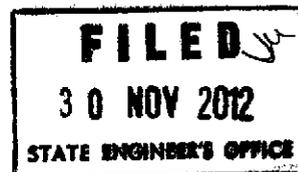


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 82238
FILED BY DeLong Ranches, Inc.
ON October 25, 20 12, TO APPROPRIATE THE
WATERS OF Springs Tributary to Alaska Creek



PROTEST



Comes now Bureau of Land Management

Printed or typed name of protestant

whose post office address is 5100 East Winnemucca Blvd Winnemucca, NV 89445

Street No. or PO Box, City, State and ZIP Code

whose occupation is _____ and protests the granting

of Application Number 82238, filed on October 25, 20 12

by DeLong Ranches, Inc. to appropriate the

waters of Springs Tributary to Alaska Creek situated in Humboldt

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

The new point of diversion (POD) described in application #82238 is located on Federal land which is designated as Wilderness and managed by the Bureau of Land Management (BLM). The Applicant has no jurisdiction or ownership of the land on which the proposed POD occurs. In order to divert water at the new POD for irrigation, the Applicant must have authorization from BLM in the form of a right of way (ROW). No such ROW exists. BLM will not grant a ROW to the Applicant for the reasons outlined in Exhibit A (attached).

THEREFORE the Protestant 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

Agent or protestant

Gerald Dixon (agent)

Printed or typed name, if agent

Address

5100 East Winnemucca Blvd

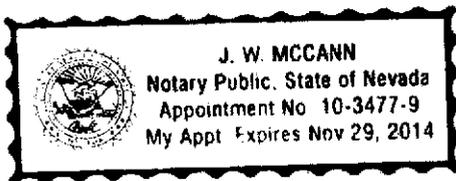
Street No. or PO Box

Winnemucca, NV 89445

City, State and ZIP Code

775-623-1500

Phone Number



Subscribed and sworn to before me this 28th day of November, 20 12 by Gerald Dixon as Field Manager of the BLM Black Rock Field Office.

Notary Public

State of Nevada

County of Humboldt

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

Exhibit A

In regard to the Change Application #82238, the existing point of diversion (POD) in the NE ¼ of the SE ¼ of Section 11 in Township 39N and Range 30E, described in Application #1424 and Certificate #0272, is located on a private parcel and does not affect public resources. The map accompanying Application #1424, dated 06/13/1911, correctly identifies Alaska Creek as flowing from the base of Alaska Canyon to the certificated POD. Application #82238 is intended to change the POD related to Certificate #0272 to the SE ¼ of the SW ¼ of Section 12 in Township 39N and Range 30E. This POD is located on lands managed by the Bureau of Land Management (BLM) which were congressionally delegated as Wilderness in the year 2000. The map accompanying Application #82238, dated 10/25/2012, incorrectly labels the ephemeral reaches of Alaska Creek as "Alaska Ditch". BLM staff conducted on-site inventories of Alaska Creek on 11/21/ 2012 and confirmed that the water channel in question is a natural creek bed rather than an improved ditch. .

The diversion works described in Application #82238 for irrigation water would require authorization from the BLM in the form of a Right of Way (ROW). The following are excerpts from federal documents regarding the management of land within the South Jackson Mountains Wilderness, which includes the proposed POD described in Application #82238:

The Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000 as Amended:

SEC. 8. WILDERNESS.

(a) DESIGNATION- In furtherance of the purposes of the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.), the following lands in the State of Nevada are designated as wilderness, and, therefore, as components of the National Wilderness Preservation System:

(9) Certain lands in the South Jackson Mountains Wilderness Study Area comprised of approximately 56,800 acres, as generally depicted on a map entitled 'South Jackson Mountains Wilderness1' and dated October 3, 2001, and which shall be known as the South Jackson Mountains Wilderness.

(b) ADMINISTRATION OF WILDERNESS AREAS- Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary in accordance with the provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

The Wilderness Act (1964):

SECTION 2(c) A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions

*SECTION 4(c) Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, **and no structure or installation within any such area.***

BLM Manual 6340 Management of BLM Wilderness defines 'installation' as "Anything made by humans that is not intended for human occupation and is left behind when the installer leaves the wilderness."

Section 4(d)(4)(1) of the Wilderness Act, relating to water resources and grazing, provides an exception. "the President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize prospecting for water resources, the establishment and

maintenance of reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest”

BLM Manual 6340 Management of BLM Wilderness Section 1.6(C)(16)(b) states “*No new rights-of-way will be approved unless required by law.*”

It is the opinion of the BLM that :

- 1) No facilities such as head boxes, diversions, dams, or ditches currently exist (as verified on-site on 11/21/2012) at the proposed POD described in Application #82238 and
- 2) The new proposed works would not qualify for a *de jure* ROW under R.S. 2339 or R.S. 2447 and
- 3) The new proposed works would fail to meet the exception criteria of being “needed in the public interest” as determined by the President and
- 4) The new proposed works would create a permanent installation and
- 5) The new proposed works would reduce the naturalness and cause ‘trammeling’ (controlling) of the natural processes within the South Jackson Mountains Wilderness and
- 6) The new proposed works would decrease opportunities for public enjoyment which Congress stated as reasons for designation as Wilderness.

Because of this, the BLM would not grant new authorization, in the form of a ROW, for installation of the diversion works that would be required to apply water to beneficial use under Application #82238.

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