't remember Pasquel.
18 Q. Remember Scuffe?
19 A. Yes.
20 Q. Did all those people have livestock?
21 A. Scuffe did, yes. Kaiser and Scuffe together. Yes, I
22 think so.
23 Q. That is in the vicinity of Pine Creek?
24 A. That was at Mosquito Creek.
25 Q. These Pine Creek holdings, now known as the United Cat-
26 tle & Packing Company, they bought all the interests?
27 A. Yes.
28 Q. Do you remember Corcoran running cattle?
29 A. He had a few head, yes, not very many. He kept his
30 home pretty well.

1 Q. Where did the horses run?
2 A. Where the Haystack Field is now, and through Monitor
3 Valley.
4 Q. How long ago was that?
5 A. In the '90's, '93 or '94. When Oddie bought out Cor-
6 coran they all left.
7 Q. Oddie bought out several people?
8 A. Corcoran and McMonigal and John Cook.
9 Q. What did Cook do?
10 A. He owned a place at the mouth of Northumberland.
11 Q. Did he run cattle?
12 A. Yes.
13 Q. On the range?
14 A. Yes.
15 Q. How long did you know Cook?
16 A. Since some time in the '80's.
17 Q. Most of these springs you have been talking about have
18 been in use by the various owners since the '80's?
19 A. Yes, I think so.
20 Q. For irrigation or cattle grazing?
21 A. For irrigation and livestock.
22 Q. What about the place known as Woodchopper Spring?
23 A. I don't seem to recognize that name. I might know it
24 by another.
25 MR. DANIELS: Where is that, Mr. Keough?
26 MR. KEOUGH: About five miles from Antelope Springs. In
27 that country.
28 MR. DANIELS: You know what it would be called, Mr. Mumph-
29 rey?
30 MR. MUMFREY: We called that country Cedar Corral.

1 Q. What stock grazed there?

2 A. There was always stock from Monitor, and there was May
3 cattle, Ernst, Anderson, John Cook's, George Stuper.

4 Q. There have been cattle from other ranches?

5 A. Yes. They all ranged there during the winter. We
6 cleaned out Cedar Spring and made it what it was. I was on the
7 scraper, with a team. I think that is the same as Woodchopper
8 Spring.

9 Q. How long ago was that?

10 A. Too long; somewhere about '90, I think.

11 Q. You were in that vicinity off and on for years and
12 years, every so often?

13 A. Yes. When I was riding, I would be in that country
14 every spring regularly, riding after cattle.

15 THE COURT: This spring called Cedar Corral Spring, that
16 is about three miles from some other spring?

17 A. Three or four miles from Antelope Springs, about five
18 miles, I should judge.

19 MR. DANIELS: Q. With regards to the water channel, did
20 cattle ever go down that way?

21 A. Yes. In the spring of the year.

22 Q. What cattle?

23 A. Cattle always watered there, always watered there.

24 Q. All the old-timers had cattle?

25 A. Yes. Every spring we would round them up, what didn't
26 get stuck in the mud. A lot of them died in mud holes.

27 Q. Did cattle from Pine Creek and the Scuffe Ranch all
28 use that place?

29 A. Yes, all the cattle used the water there.

30 Q. During the years you were connected with the cattle in-

1 dustry they went down there?

2 A. The cattle used to run together. There were no for-
3 est ranges. We just put the cattle in the hills for feeding and
4 let them go.

5 Q. Do you know when the Water Company started to build
6 their plant in Rye Patch Channel?

7 A. I think it was in 1901 that they started.

8 Q. Do you recall what provision they made for the water-
9 ing of cattle at that place?

10 A. No, I don't, Lowell, I don't know what provision was
11 made for the cattle. I understood that after they got started
12 pumping there was some kind of an agreement to let the water run
13 for cattle.

14 Q. Did you ever seem to see places left for cattle to
15 water at?

16 A. Yes, there were plenty of watering places when I was
17 there.

18 Q. Did they always leave plenty of water, and was there plenty
19 of water for cattle?

20 A. Yes.

21 MR. DANIELS: That is all. Thank you, Jack.

22 MR. DANIELS: I would like to call Jim Hughes.

23 JIM HUGHES, a witness called on behalf of the plaintiff,
24 being first duly sworn, testified as follows:

25 MR. DANIELS: Q. What is your name, please?

26 A. Jim Hughes.

27 Q. Where do you live?

28 A. Belmont.

29 Q. How long have you lived there?

30 A. For 12 years.

1 Q. How old are you, Jim?
2 A. Sixty-two years.
3 Q. Sixty-four?
4 A. No, sixty-two.
5 Q. You have heard Mr. Humphrey testify as to these var-
6 ious springs and water rights?
7 A. Yes.
8 Q. You were able to hear him?
9 A. Yes.
10 Q. Did you ever work for any ranchers in that vicinity?
11 A. I worked at Pine Creek.
12 Q. Did you ever work for Ernst?
13 A. Yes.
14 Q. Did you ever work for any other old-timers?
15 A. No. Ernst was the only one I worked for. I worked
16 for Oddie and Mr. Mcough.
17 Q. Did you ever work for Scuffe or the Kaiser outfit?
18 A. I worked for Scuffe.
19 Q. Did you ever work for McConigall?
20 A. No.
21 Q. Do you know where his place was?
22 A. Yes.
23 Q. You knew where most all of these people lived, that
24 Mr. Humphrey related?
25 A. Yes. But I don't remember some of them. I was too
26 young.
27 Q. Do you know where Punch Bowl Spring is?
28 A. Yes.
29 Q. It is located in what valley?
30 A. Monitor Valley.

1 Q. Do you know what ranch that is connected with?

2 A. No, I don't.

3 Q. Do you know who ran cattle there?

4 A. I don't know, unless it would be Pine Creek cattle.

5 Q. Did Scuffe ever use that springs, do you know?

6 A. I don't know, but I suppose his cattle watered there

7 like anyone else's.

8 Q. While working for Cddie, did his cattle make use of

9 that place?

10 A. He had his cattle at the ranch.

11 Q. Do you know where McMonigal Spring is?

12 A. Yes.

13 Q. Was that ever used by McMonigal?

14 A. Yes.

15 Q. You saw him using water from that spring?

16 A. I didn't see him.

17 Q. Do you know who purchased McMonigal's ranch?

18 A. I believe Cddie did.

19 Q. What do you know about Bach Spring?

20 A. I don't know much about it, only that it was a water-

21 ing place.

22 Q. For what ranch?

23 A. I don't know.

24 Q. Did Pine Creek ranch use it?

25 A. The stock watered there, is all I know.

26 Q. Stock from Pine Creek Ranch watered there?

27 A. Yes.

28 Q. You say you worked for Ernst?

29 A. A little, on the ranch.

30 Q. What about Northumberland Spring, do you know where
that is?

1 A. Yes.

2 Q. Do you know whether it was connected with Pinr Creek
3 Ranch for watering purposes?

4 A. I couldn't say.

5 Q. Do you know who owned it originally, or claimed to
6 own it?

7 A. As far as I know, I think Scuffe claimed it.

8 Q. Did he make use of it?

9 A. Yes.

10 Q. And that is the same ranch that Masiers had afterwards?

11 A. Yes, Losquito Creek.

12 Q. Do you know where Pablo Canyon, or Pasquel Spring, is?

13 A. Yes.

14 Q. Do you know who made use of that?

15 A. Cook.

16 Q. What did he use it for?

17 A. Well, for cattle, and they raised hay.

18 Q. It was used for both cattle and irrigation?

19 A. Yes.

20 Q. Do you know who got Cook's ranch?

21 A. Oddie did.

22 Q. You know all about Pine Creek?

23 A. Yes.

24 Q. That is used by who?

25 A. By the Pine Creek Ranch.

26 Q. And it is used for what purpose?

27 A. Irrigation.

28 Q. Did Ernst use it?

29 A. Yes.

30 Q. How long ago was that?

1 A. I don't really know. I was pretty young at that time.
2 Q. You saw Oddie use it?
3 A. Yes.
4 Q. You worked for Oddie?
5 A. Yes.
6 Q. As to Warm Springs, do you know where that is?
7 A. Yes.
8 Q. Did you ever see Scuffe use it?
9 A. Not any more than anyone else.
10 Q. Did Scuffe's stock use it?
11 A. Yes, or anyone else's.
12 Q. How long ago was Scuffe using it?
13 A. I don't just remember. I was there until the time of
14 his death.
15 Q. Was he there when Oddie was there?
16 A. I believe he was.
17 Q. As to Barley Creek, the overflow, did you ever see that
18 used by any ranch?
19 A. It was used to water the Haystack Field.
20 Q. Who owned the Haystack Field?
21 A. Pine Creek.
22 Q. The same one as Ernst owned?
23 A. Yes.
24 Q. You saw Ernst using it?
25 A. Yes.
26 Q. And Oddie used it, too?
27 A. Yes.
28 Q. Referring to Corcoran Creek, where is that located?
29 A. Eight or nine miles south of Pine Creek.
30 Q. Do you know what that creek was used for?

1 A. Irrigation.

2 Q. By who?

3 A. It was used by Corcoran and Oddie.

4 Q. Was Corcoran before Oddie?

5 A. Yes.

6 Q. Do you remember his being before?

7 A. Yes. I can remember him.

8 Q. Do you remember whether or not Oddie bought that

9 place?

10 A. I believe he did.

11 Q. You worked for him?

12 A. Yes.

13 Q. Did you work at Corcoran Creek?

14 A. Not for Oddie. I worked for Pine Creek.

15 Q. Going over to Colston Valley, we come to Antelope

16 Springs. Do you know where that is, and how far from the Pine

17 Creek Ranch?

18 A. I think it is 45 or 50 miles south of Pine Creek Ranch.

19 Q. Do you know whether cattle from Pine Creek Ranch made

20 use of that spring?

21 A. They did. They used to water there.

22 Q. Did you ever go there while working for Ernst?

23 A. Yes.

24 Q. It was made use of by Ernst's cattle?

25 A. Yes.

26 Q. How about the United Cattle & Packing Company?

27 A. I rode there after their cattle.

28 Q. All of these various springs I have mentioned, did the

29 United Cattle & Packing Company use these springs for their cat-

30 tle?

1 A. Yes, I think so. Their cattle watered there the same
2 as anyone else's. The springs were open for any stock.
3 Q. They did water there?
4 A. Yes.
5 Q. And you rode for the United Cattle & Packing Company?
6 A. Yes.
7 Q. For how many years?
8 A. I rode for about 14 years south of here, and then I
9 rode up around here for about a year or a little over before I
10 went south.
11 Q. They were using all these various springs?
12 A. Yes.
13 Q. How about Antelope Springs; did they make use of that?
14 A. Yes.
15 Q. Do you know where Pine Creek Well is?
16 A. Yes.
17 Q. Do you know who dug that well?
18 A. The United Cattle & Packing Company.
19 Q. Do you know who worked on it?
20 A. No.
21 Q. Did you ever see the company use that well?
22 A. Yes.
23 Q. You used it while riding?
24 A. Yes.
25 Q. For what purpose?
26 A. Watering cattle and horses.
27 Q. Do you recall about when that was dug?
28 A. No, I can't.
29 Q. Do you know where Salisbury Well is?
30 A. Yes.

1 Q. Did you have anything to do with Salisbury Well?
2 A. No.
3 Q. Did they ever make use of it?
4 A. Yes, for watering stock, when going through.
5 Q. Who was that, the United Cattle & Packing Company?
6 A. It was.
7 Q. At that time?
8 A. Yes, I believe it was at that time.
9 Q. These various watering places you mentioned, when you
10 rode for the people who used to own them, prior to the United
11 Cattle Company, did they drive cattle down to those wells and
12 make use of them?
13 A. You mean Johnson?
14 Q. Johnson and the rest?
15 A. They didn't have a well. They ranged the cattle in
16 Ralston Valley in winter, but brought them back in the spring.
17 Q. Do you remember seeing the cattle drift down on snow
18 down south, or in the lower end of Ralston Valley, around Cactus
19 Range?
20 A. Yes, around Cactus Range.
21 Q. You have ridden in there for cattle?
22 A. Yes.
23 Q. Do you know whether they went down in winter on the
24 snow?
25 A. Yes, they drifted out there.
26 Q. About how far south would they go?
27 A. Well, as far as ever I was south, was Cactus Peak,
28 eight or ten miles.
29 Q. How far east did they go?
30 A. Well, they would go over to what is called Wild Horse
pipe line, and around Lawich.

1 Q. They would drift all through there?
2 A. Yes, they would drift all through there.
3 Q. Was that just the United Cattle & Packing Company
4 cattle or other cattle, too?
5 A. Other cattle would drift with them, too. The United
6 Cattle Company cattle drifted all over the State. Some clear
7 over in Caliente. We got some over there.
8 Q. In connection with the grazing land down around Cac-
9 tus, how did the cattle water there?
10 A. They would water on snow and those hardpan lakes.
11 Q. The water would accumulate in hard lakes?
12 A. Yes.
13 Q. And they would graze there during the winter?
14 A. Yes.
15 Q. Did you have to go down in the spring and take them
16 back?
17 A. Yes.
18 Q. You would find them in that vicinity?
19 A. Yes, they would go down to the lower end and stay.
20 Q. When these cattle were drifting, how far west would
21 they go; as far as the Esmeralda County line?
22 A. I just don't remember.
23 Q. I refer you to the map known as Western States Service
24 Company. Here on the map is indicated Cactus Mountains. How
25 far west would they go? As far as Stonewall Mountain?
26 A. They didn't get down in the Stonewall Mountain coun-
27 try.
28 Q. They were more around Cactus Mountain?
29 A. Yes.
30 Q. Would they drift east of the Cactus Mountains?

1 A. Yes.
2 Q. How far?
3 A. I don't recall, but quite a ways.
4 Q. As far as Kawich range?
5 THE COURT: Would they go west of the Cactus Mountains?
6 A. They may have gone a ways, but not far.
7 Q. (Mr. Daniels): Do you know where Woodchopper Spring
8 is?
9 A. Not by that name, but I probably know where it is.
10 Q. About five miles south of Antelope Springs, known as
11 Cedar Corral Springs?
12 A. Yes, I know where that is.
13 Q. Did the cattle ever go to that spring?
14 A. Yes.
15 Q. Did other cattle in the early days go to that spring?
16 A. I don't remember whether they did or not.
17 MR. DANIELS: That is all, Mr. Hughes.
18 MR. DANIELS: Mr. Keough, please.
19 CHARLES KEOUGH, a witness called on behalf of the plain-
20 tiff, being first duly sworn, testified as follows:
21 MR. DANIELS: Q. Please state your name.
22 A. Charles Keough.
23 Q. What is your business?
24 A. Livestock business.
25 Q. Have you ever been connected with the United Cattle &
26 Packing Company?
27 A. Yes, Sir.
28 Q. How long were you with them?
29 A. Well, I first worked for them in '29, but I have been
30 familiar with the outfit since 1910.

1 Q. Since 1910?
2 A. Yes.
3 Q. The person who had charge during 1910 and since that
4 time was Mr. Humphrey?
5 A. Yes. Our cattle would run in amongst theirs, and we
6 cowboyed together in the Spring.
7 Q. Mr. Humphrey was president of the United Cattle & Pack-
8 ing Company?
9 A. Yes.
10 Q. And you are familiar with their property?
11 A. I am.
12 Q. I believe you are related, so you had been at the prop-
13 erty prior to the time you were working for him?
14 A. Yes.
15 Q. Are you familiar with the various ranches?
16 A. Yes.
17 Q. How about the Scuffe ranch, later known as Kaiser's?
18 A. It is referred to as the Scuffe Ranch, but it belonged
19 to Kaiser, or Kaiser's company, the Monitor Livestock company.
20 Q. That is located near Pine Creek Ranch?
21 A. Six miles west, and a little north.
22 Q. When was the first time you ever went out in that
23 country?
24 A. In the fall of 1911.
25 Q. What were you doing there?
26 A. Riding after cattle. At that time Pine Creek belonged
27 to Bill Marsh and Stimler, and Kaiser's ranch belonged to the
28 Monitor, and Joe Scuffe was leasing it.
29 Q. How long did you ride in that vicinity?
30 A. I was all over that Monitor Valley. We followed the

1 rodeo all over the valley.

2 Q. You know where Punch Bowl Spring is?

3 A. Yes, Sir.

4 Q. And during the time that you were there, do you re-

5 call any cattle which belonged to Pine Creek, or one of the

6 ranches owned by the United Cattle & Packing Company, making

7 use of that spring?

8 A. Yes, continuously, from the time I first became ac-

9 quainted with the Valley, cattle belonging to the United Cattle,

10 or its predecessors in interest, used it.

11 Q. Would you answer the same to McConigal Spring?

12 A. Yes.

13 Q. And Bach Springs?

14 A. Yes.

15 Q. Northumberland Spring?

16 A. Yes.

17 Q. Pablo or Pasquel Spring?

18 A. Yes.

19 Q. Pine Creek?

20 A. Yes.

21 Q. Warm Springs?

22 A. Yes.

23 Q. And the overflow of Barley Creek, Corcoran Creek and

24 Antelope Springs in Ralston Valley?

25 A. Yes, and also the Combination Springs over at Belmont.

26 Q. Is Combination Springs connected with any of them?

27 A. The livestock have always used it to water. I think

28 it belonged to the Belmont Mining Company for the last ten years,

29 and the ground belongs to the Sheep company, but livestock always

30 used it to water at.

1 around Township 5 south.

2 Q. There are a number of mortgages against said property,
3 in connection with the Complaint, and these mortgages are still
4 outstanding?

5 A. I do not believe so.

6 Q. As far as you know, they are owned by Mr. Wardlaw?

7 A. Yes.

8 Q. With regards to the exchange of land with Tina Hooper,
9 known as Indian Allotment, the facts as set forth in the Com-
10 plaint are correct?

11 A. Yes, Sir.

12 Q. And it is the intention, that is, the agreement of
13 sale was made with the intention of making the transfer?

14 A. Yes, Sir.

15 Q. With regards to the water known as the Eye Patch Chan-
16 nel, that has never yet been settled?

17 A. There has never been final proof issued.

18 Q. That is due to the various protests filed, or what?

19 A. It is mostly due to neglect. The protests were never
20 wound up.

21 Q. The Marsh protest is still in?

22 A. A release was signed for Marsh. That is, they signed
23 a release, on the provision that when the release was issued, the
24 would get a one-quarter interest, but they withdrew the protest
25 with that understanding. Other interests in said spring, such
26 as Stewart, Borrego, have all been purchased. Borrego withdrew
27 his protest, and Mrs. Stewart assigned her interest to the Uni-
28 ted Cattle & Packing Company.

29 Q. Is there anything else you want to say in connection
30 with these water rights?

1 A. Well, about all I can say is, the only water right to
2 be worried about was Darley Creek. Both had an interest in it
3 and room was left for argument, and it might develop into a law-
4 suit some day. Mildred Marsh wanted to sell so I advised Mr.
5 Wardlaw to buy it in order to make all titles clear, and there
6 would be no cloud of any kind. That is my version of it.

7 Q. That has been settled, then, so there will be no con-
8 test of any water in that valley?

9 A. Mr. Wardlaw owns it now.

10 MR. DANIELS: I think that is all we have to offer, your
11 Honor. We desire to submit the case, but for your information
12 there are parts of this land where none of the water rights,
13 that is, none of the spring rights, are located below the Mount
14 Diablo Base & Meridian, but some of the land wherein the cattle
15 were permitted to drift and water on snow is in what is known
16 as the Tonopah Gunnery & Bombing Field. There has been issued
17 out of the Federal Court of this District, a certain Order re-
18 questing the vacating of this land, so I think in connection
19 with your Order, if you should see fit to give us a decree, it
20 will be subject to that of said cases, otherwise we might be in
21 contempt of Court. Referring to the mortgages, the decree will
22 be subject to those mortgages. We expect that because the mort-
23 gages will not be settled until after the case has been comple-
24 tely settled, and title is issued by the Washoe County Title
25 Guaranty Company, subject to these mortgages.

26 THE COURT: You will prepare a formal Decree.

27 MR. DANIELS: Yes, your Honor, and we can check the matter
28 over further at that time. I think after the decree has been
29 prepared and checked over, the order for the entry of the decree
30 can be made at that time. In addition to the Washoe Title Com-

1 pany, I have checked it over myself very thoroughly. The Com-
2 plaint as to the sectional land and as to the springs. Of
3 course, the Washoe County Title Guaranty Company have nothing
4 to do with the water rights, and will not pass any title on
5 those. Most of these are vested water rights, outside of the
6 two water rights we have placed in the record. The object of
7 bringing title here is in vesting the water rights as recog-
8 nized by this State, but as to the land itself, I have checked
9 that over very thoroughly.

10 THE COURT: Of course, the checking of the land and the
11 settling of its title is a simple matter. But in dealing with
12 the water rights, especially what we know as vested water rights,
13 excepting on rivers and streams, I think the State Engineer's
14 office does not purport to make any final determination of these
15 vested rights on springs. They either overflow or don't over-
16 flow, as the case may be, but the State Engineer's office does
17 receive evidences of title to these rights, in the form of an
18 affidavit, which they place on file, and I suppose that is what
19 you wish this record for?

20 MR. DANIELS: We would like to file that, if the Court
21 please, with the State Engineer, and undoubtedly some time Mr.
22 Wardlaw might be in an action for the determination of those
23 rights, and we could have the record here. I don't know if it
24 would ever be used for that purpose, but we can file them with
25 the State Engineer with that in view. That is, file a copy of
26 the record.

27 THE COURT: I should think, not only as to land but also
28 as to these water rights, so-called vested water rights, and
29 other rights, that a decree would be conclusive, and title would
30 be quieted against all those persons, but as to vested water

1 rights, I do not believe a decree would make out any title that
2 would be binding against persons not connected with this suit.

3 MR. DANIELS: I do not think, your Honor, that a stranger
4 would have any right to claim any use of these springs or graz-
5 ing rights around it. We still have Act 25 on the Statute books,
6 which would prohibit any stranger from making use of them.

7 THE COURT: The case will be deemed submitted, and you may
8 prepare and submit the form of Decree.

9 THE COURT: Court will be in recess.

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Francis Bell County Clerk

By *John P. Hall* Deputy

1 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
2 STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE.

No. 5038.

3
4
5 UNITED CATTLE & PACKING COMPANY,
6 a Corporation,

Plaintiff,

-vs-

7
8
9 JOHN DOE SMITH, husband of DICEY MARIA SMITH; all
10 unknown heirs at law of JOHN DOE SMITH, husband
11 of DICEY MARIA SMITH, deceased; S. P. KINCAID;
12 all unknown heirs at law of S. P. KINCAID; deca-
13 sed; E. H. KINCAID; all unknown heirs at law of
14 E. H. KINCAID, deceased; SAMANTHA P. KINCAID; all
15 unknown heirs at law of SAMANTHA P. KINCAID; de-
16 ceased; JACOB B. HUMPHREY; JAKE B. HUMPHREY; J.
17 B. HUMPHREY; HENRY D. ERNST; all unknown heirs at
18 law of HENRY D. ERNST, deceased; TIM HOOPER; JOHN
19 CONNOLLY; HENRY G. CLINTON; ESSIE WEST, formerly
20 ESSIE SCUFFE; individually and as heir at law of
21 JOSEPH SCUFFE, deceased; all unknown heirs at law
22 of JOSEPH SCUFFE, deceased; CHAS. E. KAISER; all
23 unknown heirs at law of CHAS. E. KAISER, deceased;
24 C. E. GLOVER; all unknown heirs at law of C. E.
25 GLOVER, deceased; CORA E. KAISER; all unknown
26 heirs at law of CORA E. KAISER, deceased; CHARLES
27 E. KAISER; all unknown heirs at law of CHARLES E.
28 KAISER, deceased; ISAAC G. McMONIGAL; all unknown
29 heirs at law of ISAAC G. McMONIGAL, deceased;
30 THEOPHILE GUERTIN; all unknown heirs at law of

Alameda

RECORDED
INDEXED
MAY 15 1942

1 THEOPHILE CUERTIN, deceased; DANIEL ERNST; all un-
2 known heirs at law of DANIEL ERNST, deceased;
3 GERALD STIMLER, as heir at law of HARRY C. STIMLER,
4 deceased; all unknown heirs at law of HARRY C.
5 STIMLER, deceased; all unknown heirs at law of W.
6 A. MARSH, deceased; MILDRED MARSH FROSINI, indivi-
7 dually and as heir at law of W. A. MARSH, deceased;
8 THE TONOPAH BANKING CORPORATION, a Corporation, and
9 LEO F. SCHMITT, Receiver of Tonopah Banking Corpor-
10 ation, a Corporation; JOHN CONNOLLY; THE MONITOR
11 VALLEY LAND AND CATTLE COMPANY, a Corporation; NYE
12 COUNTY LAND AND LIVESTOCK COMPANY, a Corporation;
13 W. H. THOMAS, as Sheriff of Nye County, Nevada;
14 FRANK E. BELL, County Treasurer of Nye County; FRANK
15 E. BELL, as County Clerk of Nye County, Nevada, and
16 ex-officio Treasurer of said County, as Trustee for
17 County of Nye, Nevada property; JOHN POTTS; GEORGE
18 POTTS; MRS. E. D. KAISER; all unknown heirs at law
19 of MRS. E. D. KAISER, deceased; EMMA B. KAISER; all
20 unknown heirs at law of EMMA B. KAISER, deceased;
21 M. W. ESSER; M. W. ESSER, deceased, and all unknown
22 heirs at law of M. W. ESSER, deceased; ADAM STONE-
23 BARGER; ADAM STONEBARGER and all unknown heirs at
24 law of ADAM STONEBARGER, deceased; MRS. E. B. KAISER;
25 all unknown heirs at law of MRS. E. B. KAISER, decea-
26 sed; EMMA ORNELAS; OLEPHIA KING, ELLEN NAY, as heirs
27 at law of J. B. NAY, deceased; all unknown heirs at
28 law of J. B. NAY, deceased; O. C. STEWART; OLIVE C.
29 STEWART; JOSEPH A. BORREGO; JAMES JENSEN; JOHN DOE;
30 RAY COE; HARRY FOE; MARY MOE; SUSAN MOE; all unknown

1 heirs at law of JOHN DOE, deceased; all unknown heirs
2 at law of RAY COE, deceased; all unknown heirs at law
3 of HARRY FOE, deceased; all unknown heirs at law of
4 MARY MOE, deceased; all unknown heirs at law of SUSAN
5 MOE, deceased; JOHN DOE CORPORATION, and RAY COE COR-
6 PORATION,

7 Defendants.
8

9 DECREE ESTABLISHING TITLE

10 This cause coming on regularly for hearing this 19th day
11 of January, 1942, before the Court without a jury, Honorable Wm.
12 D. Hatton, presiding, the plaintiff being represented by his
13 counsel, Lowell Daniels, Esquire, and certain defendants, name-
14 ly: James Butler, having appeared by Answer as filed by his at-
15 torney, Wm. J. Crowell, Esquire, and thereafter having filed a
16 Stipulation as to entry of Decree and Judgment in said case; and
17 the defendant, Ellen Nay, having filed an Answer by and through
18 her attorney, Wm. J. Crowell, Esquire, and having thereafter filed
19 a Stipulation as to entry of said Decree; and the defendant,
20 Frank E. Bell, County Treasurer of Nye County, and Frank E. Bell,
21 as County Clerk of Nye County, Nevada, and ex-officio Treasurer
22 of said County, as Trustee for County of Nye, Nevada property,
23 having filed a Disclaimer in said case; and the defendant, Jacob
24 B. Humphrey, Jake B. Humphrey and J. B. Humphrey, having filed
25 his Disclaimer in said case; and the defendants, John Doe Smith,
26 husband of Dicey Maria Smith; all unknown heirs at law of John
27 Doe Smith, husband of Dicey Maria Smith, deceased; S. P. Kin-
28 caid; all unknown heirs at law of S. P. Kincaid, deceased; E. H.
29 Kincaid; all unknown heirs at law of E. H. Kincaid, deceased;
30 Samantha P. Kincaid; all unknown heirs at law of Samantha P. Kin-

1 caid, deceased; Henry D. Ernst; all unknown heirs at law of
2 Henry D. Ernst, deceased; Tim Hooper; John Connolly; Henry G.
3 Clinton; Essie West, formerly Essie Scuffe, individually and
4 as heir at law of Joseph Scuffe, deceased; all unknown heirs
5 at law of Joseph Scuffe, deceased; Chas. E. Kaiser, all unknown
6 heirs at law of Chas. E. Kaiser, deceased; C. E. Glover; all
7 unknown heirs at law of C. E. Glover, deceased; Cora E. Kaiser;
8 all unknown heirs at law of Cora E. Kaiser, deceased; Charles
9 E. Kaiser; all unknown heirs at law of Charles E. Kaiser, de-
10 ceased; Isaac G. McMonigal; all unknown heirs at law of Isaac
11 G. McMonigal, deceased; Theophile Guertin; all unknown heirs at
12 law of Theophile Guertin, deceased; Daniel Ernst; all unknown
13 heirs at law of Daniel Ernst, deceased; Gerald Stimler, as heir
14 at law of Harry C. Stimler, deceased; all unknown heirs at law
15 of Harry C. Stimler, deceased; all unknown heirs at law of W.
16 A. Marsh, deceased; Mildred Marsh Frosini, individually and as
17 heir at law of W. A. Marsh, deceased; The Tonopah Banking Cor-
18 poration, a Corporation, and Leo F. Schmitt, Receiver of Tono-
19 pah Banking Corporation, a corporation; John Connolly; The Mon-
20 itor Valley Land and Cattle Company, a corporation; Nye County
21 Land and Livestock Company, a Corporation; W. H. Thomas, as
22 Sheriff of Nye County, Nevada; John Potts; George Potts, Mrs.
23 E. D. Kaiser; all unknown heirs at law of Mrs. E. D. Kaiser, de-
24 ceased; Emma B. Kaiser; all unknown heirs at law of Emma B. Kai-
25 ser, deceased; M. W. Esser; M. W. Esser, deceased, and all un-
26 known heirs at law of M. W. Esser, deceased; Adam Stonebarger;
27 Adam Stonebarger and all unknown heirs at law of Adam Stonebar-
28 ger, deceased; Mrs. E. B. Kaiser; all unknown heirs at law of
29 Mrs. E. B. Kaiser, deceased; Emma Ornelas, Olephia King,
30 as heirs at law of J. B. Nay, deceased; all unknown heirs at

1 law of J. B. Nay, deceased; O. C. Stewart; Oline C. Stewart;
2 Joseph A. Borrego; James Jensen, each having been duly served
3 by summons in said action, and none of them appearing either
4 in person or by counsel, and it appearing to the Court that all
5 of said defendants have failed to appear, demur or otherwise
6 plead to the complaint in the above entitled action within the
7 time prescribed by law, and the defaults having been duly and
8 regularly entered against all of said defendants;

9 AND IT APPEARING that the plaintiff, at the time of filing
10 his complaint, filed for record in the office of the County Re-
11 corder of Nye County, Nevada, a Notice of the Pendency of this
12 action, containing a statement of the object of the action and a
13 particular description of the property affected thereby;

14 AND IT APPEARING that the summons herein has been duly and
15 regularly published in the Tonopah Daily Times Bonanza of Tono-
16 pah, Nye County, Nevada, the newspaper designated by the above
17 entitled Court by an order duly made and filed herein, as the
18 newspaper most likely to give notice to all persons interested,
19 and being a newspaper of general circulation printed and pub-
20 lished in the County above mentioned, where said property is
21 situated, at least once a week for a period of four consecutive
22 weeks, as more fully appears from the Affidavit of Publication
23 on file herein;

24 AND IT FURTHER APPEARING that a copy of said summons, at-
25 tached to a certified copy of the complaint herein, was, within
26 ten days after the making of the order for publication of sum-
27 mons herein, mailed to all of the defendants, save and except
28 those residing within the State of Nevada who were personally
29 served, with the postage thereon fully prepaid;

30 AND IT FURTHER APPEARING that a copy of the Summons here-

1 in, which Summons contained a description of the real property
2 and water rights affected by this action, was posted in a con-
3 spicuous place on each separate parcel of the property descri-
4 bed in said complaint, within thirty (30) days after the issu-
5 ance of said summons, as more fully appears from the Affidavit
6 of Posting on file herein;

7 AND IT FURTHER APPEARING that copies of Complaint and
8 Summons were served personally upon Tim Hooper, John Connolly,
9 Henry G. Clinton, Essie West, formerly Essie Scuffe; Mildred
10 Marsh Forsini; Tonopah Banking Corporation, a corporation, and
11 Leo F. Schmitt, Receiver of Tonopah Banking Corporation, a cor-
12 poration; The Monitor Valley Land and Cattle Company, a corpor-
13 ation; W. H. Thomas, as Sheriff of Nye County, Nevada; Frank E.
14 Bell, County Treasurer of Nye County; Frank E. Bell, as County
15 Clerk of Nye County, Nevada, and ex-officio Treasurer of said
16 County, as Trustee for County of Nye, Nevada property; John
17 Potts; George Potts; Emma Ornelas; Olephia King; Ellen Nay; O.
18 C. Stewart; Oline C. Stewart; Joseph A. Borrego and James Jensen;

19 AND IT FURTHER APPEARING that copies of said summons at-
20 tached to certified copies of the Complaint herein, were within
21 ten (10) days after making the order of publication of Summons
22 herein, mailed to John Doe Smith, husband of Dicey Maria Smith,
23 and all unknown heirs at law of John Doe Smith, husband of Dicey
24 Maria Smith, at his last known place of residence, Nye County,
25 Nevada; and also to S. P. Kincaid, and all unknown heirs of S.
26 P. Kincaid, at his last known place of residence, Nye County,
27 Nevada; and also to E. H. Kincaid, and all unknown heirs of E.
28 H. Kincaid, at his last known place of residence, Nye County,
29 Nevada; and also to Samantha P. Kincaid, and all unknown heirs
30 of Samantha P. Kincaid, at her last known place of residence,

1 Nye County, Nevada; and also to Henry D. Ernst, and all unknown
2 heirs of Henry D. Ernst, at his last known place of residence,
3 Nye County, Nevada; and also to all unknown heirs of Joseph
4 Scuffe, at his last known place of residence, Nye County, Nev-
5 ada; and also to Chas. E. Kaiser, and all unknown heirs of Chas.
6 E. Kaiser, at his last known place of residence, Nye County, Nev-
7 ada; and also to C. E. Glover and all unknown heirs of C. E. Glo-
8 ver, at his last known place of residence, Nye County, Nevada;
9 and also to Cora E. Kaiser and all unknown heirs of Cora E. Kai-
10 ser, at her last known place of residence, Nye County, Nevada;
11 and also to Charles E. Kaiser and all unknown heirs of Charles
12 E. Kaiser, at his last known place of residence, Nye County, Nev-
13 ada; and also to Isaac G. McMonigal, and all unknown heirs of
14 Isaac G. McMonigal, at his last known place of residence, Nye
15 County, Nevada; and also to Theophile Guertin and all unknown
16 heirs of Theophile Guertin, at her last known place of residence,
17 Nye County, Nevada; and also to Daniel Ernst and all unknown
18 heirs of Daniel Ernst, at his last known place of residence,
19 Nye County, Nevada; and also to Gerald Stimler, as heir at law
20 of Harry C. Stimler, deceased, at his last known place of resi-
21 dence, Nye County, Nevada; and also to all unknown heirs of
22 Harry C. Stimler, at his last known place of residence, Nye
23 County, Nevada; and also to all unknown heirs of W. A. Marsh,
24 at his last known place of residence, Nye County, Nevada; and
25 also to Mrs. E. D. Kaiser, and all unknown heirs of Mrs. E. D.
26 Kaiser, at her last known place of residence, Nye County, Nev-
27 ada; and also to Emma B. Kaiser and all unknown heirs of Emma
28 B. Kaiser, at her last known place of residence, Nye County,
29 Nevada; and to M. W. Esser and all unknown heirs of M. W. Esser,
30 at his last known place of residence, Nye County, Nevada; and

1 also to Adam Stonebarger and the unknown heirs of Adam Stone-
2 barger, at his last known place of residence, Nye County, Nevada;
3 and also to Mrs. E. B. Kaiser and all unknown heirs of Mrs. E.
4 B. Kaiser, at her last known place of residence, Nye County,
5 Nevada, with postage fully prepaid thereon.

6 AND IT FURTHER APPEARING that all of the requirements of
7 the laws of the State of Nevada for service of summons by pub-
8 lication have been fully complied with;

9 AND IT FURTHER APPEARING through documentary and oral
10 proof presented to the Court that all of the facts and things,
11 and matters as set forth in plaintiff's complaint herein, (ex-
12 cept as amended by Stipulation, ^{or}) are true, and that the plaintiff
13 above named now is, and for more than fifteen years prior there-
14 to (except certain lots, pieces and parcels as hereinafter de-
15 scribed) Has, by itself and its predecessors in interest, been
16 continuously the owner of, in the actual, exclusive and adverse
17 possession of, as against all persons and the whole world, and
18 entitled to the possession of those certain lots, pieces and
19 parcels of land lying and being in the County of Nye, ^{State of Nevada,} State of
20 Nevada, and as particularly hereinafter described, and that the
21 plaintiff has for more than five (5) years immediately preced-
22 ing the filing of this complaint paid all taxes of every kind
23 levied or assessed or due against said lots, pieces or parcels
24 of land and water permits and rights, lying and being in the
25 County of Nye, State of Nevada;

26 AND IT FURTHER APPEARING that all of the pieces, lots
27 and parcels of land described in said complaint herein have been
28 duly patented, either through the Department of Interior, United
29 States Land Office, or the land office of the State of Nevada,
30 (Except United States Patent No. 613396, issued January 7th, 1918;

1 and being Public Domain Allottee, No. 1018, Carson City, Nevada,
2 No. 010807, Trust Patent No. 953404, dated February 14th, 1925,
3 Carson Indian Agency; and Public Domain Allottee No. 1018, Car-
4 son City, Nevada, No. 010807, Trust Patent No. 953404, dated
5 February 14th, 1925, Carson Indian Agency, have not as yet been
6 made of record;

7 AND IT FURTHER APPEARING that applications for the var-
8 ious water rights which were made to the State Engineer with
9 permits issued thereon, are in force and effect;

10 AND IT FURTHER APPEARING that the vested water rights of
11 said plaintiff in and to the various water rights as hereinafter
12 described have been established by oral and documentary evidence
13 as presented to said Court;

14 The Court having fully examined into and determined the
15 legality of plaintiff's title, and of the title and claim of all
16 of the defendants, and their unknown heirs, and all unknown per-
17 sons, and all adverse claims to and clouds upon the said lots,
18 pieces and parcels of land and water rights, and every part
19 thereof, as described in said Complaint, and the Court being
20 fully advised in the premises; and it appearing that the plain-
21 tiff is entitled to the relief prayed for;

22 IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that the
23 plaintiff is the owner of and seised in fee simple, and in the
24 actual and peaceable possession of those certain lots, pieces and
25 parcels of land described in the Complaint and as hereinafter
26 described, and each and every part and parcel thereof;

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the
28 plaintiff is the owner of and in the actual and peaceable pos-
29 session of certain water rights, either water rights granted
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1 by the State of Nevada through water permits, or vested water
2 rights as hereinafter described;

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that none of
4 the defendants, nor any other person or persons has or have any
5 right, title, interest, claim, estate or possession in or to, or
6 lien upon, the said property, or any part thereof, adversely to
7 plaintiff's herein, except the liens and mortgages as issued to
8 and held by the Regional Agricultural Credit Corporation, as
9 follows:

10 (a) Mortgage and Chattel Mortgage, dated Feb-
11 ruary 7, 1933, recorded in Book 1 of Real and
12 Chattel Mortgages, page 507, records of County
Recorder of Nye County, Nevada;

13 (b) Mortgage and Chattel Mortgage, dated Feb-
14 ruary 9, 1934, recorded in Book 2 of Real and
Chattel Mortgages, page 12, records of County
Recorder, of Nye County, Nevada;

15 (c) Mortgage and Chattel Mortgage, dated June
16 2, 1936, recorded in Book J of Mortgages, page
305, records of County Recorder, of Nye County,
Nevada;

17 (d) Supplemental Mortgage, recorded in Book
18 J of Mortgages, Page 310, records of County Re-
corder of Nye County, Nevada;

19 (e) Mortgage and Chattel Mortgage, dated Sep-
20 tember 15, 1938, recorded in Book J of Mortga-
ges, page 393, records of County Recorder, of
21 Nye County, Nevada;

22 (f) Assignment of Mortgage, dated September 15,
23 1938, recorded in Book J of Mortgages, page 398,
records of County Recorder of Nye County, Nevada;

24 (g) Mortgage dated September 3, 1940, filed as
25 Chattel Mortgage No. 12101, records of County Re-
corder of Nye County, Nevada;

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that said
27 property herein referred to and described in said complaint,
28 and whose title is hereby quieted, established and determined
29 in the plaintiff herein, are all those certain lots, pieces and
30 parcels of land lying and being in the County of Nye, State of

1 Nevada, and particularly described as follows:

2 TOWNSHIP 10 NORTH, RANGE 46 EAST, MDB & M.

3 Section 12: E $\frac{1}{2}$ of NE $\frac{1}{4}$; SE $\frac{1}{4}$; State of Nevada
4 Patent No. 7858, issued November 24, 1914,
and United States Patent Certificate No. 40,
5 Eureka Land Office, Nevada, issued December
20th, 1877;

6 Section 13: N $\frac{1}{2}$ of NE $\frac{1}{4}$; State of Nevada pat-
7 ent No. 7858, issued November 24th, 1914;

8 Section 27: NW $\frac{1}{4}$ of SW $\frac{1}{4}$; S $\frac{1}{2}$ of SW $\frac{1}{4}$; United
9 States Patent No. 256623, issued March 20th,
1876, also known as Certificate No. 23, Eu-
reka, Nevada, Land Office;

10 Section 28: NE $\frac{1}{4}$ of SE $\frac{1}{4}$; United States Pat-
11 ent No. 256623, issued March 20th, 1876, al-
so known as Certificate No. 23, Eureka, Nev-
12 ada, Land Office;

12 TOWNSHIP 10 NORTH, RANGE 47 EAST, MDB & M.

13 Section 6: Lot 5 of the NW $\frac{1}{4}$; Lots 6 and 7 of
14 the SW $\frac{1}{4}$; State of Nevada Patent No. 7995, is-
sued July 21, 1915, and State of Nevada Pat-
15 ent No. 7858, issued November 24th, 1914;

16 Section 7: Lots 1 and 2 of the NW $\frac{1}{4}$; Lot 3 of
17 the SW $\frac{1}{4}$; State of Nevada Patent No. 7995, is-
sued July 21, 1915, and State of Nevada Pat-
18 ent No. 7858, issued November 24th, 1914.

