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

FILED
DEC 23 2011
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 81323
FILED BY GARY SNOW
ON 16 DAY OF NOVEMBER, 2011

PROTEST

Comes now JOE B. FALLINI JR OF TWIN SPRINGS RANCH
Printed or typed name of protestant

whose post office address is HC 76 BOX 1100 TONOPAH 89049
Street No. or PO Box, City, State and ZIP Code

whose occupation is HAY & LIVESTOCK and protests the granting

of Application Number 81323, filed on 16 DAY OF NOVEMBER, 2011

by GARY SNOW for the

waters of STATE OF NV. situated in GOV LOT 4 (NW¼ NW¼) SEC 5, T4N, R44E MDM
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 ATTACHED LETTER

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 Joe B Fallini Jr
Agent or protestant

JOE B. FALLINI JR TWIN SPRINGS RANCH
Printed or typed name, if agent

Address HC76 BOX 1100
Street No. or PO Box

TONOPAH, NV 89049
City, State and ZIP Code

775-863-0125
Phone Number

E-mail

Subscribed and sworn to before me this 20th day of December, 2011

Betty Gaye Blazek
Notary Public

BETTY GAYE BLAZEK
NOTARY PUBLIC
STATE OF NEVADA
NYE COUNTY
APPT. No. 10-1990-14
MY APPT. EXPIRES FEB. 25, 2014

State of Nevada

County of Nye

+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

December 20, 2011

Joe B. Fallini, Jr.
Twin Springs Ranch
HC76 Box 1100
Tonopah, Nevada 89049-9801

State of Nevada
Division of Water Resources
901 South Stewart Street
Suite 2002
Carson City, Nevada 89701

Re: Protest of Applications 81311, 81312, 81313, 81314 81316, 81317, 81318, 81319, 81320, 81321, 81322, 81323, 81324, 81325, 81326, 81327, 81328, 81329, 81330, 81331 filed by Gary Snow on November 16, 2011

To Whom It May Concern:

As instructed by the protest division of your agency, I am preparing this cover letter to fully explain the reasons for my protest.

On November 8, 2011, the Bureau of Land Management (Tonopah Field Office) solicited applications for a new grazing preference and a ten-year permit for the Ralston Allotment.

I, Joe Fallini of Twin Springs Ranch, find this to be a violation of the United States Constitution, Article I, Section 8, Clause 17:

1. "To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square) as may <u>by cession of particular states</u>, and the acceptance of Congress become the seat of Government of the United States, and to exercise like authority over all places purchased, <u>by the consent of the legislature of the state in which the same shall be</u>, for the erection of forts, magazines, arsenal, dockyards, and other needful buildings. And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the

Government of the United States or in any department of office thereof."

2. And the Ordinance of 1787, confirmed by the statute of August 7, 1789, provided among other things, for the orderly disposition of those lands, in the following language:

"...that this territory must be erected into states, and have their entrance into the Union on equal terms with the original states, and bear the same relation to the State government as all the original States. They shall be settled and formed into distinct republican States, which shall become members of the Federal Union and have the same rights of sovereignty, freedom, and independence as the other States."

3. And the treaty with France, conveying the Louisiana Purchase in 1803, provided:

"The inhabitants of the ceded territory shall be incorporated into the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States, and in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

4. And the treaty with Mexico, which included Nevada, (the treaty of Guadelupe-Hidalgo) covering the Mexican Cession in 1848, contained the following provision:

"...shall be formed into free, sovereign, and independent States and incorporated into the Union of the United States as soon as possible, and the citizens thereof shall be accorded the enjoyment of all the rights, advantages, and immunities, as citizens of the original States."

5. And the Supreme Court, early in the history of our country laid down the rule that "when the thirteen

original States established their independence, each State become the owner of the vacant and unappropriated lands within its borders." (People v Livingston, 8 Barb, N.Y. 253; State v Pinckney, 22s. 484.)

6. And the Supreme Court said, "and when new States were formed out of the territory of such original States, and admitted into the Union, such new States became entitled to vacant and unappropriated lands within their borders..." (Pollard v Hagen, 3 How. (U.S.) 212 221 11 Law Economic development. 565; United States v Chandler Bunbar Water Power Mrs. Cox., 152 Fed. 25, 81, C.C.A. 221.)

The State of Nevada, under NRS Chapter 568, gave the BLM the authority only. The BLM did not follow the state law.

