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

IN THE MATTER OF APPLICATIONS 37946 AND 38302 FILED TO APPROPRIATE THE PUBLIC WATERS OF DEER SPRING LOCATED WITHIN THE PINE VALLEY HYDROGRAPHIC BASIN (53) EUREKA COUNTY, NEVADA.	)	**RULING** **#5654**

GENERAL

I.

Application 37946 was filed on April 18, 1979, by Floyd C. Slagowski, and later assigned to Slagowski Ranches, Inc., to appropriate 0.05 cubic-feet per second (cfs) of water from Deer Spring for stockwater purposes. The place of use is described as being within the NW¼ NE¼ of Section 18, T.27N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 18.[1]

II.

Application 38302 was filed on June 8, 1979, by Frank Paxton and Family, and later assigned to Slagowski Ranches, Inc., to appropriate 0.1 cfs of water from Deer Spring for stockwater purposes. The place of use is described as being within the NW¼ NE¼ of Section 18, T.27N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 18.[2]

III.

Vested Claim V-09424 was filed on April 26, 2004, by Slagowksi Ranches, Inc., claiming 0.0094 cfs of water from Deer Spring for stockwatering purposes. The priority date claimed is January 1, 1869, for 300 cattle. The source has not been formally adjudicated.

IV.

Application 37946 was timely protested by Frank Paxton and Family, on the following grounds:

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[1] File No. 37946, official records in the Office of the State Engineer.
[2] File No. 38302, official records in the Office of the State Engineer.

1.) The expected U.S.B.L.M. South Buckhorn allotment division would place Deer Spring within Paxton area of usage, as an adjunct to the Knight Ranch operation (being portions of Secs. 30 & 31, T.27N., R.51E., M.D.M.), and
2.) Improvements to this source have been made by, and at the expense of, predecessors in interest of the protestant.

FINDINGS OF FACT

I.

A review of records on file in the Office of the State Engineer shows that Applications 37946 and 38302 and vested claim V-09424 were filed to appropriate water from Deer Spring. On June 18, 1999, an informal field investigation found the spring to be damp with no visible flow. There were no improvements to the spring.[3] On April 26, 2005, an informal field investigation found the spring flowing about 5 gallons per minute (gpm). It was noted that the entire Pine Valley area was extremely wet with creeks at or above flood stage and run-off near its maximum. Again no improvements to the spring were noted.[4]

In taking into account whether to issue any additional water rights on the source, consideration must be given to water availability. Vested claim V-09424 was filed for 0.0094 cfs or approximately 4.2 gpm. Based on the field investigations, this is probably the entire quantity of the spring in most years. A vested claim stands on its own merits until such time as an adjudication of the source is completed. At the time of the adjudication the claim will be accepted or rejected. If the claim is rejected, the applicant could be left without a valid water right on the source. One possible solution to this dilemma is to issue a permit supplemental to the claim of vested right. No additional water would be appropriated at the source but the permit would be insurance against the possible rejection of the vested claim. In this case, there are two additional applications filed on the source. There is no benefit to having two additional supplemental permits on the source; therefore, the application filed later in time would serve no purpose.

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[3] See, Informal Field Investigation, June 18, 1999, in File No. 38302, official records in the Office of the State Engineer.
[4] See, Informal Field Investigation, April 26, 2005, in File Nos. 37946 and 38302, official records in the Office of the State Engineer.

The State Engineer finds that Deer Spring is fully appropriated under a non-adjudicated vested claim and therefore, Application 37946 may only be approved as a supplemental permit. The State Engineer further finds that there is no water at the source available to satisfy Application 38302.

II.

In regards to the protest, Frank Paxton and Family protested Application 37946 and later filed their own competing application under Application 38302. Frank Paxton and Family later transferred their interest in Application 38302 to the Northern California Financial Service Corporation by quitclaim deed dated March 9, 1983. Ultimately, through a series of ownership transfers, Slagowski Ranches, Inc. became the owner of record for Application 38302. By relinquishing ownership of Application 38302, it is apparent that Frank Paxton and Family no longer have an interest in Deer Spring. This assumption is bolstered by information obtained from the U.S. Bureau of Land Management (BLM) indicating that Frank Paxton and Family are not the current range users or permittees for the South Buckhorn Allotment where Deer Spring is located.[5]

The protest also mentions that predecessors to the protestant made improvements to Deer Spring implying that the protestant now owns these improvements. Two separate field investigations in 1999 and 2005, show that there are no visible improvements to Deer Spring. Additionally, it appears that the protestant transferred any interest in improvements to Deer Spring to succeeding owners in 1983.

The State Engineer finds that the protest to Application 37946 no longer has merit.

III.

Deer Spring lies within the South Buckhorn Grazing Allotment managed by the BLM. This is a shared allotment with five permittees of which Slagowski Ranches, Inc. is one of the five.[6]

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[5] See, BLM letter, August 10, 1999, in File Nos. 37946 and 38302 official records in the Office of the State Engineer.
[6] Ibid.

The State Engineer finds that the applicant is entitled by the proper federal agency to place livestock upon the public range at the proposed point of diversion and place of use described in Application 37946.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[7]

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:[8]

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 protectible 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 stockwatering is a beneficial use and the applicant is one of the current range users of the associated grazing allotment; therefore the approval of Application 37946 would not threaten to prove detrimental to the public interest.

IV.

The only rights filed on Deer Spring are vested claim V-09424 and Applications 37946 and 38302, all of which are in the name of Slagowski Ranches, Inc. Based on field investigations, there is no unappropriated water at the proposed source beyond the amount claimed under V-09424. However, a determination has been made that Application 37946 can be approved supplemental to vested claim V-09424.

The State Engineer concludes that the issuance of Application 37946, supplemental to vested claim V-09424, will not conflict with existing rights.

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[7] NRS chapter 533.
[8] NRS § 533.370(5).

V.

The State Engineer concludes that, with the approval of Application 37946, there is insufficient water at the proposed source to satisfy the requirements of Application 38302; therefore, Application 38302 may be considered for denial.

VI.

The State Engineer concludes that the protest claims against Application 37946 are no longer valid and are without merit.

RULING

The protest to Application 37946 is hereby overruled and said application is approved subject to existing rights and payment of the statutory permit fees. Application 38302 is hereby denied for insufficient water at the proposed source.

Respectfully submitted,

Tracy Taylor, P.E.

TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 31st day of August, 2006.