



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

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Nevada Fish and Wildlife Office

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APR 19 1994

Memorandum

To: Project Leader, Fish Springs National Wildlife Refuge

Through: Regional Engineer, Region 6

From: Chief, Water Rights Branch

Subject: Public Water Reserve

William A. Gentry
Chief

Jay, I reviewed the information you sent, and then found a much cleaner copy in the files so have attached that for your files. North Spring, as well as Deadman and Walter Springs, was included in the 1912 Public Water Reserve.

The government's intent in creating public water reserves was to provide drinking water for persons and livestock and ensure that one individual could not tie up large blocks of land by appropriating the only water supply in the area. The 1958 memo from the BLM State Supervisor reflects that agency's concern that the Refuge not prevent use of North Spring for stock watering. As well, Public Land Order No. 1942 dated August 19, 1959, which withdrew lands for the Refuge, stated that the withdrawal must not interfere with the continued use of the lands for stock driveway purposes, nor "... stock use of accustomed resting and watering places, including the W1/2SE1/4, Section 3, T11S R14W, and no improvements shall be constructed on the lands as will interfere with such continued use."

I don't know what this does to your fence project, but the water rights implications are not significant. The courts have held that this reservation is only for the amount of water needed for stock use, not for the entire flow of the springs. Therefore, the state-granted water permits, issued subsequent to this Federal reserved water rights reservation, would be valid for the remainder of the water. The Service would also be able to assert a claim for a Federal reserved water right for wildlife Refuge purposes, if it is determined that such a claim is necessary.

Attachments

REC'D

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