

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

IN THE MATTER OF APPLICATIONS 54953,))
54954, 54958, 54960 AND 54961 FILED))
BY SALMON RIVER CATTLEMEN'S))
ASSOCIATION, INC. TO APPROPRIATE))
WATER FROM VARIOUS SPRINGS IN THE))
SALMON FALLS CREEK AREA, ELKO))
COUNTY, NEVADA.))

RULING

3905

GENERAL

I.

Application 54953¹ was filed on June 15, 1990, by the Salmon River Cattlemen's Association, Inc. to appropriate 0.02 c.f.s. of water from Monkey Creek Spring for stockwatering purposes within the NW1/4 NE1/4 Section 18, T.45N., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 18, T.45N., R.63E., M.D.B.&M.

Application 54954¹ was filed on June 15, 1990, by the Salmon River Cattlemen's Association, Inc. to appropriate 0.02 c.f.s. of water from Scott Creek Spring for stockwatering purposes within the NE1/4 NE1/4 Section 12, T.45N., R.62E., and Lot 7 (SW1/4 SW1/4) Section 6, T.45N., R.63E., M.D.B.&M. The point of diversion is described as being within Lot 7 (SW1/4 SW1/4) Section 6, T.45N., R.63E., M.D.B.&M.

Application 54958¹ was filed on June 15, 1990, by the Salmon River Cattlemen's Association, Inc. to appropriate 0.1 c.f.s. of water from Mahogany Basin Spring for stockwatering purposes within the NW1/4 SW1/4 Section 34, SW1/4 SW1/4 Section 23, and the NE1/4 SE1/4 Section 27, T.46N., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 34, T.46N., R.63E., M.D.B.&M.

Application 54960¹ was filed on June 15, 1990, by the Salmon River Cattlemen's Association, Inc. to appropriate 0.02 c.f.s. of water from East Cottonwood Spring for stockwatering purposes

¹ Public record in the office of the State Engineer.

within Lot 2, Section 19; SE1/4 NW1/4, SW1/4 NE1/4 Section 20; NW1/4 NW1/4 Section 28; SW1/4 NE1/4, SW1/4 SE1/4 Section 29; Lot 1, Lot 2, NW1/4 SE1/4 Section 30; NE1/4 NE1/4 Section 31; and the SW1/4 SW1/4 Section 33, T.46N., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 33, T.46N., R.63E., M.D.B.&M.

Application 54961¹ was filed on June 15, 1990, by the Salmon River Cattlemen's Association, Inc. to appropriate 0.02 c.f.s. of water from West Cottonwood Spring for stockwatering purposes within the Lot 2 Section 19; SE1/4 NW1/4, SW1/4 NE1/4 Section 20; NW1/4 NW1/4 Section 28; SW1/4 NE1/4, SW1/4 SE1/4 Section 29; NW1/4 SE1/4, Lot 1, Lot 2, Section 30; NE1/4 NE1/4 Section 31; SW1/4 SW1/4 Section 33, T.46N., R.63E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SE1/4 Section 32, T.46N., R.63E., M.D.B.&M.

II.

Application¹ 54953, 54954, 54958, 54960 and 54961 were timely protested by the Nevada Department of Wildlife on the following grounds:

This spring(s) supplies water and supports attendant Riparian vegetation, both of which are extremely important to a variety to game and nongame animal species. We believe that any further compromise of water availability and the attendant Riparian vegetation would compromise wildlife values dependent on that site. We also do not believe this spring can supply the proposed development and continue to maintain adequate water at the source during critical periods and/or water years. Therefore the protestant requests that the application be denied.

III.

A letter² dated August 22, 1990 was received by the State Engineer from the Director of the Department of Wildlife that provided further formal protest to the granting of the subject application on the grounds of critical habitat, inconsistency with the planning objectives of the public agencies and inconsistency of the amount of water requested for various numbers of cattle.

² Public record in the office of the State Engineer under 54953.

IV.

Application 54953² was timely protested by the United States Department of Interior, Bureau of Land Management on the following grounds:

1. The waters from this underground source are required for multiple use management of the vacant public lands which are adjacent to, adjoining, and overlying the water source.
2. The Bureau of Land Management has either constructed the development or cooperated in the construction of the development.
3. The waters from this source and associated development are necessary for proper use and management of two allotments.

FINDINGS OF FACT

I.

Letters² from the agent of the applicant dated March 8, 1991 and Bureau of Land Management dated January 17, 1992, indicate that the applicant has provided improvements to the source (Monkey Creek Spring) for Application 54953 and that the amount of water being requested is for the number of animals permitted by the current Bureau of Land Management grazing permit.

II.

The State Engineer has historically granted stockwatering permits on public land for the maximum number of gallons per animal per day or the maximum allowed by the requested diversion rate whichever is less. The actual amount of water consumed is governed by range conditions and the regulatory controls of the range management agency, but cannot exceed the permitted amount.¹

III.

Before a person may obtain a right to the use of water from a spring or water which has seeped to the surface of the ground, he must ensure that wildlife which customarily uses the water will have access to it. The State Engineer may waive this requirement for a domestic use of water.³

³ NRS 533.367.

IV.

A letter² dated January 17, 1992 received from the United States Department of the Interior, Bureau of Land Management provides current information concerning current authorized cattle allotments and relevant spring information for the subject applications and lists the applicant as the current range user.

V.

There are no other water rights of record on the sources of the subject applications except those of the applicant.¹

VI.

The applicant has supplied additional information in the form of photos taken at the sites of the proposed points of diversion indicating water availability.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where⁵:

- A. There is no unappropriated water in the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public welfare.

III.

The State Engineer concludes that there is water available for appropriation in the sources described under Applications 54953, 54954, 54958, 54960 and 54961.

IV.

The State Engineer concludes that the approval of Applications 54953, 54954, 54958, 54960 and 54961 for water amounts, not to exceed current cattle allotments, will not impair any existing rights nor be detrimental to the public interest.

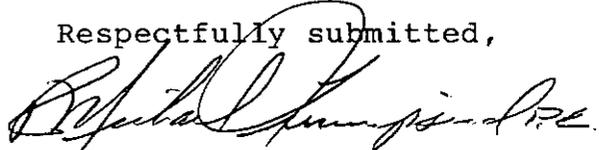
⁴ NRS Chapter 533.

⁵ NRS Chapter 533.370.

RULING

The protests to granting of Applications 54953, 54954, 54958, 54960 and 54961 are hereby overruled, and said applications are hereby approved for the maximum number of cattle authorized under current Bureau of Land Management allotments, subject to NRS 533.367, and subject to prior rights and payments of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GC/pm

Dated this 13th day of
October, 1992.