

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

IN THE MATTER OF APPLICATIONS)
50430, 50431, 50432, AND 50433)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM UNNAMED STREAMS NO.1,)
2, and 3 WITHIN THE LEMMON VALLEY)
(WESTERN PART) HYDROGRAPHIC BASIN)
(92A), WASHOE COUNTY, NEVADA.)

RULING

5027

GENERAL

I.

Application 50430 was filed on December 18, 1986, by Harold C. Heitmiller to appropriate 3.0 cubic feet per second of water from Unnamed Streams No. 1, 2, and 3 for quasi-municipal purposes (injection well) within the N $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all within Section 7, T.20N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 7, T.20N., R.19E., M.D.B.&M.¹

II.

Application 50431 was filed on December 18, 1986, by Harold C. Heitmiller to appropriate 1.0 cubic foot per second of water from Unnamed Stream No. 1 for quasi-municipal purposes within the N $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all within Section 7, T.20N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.20N., R.18E., M.D.B.&M.²

¹ File No. 50430, official records in the office of the State Engineer.

² File No. 50431, official records in the office of the State Engineer.

III.

Application 50432 was filed on December 18, 1986, by Harold C. Heitmiller to appropriate 1.0 cubic foot per second of water from Unnamed Stream No. 2 for quasi-municipal purposes within the N $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all within Section 7, T.20N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.20N., R.18E., M.D.B.&M.³

IV.

Application 50433 was filed on December 18, 1986, by Harold C. Heitmiller to appropriate 1.0 cubic foot per second of water from Unnamed Stream No. 3 for quasi-municipal purposes within the N $\frac{1}{2}$ SW $\frac{1}{4}$, a portion of the SE $\frac{1}{4}$, a portion of the NW $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, all within Section 7, T.20N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.20N., R.18E., M.D.B.&M.⁴

V.

Application 50431 was timely protested on May 8, 1987, by W.W. Waters on the grounds that the stream when running is used by Mr. Waters to work his patented claim and 3 unpatented claims in the area of T.20N., R.23E., M.D.B.&M., and further, that removal of the willows in the area would cause excessive erosion in wet years.

VI.

Applications 50431, 50432, and 50433 were timely protested on May 8, 1987, by the Washoe County Utility Division on the grounds that Washoe County has pending senior Applications 47210 through 47219, inclusive, and

³ File No. 50432, official records in the office of the State Engineer.

⁴ File No. 50433, official records in the office of the State Engineer.

50623 through 50631, inclusive, to appropriate the waters of Heitmiller's applications.

VII.

Application 50432 was timely protested on May 8, 1987, by J.R. McGathey on the grounds that the stream, when running, is used by J.R. McGathey to work his patented claim, the Paymaster #41 in the area of T.20N., R.24E., the Paymaster #41 Patented 1877, for exclusive use of water in Horse Creek, and removal of the willows in the area would cause excessive erosion in wet years.

VIII.

Application 50433 was timely protested on May 8, 1987, by J.R. McGathey on the grounds that the stream and spring located on patented claim, known as the Denver, and when running, the water is used by J.R. McGathey to work that claim and the Paymaster #41, the Paymaster #41 Patented 1877, for exclusive water rights, and removal of the willows in the area would cause excessive erosion in wet years.

IX.

Application 50433 was timely protested on May 11, 1987, by Loren E. Burnett on the following grounds:

1. Water right appropriated to patented claims upstream from project.
2. No access across patented land to or from diversion.
3. Stream bed south of project are contaminated.

X.

Application 50433 was timely protested on May 11, 1987, by Carl C. Wikstrom on the following grounds:

1. Water right appropriated to patented claims upstream from project.
2. No access across patented land to or from diversion.
3. Stream bed south of project area contaminated.

FINDINGS OF FACT

I.

The applicant was requested by certified letter dated December 21, 2000, to provide the office of the State Engineer with evidence that he still has an interest in pursuing Applications 50430, 50431, 50432, and 50433. The applicant was also informed that if a response was not received within 60 days from the date of the letter, the applications may be considered for denial. The December 21, 2000, letter was returned by the United States Postal Service to the office of the State Engineer with the envelope stamped "Not Deliverable as addressed, unable to Forward."¹ "Deceased" was also handwritten on the envelope.¹ The State Engineer finds that to date no information indicating any further interest by the applicant in pursuing Applications 50430, 50431, 50432, and 50433 has been received in the office of the State Engineer.

II.

It has been a long standing policy within the office of the State Engineer that it is the applicant's responsibility to inform said office of any changes which may occur in the ownership and address associated with a specific water right application. The State Engineer finds that the owner of record under Applications 50430, 50431, 50432, and 50433 was properly noticed of the opportunity to express his continued interest in pursuing Applications 50430, 50431, 50432, and 50433, but has failed to do so; therefore, Applications 50430, 50431, 50432, and 50433 may be considered for denial.

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 a permit to appropriate the public waters where:⁶

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

III.

On December 21, 2000, the applicant was requested by the office of the State Engineer to provide information as to his continued interest in pursuing Applications 50430, 50431, 50432, and 50433. The applicant was informed that a failure to respond to the request would represent a lack of interest in this matter and would result in said applications being considered for denial. The applicant failed to provide any indication that he intends to move forward with Applications 50430, 50431, 50432, and 50433. The State Engineer concludes that it would threaten to prove detrimental to the public interest to approve applications which the applicant no longer intends to pursue.

⁵ NRS chapter 533.

⁶ NRS § 533.370(3).

RULING

Applications 50430, 50431, 50432, and 50433 are hereby denied on the grounds that granting said applications would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MJR/hf

Dated this 29th day of

May, 2001.