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

IN THE MATTER OF APPLICATION NUMBER 85544
FILED BY Saving Americas Mustangs
ON October 23, 20 15

PROTEST

FILED
DEC 11 2015
STATE ENGINEER'S OFFICE

Comes now US Bureau of Land Management
Printed or typed name of protestant

whose post office address is 3900 E. Idaho Street, Elko, NV 89801
Street No. or PO Box, City, State and ZIP Code

whose occupation is Land Management Agency and protests the granting

of Application Number 85544, filed on October 23, 20 15

by Saving Americas Mustangs for the

waters of Lower Spruce Spring situated in Elko
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:

The application would prove detrimental to the public interest. The applications change the livestock use from stockwater for 6,000 sheep to stockwater for 1000 cattle or horses is arbitrary. Cattle have an Animal Unit Equivalent (AUE) of 1.0, sheep have an AUE of 0.20, i.e. sheep to cattle conversions typically occur 5 to 1. In this case, a reasonable conversion from 6000 sheep would be to 1,200 cattle. This is an issue as the Spruce Allotment grazing permit does not authorize domestic horse use. The maximum number of cattle authorized on the grazing permit for summer use is 605. The applicant also proposes places of use unrelated to existing or proposed range improvement water developments authorized by the BLM. The applicant and the BLM are currently in dispute regarding the unauthorized excavation of the Lower Spring Spring area and the reconstruction of the Spruce Pipeline in the summer of 2015; this application is likely related to this dispute. See attached letter and map.

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
Agent or protestant

John F. Ruhs
Printed or typed name, if agent

Address 1340 Financial Blvd
Street No. or PO Box

Reno, NV 89502
City, State and ZIP Code

775-861-6590
Phone Number

jruhs@blm.gov
E-mail

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State of Nevada
County of WASHOE

Subscribed and sworn to before me on 12/11/2015

by John F. Ruhs

CHET R. BEECH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 12-8443-2 - Expires August 6, 2016

Chet R. Beech
Signature of Notary Public Required

Notary Stamp or Seal Required

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

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Nevada State Office
1340 Financial Boulevard
Reno, Nevada 89502-7147
http://www.blm.gov/nv

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In Reply Refer To:
Applications 85544 & 85545

Jason King
State Engineer, Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

Dear Mr. King:

On 22 November 2015, the Wells Field Office learned that applications 85544 & 85545 had been filed to change the manner of use and place of use of water heretofore appropriated under Permit 5742, Certificate No. 1416, and Permit 5745, Certificate No. 1419. The sources of water (Lower Spruce Spring and Upper Spruce Spring) and the proposed places of use (the Spruce Pipeline and the Spruce Springs Pipeline) are all found within the Spruce Allotment, Unit E-2. This Unit is scheduled for cattle grazing annually, with 858 Animal Unit Months (AUMs) authorized from 01 July to 30 September. Across the entire Spruce Allotment, a maximum of 605 head of cattle are authorized from 01 July to 30 September. The authorized permittee on this Allotment is the Spruce Grazing Association (SGA); SGA leases the base property for the Spruce Allotment from Saving America's Mustangs (SAM). The majority of the land found in proximity to the proposed places of use is public land. Three small parcels of private land (approximately 120 acres) are located near the proposed places of use; however, these lands are unfenced.

The Bureau of Land Management (BLM) is submitting a protest to these applications because the proposed changes would prove detrimental to the public's interest. The applications change the livestock use from stockwater for 20,000 (application 85545) or 6,000 (application 85544) sheep to stockwater for 1000 cattle or horses. There are three problems with these changes. First, the Spruce Allotment grazing permit does not authorize domestic horse use; any grazing of domestic horses on public land in the Spruce Allotment – including the areas around Upper and Lower Spruce Spring – would constitute a trespass as per the grazing regulations. If by "horses" the applicant is referring to wild horses, such should be specified. Second, the current grazing permit limits cattle numbers on the Spruce Allotment from 01 July to 30 September to 605. The livestock numbers proposed in this application exceed the maximum permit numbers for the entire Allotment by 65%. Third, the change in livestock kind proposed in application 85544 and 85545 – from sheep to cattle or horses – is arbitrary. Cattle have an Animal Unit Equivalent (AUE) of 1.0, sheep have an AUE of 0.20, i.e. sheep to cattle

conversions typically occur 5 to 1. In this case, the conversion from 6,000 sheep would be to 1,200 cattle. In application 85545, the conversion from 20,000 sheep would be 4,000 cattle.

