

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

IN THE MATTER OF APPLICATION 38405)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF NIGGER CREEK (AKA)
NEGRO CREEK) WITHIN THE HUALAPAI)
FLAT HYDROGRAPHIC BASIN (24),)
WASHOE COUNTY, NEVADA.)

RULING

#6200

GENERAL

I.

Application 38405 was filed on June 21, 1979, by Fred E. Chez, and later assigned to High Rock Holding, LLC, to appropriate 10 cubic feet per second (cfs) not to exceed 900 acre-feet annually, of water for the irrigation of 220 acres of land and domestic purposes. The proposed place of use is described as being located within portions of Sections 28 and 33, T.36N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 28.¹

FINDINGS OF FACT

I.

Before an application to appropriate water can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the appropriation will not conflict with existing water rights. One of the initial steps in making this determination is to identify all active water rights on the stream in question. The Office of the State Engineer has a searchable water rights database to allow research of existing water rights. A recent review of the database shows existing water rights on Negro Creek, as follows:

Permit 5733	Certificate 1146	0.821 cfs	246.18 acre-feet annually
Permit 9463	Certificate 4786	0.400 cfs	54.16 acre-feet annually
Permit 11145	Certificate 4787	<u>0.500 cfs</u>	<u>167.32</u> acre-feet annually
		1.721 cfs	467.66 acre-feet annually

¹ File No. 38405, official records in the Office of the State Engineer.

Measurements of Negro Creek show that the average annual run-off is 230 acre-feet,² which is less than half of the total duty of existing water rights on the source.

On September 23, 2009, the Office of the State Engineer issued Field Investigation Report No. 1119. This report investigated numerous applications and their respective water sources. In the case of Application 38405, an inspection at the proposed point of diversion found water flowing at 0.61 cfs, as measured with a Pygmy current meter on May 21, 2009. The field investigation concludes that there is no available water for Application 38405 to be granted.

On June 28, 2012, the Office of the State Engineer issued Field Investigation Report No. 1159. This report investigated numerous applications and their respective water sources. In the case of Application 38405, an inspection at the proposed point of diversion found water flowing at 0.70 cfs, as measured with a Pygmy current meter on March 28, 2012.

On August 16, 2012, the Office of the State Engineer issued Field Investigation Report No. 1164. This report investigated numerous applications and their respective water sources. In the case of Application 38405, an inspection at the proposed point of diversion found water, but there was insufficient flow to measure. The flow was estimated at 1-2 gallons per minute or less on July 10, 2012.

On July 8, 2003, the Applicant was notified by certified letter that the Nevada Division of Water Resources believed the source of water was fully appropriated under existing rights; however, the Applicant was given an opportunity to supply additional information in this regard. On August 6, 2003, the Applicant's agent requested and was granted an additional 30 days to provide the requested information. To date, no information on water availability has been submitted.

The State Engineer finds that Negro Creek is fully appropriated under existing water rights. The State Engineer finds that there is no additional water available to satisfy the requested appropriation of an additional 10 cfs under Application 38405.

² J.R. Harrill, *Hydrologic Response to irrigation pumping in Hualapai Flat, Washoe, Pershing and Humboldt Counties, Nevada 1960-1967*, Water Resources Bulletin No. 37, Nevada Department of Conservation and Natural Resources, p. 28, 1969.

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 an application to appropriate the public waters where:⁴

- 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 protectable interests in 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.

Based on historic flow data and three recent field investigations, the State Engineer concludes that there is no unappropriated water at the proposed source to support approval of Application 38405; therefore, the application is subject to denial.

RULING

Application 38405 is hereby denied on the grounds that there is insufficient water at the proposed source.

Respectfully submitted,

 P.E.
JASON KING, P.E.
State Engineer

Dated this 10th day of
October, 2012.

³ NRS Chapter 533.

⁴ NRS § 533.370(2).