

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

IN THE MATTER OF APPLICATION)
81942 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BATHTUB AKA)
MURDER SPRING WITHIN THE IMLAY)
AREA HYDROGRAPHIC BASIN (72),)
PERSHING COUNTY, NEVADA.)

RULING

#6197

GENERAL

I.

Application 81942 was filed on June 1, 2012, by the Tim DeLong Family Trust Agreement to appropriate 0.0156 cubic feet per second (cfs), or sufficient water for 500 head of cattle from Bathtub a.k.a. Murder Spring. The proposed point of diversion and place of use is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T.32N., R.31E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The United States Department of Interior, Bureau of Land Management (BLM) has created a set of Surface Management Status maps that cover the entire state of Nevada. The Eugene Mountains 1:100,000 map provides coverage for the land comprising the proposed place of use described under Application 81942. An examination of this map identified Section 9, T.32N., R.31E., as a patented or private section that is bordered on all four sides by public land administered by the BLM.²

The first step in determining the owner of said Section 9, is to identify the property by its Pershing County parcel number, which was found to be APN #002-141-12. A search of the Pershing County Assessor's online real property records listed Kassandra Eve Dickerson as its current legal and assessed owner.³

The State Engineer finds that both the point of diversion and place of use described under Application 81942 are located upon land that is not owned by the Applicant.

¹ File No. 81942, official records in the Office of the State Engineer.

² Eugene Mountains 1:100,000-scale topographic map, BLM Edition Surface Management Status, 1995.

³ Pershing County Assessor's Office Real Property Information Website, August 13, 2012.

II.

Application 81942 does not represent the first attempt to secure the waters of Murder Spring for stock watering purposes. An earlier water right filing, Application 14370 was submitted by John E. Smith on June 27, 1952. Applicant Smith requested 0.10 cfs of water from this source to support 150 head of cattle. The filing of this application was timely protested by Barry Duncan and J.O. Hill on several grounds. To resolve this matter, an informal hearing was held before Deputy State Engineer E. J. DeRicco in Lovelock, Nevada on July 30, 1953. From this hearing and from the records of the Office of the State Engineer, together with the records of the Bureau of Land Management, Division of Grazing, Reno, Nevada, the State Engineer determined at the time, that John E. Smith had filed Application 14370 on a spring located on private land on which he held no grazing lease. It was the opinion of State Engineer Shamberger that John E. Smith could not place the water that he had requested from Murder Spring to its intended beneficial use without trespassing on private land. Based, in part, on this finding, Application 14370 was denied.⁴

Fifty-seven years later, several of the issues that were addressed in the 1955 ruling must be revisited. It is recognized that the Applicant holds the federal grazing lease for the public land that borders the Dickerson parcel.⁵ By letter dated August 8, 2012, the State Engineer's office was also advised by Dickerson's counsel that there was no agreement in effect between Dickerson and the Applicant to allow the Tim DeLong Family Trust access to Murder Spring.¹ Without proper access, the State Engineer finds that the Applicant would be unable to place the water requested under Application 81942 to its intended beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁷

⁴ State Engineer's Ruling No. 211, dated June 16, 1955, File No. 14370, official records in the Office of the State Engineer.

⁵ BLM RAS Website, August 13, 2012.

⁶ NRS Chapter 533.

⁷ NRS § 533.370(2).

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

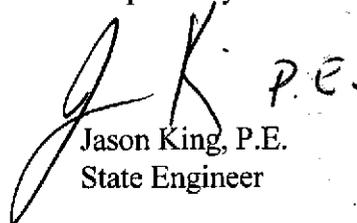
III.

Based on the findings, the State Engineer concludes that the proposed use would threaten to prove detrimental to the public interest.

RULING

Application 81942 is hereby denied on the grounds that the Applicant cannot place the water to beneficial use; therefore, its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

 P.E.
Jason King, P.E.
State Engineer

Dated this 10th day of
October 2012