

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

IN THE MATTER OF APPLICATION NUMBER 82955-T
FILED BY Joe Saval Company, LLC
ON July 8, 2013

FILED
JUN 18 2013
PROTEST
STATE ENGINEER'S OFFICE

Comes now Sam E. Monteleone, as agent for Mike and Barbara Stremler

Printed or typed name of protestant

whose post office address is 2426 Haida Court, Reno, Nevada 89506-9118

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

whose occupation is Water Rights Consultant

and protests the granting

of Application Number 82955-T

, filed on July 8,

2013

by Joe Saval Company, LLC

for the

waters of Jersey Hot Spring (Spring "F")

situated in

Pershing

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:

Please see Attachment.

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

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

Signed

Sam E. Monteleone

Agent or protestant

Sam E. Monteleone

Printed or typed name, if agent

Address

2426 Haida Court

State of Nevada

Street No. or PO Box

County of Carson City

Reno, Nevada 89506-9118

City, State and ZIP Code

Subscribed and sworn to before me on

7-18-13

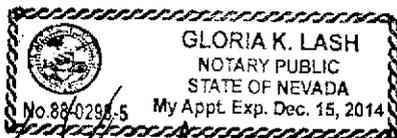
775-843-4419

Phone Number

by Sam E. Monteleone

oldnevadanwater@gmail.com

E-mail



Gloria K. Lash

Signature of Notary Public Required

Notary Stamp or Seal Required

RECEIVED
2013 JUL 18 AM 8:33
STATE ENGINEERS OFFICE

+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment to PROTEST OF 82955T

Mike and Barbara Stremler are in protest of application 82955T on the following grounds.

1. Our vested water rights to Jersey Hot Springs will be impaired violating NRS 533.085.
2. The Joe Saval Company has no title to the waters of Jersey Hot Springs. Stremlers do have a complete chain of title filed with the State Engineer's office.
3. Joe Saval Company, LLC owns no cattle. The full title to the cattle is listed in the Nevada brand book under Jay and Georgia Black and Shawn and Mindy Goemmer.
4. Joe Saval Company, LLC does not have a grazing permit. They are only interested public according to BLM.
5. 1147 head of cattle will not be grazing in Jersey Valley. The BLM grazing plan will not allow that.
6. 100% of the water is used by Mike & Barbara Stremler to irrigate and water livestock. There is NO unappropriated water available.
7. The map of Nevada State in your office shows the traditional use of the range and WT Jenkins Company used all of the country in Jersey Valley. The Savals used none!
The book, Humboldt County 1905, page 9 and 10 under Mrs. WT Jenkins, states that Mrs. Jenkins was running 150,000 sheep and a good bunch of cattle as well as making 250 ton of hay.

1. Our vested rights to Jersey Hot Springs will be impaired and will contravene the statute 533.085 as well as 533.345 2(c).

NRS 533.085 1. Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.

Our predecessor in interest put the waters of Jersey Hot Springs to beneficial use in the 1870's (please see our chain of title). Mr. Abel used these water to grow crops as we still do. Any diversion of our water will impair our rights. We can do a change of use because we own 100% of the water and therefore do not impair others' vested rights. Our title is clear and not clouded. The State Engineer's office has already investigated our chain of title and it is clear that the Stremlers own the water rights to Jersey Hot Springs. Nevada is a prior appropriation state, not a riparian doctrine state.

NRS 533.345 Application for permit to change place of diversion, manner of use, or place of use: 2. If an applicant is seeking a temporary change

of place of diversion, manner of use, or place of use of water already appropriated, the State Engineer shall approve the application if: (c) The temporary change does not impair the water rights held by other persons.

This change of place of use and point of diversion will no doubt impair the Stremlers vested rights, as well as drying up four acres of alfalfa.

At the very least, the State Engineer needs to comply with NRS 533.345 part 3. If the State Engineer determines that the temporary change may not be in the public's best interest, or may impair the water rights held by other persons, the State Engineer shall give notice of the application as provided in 533.360 and hold a hearing and render a decision as provided in this chapter.

2. The Joe Saval Company, LLC has no complete chain of title to any of the waters of Jersey Hot Springs.

The Stremlers do have a complete chain of title filed with the State Engineer's office.

The Joe Saval Company, LLC has presented a chain of title which uses rangeline agreements as part of their chain of title. A rangeline agreement does not transfer title of real property which includes water. A rangeline agreement is only enforceable under title 43 of the Code of Federal Regulations. A grazing permit is not a recognized property right and therefore cannot transfer real property. (see US v. Colvin).

Water is appropriated under state law not federal law. The controlling case law in this case is US v. New Mexico 1978. Water is real property and can only be lost by voluntary abandonment (re: Waters of Manse Springs 1916) water is only transferred by deed, not by a rangeline agreement. Federal regulations on grazing do not diminish or trump state law especially when water rights are concerned. (Hage v. US)

3. Joe Saval Company, LLC owns no cattle.

The title to the cattle is listed in the Nevada State brand book and the owners of the cattle in Jersey Valley are Jay and Georgia Black, or Shawn and Mindy Goemmer. The Joe Saval Company, LLC has no cattle grazing in Jersey Valley whatsoever, nor have they for many years.

The Stremlers realize that the Joe Saval Company, LLC have signed an agreement/affidavit claiming they have some limited control of the cattle, but this falls short under legal scrutiny and will be tested at any hearings. If the Joe Saval Company, LLC claims any rights to the cattle grazing the Jersey Valley area then surely the Joe Saval Co. name would be present on the brands which shows the title of the cattle on open range in Nevada.

4. Joe Saval Company, LLC only owns deeded lands in Jersey Valley, not a grazing permit. The grazing permit is not in the Joe Saval Company, LLC name and therefore they have no right to place cattle on BLM lands. Therefore, the Joe Saval Company, LLC can only place cattle on deeded