

IN THE MATTER OF APPLICATION 40425)
FILED BY THE UNITED STATES OF)
AMERICA - FOREST SERVICE FOR THE)
WATERS OF SIERRA CREEK IN DOUGLAS)
COUNTY, NEVADA.)

RULING

GENERAL

Application 40425¹ was filed on January 29, 1980, by the United States of America - Forest Service for permission to appropriate .015 c.f.s. of water from Sierra Creek for wildlife purposes. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 4, T.13N., R.19E., M.D.B.&M.; the proposed place of use is within the NE1/4 SW1/4, NW1/4 SW1/4 and SW1/4 NW1/4 Section 4; SE1/4 NE1/4, NE1/4 NE1/4 and NW1/4 NE1/4 Section 5, all in T.13N., R.19E., M.D.B.&M. The application became ready for action on October 4, 1980.

FINDINGS OF FACT

I.

A Decree dated August 29, 1879 was entered in the District Court of the Second Judicial District of the State of Nevada, County of Douglas, which provides for the diversion of water customarily flowing in Sierra Creek.

In a decision dated April 1, 1885, the Supreme Court of the State of Nevada affirmed the judgment of the District Court (Case No. 1081).²

II.

Although there may be periods of time of limited duration when there is excessive water, or water in excess of that "customarily" flowing in Sierra Creek, the evidence gathered in a field investigation³ held on July 12, 1966, indicates there is no unappropriated natural flow of water remaining in the stream.

¹ Application 40425 is a public record on file in the office of the State Engineer.

² Joseph Jones vs. John Q. Adams, Nevada State Supreme Court, 1885 (Case No. 1081).

³ A report of the field investigation held on July 12, 1966, is a public record filed with the Sierra Canyon Creek Adjudication in the office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this application.⁴

II.

The State Engineer is prohibited by law from granting a permit where:⁵

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

III.

The source of water of Application 40425 is Sierra Creek, which has been decreed in District Court and has been declared fully appropriated.

RULING

Application 40425 is hereby denied on the grounds that there is no unappropriated water in the source.

Respectfully submitted



Peter G. Morros
State Engineer

PGM/GC/bl

Dated this 13th day of
JULY, 1984.

⁴ NRS 533.325.

⁵ NRS 533.370, subsection 3.