

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

IN THE MATTER OF APPLICATION)
82361 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNNAMED)
SPRING WITHIN THE PARADISE)
VALLEY HYDROGRAPHIC BASIN (69),)
HUMBOLDT COUNTY, NEVADA.)

RULING

#6267

GENERAL

I.

Application 82361 was filed on December 14, 2012, by David E. and Susan M. Kern to appropriate 0.0093 cubic feet per second (cfs) of water from an Unnamed Spring, to water 300 head of cattle from January 1st to December 31st of each year, which when expanded over a year equates to 6.73 acre-feet annually. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 10, T.42N., R.39E., M.D.B.&M. The proposed place of use is described as being located within the NE¼ NE¼ of Section 15, T.42N., R.39E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The unnamed spring is situated in close proximity to Cottonwood Creek. Cottonwood Creek is documented as a tributary to the Little Humboldt River as decreed by the Sixth Judicial District Court of Nevada in its Findings of Fact, Conclusions of Law and Decree issued May 9, 1935, in, *In the Matter of the Determination of the Relative Rights in and to the Waters of the Little Humboldt River and its Tributaries in Humboldt and Elko Counties* (Decree).² The Decree adjudicated the waters of the stream system as fully appropriated.³

¹ File No. 82361, official records in the Office of the State Engineer.

² *In the Matter of the Determination of the Relative Rights in and to the Waters of the Little Humboldt River and its Tributaries in Humboldt and Elko Counties*, Case No. 3157, Sixth Judicial District Court of the State of Nevada, In and For the County of Humboldt, (May 9, 1935) p. 8.

³ *Ibid.*, p. 10, § XV.

The State Engineer finds that the unnamed spring in proximity to Cottonwood Creek, a tributary to the Little Humboldt River, has been previously adjudicated as fully appropriated and that there is insufficient unappropriated water at the source to grant Application 82361.

II.

Proof of Appropriation No. 0658 (which includes Proof Nos. 0658B and 0658C) as listed in the *Decree*, was filed by G. Peraldo, who claimed pre-statutory vested water rights with priority dates of 1871 for Proof No. 0658C, and 1872 for Proof No. 0658B for irrigation in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.42N., R.39E., M.D.B.&M.⁴ The Decree ordered that all irrigation rights were entitled to use water for stockwater and domestic purposes, limiting stockwater to the use of one-tenth of a cubic foot per second for each one thousand head of stock year-round.⁵ The State Engineer finds that a vested right for irrigation, which includes stockwater use, was previously decreed by the Sixth Judicial District Court in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.42N., R.39E., M.D.B.&M. The State Engineer finds that Application 82361 requests a stockwater right with the same point of diversion as the right previously decreed by the Sixth Judicial District Court. The State Engineer finds that granting Application 82361 would conflict with existing decreed rights.

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 public waters where:⁷

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

⁴ *Ibid.*, pp. 48-49.

⁵ *Ibid.*, p. 10 § XIII; p. 74.

⁶ NRS Chapter 533.

⁷ NRS § 533.370(2).

- 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.

The State Engineer concludes that based upon the Findings of Fact, Conclusions of Law and Decree *In the Matter of the Determination of the Relative Rights in and to the Waters of the Little Humboldt River and its Tributaries in Humboldt and Elko Counties*, there is no unappropriated surface water at the proposed source; therefore, Application 82361 is subject to denial.

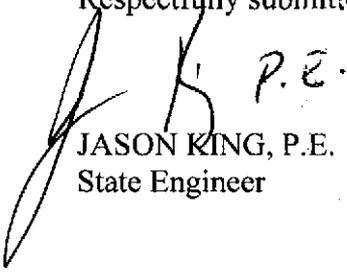
IV.

The State Engineer concludes that based upon the Findings of Fact, Conclusions of Law and Decree *In the Matter of the Determination of the Relative Rights in and to the Waters of the Little Humboldt River and its Tributaries in Humboldt and Elko Counties*, a vested stockwater right was decreed by the Sixth Judicial District Court, and granting Application 82361 would conflict with existing rights.

RULING

Application 82361 is hereby denied on the grounds that no water is available for appropriation at the proposed source and approval would conflict with existing decreed rights.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 7th day of
March, 2014.