18 TOWNSHIP 11 NORTH, RANGE 46 EAST, MDB & M.

19 Section 15: NW $\frac{1}{4}$ of SE $\frac{1}{4}$; W $\frac{1}{2}$ of SW $\frac{1}{4}$; NE $\frac{1}{4}$ of
20 SW $\frac{1}{4}$; United States Patent Certificate No. 44
Eureka, Nevada, Land Office, issued March
21 20th, 1882;

22 Section 16: S $\frac{1}{2}$ of S $\frac{1}{2}$, State of Nevada pat-
ent No. 2449, issued March 5th, 1886;

23 Section 17: S $\frac{1}{2}$ of S $\frac{1}{2}$; United States Patent
24 Certificate No. 22, Eureka, Nevada, Land Of-
fice, issued December 20th, 1877;

25 Section 18: Lot 2 of the NW $\frac{1}{4}$; State of Nev-
26 ada Patent No. 5006, issued May 11th, 1903;

27 Section 20: N $\frac{1}{2}$ of NE $\frac{1}{4}$; United States Patent
No. 613396, issued January 7, 1918;

28 Section 21: N $\frac{1}{2}$; State of Nevada Patent No.
29 5006, issued May 11th, 1903, and United
States Patent No. 613396, issued January 7th,
30 1918; also Public Domain Allottee, No. 1018,
Carson City, Nevada, No. 010807, Trust Patent
No. 953404, dated February 14th, 1925, Carson
Indian Agency;

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Section 22: NW $\frac{1}{4}$ of NW $\frac{1}{4}$; known as Public Domain Allottee No. 1018, Carson City, Nevada, No. 010807, Trust Patent No. 953404, dated February 14th, 1925, Carson Indian Agency.

TOWNSHIP 11 NORTH, RANGE 47 EAST, MDB & M.

Section 6: SE $\frac{1}{4}$ of NE $\frac{1}{4}$; State of Nevada Patent No. 4463, issued March 19th, 1901.

TOWNSHIP 12 NORTH, RANGE 46 EAST, MDB & M.

Section 9: N $\frac{1}{2}$ of SW $\frac{1}{4}$, State of Nevada Patent No. 3608, issued June 24th, 1896, and State of Nevada Patent No. 7336, issued September 12th, 1912;

Section 26: SE $\frac{1}{4}$; United States Patent No. 1053213, issued February 9th, 1932;

Section 32: NW $\frac{1}{4}$ of SE $\frac{1}{4}$; SE $\frac{1}{4}$ of SE $\frac{1}{4}$; United States Patent No. 637109, issued June 18th, 1918; and United States Patent No. 6557813, issued December 8th, 1916;

Section 35: E $\frac{1}{2}$; United States Patent No. 1053213, issued February 9th, 1932;

TOWNSHIP 12 NORTH, RANGE 47 EAST, MDB & M.

Section 7: SE $\frac{1}{4}$ of SW $\frac{1}{4}$; State of Nevada Patent No. 2610, issued May 21st, 1887;

Section 18: NE $\frac{1}{4}$ of NW $\frac{1}{4}$; E $\frac{1}{2}$ of SW $\frac{1}{4}$; Lots 3 and 4 of SW $\frac{1}{4}$; State of Nevada Patent No. 2610, issued May 21st, 1887, and State of Nevada Patent No. 11197, issued April 13, 1936;

Section 19: E $\frac{1}{2}$ of NW $\frac{1}{4}$; Lots 1 and 2 of NW $\frac{1}{4}$; E $\frac{1}{2}$ of SW $\frac{1}{4}$; Lots 3 and 4 of SW $\frac{1}{4}$; State of Nevada Patent No. 11197, issued April 13th, 1936, and United States Patent No. 1026640, issued April 23rd, 1929;

Section 29: W $\frac{1}{2}$ of SE $\frac{1}{4}$; SW $\frac{1}{4}$; United States Patent No. 798721, Carson City, No. 010399, issued March 3rd, 1921;

Section 30: E $\frac{1}{2}$ of NW $\frac{1}{4}$; Lots 1 and 2 of the NW $\frac{1}{4}$; W $\frac{1}{2}$ of SE $\frac{1}{4}$; Lots 3 and 4 of SW $\frac{1}{4}$; NE $\frac{1}{4}$ of SW $\frac{1}{4}$; United States Patent No. 1362907, issued October 19th, 1881, also known as Certificate No. 54 Eureka, Nevada, Land Office; United States Patent No. 1632907, issued October 19th, 1881, also designated Eureka, Nevada, Land Office No. 45; also United States Patent No. 798722, issued March 3rd, 1921;

1 Section 31: NE $\frac{1}{4}$; E $\frac{1}{2}$ of NW $\frac{1}{4}$; Lots 1 and 2 of
2 NW $\frac{1}{4}$; United States Patent No. 1362907, issued
3 October 19th, 1881, also known as Certificate
4 No. 54, Eureka, Nevada, Land Office; also Uni-
5 ted States Patent No. 1632907, issued May 11th,
6 1888, also designated as Eureka, Nevada, Land
7 Office Certificate No. 1; also United States
8 Patent, Carson City, No. 010403, and being
9 Patent No. 798722, issued March 3rd, 1921;

6 Section 32: W $\frac{1}{2}$ of NE $\frac{1}{4}$; NW $\frac{1}{4}$; NW $\frac{1}{4}$ of SE $\frac{1}{4}$; SE $\frac{1}{4}$
7 of SE $\frac{1}{4}$; NE $\frac{1}{4}$ of SW $\frac{1}{4}$; United States Patent
8 1632907, also known as Eureka, Nevada Land
9 Office Certificate No. 53, issued May 11th,
10 1888; and United States Patent No. 1632907,
11 also known as Eureka, Nevada Land Office
12 Certificate No. 1; issued May 11, 1888; and
13 United States Patent No. 798721, also known
14 as Carson City No. 010399, issued March 3rd,
15 1921; also United States Patent No. 928490,
16 issued January 8th, 1924.

12 TOWNSHIP 13 NORTH, RANGE 46 EAST, MDB & M.

13 Section 27: NE $\frac{1}{4}$ of SE $\frac{1}{4}$; State of Nevada Pa-
14 tent No. 3608, issued June 24th, 1896.

14 TOWNSHIP 13 NORTH, RANGE 47 EAST, MDB & M.

15 Section 5: SE $\frac{1}{4}$ of NE $\frac{1}{4}$; State of Nevada Pat-
16 ent No. 3608; issued June 24th, 1896;

17 Section 17: NW $\frac{1}{4}$ of NE $\frac{1}{4}$; State of Nevada Pat-
18 ent No. 3608, issued June 24th, 1896.

18 TOWNSHIP 14 NORTH, RANGE 47 EAST, MDB & M.

19 Section 18: N $\frac{1}{2}$ of SE $\frac{1}{4}$; State of Nevada Pat-
20 ent 7994, issued July 21st, 1915;

21 Section 19: NE $\frac{1}{4}$ of NW $\frac{1}{4}$; State of Nevada Pat-
22 ent No. 3521, issued December 5th, 1894;

22 Section 20: N $\frac{1}{2}$ of SW $\frac{1}{4}$; State of Nevada Pat-
23 ent No. 7994, issued July 21st, 1915;.

24 Section 22: W $\frac{1}{2}$ of E $\frac{1}{2}$; SE $\frac{1}{4}$ of SW $\frac{1}{4}$; State of
25 Nevada Patent No. 3521, issued December 5th,
26 1894; and State of Nevada Patent No. 7993,
27 issued July 21st, 1915;

26 Section 27: NW $\frac{1}{4}$ of NE $\frac{1}{4}$; State of Nevada Pat-
27 ent No. 3521, issued 15th of December, 1894.

28 Together with all water, water rights, water applications
29 and water permits, or privileges, connected with, belonging, ap-
30 purtenant to or incident to the lands as above described, or

1 used in connection with all or any part of said lands and prem-
2 ises, or used or usable in connection therewith, and all dams,
3 reservoirs and ditches, canals or other works for storage or
4 carrying of water now owned by the plaintiff herein or in which
5 it now has or may hereafter acquire any interest, and all appli-
6 cations now pending in the office of the State Engineer of the
7 State of Nevada, for any and all waters to be used in connection
8 therewith; also all water rights of every kind, nature and de-
9 scription owned by the plaintiff herein, or in which it has any
10 interest, including all stockwatering rights, privileges and per-
11 mits incident to or appurtenant to the said lands.

12) Together with all range rights, range water rights, and
13 range privileges used in connection with the said lands.

14 Together with all those certain water rights, water per-
15 mits, and vested water rights used in connection to said descri-
16 bed lands, or incident to said lands, as situate in the County
17 of Nye, State of Nevada, described as follows:

18 All water sources and areas fed by same:

19 Monitor Valley:

20 Punch Bowl Spring, being situated in T. 14 N.,
21 R. 47 E., being a vested right, and es-
22 tablished prior to the year 1900, plain-
tiff being entitled to fifty percent use
thereof, the balance of said vested right
being used by the Potts brothers.

23 McMonigal Spring, being situated in T. 14 N.,
24 R. 47 E., being a vested right, and es-
25 tablished prior to the year 1900, plain-
tiff being entitled to the use of all of
the water thereof.

26 Bach Spring, being situated approximately in Sec-
27 tion 35, T. 14 N., R. 46 E., being a vested
28 right, and established prior to the year
1900, plaintiff being entitled to the use
of all of the water thereof.

29 Northumberland Spring, being situated approximate-
30 ly in Section 7, T. 12 N., R. 46 E., being
a vested right, and established prior to the
year 1900, plaintiff being entitled to the
use of all of the water thereof.

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Pablo Canyon Creek, also known as Pasquel Spring, being situated in Sections 4, 5 and 6, T. 11 N., R. 46 E., being a vested right, and established prior to the year 1900; plaintiff being entitled to the use of all of the water thereof.

Pine Creek, being situated in T. 11 N., R. 46 E., Sections 19, and 4 miles easterly and 7 miles westerly, also the tributaries; being a vested right, and established prior to the year 1900, plaintiff being entitled to the use of all of the water thereof.

Warm Springs, being situated in T. 11 N., R. 46 E., Section 12, being a vested right, and established prior to the year 1900, plaintiff being entitled to the use of said Springs jointly with the owners of Scuffe Ranch.

Barley Creek, being situated in T. 9 N., R. 46 E., Section 12, northerly 20 miles along the course of the creek; being a vested right, and established prior to the year 1900; plaintiff being entitled to ninety per cent (90%) thereof, the balance of the use of said right being used by adjoining neighbors.
That said waters from said Barley Creek are at all times subject to and are subordinate to the right of Ellen May, one of the defendants, insofar as the water right that is granted to Ellen May by the State of Nevada under application for water, Appropriation No. 360, as recorded in Book 3, Page 360, of the County records, and being a right to appropriate .665 (665/1000) cubic feet per second of the flow of waters in said Barley Creek; period of use being from April 1st to September 30th of each year for the purposes of watering stock, irrigation and other beneficial uses.

Corcoran Creek, being situated in T. 10 N., R. 46 E., beginning on Section 30, running three miles easterly and four miles westerly; being a vested right, established prior to the year 1900; plaintiff being entitled to the use of all of the water thereof.

Ralston Valley:

Antelope Spring, being situated in Section 20, T. 5 N., R. 45 E., being a vested right, and established prior to the year 1900; also designated as State Engineer Permit No. _____; plaintiff being entitled to the use of all of the water thereof; together with 10,000 gallon earth reservoir and 70 feet sheep troughs.

1 Pine Creek Well, being situated approximately in
2 Section 17, T. 2 N., R. 44 E., being a vested
3 right, established in the year 1911;
4 plaintiff being entitled to the use of all
5 of the water thereof; this being a well 300
6 feet deep with 6" casing, gas pump, chutes,
7 corrals, scales, barn, 2 room cabin, 10,000
8 gallon iron storage tank, drinking troughs,
9 and earthen reservoir, connected therewith.

10 "Any right of the United Cattle & Packing
11 Company, plaintiff herein, has for livestock
12 to drift and feed on snow and water accumu-
13 lated in natural hardpan tanks, in lower
14 Ralston Valley as far South as T. 5 S., M.
15 D. E. & M."

16 Stone Cabin Valley:

17 Salisbury Well, situated in approximately section
18 27, T. 3 N., R. 46 E., being a vested right,
19 established about the year 1909, plaintiff
20 being entitled to the use of all of the wa-
21 ter thereof; consisting of a well 300 feet
22 deep, and cribbed with guides and gallow's
23 frame, gas pump, 30,000 gallon iron storage
24 tank, drinking troughs, cabin, pump house,
25 and corral, connected therewith.

26 Also water applications and permits as issued by
27 the State of Nevada as follows:

28 Application No. 4574, Certificate No. 945, issued
29 December 26, 1923. Source - Antelope Springs -
30 Irrigation and stock. Point of Diversion - NW 1/4
SW 1/4, Sec. 21, T. 5 N., R. 45 E., M.D.E.M. Approv-
ed April 9, 1918, for 0.4 c.f.s. of water. All of
the proofs were filed and certificate No. 945 is-
sued Dec. 26, 1923, for 0.0045 c.f.s. of water.

Application No. 6175, Certificate No. 845, issued
November 19, 1923. Source - Woodchopper Spring -
Stock and domestic. Point of Diversion SW 1/4 SE 1/4,
Sec. 5, T. 4 N., R. 45 E., M.D.E.M. Approved Mar-
ch 1, 1921, for 0.0125 c.f.s. All of the proofs were
filed and Certificate No. 845 issued November 19,
1923, for 0.003 c.f.s. of water.

All of the right, title and interest of plaintiff
in Application No. 7929, filed November 12, 1926,
with State Engineer of the State of Nevada, by Uni-
ted Cattle & Packing Company, plaintiff herein,
the source of water being Rye Patch Channel, Nye
County, Nevada, point of diversion being SE 1/4 SE 1/4,
Section 31, T. 4 N., R. 44 E., M.D.E.M., being for
stock, irrigation and domestic uses.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the de-
fendants and unknown defendants, and none of them, have any

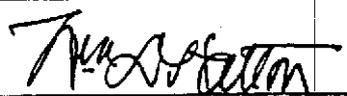
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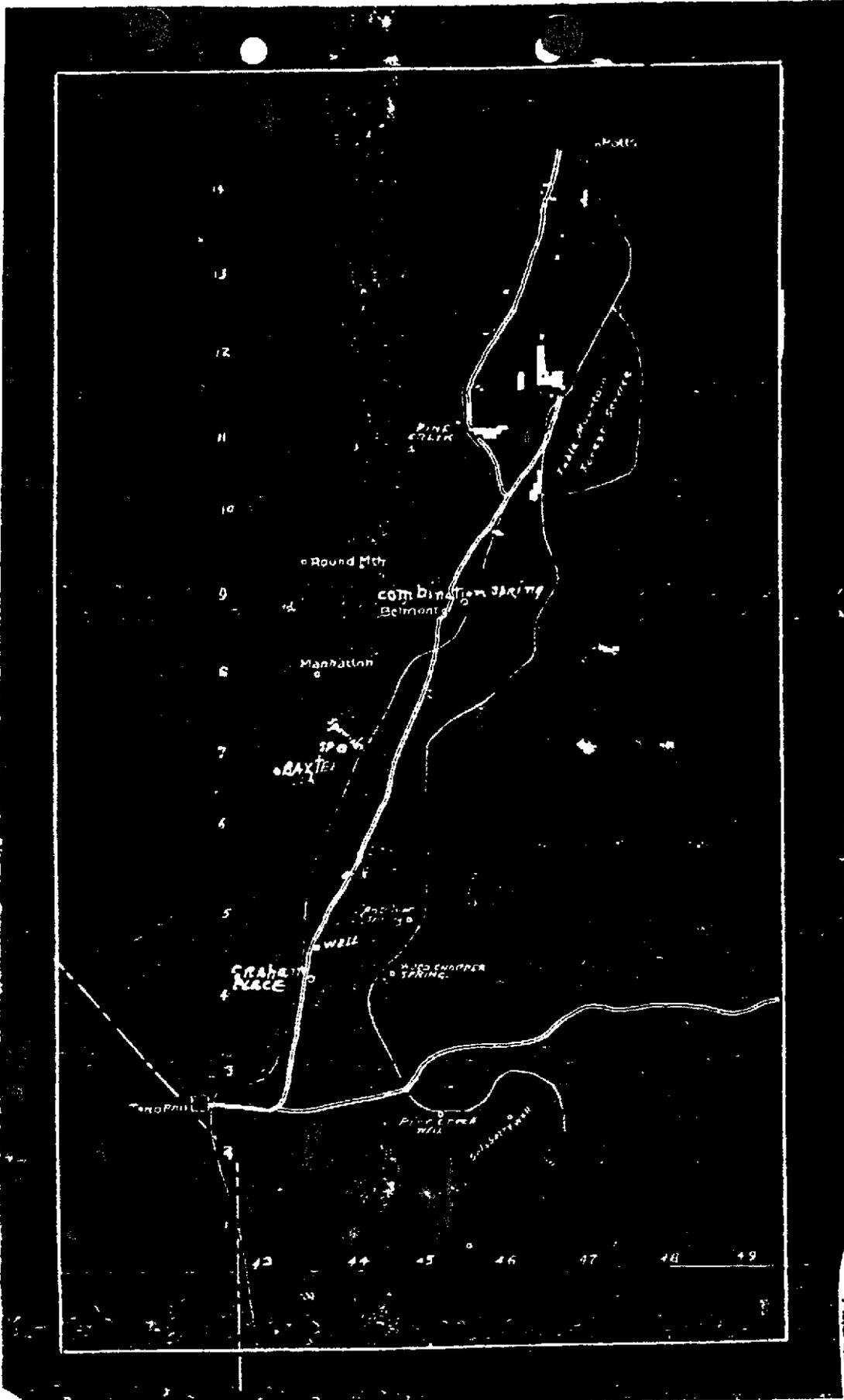
claim, right, title, interest or lien as a right of way for existing roads, ditches, canals, pipe, pole or transmission lines traversing said property and premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that all of said defendants above named, and all other persons except the plaintiff herein, and its successors in interest, and except the Regional Agricultural Credit Corporation for said liens and mortgages as issued and held by said corporation as hereinabove set forth in this said Decree, are hereby perpetually enjoined and restrained from asserting any right, title, interest, claim, estate, or possession in or lien upon the said property or any part thereof adversely to the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff shall pay his own costs.

Done in open Court this 28th day of January, 1942.


DISTRICT JUDGE.



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

JESS CHANCE, MILDRED F. CHANCE,
JESS A. CHANCE, JR., and
JANICE CHANCE,

Plaintiffs,

-vs-

FRANK H. ARCULARIUS,

Defendant.

No. 5754

FILED

Frank L. Dees County Clerk
By E. T. Murphy Deputy

DECISION

In their complaint, the plaintiffs allege that the defendant has trespassed on plaintiffs' grazing rights or privileges and has caused damage thereto in the sum of \$5,000.00. They pray for compensatory damages in said sum and for an injunction against the defendant to prevent such trespass in the future. Plaintiffs allege that their said grazing rights are held by them under the terms of the Grazing Act of 1931 and the Stock Watering Act of 1925. They allege that their said rights are exclusive and cover eleven townships situated in the branch of Ralston Valley lying north of the Ely Highway and extending to the vicinity of Belmont. They allege ownership of the right of use of the waters of what is known as Ralston Valley Wash and also the Trudgen Well, Chance Well, Blair Well and what is known as the Rye Patch Channel. On the trial they showed ownership, from their immediate grantors, of the said Trudgen Well, Blair Well and Chance Well and also title to what is known as the Trudgen Homestead, on

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CLERK

in the central portion of the area above referred to. The plaintiffs also showed title to other lands outside of, but in the general region of, the said grazing area, - namely, the Trudgen Ranch in the locality of Hunt's Canyon, and the Marsh Ranch and other tracts in the same general locality, as described in the deed, Plaintiffs' Exhibit A. The Trudgen Well bears a priority date of August 3, 1944, the Chance Well August 19, 1946, the Blair Well August 8, 1946. The well on the Trudgen Homestead has been in use for stock watering for many years. The Ralston Valley Wash above mentioned, excepting at the lower end at Rye Patch Channel, contains water only at intervals, following heavy precipitation of rain or snow. At the lower end, it appears that the excess or waste water from the Tonopah Pumping Station is found at a point called Rye Patch Channel, on which a water application has been made and is under protest. The water there is shown to have been used generally, throughout the years, by the graziers of the valley, including plaintiffs, defendant and their predecessors in interest.

The defendant, in his answer, denies the alleged trespass and other material allegations of the complaint. In his cross-complaint he alleges the ownership by him of certain springs, shown by the evidence to be what are known as Stewart Spring, with a priority date of November 25, 1931, Snow Bird Spring, June 7, 1918, Baxter Spring, October 5, 1917, and Humphrey Spring, December 17, 1917. The defendant alleges, in substance, a grazing right, or privilege, for sheep, under the terms of the Grazing Act of 1931, covering the portion of Ralston Valley bounded by the Tonopah-Ely Highway on the south, and on the east "by

the east side of the wash into which drains the waters from the east side and the west side of Ralston Valley, and on the north by a line drawn approximately easterly and westerly through the town of Belmont". He alleges that he and his predecessors have used the waters of Ralston Valley Wash when such waters existed, have grazed their sheep on the white sage flats lying in the said Ralston Valley Wash, and have used the said white sage flats as their customary lambing ground, and that the said predecessors of plaintiffs and other users of said range agreed that defendant's said predecessors should have the unobstructed use of the range on the west side of Ralston Valley and the range in the bottom of said Ralston Valley Wash. Defendant prays that plaintiffs take nothing by their complaint and that plaintiffs be enjoined from interfering with defendant's use of the range as above described.

The rights of the plaintiffs and their predecessors in interest to the use of the waters of Trudgen Well, Chance Well and Blair Well were acquired in the 1940's, as above mentioned. Hence the grazing privileges incidental to the use of those waters, under the 1925 Stock Watering Act, would be subservient to grazing rights previously acquired on the same area under the Grazing Act of 1931.

The right to water on the periodical and infrequent flow in Belmont Wash and its lower extension designated as Rye Patch Wash, was shared by the predecessors in interest of both plaintiffs and defendant and could not establish an advantage in either party over the other. The same situation prevails as to the use of the waters of the so-called Rye Patch Channel.

The plaintiffs' predecessors in interest, as shown by Exhibit A, as well as the oral proofs, were the owners of the Trudgen Ranch and the Marsh Ranch above mentioned. The plaintiffs have succeeded to the ownership of the said lands. With regard to the Trudgen Ranch, the deed referred to conveys the "ranges and range rights, easements and rights of way appurtenant thereto or used in connection therewith". In the said deed, no specific mention is made as to grazing rights, privileges or use in connection with the conveyance of the Marsh Ranch. However, as Marsh's grazing use was incidental to the Marsh Ranch according to the customs of graziers, Marsh is, as I view it, a predecessor in interest of the plaintiffs with respect to the grazing use of Marsh. Mrs. Trudgen, in her deposition, states that in 1945 she was ranging approximately 600 head of cattle, her herd having grown to that number from 115 head in 1913. Mr. Keough testified that in 1941 Marsh had probably 300 head. Wes Blair testified to 300 head of Marsh cattle (Tr. 136). It is shown, therefore, that Trudgen and Marsh, predecessors of the plaintiffs, were running about 900 head at the maximum of their holdings.

The predecessors in interest of the defendant, with respect to the grazing use which he claims, are shown by the deeds, Defendant's Exhibits 8, 9, 10 and 11. The earliest use by any such predecessor is shown to be that of the United Cattle and Packing Company. Such use is shown by the oral proofs to date back to the year 1910 or earlier. From about 1924, both sheep and cattle were grazed by the company referred to in the Ralston Valley. Such use, by the company and its successors, has been

continued from the time of Mr. Keough's employment by the company in 1930 down to the present time. They made use of their watering places on the west side of the valley, above referred to. The testimony of Mr. Keough shows that the customary use of the Ralston Valley range, by the predecessors in interest of the plaintiffs and the defendant, was brought under a plan of division and regulation in about the year 1937,- about a year before the organization of the Meadow Canyon Sheep Company. The deed to that company, Defendant's Exhibit 10, is dated April 6, 1938. Mr. Keough testified, in substance, that in or about 1929, the Trudgens moved their headquarters from Rye Patch Homestead to their Hunt's Canyon Ranch, that they then had not over 100 head of cattle, which they kept in the Hunt's Creek Mountains and at the Hunt's Creek Ranch from two to five years, during which time "they didn't come down on the desert", namely, Ralston Valley; that, excepting for possible strays, "they didn't pass the mouth of Hunt's Canyon Wash". He testified that Mrs. Trudgen took good care of her cattle and that by the time he had the last to do with her "she had a good 400 head or more"; and that they ran all over Ralston Valley (Tr. 281). Mr. Keough testified in substance (Tr. 269, 270) that in probably the year 1937 he had a conversation with Mr. and Mrs. Trudgen in which he agreed to keep the sheep "on the west side of the Belmont Wash", and (Tr. 272) that he kept the sheep on the west side of the wash. He testified (Tr. 276) that "all water falling within the confines of Ralston Valley will eventually drain or go in Belmont Wash or what I have heard described as the Rye Patch Wash", whether the moisture fell on the west or on the east side of the valley. (Tr. 276).

The evidence shows that, from the time of the conversation referred to, the graziers of the valley, including the Trudgens, Marsh and the United Company and their successors, adapted their grazing use, respectively, in conformity with the understanding referred to, the sheep using the area to the west of the wash and the cattle to the east, allowing for cattle drift to the west. As late as the ownership of the Cavanaugh Brothers, John Cavanaugh testified (Tr. 125) that "you had a slight drift to the west side of the road but in my experience there have been few times we picked up cattle west of the road". The road referred to evidently is the old county road extending from the Ely Highway to Belmont. The establishing of the Belmont Wash as the division line is corroborated by the testimony of George Idoeta (Tr. 310) where he says "the Belmont Wash is what the dividing line was; but we (the Potts outfit) usually stay on the east side and their line (the United Company's) is on the west side". Wes Blair testified (Tr. 137) that the recognized sheep range was on the west side of "this gulch". In referring to the range division line, Mr. Keough testified (Tr. 276), "Well, the lowest point in it would be where the water channel from Belmont through to these lakes down here congregated and ran; it is not the geographical center, but when you speak of the center of the valley it is the lowest point to me", and that it was generally so considered by the operators of the valley. Further, with regard to the dividing line, he testified (Tr. 289) that at the time of his conversation with the Trudgens he also agreed to "keep the sheep from going to the station, over half way between the two". The station referred to is the Trudgen Homestead, comprising

It has been and is the established custom of the defendant and his predecessors to shear their sheep at their Graham Place, adjoining the Trudgen Homestead on the south, and then take them north to the area between Henry's Well and Baxter and Spanish Springs for lambing. They also have an established practice of watering sheep at the Rye Patch Channel. I regard these practices as a part of their grazing use. At the same time, the plaintiffs, through their predecessors, are established in the practice of watering cattle at the Rye Patch Channel and at their well on the Trudgen Homestead, together with the use of such forage as is incidental to the natural drift of the cattle to the west of the wash.

In Webster's New International Dictionary, 1925, the word "Wash" is defined under a number of headings. That which is most applicable to the present case is set forth as follows:

"11. Western U.S. a) Gravel and other rock debris transported and deposited by running water; coarse alluvium. b) An Alluvial cone. c) The dry bed of an intermittent stream, sometimes at the bottom of a canyon; as, the Amargosa wash; the Diamond wash;-called also dry wash."

It is evident that the meaning of the word "wash", or Belmont Wash, or Rye Patch Wash, as used by Mr. Keough and the other witnesses, was understood as "the dry bed of an intermittent stream". It seems clear that, at least in especially wet seasons, the surface waters flow all the way from the locality of the junction of Silver Creek with Belmont Wash, along said wash past Trudgen Well, and on, into and through Rye Patch Wash and on south to the "lakes" mentioned by Mr. Keough, south of the Ely Highway. It is

the course of such water that marks the wash and establishes the boundary line between the sheep and the cattle ranges, with the modifications as herein stated. The proofs show that the plaintiffs and defendant, through their predecessors in interest, have established such boundary as limiting their established use of the range. On the part of both plaintiffs and defendant, the use as above described has been established "without protest or conflict to prior use or occupancy thereof". (Nevada Range Law) The use, as herein described, has been acquiesced in by all persons concerned from the beginning of the practice referred to in or about 1937 until the controversy involved in this suit.

Relative to the grazing of cattle, Mr. Keough testified (Tr. 272) that during the time he was operating for the United Cattle Company and the Meadow Canyon Sheep Company, that is to say, from 1930 until the end of his employment, the cattle were "run more or less over the whole valley in the fall of the year"; that in the fall "they were turned loose either at Belmont or just below Marsh's fence in Hunt's Creek", and from there they drifted "as they pleased and wound up around Pine Creek and further south", and, as to the Trudgen cattle (Tr. 281), they ran all over Ralston Valley. It seems clear that the grazing practice for all of the cattle, after 1930, was to allow them to graze on any part of Ralston Valley where their inclination would take them, limited as it was by their general refusal to graze after the sheep until after a lapse of time; and that one purpose of establishing the wash as a boundary line was to provide some place for the cattle where the sheep had not been (Tr. 283). This, as

difficulties between his own employees. As the Trudgen and Marsh cattle came onto the valley from the same general locality as did the cattle of the United Company, it is evident that they would all follow the same general drift and spread to the south. In practice, Mr. Keough stated that the cattle came onto the valley in the fall ahead of the sheep and would take what forage they wanted. It is shown that, as to the Trudgen and Marsh cattle, there was established a right in common with the sheep and cattle of the United Company and their successors to graze on the area west of the wash to such extent as their instincts, under those conditions, would permit, and also to the extent that would be incidental to the use of the waters of Trudgen Homestead and Rye Patch Channel, with the natural drift in that locality and without being pushed to the west of Belmont Wash or to the west of said watering places. The right to such cattle use, as I view it, still prevails in favor of plaintiffs.

As to the hauling of water to the sheep, it is shown that this practice was followed by the United Company over a period of years during the management of Mr. Keough and also under the ownership of the Meadow Canyon Sheep Company. This practice has, as I view it, become a legitimate part of the use established in the defendant. The plaintiffs seem to urge that the earlier exclusive use of the valley as a cattle range gives, at the present time, a higher right in favor of plaintiffs' cattle use, as against the present sheep use of the defendant. As I view it, the common use of the range by sheep and cattle over a long period of years, and without protest as between the parties here, or their predecessors, has established the

Relative to Trudgen Well, it appears, from the testimony of Mr. Blair (Tr. 138), that this well is situated a few hundred yards west of Belmont Wash and within the sheep area. The Hunt's Canyon Wash joins the Belmont Wash in this vicinity, and it evidently was selected by the Trudgens as a favorable place for sinking a well. The State Engineer's certificate, on Application No. 11150, and subsequent transfers, establish the water right in plaintiffs. As to whether or not they now hold any portion of such right in trust for others does not appear. By virtue of the common use west of the wash, by cattle and sheep, plaintiffs would have the right of ingress to and egress from the said watering place in conjunction with its use; but, under the common use west of the wash, there is a right to graze the sheep on the area adjacent to the well and up to the boundary line referred to, but without right to water at the well except by consent of the owners.

Relative to the Blair and Chance Wells, these wells, like the Henry Well, were developed, in accordance with the custom of graziers, to improve the beneficial use of the range. As the Henry Well tends to the more intensive use of the west range by the sheep, so the Blair and Chance Wells tend to increase the cattle use in their vicinity. The improvement and greater use in the west zone would seem to be off-set by the added cattle drift to the west which results from the development of the Chance and Blair Wells.

With reference to the Trudgen Homestead (Section 32) above mentioned, Mr. Keough testified that he agreed to keep the sheep from going beyond a point half way between Henry's Well and the Homestead. This practice, as I view it, established a common use, for cattle only, on the area within

a radius of approximately two miles north and west of the Homestead and to the Rye Patch Wash on the east, subject to the right and custom of the defendant to trail his sheep across this limited area each season, after the shearing at the Graham Place adjoining the Homestead on the south.

The plaintiffs seek to recover damages for alleged trespass as above mentioned. As indicated above, there could be no trespass for grazing the sheep at any place west of the Belmont-Rye Patch Wash. Under Section 4 of the Stock Watering Act of 1925, any person who, "without the right so to do", shall, on two separate days during any season, water fifty head of livestock within three miles of the watering place of another, with intent to graze such stock, shall be guilty of a misdemeanor. Mr. Chance testified that the sheep grazed within the distance of a mile or so of each well, -Trudgen, Blair and Chance, -"right on top of the Chance Well" in one instance, and "right on Trudgen" in another instance. The location of Trudgen Well west of the wash would preclude the recovery of damages for the taking of forage west of the wash and adjacent to that well. There is an absence of proof as to damage which may have been done east of the wash and in the neighborhood of Trudgen, Chance or Blair well, or elsewhere east of the wash. Mr. Chance's testimony on the subject related in a general way to the area east of the county road, and was not confined to the area east of the wash. No finding as to damages can be made.

It may be added that defendant's right to graze cattle, in common with others, extends throughout both the east and west zones of Ralston Valley.

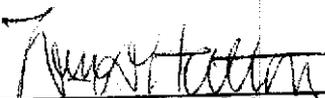
Under the Grazing Act of 1931, the plaintiffs are entitled to an injunction precluding the defendant from grazing his sheep on the area east of the center line of Belmont-Rye Patch Wash, or from interfering with the plaintiffs' established use, as herein described, to graze cattle on the area east of said line, or interfering with plaintiffs' established use for grazing cattle on the area west of said line in common with defendant's established use for grazing both sheep and cattle on said west area, as herein stated.

Defendant is entitled to an injunction precluding the plaintiffs from interfering with the defendant's established use for grazing sheep on the range west of said line, as herein set forth.

Plaintiffs' counsel are directed to prepare, serve and submit proposed findings of fact, conclusions of law and judgment in conformity with the foregoing decision. Each side to bear its own costs.

Let judgment be entered accordingly.

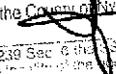
Dated April 11, 1950.


District Judge

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date: 12-13-10
Sandra L. Merino, clerk of the Fifth Judicial District Court,
in and for the County of Nye, State of Nevada

By  Deputy
Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the validity of the document.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

JESS CHANCE, MILDRED F. CHANCE,)
JESS A. CHANCE, JR., and)
JANICE CHANCE,)
Plaintiffs,)
-vs-)
FRANK H. ARCULARIUS,)
Defendant.)

No. 5754.

FILED

JUL 17 1950
Frank B. Bell County Clerk
By S. V. Murphy Deputy

J U D G M E N T

This cause having come on regularly for trial on the
17th day of October, 1949, before the Court sitting without a
jury, and the decision thereon together with the findings of
fact and conclusions of law having been rendered,

It is ORDERED, ADJUDGED and DECREED that the defendant
and all persons claiming under him, and their servants, agents
and employees, be, and they hereby are, perpetually enjoined and
restrained from grazing sheep on the Public Domain of the United
States in that portion of Ralston Valley between the Tonopah-Ely
Highway and the town of Belmont, in Nye County, State of Nevada,
lying east of the center line of the Belmont-Rye Patch Wash as
the same extends from the junction of Silver Creek with Belmont
Wash near the center of Township 8 North, Range 45 East, M.D.B.
& M.; and from in any manner interfering with the established
use and privilege of the plaintiffs in the grazing of cattle in
said Ralston Valley to the east of the center line of said Bel-

STATE OF NEVADA
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1 Homestead, being Section 32, Township 5 North, Range 44 East,
2 M.D.B. & M., and within a distance from the boundary of said
3 homestead of approximately two (2) miles and extending to said
4 Wash on the east, excepting for and subject to the established
5 use of the defendants to trail sheep across said limited area
6 each season for the purpose of shearing at the Graham Place ad-
7 joining the said Trudgen Homestead on the north; and from in
8 any manner interfering with the established use and privilege of
9 plaintiffs in allowing their cattle to drift into and upon that
10 portion of said Ralston Valley lying to the west of the center
11 line of said Belmont-Rye Patch Wash.

12 It is further ORDERED, ADJUDGED, and DECREED that the
13 plaintiffs and all persons claiming under them, and their ser-
14 vants, agents and employees, be, and they hereby are, per-
15 petually enjoined and restrained from in any manner interfering
16 with the established use and privilege of the defendant in the
17 grazing of sheep, in common with the plaintiffs' established
18 use and privilege to the grazing of drift cattle, in said Ralston
19 Valley to the west of the center line of said Belmont-Rye Patch
20 Wash and subject to plaintiffs' established use and privilege
21 to graze cattle within the limited area adjacent to the said
22 Trudgen Homestead as above set forth.

23 IT IS ORDERED that the Restraining Order dated May 23rd,
24 1949, and the Order modifying the said Restraining Order, dated
25 October 20th, 1949, are vacated.

26 Each of the parties, respectively, is required to pay
27 his own costs herein.

28 Done in open Court this 17th day of July, A.D. 1950.

29
30

J. M. H. H.

In the United States Court of Federal Claims

No. 91-1470L

January 29, 2002

**E. WAYNE HAGE
AND THE ESTATE OF JEAN N. HAGE,**

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

*
* Water Rights; Takings; Jurisdiction;
* Surface Rights; Grazing Permits;
* 43 U.S.C. § 661; 43 U.S.C. § 946; 43 U.S.C.
* § 956; 43 U.S.C. § 959; Ordinance of May
* 20, 1785; Treaty of Guadalupe-Hidalgo;
* Desert Lands Act of 1877; Act of 1888; Act
* of 1890; Creative Act of 1891; Forest
* Service Organic Act; 43 U.S.C. § 952; 43
* U.S.C. § 292; 43 U.S.C. § 315; Nev. Rev.
* Stat. § 533.505(1)
*

Lyman D. Bedford and Michael J. Van Zandt, McQuaid, Metzler, Bedford & Van Zandt, LLP, of San Francisco, CA, for plaintiffs.

