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

IN THE MATTER OF APPLICATION 82842 FILED) TO APPROPRIATE THE PUBLIC WATERS OF AN) UNDERGROUND SOURCE WITHIN THE SMITH) CREEK VALLEY HYDROGRAPHIC BASIN (134),) NYE COUNTY, NEVADA.)	**RULING** **#6317**

GENERAL

I.

Application 82842 was filed on May 31, 2013, by Michael A. and Claudia C. Casey to appropriate 0.08 cubic feet per second (cfs), of water from an underground source, known as Penelas Well, for stockwater purposes. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 19, T.14N., R.38E., M.D.B.&M. The proposed place of use is described as being located within T.17N., R.35E., R.36E., R.37E. and R.38E., M.D.B.&M.; T.16N., R.35E., R.36E., R.37E. and R.38E., M.D.B.&M.; T.15N., R.35E., R.36E., R.37E. and R.38E., M.D.B.&M.; T.14N., R.35E., R.36E., R.37E. and R.38E., M.D.B.&M.; T.13N., R.35E., R.36E. and R.37E., M.D.B.&M.; T.12N., R.34E., R.35E., R.36E. and R.37E., M.D.B.&M.; T.11N., R.34E., R.35E., and R.36E., M.D.B.&M; and T.10N., R.35E. and R.36E., M.D.B.&M., and further described as lying within the Eastgate Grazing Allotment.[1]

II.

Application 82842 was timely protested by the United States Bureau of Land Management (BLM) on grounds that the Applicant does not have a grazing permit in the South Smith Creek grazing allotment where the point of diversion and place of use are located, that the range improvement (Penelas Well) is not functional or in use, and that the Penelas Well is owned by White Sage Grazing, LLC, with whom BLM has no record of an agreement between them and the Applicant. Lastly, BLM asserts that the range improvement report for Penelas Well estimated the well production was 8 gallons/minute; therefore, there is insufficient water to fulfill the Applicants' request, which is equivalent to 35 gallons/minute.[1]

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[1] File No. 82842, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. The State Engineer finds that there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and that a hearing on this matter is not required.

II.

On April 22, 2014, the Office of the State Engineer requested that the Applicants provide a copy of a valid grazing permit for the South Smith Creek Grazing Allotment. The Applicants responded and provided maps and a document entitled "Assignment of Range Improvements" from the BLM as support of their claim that they control the Penelas Well.[1] The State Engineer finds that the Assignment of Range Improvements does not identify the Applicants as the assignee nor is the document signed.

The Office of the State Engineer confirmed, via telephone conversation with the BLM, that no official documents were found at BLM that would reverse BLM's position as stated in the protest.[1] Based on the information provided by the Applicant and the BLM, the State Engineer finds that the Applicants do not have access to the public lands where the point of diversion of this water right application is located and that the well located at the point of diversion is owned by the range improver, White Sage Grazing, LLC. The State Engineer further finds that to approve an application where there is no expectation that the Applicant will be able to legally place the water to beneficial use would threaten to prove detrimental to the public interest.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[2]

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[2] NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:[3]

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.

The State Engineer concludes that the Applicant does not have access to the point of diversion or authorization to use the well at the point of diversion; therefore, there is not a reasonable expectation that the water will be legally placed to beneficial use. The State Engineer concludes that the approval of the application when there is not an expectation that the Applicant can place the water to beneficial use threatens to prove detrimental to the public interest.

RULING

The protest to Application 82842 is upheld in part, and the application is hereby denied on the grounds that the approval of the application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest issues.

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 27th day of May, 2015.

[3] NRS § 533.370(2).