Furthermore, the applicant proposes places of use unrelated to existing or proposed range improvement water developments authorized by the BLM on public land (see attached Maps 1 and 2), i.e. the applicant proposes using and/or developing water on public land in locations not authorized by the BLM. These unauthorized legal subdivisions proposed by the applicant on public land total over 800 acres and are found in both applications, as follows:

- Application 85544
  - NW¼ NW¼ of Section 5, NE¼NE¼ of Section 6, all in T.30 N., R.64 E., M.D.B.&M
  - SW¼ SW¼ of Section 31, in T.31 N., R.64 E., M.D.B.&M
  - NE¼ SE¼ of Section 36, in T.31 N., R.63 E., M.D.B.&M
- Application 85545
  - SE¼ SE¼, NW¼ NE¼, SW¼ NE¼, NW¼ NW¼, and NW¼ NW¼ of Section 5, NE¼ NE¼ of Section 6, NE¼ NE¼ of Section 9, all in T.30 N., R.64 E., M.D.B.&M
  - SW¼ SW¼ of Section 30, SW¼ SW¼, SE¼ SE¼, NW¼ SE¼ and NE¼ SE¼ of Section 31, SW¼ SW¼ of Section 32, all in T.31 N., R.64 E., M.D.B.&M
  - NE¼ SE¼ of Section 26, NW¼ SW¼, SE¼ SW¼ and SW¼ SE¼ of Section 25, SE¼ NW¼ and NE¼ SE¼ of Section 36, all in T.31 N., R.63 E., M.D.B.&M

As a final point, BLM notes that it is currently taking administrative action to address the permittee's unauthorized excavation of public land in the Lower Spruce area and the reconstruction of the Spruce Pipeline and the Spruce Springs Pipeline. In response to this administrative action, SGA has asserted as a defense to trespass, that it holds an RS 2339 Right-of-Way right/claim on the Lower Spruce Spring area, Spruce Pipeline, and Spruce Springs Pipeline. This application is likely related to this trespass situation. The BLM is therefore requesting that the State Engineer refrain from making a decision on granting the changes proposed in Application 85544 and Application 85545 until the trespass and any associated appeal has been resolved.

BLM appreciates the State Engineer's attention to BLM's concerns. Please contact Daniel Zvirzdin, Wells Field Office Rangeland Management Specialist at 775-753-0331 if you have any questions or need further information.

Sincerely,

John F. Ruhs
State Director

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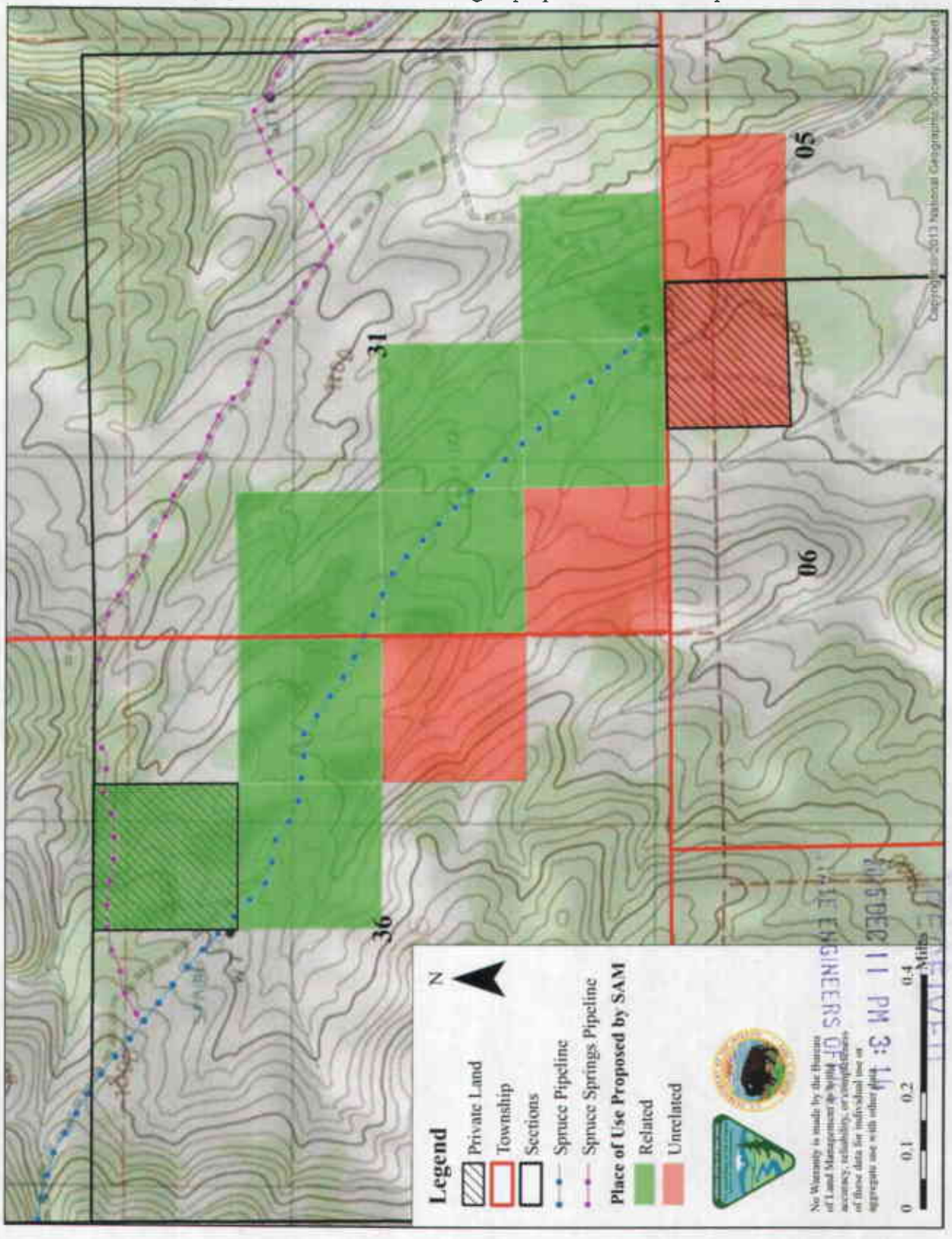
Enclosures

