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

IN THE MATTER OF APPLICATION)
85626 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF CHERRY SPRING)
#2 WITHIN THE EDWARDS CREEK)
VALLEY HYDROGRAPHIC BASIN (133),)
CHURCHILL COUNTY, NEVADA.)

RULING

#6373

GENERAL

I.

Application 85626 was filed on November 5, 2015, by Paul Plouviez to appropriate 0.02 cubic feet per second (cfs), or sufficient to water 550 head of cattle, of water from a surface-water source identified on the application as Cherry Spring #2 for stock-watering purposes. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 20, T.20N. R.36E., M.D.B.&M., which also the proposed place of use identified on the application.[1]

II.

Application 85626 was timely protested by Michael A. Casey on the following grounds:[1]

> This spring is certificated to us under PMT [sic] 7977 and Cer [sic] 2725. This is a small spring and all the water is appropiated [sic]to us. We own the allotment adjacent and us[sic] this spring yearly.

FINDINGS OF FACT

I.

On June 22, 2016, staff from the Office of the State Engineer conducted a field investigation at Cherry Spring #2. The observations made during this visit are set forth in Report of Field Investigation No. 1235.[1] A review of this report indicates that on this day, the flow of water from Cherry Spring #2 was approximately 10 gallons per minute, which equates to 0.22 cfs. The State Engineer finds that the flow from Cherry Spring #2 is 0.22 cfs.

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[1] File No. 85626, official records in the Office of the State Engineer.

II.

The proposed point of diversion described under Application 85626 was initially thought to locate the spring west of the divide that separates Dixie Valley from Edwards Creek Valley. This would place it in the Dixie Valley Hydrographic Basin. While preparing for the field investigation, a closer examination was made of the maps and aerial imaging of the spring-site.[2] From this examination, it was determined that Cherry Spring #2 was clearly residing in the upper reaches of the Cherry Creek watershed, providing recharge to the Edwards Creek Valley Hydrographic Basin, and the same observation was made during the field investigation; therefore, based upon these facts the State Engineer finds that Cherry Spring #2 is located within the Edwards Creek Valley groundwater basin.

III.

The Nevada Revised Statutes require that before a water right application can be considered for approval, it must be determined, in part, that there is sufficient unappropriated water at the source to satisfy its proposed manner of use.

The amount of unappropriated water, if any, is determined by subtracting the sum of the spring's committed resource from the spring's measured flow rate. The number representing the committed resource is found by adding the diversion rates of all existing water rights that appropriate water from Cherry Spring #2. A search of the records of the Office of the State Engineer identified these water rights as Permit 7977, Certificate 2725 and the unadjudicated claim of vested right, Proof V-10806. Permit 7977 is currently held by Michael A. and Claudia L. Casey, and it was certificated for 0.25 cfs, or sufficient to water 2,000 sheep and 250 head of cattle.[2] Proof V-10806 is also held under the Casey name and has yet to be formally adjudicated by the Office of the State Engineer. It claims an 1885 priority date for 0.04 cfs to provide stock water from Cherry Spring #2. Together Permit 7977, Certificate 2725 and V-10806 represent a combined appropriation of 0.29 cfs.

During the field investigation, it was determined through reliable field techniques that the flow of Cherry Spring #2 was found to be 0.22 cfs. With a committed resource amounting to 0.29 cfs, the State Engineer finds that the Protestant is correct in his contention that the subject spring is fully committed under his senior water rights.

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[2] Nevada Division of Water Resources Interactive Web Map, Permit Search, official records in the Office of the State Engineer.

IV.

A large portion of the public lands of Nevada is utilized by the cattle industry for grazing purposes. To effectively manage this use, the range has in many instances been divided into federal grazing allotments overseen by the United States Department of the Interior, Bureau of Land Management (BLM). In this instance, both the Applicant and Protestant have been authorized by the BLM to place cattle upon their respective grazing allotments. Plouviez currently runs cattle on the Dixie Valley Allotment and Casey is entitled to place his cattle on the Clan Alpine Allotment. A map depicting both of these grazing allotments can be viewed on the BLM's Range Administration website, which clearly shows that Cherry Spring #2 is on the Dixie Valley side of the range fence.[3] However, during the field investigation it was found that the flow of Cherry Spring #2 crosses the nearby range fence and continues into the Clan Alpine Allotment where it is used by the Protestant to support his cattle operation. While not having access to the spring itself, the State Engineer finds that a beneficial use of its water occurs a short distance away under the Protestant's two senior water rights.

V.

The allocation of water from a surface source is accomplished on a priority system where first in time equates to first in use. In other words, a senior water right must be satisfied before water can be appropriated under a junior water right. The priority of a water right permit that was issued for a new appropriation of water is determined by the date it was filed in the office of the State Engineer. The priority date for a claim of vested right, commonly referred to as a "Proof", is determined through the adjudication process. Having a claimed priority date of 1885, Proof V-10806 represents a senior active water right filing on the spring. Next in seniority is Permit 7977, with a January 10, 1927, priority date. Application 85626, if approved, would carry a priority date of November 5, 2015. For this right to be in priority, Cherry Spring #2 would have to generate a sustained flow rate in excess of 0.29 cfs, being the sum of the committed resources under the existing rights. Any appropriation of water by the junior user when the flow rate of the spring is less than 0.29 cfs would be at the expense of senior rights. The State Engineer finds that the approval of Application 85626 would conflict with existing senior water rights on the source, and therefore threatens to prove detrimental to the public interest.

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[3] BLM Range Administration System (RAS) public website, accessed on August 16, 2016.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[4]

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:[5]

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 there is no unappropriated water at the source and that approval of the Application would conflict with existing rights and would threaten to prove detrimental to the public interest.

RULING

The protest to Application 85626 is hereby upheld and Application 85626 is denied on the grounds that there is no unappropriated water at the source, its approval would conflict with existing senior water rights on the source and would threaten to prove detrimental to the public interest.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 2nd day of
November, 2016.

[4] NRS Chapter 533.
[5] NRS § 533.370(2).