

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

IN THE MATTER OF APPLICATION 82078)
FILED TO CHANGE THE PUBLIC)
WATERS OF SEVEN DEVILS AKA (SOU))
HOT SPRINGS WITHIN THE DIXIE)
VALLEY HYDROGRAPHIC BASIN (128),)
PERSHING COUNTY, NEVADA.)

RULING
#6297

GENERAL

I.

Application 82078 was filed on August 21, 2012, by Mike and Barbara Stremler to change the point of diversion and place and manner of use of 0.09 cubic feet per second (cfs) of surface water from the Seven Devils aka (Sou) Hot Springs, a portion of Proof of Appropriation V-09887. The existing manner of use is for stockwater purposes and the proposed manner of use is for irrigation purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.26N., R.38E., M.D.B.&M. The proposed place of use is described as being 16.0 acres within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.26N., R.38E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.26N., R.38E., M.D.B.&M. The existing place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, T.26N., R.38E., M.D.B.&M.¹

II.

Application 82078 was timely protested by the Joe Saval Company, L.L.C., on the grounds that:¹

1. Proof of Appropriation V-10018, held by Robert and Sallie Lincoln, has the most senior right on the source and possibly accounts for the majority, if not all of the water available at the source.
2. The base right for Application 82078 is Proof of Appropriation V-09887, which is a stockwater right for 300 head of stock, equaling 6.79 acre-feet annually (afa). Application 82078 was filed for a diversion rate of 0.09 cfs (64 afa), which equates to the

¹ File No. 82078, official records in the Office of the State Engineer.

watering of 2,880 cattle or 14,400 sheep. It is highly questionable whether the Stremers can show they are a successor in interest to 2,880 cattle.

3. This water source has not been adjudicated by the Nevada State Engineer. The Stremmer proof lists a priority date junior to the Lincoln proof. At the current time, even with improvements to the source, there does not appear to be enough water to fulfill all of the competing rights. It would threaten to prove detrimental to the public interest to grant an application to change an unadjudicated proof that seeks to use more water than is claimed under the proof.

III.

Application 82078 was protested by Robert and Sallie Lincoln on the grounds that:¹

1. Lincolns' predecessors used the springs to water livestock since at least as early as 1882, as evidenced by Proof of Appropriation V-10018. The Stremers' Proof of Appropriation V-09887 states an 1890 priority date and is junior to Lincolns' Proof of Appropriation V-10018. Until the springs are adjudicated, Lincolns' vested claim has the earliest priority to the springs and Application 82078 should be denied as it conflicts with Lincolns' vested right.

2. Even if Proof of Appropriation V-09887 is adjudicated with an earlier priority date than Proof of Appropriation V-10018, Application 82078 conflicts with Lincolns' vested right because Application 82078 seeks to change more water than is supported by the Stremers' proof. Proof of Appropriation V-09887 claims a right to 300 cattle equaling 6.27 afa. Application 82078 seeks to divert 64 afa to irrigate 16 acres. This amount exceeds the amount claimed under proof V-09887 and the application should be denied as being detrimental to the public interest.

3. There are additional springs in the vicinity located on public and private lands where the Stremers' predecessors' livestock would have watered. It is likely the springs under the application were not the only source of water for livestock in the area, and therefore, is not reasonable to assume that the Stremers' or their predecessors' livestock used these springs year-round.

FINDINGS OF FACT

I.

To determine whether the State Engineer can grant Application 82078, the State Engineer will examine the validity of the base right under Proof of Appropriation V-09887 to determine the priority and quantity, if any, of the vested right proposed to be changed. On May 5, 2014, the State Engineer requested additional information from the Applicants pursuant to NRS § 533.375, to examine the validity of Proof of Appropriation V-09887. The Lincolns had already filed such information in support of Proof of Appropriation V-10018 on November 1, 2013. In addition to requesting information in support of Proof of Appropriation V-09887, all parties were provided an opportunity to respond to the evidence of the other. The Stremmlers filed the information requested by the State Engineer on August 11, 2014. As well, the Protestants filed responses to the Stremmlers' evidence in support of Proof of Appropriation V-09887,^{2,3}

II.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. After receiving information in support of Proofs of Appropriation V-09887 and V-10018, and the parties' responses thereto, the State Engineer finds that there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

III.