Dorothy R. Burakreis, with whom was David Shuey, Environment and Natural Resources Division, U.S. Department of Justice, of Washington, D.C., for defendant. Eric C. Olson, U.S. Department of Agriculture, and John Payne, Regional Office of the Solicitor, U.S. Department of Interior, of San Francisco, CA, of counsel.

Johanna H. Wald, Natural Resources Defense Council, of San Francisco, CA, and Professor Joseph Feller, Arizona State University, of Phoenix, AZ, for amici curiae State of Nevada Division of Wildlife, National and Nevada Wildlife Federations, Natural Resources Defense Council, and Sierra Club. Thomas D. Lustig, with whom was Beth Wendel, of Boulder, CO, for amicus curiae National Wildlife Federation.

David Creekman, Deputy Attorney General, State of Nevada, for amicus curiae R. Michael Turnipseed, State Engineer of Nevada.

A TRUE COPY: TEST: MAY 6 2002
MARGARET M. EARNEST Clerk, U.S. Court of Federal Claims
By <u>Derek Williams</u> Deputy Clerk

FINAL OPINION: FINDINGS OF FACT

SMITH, Senior Judge.¹

BACKGROUND

Plaintiffs, E. Wayne Hage and the Estate of Jean N. Hage, are the owners of the Pine Creek Ranch in Nye County, Nevada. In September 1991, plaintiffs filed this claim alleging constitutional, contractual, and statutory causes of action.² In 1996, the court granted in part and denied in part defendant's Motion for Summary Judgment, holding that plaintiffs should have the opportunity to prove whether they "own property rights in the claimed water, ditch rights-of-way and forage and the scope of those rights." *Hage v. United States*, 35 Fed. Cl. 147, 180 (1996) (hereinafter *Hage I*).

In June 1997, the court granted plaintiffs leave to amend their complaint to include a claim for ownership of the surface estate of approximately 752,000 acres of grazing land on federal allotments. On July 6, 1998, the court stayed defendant's Motion to Dismiss or Alternatively for Partial Summary Judgment addressing the plaintiffs' surface estate claim until after a evidentiary hearing on plaintiffs' property interests.

Plaintiffs' amended complaint alleges a variety of constitutional takings. As in every takings claim, the court must decide: first, do plaintiffs own the property at issue; second, did the government take the property; and if so, what is the "just compensation" due the plaintiffs. The parties have been unable to stipulate to ownership of the property plaintiffs allege defendant took. That necessitated dividing this proceeding into a series of hearings on the different elements of plaintiffs' claims. This FINAL OPINION: Findings of Fact only addresses the first issue of what property and what water rights plaintiffs owned. The other steps of the takings analysis will be addressed after subsequent proceedings.

In October 1998, the court held a two-week trial to resolve whether plaintiffs own the property at issue. A month after the hearing, the court issued a "Preliminary Opinion" to better focus the parties' post-trial briefing and with the hope of possible settlement. *Hage v. United States*, 42 Fed. Cl. 249 (1998) (hereinafter *Hage III*). As clearly indicated by its title, the draft was meant solely as an expression of the court's initial thoughts, similar to the court's practice of making closing comments from the bench. This court issued the Preliminary Opinion "to streamline and expedite post-trial briefing." *Id.* at 250. It was not meant to be interpreted as a final finding of fact, but merely an expression of the court's thinking at the time. After a

¹ Chief Judge Loren A. Smith assumed senior status on July 11, 2000.

² See *Hage v. United States*, 35 Fed. Cl. 147, 156 (1996) (hereinafter *Hage I*) (granting and denying in part defendant's Motion for Summary Judgment); *Hage v. United States*, 35 Fed. Cl. 737 (1996) (hereinafter *Hage II*) (granting *amici* status to environmental groups and Nevada state agencies); and *Hage v. United States*, 42 Fed. Cl. 249 (1998) (hereinafter *Hage III*) (Preliminary Opinion).

thorough review of the parties' post-trial briefs and closing arguments, the court now issues this FINAL OPINION defining what property interests the plaintiffs own for purposes of their taking claim.

With the publication of this FINAL OPINION in the property phase of this case, the court's earlier Preliminary Opinion, *Hage III*, is rescinded except as explicitly reaffirmed herein.

INTRODUCTION

The property involved in this case is atypical of most takings litigation. It is not land or minerals at a specific time, but rather the usage of water which ebbs and flows throughout the year. The question the court confronted was whether plaintiff had a right to put to beneficial use the water that traveled through certain ditches.

The court was not called upon to determine the chain of title or actual ownership of a pond or lake, but a right of usage defined by historical practice. The law is relatively clear that if plaintiffs stopped using the water, they lost the right to the continued use of that water. Indeed, plaintiffs merely own the right to use all the water they can put to beneficial use.

The two threshold questions in any takings case are: do plaintiffs "possess a property interest, and if so, what is the proper scope of that interest?" *Store Safe Redlands Assoc. v. United States*, 35 Fed. Cl. 726, 734 (1996). Throughout this case, the government has characterized plaintiffs' claims as questions of law to which no finding of facts are needed. The court rejected this argument in its 1996 summary judgment opinion, *Hage I*, and continues to reject it here.

Plaintiffs' case is based on the accepted theory that Western lands are divided into split estates: the federal government retained the mineral rights, and the ranchers owned various surface rights such as: water usage, rights to forage, ditch and pipeline rights of way protected and recognized under the Act of July 26, 1866, and right of access to the above, in the form of easements and/or rights of way for their livestock across the lands or mineral estates of the United States.

Plaintiffs' amended complaint raises the following claims: first, that the suspension and cancellation of their grazing permits deprived them of their right to graze their cattle; second, that they were deprived of their water rights when the Forest Service cancelled and suspended their grazing permits and diverted and used the water on those allotments; third, that defendant took their property interest in the ditch rights-of-way by forbidding plaintiffs to access the ditches; fourth, that non-indigenous elk consumed forage and drank water reserved for their cattle in violation of their property right; fifth, that when the Forest Service impounded plaintiffs' cattle, defendant took plaintiffs' personal property; sixth, that by canceling and suspending portions of their grazing permit and interfering with their water rights, ditch rights-of-way, and forage, defendant deprived plaintiffs of all economic use of their ranch; and finally, that they are entitled

to compensation for improvements they made to federal rangeland pursuant to 43 U.S.C. § 1752(g).

This opinion focuses on these seven claims solely to the extent that the claim is contingent upon plaintiffs ownership of property. All other issues – whether there was a taking, and if so, what just compensation would be for that taking – are deferred.

Based on the evidence presented at trial and a judicial inspection of much of the property in question, this court finds that plaintiffs have established ownership of substantial vested water rights and many Act of 1866 ditch rights-of-way. The court, however, finds that the plaintiffs have shown no evidence and have no legal support to sustain a viable claim for a property interest in grazing permits or a surface estate. Therefore, the court grants defendant's Motion to Dismiss with regard to the surface estate and grazing permits.

DISCUSSION

I. JURISDICTION

Pursuant to the Tucker Act:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (2001). This court has jurisdiction over takings cases where the plaintiff is seeking compensation rather than possession of the land in question. *See Bourgeois v. United States*, 212 Ct. Cl. 32, 35-36 (1976) (citing *Malone v. Bowdoin*, 369 U.S. 643, 647 n. 8 (1962) and *Carlson & Carlson v. United States*, 208 Ct. Cl. 1022, 1023 (1976)). Because this is a suit for just compensation and not “a suit for possession,” it is “within the historical jurisdiction of the court.” *Bourgeois*, 212 Ct. Cl. at 35 n.1.

A. This Court has Jurisdiction because this is not an *In Rem* Adjudication

In September 1998, immediately before the October 1998 evidentiary hearing, the Office of the State Engineer of the State of Nevada filed its final Order of Determination in the ongoing adjudication of water rights in the Southern Monitor Valley.³ Two days later, R. Michael

³ R. Michael Turnipseed, State of Nevada, Office of the State Engineer, *Order of Determination in the matter of the determination of the relative rights in and to the waters of Monitor Valley – Southern Part (140-B)*, Nye County, Nevada (Sept. 15, 1998). The state adjudication process began on October 15, 1981, when E. Wayne Hage filed a petition requesting a determination of the relative rights of the

Turnipseed, the State Engineer for Nevada, filed a Petition for Writ of Mandamus or Prohibition to prevent this court from continuing to exercise jurisdiction over the water rights at issue in this matter. The State Engineer argued that under Nevada law, the filing of the Order of Determination commenced the judicial phase of the state adjudication process, and thereby deprived this court of jurisdiction over the water at issue. See NEV. REV. STAT. 533.165 (2001) ("The order of determination, when filed with the clerk of the district court as provided in NRS 533.165, shall have the legal effect of a complaint in a civil action.").

The State of Nevada argues that even though the Court of Federal Claims was first in time, Nevada is not prevented from asserting jurisdiction over the water rights adjudication because this court is not proceeding *in rem*. The State further argues that because it has begun *in rem* proceedings, this court should halt its consideration of this case because at bottom the same *res* is at issue. The State, however, misconstrues what the plaintiffs have asked this court to do. Plaintiffs do not seek *in rem* relief from this court. Instead, plaintiffs seek just compensation for the losses they incurred when, they allege, the government took their property. As this court noted in *Hage I*, "a title dispute, as part of a taking claim, traditionally does not prevent jurisdiction in this court, assuming jurisdiction otherwise exists. See *Oak Forest, Inc. v. United States*, 23 Cl. Ct. 90 (1991); *M.R.K. Corp. v. United States*, 15 Cl. Ct. 538 (1988). Moreover, plaintiffs contend that determining title to water is no different than determining title to real property, and the same jurisdictional rules should apply to all forms of property." *Hage I* at 158.

Plaintiffs should not be forced to wait for a determination of whether a taking occurred for Fifth Amendment purposes while the state proceeding winds its way through the courts. Water determination cases can take decades to reach a conclusion. For example, in *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851 (9th Cir. 1983), the quiet title action began in 1925 but was not decided until 1980, a span of 65 years. That case was the "comprehensive adjudication . . . of the rights of all parties to the Carson's waters," much like the Order of Determination for the Monitor Valley is a comprehensive determination of the water rights for that area. *Id.* at 853.

In the alternative, Nevada argued that the court should, in deference, stay its proceedings until the completion of the judicial phase of the Nevada adjudication. The Federal Circuit denied Nevada's Petition because Nevada could not show extraordinary relief was necessary since it had known this court was exercising jurisdiction for 30 months. *In re Turnipseed*, 173 F.3d 434, slip op. (Fed. Cir. 1998).

At closing arguments Nevada and the government raised these arguments again. In addition, the government renewed its contention that the court need not make any findings of fact in this matter as all of plaintiffs' claims are questions of law.

claimants to the waters of the Meadow Creek, Barley Creek, Corcoran Creek, Andrews Creek, Pine Creek, Pasco Creek, Mosquito Creek, Barley Creek, and their tributaries, as well as all other waters flowing into or arising in the Southern Monitor Valley.

The government raised a similar point in its Summary Judgment argument, which this court addressed at length in our 1996 Opinion. See *Hage I* at 159. This court distinguished this case from a water rights adjudication because stream adjudications are “creatures” of state law which the states are best able to determine. However, this court can determine whether plaintiffs have title to water rights without engaging in a stream adjudication. See *Hage I* at 159, 163.⁴ It is also clear that this court can determine title to real property as a preliminary matter when addressing a takings claim. See e.g., *Bourgeois v. United States*, 212 Ct. Cl. 32 (1976) (stating that in a suit seeking compensation, the court is not denied jurisdiction simply because there is a quiet title issue involved in determining compensation); *Yaist v. United States*, 228 Ct. Cl. 281 (1981). “Similarly, this court may determine whether plaintiffs have title to a property interest in water as a preliminary matter before addressing whether that property interest has been taken by the government.” *Hage I* at 159.

Nor do the McCarran Amendment⁵ or *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), “require that a federal water suit must always be dismissed or stayed in deference to a concurrent and adequate comprehensive state adjudication.” *Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 569 (1983) *reh’g. denied* 464 U.S. 874 (1983). See also *Hage I* at 160; *Duval Ranching Co. v. Glickman*, 965 F. Supp. 1427 (D. Nev. 1997) (stating that even where there is an ongoing water rights adjudication, “abstention is always discretionary”); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 730 (1996).

B. The Legal Standard in Physical Takings Cases

The Supreme Court has made it clear that a “physical taking occurs when the government’s action amounts to a physical occupation or invasion of the property, including the functional equivalent of a ‘practical ouster of [the owner’s] possession.’ *Transp. Co. v. Chicago*, 99 U.S. 635, 642 (1878); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). When an owner has suffered a physical invasion of his property, courts have noted that ‘no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation.’ *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992).” *Tulare Lake Basin Water Storage Dist. v. United States*, 49 Fed. Cl. 313, 318 (2001). First,

⁴ In Nevada water rights exist independent of stream adjudication. The Nevada Supreme Court has stated that “[m]ost water rights upon the streams of this state are undetermined by any judicial decree or other record. While the right exists, it is undefined. For the state, however, to administer such rights, it is necessary that they should be defined.” *Ormsby County v. Kearney*, 143 P. 803, 806 (Nev. 1914). Therefore, the Monitor Valley stream adjudication simply defines the parameters of property interests; it does not determine who has title to the water rights at issue. As this court recognized in *Hage I* “the concurrent adjudication of the Monitor Valley has no bearing on the ripeness of the claims before this Court. To hold otherwise would deny citizens of the United States the protection of the federal Constitution’s guarantees and make those guarantees solely dependent upon state law. Compare *In re Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872) with *Allgeyer v. Louisiana*, 165 U.S. 578 (1897) and *Baker v. Carr*, 369 U.S. 186 (1962). See also *Nollan v. Cal. Coastal Comm.*, 483 U.S. 825 (1987); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).” *Hage I* at 163.

⁵ 43 U.S.C. § 666.

however, the party seeking compensation must prove they own a compensable property interest. *Avenal v. United States*, 33 Fed. Cl. 778, 785 (1995). This court has divided this case into two stages. In addition to proving that they have a compensable property interest, plaintiffs must show that the Government physically took their property and that that property had compensable value.

The defendant seems to argue that the court should not consider this case because there is no value to any water rights or other property the plaintiffs may have. Valuation, however, is a later step in the takings analysis. The parties will be entitled to put on evidence at that time. The court would note that plaintiffs did, by the undisputed record, run a cattle ranch using the water rights in question for some years. This would seem to indicate positive value. If there was value, and the plaintiffs can by a preponderance of the evidence show what that value was, and that the government's actions amounted to a taking, then the plaintiffs will be entitled to just compensation.

II. WATER RIGHTS

The court has utilized a three step analysis to determine the water rights at issue in this litigation. First, the court determined what the legal standard is for "vested water rights." Second, the court determined which of the claimed water rights are "vested water rights." Finally, the court determined which of those vested water rights qualify as "1866 ditches." Fundamentally, "[w]hile the owner of a water right has a vested interest in that right, the right itself is something less than the full ownership of property because it is a right not to the corpus of the water but to the use of the water." *Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308, 315 (D.C. Ct. App. 1938). We now tend to understand property rights in a more subtle way than in 1938, as evidenced by interests in pension funds, condominiums and numerous financial instruments.

A. Vested Water Rights

The plaintiffs proved they have vested water rights in the ditches, wells, creeks, and pipelines listed below that cross their land and grazing areas as well as the Monitor Valley, Ralston, and McKinney allotments.

1. Nevada Law Controls where it is not Superseded by Federal Law.

It has long been a principle of water law that state law controls where it is not directly superseded by federal law. Indeed, it "is settled that the states may prescribe police regulations applicable to public land areas, so long as the regulations are not arbitrary or inconsistent with applicable congressional enactments." *McKelvey v. United States*, 260 U.S. 353, 359 (1922); see e.g. *Itcaina v. Marble*, 55 P.2d 625, 630 (Nev. 1936). In addition, in the 1866 Ditch Rights-of-Way Act, 43 U.S.C.A. § 661 (1999), the Reclamation Act of 1902, 43 U.S.C. § 371-390g-8

(2001),⁶ and the Taylor Grazing Act of 1934, 43 U.S.C.A. § 315 (1998),⁷ Congress carefully respected the rights that state law recognized prior to passage of the federal laws.

For example, the Supreme Court recognized that the Reclamation Act “leaves it to the State to say what rights of an appropriator or riparian owner may subsist along with any federal right.” *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 736 n. 7 (1950).⁸ The Court concluded that Congress “elected to recognize any state-created rights and to take them under its power of eminent domain” with the Reclamation Act. *Id.* at 739. The Nevada Supreme Court, when examining the intersection of Nevada water law and the Taylor Grazing Act, reiterated that where the federal government has not acted, the state may act. *Ansolabehere v. Laborde*, 310 P.2d 842, 845 (Nev. 1957) (Nevada Stockwatering Act of 1925 superceded where it overlaps with the Taylor Grazing Act). Therefore, federal law directs this court to state law to determine whether or not a water right exists.

2. Vested Water Rights Under Nevada Law

Under Nevada law to have a vested water right, the plaintiffs must have the right to “divert water by artificial means for beneficial use from a natural spring or stream.” *In re Waters of Duff Creek*, 202 P.2d 535, 537 (Nev. 1949). A vested water right becomes “fixed and established . . . either by actual diversion and application to beneficial use or by appropriation . . . and is a right which is regarded and protected as property.” *Id.* Appropriation of the water occurs when actual “acquisition from the government by diversion and use” is made by a party. *Id.* at 538; *see also Walsh v. Wallace*, 67 P. 914, 917 (Nev. 1901) (“To constitute a valid appropriation of water . . . there must be an actual diversion of it, with intent to apply it to a beneficial use, followed by an application to such use in a reasonable time.”); *Reno Smelting Works v. Stevenson*, 21 P. 317 (Nev. 1889). Therefore, for an appropriation to occur, “there must co-exist ‘the intent to take, accompanied by some open, physical demonstration of the intent, and for some valuable use’ . . . The outward manifestation is most often evidenced by a diversion of the water from its natural source prior to the use; . . . but it also can be evidenced in other ways,

⁶“Nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior . . . shall proceed in conformity with such laws . . .” 43 U.S.C. § 383.

⁷“Nothing in this subchapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands . . .” 43 U.S.C.A. § 315 (1998). The Taylor Grazing Act had two purposes: 1) to provide for the best use of the public range and 2) to define the rights of stock grazers and protect them from interference. *See Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308, 314 (D.C. Ct. App. 1938).

⁸It is important to note that Nevada uses a system of appropriation rather than riparian water use as do most Western states. In *Bergman v. Kearney*, 241 F. 884 (D. Nev. 1917), the district court stated clearly that riparian rights had “no place in the law of Nevada.” *Id.* at 893. In addition, the court recognized that, “[w]ater is not capable of permanent private ownership; it is the use of water which the state permits the individual to appropriate.” *Id.*

for example . . . by watering livestock directly from the source." *Hunter v. United States*, 388 F.2d 148, 153 (S.D. Cal. 1967) (Citations omitted).

The Nevada Supreme Court has recognized that though the manner of acquiring the water from the government may change as the law changes, "the character of" appropriation "remains, as ever, an acquisition of a right to use water from the government." *In re Waters of Duff Creek*, 202 P.2d at 537. Nevertheless, the use of the water cannot include any waste or be unreasonable, *United States v. Alpine Land & Reservoir Co.*, 697 F.2d 851, 854 (9th Cir. 1983), and one who appropriated a right to use the water can lose that right by voluntarily abandoning it. See *In re Manse Spring*, 108 P.2d 311, 315 (Nev. 1940).

3. *The Hages' Water Rights*

The court now turns its attention to whether plaintiffs have proven they acquired vested water rights in any of the claimed water sources. In reaching the following determinations, the court has relied heavily on the evidence presented at trial through expert testimony and exhibits. The parties are to be commended for the quality of the evidence they presented at trial.

a. Monitor Valley Water Rights

As this court noted in its Preliminary Opinion, the court finds the Order of Determination of the Nevada State Engineer⁹ compelling and "incorporates by reference the findings of

⁹In Nevada, the state engineer has been tasked with determining who owns rights to the water within the state. In *Bergman v. Kearney*, 241 F. 884 (D. Nev. 1917), the district court outlined the multiple steps that the state engineer must take to make a determination. The engineer

must investigate the flow of the stream, the diverting ditches, the lands irrigated, make surveys and prepare maps showing the course of the stream, the location of each ditch or canal, the area, outline and character of culture of each parcel of land upon which the water of the stream has been used, and gather such other data and information as may be essential to a proper determination of water rights in the stream.

Bergman, 241 F. at 884 referencing §§ 20-21 of the Nevada Water Law of 1913 (currently NEV. REV. STAT. 533.100 & 533.105 (2001)). All interested parties are then given an opportunity to file proofs of their ownership of the water. The State Engineer collects, prints, and distributes the proofs to all interested parties. Those parties may contest the proof in writing before the State Engineer issues his Order of Determination. The Order of Determination when filed becomes the equivalent of a complaint in the Nevada district court where the water is located.

The court recognizes there is an on-going state adjudication where both parties had an opportunity to present evidence about who owns the water in question. On October 15, 1981, the Hages filed a petition with the State Engineer requesting a determination of ownership rights of various bodies of waters within the Monitor Valley B Southern Portion. R. Michael Turnipseed, State of Nevada, Office of the State Engineer, *Order of Determination* in the matter of the determination of the relative rights in and to the waters of Monitor Valley B Southern Part (140-B), Nye County, Nevada at 1 (Sept. 15, 1998). The State Engineer accepted the petition on June 15, 1982, and began taking proofs of ownership that fall. *Id.* at 2. The filing

(Continued . . .)

ownership contained at pages 130-172 of the State Engineer's report on the Southern Monitor Valley." *Hage III* at 250. This court's conclusions regarding the Southern Monitor Valley, however, are based upon the strength of the Engineer's testimony and report, not on legal deference, since this factual issue is considered *de novo*. It is also based on this court's own review of the evidence and testimony presented at trial. Plaintiffs introduced the State Engineer's Order of Determination, and then the State Engineer, Mr. R. Michael Turnipseed, testified about the examinations his office made of the sites in question prior to issuing the determination. In addition, the court made a site visit to many of the locations of the streams and ditches in question.

As in every trial, the court must determine what the facts are, often adopting the evidence of one party or the opinion of one expert witness. Due to the specific nature of the property rights at stake, the type of measurements involved in accurately describing water rights, and the court's acknowledgment of the Nevada State Engineer's expertise in mapping such rights, the court incorporates the State Engineer's descriptions of the property for accuracy and clarity.¹⁰

This court finds that plaintiffs showed by a preponderance of the evidence that the plaintiffs and their predecessors appropriated and maintained a vested water right in the following bodies of water in the Southern Monitor Valley. In addition to certificates of appropriation that were entered into evidence, the plaintiffs also submitted an exhaustive chain of title which showed that the plaintiffs and their predecessors-in-interest had title to the fee lands where the following springs and creeks are located:¹¹

- *Andrews Creek*, which was appropriated with a priority date of 1874,¹²
- *Barley Creek*, which was appropriated with priority dates of 1874 and 1915,

(... Cont. 9)

deadline for the proofs was extended repeatedly to February 28, 1994. *Id.* at 4. Field investigations were conducted the summers of 1994 and 1995 with a preliminary order of determination being issued on February 15, 1996. During the field investigations, the State Engineer and his staff measured the streams and their basins and the water flow rate in cubic feet per second. *See id.* at 7-12. They also analyzed whether the streams would meet the crop water needs during the summer and when the streams would dry up. *See id.* After receiving objections to the preliminary order, the final order was issued on September 15, 1998, immediately prior to the original trial in this case. A bench trial was held before the Nye County District Court on November 1, 2001.

¹⁰ The pages of the report referred to here (pages 130-172) are appended to this FINAL OPINION.

*¹¹ Explicit boundaries and dimensions of the plaintiffs' Monitor Valley property interests are detailed in Appendix A.

¹² The plaintiffs proved that some of these bodies of water are also 1866 ditches. To find that an 1866 Ditch exists, the plaintiff had to prove at trial that the ditch was in place prior to 1907 when the Toiyabe National Forest was created by President Theodore Roosevelt. *See Hage I* at 161; *see also* Proclamation dated April 15, 1907. The priority appropriation dates establish how far back in time the State Engineer was able to trace the water's ownership rights through the plaintiffs' predecessors in interest.

- *Combination Springs*, which was appropriated with a priority date of 1866,
- *Meadow Canyon Creek*, which was appropriated with priority dates of 1874 and 1911,
- *Mosquito Creek*, which was appropriated with priority dates of 1874 and 1917,
- *Pasco Creek*, which was appropriated with priority dates of 1869 and 1911,
- *Pine Creek*, which was appropriated with priority dates of 1874 and 1972,
- *Smith Creek*, which was appropriated with a priority date of 1874, and
- *White Sage Ditch*, which was appropriated with a priority date of 1878.

b. Ralston and McKinney Allotments

This court finds that plaintiffs presented evidence at trial that showed by the preponderance of evidence that the plaintiffs and their predecessors appropriated and maintained a vested water right in the following bodies of water on the Ralston and McKinney allotments. In addition to certificates of appropriation that were entered into evidence, the plaintiffs also submitted an exhaustive chain of title which showed that the plaintiffs and their predecessors-in-interest had title to the fee lands where the following springs and creeks are located.

1. Ralston Allotments

The plaintiffs have a vested water right to the following bodies of water in the Ralston allotment based either on the date of appropriation or prior beneficial use of their predecessors-in-interest:

- *AEC Well*: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- *Airport Well*: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of March 19, 1981.
- *Baxter Spring*: The state engineer issued a certificate of appropriation to United Cattle and Packing Company, a predecessor in interest of the plaintiffs, with a priority date of October 5, 1917.

- *Black Rock Well:* The state engineer issued a certificate of appropriation to plaintiffs with a priority date of July 23, 1982.
- *Cornell Well:* The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- *Frazier Spring:* The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of February 17, 1927.
- *Henry's Well:* The state engineer issued a certificate of appropriation to plaintiffs with a priority date of April 27, 1981.
- *Humphrey Spring:* The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of December 17, 1917.
- *Pine Creek Well:* The state engineer issued a certificate of appropriation to Frank Arcularius with a priority date of January 11, 1950.
- *Ray's Well:* The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of February 17, 1927.
- *Rye Patch Channel:* The state engineer issued a certificate of appropriation to Frank Arcularius, a predecessor in interest of the plaintiffs, with a priority date of November 12, 1926.
- *Saulsbury Well:* The state engineer issued a certificate of appropriation to plaintiffs with a priority date of April 27, 1981.
- *Silver Creek Well:* The state engineer issued a certificate of appropriation to Frank Arcularius with a priority date of February 10, 1950.
- *Snow Bird Spring:* The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of June 7, 1918.
- *Spanish Spring:* The state engineer issued a certificate of appropriation to United Cattle and Packing Company with a priority date of December 17, 1917.

- *Stewart Spring*: The state engineer issued a certificate of appropriation to Mrs. O. C. Stewart, a predecessor in interest of the plaintiffs, with a priority date of November 25, 1931.
- *Well No. 2*: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.
- *Well No. 3*: The state engineer issued a certificate of appropriation to plaintiffs with a priority date of December 26, 1980.

2. McKinney Allotment

The plaintiffs have a vested water right to the following bodies of water in the McKinney allotment based either on the date of appropriation or prior beneficial use of their predecessors-in-interest:

- *Caine Springs*: The state engineer issued a certificate of appropriation to Mrs. Milo A. Caine, a predecessor in interest of the plaintiffs, with a priority date of October 8, 1919.
- *Cedar Corral Springs*: The state engineer issued a certificate of appropriation to Milo A. Caine with a priority date of February 10, 1920.
- *Mud Springs*: The state engineer issued a certificate of appropriation to Milo A. Caine, a predecessor in interest of the plaintiffs, with a priority date of October 8, 1919.
- *Perotte Springs*: The state engineer issued a certificate of appropriation to Milo A. Caine with a priority date of February 10, 1920.

B. Ditch Rights-of-Way and Forage Rights

Next, the court turns its attention to whether those water rights have accompanying ditch rights-of-way and forage rights. The plaintiffs claim that the government took their property when it prevented them access to their 1866 Act ditches.¹³

¹³ This is a physical takings claim because plaintiffs argue the government has physically barred them from the land, with threat of prosecution for trespassing if they enter federal lands to maintain their ditches. This is not an idle threat, because the government unsuccessfully prosecuted Mr. Hage for maintaining the White Sage Ditch. The government obtained a criminal conviction against Mr. Hage that was overturned by the Ninth Circuit Court of Appeals. See *United States v. Seaman*, 18 F.3d 649 (1994).

1. Determining whether a Ditch Right-of-Way existed.

The court has developed a three-step analysis to determine whether plaintiffs have a ditch right of way. First, the court must determine whether plaintiffs own 1866 Act Ditches. Second, the court must examine the proof submitted for each ditch to determine whether the ditch was established prior to 1907, when the land the ditches are on became part of the Toiyabe National Forest Reserve. Finally, the court must determine the extent of the right of way.

In its Preliminary Opinion, the court found that the Hages were entitled to ditch rights-of-way equal to 50 feet on each side of the ditches or canals they own under Section 9 of the Act of July 26, 1866, 43 U.S.C. § 661. *See Hage III* at 250-51. Under a common sense analysis, the court also found “that implicit in a vested water right based on putting water to beneficial use for livestock purposes was the appurtenant right for those livestock to graze alongside the water.” *Hage III* at 251.

At trial and in post-trial briefing, the government has opposed the plaintiffs’ ownership claims under the Act of 1866 as unripe because plaintiffs failed to seek a regulatory determination that the ditches were subject to the Act and never sought a USFS special maintenance permit when engaged in clearing and cleaning work close to the outer limits of the claimed right-of-way. Alternatively, defendant contended that the right-of-way is much more limited than the scope recognized by the court. Defendant and *amici* challenged plaintiffs’ entitlement to forage rights surrounding the 1866 ditches, arguing that Nevada law does not recognize forage rights as a component of water rights.

Many statutes with similar purposes to the 1866 Act incorporate a consistent 50 foot right-of-way for ditches. *See* Act of 1891, 43 U.S.C. § 946; Act of 1895, 43 U.S.C. § 956; and Act of 1901, 43 U.S.C. § 959. In addition, there was undisputed testimony at trial about the historic use of these ditches for livestock watering and irrigation. There was also persuasive testimony about the intent of Congress when it passed these acts. Specifically, the United States intended to “respect and protect the historic and customary usage of the range.” *See Hage III* at 251. Upon careful consideration of the trial evidence and evaluation of applicable law, the court reaffirms its findings regarding ditch rights-of-way and the forage rights.

2. The 1866 Ditch Rights-of-Way Act

In the Ditch Rights-of-Way Act, Congress chose not to enact detailed dimensions of ditch rights-of-way. Instead, Congress expressly deferred to state and local custom and usage:

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and *the same are recognized and acknowledged by the local customs, laws, and the decisions of courts*, the possessors

and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed . . .

43 U.S.C. § 661 (1866) (emphasis added). Under the 1866 Act, Congress explicitly drafted the statute to leave local definitions of water and ditch rights in place. The Act's legislative history shows that Congress believed that Western water and easements law generally allowed a right-of-way for 50 feet on both sides of a ditch.¹⁴

The Act of 1866 was introduced in the Thirty-Ninth Congress on March 8, 1866, as "an act granting the right of way to ditch and canal owners in the State of California over public lands." 1866 Cong. Globe 1259. The floor debates in the House and Senate contain a detailed discussion of the 50 foot-long rights of way. The version reported out of the Committee on Mines and Mining by the Chairman and original sponsor, Representative William Higby of California, provided that under the first section:

the owners of ditches, flumes, canals, or aqueducts for mining, mechanical, or agricultural purposes, shall have the right of way over the public lands . . . so long as those works are to be used for said purpose. The second section provide[d] that in order to give free access to such canals, flumes, and ditches, for the purpose of repairs and construction, the owners of the same are granted the use and occupation of a strip of land on each side of their respective works three rods¹⁵ in width.

1866 Cong. Globe 3141 (June 13).

The House Committee recommended several amendments to the original language, one of which read: "Amend the second section by striking out the words 'canals, flumes, and ditches' and inserting in lieu thereof the words 'ditch, flume, canal, or aqueduct,' also by striking out the words 'three rods in width' and inserting 'fifty feet in width.'" 1866 Cong. Globe 3141 (June 13). The House agreed to the amendment, and on Representative Higby's motion the bill was extended to include Nevada and Oregon in addition to California. In his floor remarks, Congressman Higby explained that the 50-foot ditch right-of-way was simply a codification of pertinent state and local law in the Pacific States: "We propose, in the bill as amended, that they shall have the right of way as they now have, respecting at the same time the rights of possession as established by the laws of the State." 1866 Cong. Globe 3141 (June 13).¹⁶ The dimensions

¹⁴ Indeed, when asked at trial why he allowed Mr. Seamun to clear trees from 50 feet on each side of the White Sage Ditch, Mr. Hage stated it was because the 1866 Act did not clearly delineate the distance but all other laws from that time allowed a fifty foot area on each side of a ditch.

¹⁵ Three rods is the equivalent of 49.5 feet. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1020, 1338 (1984).

¹⁶ The Act of 1866 was not the only law to recognize 50 feet rights of way for the purposes of maintaining and operating irrigation ditches and canals. See Act of March 3, 1891, 26 Stat. 1095 § 18. The Livestock Reservoir Siting Act of 1891 recognized rights-of-way for up to 160 acres. See discussion *infra*.

used in the House's version of the bill demonstrate Congress understood and accepted the local law and custom when it drafted, debated, and passed the 1866 Act.

At the same time, the amended House version also conditioned the duration of the estate in water and ditch rights on the use of the rights for mining, agricultural, and other purposes specified in the legislation.¹⁷ See 1866 Cong. Globe 3141 (June 13). Representative Higby likewise confirmed this limitation on the House floor "that the right of way shall be guaranteed by the General Government so long as these ditches, [etc.], shall be used for the purposes named in the bill." *Id.*

In the Senate, Senator William Morris Stewart of Nevada introduced a substitute amendment that removed limitations on titles to mining, water, and ditch rights. See 1866 Cong. Globe 3228 (June 18). Unlike its House counterpart, the Senate bill contained no dimensions for the right of ways; it was ultimately enacted into law. The Senate's Amendment acknowledged the rights recognized under state and local law like the amended House bill. See, e.g., 1866 Cong. Globe 3227 (June 18).¹⁸ Because the legislative intent behind the rights-of-way provisions was to honor the scope of property rights as defined by their independent sources, Congress' failure to incorporate the 50-foot limitation did not alter the fifty foot scope.¹⁹ Defining ditch rights-of-way in a federal statute would be redundant where the statute incorporates the definition of these rights under non-federal law. The legislative intent of incorporation is clear, and therefore, the Act of 1866 must be interpreted to allow for ditch rights-of-way of 50 feet on each side of a ditch.

As the Supreme Court recognized in *Jennison v. Kirk*, 98 U.S. 453 (1878), the purpose of the 1866 Act was to "give the sanction of the United States, the proprietor of the lands, to possessory rights, which had previously rested solely upon the local customs, laws, and decisions of the courts, and to prevent such rights from being lost on a sale of the lands." *Jennison*, 98 U.S. at 457. See also *Hunter v. United States*, 388 F.2d 148, 151 and n. 6 (1967). The Supreme

¹⁷ "Provided, That the possessory rights of others to public lands adjoining such ditch, flume, canal, or aqueduct, previously acquired under the law of the State or of the United States shall not be disturbed by the passage of this act: *And provided further*, that the use and occupation hereby granted shall be for the purpose named and no other." 1866 Cong. Globe 3141 (June 13).

¹⁸ "It furnishes the means to actual settlers of acquiring title to their homesteads by segregating the agricultural from the mineral lands, and confirms the rights to the use of water and the right of way for ditches as established by local law and decisions of the court. In short, it proposes no new system, but sanctions, regulates, and confirms a system to which the people are devoutly attached, and removes a cloud of doubt and uncertainty . . ." 1866 Cong. Globe 3227 (June 18).

¹⁹ "This falls within a well-recognized exception to the rejection of amendments, namely, that amendments may be rejected because the bill already includes those provisions." See SUTHERLAND STAT. CONST. § 48:18. As a matter of property rights law, this conclusion should not be surprising in light of the Supreme Court's long-standing recognition that these rights are usually defined by state law and other sources independent of federal protections for private property. See, e.g., *Bd. of Regents v. Roth*, 408 U.S. 564 (1972) (due process protection).

Court interpreted the Act to say that:

whenever rights to the use of water by priority of possession had become vested, and were recognized by the local customs, laws, and decisions of the courts, the owners and possessors should be protected in them; and that the right of way for ditches and canals incident to such water-rights, being recognized in the same manner, should be 'acknowledged and confirmed.'

Jennison, 98 U.S. at 460. The Supreme Court also held that the 1866 Act was a "voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use, [rather] than the establishment of a new one." *Broder v. Natoma Water & Mining Co.*, 101 U.S. 274, 276 (1879) (emphasis in original). The Court has also established the principle that states may determine the rights of an appropriator of water and how that right interacts with federal rights to water. *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 734 (1950).

3. *Establishing a 1866 Act Ditch and Right-of-way.*

Plaintiffs must demonstrate that their predecessors-in-interest of the various parcels of land that constitute Pine Creek Ranch (at the time of the alleged taking) established and used the 1866 Act ditches prior to 1907 when the land was removed from the public domain and became part of the Toiyabe National Forest Reserve. See *Hage I* at 161. They must also show that the rights-of-way have been maintained and the ditches have been used since 1907.

Plaintiffs proved that only a subset of their vested water rights actually constitute 1866 Act Ditches. At trial plaintiff presented evidence the court found persuasive that the following ditches are 1866 Act Ditches:

- *Andrew's Creek Ditch* was built in May 1876 and entered into the survey books of Nye County on June 30, 1876. The defendant admits that the Andrews Creek Ditch is an 1866 Ditch.
- *Barley Creek Ditch* was appropriated to a Hage predecessor in interest by the Nevada State Engineer in 1915 and evidence was presented that the ditch and extension ditch existed prior to 1877.
- *Borrogo Ditches*: The easement to this ditch dates to 1866.
- *Combination Pipeline* was built by the BLM in 1965 on an easement from Frank Arcularius. The title records show that the land Mr. Arcularius owned had the vested water rights to all water on the land since 1870, and plaintiffs proved the easement dates back to 1866.
- *Corcoran Ditch* was constructed between 1880 and 1889, with the proof of

appropriation filed on September 28, 1912.

- *Meadow Creek Ditch*: The Meadow Canyon Creek and its tributaries have been in the possession of the Hages and their predecessors in interest since at least 1902, and probably 1868. The Ditch was constructed between 1902 and 1912. While the State Engineer's office recommended that the ditch be considered abandoned on March 8, 1996, the court saw evidence of the ditch during its site visit in 1998.
- *Pasco or Tucker Ditch* was built in 1869 and expanded in 1878.
- *Pine Creek Irrigating Ditch* was built and registered by Mr. E.H. Kincaid, a predecessor-in-interest of the plaintiffs, on April 29, 1876.
- The *Spanish Spring Pipeline* was built in 1959 but plaintiffs' predecessors-in-interest acquired a vested interest to the water in 1870.
- *White Sage Irrigation Ditch* was recorded by the Nye County Clerk at the request of E.H. Kincaid on April 29, 1878, and built that summer. The White Sage Irrigation Ditch was part of the Certificate of Appropriation granted to the Nye County Land & Livestock Company by the Nevada State Engineer's Office on April 20, 1914.

