

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 36172,) 36218, 36219, 36220, 36221, 36222, 36223 AND) 36224 FILED TO APPROPRIATE THE PUBLIC) WATERS OF UNNAMED SPRINGS IN EAGLE) VALLEY, CARSON CITY, NEVADA.)

RULING

GENERAL

Application 36172 was filed on November 15, 1978, by James H. Lathrop, Sr., to appropriate 0.05 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Application 36218 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 28, T.15N., R.19E., M.D.B.&M.¹

Application 36219 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Application 36220 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Application 36221 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Application 36222 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 36223 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Application 36224 was filed on November 30, 1978, by James H. Lathrop, Sr., to appropriate 0.07 c.f.s. of water from an Unnamed Spring for irrigation and domestic purposes on 200 acres of land within the S1/2 NW1/4, N1/2 SW1/4, SE1/4 SW1/4 Section 27; NW1/4 NW1/4 Section 34, T.15N., R.19E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 27, T.15N., R.19E., M.D.B.&M.¹

Applications 36172, 36218, 36219, 36220, 36221, 36222, 36223 and 36224 were timely protested by Carson City, Robert W. Shultz and the United States Bureau of Indian Affairs on the grounds that these springs are tributary to Clear Creek, a fully appropriated, decreed stream system.

FINDINGS OF FACT

I.

The sources of water under Applications 36172, 36218, 36219, 36220, 36221, 36222, 36223 and 36224 rise in the mountains of the Clear Creek drainage basin appearing at an elevation above 6000 feet.²

II.

Written and oral communication with the applicant indicates that he filed the applications only to prevent others from appropriating water he had always used under existing decreed rights and that he intended only to use the water on the same cultivated lands with no interest of expansion.³

III.

Clear Creek has been adjudicated in the Second Judicial District Court and the rights thereunder are set by decree which prohibits any person or party from diverting water other than to the rights set by the decree.⁴

CONCLUSIONS

I.

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

² U.S.G.S. 7-1/2 Minute Topographic Map "Carson City Quadrangle".

³ See partial report of field investigation and letter from applicant dated June 27, 1979, filed under Application 36172, public record in the office of the State Engineer.

⁴ Fredrick Danberg and Charles Schultz v. Henry Ross, et al., Case No. 1020, Second Judicial District Court, July 22, 1872, Judge C.N. Harris.

⁵ NRS 533.025 and NRS 533.030(1).

II.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

The lands sought to be irrigated by Applications 36172, 36218, 36219, 36220, 36221, 36222, 36223 and 36224 have been irrigated for many years under existing decreed rights and the flow from the springs continue on down the canyon to make up a tributary to Clear Creek.⁷

RULING

The protests to Applications 36172, 36218, 36219, 36220, 36221, 36222, 36223 and 36224 are hereby upheld and said applications are hereby denied on the grounds that approval would constitute an additional appropriation which would impair the value of existing decreed rights and that the sources and lands sought in the appropriations are the subject of and covered by rights under the Clear Creek Decree.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/MT/bl

Dated this 30th day of
May, 1985.

⁶ NRS 533.370(3).

⁷ See memo to the file of examination made May 10, 1985, filed under Application 36172, public record in the office of the State Engineer.