

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

FILED
SEP 05 2012
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 81982
FILED BY Kassandra Dickerson and Joseph Swift
ON June 26, 2012

PROTEST

Comes now Tim and Margarita DeLong, as co-trustees of the Tim DeLong Family Trust Agreement,
Printed or typed name of protestant
whose post office address is P.O. Box 367,
Street No. or PO Box, City, State and ZIP Code
whose occupation is Rancher and protests the granting
of Application Number 81982, filed on June 26, 2012
by Kassandra Dickerson and Joseph Swift for the
waters of Bathtub/Murder Springs situated in Pershing
an underground source or name of stream, lake, spring or other source
County, State of Nevada, for the following reasons and on the following grounds, to wit:
See attached Exhibit A.

THEREFORE the Protestants requests that the application be Denied
Denied, issued subject to prior rights, etc., as the case may be
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed John R. Zimmerman Agent or protestant
John R. Zimmerman, Esq. Printed or typed name, if agent
Address 50 W. Liberty St., Suite 750 Street No. or PO Box
Reno, NV 89501 City, State and ZIP Code
775-323-1601 Phone Number
jzimmerman@parsonsbehle.com E-mail

Subscribed and sworn to before me this 4th day of September, 2012



Roni L. Shaffer Notary Public
State of Nevada
County of Washoe

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Exhibit A

The Tim DeLong Family Trust Agreement's predecessors used water from these springs to water livestock since as early as the 1860s, as evidenced by the information on file at the State Engineer's Office under Proof of Appropriation V10248. The springs have been used continuously by DeLong Trust's predecessors and the Trust currently relies on these springs as a source of water for its livestock. The DeLong Trust asserts that the springs do not produce a sufficient volume of water to satisfy both its claim of vested right and Application 81982. This conclusion is supported by the fact that Swift and Dickerson's unlawful use of water from the springs has reduced the amount of water stored in the pond that would have been available to the DeLong Trust for stockwatering purposes. Additionally, the DeLong Trust owns Application 81942, which was filed to appropriate any unappropriated water from the springs. The DeLong Trust's Application was filed before Application 81982; and therefore, has priority. Accordingly, the DeLong Trust asserts that there is no water available for appropriation, and therefore, Application 81982 must be denied under NRS 533.370(2).

Additionally, the DeLong Trust's right to use water originating from the springs would be adversely impacted by granting Application 81982. The DeLong Trust has the lawful right to graze cattle on the public domain and it and its predecessors have used the springs for livestock watering, which are a vital part of their grazing privileges, since at least the 1860s. Accordingly, the use of water under Application 81982 will conflict with the DeLong Trust's claim of vested right and it should be denied under NRS 533.370(2).

Also, it would threaten to prove detrimental to the public interest to grant an application to appropriate water from springs that has been relied on and continuously used for stockwatering purposes by the DeLong Trust, which is the only grazing permittee currently authorized to use the allotment in which the springs are situated. Therefore, Application 81982 must be denied pursuant to NRS 533.370(2) because granting it would threaten to prove detrimental to the public interest.

Lastly, the DeLong Trust has filed a lawsuit against the current applicant and is seeking, *inter alia*, the court's determination of the DeLong Trust's claim of vested right to the water produced by the springs. Accordingly, any determination regarding Application 81982 should not be made until the lawsuit is concluded.