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

IN THE MATTER OF APPLICATION NUMBER 81976
FILED BY Rand Properties, LLC
ON June 20, 20 12

PROTEST

FILED
AUG 14 2012
STATE ENGINEER'S OFFICE

Comes now Daniel and Eddyann Filippini (hereinafter referred to as Filippini)
Printed or typed name of protestant

whose post office address is HC-61, Box 65, Battle Mountain, NV 89820
Street No. or PO Box, City, State and ZIP Code

whose occupation is rancher and protests the granting

of Application Number 81976, filed on June 20, 20 12

by Rand Properties, LLC for the

waters of Trout Creek situated in Lander
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 Protest Grounds

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
Agent or protestant

Therese A. Ure, Schroeder Law Offices, P.C.
Printed or typed name, if agent

Address 440 Marsh Ave.
Street No. or PO Box

Nevada, OR 89509
City, State and ZIP Code

775-786-8800
Phone Number

counsel@water-law.com
E-mail

RECEIVED
2012 AUG 14 AM 10: 16
STATE ENGINEERS OFFICE

Subscribed and sworn to before me this 13th day of August, 20 12

ASHLEY ROBBINS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-12-16
Certificate No: 12-6803-2

Notary Public

State of Nevada
County of Washoe

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

Filippini's Protest to Change Application 81976
In the name of Rand Properties, LLC

Attachment 1

(1) Filippini protests the requested change to the extent it may cause injury to Filippini's vested claims and water rights for surface waters of Trout Creek. Filippini asserts its vested claim to the surface waters of Trout Creek, V01563, is senior to claim V02678[1]. Claim V01563 and Certificate 901, held by Filippini, are diverted downstream from the proposed change in place of use as requested in Application 81976.

(2) Filippini protests the change to the extent the applicant has no legal right to access, to control or to use the pipeline proposed for use in Application 81976. The United States of America, Department of the Interior, Bureau of Land Management ("BLM") assigned the use, management benefit and maintenance responsibility of the pipeline to Julian Tomera Ranches in 1989. *See Attachments 2 and 3.*

(3) Filippini protests the change to the extent it is premature and not ready for determination by the State Engineer. Filippini filed a Complaint in The Sixth Judicial District Court for Lander County seeking the adjudication of the vested claims on Trout Creek.

The Complaint was filed on June 7, 2011[2]. The Sixth Judicial District Court for Lander County confirmed jurisdiction of the adjudication proceeding and those issues are being prepared for determination in that forum. The Third Amended Complaint is incorporated by this reference. Any "change" to the vested claims will be adjudicated in that pending action.

The right to use, and the interference with the use of the pipeline, is also an issue for determination in the action in Lander County.

Filippini files this protest to ensure that its right and claims are protected. Filippini specifically reserves the right to assert and establish these and other protest grounds as part of the adjudication proceeding before the Sixth Judicial District Court for Lander County or any other forum.

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[1] Rand filed a First Amended Claim V02678 on January 11, 2011, and a Second Amended Claim V02678 on March 20, 2012. In each amendment, Rand asserted an earlier priority date for V02678 to 1869. Filippini has protested both amendments in Case CV-10122, Department No. 2, *Filippini v. Tomera v. Rand.*

[2] The Complaint has since been amended two times.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Battle Mountain District Office
50 Bastian Road
Battle Mountain, NV 89820
http://www.blm.gov/nv/st/en.html

TAKE PRIDE IN AMERICA

JAN 13 2011

RECEIVED
JAN 13 2011

In Reply Refer To:
4120 (NVB0100)

Rand Properties, LLC
C/O Martha Rand
P.O. Box 2703
Elko, NV 89803-2703

RECEIVED
JAN 14 2011

Dear Mrs. Rand

As you are aware, when Rand Properties, LLC acquired the livestock grazing permit for the Argenta Allotment in 2009, you were also assigned maintenance responsibilities for the Trout Creek Pipeline/Troughs and the Harry Canyon Division Fence. The maintenance responsibilities were assigned under the "Assignment of Range Improvements", Form 4120.8 on September 24, 2009. With further review of the BLM records, I find that these responsibilities were assigned to you in error.

