

IN THE MATTER OF APPLICATIONS NOS. 12106,)
 12107, 12108, 12119, and 12120 IN NAME OF)
 GABBS VALLEY CATTLE COMPANY TO APPROPRIATE :
 THE WATERS OF UNDERGROUND SOURCE, PARADISE : RULING
 SPRINGS, WILLOW SPRINGS, OBRIEN SPRING AND :
 FACTOLA SPRINGS, RESPECTIVELY, FOR STOCK-)
 WATERING PURPOSES, NYE COUNTY, NEVADA.)

Application No. 12106 was filed November 20, 1947 by Gabbs Valley Cattle Company to appropriate underground waters at a point within the NW NE Section 6, T. 10 N., R. 37 E. for stockwatering and domestic purposes. Said application was protested March 19, 1948 by Ralph M. Gelvin on behalf of the Yomba Tribe of Indians.

Application No. 12107 was filed November 20, 1947 by Gabbs Valley Cattle Company to appropriate the waters of Paradise Springs at a point within the NW SE Section 32, T. 11 N., R. 37 E. for stockwatering and domestic purposes. This application was protested March 30, 1948 by the Forest Supervisor of the Toiyabe National Forest.

Application No. 12108 was filed November 20, 1947 by Gabbs Valley Cattle Company to appropriate the waters of Willow Springs at a point within the SW NE Section 1, T. 10 N., R. 36 E. for stockwatering and domestic purposes. A protest was filed March 19, 1948 by Ralph M. Gelvin in behalf of the Yomba Tribe of Indians.

Application No. 12119 was filed December 2, 1947 by Gabbs Valley Cattle Company to appropriate the waters of O'Brien Spring at a point within the SE NE Section 34, T. 11 N., R. 37 E. for stockwatering and domestic purposes. Said application was protested March 30, 1948 by the Forest Supervisor of the Toiyabe National Forest.

Application No. 12120 was filed December 2, 1947 by Gabbs Valley Cattle Company to appropriate the waters of Pactola Springs at a point within the NW SE Section 3, T. 9 N., R. 37 E. for stockwatering and domestic purposes. On March 19, 1948 a protest was filed against this application by Ralph M. Gelvin on behalf of the Yomba Tribe of Indians.

On October 1, 1948 a field investigation was made on these applications by Hugh A. Shamberger, Assistant State Engineer. Others present were as follows: Gordon Smith and Ed Smith representing applicant Gabbs Valley Cattle Co.; A. L. Rohwer, Range Manager,

Bureau of Land Management; C. Priest of the Carson Indian Agency and Henick Smith, Willie Hobb, Jim Hobb and Dan Brady of the Yomba Tribe of Indians and Basil Crane representing the Forest Supervisor of the Toiyabe National Forest.

The protests of the Yomba Tribe of Indians against the granting of permits under applications Nos. 12106, 12108 and 12120 were based on the grounds that they have made continuous use of the area surrounding the sources of water applied for; that they purchased the water and range rights of Frank Bell; that they have exclusive grazing privileges on the adjoining forest Reserve and that the range is used to capacity.

The protests of the Forest Service against the granting of permits under applications Nos. 12107 and 12119 were based on the grounds that the sources applied for are located on National Forest land and that the surrounding range is already allotted and used by other persons.

In the consideration of applications Nos. 12107 and 12119 to appropriate the waters of Paradise Springs and Obrien Springs, and which are located within the National Forest, Mr. Basil Crane of the Forest Service advised that the Yomba Tribe of Indians have the full grazing rights within the Paradise Range of the Toiyabe National Forest. This particular portion of the Toiyabe National Forest is isolated from other areas within the National Forest and extends northward three townships from the 2nd Standard Parallel North and varies from a township and a half to less than a township in width. The southerly boundary is the northerly boundary of township 10 north. This whole area is known as the Paradise Range. The Yomba Tribe have a forest permit for 1801 cattle from May 1 to June 1st on the Forest. The Yomba Tribe have water rights as evidenced by Proof of Appropriation No. 01355 on Coyote Spring located less than 1½ miles southwesterly from Paradise Springs under application No. 12107 and on Goldyke Well, as evidenced by Permit No. 5749 which is the subject of Certificate No. 937.

It is evident that the granting of permits under applications Nos. 12107 and 12119 would be detrimental to public welfare and would contravene section 2 of the 1925 Stockwatering Act. Therefore, said applications will have to be denied.