Map 1. Places of use proposed by Saving America's Mustangs in Application 85544. Legal subdivisions highlighted in green are related to Spruce Pipeline, a water development authorized by the BLM on public land; subdivisions highlighted in red have no existing or proposed water developments authorized.



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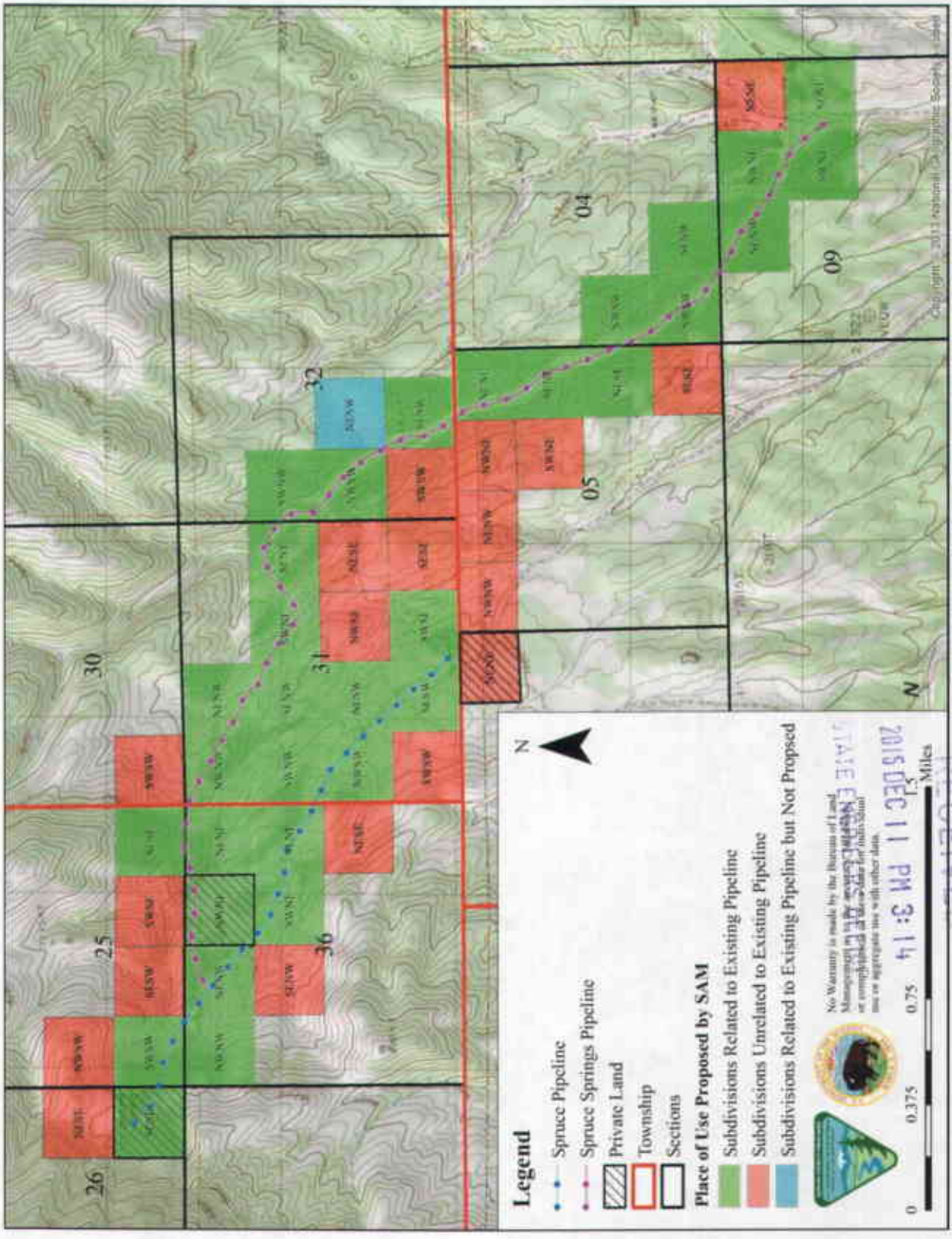
Map 2. Places of use proposed by Saving America's Mustangs in Application 85545. Legal subdivisions highlighted in green are related to Spruce Springs Pipeline, a water development authorized by BLM on public land; subdivisions highlighted in red have no existing or proposed water developments authorized.



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