First and foremost, the Trout Creek Pipeline/Troughs and Harry Canyon Division Fence were assigned to Mr. LeRoy Horn in 1979 and 1976 respectively. Mr. Horn then transferred the maintenance responsibility of these projects to Julian Tomera Ranches, Inc in 1989. Therefore, these range improvements should not have been assigned to Rand Properties, LLC unless an updated cooperative agreement between both you and Julian Tomera Ranches, Inc was established and approved by the authorized officer. To date, no such agreement has been brought forward to this office.

It is the policy of the BLM to assign maintenance responsibility, to the extent possible, to the primary beneficiaries of improvement projects. According to BLM Handbook H-1740-1-Renewable Resource Improvement and Treatment Guidelines and Procedures, "parties deriving the primary benefit(s) from a structural improvement shall be responsible for maintaining that improvement. Primary benefits constitute more than 50% of the benefits realized." At this point in time, Julian Tomera Ranches, Inc. realizes the primary benefit for both of these projects (Tomera's 3629 AUM grazing permit acquired from LeRoy Horn vs. Rand's 301 AUM 10-month grazing permit). Furthermore, the Tomera's have placed a substantial amount of resources into maintaining this project since acquiring it in 1989. Therefore, your "Assignment of Range Improvements" dated September 24, 2009 is cancelled. Please keep in mind that the assignment of a range improvement under a Cooperative Agreement does not instill an individual right or title to a project. Right and title of this project is retained by the Federal Government.

If you have any questions, comments, or concerns, please contact Michele McDaniel, Supervisory Rangeland Management Specialist for the Mount Lewis Field Office at (775) 635-4083.

Sincerely

Doug Furtado,
District Manager
Battle Mountain District

cc:
Marvel & Kump Ltd
Julian Tomera Ranches, Inc. c/o Pete Tomera
Josh Smith

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Battle Mountain District Office
50 Bastian Road
Battle Mountain, Nevada 89820
Phone: 775-635-4000 Fax: 775-635-4034
http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html

TAKE PRIDE IN AMERICA

In Reply Refer To:
4120 (NVB0100)

MAR 29 2011

Rand Properties, LLC
C/O Martha Rand
P.O. Box 2703
Elko, NV 89803-2703

Dear Mrs. Rand

I am writing in regards to the current conditions of the range improvements within your permitted area of use in the Argenta allotment. As you were made aware in a letter issued to you on January 13, 2011, the maintenance responsibility of the Trout Creek pipeline and Harry Canyon drift fence are assigned to Julian Tomera Ranches, Inc. We are aware that providing water in this pipeline remains a point of contention between you, Julian Tomera Ranches, Inc, and Chiara Ranch. As a result of water not being provided in the pipeline, proper management of this portion of the allotment is also being jeopardized.

The terms and conditions of your grazing permit state that, "All horse use will be made on the flat of the Reese River Valley and to the west of old highway 8A". This is a term and condition that was implemented in 1994 when LeRoy Horn held the permit. Mr. Horn was also the individual who constructed the Trout Creek pipeline with authorization by the Bureau of Land Management to properly distribute livestock within this portion of the allotment. As a result, the Trout Creek pipeline is the only water development that provides a consistent source of water for your permitted area of use. Its condition and functionality directly affect the potential for proper management and aid in the attainment of the standards and guidelines for grazing administration as stated in 43 CFR §4180.2.

If found that water is not being adequately provided for proper grazing management and standards are not being met within your permitted area of use, action may be taken on your permitted AUMs for the Argenta Allotment. 43 CFR §4180.2 (c) states that, "The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section".

Monitoring will take place to determine the condition and functionality of the Trout Creek Pipeline. If you would like to take part in the monitoring process, please contact Casey Johnson, the assigned Rangeland Management Specialist at (775) 635-4059. If you have any questions, comments, or concerns in regards to matters associated with the Trout Creek pipeline or other livestock permitting issues, please contact Michele McDaniel, Supervisory Rangeland Management Specialist for the Mount Lewis Field Office at (775) 635-4083.

Sincerely,

Douglas W. Furtado
District Manager
Battle Mountain District Office

cc:
Chiara Ranch c/o Dan Filippini
Julian Tomera Ranches, Inc. c/o Pete Tomera
Josh Smith