

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

IN THE MATTER OF APPLICATIONS)
40847, 40848 AND 40849 FILED TO)
CHANGE THE POINT OF DIVERSION,)
TIME AND PLACE OF USE OF THE)
WATER PREVIOUSLY APPROPRIATED)
UNDER PERMIT 1866, CERTIFICATE 370,)
PERMIT 3231, CERTIFICATE 821 AND)
PERMIT 1709, CERTIFICATE 331 IN THE)
STEPTOE VALLEY HYDROGRAPHIC)
BASIN (179), WHITE PINE COUNTY,)
NEVADA.)

RULING
#5939

GENERAL

I.

Application 40847 was filed on March 7, 1980, by Kennecott Copper Corporation to change the point of diversion, time and place of use of 12.11 cubic feet per second (cfs) of the water of Steptoe Slough previously appropriated under Permit 1866. The proposed place of use is described as being located within Sections 9, 10, 15, 16, 22, 27, and 34, T.19N., R.63E., 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 35, T.19N., R.63E., M.D.B.&M.¹

II.

Application 40848 was filed on March 7, 1980, by Kennecott Copper Corporation to change the point of diversion, time and place of use of 24.971 cfs of the water of Steptoe Slough previously appropriated under Permit 3231. The proposed place of use is described as being located within Sections 9, 10, 15, 16, 21, 22, 27, and 28, T.19N., R.63E. 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 35, T.19N., R.63E., M.D.B.&M.²

III.

Application 40849 was filed on March 7, 1980, by Kennecott Copper Corporation to change the point of diversion, time and place of use of 4.454 cfs of the water of Steptoe Slough previously appropriated under Permit 1709. The proposed place of use is described

¹ File No. 40847, official records in the Office of the State Engineer.

² File No. 40848, official records in the Office of the State Engineer.

as being located within Sections 10, 15 and 34, T.19N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 35, T.19N., R.63E., M.D.B.&M..³

IV.

Applications 40847, 40848 and 40849 were timely protested by Loran W. and Christine Deming, and Irene T. and Gordon V. Foppiano on grounds not to be considered in this ruling.^{1, 2, 3.}

FINDINGS OF FACT

I.

The State Engineer finds that on November 2, 1992, the records of the Division of Water Resources indicated that the water rights these applications seek to change were assigned into the name of Kennecott Copper Corporation. However, by letter dated January 9, 2004, the State Engineer notified Kennecott of a problem regarding the change applications and the rights they seek to change as not being in the exact name of the same owner. Kennecott was given options of how this matter could be resolved. By letter dated January 26, 2004, legal counsel for Kennecott Corporation informed the State Engineer that he would be representing Kennecott and that they were aware of the chain of title and various problems therein. Legal counsel requested the State Engineer “forebare [sic] taking any immediate action.” By letter dated June 28, 2004, the State Engineer contacted legal counsel for Kennecott to again address the title issues. The State Engineer finds that, to date, the title issues have not been resolved; thereby making the change applications subject to denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:⁵

³ File No. 40849, official records in the Office of the State Engineer.

⁴ NRS chapter 533.

⁵ NRS 533.370(5).

- A. there is no unappropriated water at the proposed source;
- 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 it would threaten to prove detrimental to the public interest to permit a water right application for which the applicant cannot demonstrate a clear chain of title to the water rights being requested for change.

RULING

Applications 40847, 40848 and 40849 are hereby denied on the grounds that their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


TRACY TAYLOR, P.E.
FOR State Engineer

TT/SJT/jm

Dated this 10th day of
February, 2009.