

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

IN THE MATTER OF APPLICATION 81163)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF HALTER SPRING WITHIN THE)
FISH LAKE VALLEY HYDROGRAPHIC BASIN)
(117), ESMERALDA COUNTY, NEVADA.)

RULING

#6218

GENERAL

I.

Application 81163 was filed on September 8, 2011, by the Denver Square Trust to appropriate 1.0 cubic feet per second (cfs), not to exceed 269.59 acre-feet annually, of water from Halter Spring. The proposed manner and place of use is for the irrigation of 80.0 acres of land located within the N½ NE¼ of Section 14, T.6S., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 13, T.6S., R.39E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The Office of the State Engineer and the United States Geological Survey have for many years, collected and recorded spring flow data from numerous sites throughout the state. Most of this information relates either to the larger springs within the state, or those that are tributaries to river systems that have been formally adjudicated. A complete record has not been made for the majority of the small, isolated springs that are found throughout the basin and range. A search of the records of the Office of the State Engineer failed to identify any reliable spring flow records specific to Halter Spring.

Given the lack of spring flow data, a decision was made to conduct a field investigation at the proposed point of diversion requested under Application 81163. The purpose of this visit was to determine the amount of water that the spring was currently producing.² Once the spring flow

¹ File No. 81163, official records in the Office of the State Engineer.

² Report of Field Investigation No. 1156, dated May 24, 2012, official records in the Office of the State Engineer.

has been estimated the State Engineer finds that the suitability of the Halter Spring as a source of additional irrigation water can be determined.

II.

The guidelines governing the appropriation and allocation of surface water are set forth within the Nevada Revised Statutes (NRS). Under the provisions of NRS 533.370(2), before an application that requests a new appropriation of water can be considered for approval, it must be determined that there is unappropriated water present at the source. Unappropriated water may be defined as the amount of water that is available for capture once all senior water rights on the source have been fully served, including any customary use of the water by wildlife.³ If the amount of water committed under existing water rights exceeds the amount of sustained flow produced by the source, additional requests for water through the State Engineer's application process are generally denied.

For Halter Spring, the question of unappropriated water is answered through a simple analysis where its committed resource is compared to its estimated or measured flow. A spring's committed resource is represented by the active water rights that appropriate its water. In this instance, it was determined that the following water rights have been filed for appropriations of water from Halter Spring.

Permit 4861, Certificate 7138 (0.007 cfs), Permit 6947, Certificate 2571 (0.025 cfs), Claim of Vested Right V-01868 (0.0065 cfs) and Claim of Vested Right V-04820 (0.04 cfs), all of which are held under the name of the Denver Square Trust LLC. By combining their respective diversion rates, the committed resource of Halter Spring can be calculated to be 0.0785 cfs. It should be noted that the claim of historic water use represented by V-01868, did not have a specific diversion rate stated on the form; however, for the purposes of this ruling an acceptable diversion rate was calculated from the number and types of animals claimed.⁴ The flow from the spring was determined on March 8, 2012, to be, at best, 0.1 cfs.²

It is the Applicant's intention to irrigate 80.0 acres of land and it is not known at this time what classification of crop will be cultivated. Assuming that the proposed place of use will contain pasture grass, it has been determined by the Nevada Division of Water Resources that this would

³ NRS §§ 533.370 and 533.367.

⁴ Files Nos. 4861, 6947, V-01868 and V-04820, official records in the Office of the State Engineer.

require approximately 3.0 – 4.0 acre feet of water per acre of land, at 80.0 acres this equates to 240 – 320 afa of water. Using standard conversion values, a sustained diversion rate of 0.331 – 0.442 cfs would have to be present in Halter Spring to support the proposed manner of use. This compares unfavorably with the 0.021 cfs, that remains after all existing senior water rights on this source have been served. Again, employing standard conversion values, a diversion rate of 0.021 cfs equates to an annual duty of 15.2 acre-feet, which may be sufficient to irrigate approximately 5 acres of low maintained pasture. In addition, sufficient spring flow must be retained at the spring to provide water for any customary use by wildlife. The State Engineer finds that Halter Spring is substantially committed under its existing water rights and that there is not a sufficient amount of unappropriated water remaining to properly support the manner of use requested under Application 81163.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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 finds that there is not sufficient unappropriated water generated by Halter Spring; therefore, Application 81163 does not meet the criteria for approval set forth under the Nevada Revised Statutes.

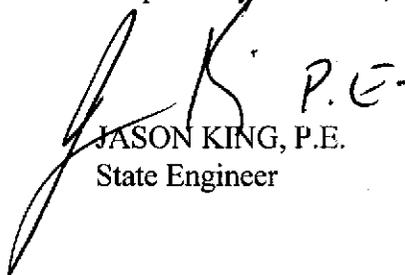
⁵ NRS Chapters 533.

⁶ NRS § 533.370(2).

RULING

Application 81163 is hereby denied on the grounds that there is insufficient unappropriated water available at its source.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 25th day of

March, 2013.