

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

FILED
JUL 15 2016
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 86201
FILED BY Raymond E., Cheryl A., & Chance Kretschmer-1/3int ea
ON May 9, 20 16



PROTEST

Comes now Peavine Ranches, LLC

Printed or typed name of protestant

whose post office address is 1325 Airmotive Way, Suite 125V, Reno, Nevada 89502

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

whose occupation is Ranching and Farming

and protests the granting

of Application Number 86201

, filed on May 9

, 20 16

by Raymond E., Cheryl A., & Chance Kretschmer (each and undivided 1/3 interest)

for the

waters of an underground source

situated in Nye

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 Attachment

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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

Chris N. Facque

Agent or protestant

Chris N. Facque - Farr West Engineering

Printed or typed name, if agent

Address

5510 Longley Lane

Street No. or PO Box

Reno, Nevada 89511

City, State and ZIP Code

State of Nevada

County of Washoe

Subscribed and sworn to before me on 7/15/16

(775) 853-7268

Phone Number

by Chris N Facque

cfacque@farrwestengineering.com

E-mail

Heather Matheus

Signature of Notary Public Required

HEATHER MATHEUS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 92-2189-2 - Expires June 15, 2017

Notary Stamp or Seal Required

**+ \$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

Attachment to Protest under Application Nos. 86200, 86201, and 86202

Filed by Raymond E. Kretschmer, Cheryl A. Kretschmer and Chance Kretschmer (each an undivided 1/3 interest)

The appropriation of water in Nevada is governed by statute which authorizes and requires the State Engineer to regulate such appropriations. Under NRS 533.370(3), the State Engineer must deny applications where there is no un-appropriated water in the proposed source, when the proposed use conflicts with exiting rights, the proposed use is detrimental to the public interest, and/or if the use conflicts with existing domestic wells. Peavine Ranches, LLC, owns existing water rights from and subject to the Peavine Creek Decree under Vested Proof V02225, V02226, and Permit No. 51404. Peavine Ranches, LLC, formally protests Application Nos. 86200, 86201, and 86202 based on the following:

1. Application Nos. 86200, 86201, and 86202 seek to change the point of diversion, place and manner of use of Vested Proof V02225, V02226, and Permit No. 51404. These water rights are a portion of and subject to Findings of Fact, Conclusions of Law and Decree in “The Matter of the Determination of Relative Rights In and To the Waters of Peavine Creek and Its Tributaries, in Nye County, State of Nevada.” In said Decree, the season of use is defined as “March 16th through September 15th” of each year. A change in the manner of use to expand from season to annual for one user on the Decree shall negatively impact and conflict with our existing rights from Peavine Creek. In addition, each user “shall be entitled to deliver sufficient water for stockwatering and domestic purposes during the non-irrigating season...” In order to manage flows on the system and operate dam and storage structures, a consistent irrigation season is needed for users on Peavine Creek.

The proposed changes to the existing points of diversion may also conflict with existing water rights owned by Peavine Ranches, LLC. Application No. 86202 proposes to change the point of diversion from Ditch No. 2, located in the NE1/4 of the NW1/4 of Section 9, T.8N., R.42 E., M.D.M., to a proposed point of diversion located downstream to the NE1/4 of the SW1/4 of Section 16, T.8N., R.42E., M.D.M. Peavine Ranches,

LLC, are concerned that the change in point of diversion from what appears to be an effort to consolidate diversions from Ditch Nos. 2, 3, 4, and the Indian Ditch may impact their ability to divert their Decreed water rights within the priority allotments on the system. The Peavine Creek Decree encouraged use of a rotation schedule to accommodate diversions for each user.

Application Nos. 86200, 86201, and 86202 should be denied on grounds that the proposed use conflicts with existing rights.

2. Application No. 86201 proposes to change the point of diversion from an induction well off Peavine Creek (as indicated under the Nevada Division of Water Resources database under Permit No. 51404) to a percolating groundwater source. Diversions from Peavine Creek are attributed to a stream source, and changes of the point of diversion to a new induction well location would be required to capture the same stream water flows as Decreed. By proposing to capture percolating groundwater exclusively, Application No. 86201 suffers a fatal flaw of seeking to divert water from a different source than originally appropriated under the base right.

Permit No. 51404, Certificate 12843, is a change of Permit No. 18973, which abrogated all of Permit No. 10195, Certificate 2696. The certificate issued under Permit No. 10195 states that the source of the water placed to beneficial use is Peavine Creek, both surface and underground, which indicates an induction well system was in operation as early as 1937.

Further, Big Smoky Valley- Tonopah Flat Hydrographic Basin No. 137A is designated as over-appropriated under State Engineer's Order 725, signed May 14, 1975. Municipal, quasi-municipal, and domestic purposes were designated as the preferred use in a portion of Big Smoky Valley – Tonopah Flat Hydrographic Basin under State Engineer's Order 828, signed November 4, 1983. The total appropriation from a groundwater source in Big Smoky Valley- Tonopah Flat Hydrographic Basin is approximately 23,195.60 acre-feet annually, which exceeds the estimated perennial yield of 6,000 acre-feet annually by

approximately 17,195.60 acre-feet annually. State Engineer's Orders 725 and 828, and the hydrographic basin summaries on file at the Nevada Division of Water Resources indicate that there is no groundwater available at the source for new appropriation.

Application No. 86201 should be denied on the grounds that the proposed use conflicts with existing rights, there is no unappropriated water at the source, and the proposed use is detrimental to the public interest.

Peavine Ranches, LLC, expresses concerns that approval of Application Nos. 86200, 86201, and 86202 would negatively impact their existing rights on Peavine Creek. This protest also argues that changes to these rights have implications to the Peavine Creek Decree, and are concerned that changes to that Decree and the process to re-work the Decree would be onerous and potentially unnecessary. Based on the statements above, Peavine Ranches, LLC, respectfully requests the subject applications be denied.

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