A. **Proof of Appropriation V-09887 (Stremmler)**

Proof of Appropriation V-09887 was filed on January 29, 2010, by Mike and Barbara Stremmler claiming a vested stockwater right to 0.10 cubic feet per second (cfs) of water from

² Multiple times the Lincolns refer to this proceeding as an adjudication of the vested claims. To be clear, although the Stremmlers have filed a Petition requesting an adjudication be initiated, this Ruling is not an adjudication of the vested rights discussed herein, but constitutes a preliminary examination of the evidence in support of the vested rights for purposes of acting upon the Application 82078, including resolution of the protests by the Lincolns and Joe Saval Co.

³ The Lincolns' Response filed September 11, 2014 is referred to as Lincolns' Response; the Response by Joe Saval Co., LLC filed on September 19, 2014 is referred to as the Saval Response. In addition, the statement by the Stremmlers dated August 9, 2014, which accompanied the exhibits, is referred to as the Stremmler Summary.

Seven Devils/Sou Hot Springs. Seven Devils Hot Springs⁴ is located on an 80 acre parcel within the S½ SE¼ of Section 29, T.26N., R.38E., M.D.B.&M (Seven Devils Parcel). The Proof of Appropriation asserted an 1890 priority date, claiming that 7,000 cattle and 33,000 sheep were watered the first year, and 300 cattle were watered in subsequent years.

The Stremlers' amended Proof of Appropriation V-09887 on September 4, 2013, to claim an 1872 priority date to the watering of 7,000 cattle and 133,000 sheep with no change to the claimed diversion rate of 0.10 cfs.

1. Priority date

A vested right to surface water may be shown by diversion and application to beneficial use prior to March 1, 1905. *See generally, In re Application of Fillipini*, 66 Nev. 17, 21, 202 P.2d 535, 537 (1949). In addition, Nevada Revised Statute (NRS) § 533.492(1)(b) also provides that a subsisting right to water livestock may be proven by an owner of livestock by one or more of the following items of evidence for the number of livestock and date of priority for a water right on privately owned land:

- (1) An affidavit concerning the number and kind of livestock by a person familiar with the use made of the lands;
- (2) A record of livestock assessed to the claimant of the right, or the claimant's predecessor, by a county assessor;
- (3) A count of livestock belonging to the claimant or the claimant's predecessor made by a lender; or
- (4) An affidavit of a disinterested person.

a) *The Kyles*

The Stremlers claim an 1872 priority dating back to brothers C.A. Kyle and C.T. Kyle who ran a stock operation of horses and cattle. The Stremlers rely on two classes of evidence they contend show chain of title back to the Kyles. First, the Stremlers include tax assessments paid by C.A. Kyle between 1872 and 1877 in Humboldt County. Generally, the description of the taxed property was described as: "Improvements in Unionville; improvements on a stock ranch situated 8 miles southwest of Clark and Minor's Ranch known as Smith place in Pleasant

⁴ The parties and/or documents alternately refer to the source as Seven Devils/Sou Hot Springs, Sou Hot Springs aka Seven Devils Hot Springs or Warm Springs. It will be referred to herein simply as Seven Devils Hot Springs or Seven Devils.