The defendant argues that only Andrew's Ditch is an 1866 Act Ditch, because none of the others can be definitively proved to be in their original ditch beds. The court examined many of these ditches during a site visit. The site visits made it clear that the ditches – while maintained by the owners – are subject to floods, wash outs and other forces of nature.²⁰ Therefore, it would be an unreasonable burden to require the plaintiffs to prove that all the ditches were in their exact points of departures and beds as they were when built in the late 1800s.

The court finds, however, that plaintiffs failed to meet their burden of proof that the following were actually 1866 Act Ditches.

- *Baxter Spring Pipeline*: Plaintiffs claim the pipeline easement dates back to 1870. Nevada State Engineer issued a Certificate of Appropriation to the Hages' predecessor in interest with a date of priority of October 5, 1917. The Pipeline was built in 1956 and extended in 1963.
- *Corcoran Pipeline* was completed in 1965 by a Hage predecessor.
- *Desert Entry Ditch*: Plaintiffs rely on two exhibits the Defendant submitted at trial. Both are applications for Special Use permits: one states that a ditch existed

²⁰ Including an ill-fated insertion of beavers by the Forest Service in the late 1940's through the early 1950s.

in 1973 and the other states the Hages' intent to maintain it. There is no evidence of when the ditch was created, but plaintiffs claim the easement was created in 1973.

- *Hot Well Ditch*: The easement to this ditch dates to 1968, 61 years after the Toiyabe Forest was reserved from the public domain.
- The *Mount Jefferson Spring and Pipeline* were installed in 1973 by the BLM.
- The *Salisbury Well Pipeline* was created in 1966 at the request of Frank Arcularius.

Thus, the court finds that it must uphold in part and reject in part the plaintiffs' claims to 1866 Act Ditch rights-of-way.

C. Vested Rights-of-Way may be subject to Reasonable Regulation where they run across Federal Land.

Because the Hages' have vested rights of way under the 1866 Act, this court must then address their contention that they are not subject to Forest Service regulations. As the District Court in Nevada recognized, "a vested right-of-way which runs across Forest Service lands is nevertheless subject to reasonable Forest Service regulation, where 'reasonable' regulation is defined as regulation which neither prohibits the ranchers from exercising their vested rights nor limits their exercises of those rights so severely as to amount to a prohibition." *Elko County Bd. of Supervisors v. Glickman*, 909 F. Supp. 759, 764 (D. Nev. 1995). Under the 1866 Act, vested ditch rights-of-way are subject to Forest Service regulations, including the need to obtain special use permits when necessary. See 43 U.S.C. § 1761(b)(3) and Part 2800. According to the defendants, normal maintenance includes minor trimming and clearing of vegetation around the ditches. The defendants argue that any other maintenance can only be done after a special use permit is obtained from the Forest Service. See 43 C.F.R. § 2801.1-1.

The government cannot deny plaintiffs access to their vested water rights without providing a way for them to divert that water to another beneficial purpose if one exists. The government cannot cancel a grazing permit and then prohibit the plaintiffs from accessing the water to redirect it to another place of valid beneficial use. The plaintiffs have a right to go onto the land and divert the water.²¹

²¹ Yet Mr. Hage was found guilty by the U.S. District Court for Nevada for doing just that: allowing an employee to cut trees from a 50 foot section alongside each side of an 1866 Ditch as he maintained it. As Mr. Hage testified at trial, he reached the 50 foot number by a common sense analysis of the laws that he was told would apply to the ditches. His conviction was overturned by the Ninth Circuit Court of Appeals. See *United States v. Seaman*, 18 F.3d 649 (1994). At trial the government did not dispute that the pinions and junipers cut were trash trees.

Whether the requirement of a special use permit to maintain a ditch right-of-way is a taking is a question this court can most appropriately answer in the takings phase of this case, which the court addresses in the Next Steps section of this FINAL OPINION: Findings of Fact.

D. The Forest Service Manual does not have the Force of Law

The government's federal law argument does not squarely resolve the interpretive problems with the statute at issue. Instead, the government directs the court to look at the USFS Manual as an authoritative pronouncement on the scope of the right-of-way easement rather than at the 1866 Act. The government contends that plaintiffs should be denied the 50-foot rights-of-way because Mr. Hage exceeded the dimensions appropriate for normal, reasonable maintenance as defined under the Manual and the Forest Service practice. This contention must be rejected for the simple reason that the Forest Service Manual does not have the force of law. It can not alter a statutory right.

Indeed, the Supreme Court stated this principle quite clearly a year ago in *Christensen v. Harris County*, 529 U.S. 576 (2000), where the Court stated that "[i]nterpretations such as those in opinion letters – like interpretations contained in policy statements, *agency manuals*, and enforcement guidelines, all of which lack the force of law – do not warrant *Chevron*-style deference." *Christensen*, 529 U.S. at 587 (emphasis added). The Manual was created to guide Forest Service personnel, not to govern private citizens in the exercise of their rights. See *W. Radio Serv. Co. v. Espy*, 79 F.3d 896, 901 (9th Cir. 1996) ("Manual and Handbook do not have the independent force and effect of law.")²² Such agency pronouncements on the statutes are

²² The Ninth Circuit's manifold reasons in *Western Radio Services Company* – which includes references to binding Federal Circuit precedent – refute the government's theory and are worth quoting here:

First, the Manual and Handbook are not substantive in nature. In *United States v. Doremus*, 888 F.2d 630, 633 n. 3 (9th Cir. 1989), *cert. denied*, 498 U.S. 1046 (1991), we explained in dictum that "the Forest Service Manual merely establishes guidelines for the exercise of the Service's prosecutorial discretion; it does not act as a binding limitation on the Service's authority." See also *Stone Forest Indus. v. United States*, 973 F.2d 1548, 1551 (Fed. Cir. 1992) (Manual does not have force and effect of law); *Lumber, Prod. and Indus. Workers Log Scalers Local 2058 v. United States*, 580 F. Supp. 279, 283 (D. Or. 1984) (Manual is "basically a large compilation of guidelines . . . [and] not a 'substantive' rule" (internal quotations and citations omitted)). The Manual and Handbook are a series of "[p]rocedures for the conduct of Forest Service activities." 36 C.F.R. § 200.4(b), (c)(1) (1995).

The Manual and Handbook are not promulgated in accordance with the procedural requirements of the Administrative Procedure Act. Neither is published in the Federal Register or the Code of Federal Regulations. See *Parker v. United States*, 448 F.2d 793, 797 (10th Cir. 1971), *cert. denied*, 405 U.S. 989 (1972). They are not subjected to notice and comment rulemaking; they are not regulations. *HiRidge Lumber Co. v. United States*, 443 F.2d 452, 455 (9th Cir. 1971) (Manual "does not rise to the status of a regulation").

Nor are the Manual and Handbook promulgated pursuant to an independent congressional authority. The National Forest Management Act authorizes the Secretary to

merely “‘entitled to respect’ under [the Supreme Court’s] decision in *Skidmore v. Swift & Co.*, but only to the extent that those interpretations have the ‘power to persuade.’” *Christensen*, 529 U.S. at 587 (citation omitted).

Although the Preliminary Opinion found persuasive the Manual’s position that determining the scope of rights-of-way requires a factual inquiry, *see Hage III*, the substantive provisions and Forest Service practices regarding the scope of the rights-of-way work no such persuasive effect. The Forest Service is without authority to adjudicate title to rights-of-way under the 1866 Act, and maintenance permitting for ditches has no adjudicatory implications for these rights. Permitting decisions by Forest Service rangers in Nevada do not create some kind of ditch common law, as the government implies. The legal questions regarding the scope of the Act of 1866 rights are the province of the judiciary, not the Forest Service field personnel.

The Government emphasizes that plaintiffs did not confirm with the Forest Service that any of the ditches were 1866 Act ditches and did not seek authorization to maintain those ditches. However, there is no requirement under the law to seek permission to maintain an 1866 Ditch. Instead, that right is expressly reserved in the 1866 Act. 43 U.S.C. § 661. The government also argues that a fifty-foot right-of-way on either side of the ditches is unreasonable under the local maintenance and construction practices and the needs of the Hages and their predecessors in interest. Further, the government argued that the scope of the rights-of-way is a matter of federal law. *See United States v. Oregon*, 295 U.S. 1, 27-28 (1935) and *Adams v. United States*, 3 F.3d 1254, 1260 (9th Cir. 1993). The legislative history, as explored above, makes it clear that Congress intended to give those with 1866 Act ditches access to those ditches for construction and maintenance. Anything less might make those same ditches worthless.²³

The BLM and Forest Service can attempt to place right-of-way restrictions on ranchers, but it will be next to impossible to enforce those against cattle. Ranchers let cattle drink straight from streams rather than build diversions for pragmatic, economic reasons:

“[T]he owner cannot make cattle drink; if he built the most expensive pipe conceivable and the most beautiful trough that human ingenuity and skill could produce, for the cattle to drink out of, there would be no way of compelling the cattle to drink out of the trough, instead of out of a puddle made by the overflow from the trough. No doubt it was this consideration which led the hardy and practical live stock men of a half a century ago to adopt the well and widely established custom which the court found to prevail.”

(Cont. 22)

promulgate regulations, but the Manual and the Handbook are not regulations from the Secretary. 36 C.F.R. § 200.4(d)(1) (1995) (Chief of Forest Service promulgates rules in Manual and Handbook). The Manual and Handbook provisions are contemplated in a Service regulation, not in a congressional statute. *W. Radio Serv. Co.*, 79 F.3d at 901.

²³ See CURTIS H. LINDLEY, A TREATISE ON THE AMERICAN LAW RELATING TO MINES AND MINERAL LANDS § 530 vol. II (3d ed. 1988).

Steptoe Livestock Co. v. Gulley, 295 P. 772, 776 (Nev. 1931). While the BLM might commission a genetically engineered cow that will drink only where preprogrammed, until then it is highly unlikely that you will be able to make a cow differentiate between water they can drink because it is on base property and water that it is attached to public land. For centuries, no one has been able to lead the cow without it drinking at will. In a sense, the point of use for the water is the cow's head, which is an extension of the base ranch.

Therefore, for the reasons stated the court upholds in part and denies in part the plaintiffs' claims to three kinds of property: 1) vested water rights in the Southern Monitor Valley; 2) vested water rights in the Ralston and McKinney allotments; and 3) 1866 Act Ditch rights-of-way.

III. GRAZING PERMITS

The plaintiffs argue that the government took their property when it revoked their grazing permits. This disregards, however, a long line of cases and the Taylor Grazing Act itself, 43 U.S.C. § 315 *et seq.* (1934), which establish the principle that grazing permits are merely a license to use the land rather than an irrevocable right of the permit-holder.

Historically, the public lands of the United States were "free to the people who seek to use them, where they are left open and uninclosed [stet], and no act of government forbids this use." *Buford v. Houtz*, 133 U.S. 320, 326 (1890). *But see Leo Sheep Co. v. United States*, 440 U.S. 668, 686 n. 24. It was, however, also clear that the government's "failure to object . . . did not confer any vested right on the [users], nor did it deprive the United States of the power of recalling any implied license under which the land had been used for private purposes." *Light v. United States*, 220 U.S. 523, 535 (1911).²⁴

In *United States v. Fuller*, the Supreme Court held that the Fifth Amendment did not require the government to pay respondent, a large cow-calf rancher, "for that element of value [in his land] based on the use of respondent's fee lands in combination with the Government's permit lands." *United States v. Fuller*, 409 U.S. 488, 493 (1973). While *Fuller* is most applicable to the takings phase of this case because it directly addresses whether the government has a duty to reimburse grazing permit holders, it establishes that grazing permits are licenses rather than rights. The Federal Circuit extended *Fuller* in *Alves v. United States*, 133 F.3d 1454 (Fed. Cir. 1998). In *Alves* the court held that there is no difference between grazing permits and grazing preferences because neither is a compensable property interest under the Fifth Amendment. *Alves*, 133 F.3d at 1457.

More recently, in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), the Supreme Court reaffirmed that the Secretary of the Interior has "consistently reserved the authority to

²⁴ The Court went on to say "the United States can prohibit absolutely or fix the terms on which its property may be used. As it can withhold or reserve the land, it can do so indefinitely." *Light*, 220 U.S. at 536.

cancel or modify grazing permits.” *Public Lands Council*, 529 U.S. at 743. The Court explored the history and purpose of the Taylor Grazing Act.²⁵ At no time have the grazing permits been recognized as a right but rather a privilege – an opportunity to rent the public range from the government. The Secretary always retained the right to decrease the number of “animal unit months” (AUMs) allocated to each permit – in reality decreasing and increasing the number of stock allowed to range the public land as its condition changed.²⁶ The rancher plaintiffs in *Public Lands Council* argued that they were harmed by the Secretary’s ability to change their permits after they were issued because it would affect their ability to get mortgages and loans. However, the Court said the language of the Act makes it “clear that the ranchers’ interest in permit stability cannot be absolute.” *Id.* at 741.²⁷ If hardship is produced, as well it may be, it is for the Congress, and not the Court, to amend the law.

As this trilogy of cases makes clear, the plaintiffs could not hold a valid property interest in the grazing permits.²⁸ Thus, their fee lands and water rights must be valued independently of any value added by any appurtenant grazing permits or grazing preferences. As this court stated in *Hage I*, “[a]lthough the permit may have value to plaintiffs . . . value itself does not create a compensable property right, no matter how seemingly unjust the consequences to the plaintiffs. See e.g., *United States v. Cox*, 190 F.2d 293, 295 (10th Cir. 1951), cert. denied 342 U.S. 867 (1951).” *Hage I* at 169. Indeed, this court recognized in *White Sands Ranchers of New Mexico v. United States*, 14 Cl. Ct. 559 (1988), that plaintiffs had no compensable right to the value that the permit lands contributed to their fee ranches, because the government should not be required to pay for value that it contributed to the ranches. See *White Sands Ranchers*, 14 Cl. Ct. at 566-67.²⁹

²⁵ The Court noted that the rules the Department of the Interior established for allocating grazing permits had a three tier ranking preference: 1) first preference went to owners who had base property to support their herds as well as had historically grazed the public range; 2) then the preference went to those who owned base property but had not grazed the range before; and 3) final preference went to those who had no base property. See *Public Lands Council*, 529 U.S. at 734-35.

²⁶ Indeed Congress gave the Secretary of the Interior discretion to “create grazing districts, to establish and modify the boundaries thereof, and from time to time to reclassify the lands therein for other purposes.” *Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308, 313 (D.C. Cir. 1938).

²⁷ The court also noted that the regulations establish that if a permit holder did not “make substantial use” of his permit for two years, the Secretary could revoke the portion of the permit for the unused part. The Secretary also had to approve such non-use on an annual basis, but could grant it for no more than three consecutive years. See *Public Lands Council*, 529 U.S. at 747. The defendant asserts that the plaintiffs did not make full use of the permitted land which is why the grazing permits were revoked. However, all arguments about the “taking” of the grazing permits is moot since the plaintiffs could not hold a property interest in them under the Taylor Grazing Act and its implementing regulations.

²⁸ However, if by revoking the grazing permits the Forest Service and Bureau of Land Management prevented the plaintiffs from accessing and using their vested water rights, then those agencies may have taken the plaintiffs’ water rights. Those water rights were a property right and not a license like the grazing permits.

²⁹ The United States District Court in Nevada recently reiterated that grazing rights are not appurtenant to vested water rights. See *Gardner v. Stager*, 892 F. Supp. 1301, 1303 (1995). The fact that plaintiffs “predecessors grazed stock on the land at issue in the 1870’s does not mean that the Gardners today have a

At closing argument, defendant and *amici* also raised again a quasi-jurisdictional issue by asserting that the holdings of *United States v. Fuller*, 409 U.S. 488 (1973), and *Alves v. United States*, 133 F.3d 1454 (Fed. Cir. 1998), preclude this court from awarding plaintiffs any damages for any taking of their alleged water rights. Thus, even if plaintiffs were able to prove ownership of the water rights they assert were taken, defendant argues *Fuller* and *Alves* would prevent this court from awarding any compensation. According to defendant, these cases classify the interests plaintiffs allege were taken as "non-compensable" property interests. Defendant, however, makes too much of *Fuller* and *Alves* for this stage of the proceeding. Defendant's arguments would be more appropriately raised in the takings stage.

While this court believes that plaintiffs present a strong equitable argument with regard to their grazing permits, the case law on this point is clear. Only Congress can create rights out of what now are licensees. Of course, there are rights to procedural due process in any permitting decision. See *Bischoff v. Glickman*, 54 F. Supp. 2d 1226 (D. Wyo. 1999), *aff'd*, 216 F.3d 1086 (2000). See also *Nat'l Wildlife Fed'n v. Cosgriffe*, 21 F. Supp. 2d 1211 (D. Or. 1998). Therefore, the plaintiffs have no compensable right in the land covered by their grazing permits or in the permits themselves.

IV. SURFACE ESTATE

Plaintiffs, relying on a string of federal laws dating from the 18th century, claim a 752,000-acre surface estate for grazing; the acreage essentially encompasses the area of their grazing allotments. Defendant claims there is no such right. While at first glance this claim strikes the court as an attempt by the plaintiffs to revive their claim to a property interest in the rangelands that this court disallowed in its summary judgment order, *see Hage I* at 170, it is somewhat different and requires analysis by the court. Therefore, this court will address each law in its chronological order.

A. Ordinance of May 20, 1785

The first statute on which plaintiffs rely is the Ordinance for Ascertaining the Mode of Disposing of Lands in the Western Territory of May 20, 1785. The Ordinance directed surveys

vested grazing right . . . immune from federal regulations. On the contrary: use of public lands for stock grazing. . . was and is a privilege with respect to the federal government, revocable at any time." *Gardner*, 892 F. Supp. At 1303-04. The Nevada Supreme Court recognized that the United States allows ranchers to graze on federal lands, but can freely revoke that privilege at any time. See *Itcaina v. Marble*, 55 P.2d 625 (Nev. 1935). The Nevada Supreme Court also recognized that portions of Nevada's water law were superceded by the Taylor Grazing Act, 43 U.S.C. § 315 *et seq.* (1934). See *Ansolabehere v. Laborde*, 310 P.2d 842 (Nev. 1957) *cert. denied*, 355 U.S. 833 (1957) (1925 Stockwatering Act is superceded by Taylor Grazing Act where they overlap).

and divisions of Western lands into townships and established a system by which land within the townships would be sold to the public in the original thirteen states as well as granted to the members of the military in recognition of their service. Plaintiffs argue that the Ordinance stands for the policy of disposing "of the land so that the natural treasure that belonged to the United States could be put to productive use by its citizens The return benefit to the United States was productivity and economic contribution to the newly emerging communities in which these federal lands were situated." This policy, although clearly implicit in the Ordinance, applies only to township lands, not the range. Moreover, the Ordinance concerned "the territory ceded by individual [thirteen] states to the United States." The ordinance is inapplicable to Nevada because Nevada was governed by the law of Mexico at the time of the ordinance and would not become a state for 79 years. Thus, this ordinance does not provide support to plaintiffs' claim to a surface estate.

B. Kearney's Code and the Treaty of Guadalupe-Hidalgo

Plaintiffs apparently recognize this jurisdictional problem and contend that the surface estate was properly under the legal regime governing Nevada from the time of its occupation to the Treaty of Guadalupe-Hidalgo. Plaintiffs argue that the Treaty encompassed the law as recognized by the Kearney Code upon the accession of Nevada by the United States. The Kearney Code came into effect on September 27, 1845, by order of Brigadier General Stephen Watts Kearney.

The United States and Mexico concluded the Treaty of Guadalupe-Hidalgo on February 2, 1848. The Treaty ended the U.S.-Mexican War and enlarged the borders of the United States to include the present states of California, New Mexico, Nevada, Arizona, and Colorado in exchange for 15 million dollars. Upon ratification, the United States began to manage the newly acquired territory both as a sovereign and a proprietor under the Property Clause. *See* U.S. Const. Art. IV, § 3, cl.2 ("Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.").

A transfer of territory by cession, such as through a Treaty, "confers . . . [only] a derivative title." CHARLES G. FENWICK, *INTERNATIONAL LAW* 219-220 (1924). Private holdings are not deemed expropriated with changes in sovereignty. Plaintiffs argue that as a matter of law, the United States was bound to recognize possessory rights as property because such rights were recognized under Mexican law. The principle of recognition of preexisting rights is supported by Article VIII of the Treaty, which stipulates respect and protection for Mexican private property coming under the jurisdiction of the United States. 9 Stat. 922, 929.

The California Supreme Court explained that under Mexican law occupation of land for stockraising could create a possessory property right. *See Sunol v. Hepburn*, 1 Cal. 254 (1850). However, the court stated that the mere roaming of cattle and other stock "was too slight a circumstance on which to found a claim to wild, uncultivated and unfenced lands, unless it be also shown . . . that such cattle and horses were restricted by keepers or otherwise within definite

boundaries.” *Sunol*, 1 Cal. at 262. Even then, occupation required the intent to occupy along with “actual detention” of the thing occupied. *Sunol*, 1 Cal. at 263. The plaintiffs presented no evidence at trial that demonstrated the plaintiffs’ predecessors-in-interest had occupation of the land prior to Nevada being purchased by the United States.³⁰ Neither did they provide evidence which would link Mexican law to their claim for 752,000 acres of public land. Thus, this Treaty does not provide support to plaintiffs’ claim to a surface estate.

C. Act of 1866

The plaintiffs next turn their attention to the Act of 1866, which they argue created a system of split-estates. Because this court exhaustively examined it above, we need only restate here that the Act established water rights, but did not include more than a right-of-way to access those water rights. Thus, this act does not provide support to plaintiffs’ claim to a surface estate.

D. Desert Lands Act of 1877³¹

The Desert Lands Act encouraged settlement of the West but limited any person’s reclamation of the desert to no more than 640 acres. At the same time, the Act reserved water rights to prior appropriators and required all surplus water to be free for others to appropriate and use. However, as the plaintiffs note, they are not claiming fee simple lands under this Act nor do they rely on the Act to establish their grazing allotments. This Act merely shows that Congress limited settlers reclamation to 640 acres, not 752,000 acres.³² Thus, this act undercuts plaintiffs’ claim to a surface estate.

E. A Trilogy: the Act of 1888,³³ Act of 1890,³⁴ and the Creative Act of 1891³⁵

This trilogy of laws was an extension of the Desert Lands Act and illustrates Congress’ efforts to balance recognized prior usage of public lands by private citizens with protecting and taming the vast rangeland of the West. The Act of 1888 reserved desert lands that contained water or the possibility of ditches and waterways from entry and settlement. Congress quickly revoked the law in 1890, because it threatened to shut down all settlement in the desert areas – without water the land was useless. The Act of 1890 repealed the Act of 1888, reinstated settlers who had claims to the land prior to the Act of 1888, and allowed them to continue to occupy and settle the land. The Creative Act of 1891 clarified the 1890 Act by repealing the pre-emption laws. It also gave the President the authority to create National Forests from public lands.³⁶

³⁰ In fact in their post-trial brief, the plaintiffs only allege that their predecessors-in-interest had possession of the range in question as far back as the 1860s.

³¹ Desert Lands Act, 19 Stat. 377 (1877).

³² Plaintiffs’ Pine Creek Ranch encompasses approximately 7,000 acres.

³³ Act of 1888, 25 Stat. 527 (1888).

³⁴ Act of 1890, 26 Stat. 391 (1890) (also known as the Canal Act).

³⁵ Creative Act of 1891, 26 Stat. 1103 (1891).

³⁶ The Creative Act gave the President authority to create the Toiyabe National Forest in 1907.

While this series of laws eventually allowed the status quo to exist for settlers who had begun to reclaim the desert lands, nothing in the laws suggests that the settlers could accumulate a surface estate in public land through grazing permits as the plaintiffs claim. Instead, the laws affirm the rights of settlers to maintain their water rights and develop desert parcels of up to 640 acres. Thus, these acts also do not provide support to plaintiffs' claim to a surface estate.

F. Forest Service Organic Administration Act³⁷

The Forest Service Organic Administration Act set the parameters for reserving and establishing National Forests. The purpose of these National Forests was to "improve and protect the forests within their boundaries." 16 U.S.C. § 475. At the same time, the Act allowed settlers who lived within the boundaries of the Forest Reservations to enter and exit those lands freely. Neither did it prevent them from crossing the Forest Reservations to reach their homes. The Act also specifically outlined the purposes for which water could be used: domestic, mining, milling, and agriculture. The Act did not deprive settlers of any vested water rights once a forest was reserved and allowed them to locate new land for any unperfected claims in the new forest. However, this merely indicates that Congress understood the importance of water rights, not that Congress intended to create split estates in public land as plaintiffs claim.

G. Livestock Reservoir Siting Act³⁸

The Livestock Reservoir Siting Act allowed individuals and livestock companies to construct reservoirs on unoccupied public lands for the purpose of watering stock. It also allowed them to fence an area around the reservoir as long as it was available for others to use for watering stock. In addition, the Act gave the constructor of the reservoir control of the surrounding grazing – up to 160 acres – but subject to regulations the Secretary of the Interior would implement.

The defendant calls the right to water stock a bare license to use unoccupied lands, while the plaintiffs argue the settlers gained an easement around each reservoir. However, the Act's language never states that an easement was created. Instead, it states that a reservoir could be constructed of up to 160 acres. It is also clear from the Act's language that fences could not be constructed without permission of the Secretary of the Interior and he could direct them to be torn down immediately. This clearly indicates Congress had no intent for settlers to gain a permanent right to use or own the land around the reservoir.

H. The Stock Raising Homestead Act³⁹

The Plaintiffs claim that Section 10 of the Stock Raising Homestead Act allowed current

³⁷ Forest Service Organic Act of 1897, 30 Stat. 11 (1897).

³⁸ Livestock Reservoir Siting Act, 43 U.S.C. § 952 (1897). The reservoir portion of this act was repealed by the FLPMA, 43 U.S.C. § 1769 (1976).

³⁹ Stock Raising Homestead Act of 1916, 39 Stat. 862, 43 U.S.C. § 292 *et seq.*

users of water to have a right of way across public land to that water of one to five miles across depending on the distance to the water source. The regulations interpreting section 10 state simply that applications for such a “driveway” to access water will be considered as received by the Secretary of the Interior.⁴⁰ The fact that Congress split the mineral and surface estate in this Act (and others) does not mean that either ceased to be within the control of the Secretary of the Interior. The land covered by this Act could be acquired in blocks of no more than 640 acres.

I. Taylor Grazing Act⁴¹

Congress passed the Taylor Grazing Act in response to over-use of the open range. The Act gave the Secretary of the Interior broad discretion to manage the public land through rules and regulations and provided for future grazing to be allowed only via grazing permits. However, the system adopted gave a preference to those who had been grazing the land prior to passage of the Act. The Court of Appeals for the D.C. Circuit stated that one of the two purposes for the Taylor Grazing Act was to identify and protect the stock growers grazing rights. *Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308, 314 (1938). However, the court affirmed that grazing rights were not property rights in the traditional sense of the word, but similar to licenses that could be issued and revoked by the Secretary of the Interior. *Id.* at 315.

J. Nevada’s Three Mile Grazing Rule

In the alternative to these federal statutes, plaintiffs allege that they have a surface estate based on Nevada’s Three Mile Rule. NEV. REV. STAT. § 533.505(1) (2001). This law was passed in 1925, well after the Toiyabe National Forest was created in 1907, and stated that a rancher was guilty of a misdemeanor if he allowed his stock to water at a site of another or within three miles of that site for two or more consecutive days. While the plaintiffs try to use this law to create a right, it is a well-established legal principle that “[t]he laws of the United States alone control the disposition of title to its lands. The States are powerless to place any limitation or restriction on that control.” *United States v. Oregon*, 295 U.S. 1, 27-28 (1935).

In fact, “the construction of grants by the United States is a federal not a state question and involves the consideration of state questions only insofar as it may be determined as a matter of federal law that the United States has impliedly adopted and assented to a state rule of construction as applicable to its conveyances.” *See id.* (citations omitted). In addition, the Act of 1866 only allowed local custom and usage to be evaluated *where they did not conflict with federal law*.

The Taylor Grazing Act did the same: local custom was used as a guide as grazing permits were issued *to the extent they did not conflict with federal law*. Thus, Nevada’s Three Mile Rule would only be applicable to the *extent it does not conflict with federal law*. However, none of the parties nor the court have found a federal statute which would establish a similar

⁴⁰ Stock Raising Homesteads – Act of December 29, 1916, Circular No. 523 § 15.

⁴¹ Taylor Grazing Act, 43 U.S.C. §§ 315 et seq.

right to graze for three miles around a water source. Instead, every law and case the court could find reinforces the principle that grazing on federal public land is a privilege and never a right.

None of these statutes give the plaintiffs a surface estate. At most, they may have a right to go on to the land to access the water in which they have a vested right. The plaintiffs are correct that all of the statutes addressed in this section included savings clauses which stated that no laws could change vested rights. However, this court is not convinced that Congress ever intended to split the surface estate to the extent that plaintiffs claim. There is no indication that Congress intended to give away vast acreages of the public land when the largest amount cited in any of these Acts was 640 Acres. Therefore, plaintiffs have no right to the 752,000 acre surface estate that they claim.

CONCLUSION

The property involved here is not land at a specific time, but rather the usage of water which ebbs and flows throughout the years. The questions the court confronted were whether plaintiffs owned vested water rights and had a right to put to beneficial use the water that traveled the ditches. In addition to a two week trial with witnesses and evidence, the court at the request of the parties made a physical site inspection of many of those ditches.

For the reasons addressed above, the court finds that the plaintiffs have proven that they and their predecessors-in-interest own the rights to use the water listed in this FINAL OPINION: Findings of Fact. The plaintiffs have also proven that they own the ditch rights to ten of the sixteen ditches and pipelines that they claim. However, the plaintiffs do not have property rights in the surface estate or in the grazing permits. Thus, the court upholds in part and denies in part the plaintiffs' claims to three kinds of water: 1) vested water rights in the Southern Monitor Valley; 2) vested water rights in the Ralston and McKinney allotments; and 3) 1866 Act Ditch rights-of-way. The court also grants the defendant's Motion to Dismiss with respect to plaintiffs' Surface Estate and Grazing Permit claims.

NEXT STEPS

This Final Finding of Fact simply addresses what property plaintiffs own. The next and final stage will address whether the plaintiffs' ditch rights-of-way (and other water rights) were taken by the government. The court will use a two step analysis to answer that question. The plaintiffs must present evidence to establish that: 1) plaintiffs had a beneficial use for the water prior to the government revoking their grazing permits and 2) that there was a taking of the plaintiffs' right to use their vested water right. Essentially, the plaintiffs must demonstrate they could have used the water if the government had not deprived them of access to prevent them from using the water. The plaintiffs have a right to the water so long as they can put it to beneficial use.

The parties are directed to the order that accompanies this opinion for the next steps in this case. Approximately sixty days from the date of this opinion the court will schedule a status conference with the parties to discuss the next immediate steps. Because of the length of this litigation it is hoped that one final proceeding, whether trial or oral argument, can be used to finally resolve this case. It is also hoped that the valuation issues can be included in this segment of the case.

It is so ORDERED.



LOREN A. SMITH
SENIOR JUDGE

Appendix

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC-FT./ACRE	TOTAL AC-FT.										
V-01081	E. WAYNE B. JEAN N. HAGE	MEADOW CANYON CREEK AND TRIBUTARIES	NW1/4 SEC. 21, T. 10N., R. 45E., M.D.B. 8M., N. 40°58'04"W, 19.83793 FT. FROM THE NE1/4 COR. SEC. 2, T. 9N., R. 45E., M.D.B. 8M.	MAY 1 TO OCT. 31 PER DECREE 888	IRRIGATION STOCKWATER DOMESTIC 1874	24	3	480.60										
PLACE OF USE 46 ACRES DESCRIPTIONS																		
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS		
1	T. 10 N., R. 45 E.		0.25	4.71	10.84	4.94	12.01	0.48	17.28	8.03	7.82	5.83	7.80	10.24		REFER TO APPENDIX A FOR SPRING DESCRIPTIONS FOR STOCKWATERING. PROOF NOS. V-01081, V-01183, V-01184, V-01185, V-01188, V-04488, V-04489, V-04490, V-04491, V-04492, V-04493, V-04494, V-04495, V-04496, V-04497, V-04498, V-04499, V-04500, V-04501, V-04502, V-04503, V-04504, V-04505, V-04506, V-04507, V-04508, V-04509, V-04510, V-04511, V-04512, V-04513, V-04514, V-04515, V-04516, V-04517, V-04518, V-04519, V-04520, V-04521, V-04522, V-04523, V-04524, V-04525, V-04526, V-04527, V-04528, V-04529, V-04530, V-04531, V-04532, V-04533, V-04534, V-04535, V-04536, V-04537, V-04538, V-04539, V-04540, V-04541, V-04542, V-04543, V-04544, V-04545, V-04546, V-04547, V-04548, V-04549, V-04550, V-04551, V-04552, V-04553, V-04554, V-04555, V-04556, V-04557, V-04558, V-04559, V-04560, V-04561, V-04562, V-04563, V-04564, V-04565, V-04566, V-04567, V-04568, V-04569, V-04570, V-04571, V-04572, V-04573, V-04574, V-04575, V-04576, V-04577, V-04578, V-04579, V-04580, V-04581, V-04582, V-04583, V-04584, V-04585, V-04586, V-04587, V-04588, V-04589, V-04590, V-04591, V-04592, V-04593, V-04594, V-04595, V-04596, V-04597, V-04598, V-04599, V-04600, V-04601, V-04602, V-04603, V-04604, V-04605, V-04606, V-04607, V-04608, V-04609, V-04610, V-04611, V-04612, V-04613, V-04614, V-04615, V-04616, V-04617, V-04618, V-04619, V-04620, V-04621, V-04622, V-04623, V-04624, V-04625, V-04626, V-04627, V-04628, V-04629, V-04630, V-04631, V-04632, V-04633, V-04634, V-04635, V-04636, V-04637, V-04638, V-04639, V-04640, V-04641, V-04642, V-04643, V-04644, V-04645, V-04646, V-04647, V-04648, V-04649, V-04650, V-04651, V-04652, V-04653, V-04654, V-04655, V-04656, V-04657, V-04658, V-04659, V-04660, V-04661, V-04662, V-04663, V-04664, V-04665, V-04666, V-04667, V-04668, V-04669, V-04670, V-04671, V-04672, V-04673, V-04674, V-04675, V-04676, V-04677, V-04678, V-04679, V-04680, V-04681, V-04682, V-04683, V-04684, V-04685, V-04686, V-04687, V-04688, V-04689, V-04690, V-04691, V-04692, V-04693, V-04694, V-04695, V-04696, V-04697, V-04698, V-04699, V-04700, V-04701, V-04702, V-04703, V-04704, V-04705, V-04706, V-04707, V-04708, V-04709, V-04710, V-04711, V-04712, V-04713, V-04714, V-04715, V-04716, V-04717, V-04718, V-04719, V-04720, V-04721, V-04722, V-04723, V-04724, V-04725, V-04726, V-04727, V-04728, V-04729, V-04730, V-04731, V-04732, V-04733, V-04734, V-04735, V-04736, V-04737, V-04738, V-04739, V-04740, V-04741, V-04742, V-04743, V-04744, V-04745, V-04746, V-04747, V-04748, V-04749, V-04750, V-04751, V-04752, V-04753, V-04754, V-04755, V-04756, V-04757, V-04758, V-04759, V-04760, V-04761, V-04762, V-04763, V-04764, V-04765, V-04766, V-04767, V-04768, V-04769, V-04770, V-04771, V-04772, V-04773, V-04774, V-04775, V-04776, V-04777, V-04778, V-04779, V-04780, V-04781, V-04782, V-04783, V-04784, V-04785, V-04786, V-04787, V-04788, V-04789, V-04790, V-04791, V-04792, V-04793, V-04794, V-04795, V-04796, V-04797, V-04798, V-04799, V-04800, V-04801, V-04802, V-04803, V-04804, V-04805, V-04806, V-04807, V-04808, V-04809, V-04810, V-04811, V-04812, V-04813, V-04814, V-04815, V-04816, V-04817, V-04818, V-04819, V-04820, V-04821, V-04822, V-04823, V-04824, V-04825, V-04826, V-04827, V-04828, V-04829, V-04830, V-04831, V-04832, V-04833, V-04834, V-04835, V-04836, V-04837, V-04838, V-04839, V-04840, V-04841, V-04842, V-04843, V-04844, V-04845, V-04846, V-04847, V-04848, V-04849, V-04850, V-04851, V-04852, V-04853, V-04854, V-04855, V-04856, V-04857, V-04858, V-04859, V-04860, V-04861, V-04862, V-04863, V-04864, V-04865, V-04866, V-04867, V-04868, V-04869, V-04870, V-04871, V-04872, V-04873, V-04874, V-04875, V-04876, V-04877, V-04878, V-04879, V-04880, V-04881, V-04882, V-04883, V-04884, V-04885, V-04886, V-04887, V-04888, V-04889, V-04890, V-04891, V-04892, V-04893, V-04894, V-04895, V-04896, V-04897, V-04898, V-04899, V-04900, V-04901, V-04902, V-04903, V-04904, V-04905, V-04906, V-04907, V-04908, V-04909, V-04910, V-04911, V-04912, V-04913, V-04914, V-04915, V-04916, V-04917, V-04918, V-04919, V-04920, V-04921, V-04922, V-04923, V-04924, V-04925, V-04926, V-04927, V-04928, V-04929, V-04930, V-04931, V-04932, V-04933, V-04934, V-04935, V-04936, V-04937, V-04938, V-04939, V-04940, V-04941, V-04942, V-04943, V-04944, V-04945, V-04946, V-04947, V-04948, V-04949, V-04950, V-04951, V-04952, V-04953, V-04954, V-04955, V-04956, V-04957, V-04958, V-04959, V-04960, V-04961, V-04962, V-04963, V-04964, V-04965, V-04966, V-04967, V-04968, V-04969, V-04970, V-04971, V-04972, V-04973, V-04974, V-04975, V-04976, V-04977, V-04978, V-04979, V-04980, V-04981, V-04982, V-04983, V-04984, V-04985, V-04986, V-04987, V-04988, V-04989, V-04990, V-04991, V-04992, V-04993, V-04994, V-04995, V-04996, V-04997, V-04998, V-04999, V-05000	150.22	
PLACE OF USE 45 ACRES DESCRIPTIONS																		
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS		
27	T. 10 N., R. 48 E.						2.41											
28	T. 10 N., R. 48 E.																	
TOTAL ACRES: 150.22																		
V-01183	E. WAYNE B. JEAN N. HAGE	SMITH CREEK (AKA WIDOW SMITH CREEK, AND SOUTH FORK WIDOW SMITH CREEK)	SW1/4 SEC. 28, T. 10N., R. 45E., M.D.B. 8M., N. 83°38'W, 4.818 0 FT. FROM THE E.K. COR. SAID SEC. 28.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER DOMESTIC 1874	45	3	238.11										
PLACE OF USE 45 ACRES DESCRIPTIONS																		
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS		
27	T. 10 N., R. 48 E.						2.41											
28	T. 10 N., R. 48 E.																	
TOTAL ACRES: 78.27																		
REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING REFER TO REMARKS UNDER PROOF NO. V-01081 REGARDING STOCKWATERING.																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.							
V-01184	E. WAYNE & JEAN N. HAGE	PINE CREEK - WHITE SAGE DITCH	SW/4NW/4 SEC. 18, T. 11N., R. 48E., M.D.B.M., N. 1/2 E. 385.72 FT. FROM THE E.K. COR. SAID SEC. 18.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER 1878	5	3	240.90							
PLACE OF USE															
40 ACRES DESCRIPTIONS															
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
32	T. 12 N.	R. 48 E.													86.30
33	T. 12 N.	R. 48 E.													14.00
TOTAL ACRES:															100.30
									SHADED ACREAGE IS SUPPLEMENTED BY PERMIT 2212, CERTIFICATE 414 AND PROOF NO. V-08728. SEE REMARKS UNDER PROOF V-01081 REGARDING STOCKWATERING.						

