

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

IN THE MATTER OF APPLICATION)
26412 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF OPHIR CREEK AND)
TRIBUTARIES LOCATED WITHIN THE)
WASHOE VALLEY HYDROGRAPHIC BASIN)
(89), WASHOE COUNTY, NEVADA.)

RULING
#5842

GENERAL

I.

Application 26412 was filed on November 19, 1971, by Washoe County to appropriate 3.0 cubic feet per second of water from Ophir Creek and its tributaries for recreation, propagation of fish and wildlife, and domestic purposes. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 34, T.17N., R.19E, M.D.B.&M. The proposed place of use is described as being located within the SW¼ NE¼ and W½ SE¼ of Section 27 and the W½ SE¼ of Section 34, all in T.17N., R.19E., M.D.B.&M. and includes Fish Pond, now known as Davis Park Lake.¹

FINDINGS OF FACT

I.

Application 26412 proposes to appropriate the waters of Ophir Creek and its tributaries. Ophir Creek and its tributaries have been adjudicated in accordance with NRS §§ 533.090 through 533.320. Judge John W. Barrett of the Second Judicial District Court of the State of Nevada in and for the County of Washoe issued in the final decree in *The Matter of the Determination of the Relative Rights in and to the Waters of Ophir Creek and Its Tributaries in Washoe*

¹ File No. 26412, official records in the Office of the State Engineer.

County, February 13, 1984.² The State Engineer finds that the final decree on the waters of Ophir Creek and its tributaries adjudicated all claims to all the waters of the Ophir Creek stream system leaving no water available for appropriation pursuant to Application 26412.

II.

Under vested right V-02713, as adjudicated under the final decree on the waters of Ophir Creek and its tributaries, Washoe County was granted waters from Ophir Creek and its tributaries for recreation and propagation of fish and wildlife at the same point of diversion described in Application 26412 and for a place of use that also contains Fish Pond as described in Application 26412. The State Engineer finds that waters from Ophir Creek and its tributaries have already been allocated to Washoe County for maintenance of Davis Park Lake and associated fish and wildlife.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this 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;

² Findings of Fact, Conclusions of Law, Judgment and Decree, *In the Matter of the Determination of the Relative Rights in and to the Waters of Ophir Creek and Its Tributaries in Washoe County, Nevada*, Case No. 319562, Second Judicial District Court of Nevada, in and for the county of Washoe, February 13, 1984.

³ NRS chapter 533.

⁴ NRS § 533.370(5).

- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible 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 the water proposed to be appropriated under Application 26412 has already been accounted for under the final decree on the waters of Ophir Creek and its tributaries.

IV.

The State Engineer concludes that there is no unappropriated water available from Ophir Creek and its tributaries and that any additional appropriations would impair the value of and conflict with existing decreed rights.

RULING

Application 26412 is hereby denied on the grounds that there is no unappropriated water at the proposed source and that it would conflict with existing rights.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MJW/jm

Dated this 13th day of
May, 2008.