Valley; improvements at hot springs 12 miles east of Unionville; and improvements on a ranch 10 miles south of Jersey District.”⁵

The second piece of evidence is the transcript of the *Kyle v. Kyle* case, heard in the Fourth Judicial District Court of Nevada in 1881, which transcript gives the details of the dissolution of the stock operation and disagreement over debts owed by the respective brothers and how the stock and the ranch operations would be divided. In numerous places in the transcript, Plaintiff C.A. Kyle testified that in the division of the ranches, he was to take the upper ranch called Smith place, and Defendant C.T. Kyle agreed to take the lower ranch called Rice place.⁶

The Stremmlers assert that the upper ranch known as Smith Place, is now referred to as Pear Orchard on Dego Pass, owned by the Paris Ranch.⁷ The Stremmlers contend this must mean that Seven Devils Hot Springs is the lower ranch, or Rice Place.⁸ The Stremmlers’ assert it is their belief that Rice Place is the lower ranch because they are acquainted with the range and drew this conclusion after reading the court transcript numerous times; that on page 10 of Humboldt County 1905, Mr. Bragg describes a reference to the Humboldt Salt Marsh and other references are made to Salt Marsh Valley; and because that Fence Maker canyon is given as a reference point.⁹

The Lincolns respond that the Kyles never had any interest in the Seven Devil Parcel and were never in the chain of title. The Lincolns contend that the Kyle Horse Ranch is the lower ranch or Rice Place – not Seven Devils. The Lincolns point out the *Kyle v. Kyle* transcript describes Smith Place and Rice place as between 12 and 13 or 14 miles apart across a flat, also referred to as Salt Marsh Valley.¹⁰ If the upper ranch is at Pear Orchard and the lower ranch is Seven Devils, the Lincolns argue the distance between the two ranches is not correct and there is no salt flat between the two places. Also, if the upper ranch is located at Pear Orchard, then the descriptions in the transcript where stock ranged does match with what is described in the transcript.

⁵ Stremler Ex. 1A at pp. 000050; 000101-000103.

⁶ See Stremler Ex. 2 at pp. 8, 10, 11, 12, 13, 20

⁷ The Paris Ranch is identified on Exhibit 5 of the Lincoln Response within T.27N., R.38E., M.D.B.&M.

⁸ Stremler Summary p. 19.

⁹ Stremler Summary p. 19.

¹⁰ Lincoln Response, citing *Kyle v. Kyle* transcript at pp. 3, 10.

Instead, the Lincolns assert that lower ranch or Rice Place is Kyle's Horse Ranch shown on the 1883 General Land Office (GLO) plat in Section 16, T.25N., R.39E., M.D.B.&M.¹¹ They point out that on a current General Highway Map Quadrangle 4-8,¹² there is a ranch identified as "lower ranch" in the same location of Kyle's Horse Ranch shown on the 1883 GLO plat.¹³

Given the lengthy discussion of the Smith Place and Rice Place in the *Kyle v. Kyle* transcript, the State Engineer finds that an accurate determination of the location of the Kyle ranches is helpful in determining chain of title to any vested rights. First, in the description of assessed property, C.A. Kyle paid taxes on improvements on hot springs located 12 miles east of Unionville. Unionville is located approximately 50 miles northwest of Seven Devils; therefore, the State Engineer finds that the reference to hot springs 12 miles east of Unionville is more likely referring to Kyle Hot Springs, located in T.29N., R.36E., M.D.B.&M., rather than to Seven Devils.

Next, C.A. Kyle paid taxes on a stock ranch located 10 miles south of Jersey City/Jersey District. In the ongoing adjudication by the State Engineer of Jersey Valley, the State Engineer found that the stock ranch described as being 10 miles south of Jersey District was Kyles' Horse Ranch.¹⁴ C.T. Kyle agreed to take the lower ranch, or Kyles' Horse Ranch, which he later sold to Frank Martin. If Stremblers' argument is accepted, the Kyles would effectively have three ranches: Smith Place, Rice Place and Kyles' Horse Ranch. The Stremblers do not address Kyles' Horse Ranch at all, and given the lengthy discussion of there being only two ranches in the *Kyle v. Kyle* transcript, the State Engineer finds that Kyles' Horse Ranch must be either Smith Place or Rice Place. Based upon the findings concerning Kyles' Horse Ranch in the Jersey Valley Adjudication, and the arguments of the Lincolns, the State Engineer finds the evidence persuasive that Rice Place, or the lower ranch, is Kyles' Horse Ranch and not Seven Devils Hot Springs.