The Congress of the United States in 1976 passed the Organic Act which stole all of the land in Nevada but did not take any of the preexisting rights that existed (Saving Clause).

In May of 1979, the Nevada Legislature passed a law which stripped the BLM of all land rights in Nevada and Nevada already owned the water.

Nevada and other Public Land States are, in effect, owned in part by the people of the eastern, Midwest and southern states through ownership by the Federal Government, which is in violation of the Constitution.

Article IV, Section III, of the Federal Constitution provides:

"The Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territories or other property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state."

And it further provides:

"New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state."

Before the BLM was created, Senator O'Mahone of Wyoming asked Secretary of Interior Ickes about customary established rights. Interior Secretary Ickes replied:

"Gentlemen of the Committee: All that the Department of Interior wants to do is to maintain and upbuild the ranges for the benefit of local interests. Now in doing that, we have no intention to run amuck in any state or in any area and drive stockmen off their ranges or deprive them of rights to which they are entitled either under state laws or by customary usage."

The foregoing statement showed the intent of the creation of the Taylor Grazing Act.

After passage, the Taylor Grazing Act was amended by Senator Pittman.

"Senator Pittman then pointed out the Bill (Taylor Grazing Act) as then amended contained certain protection for the ranchers. It **provided their water rights would be respected** and also **the local grazing rights under the laws and customs of the state would be honored.**

It is very clear to me that the BLM does not have the authority to steal a person's grazing and water rights.

In addition to the relevant Nevada Revised Statutes, I am enclosing Check 3244 in the amount of $500.00 to cover the $25.00 fee for twenty protest applications.

Thank you for your time and attention. If additional information is required, please fee free to contact me at the address listed above or by telephone at 775-863-0125.

Joe B. Fallini, Jr.

Joe B. Fallini, Jr.

cc: Nye County Commission
Central Nevada Regional Water Authority
United States Bureau of Land Management

[Rev. 2/18/2010 11:38:51 AM]

CHAPTER 568 - GRAZING AND RANGING

COOPERATION WITH FEDERAL AGENCIES IN RELATION TO GRAZING LANDS

NRS 568.010	"Taylor Grazing Act" defined.
NRS 568.020	Provisions of Taylor Grazing Act; money derived from grazing fees and leases.
NRS 568.030	Disposition of money received from Federal Government under Taylor Grazing Act.
NRS 568.040	State grazing boards: Creation.
NRS 568.050	State grazing boards: Names.
NRS 568.060	State grazing boards: Members; chair; qualifications.
NRS 568.070	State grazing boards: Selection and remuneration of officers.
NRS 568.080	State grazing boards: Compensation of members.
NRS 568.090	State grazing boards: Meetings; quorum.
NRS 568.100	Procedure for expenditure of money from range improvement fund.
NRS 568.120	Authorized uses of range improvement fund.
NRS 568.130	Conditions authorizing refunds from range improvement fund.
NRS 568.140	Cooperative agreements for projects involving construction and maintenance of range improvements and other projects.
NRS 568.150	Cooperative agreements between board of county commissioners and state grazing boards; contents and conditions.
NRS 568.160	Deposit of money resulting from cooperative agreement in range improvement fund; procedure.
NRS 568.170	Central Committee of Nevada State Grazing Boards: Establishment; membership.
NRS 568.180	Central Committee of Nevada State Grazing Boards: Compensation and expenses of members.
NRS 568.190	Officers; subcommittees; meetings of Central Committee of Nevada State Grazing Boards.
NRS 568.200	Central Committee of Nevada State Grazing Boards: Powers; duties; limitations.
NRS 568.210	Provisions of NRS 568.010 to 568.210, inclusive, continue to apply to area detached from state grazing district.

GRAZING PREFERENCE RIGHTS

NRS 568.225	Grazing preference rights appurtenant to property; unlawful interference with grazing; penalty.

REGULATION OF GRAZING ON FEDERAL LANDS

NRS 568.230	Grazing interfering with customary use of land unlawful; exceptions.
NRS 568.240	Customary or established use: Definition; change.
NRS 568.250	Continued use by established user not prohibited.
NRS 568.260	Penalty; liability for damages.
NRS 568.270	Restraint of violation by injunction.
NRS 568.280	Free transit over and rights in public domain not prohibited.
NRS 568.290	Purpose; construction.

