

IN THE MATTER OF APPLICATIONS 13060 and 13061)
FILED BY F. M. AND L. E. SCHMIDTLEIN TO APPRO-)
PRIATE THE WATERS OF KINGSTON CREEK (AKA BIG) R U L I N G
SMOKY CREEK) IN LANDER COUNTY, NEVADA)

GENERAL:

Application 13060 was filed September 27, 1949 by F. M. and L. E. Schmidtlein to appropriated 2.80 c.f.s., of the waters of Big Smoky Creek for irrigation and domestic use. The point of diversion is described as being in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 29, T. 16 N., R. 44 E., M.D.B.&M., and the place of use to be the SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 16 and NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, T. 16 N., R. 44 E., M.D.B.&M. The period of use is from January 1 to December 31 of each year.

Application 13061 was filed September 27, 1949 by F. M. and L. E. Schmidtlein to appropriate 2.80 c.f.s., of the waters of Big Smoky Creek for irrigation and domestic use. The point of diversion is described as being in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24, T. 16 N., R. 44 E., M.D.B.&M., and the place of use to be the S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ Sec. 24, T. 16 N., R. 44 E., M.D.B.&M. The period of use is from January 1 to December 31 of each year.

Applications 13060 and 13061 were protested January 9, 1950 by G. L. Morris, H. P. Gower and George Ishmael on the grounds "That the protestants claim and are entitled to all of the water of said Smoky Creek for irrigation, domestic and stock watering purposes".

The waters of Kingston Creek were adjudicated, the decree being issued March 22, 1963.

A field investigation was made of the protested applications on August 2, 1967.

Flow records indicate that water in excess of the total amount granted in the Kingston Creek Decree, flows in Kingston Creek.

RULING

The protests to the granting of Applications 13060 and 13061 are herewith overruled and permits will be issued upon receipt of the statutory permit fees, for acreages controlled by the applicants.

On Application 13060, the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, T. 16 N., R. 44 E., M.D.B.&M., is included in the place of use. Since the applicant does not control these lands, the permit will not include these lands. The acreage in the permit for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, will be limited to 1.09 acres of harvest crop as specified in the decree.

On Application 13061, the NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 24, T. 16 N., R. 44 E., M.D.B.&M., is included in the place of use. Since the applicant does not control these lands, they will be excluded from the permit. The acreage in the permit for the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 24, will be for 23.03 acres of harvest crop and for the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 24, will be for 6.83 acres of harvest crop as specified in the decree.

The total acre-feet duty of water for lands to be issued a permit under Applications 13061 and 13061 is 4.0 acre-feet per acre.

Respectfully submitted


Roland D. Westergaard
State Engineer

RDW:SH:hs

Dated this 31st day of
July, 1968