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

IN THE MATTER OF APPLICATION 81982, FILED) TO APPROPRIATE THE PUBLIC WATERS OF) BATHTUB SPRINGS AKA MURDER SPRINGS) WITHIN THE IMLAY AREA HYDROGRAPHIC) BASIN (72), PERSHING COUNTY, NEVADA.)	**RULING** **#6291**

GENERAL

I.

Application 81982 was filed on June 26, 2012, by Kassandra Dickerson and Joseph Swift to appropriate 0.71 gallons per minute of water from Bath Tub Springs a.k.a. Murder Springs for stock watering purposes. Both the proposed point of diversion and place of use are located within the NE¼ NE¼ of Section 9, T.32N., R.31E., M.D.B.&M.[1]

II.

Application 81982 was timely protested by the DeLong Family Trust Agreement on grounds summarized as follows:[1]

> 1. The Tim DeLong Family Trust Agreement owns Proof of Appropriation V10248 on these springs. The DeLong Trust asserts that these springs do not produce a sufficient volume of water to satisfy both its claim of vested right and Application 81982. Additionally, the DeLong Trust owns Application 81942, filed to appropriate any unappropriated water from the springs, and Application 81942 is senior to Application 81982. Accordingly, there is no water available for appropriation and Application 81982 must be denied.
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> 2. The DeLong Trust's right to use water originating from the springs would be adversely impacted by granting Application 81982. The DeLong Trust has the lawful right to graze cattle on the public domain where it and its predecessors have used the springs for livestock watering. Accordingly, Application 81982 will conflict with existing rights.
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> 3. It would threaten to prove detrimental to the public interest to grant an application to appropriate water from springs that has been relied on and continuously used for stockwatering, where the DeLong Trust is the only grazing permitee currently authorized to use the allotment where the springs are situated.

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[1] File No. 81982, official records in the Office of the State Engineer.

4. The DeLong Trust has filed a lawsuit against the current applicant and is seeking a court determination of the Trust's claim of vested right to the water produced by the springs. Accordingly, any determination on Application 81982 should not be made until the lawsuit is concluded.

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 a hearing on this matter is not required.

II.

The United States Department of the Interior, Bureau of Land Management (BLM) has created a set of Surface Management Status Maps that cover the state of Nevada. The Eugene Mountains 1:100,000 scale map provides coverage for the land comprising the proposed place of use described under Application 81982. An examination of this map identified Section 9, T.32N., R.31E., as a patented or private section that is bordered on all four sides by public land administered by the BLM. The owner of Section 9 was identified by its Pershing County parcel number, which is APN #002-141-12. A search of the Pershing County Assessor's on-line real property records listed the Delong Family Trust as the current and assessed owner.[2]

A quitclaim deed received in the Office of the State Engineer on June 27, 2014, confirms that title to Section 9 was acquired by the DeLong Family Trust on May 30, 2013, from Kassandra Eve Dickerson.[1] The State Engineer finds that both the point of diversion and place of use described under Application 81982 are located upon land that is not owned by the Applicants.

III.

Nevada Revised Statute § 533.503 addresses the requirements for stockwatering permits, and states in part, that:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

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[2] Pershing County Assessors on-line real property database (accessed July 22, 2014).

(a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
(1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
(2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;

(b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and

(c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

IV.

Information obtained from the BLM's Rangeland Administration System (RAS) website confirms that the Applicants are not entitled to place their cattle upon the federal grazing allotment adjacent to Section 9 where the water source is located.[3] The State Engineer finds that the Applicants are not legally entitled to place livestock on private land owned by the Protestant; nor are the Applicants legally entitled to place livestock on the adjacent federal grazing allotment.

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 an application to appropriate the public waters where:[5]

A. there is no unappropriated water at the proposed source;

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[3] BLM RAS website, Master Allotment Report (accessed July 23, 2014).
[4] NRS Chapters 533.
[5] NRS § 533.370(2).

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 approval of Application 81982 is prohibited by NRS § 533.503(1) where Applicants have no legal right to graze cattle on Section 9 or the adjacent grazing allotment accordingly, granting the Application would threaten to prove detrimental to the public interest.

RULING

The protest to Application 81982 is upheld in part, and Application 81982 is hereby denied on the grounds that to approve an application for stockwater purposes where the Applicants are not legally entitled to place livestock on the lands for which the permit is sought, would threaten to prove detrimental to the public interest. No ruling is made on the merits of the remaining protest grounds.

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 4th day of September, 2014.