UNLAWFUL ACTS AND PENALTIES; LIABILITY FOR DAMAGES

NRS 568.300	Herding or grazing of livestock on land of another without consent unlawful; liability for damages; attachment.
NRS 568.330	Herding or grazing of livestock in certain areas near water supply unlawful; penalty.
NRS 568.340	Herding or grazing of livestock at spring or well of another or within 1 mile of home or ranchhouse unlawful; liability for damages.
NRS 568.350	Unauthorized driving of livestock from range unlawful; penalty; liability for damages.
NRS 568.355	"Open range" defined.
NRS 568.360	Duties of owners of domestic animals with respect to domestic animals upon highway.
NRS 568.370	Permitting dog to chase, worry, injure or kill domestic animals on open range or private property unlawful.

COOPERATION WITH FEDERAL AGENCIES IN RELATION TO GRAZING LANDS

NRS 568.010 "Taylor Grazing Act" defined. As used in NRS 568.010 to 568.210, inclusive, "Taylor Grazing Act" means the Act of Congress entitled "An act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement and development, to stabilize the livestock industry dependent upon the public range, and for other purposes," approved June 28, 1934, being c. 865, 48 Stat. 1269, also designated as 43 U.S.C. §§ 315 to 315r, inclusive, any amendment thereto and any replacement therefor, including provisions of the Code of Federal Regulations adopted and promulgated pursuant to any such act, amendment or replacement, providing for grazing

property is sold, leased or otherwise transferred must not be deprived of any grazing preference right that is appurtenant to that property solely on the basis of the sale, lease or other transfer of that property unless the person consents to, or receives just compensation for, the deprivation of that right.

2. Except as otherwise provided in NRS 568.230 to 568.370, inclusive, a person who willfully or negligently:

(a) Interferes with the lawful herding or grazing of livestock on land:

(1) That is base property; or

(2) Other than base property that is located within a grazing district and upon which the livestock are herded or grazed in accordance with a permit to graze livestock issued pursuant to the provisions of the Taylor Grazing Act; or

(b) Damages or destroys a fence, gate, facility for watering livestock or other improvement that is used to sustain livestock and is located on land specified in paragraph (a),

➥ is guilty of a misdemeanor. In addition to any other penalty, the court shall order the person to pay restitution.

3. As used in this section:

(a) "Base property" means any land or water in this state that is owned, occupied or controlled by a person who has obtained an appurtenant grazing preference right for that land or water pursuant to the provisions of the Taylor Grazing Act.

(b) "Grazing preference right" means a right that:

(1) Is conferred upon a person pursuant to the provisions of the Taylor Grazing Act; and

(2) Entitles the person to priority in the issuance of a permit to graze livestock in accordance with those provisions.

(c) "Taylor Grazing Act" has the meaning ascribed to it in NRS 568.010.

(Added to NRS by 1999, 2052)

REGULATION OF GRAZING ON FEDERAL LANDS

NRS 568.230 Grazing interfering with customary use of land unlawful; exceptions.

1. It is unlawful to graze livestock on any part of the unreserved and unappropriated public lands of the United States in the State of Nevada, when grazing will or does prevent, restrict or interfere with the customary use of the land for grazing livestock by any person who, by himself or herself or the person's grantors or predecessors, has become established, either exclusively or in common with others, in the grazing use of the land by operation of law or under and in accordance with the customs of the graziers of the region involved.

2. NRS 568.230 to 568.290, inclusive, does not prohibit the grazing on any public lands of livestock owned, kept or used for work or milking purposes by any ranch owner or bona fide settler, for the owner or settler's domestic use, as distinguished from commercial use, or prohibit the grazing of any livestock necessary for and used in connection with any mining or construction work or other lawful work of similar character.

[Part 1:226:1931; 1931 NCL § 5581]—(NRS A 1985, 526)

NRS 568.240 Customary or established use: Definition; change.

1. Customary or established use as graziers, otherwise than under operation of law, as used in NRS 568.230 to 568.290, inclusive, shall be deemed to include the continuous, open, notorious, peaceable and public use of such range seasonally for a period of 5 years or longer immediately before March 30, 1931, by the person or the person's grantors or predecessors in interest, except in cases where initiated without protest or conflict to prior use or occupancy thereof.

2. Any change in customary use so established must not be made after March 30, 1931, so as to prevent, restrict or interfere with the customary or established use of any other person or persons.

[Part 1:226:1931; 1931 NCL § 5581]—(NRS A 1985, 526)

NRS 568.250 Continued use by established user not prohibited. NRS 568.230 to 568.290, inclusive, does not prohibit any such established user from continuing his or her grazing use, as established by operation of law or in accordance with such customs.

