IN THE MATTER OF APPLICATION NUMBER 81329

FILED BY Gary Snow Livestock and Grain

ON 16th day of November, 20 11

PROTEST

FILED
DEC 16 2011
STATE ENGINEER'S OFFICE

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 81329, filed on 16th day of November, 20 11

by Gary Snow Livestock and Grain for the

waters of Henerys Well situated in SE1/4 NW1/4 Sec7, T5N, R44E, 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 March11, 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

775 482-4187
Phone Number

almaty21@hotmail.com
E-mail

Subscribed and sworn to before me this 14 day of December, 20 11

GLORIA K. LASH
NOTARY PUBLIC
STATE OF NEVADA
No 93-0298-5 My Appt. Exp. Dec. 15, 2014

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 located within the area covered by vested water rights 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 in the area 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 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, surrounding 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-RCJ-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 Bevins 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-RCJ-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