

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

IN THE MATTER OF APPLICATION)
82207 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF HENRY SPRING)
LOCATED WITHIN THE WASHOE)
VALLEY HYDROGRAPHIC BASIN (89),)
WASHOE COUNTY, NEVADA.)

RULING

**#6241
VACATED**

DATE 9-24-2015

GENERAL

I.

Application 82207 was filed on October 17, 2012, by The Carol A. Bailey 1994 Trust to appropriate 2.0 cubic feet per second of water from Henry Spring for quasi-municipal purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T.16N., R.19E., M.D.B.&M. The proposed place of use is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, all in T.16N., R.19E., M.D.B.&M., being further described as Washoe County Assessor's Parcel No. 055-180-27.¹

FINDINGS OF FACT

I.

Application 82207 proposes to appropriate the waters of Henry Spring. Henry Spring is actually known as Bandera Spring, which is tributary of Lewers Creek, being a branch of Musgrove Creek.

Lewers Creek and its tributaries were previously adjudicated pursuant to Nevada Revised Statutes (NRS) § 533.090, *et seq.*, by the Second Judicial District Court of Nevada.² A final decree was issued by that Court on August 18, 1976. The State Engineer finds that the Decree issued on the water of Lewers Creek, including those

¹ File No. 82207, official records in the Office of the State Engineer.

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 Lewers Creek (a.k.a. Musgrove Creek) and Its Tributaries in Washoe County Nevada*, Second Judicial District Court of Nevada, Case No. 301866 (August 18, 1976).

from Bandera Spring and its tributaries, adjudicated all claims to all the waters of the Lewers Creek stream system leaving no water available for appropriation pursuant to Application 82207.

II.

Claimants in the adjudication proceeding, Henry E. and Minnie E. Heidenreich were granted a water right from Lewers Creek and its tributaries under vested right V-02771.² Vested right V-02271 is a decreed right for the same point of diversion described in Application 82207 and for the same place of use as described in Application 82207. Vested right V-02771 is now owned by the Applicant, The Carol A. Bailey 1994 Trust; therefore, the State Engineer finds that waters from Lewers Creek and its tributaries that the Applicant seeks to appropriate under Application 82207 have already been allocated to The Carol A. Bailey 1994 Trust for irrigation purposes under decreed right V-02771.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of 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 or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectable 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 82207 has already been accounted for under the Decree issued *In the Matter*

³ NRS § Chapter 533.

⁴ NRS § 533.370(2).

*of Determination of the of the Relative Rights In and To the Waters of Lewers Creek
(a.k.a. Musgrove Creek) and Its Tributaries in Washoe County, Nevada.²*

IV.

The State Engineer concludes that there is no unappropriated water available from Lewers Creek (a.k.a. Musgrove Creek) and its tributaries; and that granting Application 82207 would conflict with existing decreed rights.

RULING

Application 82207 is hereby denied on the grounds that there is no unappropriated water at the proposed source and that approval of Application 82207 would conflict with existing rights.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 17th day of
October, 2013.