¹¹ Stremler Ex. 1B at p. 000006.

¹² Stremler Ex. 1B at p. 000001; Lincoln Response Ex. 5.

¹³ *Cf.*, Stremler Ex. 1B at p. 000001 and Stremler Ex. 1B at p. 000006; *and see also*, Stremler identification of Kyle's Horse Ranch on Stremler Ex. 1B at p. 000005.

¹⁴ *See* Preliminary Order of Determination, at p. 6, *In The Matter Of The Determination Of The Relative Rights In And To The Waters Of Jersey Hot Springs, Butcher Canyon, Jersey Canyon (AKA Old Town Canyon), Cedar Canyon And Home Station Wash And Their Tributaries, And Springs Located Within The Jersey Valley Hydrographic Basin (No. 132), Pershing And Lander Counties, Nevada.*

The last reference in the tax assessment rolls is to a stock ranch 8 miles southwest of Clark and Minor's Ranch.¹⁵ The Stremmlers contend that this ranch, or Smith Place, is in Pleasant Valley and is now known as the "Pear Orchard," citing the affidavit of Tom Marvel. The Stremmlers state they know this is the location of Smith Place because it is described as being southwest 8 miles from the Pleasant Valley Ranch, which used to be the Clark Ranch. The Lincolns' do not directly refute Stremmlers' proffered location of Smith Place, as they agree Pleasant Valley is a long valley with numerous ranches. The Stremmlers did not include plats or a map showing the location of the Clark and Minor Ranch; however, the parties describe the Clark Ranch as being east of McKinney Pass (DeGo Pass).

A review of the GLO plat for T.27N., R.38E.,M.D.B.&M., which is east of McKinney Pass, shows irrigated fields and a house identified as "Clark and Minor's House" with irrigated areas identified as "Clark's Field," generally extending north to south through Sections 2, 10, 11 and 15.¹⁶ As stated, the tax assessment rolls describe the stock ranch as 8 miles southwest of Clark and Minor's Ranch. Seven Devils Hot Springs is approximately 8 miles southwest of the lowest portion of Clark and Minor's Ranch at Section 15, T.27N., R.38E. M.D.B.&M. Thus, the State Engineer finds it possible that Seven Devils is the upper ranch or Smith Place, but as stated previously, Seven Devils is not Rice Place.¹⁷ To that end, the State Engineer rejects the Stremmlers' argument that the affidavit of Tom Marvel states that Smith Place is Pear Orchard. Mr. Marvel's affidavit generally describes feed conditions of the range northwest of Seven Devils 6 or 8 miles near the "Pear Orchard" owned by the Paris Ranch. Hence, Mr. Marvel's

¹⁵ As described in the tax assessment roll, the description of "improvements on a stock ranch situated 8 miles southwest of Clark and Minor's Ranch known as Smith Place in Pleasant Valley" is subject to two interpretations. The Applicants assert that Smith Place is referring to Clark and Minors Ranch in Pleasant Valley. The State Engineer alternatively reads the phrase as Smith Place referring to the stock ranch *located 8 miles southwest of* Clark and Minor's Ranch. In light of locations of the respective ranches discussed herein, the State Engineer believes the latter interpretation is correct.

¹⁶http://www.glorerecords.blm.gov/details/survey/default.aspx?dm_id=357975&sid=bjlihmkkq.bik#surveyDetailsTabIndex=1 (last accessed November 3, 2014).