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.							
V-01185	E. WAYNE & JEAN N. HAGE	PINE CREEK & TRIBUTARIES	SW/4NW/4 SEC. 18, T. 11N., R. 48E., M.D.B.M., N. 1/2 E. 385.72 FT. FROM THE E.K. COR. SAID SEC. 18.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER DOMESTIC 1874	72	3	3470.01							
PLACE OF USE															
40 ACRES DESCRIPTIONS															
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
10	T. 11 N.	R. 48 E.													96.21
11	T. 11 N.	R. 48 E.													119.37
14	T. 11 N.	R. 48 E.													58.59
15	T. 11 N.	R. 48 E.													232.28
16	T. 11 N.	R. 48 E.													184.04
17	T. 11 N.	R. 48 E.													21.92
20	T. 11 N.	R. 48 E.													44.84
21	T. 11 N.	R. 48 E.													123.61
22	T. 11 N.	R. 48 E.													26.81
26	T. 12 N.	R. 48 E.													103.11
35	T. 12 N.	R. 48 E.													142.40
TOTAL ACRES:															1188.87
									REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING						
									REFER TO REMARKS UNDER PROOF NO. V-01081 REGARDING STOCKWATERING. SHADE ACREAGE IS SUPPLEMENTED BY PROOF NO. V-01188 AND PERMIT 2408. CERT 742						

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.		
V-01186	E. WAYNE & JEAN H HAGE	ANDREW'S CREEK & TRIBUTARIES	SW 1/4 NW 1/4 SEC. 30, T. 11 N., R. 48 E., M.D.B.M., S. 71° 2' W. 4,352.00 FT. FROM THE E.N. COR. SEC. 19, T. 11 N., R. 48 E., M.D.B.M.	APR. 1 TO OCT. 30	IRRIGATION STOCKWATER DOMESTIC 1874	24	3	3184.14		
PLACE OF USE										
48 ACRES DESCRIPTIONS										
SECTION	TOWNSHIP	RANGE	T. 11 N.			R. 48 E.			ACRES PER SECTION	REMARKS
			NE	NW	SW	SE	SW	SE		
10	T. 11 N.	R. 48 E.	2.78			28.15			96.21	
11	T. 11 N.	R. 48 E.					2.89	28.78	119.37	
14	T. 11 N.	R. 48 E.					28.08	1.81	49.87	
16	T. 11 N.	R. 48 E.	26.08		27.23	1.84			232.28	
17	T. 11 N.	R. 48 E.							141.90	
20	T. 11 N.	R. 48 E.							21.92	
21	T. 11 N.	R. 48 E.	28.71	31.84	6.15	13.89	13.23	17.81	0.00	
22	T. 11 N.	R. 48 E.					28.41		123.91	
28	T. 12 N.	R. 48 E.							25.81	
35	T. 12 N.	R. 48 E.							103.11	
			33.84	88.25	38.31	0.00			147.40	
			38.41	31.21					1081.38	
			TOTAL ACRES						1081.38	

REFER TO APPENDIX A FOR SPRING SOURCE DESCRIPTIONS FOR STOCKWATERING

REFER TO REMARKS UNDER PROOF NO. V-01091 REGARDING STOCKWATERING. SHADED ACREAGE IS SUPPLEMENTED BY PROOF NO. V-01185 AND PERMIT 3408. CERT. 742

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.												
V-02355	JAMES R. BOYCE & CHRISTINE D. BOYCE	LOWER WADSWORTH CREEK AND TRIBUTARIES	NW 1/4 SEC. 27, T. 13N., R. 47E., M.D.B.M. S. 49° 28' E. 17,620 FT. FROM THE NW COR. OF SEC. 17, T. 13N., R. 47E., M.D.B.M.	OCT. 1 TO MAY 31	STOCKWATER 1871															
PLACE OF USE 46 ACRES PER SECTION																				
46 ACRES PER SECTION																				
PLACE OF USE 46 ACRES PER SECTION																				
SECTION	TOWN-SHIP	RANGE	PLACE OF USE												ACRES PER SECTION	REMARKS				
			N	E	N	E	N	E	N	E	N	E	N	E	N	E				
16	T. 13 N., R. 47 E.		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		STOCKWATERING UNDER PROOF NOS. V-02355, V-02357 V-02358, V-05094-98, V-05736, V-05742 AND V-05744 SHALL BE LIMITED TO 1,890 HEAD OF CATTLE, 15,900 SHEEP AND 419 HORSES DISTRIBUTED ON ALL SOURCES
21	T. 13 N., R. 47 E.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
22	T. 13 N., R. 47 E.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
23	T. 13 N., R. 47 E.																			
25	T. 13 N., R. 47 E.																			
26	T. 13 N., R. 47 E.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
27	T. 13 N., R. 47 E.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
35	T. 13 N., R. 47 E.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
30	T. 13 N., R. 48 E.																			

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.												
V-02357	JAMES R. BOYCE & CHRISTINE D. BOYCE	MILL CANYON CREEK	A POINT ON THE WEST LINE OF SEC. 1, T. 13N., R. 48E., M.D.B.M., N. 1° 30' E. 2,937.8 FT. FROM THE SW COR. OF SAID SEC. 1.	MAY 1 TO NOV. 30	STOCKWATER 1888															
PLACE OF USE 46 ACRES PER SECTION																				
46 ACRES PER SECTION																				
PLACE OF USE 46 ACRES PER SECTION																				
46 ACRES PER SECTION																				
PLACE OF USE 46 ACRES PER SECTION																				
SECTION	TOWN-SHIP	RANGE	PLACE OF USE												ACRES PER SECTION	REMARKS				
			N	E	N	E	N	E	N	E	N	E	N	E	N	E				
1	T. 13 N., R. 48 E.		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																																																															
V-02368	JAMES R. BOYCE & CHRISTINE D. BOYCE	LOWER MORGAN CREEK & TRIBUTARIES	NE 1/4 SEC. 21, T. 12N., R. 47E., M.D.B.M., S. 85° 23' W., 8.613 FT. FROM THE NE COR. OF SEC. 22, T. 12N., R. 47E., M.D.B.M.	OCT. 1 TO MAY 31	STOCKWATER 1877																																																																																																																		
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V-04174	STEPHEN C. WILMANS, III	UNNAMED SPRINGS	NENSEK SEC. 27, T. 13N., R. 46E., M.D.B.M., N. 14° 51' W., 2.203 FT. FROM THE SE COR. OF SAID SEC. 27.	APR. 1 TO SEPT. 30	STOCKWATER 1877																																																																																																																		
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R-04176	UNITED STATES OF AMERICA FOREST SERVICE	BARLEY CREEK	SE X SW 1/4 SEC. 10, T. 08N., R. 47E., M.D.B.M., N. 73° 00' W., 12,700 FT. FROM THE BARLEY HORIZONTAL CONTROL STATION.	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 18, 1907 DOMESTIC STOCKWATERING	0.002		0.028																														
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R-04178	UNITED STATES OF AMERICA FOREST SERVICE	MEADOW SPRING AKA HOUSE SPRING OR UNNAMED SPRING	NE X SW 1/4 SEC. 21, T. 10N., R. 48E., M.D.B.M., N. 27° 20' E., 18,100 FT. FROM THE SE COR. OF SAID SEC. 31	MAY 1 TO OCT. 31 MAY 1 TO MAY 31 MAY 1 TO OCT 31	WATERSHED PROTECTION APRIL 18, 1907 DOMESTIC STOCKWATERING	0.002		0.021																														
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R-04177	UNITED STATES OF AMERICA FOREST SERVICE	TRIPLE SPRINGS (AKA PETERSON SPRING)	SE 1/4 SEC. 20, T. 10N., R. 45E., M.D. & S.M., N. 20°00'E., 15,060 FT. FROM THE SE COR. OF SAID SEC. 31	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 STOCKWATERING	0.001		0.188																												
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R-04178	UNITED STATES OF AMERICA FOREST SERVICE	O SPRING (AKA MACAFEE SPRING)	NE 1/4 SEC. 20, T. 10N., R. 45E., M.D. & S.M., N. 19°30'E., 16,360 FT. FROM THE SE COR. OF SAID SEC. 31	APR 1 TO NOV 30 APR 1 TO NOV 30 MAY 1 TO OCT 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002		0.288																												
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R-04179	UNITED STATES OF AMERICA FOREST SERVICE	BOX SPRING	NW 1/4 SW 1/4 SEC. 31, T. 10N., R. 48E., M.D.B.M., N. 27°00'E. 14,000 FT. FROM THE SE COR. OF SAID SEC. 31.	MAY 1 TO SEPT. 30	WATERSHED PROTECTION APRIL 15, 1907 STOCKWATERING	0.001		0.126																																
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R-04180	UNITED STATES OF AMERICA FOREST SERVICE	SCOFFE'S SPRING	NW 1/4 SW 1/4 SEC. 07, T. 10N., R. 48E., M.D.B.M., S. 87°00'E. 4,800 FT. FROM THE SW COR. OF SEC. 31, T. 10N., R. 48E., M.D.B.M.	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 STOCKWATERING	0.002		0.033																																
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R-04181	UNITED STATES OF AMERICA - FOREST SERVICE	UPPER SCULFEE'S SPRING	SE 1/4 SEC. 31, T. 11N., R. 48E., M.D.B.M., N. 78°00' E., 4,600 FT. FROM THE SW COR. OF SAID SEC. 31.	MAY 1 TO OCT. 31	WATERSHED PROTECTION APRIL 15, 1907 DOMESTIC STOCKWATERING	0.002		0.033																																																							
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V-04483	IRON NEVADA RESOURCES, LTD.	WARM SPRINGS	SE 1/4 SEC. 08, T. 11N., R. 47E., M.D.B.M., S. 02°00' W., 2,080 FT. FROM THE NE COR. OF SAID SEC. 08	JAN. 1 TO DEC. 31	STOCKWATER DOMESTIC 1888																																																										
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8	T. 11 N.	R. 47 E.																																																													
<p style="text-align: center;">REMARKS</p> <p>PROOF NOS. V-04483 AND V-05738 SHALL BE LIMITED TO 1,000 HEAD OF CATTLE, 12,000 SHEEP AND 34 HORSES</p>																																																															

PROOF NO.	CLAIMANT	SOURCE	POINTS OF OVERSEEN	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.								
V-04485	E. WAYNE & JEAN M. HAGE	MOSQUITO CREEK & TRIBUTARIES	NW1/4 SEC. 31, T. 12N., R. 47E., M.D.B.M., N. 88° 10' E. 1888 FT. FROM THE NE COR. SAID SEC. 31. SW1/4 SEC. 32, T. 12N., R. 47E., M.D.B.M., S. 84° 09' E. 3890 FT. FROM THE NW COR. SAID SEC. 32. SE1/4 SEC. 32, T. 12N., R. 47E., M.D.B.M., N. 79° 01' E. 4890 FT. FROM THE SW COR. SAID SEC. 32.	JAN. 1. TO DEC. 31	IRRIGATION STOCKWATER DOMESTIC 1874	22	3	7131.48								
PLACE OF USE																
40 ACRES DESCRIPTIONS																
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS
13	T. 12 N.	R. 47 E.	0.85		16.18						34.61			2.3	96.01	
24	T. 12 N.	R. 48 E.	19.21	1.84	10.81						14.34			21.87	87.87	
25	T. 12 N.	R. 48 E.	32.73		26.00						26.45			28.16	100.40	
26	T. 12 N.	R. 49 E.	28.28		11.17										39.45	
5	T. 12 N.	R. 47 E.						0.48	27.8						28.28	
6	T. 12 N.	R. 47 E.								2.89	1.28				87.73	
7	T. 12 N.	R. 47 E.	40.00	40.10	28.84	28.40	13.16			12.82	28.89	18.24	38.08	20.33	381.27	
8	T. 12 N.	R. 47 E.						8.27							9.27	
18	T. 12 N.	R. 47 E.			32.86	18.84		EN LOT 1	LOT 2							
19	T. 12 N.	R. 47 E.			17.25	18.41		EN LOT 3	LOT 4							
28	T. 12 N.	R. 47 E.														
29	T. 12 N.	R. 47 E.														
30	T. 12 N.	R. 47 E.			22.49	6.24										
31	T. 12 N.	R. 47 E.	39.02	37.85	27.34	27.34										
32	T. 12 N.	R. 47 E.														
TOTAL ACRES															2377.16	

REFER TO REMARKS UNDER PROOF NO. V-01091 REGARDING STOCKWATERING

REFER TO REMARKS UNDER PROOF NO. V-01091 REGARDING STOCKWATERING

SHADED ACREAGE IS SUPPLEMENTED BY PERMIT 4784, CERT 1212, AND PERMIT 4785.

CERT 1213

PERMITS 4784 AND 4785 ARE NOT SUPPLEMENTAL TO EACH OTHER.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC. FT./ACRE	TOTAL AC. FT.									
V-04188	E. WAYNE & JEAN M. HAGE	BARLEY CREEK & TRIBUTARIES MEADOW CANYON CREEK & WIDOW SMITH CREEK	NW 1/4 SEC. 06, T. 10N., R. 47E., M.D.B.M., S. 29° 41' E. 1183 FT. FROM THE NW COR. SAID SEC. 6. SW 1/4 SEC. 01, T. 10N., R. 48E., M.D.B.M., N. 88° 40' E. 810 FT. FROM THE S 1/4 COR. SAID SEC. 1. NW 1/4 SEC. 13, T. 10N., R. 48E., M.D.B.M., S. 14° 11' 30E. 3029.83 FT. FROM THE N 1/4 COR. SAID SEC. 13. SE 1/4 SEC. 36, T. 10N., R. 48E., M.D.B.M., N. 82° 03' E. 1,814.00 FT. FROM THE SW COR. SAID SEC. 36.	JAN. 1 TO DEC. 31	IRRIGATION STOCKWATER DOMESTIC 1874	24	3	2864.83									
PLACE OF USE 46 ACRES DESCRIPTIONS																	
SECTION	TOWN- SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES	PER SECTION	REMARKS
1	T. 10 N.	R. 48 E.	7.00												142.80		
12	T. 10 N.	R. 48 E.	39.80	18.31	26.10	38.80									286.48		
6	T. 10 N.	R. 47 E.					LOT 4	LOT 5							84.70		
7	T. 10 N.	R. 47 E.					LOT 1	LOT 2							115.10		
18	T. 10 N.	R. 47 E.					LOT 1								33.88		
36	T. 11 N.	R. 48 E.	14.00												284.84		
31	T. 11 N.	R. 47 E.													5.30		
TOTAL ACRES															881.81		

REFER TO APPENDIX A FOR SPRING
SOURCE DESCRIPTIONS FOR STOCKWATERING

REFER TO REMARKS UNDER
PROOF NO. V-01081 REGARDING
STOCKWATERING.
SHADED ACRES IS
SUPPLEMENTED BY PERMIT
3361, CERT. 2808, AND PERMIT 3362 CERT. 2864.
PERMITS 3361 AND 3362 ARE NOT
SUPPLEMENTAL TO EACH OTHER.

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC. FT./ ACRE	TOTAL AC. FT.												
V-08532	STEPHEN C WILMANS, III	MORGAN CREEK & TRIBUTARIES	<p>NW/4NW/4 SEC. 23, T. 12N., R. 47E., M.D.B.M., S. 68°54'E 1.408 FT. FROM THE NW COR. OF SAID SEC 23.</p> <p>NE/4NW/4 SEC. 23, T. 12N., R. 47E., M.D.B.M., S. 67°01'E 2.070 FT. FROM THE NW COR. OF SAID SEC. 23.</p>	APR. 1 TO OCT. 31	IRRIGATION STOCKWATER DOMESTIC 1871	6.0	3	18.30												
PLACE OF USE																				
48 ACRE DESCRIPTIONS																				
SECTION	TOWNSHIP	RANGE	ACRES PER SECTION																REMARKS	
			NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW		
22	T. 13 N.	R. 47 E.	0.70																0.70	REFER TO REMAINS UNDER PROOF NO. V-08174 REGARDING STOCKWATERING
23	T. 12 N.	R. 47 E.																	11.40	
			TOTAL ACRES:																18.10	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																								
V-04884	JAMES R. BOYCE & CHRISTINE D. BOYCE	BRANDY'S SPRING	SE 1/4 SW 1/4 SEC. 38, T. 13N., R. 48E., M.D.B.M., N. 88° 51' W., 17, 180 FT. FROM THE W 1/4 COR. SEC. 9, T. 13N., R. 48E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1885																											
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td colspan="2">SECTION</td> <td colspan="2">TOWNSHIP</td> <td colspan="2">RANGE</td> <td colspan="2">E</td> <td colspan="2">S</td> <td colspan="2">E</td> </tr> <tr> <td>38</td> <td>T. 13 N.</td> <td>R. 48 E.</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>SE</td> </tr> </table>									SECTION		TOWNSHIP		RANGE		E		S		E		38	T. 13 N.	R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	SE
SECTION		TOWNSHIP		RANGE		E		S		E																						
38	T. 13 N.	R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	SE																					
REFER TO REMARKS UNDER PROOF NO. V-02385 REGARDING STOCKWATERING																																
ACRES PER SECTION																																
REMARKS																																
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SECTION		TOWNSHIP		RANGE		E		S		E																						
38	T. 13 N.	R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	SE																					
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SECTION		TOWNSHIP		RANGE		E		S		E																						
15	T. 13 N.	R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	SE																					
REFER TO REMARKS UNDER PROOF NO. V-02385 REGARDING STOCKWATERING																																
ACRES PER SECTION																																
REMARKS																																

PROOF NO.	CLAIMANT	SOURCE	PORTION OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-05688	JAMES R. BOYCE & CHRISTINE D. BOYCE	JT'S SPRING	NW1/4 SW1/4 SEC. 6, T.13N., R.46E., M.D.B.M., N.31°35'W. 28,100 FT. FROM THE SE COR. OF SEC. 27, T.13N., R.46E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1865													
PLACE OF USE																		
40 ACRE DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	PLACE OF USE															
5	T. 13 N.	R. 46 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING																		
ACRES PER SECTION																		
REMARKS																		
V-05687	JAMES R. BOYCE & CHRISTINE D. BOYCE	BARBARA'S SPRING	NE1/4 SW1/4 SEC. 6, T.13N., R.46E., M.D.B.M., N.31°50'W. 28,600 FT. FROM SE COR. OF SEC. 27, T.13N., R.46E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1865													
PLACE OF USE																		
40 ACRE DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	PLACE OF USE															
6	T. 13 N.	R. 46 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
REFER TO REMARKS UNDER PROOF NO. V-02355 REGARDING STOCKWATERING																		
ACRES PER SECTION																		
REMARKS																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-08488	JAMES R. BOYCE & CHRISTINE D. BOYCE	DAVID'S SPRING	NW 1/4 SEC. 8, T. 13N., R. 48E., M.D.B.M., N 36° 12' W, 29,180 FT. FROM THE SE COR. OF SEC. 27, T. 13N., R. 48E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1885													
PLACE OF USE 40 ACRES DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	PLACE OF USE															
8	T. 13 N.	R. 48 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
REFER TO REMARKS UNDER PROOF NO. V-02365 REGARDING STOCKWATERING																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-08738	JAMES R. BOYCE & CHRISTINE D. BOYCE	DRY LAKE WELL	NW 1/4 SEC. 28, T. 13N., R. 47E., M.D.B.M.	JAN. 1 TO DEC. 31	STOCKWATER PRIOR TO 1939													
PLACE OF USE 40 ACRES DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	PLACE OF USE															
28	T. 13 N.	R. 47 E.	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
REFER TO REMARKS UNDER PROOF NO. V-02365 REGARDING STOCKWATERING																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-08738	E. WAYNE HAGE AND JEAN M. HAGE & NRH NEVADA RESOURCES, INC.	COMMANATION SPRINGS	SE 1/4 SEC. 25, T. 09N., R. 45E., M.D. 8 S.M., N. 18° 25' W. 3,270 FT. FROM THE SE COR. OF SAID SEC. 25.	JAN. 1 TO DEC. 31	STOCKWATER 1886													
PLACE OF USE 40 ACRES DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	ACRES PER SECTION															
26	T 12 N.	R 45 E	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
REFER TO REMARKS UNDER PROOF NO. V-01081 REGARDING STOCKWATERING FOR THE HAGE PORTION AND PROOF NO. V-04683 FOR THE NRH NV. RES. PORTION																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-08738	E. WAYNE HAGE AND JEAN M. HAGE	PASCO CREEK PASCO SPRING & TRIBUTARIES	SE 1/4 SEC. 08, T. 11N., R. 48E., M.D. 8 S.M., N. 07° 32' 25" W. 3,278 FT. FROM THE S.E. COR. OF SAID SEC. 08	MAY 1 TO SEPT. 30	IRRIGATION STOCKWATER DOMESTIC 1889	1.6	3	240.80										
PLACE OF USE 40 ACRES DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	ACRES PER SECTION															
33	T 12 N.	R 48 E	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
33	T 12 N.	R 48 E	TOTAL ACRES: 80.30															
SHADED ACREAGE IS SUPPLEMENTED BY PERMIT 2213, CERTIFICATE #14 AND PROOF NO. V-01184. REFER TO REMARKS UNDER PROOF NO. V-01081 REGARDING STOCKWATERING																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																																																																																												
V-08740	STEPHEN C. WILMANS, III	DRY LAKE SPRINGS (SW)	SW/4 SEC. 17, T. 13N., R. 47E., M.D.B.M., S. 40°02'E. 6,276 FT. FROM THE NW COR. OF SAID SEC. 17.	JAN. 1 TO DEC. 31	STOCKWATER 1874																																																																																																																																															
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V-08741	STEPHEN C. WILMANS, III	DRY LAKE SPRINGS (NE)	SW/4 SEC. 9, T. 13N., R. 47E., M.D.B.M., N. 81°45'E. 8,822 FT. FROM THE SW COR. OF SEC. 8, T. 13N., R. 47E., M.D.B.M.	JAN 1 TO DEC 31	STOCKWATER 1874																																																																																																																																															
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td colspan="2">SECTION</td> <td colspan="2">TOWN</td> <td colspan="2">RANGE</td> <td colspan="2">N</td> <td colspan="2">E</td> <td colspan="2">S</td> <td colspan="2">W</td> </tr> <tr> <td colspan="2">9</td> <td colspan="2">T 13 N</td> <td colspan="2">R 47 E</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> <td colspan="2">NE</td> <td colspan="2">NW</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">SE</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">SE</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">SE</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> <tr> <td colspan="2"></td> <td colspan="2">SE</td> <td colspan="2">SW</td> <td colspan="2">NE</td> <td colspan="2">NW</td> <td colspan="2">SW</td> <td colspan="2">SE</td> </tr> </table> <p style="text-align: center;">REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING</p>									SECTION		TOWN		RANGE		N		E		S		W		9		T 13 N		R 47 E		NE		NW		SW		SE				NE		NW		SW		SE		NE		NW				SE		SW		NE		NW		SW		SE				NW		SW		NE		NW		SW		SE				SE		SW		NE		NW		SW		SE				NW		SW		NE		NW		SW		SE				SE		SW		NE		NW		SW		SE				NW		SW		NE		NW		SW		SE				SE		SW		NE		NW		SW		SE	
SECTION		TOWN		RANGE		N		E		S		W																																																																																																																																								
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PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.										
V-08742	JAMES R. BOYCE & CHRISTINE D. BOYCE	UPPER MORGAN CREEK & TRIBUTARIES	A POINT ON THE NORTH-SOUTH CENTER SECTION LINE, SEC. 23, T. 12N., R. 47E., M.D. 8 S.M., S. 01'-00"E, 1,138 FEET FROM THE N.W. COR. OF SAID SEC. 23.	MAY 1 TO NOV. 30	STOCKWATER 1871													
PLACE OF USE																		
48 ACRES DESCRIPTIONS																		
SECTION	TOWNSHIP	RANGE	N				E				S				REMARKS			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
23	T. 12 N.	R. 47 E.	X	X	X	X												
24	T. 12 N.	R. 47 E.	X	X	X	X												
19	T. 12 N.	R. 48 E.	X	X	X	X												
20	T. 12 N.	R. 48 E.																
28	T. 12 N.	R. 48 E.	X	X	X	X												
29	T. 12 N.	R. 48 E.	X	X	X	X												
30	T. 12 N.	R. 48 E.	X	X	X	X												
31	T. 12 N.	R. 48 E.	X	X	X	X												
32	T. 12 N.	R. 48 E.	X	X	X	X												
33	T. 12 N.	R. 48 E.	X	X	X	X												

REFER TO REMARKS UNDER PROOF NO. V-02389 REGARDING STOCKWATERING

PROOF NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEAR: PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.								
V-08743	STEPHEN C. WILLIAMS, III	WADSWORTH CREEK & TRIBUTARIES (UPPER)	A POINT ON THE WEST LINE SEC. 31, T.13N., R.48E., M.D.B.M., S.17°16'40"W., 19,704.2 FEET FROM THE EN COR. SEC. 7, T.13N., R.48E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1871											
PLACE OF USE																
40 ACRE DESCRIPTIONS																
SECTION	Township	Range	N				E				S				ACRES PER SECTION	REMARKS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
6	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	REFER TO REMARKS UNDER PROOF NO. V-01174 REGARDING STOCKWATERING
7	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
8	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
9	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
10	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
11	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
12	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
13	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
14	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
15	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
16	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
17	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
18	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
19	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
20	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
21	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
22	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
23	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
24	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
25	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
26	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
27	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
28	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
29	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
30	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
31	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	
32	T. 12 N.	R. 48 E.	X	X	X	X	X	X	X	X	X	X	X	X	X	

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.											
V-05744	JAMES R. BOYCE & CHRISTINE D. BOYCE	NORTHUMBERLAND SPRING	NE 1/4 SEC. 8, T. 12N., R. 48E., M.D.B.M., S. 35° 37' W. 438 FT. FROM THE EN. COR. OF SAID SEC. 8	JAN. 1 TO DEC. 31	STOCKWATER 1874														
PLACE OF USE																			
40 ACRES DESCRIPTIONS																			
SECTION	TOWNSHIP	RANGE	ACRE DESCRIPTIONS																REMARKS
8	T. 12 N.	R. 48 E.	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	REMARKS
																			REFER TO REMARKS UNDER PROOF NO. V-03388 REGARDING STOCKWATERING
PLACE OF USE																			
40 ACRES DESCRIPTIONS																			
SECTION	TOWNSHIP	RANGE	ACRE DESCRIPTIONS																REMARKS
26	T. 13 N.	R. 48 E.	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	REMARKS
27	T. 13 N.	R. 48 E.																	REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																														
V-05746	STEPHEN C. WALMANS, III	MORGAN SPRING	SW 1/4 SEC. 21, T. 12N., R. 48E., M.D.B.M., S. 28° 30' W. 26.910 FT. FROM THE NE COR. OF SEC. 38, T. 12N., R. 48E., M.D.B.M.	MAY 1 TO NOV. 30	STOCKWATER 1871																																	
<p style="text-align: center;">PLACE OF USE 48 ACRES PER SECTION</p> <p style="text-align: center;">48 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td>SECTION</td> <td>TOWN-SHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>21</td> <td>T. 12 N. R. 48 E.</td> <td></td> </tr> </table> <p style="text-align: right;">REFER TO REMARKS UNDER PROOF NO. V-04174 REGARDING STOCKWATERING</p>									SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	21	T. 12 N. R. 48 E.													
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																								
21	T. 12 N. R. 48 E.																																					
V-07044	STONE SAFE REDLANDS ASSOC., LTD. A PARTNERSHIP, DBA ROCK SPRINGS RANCH	DURFEE SPRING	SW 1/4 SEC. 18, T. 13N., R. 48E., M.D.B.M. (PROTRACTED)	JAN. 1 TO DEC. 31	STOCKWATER 1874																																	
<p style="text-align: center;">PLACE OF USE 40 ACRES PER SECTION</p> <p style="text-align: center;">40 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td>SECTION</td> <td>TOWN-SHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>19</td> <td>T. 13 N. R. 48 E.</td> <td></td> </tr> </table> <p style="text-align: right;">REMARKS SUFFICIENT TO WATER 1,590 HEAD OF CATTLE, 13,300 SHEEP, AND 419 HORSES</p>									SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	19	T. 13 N. R. 48 E.													
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																								
19	T. 13 N. R. 48 E.																																					

PROOF NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																														
R-07220	UNITED STATES OF AMERICA FOREST SERVICE	ALL WATERS WITHIN THE BOUNDARIES OF THE ALTA TOOLUNA WILDERNESS	NO DIVERSION ALLOWED	JAN 1 TO DEC. 31	WILDERNESS DEC. 5, 1989	SEE REMARKS	SEE REMARKS	SEE REMARKS																														
<p>PLACE OF USE 48 ACRES DESCRIPTIONS</p> <table border="1"> <tr> <th>SECTION</th> <th>TOWNSHIP</th> <th>RANGE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> </tr> <tr> <td></td> <td>T.</td> <td>N.</td> <td>N.</td> <td>E.</td> <td></td> </tr> </table> <p>ALTA TOOLUNA WILDERNESS ESTABLISHED BY THE NEVADA WILDERNESS PROTECTION ACT OF 1989. (PUB. L. 101-196; 103 STAT. 1784) VOLUME AND DIVERSION RATES OF WATER ARE NOT QUANTIFIED. THIS IS A NON-CONSUMPTIVE USE OF ALL WATER FLOWING IN ITS NATURAL STATE, EXCLUDING ADMINISTRATIVE SITES</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		T.	N.	N.	E.										
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																								
	T.	N.	N.	E.																																		
R-07221	UNITED STATES OF AMERICA FOREST SERVICE	ALL WATERS WITHIN THE BOUNDARIES OF THE TABLE MOUNTAIN WILDERNESS	NO DIVERSION ALLOWED	JAN. 1 TO DEC. 31	WILDERNESS DEC. 5, 1989	SEE REMARKS	SEE REMARKS	SEE REMARKS																														
<p>PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1"> <tr> <th>SECTION</th> <th>TOWNSHIP</th> <th>RANGE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> </tr> <tr> <td></td> <td>T.</td> <td>N.</td> <td>N.</td> <td>E.</td> <td></td> </tr> </table> <p>TABLE MOUNTAIN WILDERNESS ESTABLISHED BY THE NEVADA WILDERNESS PROTECTION ACT OF 1989. (PUB. L. 101-196; 103 STAT. 1784) VOLUME AND DIVERSION RATES OF WATER ARE NOT QUANTIFIED. THIS IS A NON-CONSUMPTIVE USE OF ALL SURFACE WATER FLOWING IN ITS NATURAL STATE, EXCLUDING ADMINISTRATIVE SITES</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		T.	N.	N.	E.										
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																								
	T.	N.	N.	E.																																		

PROOF NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																						
R-07320	U.S.D.I. BUREAU OF LAND MANAGEMENT	UNNAMED SPRING (B448-1)	LOT 8 (SE 1/4 NE 1/4 SEC. 1, T.08N., R.46E., M.D.B.M., S. 41° 53' W, 1,840 FT. FROM THE NE COR. OF SAID SEC. 1.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1928	0.010																																																								
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td rowspan="2">SECTION</td> <td rowspan="2">TOWNSHIP</td> <td rowspan="2">RANGE</td> <td colspan="16">40 ACRES DESCRIPTIONS</td> </tr> <tr> <td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td> </tr> <tr> <td>1</td> <td>T. 8 N.</td> <td>R. 46 E.</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> <p style="text-align: right;">PUBLIC WATER RESERVE</p>									SECTION	TOWNSHIP	RANGE	40 ACRES DESCRIPTIONS																NE	NW	SW	SE	1	T. 8 N.	R. 46 E.																												
SECTION	TOWNSHIP	RANGE	40 ACRES DESCRIPTIONS																																																											
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																																												
1	T. 8 N.	R. 46 E.																																																												
R-07321	U.S.D.I. BUREAU OF LAND MANAGEMENT	UNNAMED SPRING (13M47-17)	SW 1/4 SEC. 17, T.13N., R.47E., M.D.B.M., N. 28° 24' E, 18,640 FT. FROM THE SW COR. OF SAID SEC. 31.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1928	0.010																																																								
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td rowspan="2">SECTION</td> <td rowspan="2">TOWNSHIP</td> <td rowspan="2">RANGE</td> <td colspan="16">40 ACRES DESCRIPTIONS</td> </tr> <tr> <td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td><td>NE</td><td>NW</td><td>SW</td><td>SE</td> </tr> <tr> <td>17</td> <td>T. 13 N.</td> <td>R. 47 E.</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> </tr> </table> <p style="text-align: right;">PUBLIC WATER RESERVE</p>									SECTION	TOWNSHIP	RANGE	40 ACRES DESCRIPTIONS																NE	NW	SW	SE	17	T. 13 N.	R. 47 E.																												
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17	T. 13 N.	R. 47 E.																																																												

PROOF NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.							
R-07323	U.S.D.I. BUREAU OF LAND MANAGEMENT	MONITOR LAKE 4	SW 1/4 SEC. 08, T.13N., R.47E., M.D.B.M., N. 80° 37' E. 8, 160 FT. FROM THE SW COR. SEC. 8, T.13N., R.47E., M.D.B.M.	JAN. 1 TO DEC. 31	HUMAN & ANIMAL CONSUMPTION APRIL 17, 1926	0.010									
PLACE OF USE															
40 ACRE DESCRIPTIONS															
SECTION	TOWN- SHP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	REMARKS
9	T 13 N.	R 47 E.													PUBLIC WATER RESERVE
PLACE OF USE															
40 ACRE DESCRIPTIONS															
SECTION	TOWN- SHP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	REMARKS
9	T 13 N.	R 47 E.													PUBLIC WATER RESERVE

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																																																																
PERMIT 787 CERT. 360	CARILLO INDUSTRIES	BANLEY CREEK	ON THE E. LINE OF THE SW 1/4 SW 1/4 SECTION 10; 800 FEET W. OF E. LINE OF ME 1/4 NW 1/4 SECTION 18; 1100 FEET E. OF E. LINE NE 1/4 NW 1/4 SECTION 18; 200 FEET E. OF NW COR. OF THE SW 1/4 SEC. 8. ALL IN T. 9N., R. 47E., M.D.B.M.	APR. 1 TO SEPT. 30	IRRIGATION & DOMESTIC DEC 30, 1907	0.665	3	199.50																																																																																																																
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1"> <thead> <tr> <th>SECTION</th> <th>TOWNSHIP</th> <th>RANGE</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>ACRES PER SECTION</th> </tr> </thead> <tbody> <tr> <td>7</td> <td>T. 9 N.</td> <td>R. 47 E.</td> <td></td> <td>1.80</td> </tr> <tr> <td>8</td> <td>T. 9 N.</td> <td>R. 47 E.</td> <td></td> <td>33.80</td> </tr> <tr> <td>9</td> <td>T. 9 N.</td> <td>R. 47 E.</td> <td></td> <td>7.50</td> </tr> <tr> <td>16</td> <td>T. 9 N.</td> <td>R. 47 E.</td> <td></td> <td>14.80</td> </tr> <tr> <td>17</td> <td>T. 9 N.</td> <td>R. 47 E.</td> <td></td> <td>8.80</td> </tr> <tr> <td colspan="15" style="text-align: center;">TOTAL ACRES</td> <td>68.50</td> </tr> </tbody> </table> <p style="text-align: right;">141 PRIORITY BY DECREE 8038</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	ACRES PER SECTION	7	T. 9 N.	R. 47 E.													1.80	8	T. 9 N.	R. 47 E.													33.80	9	T. 9 N.	R. 47 E.													7.50	16	T. 9 N.	R. 47 E.													14.80	17	T. 9 N.	R. 47 E.													8.80	TOTAL ACRES															68.50
SECTION	TOWNSHIP	RANGE	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	ACRES PER SECTION																																																																																																									
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PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																
PERMIT 2313 CERT. 414	E. WAYNE & JEAN H HAGE	PASCO CREEK (AKA COOK ON TUCKER CREEK)	SW 1/4 NW 1/4 SEC. 8, T. 11N., R. 48E.	APR 1 TO AUG. 1	IRRIGATION STOCKWATER & DOMESTIC SEPT 19, 1911	0.318	2.44	77.58																																																
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1"> <thead> <tr> <th>SECTION</th> <th>TOWNSHIP</th> <th>RANGE</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>NE</th> <th>NW</th> <th>SE</th> <th>SW</th> <th>ACRES PER SECTION</th> </tr> </thead> <tbody> <tr> <td>32</td> <td>T. 12 N.</td> <td>R. 46 E.</td> <td></td> <td>31.81</td> </tr> <tr> <td colspan="15" style="text-align: center;">TOTAL ACRES:</td> <td>31.81</td> </tr> </tbody> </table> <p style="text-align: right;">SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NOS. V-01184 AND V-08728</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	ACRES PER SECTION	32	T. 12 N.	R. 46 E.													31.81	TOTAL ACRES:															31.81
SECTION	TOWNSHIP	RANGE	NE	NW	SE	SW	NE	NW	SE	SW	NE	NW	SE	SW	ACRES PER SECTION																																									
32	T. 12 N.	R. 46 E.													31.81																																									
TOTAL ACRES:															31.81																																									

PERMIT NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 2244 CERT: 438	E. WAYNE & JEAN N. HAGE	MEADOW CREEK	400 FT. DUE SOUTH OF THE K. SEC. CORNER ON THE NORTH BOUNDARY OF SEC. 7, T. 9N., R. 48E., M.D.B.M.	MAY 1 TO OCT. 1	IRRIGATION & DOMESTIC OCT 18, 1911	0.35	3	105.00			
PLACE OF USE											
40 ACRE DESCRIPTIONS											
SECTION	TOWN-Ship	RANGE	N E S W				N E S W				ACRES PER SECTION
			NE	NW	SW	SE	NE	NW	SW	SE	
1	T 9 N R 48 E	10 00									10 00
8	T 9 N R 48 E	10 00									25 00
TOTAL ACRES:											35 00
REMARKS											
ACRES PER SECTION											
PERMIT NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
PERMIT: 3381 CERT: 2608	E WAYNE & JEAN N HAGE	BARLEY CREEK AND TRIBUTARIES (MEADOW CREEK & WOOD SMITH CREEK)	SW 1/4 SEC. 1, T. 10N., R. 48E., M.D.B.M., 8.88' 40" W, 910.0 FT. FROM S 1/4 COR. SAID SEC. 1.	APR. 1 TO JUL. 31	SUPPLEMENTAL IRRIGATION & DOMESTIC APR 23 1916	1.206	2.44	294.00			
REMARKS											
ACRES PER SECTION											
SECTION	TOWN-Ship	RANGE	N E S W				N E S W				ACRES PER SECTION
			NE	NW	SW	SE	NE	NW	SW	SE	
1	T 10 N R 48 E	30 00									102 80
8	T 10 N R 47 E										18 00
TOTAL ACRES:											120 80
REMARKS											
SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04488											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
3382 CERT. 2566	E. WAYNE & JEAN N. HAGE	BARLEY CREEK AND TRIBUTARIES	NW/4NW/4 SEC. 6, T. 10N., R. 47E. M.D.B.M., N. 28° 41' W, 1,183.0 FT. FROM NW COR. SAID SEC. 6	APR 1 TO JUL 31	SUPPLEMENTAL IRRIGATION APR. 23, 1915	2.651	1.80	478.00			
PLACE OF USE 40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
34	T. 11 N. R. 48 E.		18.79	33.89	30.90	23.89					765.10
											765.10
REMARKS SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04465											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
3408 CERT. 742	E. WAYNE & JEAN N. HAGE	ANDREW CREEK	IN THE EAST PART OF THE SE 1/4 SW 1/4 SEC. 21, T. 11N., R. 48E., M.D.B.M.	APR 1 TO OCT 31	IRRIGATION DOMESTIC 5676	1.205	3.00	360.15			
PLACE OF USE 40 ACRE DESCRIPTIONS											
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
21	T. 11 N. R. 48 E.		39.80	11.00	35.39						86.09
22	T. 11 N. R. 48 E.					40.80					120.09
REMARKS SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NOS. V-01185 AND V-01186											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
3440 CERT. 3212	WARREN C. HUNT, ETHELYN HUNT, DONALD B. HUNT AND ESTHER CECELIA HUNT	NORTHUMBERLAND SPRINGS	NE 1/4 SEC. 08, T. 12N., R. 48E., M.D.B.M., S. 08° 05' E. 2,313.7 FT. FROM THE SE COR. SAID SEC. 08.	MAR. 1 TO OCT. 31	IRRIGATION JUN. 18, 1915	0.124	4.86	60.15			
PLACE OF USE 40 ACRES DESCRIPTIONS											
SECTION	TOWN- SHP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
8	T. 13 N.	R. 48 E.									12.40
REMARKS											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.			
4784 CERT. 1212	E. WAYNE AND JEAN M. HAGE	MOSQUITO CREEK	SW 1/4 SEC. 32, T. 12N., R. 47E., M.D.B.M., S. 84° 05' E. 3,880 FT. FROM THE NW COR. SAID SEC. 32.	MAR. 1 TO NOV. 1	IRRIGATION DEC. 17, 1917	2.3828	4.80	1134.06			
PLACE OF USE 40 ACRES DESCRIPTIONS											
SECTION	TOWN- SHP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	TOTAL ACRES
29	T. 12 N.	R. 47 E.									17.84
32	T. 12 N.	R. 47 E.									97.42
REMARKS											
SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04485											

