

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 53902)  
FILED TO APPROPRIATE THE WATERS OF)  
AN UNNAMED SPRING IN MARY'S RIVER)  
AREA, ELKO COUNTY, NEVADA. )

RULING

GENERAL

Application 53902 was filed on September 28, 1989, by Farnes G. Egbert to appropriate 3.0 c.f.s. of water from an unnamed spring for irrigation of 880 acres of land within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 6, all of Section 7, E $\frac{1}{2}$  NW $\frac{1}{4}$  and W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 29, T.39N., R.62E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 6, T.39N., R.62E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

Application 7527 was filed on September 20, 1925, by Metropolis Land Company to change the point of diversion and place of use of 0.33 c.f.s. of water heretofore decreed under Claim 00608D of the Edwards Decree (P. 81) of the Humboldt River Adjudication.<sup>2</sup> The application was later assigned to Farnes G. & Delores B. Egbert. The proposed use is for irrigation and domestic purposes within the S $\frac{1}{2}$  Lot 7 (19.6 acres) and S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  (7.3 acres) Section 6, T.39N., R.62E., M.D.B.&M. The proposed point of diversion was described as being within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 6, T.39N., R.62E., M.D.B.&M. The existing point of diversion was described as being within the NE corner NW $\frac{1}{4}$  Section 25, T.39N., R.61E., M.D.B.&M.<sup>1</sup> Permit 7527, Certificate 2933, changed the point of diversion and place of use of water heretofore decreed under Claim 00608D of the Edwards Decree.

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<sup>1</sup> Public record in the office of the State Engineer.

<sup>2</sup> In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries, No. 2804, Sixth Judicial District Court of the state of Nevada, in and for the County of Humboldt (Oct. 20, 1931), See P. 81, the Edwards Decree, (hereinafter "Humboldt River Decree").

II.

The source of water for Application 53902 is the same as Permit 7527, Certificate 2933.<sup>1</sup> Therefore this application seeks to store an additional 400 acre-feet from the same spring.

III.

The spring is a named tributary to the Humboldt River via Burnt Creek to Bishop Creek.<sup>3</sup>

IV.

The Sixth Judicial District Court found that the Humboldt River system and all of its tributaries are fully appropriated during the irrigation season.<sup>4</sup> The subject application seeks to appropriate the water from January 1 to December 31 of each year.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>5</sup>

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>6</sup>

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

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<sup>3</sup> The source is a spring that is the subject of Claim 608D in the Humboldt River Decree.

<sup>4</sup> Humboldt River Decree, supra footnote 2, Finding 44.

<sup>5</sup> NRS 533.325.

<sup>6</sup> NRS 533.370(3).

III.

The State Engineer concludes that the source sought in Application 53902 is tributary to the Humboldt River during the irrigation season and that the Humboldt River and its tributaries are fully appropriated.

**RULING**

Application 53902 is hereby denied on the grounds that the Humboldt River and its tributaries are fully appropriated during the irrigation season and to approve said application would impair the value of existing decreed rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SW/bk

Dated this 20th day of

July, 1990.