¹⁷ Although the distance between Seven Devils and Kyle's Horse Ranch is approximately 8 miles, which is less than the 12-14 miles described in the transcript, there is a flat between the two locations.

affidavit appears to confirm that Pear Orchard is 6-8 miles *away* from Seven Devils – not that Pear Orchard is Seven Devils, as the Stremblers claim.¹⁸

Assuming, *arguendo*, Seven Devils is Smith Place, in 1879 C.A. Kyle sold his possessory interest in a ranch “formerly known as Smith Place” to Mrs. E.M. Hamlin.¹⁹ There is no other evidence pertaining to E.M. Hamlin in the chain of title after 1879.

Based upon the State Engineer’s findings concerning the location of the Rice Place, and possible location of Smith Place, the State Engineer finds that the Stremblers have not proven that the Kyles are in the chain of title of Seven Devils and a claim to an 1872 priority date fails.

b) *Manuel Joseph, et al.*

On April 2, 1887, Manuel Joseph applied for a state land patent for numerous sections of land, including the 80 acres of the Seven Devils Parcel, pursuant to Section 8 of the Act of 1885, which Act provided for the selection and sale of lands that had been or were later granted by the United States to the State of Nevada.^{20,21} Manuel Joseph conveyed the land patent application to Frank Martin on December 26, 1887, and the patent was later issued on December 10, 1901.²² There is no evidence that Manuel Joseph ever beneficially used the water of Seven Devils Hot Springs either prior to or after applying for the land patent, nor is there any evidence which may be considered under NRS § 533.492 to prove a subsisting right to livestock for him.

After the patent application was conveyed to Frank Martin, numerous pages of tax assessments and chattel mortgages were filed for Frank Martin beginning in 1890; however, the tax assessments and counts of livestock by lenders between 1890 and 1894 concerned Martin’s Warm Springs Ranch in Jersey Valley; or, concerned livestock in other valleys and ranges that did not include the Seven Devils Parcel.²³ There is no reference to the Seven Devils Parcel in conjunction with tax assessments of stock for Frank Martin until 1895.²⁴ After 1895, Martin paid tax assessments and gave chattel mortgages until his conveyance of the Seven Devils Parcel

¹⁸ The Stremblers did not include any evidence depicting where the Paris Ranch or Pear Orchard is located.

¹⁹ Strembler Ex. 1C at p. 000110.

²⁰ 1885 Nev. Stat. ch. 85. Section 8 of the Act provided for the sale and disposal of agricultural and grazing lands according to the provisions of that Section.

²¹ See Strembler Ex. 1C at pp. 000166-000177.

²² Strembler Ex. pp. 1C at pp. 000181, 000279.

²³ See, e.g., Strembler Ex. 1C at pp. 000192, 000195, 000211, 000212.

²⁴ Strembler Ex. 1C at p. 000232.

to W.T. Jenkins Co. (Jenkins) on December 31, 1901.²⁵ Jenkins continued making tax assessment payments on livestock, which included references to the Seven Devils Parcel through the close of the vested right cutoff date of March 1, 1905. After 1895, the evidence demonstrates a complete chain of title coupled with continuous use of the water up to and including the Stremlers.²⁶

The State Engineer finds that the inclusion of the Seven Devils Parcel coupled with a count of livestock assessed to Frank Martin beginning in 1895 provides sufficient evidence for an 1895 priority date for Proof of Appropriation V-09887.

2. Duty

As stated in the amended Proof of Appropriation, the Stremlers claim water sufficient for 7,000 cattle and 133,000 sheep.

