

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

IN THE MATTER OF APPLICATION 62893)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF THE STATE OF NEVADA FROM)
AN UNNAMED SPRING WITHIN THE PINE)
VALLEY HYDROGRAPHIC BASIN (053),)
EUREKA COUNTY, NEVADA.)

RULING

4852

GENERAL

I.

Application 62893 was filed on March 3, 1997, by Slagowski Ranches, Inc. to appropriate 0.1 cubic foot per second of water from January 1st to December 31st from an unnamed spring for watering 300 head of cattle within the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, T.27N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T.27N., R.51E., M.D.B.&M. ¹

II.

Application 62893 was timely protested on May 29, 1997, by the United States Department of Interior, Bureau of Land Management (BLM) on the following grounds: ¹

1. This spring is located on the South Buckhorn Allotment on public land. It is a group allotment with five range users. Mr. Slagowski is the main range user in the area where the spring is located, but there are no fences to restrict the other range users' livestock from using this water source.

This spring is located in the southeastern portion of the allotment which has very little water when the intermittent streams dry up. If Slagowski Ranches gets the water rights solely in their name, it could create management problems for BLM, because other users may need to use this source of water and we would have no control over it.

South Buckhorn allotment has a grazing permit for up to 1000 cattle from April 16th to November 30th of each year.

2. This spring is needed for multiple use management. Deer and antelope use this water, as well as other small mammals.

¹ File No. 62893, official records in the office of the State Engineer.

3. This spring was developed without BLM authorization.

4. Current BLM policy is to issue a cooperative agreement for new water developments on public land and for the water rights to be held by the United States (either solely or jointly).

III.

Personnel from the State Engineer's office conducted an informal field investigation at the proposed point of diversion on July 20, 1999. ¹

FINDINGS OF FACT

I.

The Bureau of Land Management advised the State Engineer's office in a letter dated April 23, 1997, that Slagowski Ranches, Inc. was a grazing permittee for the Pine Creek allotment which contained the subject point of diversion and place of use and is authorized by the Bureau of Land Management to graze 100 head of cattle upon the federal range from October 1st to November 14th of each year.¹ On May 23, 1997, the Bureau of Land Management corrected their previous letter by indicating that Slagowski Ranches, Inc., was a grazing permittee for the South Buckhorn allotment which contained the subject point of diversion and place of use, and is authorized by the Bureau of Land Management to graze 1,000 head of cattle upon the federal range from April 16th to November 30th of each year.¹

By letter dated August 10, 1999 the BLM provided information to the office of the State Engineer regarding the range users in several allotments.² The letter provided that the South Buckhorn allotment was a group allotment with five permittees: Slagowski Ranches, Inc., Dominek Pieretti, Hale Bailey, George Penola and Cortez Joint Venture and that the Pine Creek allotment has only Slagowski Ranches, Inc., as a permittee.

The field investigation conducted by personnel from the State Engineer's office found that the place of use is divided by an allotment boundary fence that separates the proposed point of diversion on the northwest side from the stockwater trough on the southeast side. The fence separates the Pine Creek allotment where the point of diversion is located from the South Buckhorn allotment where the trough is located. The investigation found that the spring had been developed by means of a spring box with the entire flow diverted through PVC pipe to the water trough. The spring box was covered over with dirt and rocks at the time of the field investigation.¹

The State Engineer finds that this spring is not tributary to any decreed source nor are there any previous filings in the State Engineer's office on this point of diversion. Since any range permittee is at liberty to file an application to appropriate water for stockwater use as long as they are legally entitled to place the livestock on the public lands for which the permit is sought in accordance with NRS § 533.503(1), the State Engineer finds that the issuance of a permit under Application 62893 will not conflict with any existing rights.

II.

The July 1999 field investigation observed that the flow from this spring is diverted to a water trough which overflows to the ground and that there is nothing which denies wildlife from access to the water. The State Engineer finds that the granting of this permit would not prevent wildlife from access to the waters of the spring nor does the State Engineer waive the provisions of NRS § 533.367 which provides protection for wildlife which customarily use the water.

² File No. 38302, official records in the office of the State Engineer.

III.

The State Engineer does not extend the permittee the right of ingress and egress on public, private or corporate lands. The State Engineer finds that authorization to develop the spring comes upon the State Engineer's approval of the water right and the BLM's policy to issue a cooperative agreement is not within the State Engineer's jurisdiction.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the approval of a stockwater permit to an authorized range permittee would not threaten to prove detrimental to the public interest.

IV.

The approval of an application from a source which is neither tributary to any other waters claimed by any other water users nor

³ NRS Chapter 533.

⁴ NRS § 533.370(3).

Ruling
Page 5

claimed by any other water users would not conflict with existing rights.

RULING

The protest to Application 62893 is hereby overruled and said application is hereby approved subject to the payment of the statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJB/cl

Dated this 18th day of
February, 2000.