The point of diversion under application No. 12106 to appropriate the waters of an underground source lies less than a mile northerly from Coyote Spring on which the Yomba Tribe of Indians

claim a vested right as evidenced by Proof of Appropriation No. 01355 and less than two miles northeasterly from Dieringer Spring on which the Indians have a water right as evidenced by Certificate No. 931 issued under Permit No. 5637. Also, the Indians have a water right from Goldyke Well located about two miles southerly from the proposed point of diversion under application No. 12106 which is evidenced by Certificate No. 937 issued under Permit No. 5749. The three water rights of the Yomba Tribe mentioned above all lie within two miles of the proposed point of diversion under application No. 12108.

In addition, the Yomba Tribe have existing water rights to the east, northeasterly and northwesterly direction from the sources applied for under applications Nos. 12106 and 12108.

It is our understanding that the Yomba Tribe bring several head of cattle into the area during September and winter range them in the area to the east of the Paradise Range and adjacent to this range on the south. Some of the cattle drift back towards Ione Valley towards spring. On May 1st they are put on the forest and stay there until the latter part of June following which they range elsewhere.

It appears to the State Engineer that the granting of permits under applications Nos. 12106 and 12108 would contravene the policy of Section 2 of the 1925 Stockwatering Act and therefore said applications will be denied.

In considering application No. 12120 to appropriate the waters of Pactola Spring, we find that there are no existing water rights within about 5½ miles. The nearest water right and which is in the name of the Yomba Tribe and known as Goldyke well, is evidenced by Certificate No. 937 issued under Permit No. 5749. Pactola Springs lies about 5½ miles in a southeasterly direction and is situated in a range of hills which partially surrounds the area lying south of the Paradise Range. From information furnished by Ed. Smith, a partner of the Gabbs Valley Cattle Company, the water at this source will have to be developed.

It was stated by Basil Crane of the Forest Service and A. L. Rohwer of the Bureau of Land Management that when snow conditions exist, which is not every year, that John LaBorde and Pete Elia trail sheep down Ione Valley to Goldyke. It is quite possible that these sheepmen have certain range rights in the area, and if so, are not to be effected by the granting of a permit under application No. 12120. Also, when such snow conditions exist no doubt the cattle

of the Yomba Tribe range in the vicinity of Pactola Spring. The customary use of the range by protestant is not to be affected by the action taken by the State Engineer on this application.

Under application No. 12120 applicant makes application for sufficient water to water 400 head of cattle the year round. The range in this area is a fall and winter range and furthermore the State Engineer feels that the range use around Pactola Spring would not support more than 100 head of cattle. To allow more than this number to water here would no doubt result in over grazing which would cause the cattle to drift northward to the range used by the Indians. The State Engineer feels that application No. 12120 can be approved in an amount sufficient to water 100 head of cattle between October 1st and March 1st of the following year without being detrimental to existing range rights.

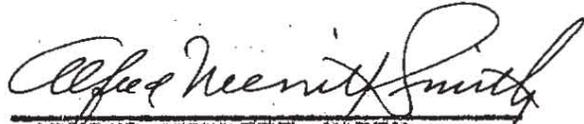
It might be well to point out that all range lying on public domain outside of now existing grazing districts will come under the jurisdiction of the Bureau of Land Management in 1949. The Bureau of Land Management in allowing grazing permits will consider prior usage and commensurable property which will include water rights. Any grazing permit issued to the Gabbs Valley Cattle Company will therefore depend upon the availability of range after existing rights have been fulfilled.

It is therefore the Order of the State Engineer that: application Nos. 12107 and 12119, protested by the Forest Service be denied on the grounds that the granting of permits thereunder will be detrimental to public welfare and would contravene Section 2 of the 1925 Stockwatering Act.

Applications Nos. 12106 and 12108, protested by the Yomba Tribe of Indians, be denied on the grounds that the granting of permits thereunder will be detrimental to public welfare and would contravene Section 2 of the 1925 Stockwatering Act.

That the protest against the granting of a permit under application No. 12120 be overruled and that a permit will be granted in sufficient amount for the watering of 100 head of cattle between October 1st and March 1st of the following year with the understanding that the granting of such permit is not to be construed as in anyway affecting the right of protestant or others in using the surrounding range as established by customary use.

Respectfully submitted,


ALFRED MERRITT SMITH
State Engineer

Dated October 19, 1948.