

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

IN THE MATTER OF APPLICATION 46945)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE, AND)
MANNER OF USE OF APPLICATION 26950)
FILED TO CHANGE THE POINT OF)
DIVERSION OF WATER PREVIOUSLY)
APPROPRIATED UNDER CLAIM 02388,)
FROM SMALL'S (EDGEWOOD) CREEK AND)
TRIBUTARIES WITHIN THE LAKE TAHOE)
BASIN HYDROGRAPHIC BASIN (090),)
DOUGLAS COUNTY, NEVADA.)

RULING

5036

GENERAL

I.

Application 26950 was filed on September 6 1972, by Nev. ALU Inc. to change the point of diversion of 0.18 cubic feet per second of water from Edgewood Creek previously appropriated under Proof 02388. The proposed manner of use is for irrigation, stockwatering, and domestic purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.13N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.13N., R.18E., M.D.B.&M.¹

II.

Application 46945 was filed on May 23, 1983, by Round Hill Associates, Inc. to appropriate 0.18 cubic feet per second of water from Edgewood Creek, a tributary to Lake Tahoe, previously applied for under Application 26950. The proposed manner of use is quasi-municipal purposes within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of

¹ File No. 26950, official records in the office of the State Engineer.

Section 15, T.13N., R.18E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 15, T.13N., R.18E., M.D.B.&M.²

III.

Application 26950 was timely protested by the Nevada Department of Fish and Game. The basis of the protest is that the source of water is a trout bearing creek and transfer of water could impair their habitat.

IV.

Application 46945 was timely protested on September 8, 1983, by Park Cattle Co. The basis of the protest is that the protestant believes that granting the application will interfere with their existing rights.

FINDINGS OF FACT

I.

The applicants were requested by certified letters dated February 8, 2001, to provide the office of the State Engineer with evidence that they still have an interest in pursuing Applications 26950 and 46945. The applicants were also informed that if a response was not received within 60 days from the date of the letters, the applications may be considered for denial. The February 8, 2001, letters were returned to the office of the State Engineer with the envelopes stamped "Return to Sender No Such Address" and "Unknown at Address" by the United States Postal Service.¹ The State Engineer finds that to date no information indicating any further interest by the applicants in pursuing Applications 26950 and 46945 has been received in the office of the State Engineer.

² File No. 46945, official records 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 owners of record under Applications 26950 and 46945 were properly noticed of the opportunity to express their continued interest in pursuing Applications 26950 and 46945, but have failed to do so; therefore, Applications 26950 and 46945 may be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:⁴

- 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 February 8, 2001, the applicants were requested by the office of the State Engineer to provide information of continued interest that they may have in pursuing Applications 26950 and 46945. The applicants were 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 applicants

³ NRS chapter 533.

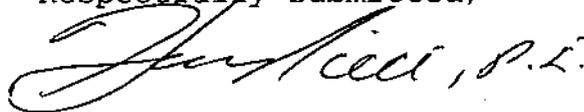
⁴ NRS § 533.370(3).

failed to provide any indication that they intend to move forward with Applications 26950 and 46945; therefore, the State Engineer concludes that it would threaten to prove detrimental to the public interest to approve applications for which the applicants no longer intend to pursue.

RULING

Applications 26950 and 46945 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 19th day of
June, 2001.