[2:226:1931; 1931 NCL § 5581.01]—(NRS A 1985, 526)

NRS 568.260 Penalty; liability for damages. Any person violating any of the provisions of NRS 568.230 to 568.290, inclusive, is guilty of a misdemeanor, and, independently of the foregoing penalty, is liable to any person injured for all damages sustained by reason of the violation, and for such exemplary damages as the circumstances may warrant.

[3:226:1931; 1931 NCL § 5581.02]—(NRS A 1967, 616; 1985, 527)

NRS 568.270 Restraint of violation by injunction. The violation of any provision of NRS 568.230 to 568.290, inclusive, may be restrained by injunction, issued by a court of competent jurisdiction, pursuant to the provisions of law and principles of equity relating to injunctions.

[4:226:1931; 1931 NCL § 5581.03]—(NRS A 1985, 527)

NRS 568.280 Free transit over and rights in public domain not prohibited. Nothing contained in NRS 568.230 to 568.290, inclusive, prohibits free transit over and rights in the public domain where provided by the Acts of Congress.

[6:226:1931; 1931 NCL § 5581.05]—(NRS A 1985, 527)

NRS 568.290 Purpose; construction.

1. NRS 568.230 to 568.290, inclusive, shall be deemed an exercise of the police power of the state, for the protection of the economic welfare and peace of the people of the state, and all of their provisions must be liberally construed for the accomplishment of its purposes.

2. Nothing in NRS 568.230 to 568.290, inclusive, amends or repeals existing law regarding the grazing use of the public lands or of water for the purpose of watering livestock, or modifies or compromises any valid rights or priorities which exist

therein on March 30, 1931.
[7:226:1931; 1931 NCL § 5581.06]—(NRS A 1985, 527)

UNLAWFUL ACTS AND PENALTIES; LIABILITY FOR DAMAGES

NRS 568.300 Herding or grazing of livestock on land of another without consent unlawful; liability for damages; attachment.

1. It shall be unlawful for any person to herd or graze any livestock upon the lands of another without having first obtained the consent of the owner of the lands so to do. The person claiming to be the owner of such lands shall have the legal title thereto, or an application to purchase the same with the first payment made thereon.

2. The livestock which is herded or grazed upon the lands of another, contrary to the provisions of subsection 1, shall be liable for all damages done by such livestock while being unlawfully herded or grazed on the lands of another, together with costs of suit and reasonable counsel fees, to be fixed by the court trying an action therefor. The livestock may be seized and held by a writ of attachment, issued in the same manner as provided in chapter 31 or 71 of NRS, as security for the payment of any judgment which may be recovered by the owner of such lands for damages incurred by reason of violation of any of the provisions of this section. The claim and lien of a judgment or attachment in such an action shall be superior to any claim or demand which arose subsequent to the commencement of the action.

3. This section shall not apply to any livestock running at large on the ranges or commons.

[1:31:1893; C § 780; RL § 2335; NCL § 4019] + [2:31:1893; C § 781; RL § 2336; NCL § 4020] + [3:31:1893; C § 782; RL § 2337; NCL § 4021]

NRS 568.330 Herding or grazing of livestock in certain areas near water supply unlawful; penalty.

1. It is unlawful for any person, firm, corporation or association owning or having charge of any livestock to herd, graze, pasture, keep, maintain or drive the same upon, over or across any lands lying within an area that has been identified by the board of county commissioners in the county in which the area is situated as unsuitable for such uses in order to protect any surface intake, intakes, water boxes or surface reservoirs into which water is diverted for use for municipal, drinking or domestic purposes in the state. A determination by the board of county commissioners that an area is unsuitable must be based upon scientific evidence and must be adopted by ordinance after consultation with affected persons and state agencies. The ordinance must describe the area that is determined to be unsuitable and notice of the determination and description must be posted in a conspicuous place in the area.

2. Subsection 1 must not be construed to apply to:

(a) Prospectors or other persons passing over or being temporarily upon such lands with not to exceed 10 head of livestock.

(b) Livestock running at large upon the range, unless by county ordinance any board of county commissioners has provided otherwise in the case of the county concerned.

(c) Persons that are herding, grazing, pasturing, keeping, maintaining or driving livestock on their own lands.

3. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

4. Each day the acts declared to be unlawful in subsection 1 are committed, done and continued constitutes separate, distinct and new offenses.