Saval argues that the evidence submitted does not support the quantity of water requested by the Application 82078 or the amended Proof of Appropriation. Saval argues that W.T. Jenkins, a predecessor of the Stremlers, had a vast ranching operation spanning four counties and over one-hundred thousand acres in Nevada and that the Applicants are attempting to claim the entirety of Jenkins' statewide operation on the 80-acre Seven Devils Parcel. Saval points to the tax records for Frank Martin, arguing that only a few dozen horses and a few hundred cattle or a few thousand sheep were the most run in the area during the ownership of Martin, and that this number is consistent with the original Proof of Appropriation, which stated that 300 cattle were continuously watered.²⁷

The Lincolns contend that the Stremlers have not shown a vested right to stockwater at all; alternatively, the Lincolns' argue that the affidavits of others, post-1905, suggest that the most the Stremlers could be given as a vested right is 5 cows with a priority date of 1895.²⁸

The State Engineer agrees with Saval's argument to the extent that W.T. Jenkins had a vast ranching operation in multiple counties, which possibly *statewide* supported the large number of animals the Stremlers claim in the amended Proof of Appropriation. As argued by the Lincolns, the tax records for Jenkins very clearly demonstrate a large part of Jenkins' operations were conducted in Lander and Elko counties, which the State Engineer finds is not determinative

²⁵ Stremmer Ex. 1C at p. 000283.

²⁶ See generally, Stremmer Ex. 1C.

²⁷ Saval Response pp. 1-2.

²⁸ Lincoln Response p. 10.

of a much more limited vested right on the Seven Devils Parcel. On this point, the Lincolns ably refute the publications relied on by the Stremmlers, arguing the documents similarly refer to operations in Lander and Elko Counties.²⁹ The State Engineer agrees with Saval that the evidence pertaining to the Seven Devils Parcel is much narrower, and the State Engineer finds the following documents demonstrate the extent of any vested right under Proof of Appropriation V-09887 established prior to 1905:

Stremler Ex. 1A Pg.	Document	Owner	Date	Record Date	Land Description incl. Seven Devils
000232	Tax assessmt.	Frank Martin	12/31/1895	12/31/1895	26 horses; 101 cattle
000241	Tax assessmt.	Frank Martin	12/31/1897	12/31/1897	6 horses; 200 cattle
000249	Tax assessmt.	Frank Martin	12/31/1898	12/31/1898 ³⁰	6 horses; 150 sheep
000264	Tax assessmt.	Frank Martin	12/31/1900	12/31/1900	3 horses; 2,000 sheep
000283	Deed	Frank Martin	12/31/1901	1/2/1902	conveys patented lands
000294	Tax assessmt.	WT Jenkins Co.	12/31/1903	12/31/1903	4 horses; 25 cattle
000300	Tax assessmt.	WT Jenkins Co.	12/31/1904	12/31/1904	4 horses; 20 cattle
000311	Tax assessmt.	WT Jenkins Co.	12/31/1905	12/31/1905	3 horses; 95 cattle

The highest pre-statutory assessment was 2,000 sheep and 3 horses in 1900. Using Stremmlers' figure of 3 gallons per day per sheep, and including 3 horses at 20 gallons per day, gives a total duty of 6.78 afa. This is nearly exactly the same duty of 6.72 afa that is required for 300 cattle, which is the current limit of the Stremmlers' grazing right and is consistent with the Applicants' statements in Proof of Appropriation V-09887, as originally filed.³¹

²⁹ See generally, Lincoln Response at pp. 10-12.

³⁰ Although Frank Martin also gave a chattel mortgage in 1898 on 7,000 sheep, 200 horses and 100 cattle situated and ranging in Lander and Humboldt Counties, the State Engineer rejects this general document in favor of the specific counts and land descriptions given in the tax assessment for the same year, which specifically references the Seven Devils Parcel. See Stremler Ex. 1C at p. 000244; cf., p. 000249.

³¹ Stremmler Summary p. 2.

Taken together, the State Engineer finds that the Applicants' evidence demonstrates that Application 82078 may be granted to the extent of Proof of Appropriation V-09887, which is 6.78 afa with a priority date of 1895.³²

B. Proof of Appropriation V-10018 (Lincoln)

Proof of Appropriation V-10018 was filed by Robert and Sallie Lincoln claiming a pre-1882 vested right to the irrigation of 200 acres at 4 afa from Seven Devil's Hot Springs Complex aka Sou Hot Springs.