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.												
PERMIT: 4785 CERT: 1213	E. WAYNE AND JEAN M. HAGE	MOSQUITO CREEK	HWY 12N. SEC. 31. T. 12N., R. 47E., M.D. 8 AM., S. 68°10' W. 1,868 FT. FROM THE NE COR. SAID SEC. 31.	MAR. 1 TO NOV. 1	IRRIGATION DEC. 17, 1917	3.2	4.80	1536.00												
PLACE OF USE 40 ACRES DESCRIPTIONS																				
SECTION	TOWN- SHP	RANGE	PLACE OF USE																ACRES PER SECTION	REMARKS
30	T 12 N	R 47 E	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	120.00	SHADED ACREAGE IS SUPPLEMENTED BY WATER UNDER PROOF NO. V-04485
31	T 12 N	R 47 E	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	200.00	
			TOTAL ACRES:																320.00	

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.												
PERMIT: 5809 CERT: 2628	M C AND GRACE WINFIELD	COMBINATION SPRINGS	SENER SEC. 25, T. 09N., R. 45E., M.D. 8 AM., N. 19°20' W. 3,798 FT. FROM THE SE COR. OF SAID SEC. 25	JAN 1 TO DEC 31	STOCKWATER OCT 18, 1919	0.003														
PLACE OF USE 40 ACRES DESCRIPTIONS																				
SECTION	TOWN- SHP	RANGE	PLACE OF USE																ACRES PER SECTION	REMARKS
25	T 9 N	R 45 E	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		0.003 CFS OR SUFFICIENT TO WATER 90 HEAD OF CATTLE AND HORSES

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT: 10006 CERT.: 2014	UNITED STATES OF AMERICA, FOREST SERVICE	UNNAMED SPRING	M.D.B.M., N 45°42'W, 30,652 FT. FROM SE COR. OF SEC. 1, T. 9N., R. 45E., M.D.B.M.	APR. 1 TO DEC. 1	MEADOW CR. RANGER STATION DOMESTIC DEC 26, 1940	0.001		0.55
PLACE OF USE								
40 ACRES DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	SW	SE
31	T 10 N. R 45 E							
DOMESTIC USE FOR THE MEADOW CREEK RANGER STATION. SAME AS PROOF R-04176								
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.
PERMIT: 10089 CERT.: 2079	UNITED STATES OF AMERICA, FOREST SERVICE	UNNAMED SPRING	NW 1/4 SEC. 13, T. 11N., R. 45E., M.D.B.M., S. 74°18'E, 8,742.8 FT. FROM THE S.E. COR. OF SEC. 17, T. 11N., R. 45E., M.D.B.M.	MAY 1 TO OCT 31	RECREATIONAL & DOMESTIC JULY 1, 1941	0.001		0.55
PLACE OF USE								
40 ACRES DESCRIPTIONS								
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	SW	SE
13	T 11 N. R 45 E							
DOMESTIC USE FOR THE UPSIDE CREEK CAMPGROUND								

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																												
PERMIT: 20822 CERT: 8316	UNITED STATES OF AMERICA, FOREST SERVICE, REGION 4	PINE CREEK	NW 1/4 SEC 13, T. 11N., R. 48E., M.D.B.M., S. 38° 10' 8" E. 3,568.7 FT. FROM THE COMMON CORNER OF THE SE COR. OF SEC. 12, & NE COR. OF SEC. 13, T. 11N., R. 48E., M.D.B.M.	APR. 15 TO NOV. 15	DOMESTIC (CAMPGROUND) AUG. 10, 1962	0.004		1.71																																																																												
<p style="text-align: center;">PLACE OF USE 40 ACRES DESCRIPTIONS</p> <table border="1"> <thead> <tr> <th>SECTION</th> <th>TOWN-SHIP</th> <th>RANGE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> <th>NE</th> <th>NW</th> <th>SW</th> <th>SE</th> </tr> </thead> <tbody> <tr> <td>13</td> <td>T. 11 N., R. 48 E.</td> <td></td> </tr> </tbody> </table> <p style="text-align: center;">DOMESTIC USE FOR THE USFS PINE CREEK CAMPGROUND</p>									SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	13	T. 11 N., R. 48 E.																																																																			
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PERMIT: 28796 CERT: 10862	E WAYNE AND JEAN M. HAGE	PINE CREEK	SW 1/4 SEC 18, T. 11N., R. 48E., M.D.B.M., N. 00° 1' W. 385.72 FT. FROM THE W 1/4 COR. BARO SEC 18.	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC JUN. 2, 1972	5.4		497.20																																																																												
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SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																																																																		
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PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.				
PERMIT 28757 CERT. 10863	E. WAYNE AND JEAN M. HAGE	PINE CREEK	SW 1/4 SEC. 18, T. 11N., R. 48E., M.D.B.M., N. 00°W, 385.73 FT. FROM THE W/4 COR. SAID SEC. 18	JAN. 1 TO DEC. 31	IRRIGATION & DOMESTIC JUN. 2, 1972	5.4	HARVEST: 4.00 MEADOW 2.00 DIVERS. PASTURE: 1.90	778.13				
PLACE OF USE 40 ACRES DESCRIPTIONS												
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS
3	T. 11 N. R. 48 E.						40.00	40.00	40.00	40.00	139.36	
4	T. 11 N. R. 48 E.										39.39	
9	T. 11 N. R. 48 E.										268.76	
TOTAL ACRES:												
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.				
PERMIT 37871 CERT. 11180	WESTERN STATES MINERALS CORPORATION	UNDERGROUND	NE 1/4 SEC. 24, T. 12N., R. 48E., M.D.B.M., N. 29°33'08"W, 23,028.83 FT. FROM E/4 COR. OF SEC. 9, T. 12N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	MINING AND MILLING AND DOMESTIC DEC. 28, 1972	0.0689		15.77 MILLION GALLONS ANNUALLY				
PLACE OF USE 40 ACRES DESCRIPTIONS												
SECTION	TOWN-SHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	ACRES PER SECTION	REMARKS
24	T. 12 N. R. 48 E.											
19	T. 12 N. R. 48 E.											
THE TOTAL COMBINED DUTY OF WATER ISSUED UNDER THIS CERTIFICATE AND ANY CERTIFICATES ISSUED UNDER PERMITS 27973, CERT. 11170; 43788, CERT. 12604; AND 47602, CERT. 12824 SHALL NOT EXCEED 40.0 MILLION GALLONS ANNUALLY												

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																			
21873 CERT. 11170	WESTERN STATES MINERALS CORPORATION	SPRING-FED POND	NW 1/4 SEC. 18, T. 12N., R. 48E., M.D.B.M., N. 29°33'08"W, 23,026.53 FT. FROM EX. COR. OF SEC. 8, T. 12N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	MINING DEC. 28, 1973	1.0		18.77 MILLION GALLONS ANNUALLY																																																			
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">SECTION</th> <th colspan="4">TOWN- SHIP</th> <th colspan="4">RANGE</th> <th colspan="4">ACRES</th> </tr> <tr> <th>N</th><th>NW</th><th>W</th><th>SW</th> <th>NE</th><th>NW</th><th>W</th><th>SW</th> <th>1</th><th>2</th><th>3</th><th>4</th> </tr> </thead> <tbody> <tr> <td>24</td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> </tr> <tr> <td>19</td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> </tr> </tbody> </table> <p style="text-align: center;">REMARKS</p> <p style="text-align: center;">THE TOTAL COMBINED DUTY OF WATER ISSUED UNDER THIS CERTIFICATE AND ANY CERTIFICATES ISSUED UNDER PERMITS 27971, CERT. 11189, 43786, CERT. 12804, AND 47902, CERT. 12824 SHALL NOT EXCEED 40.0 MILLION GALLONS ANNUALLY.</p>									SECTION	TOWN- SHIP				RANGE				ACRES				N	NW	W	SW	NE	NW	W	SW	1	2	3	4	24													19												
SECTION	TOWN- SHIP				RANGE					ACRES																																																	
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PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																						
28118 CERT. 8828	ALL MINERALS CORPORATION	UNDERGROUND	SW 1/4 SEC. 13, T. 12N., R. 48E., M.D.B.M., S 81°26' E, 7,570 FT. FROM NW COR. OF SEC. 14, T. 12N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	MINING & MILLING DEC. 28, 1973	0.3		18.77 MILLION GALLONS ANNUALLY																																						
<p style="text-align: center;">PLACE OF USE 40 ACRE DESCRIPTIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">SECTION</th> <th colspan="4">TOWN- SHIP</th> <th colspan="4">RANGE</th> <th colspan="4">ACRES</th> </tr> <tr> <th>N</th><th>NW</th><th>W</th><th>SW</th> <th>NE</th><th>NW</th><th>W</th><th>SW</th> <th>1</th><th>2</th><th>3</th><th>4</th> </tr> </thead> <tbody> <tr> <td>9</td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> <td></td><td></td><td></td><td></td> </tr> </tbody> </table> <p style="text-align: center;">REMARKS</p>									SECTION	TOWN- SHIP				RANGE				ACRES				N	NW	W	SW	NE	NW	W	SW	1	2	3	4	9												
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PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																						
PERMIT: 40878 CERT.: 13331	JAMES R. BOYCE & CHRISTINE D. BOYCE	UNDERGROUND (DRY LAKE WELL)	NW 1/4 SW 1/4 SEC. 28, T. 13N., R. 47E., M.D.B.M., N. 81° E. 18,980 FT. FROM SW COR. OF SEC. 28, T. 13N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	STOCKWATER	0.0082		SEE REMARKS																						
<p>PLACE OF USE</p> <p>48 ACRES DESCRIPTIONS</p> <table border="1"> <tr> <td>SECTION</td> <td>TOWNSHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>28</td> <td>T. 13 N.</td> <td>R. 47 E.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> <p>SUFFICIENT TO WATER 200 HEAD OF CATTLE.</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	28	T. 13 N.	R. 47 E.								
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE																				
28	T. 13 N.	R. 47 E.																												
PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																						
PERMIT: 43014 CERT.: 11437	E. WAYNE AND JEAN M. HAGE	UNDERGROUND	NW 1/4 SEC. 30, T. 12N., R. 47E., M.D.B.M., S. 78° 01' 15" W. 1,777.08 FT. FROM THE NE COR. OF SAID SEC. 30.	JUN 1 TO DEC 31	STOCKWATER	0.0094		SEE REMARKS																						
<p>PLACE OF USE</p> <p>49 ACRES DESCRIPTIONS</p> <table border="1"> <tr> <td>SECTION</td> <td>TOWNSHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>20</td> <td>T. 12 N.</td> <td>R. 47 E.</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table> <p>SUFFICIENT TO WATER 300 HEAD OF CATTLE</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	20	T. 12 N.	R. 47 E.								
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE																				
20	T. 12 N.	R. 47 E.																												

PERMIT NO.	CLAIMANT	SOURCE	POINT(S) OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																																																																																															
PERMIT 43788 CERT. 12604	WESTERN STATES MINERALS CORPORATION	UNDERGROUND	NEAR E. SEC. 24, T. 13N., R. 48E., M.D.B.M., N. 25°37'55"W, 26.134 37 FT FROM E. & COR. OF SEC. 8, T. 12N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	MINING AND MILLING AND DOMESTIC DEC. 28, 1973	0.134		16.43 MILLION GALLONS ANNUALLY																																																																																																															
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PERMIT 47802 CERT. 12624	WESTERN STATES MINERALS CORPORATION	UNDERGROUND	NEAR E. SEC. 24, T. 13N., R. 48E., M.D.B.M., N. 25°37'55"W, 26.134 37 FT FROM E. & COR. OF SEC. 8, T. 12N., R. 48E., M.D.B.M.	JAN. 1 TO DEC. 31	MINING AND MILLING AND DOMESTIC JAN. 28, 1984	0.428		82.39 MILLION GALLONS ANNUALLY																																																																																																															
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PERMIT NO.	CLAIMANT	SOURCE	POINTS OF DIVERSION	YEARLY PERIOD OF USE	PURPOSE & PRIORITY	FLOW CFS	DUTY AC.-FT./ACRE	TOTAL AC.-FT.																																													
PERMIT: 48111 CERT: 12307	E. WAYNE AND JEAN H. HAGE	UNDERGROUND	NE 1/4 SEC. 7, T. 12N., R. 47E., M.D.B.M., S. 80°04'20"E, 1,548.7 FT. FROM THE W/4 COR. OF SAID SECTION.	NOV. 15 TO JUNE 1	STOCKWATER SEPT 18, 1884	0.009		SEE REMARKS																																													
<p style="text-align: center;">PLACE OF USE</p> <p style="text-align: center;">46 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td>SECTION</td> <td>TOWNSHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>7</td> <td>T. 12 N.</td> <td>R. 47 E.</td> <td>X</td> <td></td> </tr> </table> <p style="text-align: right;">REMARKS SUFFICIENT TO WATER 300 HEAD OF CATTLE.</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	7	T. 12 N.	R. 47 E.	X																										
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PERMIT: 80244 CERT: 14276	BOARD OF NYE COUNTY COMMISSIONERS	UNDERGROUND	SW 1/4 SEC. 26, T. 8N., R. 45E., M.D.B.M., N. 13°38'E, 838 FT. FROM THE W/4 COR. OF SAID SEC. 26.	JAN 1 TO DEC 31	QUASI-MUNICIPAL	0.056		1.81 MILLION GALLONS ANNUALLY																																													
<p style="text-align: center;">PLACE OF USE</p> <p style="text-align: center;">46 ACRES DESCRIPTIONS</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td>SECTION</td> <td>TOWNSHIP</td> <td>RANGE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> <td>NE</td> <td>NW</td> <td>SW</td> <td>SE</td> </tr> <tr> <td>26</td> <td>T. 8 N.</td> <td>R. 45 E.</td> <td>X</td> <td></td> </tr> <tr> <td>28</td> <td>T. 8 N.</td> <td>R. 45 E.</td> <td>X</td> <td></td> </tr> </table> <p style="text-align: right;">REMARKS WATER TO BE USED FOR FIRE PROTECTION AND DIRT CONTROL WITHIN THE TOWN OF BELMONT.</p>									SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	26	T. 8 N.	R. 45 E.	X												28	T. 8 N.	R. 45 E.	X											
SECTION	TOWNSHIP	RANGE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE																																							
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APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
01081 E. WAYNE & JEAN N. HAGE	SOLDIER SPRING	SECTION: 9 T. 10 N. R. 45 E. NW 1/4 SW 1/4
MEADOW CANYON CREEK	REBELLION SPRING	SECTION: 16 T. 10 N. R. 45 E. SE 1/4 NE 1/4
STOCKWATER	LOWER REBELLION SPRING	SECTION: 16 T. 10 N. R. 45 E. SW 1/4 NW 1/4
	ANDERSON SPRING	SECTION: 15 T. 10 N. R. 45 E. SW 1/4 NW 1/4
	PIPE ORGAN SPRING	SECTION: 16 T. 10 N. R. 45 E. SW 1/4 NE 1/4
	LONE PINE SPRING	SECTION: 14 T. 10 N. R. 45 E. SW 1/4 NE 1/4
	PETERSON SPRING	SECTION: 20 T. 10 N. R. 45 E. SE 1/4 NE 1/4
	MACAFEE SPRING	SECTION: 20 T. 10 N. R. 45 E. NE 1/4 NE 1/4
	BOX SPRING	SECTION: 21 T. 10 N. R. 45 E. NW 1/4 SW 1/4
	HAGE MEADOW SPRING	SECTION: 21 T. 10 N. R. 45 E. SW 1/4 SE 1/4
1874	LITTLE TABLE MOUNTAIN SPRING	SECTION: 23 T. 10 N. R. 45 E. NE 1/4 SE 1/4
	BULL FRAME SPRING	SECTION: 29 T. 10 N. R. 45 E. SW 1/4 SE 1/4
	BRANDO SPRING	SECTION: 27 T. 10 N. R. 45 E. NW 1/4 NE 1/4
	MCCANN SPRING	SECTION: 27 T. 10 N. R. 45 E. SW 1/4 NE 1/4
STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	HUMPHREY SPRING	SECTION: 27 T. 10 N. R. 45 E. NE 1/4 NE 1/4
	BADGER SPRING	SECTION: 28 T. 10 N. R. 45 E. SW 1/4 NE 1/4
	WAYNE'S SPRING	SECTION: 26 T. 10 N. R. 45 E. NW 1/4 SW 1/4
	CIMBAR SPRING	SECTION: 32 T. 10 N. R. 45 E. NE 1/4 SW 1/4
	FLOWER SPRING	SECTION: 33 T. 10 N. R. 45 E. NE 1/4 NE 1/4
	WARREN SPRING	SECTION: 33 T. 10 N. R. 45 E. SE 1/4 SE 1/4
	SIDE HILL SPRING	SECTION: 33 T. 10 N. R. 45 E. NE 1/4 SE 1/4
	RYECROFT SPRING	SECTION: 34 T. 10 N. R. 45 E. SW 1/4 SE 1/4
	SIDE ROCK SPRING	SECTION: 5 T. 9 N. R. 45 E. NE 1/4 SW 1/4
	SANTOS SPRING	SECTION: 5 T. 9 N. R. 45 E. NW 1/4 SE 1/4
	SAGE HEN SPRING	SECTION: 3 T. 8 N. R. 45 E. SW 1/4 NW 1/4

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
01183	E. WAYNE & JEAN N. HAGE	2 .T. 10 N. .R. 45 E. SW ¼ SE ¼ X
CLAIMANT:	RUTH'S SPRING	SECTION: 13 .T. 10 N. .R. 45 E. SE ¼ SW ¼ X
DRAINAGE AREA:	CORCORAN DIVIDE SPRING	SECTION: 13 .T. 10 N. .R. 45 E. NE ¼ SE ¼ X
USE:	ARKANSAS SPRING	SECTION: 18 .T. 10 N. .R. 46 E. NW ¼ SW ¼ X
PRIORITY DATE:	SMITH SPRING	SECTION: 18 .T. 10 N. .R. 46 E. NE ¼ SW ¼ X
REMARKS:	CORCORAN SPRING	SECTION: 18 .T. 10 N. .R. 45 E. NW ¼ NW ¼ X
	BROWN TROUT SPRING	SECTION: 24 .T. 10 N. .R. 45 E. SE ¼ NE ¼ X
	SHEEP SPRING	SECTION: 19 .T. 10 N. .R. 48 E. NW ¼ NW ¼ X
	HOOPER SPRING	SECTION: 20 .T. 10 N. .R. 46 E. NE ¼ NW ¼ X
	RODEAR SPRING	SECTION: 28 .T. 10 N. .R. 46 E. SW ¼ NW ¼ X
	STONE HOUSE SPRING	
	GARDEN SPRING	

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.: 01186		POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION			
CLAIMANT:	E. WAYNE & JEAN N. HAGE	SOURCE NAME			
DRAINAGE AREA:	PINE CREEK AND TRIBUTARIES	LOG ROAD SPRING	SECTION: 9 .T. 11 N. .R. 45 E. SW ¼ NW ¼		
		GHOST SPRING	SECTION: 10 .T. 11 N. .R. 48 E. SE ¼ NW ¼		
		HOWARD'S SPRING	SECTION: 10 .T. 11 N. .R. 45 E. NE ¼ SE ¼		
		FIDDLER SPRING	SECTION: 11 .T. 11 N. .R. 45 E. SW ¼ SW ¼		
		LITTLE NORTH FORK SPRING	SECTION: 17 .T. 11 N. .R. 45 E. SE ¼ SE ¼		
		BIG NORTH FORK SPRING	SECTION: 15 .T. 11 N. .R. 45 E. SW ¼ SW ¼		
		COW CANYON SPRING	SECTION: 15 .T. 11 N. .R. 45 E. SE ¼ SE ¼		
		ODDIE SPRING	SECTION: 18 .T. 11 N. .R. 48 E. SE ¼ SE ¼		
		MILL SITE SPRING	SECTION: 21 .T. 11 N. .R. 45 E. SW ¼ SW ¼		
		BIG SOUTH FORK SPRING #1	SECTION: 22 .T. 11 N. .R. 45 E. NW ¼ SW ¼		
PRIORITY DATE:	1874	BIG SOUTH FORK SPRING #2	SECTION: 22 .T. 11 N. .R. 45 E. NW ¼ SW ¼		
		ERNST SPRING	SECTION: 23 .T. 11 N. .R. 45 E. SE ¼ NW ¼		
		MCMONIGAL SPRING	SECTION: 24 .T. 11 N. .R. 45 E. NE ¼ SE ¼		
		LAKE SPRING	SECTION: 29 .T. 11 N. .R. 45 E. NE ¼ NW ¼		
		SUMMIT TRAIL SPRING	SECTION: 29 .T. 11 N. .R. 45 E. SW ¼ SE ¼		
		LITTLE SOUTH FORK SPRING	SECTION: 28 .T. 11 N. .R. 45 E. SW ¼ NE ¼		
		ANDREWS PASS SPRING	SECTION: 25 .T. 11 N. .R. 45 E. NW ¼ NW ¼		
		REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.		

APPENDIX A. STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SOURCE NAME	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
01186	E. WAYNE & JEAN N. HAGE	26 .T. 11 N. .R. 45 E. SE $\frac{1}{4}$ SW $\frac{1}{4}$
CLAIMANT:	COOK SPRING	SECTION: 26 .T. 11 N. .R. 45 E. SE $\frac{1}{4}$ SE $\frac{1}{4}$ $\frac{1}{4}$
DRAINAGE AREA:	TRAIL CROSSING SPRING	SECTION: 26 .T. 11 N. .R. 45 E. SE $\frac{1}{4}$ NW $\frac{1}{4}$ $\frac{1}{4}$
	BIG ANDREWS SPRING	SECTION: 34 .T. 11 N. .R. 45 E. SE $\frac{1}{4}$ SE $\frac{1}{4}$ $\frac{1}{4}$
	WHITE ROCK SPRING	SECTION: 33 .T. 11 N. .R. 45 E. NW $\frac{1}{4}$ SE $\frac{1}{4}$ $\frac{1}{4}$
	LITTLE ANDREWS SPRING	SECTION: 34 .T. 11 N. .R. 45 E. SW $\frac{1}{4}$ SE $\frac{1}{4}$ $\frac{1}{4}$
	TRAIL CANYON SPRING	SECTION: 31 .T. 11 N. .R. 46 E. SW $\frac{1}{4}$ NW $\frac{1}{4}$ $\frac{1}{4}$
	WINDY PASS SPRING	SECTION: 3 .T. 10 N. .R. 45 E. NE $\frac{1}{4}$ SE $\frac{1}{4}$ $\frac{1}{4}$
USE:	MAHAGONY SPRING	SECTION: 3 .T. 10 N. .R. 45 E. SE $\frac{1}{4}$ NE $\frac{1}{4}$ $\frac{1}{4}$
	DEER HOLLOW SPRING #1	SECTION: 3 .T. 10 N. .R. 45 E. SE $\frac{1}{4}$ NE $\frac{1}{4}$ $\frac{1}{4}$
	DEER HOLLOW SPRING #2	SECTION: 3 .T. 10 N. .R. 45 E. SE $\frac{1}{4}$ NE $\frac{1}{4}$ $\frac{1}{4}$
PRIORITY DATE:	LAURA'S SPRING	SECTION: 2 .T. 10 N. .R. 45 E. SW $\frac{1}{4}$ NE $\frac{1}{4}$ $\frac{1}{4}$
1874		
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
04466	
CLAIMANT:	E. WAYNE & JEAN N. HAGE
DRAINAGE AREA:	MOSQUITO CREEK AND TRIBUTARIES
USE:	STOCKWATER
PRIORITY DATE:	1874
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.
SOURCE NAME	SECTION: 33 .T. 11 N. .R. 47 E. NE % SE % HAYSTACK SPRING #1
	SECTION: 30 .T. 11 N. .R. 47 E. NW % SW % BREAKOUT SPRING
	SECTION: 1 .T. 10 N. .R. 47 E. NE % NW % WILL JAMES SPRING
	SECTION: 3 .T. 10 N. .R. 47 E. SE % NW % HOOPER'S TRAP SPRING
	SECTION: 2 .T. 10 N. .R. 47 E. SE % NE % DROP OFF SPRING
	SECTION: 1 .T. 10 N. .R. 47 E. SE % NW % SCORPION SPRING
	SECTION: 1 .T. 10 N. .R. 47 E. SW % SE % MARGARET SPRING
	SECTION: 13 .T. 10 N. .R. 47% E. NE % SW % RAMONA SPRING
	SECTION: 11 .T. 10 N. .R. 47 E. NW % SW % HIGHPOINT SPRING
	SECTION: 13 .T. 10 N. .R. 47% E. NE % NW % RODEAR FLAT SPRING
	SECTION: 24 .T. 10 N. .R. 47% E. SW % NW % HAILSTORM SPRING
	SECTION: 24 .T. 10 N. .R. 47% E. SE % NW % CUT OFF SPRING
	SECTION: 12 .T. 10 N. .R. 47 E. SE % NW % DRY LAKE SPRING
	SECTION: 38 .T. 12 N. .R. 47 E. NE % NW % NORTHTRAIL SPRING
	SECTION: 38 .T. 12 N. .R. 47 E. SE % NE % BACH SPRING
	SECTION: 38 .T. 12 N. .R. 47 E. NW % SW % JEAN'S SPRING
	SECTION: 36 .T. 12 N. .R. 47 E. SE % NE % JOHNSON SPRING
	SECTION: 2 .T. 11 N. .R. 47 E. NE % SE % REED SPRING
	SECTION: 1 .T. 11 N. .R. 47 E. SW % NE % ARROWHEAD SPRING
	SECTION: 1 .T. 11 N. .R. 47 E. NE % SE % LEFT FORK SPRING
	SECTION: 33 .T. 11 N. .R. 47 E. SE % SE % DESEPTION SPRING
	SECTION: 11 .T. 11 N. .R. 47 E. NE % NW % STIENGER SPRING
	SECTION: 12 .T. 11 N. .R. 47 E. NE % NE % BORREGO SPRING
	SECTION: 12 .T. 11 N. .R. 47 E. NE % SE % STAMPEDE SPRING
	SECTION: 13 .T. 11 N. .R. 47 E. NW % SW % HAGE SPRING
	SECTION: 13 .T. 11 N. .R. 47 E. SE % SW % STUPER SPRING
	SECTION: 13 .T. 11 N. .R. 47 E. SE % SW % AMBUSH SPRING
	SECTION: 23 .T. 11 N. .R. 47 E. SE % SE % KAY SPRING
	SECTION: 24 .T. 11 N. .R. 47 E. NW % NE % RUNAWAY SPRING
	SECTION: 24 .T. 11 N. .R. 47 E. SW % NE % FOURMILE SPRING
	SECTION: 28 .T. 11 N. .R. 47 E. NE % SE % LOOKOUT SPRING
	SECTION: 26 .T. 11 N. .R. 47 E. NW % NE % HAYSTACK FLAT SPRING
	SECTION: 26 .T. 11 N. .R. 47 E. NW % NE % SUNDOWN SPRING

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	SECTION:	31	T.	12	N.	R.	48	E.	SW	X	NW	X	NE	X
04465	ASPEN SPRING	31	T.	12	N.	R.	48	E.	SW	X	NW	X	NE	X
	DARK HORSE SPRING	31	T.	12	N.	R.	48	E.	SW	X	NW	X	NE	X
	SHEEP TROUGH SPRING	32	T.	12	N.	R.	48	E.	SW	X	NW	X	SE	X
	KINCAIDE SPRING	6	T.	11	N.	R.	48	E.	SE	X	SW	X	NE	X
	SLEET STORM SPRING	6	T.	11	N.	R.	48	E.	SW	X	NW	X	NE	X
	LIMITED SPRING	8	T.	11	N.	R.	48	E.	SE	X	SW	X	NE	X
	STODICK SPRING #1	8	T.	11	N.	R.	48	E.	SE	X	SW	X	NE	X
	STODICK SPRING #2	8	T.	11	N.	R.	48	E.	SW	X	NW	X	NE	X
	KEOUGH SPRING	18	T.	11	N.	R.	48	E.	SW	X	NW	X	NE	X
	WEIR SPRING	17	T.	11	N.	R.	48	E.	SE	X	NW	X	NE	X
	GEORGE'S SPRING	17	T.	11	N.	R.	48	E.	NE	X	NW	X	NE	X
	NORWAY SPRING	17	T.	11	N.	R.	48	E.	NE	X	NW	X	NE	X
	NICHOLS SPRING	17	T.	11	N.	R.	48	E.	NE	X	NW	X	NE	X
	CLAYTON SPRING	17	T.	11	N.	R.	48	E.	NE	X	NW	X	NE	X
	GEORGE CAMP SPRING	17	T.	11	N.	R.	48	E.	NE	X	NW	X	NE	X
	TYBO SPRING	19	T.	11	N.	R.	48	E.	NW	X	SE	X	SE	X
	UPSET SPRING	19	T.	11	N.	R.	48	E.	SW	X	SE	X	SE	X
	GLOVER SPRING	19	T.	11	N.	R.	48	E.	NW	X	NE	X	NE	X
	MARSH SPRING	20	T.	11	N.	R.	48	E.	SE	X	NE	X	NE	X
	DANVILLE SPRING	20	T.	11	N.	R.	48	E.	SE	X	NE	X	NE	X
	CLINTON SPRING	30	T.	11	N.	R.	48	E.	NE	X	NE	X	NE	X
	TIGHTSPOT SPRING	30	T.	11	N.	R.	48	E.	NW	X	NW	X	NW	X
	WATERFALL SPRING	29	T.	11	N.	R.	48	E.	SW	X	NW	X	NE	X
	KAISER SPRING	31	T.	11	N.	R.	48	E.	NW	X	NE	X	NE	X
	HARDWAY SPRING	31	T.	11	N.	R.	48	E.	NE	X	NE	X	NE	X
	DUTCHMAN SPRING	25	T.	11	N.	R.	47	E.	SE	X	NW	X	NE	X
	UNCLE BILL'S SPRING	25	T.	11	N.	R.	47	E.	SE	X	NW	X	NE	X
	HARDROCK SPRING	25	T.	11	N.	R.	47	E.	SE	X	SW	X	SW	X
	SURVEYOR SPRING	25	T.	11	N.	R.	47	E.	NE	X	NE	X	NE	X
	ANDY'S SPRING	36	T.	11	N.	R.	47	E.	NE	X	SE	X	SE	X
	UPPER COFFEE POT SPRING	35	T.	11	N.	R.	47	E.	NW	X	SE	X	SE	X
COFFEE POT SPRING	35	T.	11	N.	R.	47	E.	SE	X	SW	X	SW	X	
LAST CHANCE SPRING	35	T.	11	N.	R.	47	E.	SE	X	SW	X	SW	X	
SMOKEY SPRING	24	T.	11	N.	R.	47 1/2	E.	NE	X	SW	X	SW	X	
LOWER HAYSTACK SPRING	16	T.	10	N.	R.	47	E.	NE	X	NW	X	NW	X	

APPENDIX A: STOCKWATER SOURCE DESCRIPTION.

PROOF NO.:	04466	POINT OF DIVERSION 40 ACRE PARCEL DESCRIPTION
CLAIMANT:	E. WAYNE & JEAN N. HAGE	SECTION: 33 .T. 11 N. .R. 48 E. NW ¼ NW ¼ SE ¼ X
DRAINAGE AREA:	BARLEY CREEK AND TRIBUTARIES (MEADOW CANYON AND WIDOW SMITH CREEK)	SECTION: 31 .T. 11 N. .R. 48 E. SE ¼ SW ¼ X SECTION: 32 .T. 11 N. .R. 48 E. NW ¼ SW ¼ X SECTION: 12 .T. 10 N. .R. 47 ½ E. SE ¼ SE ¼ X SECTION: 7 .T. 10 N. .R. 48 E. NE ¼ SW ¼ X SECTION: 8 .T. 10 N. .R. 48 E. NE ¼ SW ¼ X SECTION: 13 .T. 10 N. .R. 47 ½ E. SE ¼ SW ¼ X SECTION: 18 .T. 10 N. .R. 48 E. SW ¼ SW ¼ X SECTION: 19 .T. 10 N. .R. 48 E. NW ¼ NE ¼ X SECTION: 25 .T. 10 N. .R. 47 ½ E. NW ¼ NE ¼ X SECTION: 30 .T. 10 N. .R. 48 E. SE ¼ SW ¼ X SECTION: 30 .T. 10 N. .R. 48 E. NE ¼ NE ¼ X SECTION: 29 .T. 10 N. .R. 48 E. SE ¼ SW ¼ X SECTION: 18 .T. 10 N. .R. 47 E. NE ¼ NW ¼ X
USE:	STOCKWATER	
PRIORITY DATE:	1874	
REMARKS:	STOCKWATER SOURCES FILED UNDER PROOF OF APPROPRIATION FOR IRRIGATION.	
SOURCE NAME	TRAGEDY SPRING UPPER SCUFFE SPRING LEE'S CAMP SPRING CAVANAUGH SPRING SCUFFE SPRING HIDE OUT SPRING HOLD UP SPRING WILSON SPRING RIM SPRING MERLINO SPRING SWITCHBACK SPRING RED ROCK SPRING SOUTH POINT SPRING LOWER HAYSTACK SPRING	

STATE DISTRICT COURT
2011 DEC 16 PM 4:03



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26 of 141 DOCUMENTS

UNITED STATES OF AMERICA, Plaintiff, vs. ESTATE OF E. WAYNE HAGE et al., Defendants.

2:07-cv-01154-RCJ-LRL

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

2011 U.S. Dist. LEXIS 53019

May 16, 2011, Decided

May 17, 2011, Filed

COUNSEL: [*1] For USA, Plaintiff: Bruce K Trauben, Stephen G Bartell, LEAD ATTORNEYS, United States Department of Justice Environment & Natural Resources Division, Washington, DC; Blaine T Welsh, U.S. Attorney's Office, Las Vegas, NV.

For Estate of E. Wayne Hage, Defendant: Mark L. Pollot, LEAD ATTORNEY, PRO HAC VICE, Boise, ID; John Jack W. Hoffman, Reno, NV.

Wayne N. Hage, Defendant, Pro se, Tonopah, NV.

For Colvin Cattle Co., Inc., Defendant: Joel F. Hansen, Jonathan J. Hansen, LEAD ATTORNEYS, R. Scott Rasmussen, Hansen Rasmussen, LLC, Las Vegas, NV.

Daniel Gabino Martinez, Interested Party, Pro se, Las Vegas, NV.

Ramona J. Morrison, Interested Party, Pro se, Sparks, NV.

For Colvin Cattle Co., Inc., Counter Claimant: Joel F. Hansen, Jonathan J. Hansen, LEAD ATTORNEYS, R. Scott Rasmussen, Hansen Rasmussen, LLC, Las Vegas, NV.

For USA, Counter Defendant: Bruce K Trauben, LEAD ATTORNEY, U.S. Department of Justice, Washington, DC; Blaine T Welsh, U.S. Attorney's Office, Las Vegas.

NV.

JUDGES: ROBERT C. JONES, United States District Judge.

OPINION BY: ROBERT C. JONES

OPINION

ORDER

The United States has sued Wayne N. Hage ("Wayne Jr.") both individually and in his capacity as executor of the Estate of E. Wayne Hage ("Wayne Sr."), his father, [*2] for the unauthorized grazing of cattle on federal land. Pending before the Court are the Estate's and Wayne Jr.'s separate Motions to Dismiss or Stay (ECF Nos. 185, 201), as well as the United States' Motion for Summary Judgment (ECF No. 186). For the reasons given herein, the Court denies the motions and will allow the case to proceed to trial.

I. FACTS

Wayne Sr. owned and operated the Pine Creek Ranch (the "Ranch") in Nye County, Nevada until his death in June 2006. (First Am. Compl. ¶ 9). The 7000-acre Ranch was established in 1865, and Wayne Sr.

purchased it with his wife Jean in 1978. *Hage v. United States (Hage I)*, 35 Fed. Cl. 147, 153 (1996). In 1907, Congress created the Toiyabe National Forest, and the U.S. Forest Service ("USFS") issued a grazing permit to the owners of the Ranch, permitting grazing on federal lands adjacent to the Ranch. *Id.* The Hages received their first ten-year permit on October 30, 1978, which permitted grazing on six allotments: Table Mountain, Meadow Canyon, McKinney, Silver Creek, Monitor Valley East, and Monitor Valley West. *Id.* at 153 & *nn.* 1-2. Due to alleged violations of the scope of the grazing permit in the Table Mountain Allotment, the USFS [*3] in 1990 cancelled 25% of the Hages' grazing permit in the area and suspended another 20%. *Id.* at 154-55. The Hages also claimed rights to all the water of Meadow Canyon Creek due to prior appropriation by the original owners of Pine Creek Ranch in 1868, including Meadow Spring and Q Spring, to which the flow of water was diverted by the USFS in 1980 without approval of the State Engineer. *Id.* at 155. Due to an alleged refusal to comply with a livestock removal order, the USFS in 1991 cancelled 38% of the Hages' grazing permit in the Meadow Canyon Allotment and suspended the remainder for five years. *Id.* The Hages also claimed ditch rights of way appurtenant to their lands for watering cattle pursuant to "the Act of 1866." *Id.* at 156. ¹ In 1991, the Ninth Circuit reversed the criminal conviction of Wayne Sr. and one of his employees for maintaining such a ditch. *Id.* The Estate was opened in September 2006, and Wayne Jr., the operations manager of the Ranch, was appointed as substitute executor in August 2007. (*Id.* ¶¶ 9, 11).

¹ That act (the "Ditch Act") was passed on July 26, 1866:

And be it further enacted, That whenever, by priority of possession, rights to the use of water for mining, [*4] agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and

canals for the purposes aforesaid is hereby acknowledged and confirmed

Act of July 26, 1866, ch. 262, § 9, 14 Stat. 251, 253.

Benjamin J. Colvin, an officer and/or director of Colvin Cattle Co., Inc., an Oregon corporation doing regular business in Nevada, operates the 40 Bar Ranch in Esmeralda County, Nevada. (*Id.* ¶¶ 10, 12). The present action has been dismissed as against Colvin and Colvin Cattle Co., and their related takings claims have been finally adjudicated by the Court of Federal Claims and the Federal Circuit.

On dozens of occasions between January 5, 2004 and April 3, 2008, Bureau of Land Management ("BLM") employees observed cattle bearing brands registered to Wayne Sr. and Colvin grazing on BLM-managed lands without a grazing use authorization. (*See id.* ¶ 14(A)-(NN)). The BLM sent Wayne Sr., Wayne Jr., and Colvin trespass notices several times. [*5] (*See id.*). On approximately twenty occasions between July 29, 2004 and August 15, 2007, USFS employees observed cattle bearing brands registered to Wayne Sr. and Colvin grazing on the Meadow Canyon C&H Allotment within the Tonopah Ranger District of the USFS without a grazing use authorization. (*See id.* ¶ 16(A)-(S)).