[1:188:1915; A 1929, 195; NCL § 3996] + [2:188:1915; A 1929, 195; NCL § 3997] + [3:188:1915; 1919 RL p. 2845; NCL § 3998]—(NRS A 1967, 617; 1995, 797)

NRS 568.340 Herding or grazing of livestock at spring or well of another or within 1 mile of home or ranchhouse unlawful; liability for damages.

1. It shall be unlawful for any person owning or having charge of any livestock to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within 1 mile of a bona fide home or a bona fide ranchhouse.

2. The owner or agent of the owner of livestock violating the provisions of subsection 1, on complaint of the person injured in any court of competent jurisdiction, shall be liable to the person injured for actual and exemplary damages.

3. Nothing in this section shall:

(a) Prevent the owners from herding or grazing their livestock on their own lands.

(b) Be construed as to prevent livestock being driven along any public highway.

[1:81:1917; 1919 RL p. 2845; NCL § 3999] + [2:81:1917; 1919 RL p. 2845; NCL § 4000]

NRS 568.350 Unauthorized driving of livestock from range unlawful; penalty; liability for damages.

1. It shall be unlawful for any person to lead, drive or in any manner remove any horse, mare, colt, jenny, jack, mule, or any head of neat cattle, or hog, sheep, goat, or any number of these animals, the same being the property of another person, from the range on which they are permitted to run in common, without the consent of the owner thereof first had and obtained.

2. The owner of any such animals, finding the same running on the herd grounds or commons with other animals of the same kind, is permitted to drive his or her own animal or animals, together with such other animals as the owner cannot conveniently separate from his or her own, to the nearest and most convenient corral or other place for separating his or her own from other animals if the owner, in such case, immediately, with all convenient speed, drives all such animals not belonging to him or her back to the herd ground from which he or she brought such animals.

3. Any person violating the provisions of this section shall be guilty of a misdemeanor.

4. In addition to the penalty provided for in subsection 3, such person shall be civilly liable to the owner of livestock so removed from the range for the value of all such stock and the necessary expenses incident to their return.

2. On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, or any permit, certificate, decision or order issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120, the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

5. Any proceeding conducted or injunction or order issued pursuant to this section is in addition to, and not in lieu of, any other penalty or remedy available for a violation specified in this section.

(Added to NRS by 2007, 2015)

USE OF WATER FOR WATERING LIVESTOCK

NRS 533.485 Definitions. As used in NRS 533.485 to 533.510, inclusive:

1. "Public range" means all lands belonging to the United States and to the State of Nevada on which livestock are permitted to graze, including lands set apart as national forests and lands reserved for other purposes.

2. "Range livestock" shall mean livestock which during the general period or season when they are being or are proposed to be watered at the place involved shall be subsisting chiefly or entirely by grazing on the public range.

[6:201:1925; NCL § 7984]

NRS 533.490 Watering livestock declared beneficial use.

1. The use of water for watering livestock is hereby declared to be a beneficial use except as provided in NRS 533.495. Subject to such exception, the right to use water for that purpose may be acquired in the same manner as the right to use water for any other beneficial purpose.

2. On application to the State Engineer for any such right, it shall not be necessary for the applicant to state or prove or for the State Engineer to determine in cubic feet per second of time the quantity of water the use of which is applied for or granted, but in all such applications and in all proceedings connected therewith and, also, in all proceedings either before the State Engineer or the courts relating to the proof or establishment of a vested right to use water for watering livestock, it shall be a sufficient measure of the quantity of the water to specify the number and kind of animals to be watered or which have been watered, as the case may be. This subsection is not intended to imply that prior to April 1, 1925, it was necessary to specify, prove or determine the quantity of water in cubic feet per second, but is meant only to remove for the future any uncertainty that may have existed as to such necessity.

[1:201:1925; NCL § 7979]

NRS 533.492 Subsisting right to water livestock: Manner of proof; marking of location of right.

1. 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:

(a) As to water rights on open range, whether public lands or unfenced private lands or a combination of these:

(1) A statement of priority of use submitted to the Taylor Grazing Service, predecessor to the Bureau of Land Management, to show the numbers of livestock grazed upon the open range, for years from 1928 to 1934, inclusive, if accompanied by evidence of changes or absence of change since the date of the statement;

(2) A license issued by the Taylor Grazing Service for use upon the open range; or

(3) A statement of priority of use, or a license, issued by the United States Forest Service for the grazing of livestock before 1950.

(b) As to water rights on other 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.

