

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

IN THE MATTER OF THE APPLICATION)
81137 AND APPLICATION 81221 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
PIGEON SPRINGS WITHIN THE FISH LAKE)
VALLEY HYDROGRAPHIC BASIN (117),)
ESMERALDA COUNTY, NEVADA.)

RULING
#6187

GENERAL

I.

Application 81137 was filed on September 1, 2011, by the Denver Square Trust, later assigned to Denver Square, LLC to appropriate 0.16 cubic feet per second (cfs), not to exceed 30.0 acre-feet annually (afa) of water from Pigeon Springs for the irrigation of 10.0 acres of land described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.6S., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 17.¹

II.

Application 81221 was filed on October 7, 2011, by the Denver Square Trust, later assigned to Denver Square, LLC to appropriate 0.16 cfs of water from Pigeon Springs for the irrigation of 40 acres of land described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.6S., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 17.²

III.

Applications 81137 and 81221 were timely protested by Richard and Patricia Apted and Herman and Colleen Groman, on the grounds that Pigeon Springs is fully appropriated under existing rights.^{1,2}

FINDINGS OF FACT

I.

Nevada Revised Statutes 533.370(2) states, in part, that, "...where there is no unappropriated water in the proposed source of supply, or where its proposed use or change

¹ File No. 81137, official records in the Office of the State Engineer.

² File No. 81221, official records in the Office of the State Engineer.

conflicts with existing rights... the State Engineer shall reject the application and refuse to issue the requested permit.”

To determine if unappropriated water exists at Pigeon Springs, two values need to be calculated, these being its committed resource and its measured stream flow. Committed resource is found by identifying all of the claims of vested right and the permits and certificates that have been issued for appropriations of water from the spring. The sum of their associated diversion rates and/or annual duties of water represent Pigeon Springs’ committed resource, which is calculated below:

<u>File No.</u>	<u>(cfs)</u>	<u>Manner of use</u>	<u>Owner of Record</u>
V-04819	0.040	Stock Water	Denver Square, LLC ³
9431	0.047	Irrigation	Hartsif ^{4, 5}
9431	0.025	Domestic	Hartsif
25289	0.005	Stock Water	Denver Square, LLC ⁶
Total	0.117 cfs		

The second value that must be determined is the amount of sustained flow that is generated by the spring. While the spring has a long history of water use that reaches back many years, only two reliable flow measurements exist in the records of the Office of the State Engineer. Both of these measurements were taken by the Nevada Division of Water Resources, as part of an evaluation of Applications 70508, 81137 and 81221. Application 70508 was filed for a new appropriation of water from Pigeon Springs. A flow measurement taken in April 2004 found the spring flow to be 12.22 gallons per minute (gpm), which converts to 0.027 cfs.⁷ Based upon this level of flow, the State Engineer denied Application 70508 due to the absence of unappropriated water at the source.⁸

³ File No. V-04819, official records in the Office of the State Engineer.

⁴ File No. 9431, official records in the Office of the State Engineer.

⁵ Report of Conveyance to transfer ownership of Permit 9431 to Denver Square LLC is pending confirmation in the Office of the State Engineer.

⁶ File No. 25289, official records in the Office of the State Engineer.

⁷ Report of Field Investigation No. 1059, official records in the Office of the State Engineer.

⁸ State Engineer’s Ruling No. 5599, dated March 16, 2006, official records in the Office of the State Engineer.

A second measurement was taken at Pigeon Springs on March 18, 2012, which indicated that the flow had been reduced to 2.75 gpm or 0.006 cfs.⁹ Spring flow levels are dependent upon many factors, both natural and manmade, but even if the higher value is considered, the amount of appropriated water (0.117 cfs) far exceeds the amount that the spring is capable of producing (0.027 cfs). The issue of ownership of the existing water rights does not change the analysis of whether there is unappropriated water at the source. The State Engineer finds that there is no unappropriated water available at Pigeon Springs to support Applications 81137 and 81221.

II.

Nevada's water law is founded on the principal of prior appropriation, where "first in time equates to first in right." Accordingly, a senior water right must be served before water can be passed to a junior appropriator. A water right is considered to be "in priority" only after the system's senior rights have been served, and the remaining water is of sufficient quantity and duration to meet the needs of the right in question. Being fully committed under existing water rights, the approval of Applications 81137 and 81221 would either mean that these permits would never be in priority or that they would divert water at the expense of the senior water rights held on Pigeon Springs. The State Engineer finds that the approval of Applications 81137 and 81221 would have an adverse impact on existing water rights that appropriate water from Pigeon Springs.

III.

The legal description and location referenced in Application 81137 is incorrect per modern survey ties and bearings and the actual location of Pigeon Springs found in the field by use of GPS. The State Engineer finds Application 81137 does not accurately describe the location of Pigeon Springs; therefore, Application 81137 is subject to denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

⁹ Report of Field Investigation No. 1155 dated May 2, 2012, official records in the Office of the State Engineer.

⁸ NRS Chapter 533.

II.

The State Engineer shall reject an application and refuse to issue a permit to appropriate the public waters where:⁹

- 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.

Applications 81137 and 81221 request appropriations of water from Pigeon Springs, where there are existing water rights on the source. Based on the findings, there is no unappropriated water available and the issuance of additional permits would have an adverse impact on existing rights. The State Engineer concludes that Applications 81137 and 81221 are subject to denial on these grounds.

RULING

The protests are upheld and Applications 81137 and 81221 are hereby denied on the grounds that there is no unappropriated water at the source and the proposed use would conflict with existing rights.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 20th day of
July, 2012.

⁹ NRS § 533.370(2).