

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

IN THE MATTER OF APPLICATIONS 82192,)
82194 AND 82195 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF INDIAN CREEK,)
FISH CREEK SPRING AND FISH CREEK)
ROAD SPRING WITHIN THE MIDDLE)
REESE RIVER VALLEY HYDROGRAPHIC)
BASIN (58) LANDER COUNTY, NEVADA.)

RULING
#6329

GENERAL

I.

Application 82192 was filed on October 11, 2012, by Joe Saval Company, LLC, to appropriate 0.0358 cubic feet per second (cfs), not to exceed 5.4 acre-feet annually (afa) of water from Indian Creek for stockwater purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T.27N., R.42E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and portions of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 21.¹

II.

Application 82194 was filed on October 11, 2012, by Joe Saval Company, LLC, to appropriate 0.0358 cfs, not to exceed 5.4 afa of water from Fish Creek Spring for stock watering purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.27N., R.41E., M.D.B.&M. The proposed place of use is described as being located within the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19; the W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20; the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17; the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 16; the S $\frac{1}{2}$ S $\frac{1}{2}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15; the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14; the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 13; the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 12; all within T. 27N., R.41E., M.D.B.&M. and portions of Sections 7, 8, 9, 16, 17 and N $\frac{1}{2}$ of Section 21, T.27N., R.42E., M.D.B.&M.²

¹ File No. 82192, official records in the Office of the State Engineer.

² File No. 82194, official records in the Office of the State Engineer.

III.

Application 82195 was filed on October 11, 2012, by Joe Saval Company, LLC, to appropriate 0.0358 cfs, not to exceed 5.4 afa of water from Fish Creek Road Spring for stockwater purposes. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, T.27N., R.42E., M.D.B.&M. The proposed place of use is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 16.³

IV.

Applications 82194 and 82195 were timely protested by the Ellison Ranching Company, LLC on grounds as summarized below:^{2,3}

1. The points of diversion are located in a common use allotment and the allowance of 1,147 head of cattle during the period of use would result in consumption of all production of the source, which would result in curtailing the grazing use of the Protestant in the area.
2. The Applicant has filed for 1,147 head of cattle on several sources and based on the several applications, would therefore become additive, which is in excess of the permit to graze in the area and beneficial use could not be accomplished.
3. Ellison Ranching Company holds a water right on Fish Creek for irrigation and Fish Creek Road Spring contributes to Fish Creek; therefore, new appropriations on Fish Creek Spring (82194) or Fish Creek Road Spring (82195), for use by that number of cattle and season of use requested, would eliminate the spring's contribution to the flow.

FINDINGS OF FACT

I.

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 Nevada. The State Engineer finds that in the case of Applications 82194 and 82195, 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.

³ File No. 82195, official records in the Office of the State Engineer.

II.

The proposed point of diversion and a significant portion of the place of use of Application 82192 are on public lands within the Carico Lake Grazing Allotment #10003, which has 5 permitted range users; Ellison Ranching Co., C. Ranches Inc., Julian Tomera Ranches Inc., Silver Creek Ranch, Inc., and Filippini Ranching Co. The State Engineer finds that Joe Saval Company, LLC is not listed as an authorized range user within the Carico Lake Grazing Allotment.⁴

III.

The proposed point of diversion and place of use of Applications 82194 and 82195 are on public lands within the Buffalo Valley Grazing Allotment #10021, which has 2 permitted range users, Joe Saval Company, LLC and Ellison Ranching Co. Currently Joe Saval Company, LLC has leased allotment use to Goemmer L & L Buffalo Ranch, LLC. Goemmer L & L Ranching, LLC is authorized for 4,856 AUMs while Ellison Ranching Co. is authorized for 595 AUMs.^{5,6} The State Engineer finds that Ellison Ranching Co. and Joe Saval Company, LLC are permitted range users for the Buffalo Valley Grazing Allotment.

IV.

The source of water under Application 82194 is Fish Creek Spring. This spring is near the headwaters of Fish Creek and is within the Fish Creek drainage.⁷

The source of water under Application 82195 is Fish Creek Road Spring. This spring is approximately 500 feet from the main channel of Fish Creek. A drainage pathway from the spring to the creek is visible in aerial imagery and supports some riparian habitat. The State Engineer finds this spring is a tributary to Fish Creek.⁸

Proof No. V-01569 was filed on May 21, 1918, by Ellison Ranching Company. This filing is an un-adjudicated claim of a pre-statutory vested water right and indicates that water from Fish Creek is used for irrigation, stock watering, and domestic purposes each year. In the

⁴ U.S.D.O.I. Bureau of Land Management Allotment Master Report NV10003 Carico Lake, File No. 82191, official records in the Office of the State Engineer.

⁵ U.S.D.O.I. Bureau of Land Management Allotment Master Report NV10021 Buffalo Valley, File No. 82191, official records in the Office of the State Engineer.

⁶ E-mail from Alden Shallcross, BLM Mt. Lewis Field Office, File No. 82191, official records in the Office of the State Engineer.

⁷ File No. 82194, official records in the Office of the State Engineer.

⁸ File No. 82195, official records in the Office of the State Engineer.

Remarks section of Proof No. V-01569, it states; “all of the water coming down the canyon is used up, and very little goes to waste even in the spring during flood season.”⁹

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹¹

- 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.

Nevada Revised Statute § 533.503 provides that the State Engineer shall not issue a permit to appropriate water for stockwater purposes unless the applicant is legally entitled to place the livestock on the lands for which the permit is sought. The State Engineer concludes that since the Applicant is not legally entitled to place livestock upon the lands comprising the point of diversion and portions of the place of use under Application 82192, he is precluded from issuing a permit by NRS § 533.503.¹²

IV.

The State Engineer recognizes the Protestant’s assertion that their claim of vested right “uses up all the water in Fish Creek” and a formal adjudication proceeding is necessary for a final determination. This ruling does not imply any determination on the merits of the claim of vested right V-01569 and other claims that have been filed on Fish Creek. Proofs of Appropriation remain undetermined claims until their validity is determined through adjudication proceedings. The State Engineer concludes that any new appropriations from the same source

⁹ File No. V-01569, official records in the Office of the State Engineer.

¹⁰ NRS Chapter 533.

¹¹ NRS § 533.370(2).

¹² NRS § 533.503.

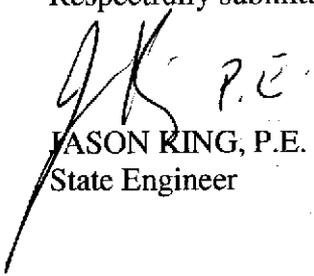
will conflict with existing rights, adjudicated or not. The State Engineer concludes that there is no unappropriated water and granting Applications 82194 and 82195 would conflict with existing rights.

RULING

Application 82192 is hereby denied on the grounds that to approve an application for stockwater purposes where the applicant is not the authorized range user would contravene NRS § 533.503.

The protest is upheld in part and Applications 82194 and 82195 are hereby denied on the grounds that there is no unappropriated water at the source and granting of the applications would conflict with the existing rights.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 11th day of
December, 2015.