2. The location of a subsisting right to water livestock and its extent along a stream may be shown by marking upon a topographic map whose scale is not less than 1:100,000 or a map prepared by the United States Geological Survey covering a quadrangle of 7 1/2 minutes of latitude and longitude and by further identifying the location or extent by one-sixteenth sections within a numbered section, township and range as certified by a registered state water right surveyor.

(Added to NRS by 1993, 1944)

NRS 533.493 Recognition of adjudicated rights to water livestock from streams by State Engineer. Within a stream system or groundwater basin where rights have been adjudicated, the State Engineer shall recognize rights to water livestock from streams, whether or not in conjunction with a right to use water for irrigation, which are established by a vested water right, a subsisting right shown as provided in NRS 533.492 or a permit issued by the State Engineer.

(Added to NRS by 1993, 1944)

NRS 533.495 Subsisting rights not to be impaired. Whenever one or more persons shall have a subsisting right to water range livestock at a particular place and in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at that place, no appropriation of water from either the same or a different source shall subsequently be made by another for the purpose of watering range livestock in such numbers and in such proximity to the watering place first mentioned as to enable the proposed appropriator to deprive the owner or owners of the existing water

right of the grazing use of such portion of the public range, or substantially to interfere with or impair the value of such grazing use and of such water right.
[2:201:1925; NCL § 7980]

NRS 533.500 Duties of State Engineer concerning approval and rejection of application.
1. Before approving any application for the right to use water for watering livestock, the State Engineer shall determine, by examination on the ground or otherwise, that the right and use applied for will not contravene the policy of NRS 533.495. If the State Engineer shall determine that the right applied for will contravene such policy, the State Engineer must reject the application.
2. If the water applied for shall be along the course of or in the immediate vicinity of an established or customary driving route for moving livestock from one range to another, the State Engineer may reject the application even if no previous right shall exist for any portion of such water, if the State Engineer shall determine that such water will best subserve the public interest by being reserved for the watering of livestock while so being driven along such customary driving route.
[3:201:1925; NCL § 7981]

NRS 533.503 Restrictions on issuance of permit or certificate regarding appropriation to water livestock.
1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:
(a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
(1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
(2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
(b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
(c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.
2. The State Engineer shall not issue a certificate of appropriation based upon a permit to appropriate water for the purpose of watering livestock unless:
(a) The holder of the permit makes satisfactory proof that the water has been beneficially used, is legally entitled to place on the lands the livestock which have been watered pursuant to the permit, and:
(1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock which have been watered pursuant to the permit; or
(2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock which have been watered pursuant to the permit, and authorization to care for, control and maintain such livestock;
(b) The forage serving the beneficial use of the water that has been beneficially used is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the holder of the permit; and
(c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the holder of the permit.
3. This section must not be construed to impair the vested right of any person to the use of water for the purpose of watering livestock or to prevent any transfer of ownership of a water right for the purpose of watering livestock.
4. As used in this section, "grazing preference" means a priority position in the issuance of a permit to graze livestock on the public range.
(Added to NRS by 1995, 2522; A 2003, 3411)

NRS 533.506 Unlawful acts; penalties.
1. Any person who, without the right so to do, shall, on two or more separate days during any season, water more than 50 head of livestock at the watering place at which another shall have a subsisting right to water more than 50 head of livestock, or within 3 miles of such place, with intent to graze the livestock so watered on the portion of the public range readily accessible to livestock watering at the watering place of such other person, shall be guilty of a misdemeanor.
2. Each day's watering in violation of this section shall be deemed a separate offense.
3. Whenever, in any prosecution for such offense, it shall appear that the watering by the accused was not done at the watering place of another, but was done within 3 miles thereof, it shall be a sufficient defense for the accused to prove that he or she had no knowledge of the existence of such other watering place.
[4:201:1925; NCL § 7982]—(NRS A 1967, 609)

NRS 533.510 Prior rights not affected. NRS 533.485 to 533.510, inclusive, do not affect the validity of rights to the use of water for watering livestock or other purposes acquired under the previously existing laws of this state or by decree or impair any existing vested or decreed right to the use of water for that purpose.
[5:201:1925; NCL § 7983]—(NRS A 1993, 1944)

MISCELLANEOUS PROVISIONS

NRS 533.515 Permit for appropriation of water or application to change point of diversion if point of diversion or portion of works is outside state.
1. No permit for the appropriation of water or application to change the point of diversion under an existing water right