II. PROCEDURAL HISTORY

A. The CFC Case - Pretrial Rulings (*Hage I*)

In 1991, Wayne Sr. and his wife Jean N. Hage, now also deceased, filed an action in the U.S. Court of Federal Claims (the "CFC Case") due to the United States' cancellation of their grazing permit. *See Hage I*, 35 Fed. Cl. at 156. Wayne Jr. was not a party to the CFC Case. The court granted summary judgment to the United States on the damages claim because the grazing permit was a license, the revocation of which could not give rise to damages, but the court denied summary judgment on the takings claims and the claim for compensation for improvements, because there remained a genuine issue of material fact whether Wayne Sr. had certain water rights, forage rights, and ditch rights of way. *See id.* The court first rejected the United States' argument that it lacked jurisdiction over the takings claim because [*6] it lacked jurisdiction to adjudicate water rights, ruling that the Tucker Act in fact required the court to exercise

jurisdiction, and that the McCarran Amendment did not affect the result. *See id.* 157-60. The court then rejected the United States' argument that the takings issue was unripe because an adjudication of water rights (the Monitor Valley adjudication) was pending which might affect title to the water. *See id.* at 160-64 (noting that water rights in Nevada vesting before 1905 are unaffected by later-adopted water law and exist independently of stream adjudications, which concern only the scope of such rights). The court also noted that the ditch rights of way were inherently tied to the water rights, because without the attendant ditch rights of way, the water rights were of no value. *See id.* at 163.

After granting summary judgment on the breach of contract claim based on cancellation of the grazing permit, the court addressed the takings claims. First, the court ruled that the Hages had no property interest in the grazing permit or the federal range land itself. *See id.* at 170. Second, the court denied summary judgment on the takings claim as to the Hages' water rights, ruling [*7] that the Ditch Act and Supreme Court precedent clearly established that a private party may have water rights in water on federal land, and that priority is in fact determined by local law. *See id.* at 172. Third, the court denied summary judgment on the ditch rights of way takings claim, because there remained a question of fact whether the Hages had such rights and whether they had exceeded the permitted scope of maintenance of or changes to the ditches. *See id.* at 174. Fourth, the court denied summary judgment on the forage takings claim because although water rights did not necessarily include grazing rights under the Ditch Act, it was possible that under pre-1907 Nevada law the right to bring cattle to the water and permit them to graze incidentally near the water source--because it is impossible to stop them as a practical matter--were an inextricable part of the water rights themselves if the water had been appropriated for the purpose of watering livestock. *See id.* 174-76. Finally, the court denied summary judgment on a cattle-impoundment takings claim and a compensation claim under 43 U.S.C. § 1752. *See id.* at 176-80.

B. The CFC Case - Property Rights Phase Rulings (*Hage III* and [*8] *IV*)²

² *Hage II* concerned motions to intervene by various private and state groups. The court denied the motions but permitted the groups to file amicus briefs.

Two-and-a-half years after *Hage I*, the Court of Federal Claims ruled preliminarily on the claims that had survived summary judgment in 1996. *See Hage v. United States (Hage III)*, 42 Fed. Cl. 249 (1998). In the meantime, the court had permitted the Hages to amend their complaint to include a claim to the surface estate of 752,000 acres of grazing land on federal allotments. *See id.* at 249. The court ruled that the Hages had shown they had a property interest in the vested water rights and in the ditch rights-of-way and forage rights appurtenant thereto. *See id.* at 250.

1. Water Rights

Three-and-a-half years after *Hage III*, the court ruled that the Hages had water rights in the following bodies of water within the Monitor Valley Allotment, with priority dates between 1866 and 1878: Andrews Creek, Barley Creek, Combination Springs, Meadow Canyon Creek, Mosquito Creek, Pasco Creek, Pine Creek, Smith Creek, and White Sage Ditch. *See Hage v. United States (Hage IV)*, 51 Fed. Cl. 570, 579 (2002). The court ruled that the Hages had water [*9] rights to the following bodies of water within the Ralston Allotment, with priority dates between 1917 and 1981: AEC Well, Airport Well, Baxter Spring, Black Rock Well, Cornell Well, Frazier Spring, Henry's Well, Humphrey Spring, Pine Creek Well, Ray's Well, Rye Patch Channel, Salisbury Well, Silver Creek Well, Snow Bird Spring, Spanish Spring, Stewart Spring, Well No. 2, and Well No. 3. *See id.* at 579-80. The court ruled that the Hages had water rights to the following bodies of water within the McKinney Allotment, with priority dates between 1919 and 1920: Caine Springs, Cedar Corral Springs, Mud Springs, and Perotte Springs.

2. Ditch Rights-of-Way

The court also ruled that Congress via the Ditch Act had expressly deferred to state law concerning the proper scope of such rights of way, and that the legislative history indicated Congress was fully aware of, and intended to codify via the Ditch Act, the custom in the American West of a fifty-foot right of way on each side of a ditch. *See id.* at 581-82. The court ruled that the Hages had established ditch rights of way cognizable under the Ditch Act in the following ditches: Andrews Creek Ditch, Barley Creek Ditch, Borrego Ditches, Combination [*10] Pipeline, Corcoran Ditch, Meadow Creek Ditch, Pasco or Tucker Ditch, Pine Creek Irrigating Ditch, Spanish Spring Pipeline, and White Sage Irrigation Ditch. *See id.* at 583. The Hages failed to show

that the following ditches were cognizable under the Ditch Act: Baxter Spring Pipeline, Corcoran Pipeline, Desert Entry Ditch, Hot Well Ditch, Mount Jefferson Spring and Pipeline, and Salisbury Well Pipeline. *See id. at 584*. The court ruled that the USFS had the right to reasonably regulate the use of the ditches but could not deny access to vested water rights for permitted use or diversion to another beneficial use. *See id.* The court also held the law did not require the owner of a Ditch-Act ditch to seek permission from the USFS to maintain it. *See id. at 585-86*. The court went on to reaffirm that there was no property interest in a grazing permit that could support a takings claim for its revocation. *See id. at 586-88*.

3. The 752,000-Acre Surface Estate

Finally, although the Hages could possibly have had property rights under Mexican law that the United States would have to respect under the Treaty of Guadalupe Hidalgo, the Hages failed to show that their predecessors-in-interest actually [*11] occupied the 752,000 acres to which they claimed a surface estate prior to 1848, so they had no property rights in the surface estate. *See id. at 588-89*. The Hages also failed to convince the court of their grazing rights in the 752,000 area under several Congressional acts. The court then ordered briefing on the takings stage of the litigation. *Id. at 592*.

C. The CFC Case - Takings Phase Rulings (*Hage V, VI, VII*)

In an unpublished 2003 order, the Court of Federal Claims denied the United States' motion for partial summary judgment as to the takings claims, noting that the water and ditch rights predated the grazing permit system, and that the lack of a grazing permit did not destroy rights attendant to those rights. (*See Order*, Feb. 5, 2003, ECF No. 182, Ex. 7). In 2008, the court found that the United States had taken the Hages' water rights without compensation. *Hage v. United States (Hage V)*, 82 Fed. Cl. 202 (2008). The court found that the impoundment of the Hages' cattle was not a taking, because the license to graze in the Meadow Canyon area was a revocable license that had been revoked, the Hages had failed to remove the cattle for a year after being warned, and the cattle were [*12] sold to cover the costs of impoundment. *See id. at 209*. The court then found that the United States' construction of fences around water in which the Hages had vested water rights

amounted to a physical taking during those periods that the Hages had their grazing permit, *see id. at 211*, and that the United States' refusal to permit the Hages to maintain the upstream condition of stream beds or to access Ditch-Act ditches for maintenance and diversion constituted regulatory takings. *see id. at 211-13*. The court denied the takings claim as to the fifty-foot "foraging" rights appurtenant to the ditches, because the rights were economically worthless in-and-of-themselves, as they were incidental to the ditch rights and could not be separately sold. *See id. at 213 n.11*. In other words, there is a right to access the ditches to improve them (and presumably for cattle to drink from them, hence the appurtenant foraging rights), but there is no separate claim for the taking of the foraging rights apart from the taking of the water rights themselves. The court then awarded the Hages approximately \$2.9 million for the taking of their water rights under the *Fifth Amendment* and approximately \$1.4 [*13] million in statutory compensation for improvements made in connection with the revoked grazing permit. *See id. at 213-16*.

The court denied the United States' motion for partial reconsideration and increased the award of statutory compensation for improvements to approximately \$1.5 million. *See Hage v. United States (Hage VI)*, 90 Fed. Cl. 388, 392 (2009). The court then awarded interest at 8.25% from the date of the taking and directed the parties to file interest calculations, after which the court awarded a total amount of \$14,243,542. *See Hage v. United States (Hage VII)*, 93 Fed. Cl. 709, 709 (2010). The United States appealed the case to the Federal Circuit, and the Hages cross-appealed. According to the Federal Circuit's public website, oral argument has not yet been scheduled.

D. The Present Case

In 2007, after the Court of Federal Claims' final property rights ruling in *Hage IV*, but before its takings ruling in *Hage V*, the United States sued the Estate, Wayne Jr., and Colvin in this Court on two causes of action: (1) Trespass; and (2) Injunctive Relief. (*See Compl.*, Aug. 29, 2007, ECF No. 1). The United States later amended the Complaint to add Colvin Cattle Co. as a Defendant. [*14] (*See First Am. Compl.*, ECF No. 37). The Court granted a stipulated dismissal as to Colvin and Colvin Cattle Co., leaving only the Estate and Wayne Jr. as Defendants. (*See Order*, Oct. 13, 2009, ECF No. 120). The Estate and Wayne Jr. have separately moved in the alternative to dismiss or stay based on collateral estoppel.

and the United States has moved for offensive summary judgment.

III. LEGAL STANDARDS

A. Collateral Estoppel and Stay

"Collateral estoppel" or "issue preclusion" is a form of the res judicata doctrine that prevents the relitigation of an issue when: "(1) there was a full and fair opportunity to litigate the identical issue in the prior action; (2) the issue was actually litigated in the prior action; (3) the issue was decided in a final judgment; and (4) the party against whom issue preclusion is asserted was a party or in privity with a party to the prior action . . ." *Syverson v. IBM*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citations omitted). The Ninth Circuit has adopted the four-factor test suggested in the Restatement (Second) of Judgments to determine if the issue in a second action is the same as the issue litigated to final judgment in the first action:

(1) is there [*15] a substantial overlap between the evidence or argument to be advanced in the second proceeding and that advanced in the first?

(2) does the new evidence or argument involve the application of the same rule of law as that involved in the prior proceeding?

(3) could pretrial preparation and discovery related to the matter presented in the first action reasonably be expected to have embraced the matter sought to be presented in the second?

(4) how closely related are the claims involved in the two proceedings?

Kamilche Co. v. United States, 53 F.3d 1059, 1062 (9th Cir. 1995) (quoting *Restatement (Second) of Judgments* § 27 cmt. e), amended by 75 F.3d 1391 (9th Cir. 1996) (amending the decision in respects irrelevant to the rule announced).

The Ninth Circuit recognizes the preclusive effect of final judgments pending appeal. See *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882 (9th Cir. 2007) (citing *Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir. 1988)).

It is appropriate to recognize the preclusive effect of a final judgment on the merits despite a pending appeal, because although the first judgment may be overturned on appeal, the alternative possibility of inconsistent results and wasted [*16] judicial resources threatens or destroys the values served by the res judicata doctrine. See *id.* at 882-83 (citing 18A Charles Alan Wright et al., *Federal Practice and Procedure* § 4433f, at 94] (2d ed. 2002)).

A district court may dismiss a claim that depends on a precluded issue. See *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248, 249 (9th Cir. 1978). However, a stay may be more appropriate than outright dismissal where the precluded issue is pending on appeal in another court, because the proponent of the claim in the second action will presumably file it anew if the issue is determined in its favor on appeal in the first action. See *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 81 L. Ed. 153 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."). A district court considering a second action containing a claim depending on a precluded issue may dismiss the claim and immediately stay the order pending resolution of the appeal in the first action.

B. Summary Judgment

A court must grant summary judgment when "the movant shows that [*17] there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P.* 56(a). Material facts are those which may affect the outcome of the case. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. See *id.* A principal purpose of summary judgment is "to isolate and dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). In determining summary judgment, a court uses a burden-shifting scheme:

When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a

directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case.

C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations and internal quotation marks omitted). In contrast, when the nonmoving party bears the burden of proving [*18] the claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to make a showing sufficient to establish an element essential to that party's case on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323-24. If the moving party fails to meet its initial burden, summary judgment must be denied and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-60, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970).

If the moving party meets its initial burden, the burden then shifts to the opposing party to establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). To establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). [*19] In other words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v. Lisa*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial. *See Fed. R. Civ. P. 56(e); Celotex Corp.*, 477 U.S. at 324.

At the summary judgment stage, a court's function is not to weigh the evidence and determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249. The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if

the evidence of the nonmoving party is merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249-50.

IV. ANALYSIS

Defendants argue that their grazing rights have been adjudicated on the merits in the CFC Case, and that a trespass action, which necessarily depends on their lack of grazing rights, is therefore collaterally estopped. Defendants therefore ask the Court to dismiss the present [*20] action or stay it pending the outcome of the appeal and cross-appeal of the CFC Case to the Federal Circuit. Plaintiff responds that its present trespass action is based on allegations that Defendants' cattle grazed in areas that are not at issue in the CFC Case, and that collateral estoppel therefore does not apply because the issues are not the same. Plaintiff also argues that unlike the Estate, Wayne Jr. is not a party to the CFC case.³

3 The Estate at least is party to both the CFC Case and the present action. Wayne Jr. is the executor of the Estate. He is also presumably an heir or devisee of Wayne Sr., and the trespass claims against him personally, which arise out of the grazing of cattle on his family's ranch, are therefore closely enough related to the adjudication of the extent of Wayne Sr.'s rights to graze in the disputed areas under *Kamilche* to make issue preclusion applicable. The United States is a party in the CFC Case, so it may be collaterally estopped here. *See Syverson*, 472 F.3d at 1078.

In *Hage IV*, the CFC ruled: (1) Defendants had rights in certain bodies of water, *see 51 Fed. Cl. at 579-80*; (2) Defendants had rights in certain ditches and appurtenant foraging rights [*21] fifty feet from those ditches. *see id. at 580-84*; (3) ditch rights of way over federal land could be reasonably regulated, but the United States could not use the fact of a cancelled grazing permit to deny access to the ditches, *see id. at 584*; (4) grazing permits are licenses, the cancellation of which does not implicate the *Takings Clause*, *see id. at 586-88*; (5) no federal act created a surface estate in the 752,000 claimed acres, *see id. at 588-91*; (6) Nevada's 1925 three-mile grazing rule could not create a state right to graze on federal land, *see id. at 591*; and (7) although the Treaty of Guadalupe Hidalgo required the continued recognition of property rights as they existed under Mexican law in 1848, the Hages had not shown that their predecessors-in-interest

had occupied any of the land they claimed prior to the 1860s, and the mere roaming of cattle on land was not enough under Mexican law to create a possessory right in the land. *see id. at 588-89 & n.30* (citing *Stout v. Hepburn*, 1 Cal. 254 (1850)). In *Hage V*, the CFC ruled: (1) because the relevant grazing permit had been lawfully revoked, the impoundment of the Hages trespassing cattle was not a taking, *see 82 Fed. Cl. at 209*; [*22] (2) nothing resulting purely from the revocation of grazing permits could constitute a taking even if such revocations rendered the land useless for its intended purpose as a ranch, because grazing permits were not cognizable property interests. *see id.* (citing *Calvin Cattle Co. v. United States*, 468 F.3d 803, 808 (Fed. Cir. 2006)); (3) the United States' refusal to allow the Hages to clear upstream blockages along bodies of water in which they had water rights was a taking, *see id. at 210-12*; (4) placing fences around water sources was a taking of water rights during the time the Hages had grazing permits in the areas where the water was fenced such that the cattle could not access it, *see id. at 211*; (5) preventing access to the Ditch-Act ditches and limiting maintenance of the ditches to hand tools was a taking, *see id. at 213*; and (6) preventing access to the fifty-foot forage rights appurtenant to the ditches was not a separately compensable taking, *see id. at 213 n.11*. The United States appealed, and the Hages cross-appealed.

The Court will deny offensive summary judgment and permit the present trespass action to proceed to trial. It is possible that the Federal Circuit will rule [*23] the Hages either have some sort of surface estate to graze in the disputed areas, or that their water rights in the disputed areas include the right to graze nearby, preventing trespass claims. The FAC alleges illegal grazing on the Ralston Allotment, the Monitor Allotment, the Montezuma Allotment, and the Meadow Canyon Allotment. (See FAC ¶¶ 14, 16). But even assuming the alleged trespasses occurred further than fifty feet from water sources or ditches in which Defendants have appurtenant foraging rights, the Federal Circuit may very well find that Defendants had a right to graze their cattle in these areas.

Moreover, this Court may decide the open question of the extent of the foraging rights, if any. The CFC in *Hage II* based its finding in dicta that the local custom was to provide a fifty-foot right of way along either side of a ditch upon early House versions of the Ditch Act that specified fifty feet as the limitation based on the House's

perception of local custom, *see 51 Fed. Cl. at 581-82*, but the right could in fact be greater. The court noted, for example, that "The Livestock Reservoir Siting Act of 1891 recognized rights-of-way for up to 160 acres." *Id. at 582 n.16*. The [*24] final version of the Ditch Act as signed by President Johnson in 1866 had been amended by Senator Stewart of Nevada specifically to remove fixed limitations on the dimensions of ditch rights of way. *See id. at 582*. The language of the Ditch Act as passed specified that the ditch rights of way recognized by the United States would be as defined "by the local customs, laws, and the decisions of courts." *See Act of July 26, 1866, ch. 262, § 9, 14 Stat. 251, 253*. It is possible the Federal Circuit could determine on appeal of the CFC Case--or that this Court could determine during the trial of the present case--that the scope of the Hages' ditch rights of way include the ability to permit cattle to graze within a reasonable distance from water sources and appurtenant ditches while pastured near them, whether accompanied by ranch hands or not. The scope of reasonableness under local law and custom with respect to the behavior and supervision of cattle will be a fact-laden determination likely requiring expert testimony from members of the local ranching and regulatory communities.

Even if they cannot show vested grazing rights directly cognizable under the Treaty of Guadalupe Hidalgo--because [*25] their predecessors-in-interest did not begin using the Ranch until the 1860s and did not appropriate water for the purpose of watering cattle until sometime thereafter--it appears undisputed that the Hages have water rights vested under the common law in certain areas prior to either the institution of Nevada's statutory appropriation scheme or the federal Taylor Grazing Act ("TGA"). The purpose of the prior appropriation doctrine is to ensure and encourage the beneficial use of scarce water resources in an arid climate, and the scope of the right to use water is inextricably tied to the purpose for which the water was initially appropriated and continuously used thereafter. *See James H. Davenport, Nevada Water Law 58-65* (2003). The Hages' predecessors-in-interest appropriated certain water for the purpose of watering their livestock, which historically and customarily requires that the livestock come to the water source--whether a hole, well, stream, ditch, or canal--to drink. When appropriated for the purpose of watering cattle, such cattle's access to the water source is probably an inherent aspect of the water right itself, and the scope of the rights of way recognized under the Ditch

[*26] Act are controlled by local law and custom. The right to divert water for a prior appropriated beneficial use is undisputed, and under Nevada law diversion occurs where the cattle drink. *Steptoe Live Stock Co. v. Gulley*, 53 Nev. 163, 295 P. 772 (Nev. 1931). It may indeed have been customary when the relevant water rights vested for cattle to be permitted to graze in the area of the water sources. Congress may manage its lands via the TGA or other legislation, and it may use a permitting system to do so, but it may not take vested rights without just compensation, and the Hages could not consistent with the Ditch Act be liable for trespass if the grazing upon which the trespass action is based were an activity within the scope of the Hages' vested rights under local law or custom. All these factual issues remain for trial. The Court therefore cannot say the United States is entitled to summary judgment on its trespass action, even if it were to accept as undisputed all of its evidence of the Hages' cattle grazing in certain areas for which they had no permit.

There is no property right in a grazing permit, but the government's obstruction of or reduction of usufructory use in water rights can constitute [*27] a taking, *see, e.g., United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 70 S. Ct. 955, 94 L. Ed. 1231, 116 Ct. Cl. 895 (1950) (affirming a takings award in the Court of Claims based on the diversion of water away from the plaintiff's use via a dam system where the plaintiff had riparian rights under state law), and the institution of a federal grazing permit system does not obviate property rights in grazing under state law, whether those property rights are direct or attendant to water rights. If a government agency could completely prevent a plaintiff's access to water--water in which it is undisputed the plaintiff has a usufructory right under state law that is recognized by Congress under the Ditch Act--merely by cancelling a grazing permit on land that must be traversed for the plaintiff to reach the water and then threatening a trespass action, then it could render water rights under state law worthless for the very use the rights were originally appropriated. The nature of a water right is usufructory, and if access is restricted such that the water cannot be used for its appropriated purpose, the right to use the water has been taken. The theoretical ownership of water that cannot be used, because it cannot be accessed, [*28] is worthless. The Ditch Act does not permit such a maneuver.

The Court notes that a private party may have an easement over federal land. *See Michel v. United States*,

65 F.3d 130 (9th Cir. 1995) (Quiet Title Act action for cattle and farm-use easement across federal wildlife refuge). Although the Hages may or may not be able to bring a counterclaim under the Quiet Title Act here--the Court invites them to try--depending on when they acquired knowledge of the United States' adverse claim against their asserted grazing rights or the scope of their water rights, *see id.* at 131-32 (citing 28 U.S.C. § 2409a(g)), there is no reason such an interest cannot at a minimum exist as a shield against the government's own trespass action. A servient owner in Nevada may reasonably regulate the use of an easement, but it may not do so in such a way as to: "(a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created." *St. James Vill., Inc. v. Cunningham*, 210 P.3d 190, 192, 194 (Nev. 2009) (quoting *Restatement (Third) of Property* § 4.8).

It is possible the Hages have [*29] a prescriptive easement over federal land for their cattle to access water in which the Hages have rights precisely for this purpose, and it is possible the maintenance of a trespass action based on the grazing of such cattle within a reasonable distance of the water sources or paths leading from the Ranch to these sources would imply an unreasonable regulation of the easement under *Cunningham*. Unlike in *County of Okanogan v. National Marine Fisheries Service*, 347 F.3d 1081 (9th Cir. 2003), where the plaintiffs' right of access was born of an explicitly revocable contract with the government, *see id.* at 1084, here the right of access is alleged to be a part of the state law right itself that predates the TGA. The *County of Okanogan* court explicitly noted this distinction, as if in anticipation of a case like the present one. *See id.* at 1086 ("The FLPMA provides that '[n]othing in this Act . . . shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act,' and that '[a]ll actions by the Secretary concerned under this Act shall be subject to valid existing rights.' Under this savings [*30] clause, the government could not under the FLPMA divest a private party of an existing 'land use right' or other 'valid existing rights,' but as described above, the plaintiffs' rights-of-way were always, by their written terms, revocable at the discretion of the federal government." (citation omitted)). The plaintiffs in *County of Okanogan* could only trace their rights of way to permits issued under a 1901 act that

made their revocation discretionary with the Secretary of the Interior. *See id.* at 1085-86. The Hages, by contrast, trace their water rights--and any attendant rights such as an easement to access the water, or to graze nearby--to the 1860s.

The TGA, under which the Hages have had grazing permits in the past, is an alternative source of an ability to graze, but it is not the only source. If the Hages had a preexisting right to graze attendant to and defined by their state law water rights, and cognizable under the Ditch Act, that right did not disappear simply because they later applied for and received grazing permits that were eventually revoked. The government may issue me a license to pick cherries on my own land. The fact that I acquiesce in the licensing system for a [*31] time for some reason does not mean my right to pick cherries on my own land, which right predates the licensing system, disappears when my license expires. The TGA itself includes savings clauses similar to that in the FLPMA protecting preexisting rights. *See 43 U.S.C. §§ 315, 315b.* It is likely that the Hages have an easement for their cattle to access the water or even a right to graze directly in the disputed areas simply by virtue of the water right to the extent it is unavoidable that cattle will do so because of the nature of their behavior. *See Hunter v. United States, 388 F.2d 148 (9th Cir. 1967).* It is neither legally nor factually clear the Hages exceeded their rights in this

case. The trespass claim cannot be decided on summary judgment in favor of Plaintiff.

CONCLUSION

IT IS HEREBY ORDERED that the Motion for Summary Judgment (ECF No. 186) is DENIED.

IT IS FURTHER ORDERED that the Motions to Dismiss or to Stay (ECF Nos. 185, 201) are DENIED.

IT IS FURTHER ORDERED that the Motion in Limine (ECF No. 215) is DENIED.

IT IS FURTHER ORDERED that Defendants may amend their Answer(s) to plead counterclaims under the Quiet Title Act or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).*

IT [*32] IS SO ORDERED.

Dated this 16th day of May, 2011.

/s/ Robert C. Jones

ROBERT C. JONES

United States District Judge

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE ROBERT C. JONES, DISTRICT JUDGE
4 ---o0o---

4 UNITED STATES OF AMERICA, :
5 Plaintiff, : No. 2:07-CV-1154-RCJ-LRL
6 -vs- : March 11, 2011
7 WAYNE N. HAGE, Executor of : Las Vegas, Nevada
8 the ESTATE OF E. WAYNE :
9 HAGE, and WAYNE N. HAGE, :
10 Individually, :
11 Defendants. :

12 TRANSCRIPT OF MOTION HEARING

13
14 APPEARANCES:

15 FOR THE PLAINTIFF: STEPHEN G. BARTELL and
16 Assistant United States Attorney
17 Washington, D.C.
18 NANCY ZAHEDI
19 Regional Solicitor's Office
20 Sacramento, California
21 FOR THE DEFENDANTS: MARK L. POLLOT
22 Attorney at Law
23 Boise, Idaho
24 WAYNE N. HAGE, In Propria Persona

25 Reported by: Margaret E. Griener, CCR #3, RDR
Official Reporter
400 South Virginia Street
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LAS VEGAS, NEVADA, FRIDAY, MARCH 11, 2011, 8:45 A.M.

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THE COURT: United States versus Estate of E. Wayne Hage and Wayne N. Hage.

Thank you. Appearances, please.

MR. BARTELL: Good morning, your Honor. Stephen Bartell on behalf of the United States.

With me at counsel table is Nancy Zahedi, an attorney with Solicitor's Office, Department of Interior.

THE COURT: Thank you. And, of course, you filed your motion to appear? You're not licensed in Nevada. You made your motion to appear?

MR. BARTELL: Yes, years ago when we started the case, your Honor.

THE COURT: Very good.

MR. POLLOT: Mark Pollot on behalf of the Estate of E. Wayne Hage.

MR. HAGE: Wayne N. Hage, pro se.

THE COURT: Thank you.

Let's see. We have -- do we have motions in limine as well? We have the motion to dismiss, to dismiss or stay, and for summary judgment.

Let me give you some preliminary feelings. I've read the pleadings, of course, but I think that your oral

1 argument will be very helpful.

2 I don't think I'm quite ready yet -- I am ready to
3 deny the motion of the government for summary judgment, but
4 I'm not quite ready yet to dismiss their case, and let me
5 explain.

6 The Court of Claims, of course, has ruled on many of
7 the issues here. That case is on appeal, but under Ninth
8 Circuit law, even though the appeal has not been concluded, it
9 is treated as final for purposes of collateral estoppel, *res*
10 *judicata*.

11 The Court has discretion to so treat it or, of
12 course, to wait until there's a further final ruling, but I am
13 inclined to treat the ruling so far of the Court of Claims
14 judge as binding, issued preclusion determinations, but that
15 doesn't quite mean that I can dismiss yet, and let me explain.

16 The Court of Claims, of course, determined that
17 there was -- there were takings, at least temporary takings,
18 for periods of time with respect to the water rights.

19 The Court ruled that there was no grazing right,
20 that was simply a license, and could not therefore have
21 accrued a property interest sufficient to form a basis for
22 taking.

23 The Court also ruled, however, that attendant to the
24 water rights, the ditch rights, ditch rights under the 1866
25 act, that there were attendant foraging rights.

1 The Court declined to give compensation for the
 2 brief impairment or taking of a foraging right because they
 3 said -- the Court said it was attendant to the water rights.
 4 There are foraging rights, but there would be no separate
 5 compensation because, without the water rights, there simply
 6 is no value in the foraging rights.

7 As opposed to a grazing right, the foraging rights,
 8 without the water there is no separate value, therefore the
 9 Court said I will just give compensation for the impairment of
 10 the water rights, no separate compensation element.

11 What that means, in my mind, is that the government
 12 cannot claim trespass to the extent a foraging right is being
 13 used or implemented.

14 Now, the Court went on to say that it would honor --
 15 under custom and usage, it would determine the extent of the
 16 foraging right.

17 This is purely dicta, of course, because it did not
 18 award compensation for denial of the foraging right, and it
 19 concluded that it would honor what it saw as a 50-foot
 20 foraging right on either side of the stream or the ditch.

21 In my mind, that's dicta, and I'm at liberty, even
 22 though I honor the findings and issue preclusion in that case,
 23 I am at liberty to redetermine the extent of that foraging
 24 right.

25 So if, for example -- and I have found

1 countervailing authority. I've found authority in Nevada that
2 some rights, foraging rights, we're not talking about grazing
3 rights now, foraging rights attendant to ditch rights or water
4 rights were as much as 160-acre portions. So there is some
5 authority for going far beyond a 50-foot right.

6 I don't think I'm ready to dismiss because I cannot
7 determine, and may not be able to determine without a trial
8 and evidence of the -- or at least the citation of authority
9 for the determination of the extent of that foraging right,
10 whether it's just 50 feet and therefore the government can
11 claim trespass beyond that 50 feet, or whether it should be
12 broader. It seems to me, common sense wise, it should be
13 broader.

14 Obviously -- and it's probably a factual issue.
15 Obviously, if you bring the cattle on, and you proceed along
16 the ditch or to a watering place at the conclusion of the
17 ditch, and the cow wanders 100 feet, it seems to me you're
18 still within your foraging rights.

19 On the other hand, if you bring the cattle in, even
20 though you may raise the excuse that you're headed for the
21 watering trough, but you purposely let them go a mile off, in
22 fact, you intend that, and you leave them not only a mile off
23 but three, four, five, ten miles off over a period of time,
24 you're not exercising a foraging right.

25 So that may be a very fact-intensive question.

1 But I don't know how the government can say it's
2 limited to 50 feet if what factually is shown is, in fact, the
3 cows are simply being held to the water.

4 In addition, I don't think the government has the
5 right to say, in exercising your water rights and your
6 foraging rights, that the rancher must keep a 24-hour watch on
7 the cattle. It has no right to impose that limitation.

8 And if, in fact, you're in the process of leading
9 those cows to water, or sending them to the water, if they
10 have a normal, habitual course every day, the fact that they
11 stray beyond what the Court might otherwise determine to be a
12 foraging right, as long as it's pursuant to the exercise and
13 use of the water right and the foraging right, again, there's
14 no claim for trespass. In other words, they cannot impose a
15 limitation that on the water foraging right that the rancher
16 must 24 hours a day watch the cattle.

17 So I think that's a fact-intensive question, and I
18 think I need a trial both to determine the extent of the
19 foraging right, whether the specific instances of trespass the
20 government is claiming exceeds what was otherwise intended to
21 be simply the exercise of a foraging right.

22 In addition, there is nothing in the pleadings yet
23 regarding any counterclaims or offsets.

24 You do have compensation due from the government
25 declared by the Court of Claims now, what is it seven, 14

1 million with interest?

2 MR. HAGE: With interest, it's 14 plus million.

3 THE COURT: 14 plus million. So you have a
4 potential claim of offset. You haven't raised that in the
5 pleadings.

6 As far as I'm concerned, you also have a potential
7 *Bivens* claim against individuals. Again, that hasn't been
8 raised, and there's obviously a pleading question whether or
9 not I should allow at this late date such damages to be
10 asserted in this case. But if it's to the extent of offset, I
11 think I would be obligated to allow it, but you need to plead
12 it if you intend to prove it.

13 The *Bivens* claims, of course, there's a little bit
14 of an issue problem because those claims would be against
15 individuals. You can't assert a *Bivens* claim for takings
16 against the government. That can only be asserted in the
17 Court of Claims, and the government has waived their sovereign
18 immunity only to that extent, but you can assert a *Bivens*
19 claim seeking injunctive relief, for example.

20 In my opinion, not only in this case but in many
21 cases, the government has been all too ready to -- in the name
22 of revoking or suspending or limiting grazing licenses, the
23 government has been all too ready in the history of Nevada to
24 impair otherwise suspected and substantiated rights of
25 landowners.

1 Heaven knows, if you have a property right under the
2 Treaty of Guadalupe Hidalgo, the government is obligated to
3 recognize that. And if you have water rights and grazing
4 rights attendant -- not grazing rights, but foraging rights
5 attendant thereto, the government is obligated to recognize
6 those.

7 And, in the name of revoking or suspending a grazing
8 license, they should not be heard nor seen to fill up ditches,
9 to fence off property, to seize cattle, to preclude a property
10 owner from exercising those property rights.

11 Now, of course, there's a takings claim when the
12 government engages in that action, and the government has
13 waived sovereign immunity only to the extent that you must
14 bring that claim in the Court of Claims.

15 But as against the individuals who are involved in
16 that process, there is a *Bivens* claim, not against the
17 government, and the government -- and there is a *Bivens* claim
18 that can be asserted in the district court against those
19 individuals possibly to the extent of damages, but certainly
20 to the extent of requested relief by way of injunctive relief,
21 you will not henceforth interfere with those water rights,
22 ditch rights or attendant foraging rights.

23 So that's a potential issue, too. Again, we will
24 address it only if you raise it in the pleadings or only if
25 you file a motion to amend your pleadings to so raise it,

1 otherwise I'll assume that you are not pursuing that.

2 So I do think I need a further trial.

3 I am willing to give preclusive effect to the
4 findings at this juncture. Of course, there may be -- if we
5 get a federal circuit appeal decision in the meantime, that
6 may change the course of the case, but otherwise I'm willing
7 to give preclusive effect to the findings so far.

8 But I do think I need a trial on those remaining
9 issues, the extent, either by authority citation or by trial,
10 expert testimony, of the normal usage relative to the foraging
11 right, as well as a claim or claims of offset.

12 So those are the issues that I see as remaining.
13 That's my thinking so far.

14 One last comment, too.

15 Beneficial use. As we know, the property right is
16 determined under state law, it's not federal law, and a water
17 right in Nevada and in the west generally is based upon
18 beneficial use, first in time appropriated, first in right, as
19 opposed to the riparian systems in the east.

20 And those water rights are attached to a particular
21 beneficial use. For example, if you're a farmer and you have
22 appropriated water rights, it's for a particular beneficial
23 use, and, if you don't use it for agriculture, if you instead
24 use it for household, or even to sell, there's a potential
25 claim of abandonment or loss of the water right.

1 Similarly, for a rancher, the beneficial use, I'm
2 assuming, that was the basis for the Court of Claims decision,
3 was watering cattle.

4 The rancher can't be heard to say we still own and
5 have not abandoned a water right because we're using it to
6 water the town next-door or the city next-door, or because we
7 found a new beneficial use, we've set up a manufacturing plant
8 on our property.

9 So it's clear that the water right is attached to
10 the beneficial use of the watering of cattle here, and that
11 may have a great deal to do with the extent of the foraging
12 right. In other words, that's another reason not to honor a
13 50-foot dicta determination.

14 If, in order to water the cattle and to preserve a
15 beneficial use associated with watering the cattle, a
16 100-foot, a 200-foot, a one-mile foraging right is necessary,
17 that would be a matter of evidence and, as far as I'm
18 concerned, would be attendant as foraging right to the water
19 right.

20 Those are my thoughts so far. I've partially put
21 them into a written document, but I do need your comments
22 about the binding effect, the collateral estoppel effect, the
23 other issues raised on summary judgment, the request for a
24 stay or to dismiss, I think your arguments will be helpful.

25 So we do have the motion to dismiss, and we have the

1 countermotion for summary judgment. Maybe I'll let you go
2 ahead with the motion for summary judgment first, and then you
3 can counter it and respond with your motion to dismiss,
4 please. Thank you.

5 MR. BARTELL: Your comments were very helpful,
6 your Honor, and I will attempt to streamline my arguments in
7 light of your comments.

8 The case before this Court involves the intentional
9 and repeated trespasses on an ever-expanding scale of
10 unpermitted commercial livestock operations on federal lands.

11 As the Supreme Court stated in *Light versus United*
12 *States*, the government may object to its property being used
13 for grazing purposes and is charged with the duty and clothed
14 with the power to protect the public land from trespass.

15 Your Honor, the United States maintains there are no
16 genuine issues as to any material facts and disputes. What
17 remains before this Court is only a question of law.

18 The United States owns the approximately
19 752,000 acres of lands at issue in this case.

20 THE COURT: And to make the record complete, we
21 need to put on the record what the Court of Claims found.

22 They said there's no attendant rights, surface
23 rights, to the 752,000 acres, but they base that on Spanish
24 law, and, of course, the law since the Treaty of Guadalupe
25 Hidalgo. In other words, the cattle of defendant's

1 predecessor have been ranging on that 752,000 acres prior to
2 the Treaty of Guadalupe Hidalgo, as I understand it.

3 What they could not prove, though, according to the
4 Court of Claims, is they could not prove that under Mexican
5 law that had to be honored under that treaty, or property
6 rights, that under Spanish law, there was no surface right
7 attendant to the fact that your cattle had been ranging on
8 otherwise public lands for some time.

9 MR. BARTELL: In fact, your Honor, there's no
10 evidence whatsoever, and defendants have presented no evidence
11 in response to our motion that they ever grazed cattle prior
12 to 1848, the date of the treaty, or their predecessors in
13 interest. There's just no evidence to that effect.

14 In fact, the Treaty of Guadalupe Hidalgo transferred
15 all of the land in Nevada to the United States, and there were
16 no private rights withheld.

17 THE COURT: And in the treaty, the United States
18 agreed to honor recognized property rights under that treaty.

19 MR. BARTELL: Yes, your Honor. However, no such
20 rights have ever been determined to exist in Nevada. There
21 were some in California and New Mexico, rancheros and what
22 have you. There has never been any evidence, or any court has
23 ever found any such rights pre-existed the treaty in the State
24 of Nevada.

25 THE COURT: Or, more importantly, with respect

1 to this case, there's no proof that predecessors' cattle
2 ranged on this property prior to that treaty.

3 MR. BARTELL: Absolutely not, your Honor.

4 In fact, I'm just going to go ahead at this time and
5 turn to a couple of maps I brought just to take a moment just
6 to orientate the Court to really the lands at issue and to
7 also demonstrate there's no facts in dispute.

8 I have two maps. They may be hard to see from where
9 you're sitting, it's a little bit far away, but I have copies
10 that I can hand to you if I may.

11 THE COURT: Please.

12 MR. BARTELL: Your Honor, defendants have also
13 been provided a copy of these two maps. In fact, one of the
14 maps was presented by the defendants in deposition.

15 If I could just briefly explain what we're looking
16 at. The larger map simply shows the land ownership and the
17 area at issue.

18 In the lower left corner is the city of Tonopah.
19 I-95 runs up into Tonopah and goes on. The land at issue is
20 highlighted in black. It runs approximately 50 miles up and
21 about 20 miles across.

22 THE COURT: Where's the ranch, the
23 privately-owned ranch?

24 MR. BARTELL: If you'll look -- if I may
25 approach the exhibits.

1 THE COURT: Please.

2 MR. BARTELL: These light gray areas are the
3 7300-acre Pine Creek Ranch that is owned by the Estate of
4 Wayne Hage.

5 THE COURT: Okay.

6 MR. BARTELL: It's made up of eight to ten
7 different parcels approximately that are scattered throughout
8 the Monitor Valley.

9 What we have here in the pinkish is lands
10 administered by the Bureau of Land Management, Monitor Valley
11 and Ralston Valley. There's also some private lands down
12 here, and this is the Tonopah Airport (indicating).

13 THE COURT: Okay. Now, pinkish, where is the
14 pink land?

15 MR. BARTELL: Well, okay. This color is more
16 like a -- an Army green.

17 THE COURT: Background.

18 MR. BARTELL: Army green, okay, and then we have
19 this more pronounced green color, the land that has been
20 reserved as of 1907 as national forest, and then we have the
21 names of the different federal grazing allotments set forth.