The Lincolns filed documents on November 1, 2013, to support Proof of Appropriation V-10018. In the Lincolns' response to Stremblers' evidence, the Lincolns state Proof of Appropriation V-10018 was based on the 1883 GLO plat for T.26N., R.38E., M.D.B.&M., which shows cultivation occurring in 1882 on a part of the Lincolns' deeded ground.³³ However, the Lincolns' acknowledge that no documentation has been found connecting the individuals responsible for the cultivation shown on the GLO plat with Lincolns' predecessors in interest. For that reason, Lincolns' concede they have not proven a vested right and admit that Proof of Appropriation V-10018 may be withdrawn later during an adjudication if such evidence cannot be located. The Stremblers' filed a response to the Lincolns' evidence; however, given the concessions by the Lincolns described above, the State Engineer finds that an exhaustive discussion of the Stremblers' response to the Lincolns' documents is unnecessary.

³² In State Engineer Field Investigation No. 1125, it was observed that four wells were drilled in the travertine mound that hosts the springs to increase the flow and perhaps extend use further into the irrigation season. It was noted that the locations of the wells roughly coincide with the locations of thermal pools on recent aerial imagery. As stated in the Field Investigation, this issue may ultimately have bearing on claims of vested rights during a formal adjudication, as artesian wells drilled in the 1950s would not qualify as vested rights. As there is currently insufficient evidence upon which to conclude whether the vested rights are precluded on this theory, and because none has been submitted by the parties here, the State Engineer has not passed on the issue and may examine this, and any additional evidence presented on the proofs of appropriation during a formal adjudication of the vested rights.

³³ See Lincoln Response, pp. 19-20; *and see also, e.g.*, Strembler Ex.1B at pp. 000011-000012 (1883 GLO plat and amended plat).

IV.

In State Engineer's Ruling No. 6083, the State Engineer determined that there was sufficient water available at the source to fulfill all of the competing rights to Seven Devils Hot Springs that were known at the time. The known rights and claims of vested rights included Stremmlers' Proofs of Appropriation V-09887³⁴ and V-04741, and Robert and Sallie Lincolns' Permit 10105, Certificate 2695. As discussed above, the Applicants have demonstrated they have a valid claim to the most senior right on the source; therefore, there is sufficient water available at the source to grant change Application 82078 in the amount of 6.78 afa.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³⁵

II.

The State Engineer is prohibited by law from granting an application to change the public waters where:³⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the protestants have not provided evidence sufficient to demonstrate a vested right under Proof of Appropriation V-10018; therefore, protest grounds asserting conflicts between Application 82078 and Proof of Appropriation V-10018 are hereby overruled.

The State Engineer concludes that protest grounds which assert that Application 82078 seeks to change more water than is supported by Proof of Appropriation V09887 are upheld to the extent that the evidence demonstrates that Proof of Appropriation V-09887 may be changed in the amount of 6.78 afa.

³⁴ The original version of Proof of Appropriation V-09887 existed and was considered at the time Ruling No. 6083 was issued, which is consistent with what is being granted here.

³⁵ NRS Chapter 533.

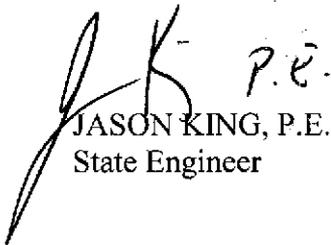
³⁶ NRS § 533.370(2).

The State Engineer concludes that the approval of Application 82078 is not intended to constitute an adjudication of either of Proofs of Appropriation V-09887 or V-10018, and as such, Permit 82078 will be issued subject to a future adjudication on this source.

RULING

The protests to Application 82078 are overruled in part, and upheld in part, and Application 82078 is hereby approved in the amount of 6.78 afa.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 7th day of
November, 2014.