

**STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER**

IN THE MATTER OF LICENSING PRE-1907
SURFACE WATER RIGHTS FOR THE PURPOSE OF
WATERING LIVESTOCK WITHIN THE PECOS RIVER,
TULAROSA RIVER, AND SALT RIVER SYSTEMS
WITHIN THE LINCOLN NATIONAL FOREST

ORDER

WHEREAS, private holders of livestock grazing allotments within the Lincoln National Forest in New Mexico have filed with the Office of the State Engineer ("OSE") numerous Declaration of Water Rights forms ("Declarations") for surface water rights for livestock watering purposes of use established prior to March 19, 1907 ("Pre-1907 Stockwatering Water Rights") within the external boundaries of the Lincoln National Forest (Guadalupe, Sacramento, and Smokey Bear Ranger Districts); and

WHEREAS, these claims for Pre-1907 Stockwatering Water Rights, although existing at the time of the adjudication suit, were not considered in and were omitted from the May 8, 1933 Final Decree entered in the suit to adjudicate water rights in the Pecos River stream system, *United States of America v. Hope Community Ditch, et al.*, United States District Court for the District of New Mexico, No. 712 Equity ("Hope Decree"), nor have Pre-1907 Stockwatering Water Rights been adjudicated on the Tularosa River System or Salt River System; and

WHEREAS, issuing licenses to appropriate water pursuant to NMSA 1978, Section 72-5-13 (1907) recognizes Pre-1907 Stockwatering Rights that have not been considered and have been omitted by stream system adjudications that encompass lands located within the Lincoln National Forest; and

WHEREAS, the State Engineer is issuing this order to provide certainty to the owners of Pre-1907 Stockwatering Water Rights within the Lincoln National Forest that have not been adjudicated in stream system adjudications; and

WHEREAS, licenses issued pursuant to this Order for a Pre-1907 Stockwatering Water Right shall recognize a surface water right for livestock to consume water from impoundments or other surface water points of diversion or directly from a surface water source located within the external boundaries of a Lincoln National Forest grazing allotment; and

WHEREAS, licenses issued pursuant to this Order for Pre-1907 Stockwatering Water Rights shall be issued to the private holders of the current grazing allotments within the Lincoln National Forest on which these livestock watering uses are located; and

WHEREAS, the licensed place of use shall be lands within the external boundaries of the current Lincoln National Forest grazing allotments on which these uses are located; and

WHEREAS, the OSE will require a showing of the application of water to beneficial use for livestock watering prior to March 19, 1907 supported by documentation of the maximum number of animal units historically grazed on the given allotment; and

WHEREAS, after the submission of the showing of beneficial use and supporting documentation, the OSE will inspect the place of use and evaluate the claimed beneficial use and pre-1907 priority date; and

WHEREAS, the amount of water licensed shall be based on the amount of water required for the maximum number of animal units historically grazed within the allotment; and

WHEREAS, the licensed purpose of use shall be limited to livestock watering purposes only; and

WHEREAS, consistent with the historical practice of the OSE, the locations of the points of diversion shall be individually identified and described in accordance with the Public Land Survey System (PLSS) and/or X and Y Coordinate System; and

WHEREAS, by a condition imposed by this Order, Pre-1907 Stockwatering Water Rights licensed pursuant to this Order must remain *in situ*, with no change in purpose of use and no change in place of use to a location outside of the external boundaries of the grazing allotment, ensuring that their continuing exercise will not result in impairment to valid and existing water rights; and


WHEREAS, any future changes in points of diversion within the allotment shall require a permit from the State Engineer.

NOW, THEREFORE, IT IS HEREBY ORDERED that all licenses issued by the State Engineer on or after June 9th, 2017 for Pre-1907 Stockwatering Water Rights within the Lincoln National Forest shall be subject to the following conditions, in addition to any specific conditions on the face of the individual licenses:

1. A showing of the application of water to beneficial use for livestock watering prior to March 19, 1907 shall be required prior to issuance of any license; and
2. The licensed Pre-1907 Stockwatering Water Right shall remain *in situ* on the grazing allotment, and the place of use of the licensed right may not be changed by State Engineer permit to a location outside of the external boundaries of the allotment; and
3. The purpose of use of the licensed right may not be changed by State Engineer permit; and
4. Any point of diversion recognized in the license may be changed by State Engineer permit but may not be changed to a location outside of the external boundaries of the grazing allotment.

Witness my hand and official seal of my office, this 9th day of June, 2017.




Tom Blaine, P.E.
State Engineer

Reviewed and approved as to legal content the 9th day of June, 2017.


Gregory C. Ridgley
General Counsel