22 THE COURT: Now, the establishment of the forest
23 land was 1907, and the establishment of the brown parcels --

24 MR. BARTELL: Well, that's just been public land
25 since the Treaty of Guadalupe Hidalgo and is now administered

1 by the BLM.

2 THE COURT: Now, the licensing system, the
3 grazing licensing system dates to when?

4 MR. BARTELL: The Taylor Grazing Act of 1935,
5 set forth the grazing permit for the public land, BLM land.
6 Approximately 1907 is when the Forest Service was created and
7 they started licensing grazing.

8 THE COURT: Okay.

9 MR. BARTELL: The lands at issue are really up
10 here (indicating), the Meadow Canyon allotment, the Forest
11 Service, to the left of the valley, Table Mountain allotment
12 to the right of the valley.

13 THE COURT: Are you showing any of the ditch
14 areas?

15 MR. BARTELL: I will address those in just a
16 moment.

17 THE COURT: Okay.

18 MR. BARTELL: Then the Monitor allotment, the
19 center parts of the valley, and this large Ralston allotment
20 at the bottom.

21 The testimony presented by Mr. Hage and the
22 gentlemen who worked for Mr. Hage as to how they run their
23 cattle operation demonstrates -- and these are maps and
24 testimony excerpts from depositions attached to our motion --
25 that they place as many as a thousand cows out on these

1 federal lands year round.

2 In winter or the cooler months, the animals are on
3 the valley floor by the BLM.

4 THE COURT: Are there fences?

5 MR. BARTELL: There are some fences. There are
6 fences along the highways. Some of the allotments are fenced,
7 some of them are open.

8 THE COURT: For example, here we have the purple
9 area, privately-owned land, along the green border there, the
10 brown or green BLM, or the lower portions, is the private
11 property fenced off?

12 MR. BARTELL: Some of it is, some of it is not.

13 THE COURT: Okay.

14 MR. BARTELL: So what we have is this, and then
15 going back to the cattle operation, in the summer or the
16 warmer months, the cattle then are drifted or trailed or
17 herded up into the higher elevations of the national forest.

18 Now, regarding your question about the ditches, the
19 claims court found ten ditches to be owned by the estate. All
20 of those were subsequent to 1848.

21 THE COURT: And in which areas?

22 MR. BARTELL: Those ditches were primarily all
23 within the Monitor allotment bringing --

24 THE COURT: Monitor, right.

25 MR. BARTELL: -- bringing water from the Forest

1 Service lands down to private lands, these private lands.

2 Some of the ditches were several miles long, some
3 were shorter, and there were ten ditches that basically moved
4 the water up here (indicating).

5 THE COURT: So the Monitor complex had some.
6 How about Table Mountain?

7 MR. BARTELL: I believe the ditches -- I don't
8 think so, your Honor.

9 I have all of our declarants here in court, and our
10 witnesses, and they'll confirm that. In fact, I would have to
11 say Mr. Hage probably knows very well where these ditches are
12 himself.

13 THE COURT: Yeah, in fact, I've got it here.
14 Let me pull it up so I know which ones were denied by the
15 Court of Claims and which ones --

16 MR. BARTELL: The Court only found ten ditches,
17 and most of them came off the Meadow Canyon, Forest Service
18 allotment area down onto the valley floor.

19 Now, what's interesting about --

20 THE COURT: Give me one minute. Let's see.

21 Six allotments, original permits, Table Mountain --
22 then in the pretrial rulings in Hage 1, Hage 3 and 4, the
23 Court of Claims -- made the ruling on the 752,000 acres of
24 grazing land.

25 The Court ruled that there were water rights in the

1 following bodies of water within the Monitor Valley -- Monitor
2 Valley. That's the Monitor complex, right?

3 MR. BARTELL: Yes, your Honor.

4 THE COURT: The priority dates between 1866 and
5 1868, Andrews Creek, Barley Creek, Combination Springs, Meadow
6 Canyon Creek -- where's Meadow Canyon? Mosquito Creek, Pasco
7 Creek, Pine Creek, Smith Creek and White Sage Creek.

8 They ruled that they had water rights within the
9 Ralston allotments priority dates 1917-1981, AEC well, Airport
10 well, Baxter Springs, Black Rock well, Cornell well, Frasier's
11 Creek, Henry's well, Compass Creek, Pine Creek well, Face
12 well, Rye Patch channel, Salisbury well, Silver Creek well,
13 Snowbird Springs, Spanish Springs, Stewart Springs, Well No.
14 2, Well No. 3.

15 And within the McKinney allotments, 1919 to 1920,
16 Cane Springs, Cedar Coral Springs, Mud Springs and Perot
17 Springs.

18 They denied -- and, of course, it also made rulings
19 with respect to ditches, the Andrews Creek ditch, Barley Creek
20 ditch, Barego ditches, Combination pipeline, McCoran ditch,
21 the Meadow Creek ditch, Pasco Ditch, Pine Creek irrigating
22 ditch, Spanish Springs pipeline, and White Sage irrigation
23 ditch.

24 They failed to show that the following ditches were
25 1866 act ditches, Baxter Springs pipeline, McCoran pipeline,

1 Desert Entry ditch, Hot Well ditch, Mountain Desert pipeline
2 and the Salisbury well pipeline.

3 So I think that's the extent of the rulings that we
4 have.

5 MR. BARTELL: Your Honor, and it's important, I
6 think, to note the United States here before this Court in
7 this case is not challenging any of the water rights, the
8 Monitor Valley adjudication, the Court of Claims Court found
9 the estate to own.

10 THE COURT: How about trespass within certain
11 distance of those rights or those ditches? Are you claiming
12 any trespass, let's say, within 50 feet of any of those?

13 MR. BARTELL: Absolutely not, your Honor. There
14 are --

15 THE COURT: Are you claiming trespass within a
16 mile of any of those ditches?

17 MR. BARTELL: That's very possible, your Honor.

18 THE COURT: Okay.

19 MR. BARTELL: All right. Now, the last point I
20 wanted to demonstrate here with these maps is to compare it to
21 Exhibit 4.

22 This is a map that Mr. Hage gave to the United
23 States in his deposition, and he was asked to highlight the
24 extent of the Pine Creek Ranch, what does the Pine Creek Ranch
25 own, and this highlighting surrounding this land was done by

1 Mr. Hage in deposition.

2 He testified that while the Pine Creek Ranch makes
3 up about 7300 acres of fee simple, absolute land, all of this
4 other land is what he calls feelings.

5 THE COURT: How were the 7300 acres acquired, by
6 patent, by grant from the Mexican government or the Spanish
7 government? How was the original patent acquired?

8 MR. BARTELL: Mr. Hage's father purchased this
9 land in the mid 1970s from a previous rancher.

10 THE COURT: Right.

11 MR. BARTELL: And they, in turn, purchased it --
12 there's a chain of title showing this land over time --

13 THE COURT: Is the original patent from the
14 United States or is it from the Spanish government?

15 MR. BARTELL: It's from the United States,
16 absolutely.

17 THE COURT: Okay.

18 MR. BARTELL: Okay. What's interesting here is
19 just that he claims the fee land to be the exact same federal
20 land that surrounds these federal allotments, which
21 demonstrates for this Court, just to, again, orientate the
22 Court, it's a hundred square miles, 750,000 acres of federal
23 lands, and it's the same lands at issue.

24 I am not -- the map that Mr. Hage highlighted is
25 already in the record. The other map is only prepared for

1 demonstrative purposes.

2 Now, this Court has already held, as have numerous
3 other courts, that the United States owns these federal lands.
4 That's one point for which the United States has moved for
5 summary judgment, that we would have to go to trial to
6 demonstrate the title, the history, what have you, that we own
7 the lands. That's just one point.

8 But then, as a matter of law --

9 THE COURT: But the lands' ownership, as we all
10 know from law school, includes many sticks.

11 MR. BARTELL: Yes, your Honor, we do.

12 THE COURT: Including potential ownership of
13 easements.

14 And are you also asking me to conclude summary
15 judgment wise that there are no easements?

16 MR. BARTELL: No, your Honor.

17 THE COURT: No. You just want a declaration
18 that, in fact, the government owns title --

19 MR. BARTELL: Yes, your Honor.

20 THE COURT: -- to the bare land.

21 MR. BARTELL: As a matter of law, yes, your
22 Honor, and further, as a matter of law, that the United States
23 has the right and the responsibility given to it by Congress
24 to manage, administer and protect these lands.

25 THE COURT: Okay. But you don't necessarily

1 have the right to exclude this particular user.

2 MR. BARTELL: Your Honor, if this user were to
3 go up onto these public lands on horseback for recreation
4 purpose or what have you, perhaps not. To go on --

5 THE COURT: But what if they go on those public
6 lands to use their water rights?

7 MR. BARTELL: The United States is not in this
8 action attempting to interfere with their water rights,
9 absolutely not. The United States recognizes that water
10 rights are a protected property interest.

11 THE COURT: And are you here seeking to prevent
12 them from using foraging rights attendant to the normal use of
13 the watering spots, the watering ditches, the water rights?

14 MR. BARTELL: Your Honor, the United States does
15 not maintain there are any such forage rights --

16 THE COURT: Sure.

17 MR. BARTELL: -- attendant to the water rights.

18 THE COURT: Although the Court of Claims held
19 there were.

20 MR. BARTELL: The Court of claims --

21 THE COURT: And it's also dicta, of course,
22 because the Court of Claims refused to give compensation for
23 loss of the foraging rights because all of the value was in
24 the water rights. That's the analysis as I understand it.

25 MR. BARTELL: You're right, your Honor, but --

1 THE COURT: So it's dicta.

2 MR. BARTELL: But every --

3 THE COURT: So it's dicta both that they have
4 foraging rights, and it's also dicta that they're limited to
5 50 feet. But you contend and you want me to determine that
6 there are no foraging rights.

7 MR. BARTELL: Yes, your Honor.

8 And the reason for that is because, first, the
9 claims court is a court only looking at their taking. If, in
10 fact, that is dicta, so be it.

11 However, every other court that has looked at this
12 precise issue --

13 THE COURT: To the extent they ruled they had
14 property interests and there was a taking, that's not dicta,
15 that's a holding.

16 MR. BARTELL: Yes, your Honor.

17 THE COURT: And I'm bound and you're bound.

18 To the extent they say there is a right, but I'm not
19 going to compensate for it on a different basis, it's dicta,
20 and I think I'm at liberty to redetermine that.

21 I'm at liberty to determine that there are or are
22 not foraging rights, and I'm at liberty to say that those
23 foraging rights are 50 feet, a mile, ten miles.

24 MR. BARTELL: Okay. And, your Honor, the United
25 States would only ask this Court, if it's going to be

1 THE COURT: But you told me there are claims of
2 trespass, there may be, within a mile.

3 MR. BARTELL: Within a mile or several miles
4 there may be. But the waters that the defendants are using
5 are these other springs and streams located all over the
6 750,000 acres, not just along the ditches.

7 Going back to how they can continue to use their
8 water, the estate privately has over 24 miles of pipelines
9 where they pipe water from federal land, all over federal
10 land, to benefit their grazing operation.

11 The United States is not coming before this Court
12 saying that they cannot come to -- go to the state engineer,
13 seek to change their place of use for these -- all their water
14 rights, which we're not contesting, and bring that water down
15 to their 7300-acre ranch.

16 THE COURT: Of course, they shouldn't even have
17 to do that. They should not have to go to the state engineer
18 and seek a change of place of use.

19 MR. BARTELL: Your Honor, if they want to graze
20 these hundreds and hundreds of cattle on a commercial
21 operation on federal land, they need a federal permit.

22 THE COURT: In order to use -- if there's a
23 recognized water right based upon a beneficial use of watering
24 cattle, they have the right to walk across -- with the cattle,
25 to walk across federal lands to get to the water.

1 MR. BARTELL: Well, your Honor, the United
2 States -- I understand the Court's position, and the United
3 States maintains that that is contrary to federal law, to the
4 Nevada State Engineer's law, to the Nevada Supreme Court law,
5 Ninth Circuit law, every other -- even the federal circuit and
6 the claims court have also all ruled there is no such right.

7 No court has ever expanded a water right to allow
8 someone to come onto someone else's land, not just to access
9 or use the water, but to graze animals in an undefined limit
10 around that land.

11 And on federal lands in particular, federal laws,
12 Congress has said if you're going to graze cows on federal
13 land, you need a permit.

14 His predecessors, his father had a permit for many
15 years. They never disputed that. They came to the United
16 States and said we want a permit to graze our cattle. They
17 got a permit.

18 THE COURT: We all know what that game is about.

19 MR. BARTELL: I understand that, your Honor.
20 But that's the claims court, they were awarded \$14 million.

21 THE COURT: And the game, just for the record,
22 even though the government in many cases didn't have the right
23 to insist upon a permit, because asking for a permit would be
24 an additional limitation on the right of use of a property
25 rights, nevertheless, the government in many cases has

1 All of these facts are undisputed.

2 The United States maintains that what is left is
3 simply a question of state law, and it is not a novel question
4 of law, it's the question we've been discussing this morning,
5 whether their water rights allow them to go up and bring these
6 hundreds and hundreds, up to a thousand animals all over these
7 federal lands any time, anywhere they want, irrespective of
8 the federal rangeland conditions or any other federal
9 oversight.

10 Your Honor, I understand this Court has said trial
11 would be helpful on some of these issues.

12 If this Court is inclined to deny the United States'
13 motion for summary judgment, the United States requests this
14 Court at the very least grant summary judgment on some of the
15 issues so that we have some direction going forward in trial,
16 do we own the land, do we have a right to manage it.

17 These are undisputed facts. Do we go before this
18 Court in trial demonstrating they've received trespass
19 notices? They have admitted all these undisputed facts I have
20 just described.

21 Finally, the reason that the United States maintains
22 that it's entitled to summary judgment as a matter of law in
23 light of these undisputed facts is because there are -- there
24 is no support for defendant's defenses in federal law, state
25 law, the claims court decision in Hage versus United States

1 that they rely on.

2 Finally, the ongoing trespasses are escalating every
3 year resulting in increased impacts to the federal lands
4 preventing the agencies from managing the lands. They're not
5 out there impounding the cows, they're turning to this Court
6 for relief, and it's preventing the agencies from --

7 THE COURT: It's a smart thing to do because the
8 prior impoundment, at least parts of it, I'm sure, were
9 contrary to the constitutional rights of the defendant here.

10 MR. BARTELL: The claims court didn't find --

11 THE COURT: There may well be that there's every
12 right to bring a *Bivens* action against some of these people
13 for impairing his constitutional rights.

14 MR. BARTELL: Well, your Honor, the claims court
15 did address that impoundment and did not find there to be a
16 taking for that impoundment, they found it to be lawful.

17 THE COURT: In essence, that's not what they
18 found. The Court found that the costs of managing and keeping
19 the cattle, the costs of sale, exceeded the value of the
20 cattle, and therefore there was no compensation element.

21 So the Court didn't say there was no takings by
22 impounding the cattle, it simply found that the value of the
23 cattle for which they would receive compensation was less than
24 the cost to the government of impounding and keeping and
25 managing and selling the cattle.

1 MR. BARTELL: Your Honor, at this point I would
2 just like to highlight some of the points that we have made in
3 our motion for summary judgment.

4 THE COURT: So to reemphasize that last point,
5 if some of those cattle were improperly impounded because they
6 were grazing improperly, so be it.

7 If some of those cattle were impounded because they
8 were properly grazing or foraging within water-right
9 attendant, foraging-right areas, then there's a potential
10 Bivens violation for whoever did that.

11 And even though the government isn't obligated to
12 give compensation, an individual might be obligated to
13 compensate for that impoundment.

14 MR. BARTELL: And, your Honor, that impoundment
15 was over ten years ago, and it was 105 cattle, in response to
16 the Court's question.

17 THE COURT: Thank you.

18 MR. BARTELL: Now, turning to the motion for
19 summary judgment, the United States is seeking summary
20 judgment as to six different elements.

21 First, as I mentioned, that the property is owned by
22 the United States as this Court has already ruled.

23 That federal law prohibits placing livestock on
24 federal lands without authorization. I respect the Court's
25 comments on this point this morning.

1 That defendants have placed these livestock on the
2 federal lands without federal authorization, an issue not in
3 dispute.

4 That the placing of livestock violates federal law
5 and constitutes trespass. Again, I respect this Court's
6 comments this morning.

7 That the United States is entitled to compensation
8 for those past trespass that are continuing to this date,
9 which we maintain is really the only issue that should be
10 presented at trial because we feel all these other issues
11 should be decided as a matter of law.

12 And, finally, that the ownership of stock watering
13 rights by the estate does not provide a defense for Mr. Hage
14 to be grazing all of these animals on federal land.

15 Mr. Hage has questioned the ownership of the federal
16 lands in his briefs. I'm not going to go through our whole
17 explanation of why we own land.

18 We have attached a declaration of Mr. David Moreland
19 who is the final authority for federal lands surveys in the
20 State of Nevada explaining that this is federal lands.

21 That the United States has a right to manage these
22 lands pursuant to the Constitution and the Property Clause as
23 also set forth in our briefs.

24 Defendants deny, however, that any land management
25 statute has any effect on their right to use these federal

1 lands, and, in fact, Mr. Hage has testified that the Taylor
2 Grazing Act, the Federal Land Policy and Management Act, and
3 other federal laws, and I quote, "do not apply to the rights,
4 lands or property of Mr. Hage or the Pine Creek Ranch."

5 He claims he is exempt to these laws. They're
6 applicable to everyone else in the United States. This is
7 contrary to the U.S. Constitution, federal laws and
8 regulations.

9 It's also inconsistent with this Court's previous
10 decisions, and in another case before this United States
11 District Court for Nevada, in the *United States versus*
12 *Gardner*, the Court granted summary judgment and enjoined
13 unauthorized grazing, ordered the removal of livestock from
14 federal lands and awarded damages against the Elko County
15 rancher who used similar defenses.

16 That case went up to the Ninth Circuit, and it was
17 affirmed.

18 The arguments are no different here, your Honor.
19 What they're arguing is that their appropriation of these
20 water rights gives them this exemption, and as I have
21 mentioned, the courts have uniformly held that is not the
22 case.

23 In particular, in *Omaechevarria versus Idaho*, the
24 United States Supreme Court said Congress has conferred no
25 rights for citizens to graze upon these public lands. There

1 are numerous other cases all included in our briefs. I'm not
2 going to go through them all.

3 One case, however, in particular I do want to bring
4 to the Court's attention is a Ninth Circuit case, *Hunter*
5 *versus United States*.

6 The Ninth Circuit recognized that Hunter had water
7 rights on federal lands, but it concluded that the right does
8 not include an easement to graze the cattle on the federal
9 lands. The court held that the holder of the stock watering
10 rights on federal land is limited to the right to use the
11 water but not the adjacent forage, and one who claims a right
12 to the forage claims too much.

13 Your Honor, this Court should hold the same. It is
14 consistent with everything from Nevada Supreme Court, Ninth
15 Circuit, Supreme Court, every other court and this Court in
16 other trespass cases. There's nothing different about this
17 case. The claims court case is irrelevant for the issues
18 before this Court.

19 I'd also like to just highlight one other case which
20 was the *Colvin Cattle Company versus United States*. In that
21 case, Mr. Colvin argued that his water right gave him -- he
22 had a grazing right inherent in his Nevada water rights.

23 The federal circuit, affirming the claims court,
24 rejected this argument stating, and I quote,

25 "Any water right that Colvin or its

1 predecessors obtained could not and did not include
2 an attendant right to graze on public lands."

3 We feel that these cases speak for themselves.

4 Now, your Honor, this Court has also asked for
5 comments regarding estoppel and whether there should be a
6 stay.

7 Turning to those two arguments that the defendants
8 have made, collateral estoppel simply does not apply here. A
9 party against whom estoppel is sought must have had the full
10 and fair opportunity to defend itself on an issue of prior
11 litigation.

12 There was no issue before the claims court about
13 whether there was a right to graze without federal permits.

14 The second amended complaint filed in the claims
15 court had three causes of action. None of them included a
16 claim that they can graze without a permit.

17 All of their causes of action sought compensation
18 for takings primarily as they related to their federal
19 permits. They weren't denying that they shouldn't have
20 federal permits, they were saying that they were taken, sought
21 compensation.

22 Further, estoppel should not be used against the
23 United States, or should only be used, perhaps, if it is used
24 at all, in very rare circumstances. Federal courts have held
25 it should only be applied against the United States where

1 doing so would not abrogate the constitutional authority of
2 Congress without a showing of misconduct on the part of
3 government agents. This has been upheld in numerous courts.

4 Now, turning to the question of whether this case
5 should be stayed, the defendants assert that they hold a
6 property interest in the nature of water rights that authorize
7 them to place livestock all over the federal land because of
8 the ditch rights.

9 They're confusing their ditch rights with access to
10 all of their other vested water rights, many of which are
11 peppered over this 750,000 acres of federal lands. However,
12 they have not identified any legal support for their position.
13 They disregard all of the precedents I was previously
14 discussing.

15 They also ignore the claims court's direct comments
16 that the forage right it found along those ditches did not
17 extend to all of the other water rights.

18 Now, I understand this Court has said that's dicta,
19 but if we're going to look to what the claims court said,
20 let's look at what it said about placing livestock on the
21 water sources that are at issue in this case, and the claims
22 court said there is no forage rights. It even said --

23 THE COURT: It said that there are forage rights
24 attendant to the ditches.

25 MR. BARTELL: To the ditches. The forage along

1 the ditches are not at issue.

2 THE COURT: Of course, pipes from water sources
3 are a rather modern invention, aren't they?

4 MR. BARTELL: I don't know --

5 THE COURT: Historically, all of those waters,
6 as evidenced by the alluvial planes below them, were
7 originally ditches.

8 MR. BARTELL: Yes, your Honor.

9 I don't know this for a fact, but I don't know that
10 pipes were really used before the invention of plastic, PVC
11 piping.

12 The Estate has over 24 miles of pipes.

13 What's interesting is Mr. Hage, in his declaration
14 attached to their motion to dismiss, or it may have been
15 attached to their response to the United States' motion for
16 summary judgment, goes on at length saying if you interfere
17 with my water rights, there will be no way for me to use this
18 water because I'll have to construct miles and miles of
19 ditches, and that's impractical because I'll have to get
20 federal authority, and the water will be lost through seepage
21 and evaporation, and using these ditches will be very
22 difficult.

23 He goes on and on about ditches, that would be very
24 difficult. He doesn't even mention once the use of pipeline,
25 something the estate has over 24 miles of pipelines.

1 I won't belabor that point.

2 Going back to why there should not be a stay of this
3 case pending that case, not only are there different issues as
4 I've described --

5 THE COURT: I'm inclined to agree with you. I
6 do think I need a trial.

7 So let's hear their response on that point, and then
8 you can reply.

9 MR. BARTELL: Very well, your Honor.

10 THE COURT: On all those issues, please.

11 MR. POLLOT: Your Honor, may it please the
12 Court. I think I first want to address your initial comments
13 about the ditch rights-of-ways because the government
14 certainly has made a very big deal about the Court's finding
15 with respect to the ditches, and has suggested that the only
16 water rights to which there is an attendant forage right are
17 the rights-of-ways within the ditches.

18 And we would take issue with the government's
19 statement that all of these things were originally in ditches
20 because they were not. As the claims court found, there were
21 seeps, there were springs, there were water bodies, there were
22 streams which were not ditches.

23 And, in fact, when you read through your list of the
24 findings of the claims court, you read where the Court found
25 water rights in certain springs, and then -- but also said but

1 there's no 1866 ditch right-of-way.

2 So the finding of a water right is independent of
3 the finding that there was a ditch right-of-way, the point of
4 diversion, of course, being the head of the cow. Wherever the
5 head of the cow goes down to drink the water, regardless of
6 what that source is, that's the point of diversion under
7 Nevada law.

8 We respectfully suggest and -- hang on. I almost
9 forget to bring this up.

10 As we pointed out in our briefs, what the Court of
11 Claims did was to first determine as far as the water rights
12 and the ditches were concerned, it went through essentially a
13 two-point analysis.

14 Its first point is there is an inherent right to
15 forage adjacent to a vested water right.

16 THE COURT: Under Nevada law.

17 MR. POLLOT: Well, I think, your Honor, it was a
18 case of Nevada and federal law.

19 I think when the Court looked at it and looked at
20 the Act of 1866, it found that Congress simply could not have
21 intended there to be a water right and yet deny the
22 opportunity for the cattle to graze adjacent to that, whatever
23 adjacent means, because without the ability to graze, they
24 couldn't use the water right.

25 It was simply as a matter of common sense and the

1 Act of 1866, which is a federal enactment which interfaces
2 with state law. So Congress recognized that state law
3 governs, you know, what is the appropriation of water, what is
4 a point of diversion, what is the priority date, what state
5 water law applies to it, but what is appurtenant to that water
6 right, such as foraging, is going to a combination of the two
7 bodies of law.

8 When Congress enacted this in 1866, I think it would
9 be pretty clear that the better part of Congress pretty much
10 understood cows and how they behave.

11 As we point out in our brief --

12 THE COURT: Does the 1866 act also cover
13 agricultural ditches?

14 MR. POLLOT: It did, your Honor. It said for
15 mining, agricultural --

16 THE COURT: So, for example, if you own the land
17 adjacent to the canal, and I have a water right but I'm next
18 to you, and the point of diversion is actually on your land,
19 under the 1866 act, let alone under other law, I have the
20 right to have my water transported across your land.

21 MR. POLLOT: That is correct, your Honor, or for
22 me to go across your land -- across my land to access that
23 water, either way, because otherwise the water right is
24 useless.

25 I mean, the government here has said over and over

1 again we're not seeking to interfere with the water rights,
2 but if the Hage --

3 THE COURT: But if I have a ditch across your
4 land out of the point of diversion which is on your land, I
5 have a right to preserve the ditch.

6 MR. POLLOT: That's correct, your Honor.

7 THE COURT: Under the 1866 act.

8 MR. POLLOT: That's correct, your Honor, because
9 it's -- in a sense, your Honor, aside from the fact the
10 federal government is involved in this, this is, frankly, a
11 garden-variety, everyday dispute between neighbors, what are
12 the rights-of-way, what right do I have to go across your
13 property to access my rights, you know.

14 And anyone who takes that property, if the United
15 States were to patent the underlying land to somebody else,
16 whoever they patent it to, they get whatever their predecessor
17 had.

18 If I had a right-of-way across that property either
19 to take my cattle there or transport that water from the ditch
20 to my property, whoever takes that property from the United
21 States, that's what they get.

22 And, your Honor, the reason I bring this up is
23 because the Court first finds in a complete sentence, no
24 semicolons, no commas, no anything, that -- and I'm going to
25 quote here,

1 "Concurrent with the accompanying easement to
2 perform ditch maintenance via the right-of-way, the
3 court finds that a limited right to forage," and this
4 is critical language, "is appurtenant to and a
5 component of a vested water right,"

6 not vested water rights in ditches, a vested water right.

7 The next sentence goes on to address the issue of
8 the waters inside the ditch because those are the waters that
9 it found to have been taken.

10 It didn't need to address how broad the forage right
11 adjacent to a water is at the side of the ditch in the 1866
12 Act, because it didn't find those waters to have been taken

13 The Court went a very exhaustive list because the
14 first phase of this, after all the procedural wrangling was
15 over, was to determine, first of all, whether the Hages had
16 property rights and whether those -- what those property
17 rights were and what the scope of those rights were because if
18 it didn't find that, the rest of the takings case would be
19 irrelevant.

20 The next phase was to determine, okay, did the
21 government's actions rise to the level of a taking, and it
22 found, as to certain rights that it identified, it did, and as
23 to other rights that it identified, it did not.

24 THE COURT: And to be a little more complete,
25 the Court not only found a complete taking, but in some

1 instances a regulatory taking.

2 MR. POLLOT: Both a regulatory taking and a
3 physical invasion and occupancy taking, your Honor, that is
4 correct.

5 And it found a regulatory taking based on the idea
6 that the reasonable right to regulate such as it had, and we
7 spend a lot of time in our briefs discussing exactly what
8 authority BLM and Forest Service had, and to the extent that
9 any -- they could regulate the ditch rights-of-ways, and the
10 Court concluded that they couldn't, but where it found them,
11 it found it specifically because the government's action was
12 not reasonable but unreasonable.

13 So we respectfully submit that when the Court --
14 and, as I said, when you identified certain rights, you said
15 aha, the Court found water right but didn't find a ditch
16 right-of-way, which meant there was no ditch right-of-way to
17 be taken. That doesn't mean there wasn't an adjacent forage
18 right because that would have made no sense. Why would there
19 only be a forage right inside ditch rights --

20 THE COURT: What's the limit of the forage
21 right, first around the source? Let's say we're only talking
22 about a source and not a ditch.

23 MR. POLLOT: Yes, your Honor.

24 THE COURT: Let's say the water seeps back down
25 into the ground. What is the finding of the Court relative to

1 a foraging right just around a water source?

2 MR. POLLOT: It didn't find one, your Honor, and
3 that's where I agree that, in fact, a trial would be needed as
4 to that issue, what is the extent of it, because that's going
5 to include things like --

6 THE COURT: Do you claim there's any foraging
7 right -- let's say, it's a mile away, the water source, from
8 my property line over government land.

9 MR. POLLOT: Yes, your Honor.

10 THE COURT: Do you claim any foraging right
11 between my fence and the water source?

12 MR. POLLOT: I do, your Honor, and the reason
13 that I do, and this is why I agreed that a trial would be
14 necessary, because a lot of that depends on the normal
15 behavior of cattle which Congress had to have -- presumed to
16 have within its contemplation when it did what it did in the
17 Act of 1866.

18 So evidence would need to be put on showing that,
19 you know, this is how cows behave, this is how likely they are
20 to wander away from a watering source. How feasible is --

21 THE COURT: So don't we need to get on with
22 that? Shouldn't I set the trial?

23 MR. POLLOT: Well, the problem, your Honor,
24 there is a potential, and we think it's small, that the Court
25 of Appeals might overturn the claims court decision which

1 would open up an entire panoply of stuff.

2 I suppose we could go ahead with the trial, then
3 reopen it, hold an additional trial if the Court gets
4 overturned, but I'm not sure that that would be a good use of
5 the parties' resources or the Court's resources.

6 But, you know, we're certainly willing to do that
7 because we think we can establish those facts.

8 The point I really wish to make here, your Honor, is
9 that if we make these determinations, it's not just with
10 respect to the water in the ditches.

11 I think the Court said, okay, these are the waters
12 that are going to be taken, and therefore I will define --

13 THE COURT: By the way, is this a jury trial?
14 Their assertion of trespass damages and/or any claim of offset
15 or otherwise, is that a jury trial issue?

16 MR. POLLOT: Well, your Honor --

17 THE COURT: Both sides have asked for the trial
18 to occur in Elko or in Reno?

19 MR. POLLOT: Reno, your Honor. I think,
20 frankly, since we are dealing with --

21 THE COURT: Is it a jury question, and can we
22 draw the jury panel from all of northern Nevada, or do we have
23 to limit it to Elko?

24 MR. POLLOT: No, I don't think we would have to
25 limit it to Reno or Elko, your Honor.

1 I do believe that there are obviously questions of
2 fact, except we believe that those questions of fact as to the
3 nature, scope and extent of the rights-of-way are subject to
4 collateral estoppel, there's no need to relitigate those.

5 So, in fact, if that's how the Court decides, I
6 think other than factual --

7 THE COURT: How about the question of a foraging
8 right, either attendant to a source or a ditch, is that a
9 factual question as well as a legal question?

10 MR. POLLOT: Your Honor, I'm going to answer off
11 the top of my head, which is perhaps a dangerous thing to do,
12 and I would like to ask the Court's indulgence if, upon
13 reflection, we be allowed to brief that.

14 THE COURT: That's fine. I can probably answer
15 it myself. It's a combination, in other words, there's law on
16 the subject, there's old Nevada cases as well as adjacent land
17 cases, but there's also some factual issues, that is, what was
18 the custom and usage.

19 MR. POLLOT: That's correct, your Honor, and
20 that was going to be my answer.

21 My impulse is to say this is a mixed question of
22 fact and law, and the facts should be submitted to a jury.

23 But having addressed the issue, unless the Court has
24 some questions about the -- our view that all of the waters
25 are subject to an adjacent -- because it makes no since

1 otherwise, it's not logical.

2 THE COURT: Let's get on with it. Let's order
3 the trial. You tell me when you can do it.

4 Let's hold the trial -- we'll hold it up north, and
5 you can raise those initial questions, and the government can
6 put on their questions of fact regarding whether or not your
7 trespasses were beyond those foraging rights or water rights
8 in outlying areas, or whether, in fact, it was within the
9 order of the property right areas.

10 MR. POLLOT: Well, since, your Honor, I think
11 that would -- unless the Court of Appeals, the fed circuit
12 finds that there is no adjacent grazing right, and I have more
13 to say on that issue in a moment, it would certainly not be a
14 waste of the Court's time.

15 THE COURT: The Court of Appeals may, of course,
16 reverse the Court of Claims in your favor.

17 MR. POLLOT: That's true.

18 THE COURT: It may say there are grazing rights,
19 I understand that, but the Court of Claims is not going to say
20 in one way or the other in any binding fashion that there is
21 or is not an attendant foraging right because the lower court
22 denied compensation separately for the foraging.

23 MR. POLLOT: Inside the ditches, that's correct,
24 and those are the only waters they found to have been taken,
25 and I submit that the taking of those forage rights and the

1 water rights was a temporary taking.

2 THE COURT: So that's dicta, I need to decide
3 it.

4 MR. POLLOT: I guess my point is, your Honor, we
5 go ahead with the trial, we're not wasting any resources
6 because even if the federal court -- fed circuit goes ahead
7 and reverses on that ruling, you know, it's still relevant to
8 the case.

9 THE COURT: Okay.

10 MR. POLLOT: So having said that, unless you
11 have any further questions, I just wanted to respond to some
12 of the things that the federal government has said in its
13 argument.

14 And the first one, to preface this, I have to say
15 that I really strongly believe that if the situation were
16 reversed, if the claims court had found no adjacent -- right
17 to forage adjacent to water rights, if that they had not found
18 the water rights, if the Court of Claims had not found that
19 the Hages had the right to go on and access and use these
20 rights --

21 THE COURT: They would be asking for
22 collaterals?

23 MR. POLLOT: That's exactly right, your Honor.

24 So having said that, first thing I want to address
25 is the claim that the United States has made that court after

1 out there and do whatever -- despite what the government --

2 THE COURT: For example, we all know that all of
3 the deeds we get these days have a reservation dating back to
4 the original patent for the gold or the oil that exists
5 underneath it, but we have a patent to the surface, and if the
6 government wishes, in a reasonable fashion, to extract the
7 minerals underneath the land, the house that I own, they have
8 the right to do that.

9 MR. POLLOT: Your Honor, I don't think we can
10 contest it's a general right. We're simply saying that when
11 the United States says that this particular chunk of land --

12 THE COURT: What in this lawsuit are you
13 claiming other than the title that you have? I understand the
14 water right, I understand the foraging right, both the source
15 and the ditch. Are you claiming anything else?

16 MR. POLLOT: At this point, your Honor, no,
17 because there's no need to claim --

18 THE COURT: You're not claiming any easement, a
19 right of passage?

20 MR. POLLOT: Well, we are claiming an easement,
21 we are claiming a right-of-way to get cattle to and from the
22 water that --

23 THE COURT: Is that in the pleadings?

24 MR. POLLOT: Yes, your Honor, it is.

25 THE COURT: As a defense.

1 MR. POLLOT: Yes, it is, your Honor.

2 But, I mean, basically, yes, we use the term
3 right-of-way, and we talk about the right-of-way to go across
4 federal land to access --

5 THE COURT: All right. I've got it.

6 MR. POLLOT: Okay.

7 THE COURT: I'm going to deny the motion for
8 summary judgment, and I'm going to set this down for trial.

9 You tell me how much -- has discovery been
10 concluded? Have we already expired on the discovery periods?

11 MR. BARTELL: Your Honor, discovery has
12 concluded many months ago.

13 THE COURT: Okay.

14 MR. BARTELL: And trial has already been set in
15 this matter to start on June 14th in Reno.

16 THE COURT: Okay, good. So I thought we had a
17 request to transfer the case to --

18 MR. POLLOT: We did, your Honor, and it's
19 already been granted.

20 THE COURT: We did that. All right.

21 MR. POLLOT: All right. Unless there are some
22 other questions, all we want to wrap up with is that many of
23 these points, that the government owns, that there's been
24 precise determinations by the courts, none of those questions
25 that have been presented to a court before were tied to a

1 specific situation, specific water rights, and with a plethora
2 of evidence that has not been admitted.

3 And we -- you know, it's my personal belief in the
4 end there is no such thing as Black Letter Law because courts
5 only answer the questions that are in front of them.

6 When new questions come up, when issues are looked
7 at in future, as Judge Smith said in one of his opinions, we
8 now understand property rights law better than we did --

9 THE COURT: And you understand the Court's
10 regular rule with regard to submitting voir dire and proposed
11 jury instructions.

12 MR. POLLOT: Yes, your Honor.

13 THE COURT: And pretrial statements so we have a
14 clear statement from each side.

15 You're supposed to work together to see if you can
16 agree, and if you can't agree, then submit one proposed order
17 but each with your separate statement of issues, and we'll
18 have both my decision here, written decision here, as well as
19 the pretrial order which will govern the extent of the issues
20 to be presented to --

21 MR. POLLOT: Yes, your Honor.

22 I just would raise one other point because I think
23 it begs an answer.

24 You know, in light of your comments earlier, we do
25 believe that raising a *Bivens* claim, at least for an

1 injunction in this Court, whether -- if it would be as to the
2 individuals, that would be a different -- different case, and
3 we would ask permission to file a *Bivens* claim.

4 THE COURT: In this case?

5 MR. POLLOT: As far as an injunction is
6 concerned, your Honor, not as to the individuals.

7 THE COURT: If you want to, you've got to do it
8 in writing.

9 MR. POLLOT: Yes, your Honor. I just wanted to
10 let you know that we intended to submit that in writing and
11 that request so you're aware.

12 THE COURT: Thank you.

13 MR. BARTELL: Your Honor, for clarification,
14 this case -- the trial has not been set for a jury trial but a
15 bench trial.

16 THE COURT: That's what I'm asking for. Did
17 either side ask for jury?

18 MR. BARTELL: No, your Honor.

19 MR. HAGE: No, your Honor.

20 MR. POLLOT: No.

21 THE COURT: All right. So it's a bench trial.

22 MR. POLLOT: We're content with that, your
23 Honor.

24 THE COURT: Thank you so much.

25 MR. POLLOT: Thank you, your Honor.

1 MR. BARTELL: Your Honor, I was going to reply
2 to Mr. Pollot's comments, if I may.

3 THE COURT: You can, for the record.

4 MR. BARTELL: And I'll be very brief.

5 Your Honor, I just want to -- we've said this in the
6 brief, we're trying to clarify this for the Court.

7 Mr. Pollot continues to do the same thing before
8 this Court as he does in his briefs. He brings the Court's
9 attention to language in Hage 3. He ignores the superseding
10 language in Hage 4.

11 When Mr. Hage filed all of the claims court
12 decisions as this Court asked him to do, he filed all of the
13 claims court decisions except one, the one that was not in
14 their favor.

15 And I bring this to this Court's attention because
16 Mr. Pollot stands before this Court and he says Hage 3 found a
17 forage right around water sources, all water sources.

18 THE COURT: I think I can figure out which
19 elements are entitled to the issue preclusion in effect and
20 which aren't.

21 MR. BARTELL: Okay. Thank you, your Honor.

22 THE COURT: Thank you. I'll issue a written
23 decision, and, of course, the matter is scheduled for trial.

24 Thank you so much. Thank you for the presentation.

25 MR. POLLOT: Thank you, your Honor.

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MR. HAGE: Thank you.

(Discussion held off the record.)

THE COURT: Thank you, counsel, for the presentation. I appreciate it. It was very helpful.

-o0o-

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Margaret E. Griener 03/23/2011
Margaret E. Griener, CCR #3, RDR
Official Reporter

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