

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

IN THE MATTER OF APPLICATIONS 37821)
THROUGH 37824, 37826 THROUGH 37828,)
37832, 37833, 37842, 37845 THROUGH)
37847, 37849, 38140, 39093 THROUGH)
39101, 39103, 39949, 39950, 44026,)
44357 THROUGH 44363, 46823, 46824,)
47438, 47491 AND 47492 FILED TO)
APPROPRIATE THE SURFACE WATERS OF)
VARIOUS SPRINGS WITHIN THE MARY'S)
RIVER AREA (042), ELKO COUNTY, NEVADA.)

RULING

4253

GENERAL

I.

Application 37821 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cubic feet per second (cfs) of water from Pole Spring for stockwatering of 1,000 head of cattle for use within Lot 4, Section 36, T.40N., R.58E., and Lot 1, Section 1, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within Lot 4, Section 36, T.40N., R.58E., M.D.B.&M.¹ Application 37821 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37822 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Hot Springs No. 1 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T.38N., R.59E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 14, T.38N., R.59E., M.D.B.&M.² Application 37822 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

¹ File No. 37821, official records in the Office of the State Engineer.

² File No. 37822, official records in the Office of the State Engineer.

Application 37823 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Warm Springs No. 1 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ of Section 26, T.37N., R.58E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 26, T.37N., R.58E., M.D.B.&M.³ Application 37823 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37824 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Warm Springs No. 2 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ of Section 25, and E $\frac{1}{2}$ Section 26, T.37N., R.58E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 25, T.37N., R.58E., M.D.B.&M.⁴ Application 37824 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37826 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Hot Springs No. 2 for stockwatering of 1,000 head of cattle for use within the S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 11 and the N $\frac{1}{2}$ NW $\frac{1}{4}$, both in Section 14, T.38N., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T.38N., R.59E., M.D.B.&M.⁵ Application 37826 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37827 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Hot Springs No. 3 for

³ File No. 37823, official records in the Office of the State Engineer.

⁴ File No. 37824, official records in the Office of the State Engineer.

⁵ File No. 37826, official records in the Office of the State Engineer.

stockwatering of 1,000 head of cattle for use within the E $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T.38N., R.59E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T.38N., R.59E., M.D.B.&M.⁶ Application 37827 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37828 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 1 for stockwatering of 1,000 head of cattle for use within Lot 9, Section 24, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within Lot 9, Section 24, T.39N., R.58E., M.D.B.&M.⁷ Application 37828 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37832 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Itcaina Spring for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.39N., R.58E., M.D.B.&M.⁸ Application 37832 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37833 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 5 for stockwatering of 1,000 head of cattle for use within Lot 5 and Lot 12 Section 13, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within Lot 12 Section 13, T.39N., R.58E.,

⁶ File No. 37827, official records in the Office of the State Engineer.

⁷ File No. 37828, official records in the Office of the State Engineer.

⁸ File No. 37832, official records in the Office of the State Engineer.

M.D.B.&M.⁹ Application 37833 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37842 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 15 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, T.40N., R.59E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, T.40N., R.59E.,

M.D.B.&M.¹⁰ Application 37842 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37845 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 18 for stockwatering of 1,000 head of cattle for use within the E $\frac{1}{2}$ NW $\frac{1}{4}$ Section 10, T.40N., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T.40N., R.59E.,

M.D.B.&M.¹¹ Application 37845 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37846 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 19 for stockwatering of 1,000 head of cattle for use within the W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 4, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within Lot 2, Section 4, T.40N., R.58E.,

⁹ File No. 37833, official records in the Office of the State Engineer.

¹⁰ File No. 37842, official records in the Office of the State Engineer.

¹¹ File No. 37845, official records in the Office of the State Engineer.

M.D.B.&M.¹² Application 37846 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37847 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 20 for stockwatering of 1,000 head of cattle for use within the W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 4, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T.40N., R.58E.,

M.D.B.&M.¹³ Application 37847 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37849 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Kelsey Spring for stockwatering of 1,000 head of cattle for use within Lot 2 Section 7, T.41N., R.59E., M.D.B.&M. The point of diversion is described as being within Lot 2, Section 7, T.41N., R.59E., M.D.B.&M.¹⁴

Application 37849 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 38140 was filed on May 11, 1979, by Dalton Livestock to appropriate 0.05 cfs of water from Hot Springs for stockwatering of 1,000 head of cattle for use within the NW $\frac{1}{4}$ NE $\frac{1}{4}$

¹² File No. 37846, official records in the Office of the State Engineer.

¹³ File No. 37847, official records in the Office of the State Engineer.

¹⁴ File No. 37849, official records in the Office of the State Engineer.

Section 17, T.38N., R.62E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 17, T.38N., R.62E., M.D.B.&M.¹⁵

Application 39093 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.5 cfs of water from Spring No. 4 for stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.43N., R.59E., M.D.B.&M.¹⁶

Application 39094 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Spring No. 3 for stockwatering of 500-1,000 head of cattle for use within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 27, T.34N., R.59E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 27, T.43N., R.59E., M.D.B.&M.¹⁷

Application 39095 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Spring No. 1 for stockwatering of 500-1,000 head of cattle for use within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20, T.43N., R.59E., M.D.B.&M.¹⁸

Application 39096 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Anderson Spring No. 1 for stockwatering of 500-1,000 head of cattle for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T.43N., R.59E., M.D.B.&M. The point of

¹⁵ File No. 38140, official records in the Office of the State Engineer.

¹⁶ File No. 39093, official records in the Office of the State Engineer.

¹⁷ File No. 39094, official records in the Office of the State Engineer.

¹⁸ File No. 39095, official records in the Office of the State Engineer.

diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T.43N., R.59E., M.D.B.&M.¹⁹

Application 39097 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Anderson Spring No. 2 for stockwatering of 500-1,000 head of cattle for use within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.43N., R.59E., M.D.B.&M.²⁰

Application 39098 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Spring No. 2 for stockwatering of 500-1,000 head of cattle for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21, T.43N., R.59E., M.D.B.&M.²¹

Application 39099 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Spring No. 5 for stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, T.43N., R.59E., M.D.B.&M.²²

Application 39100 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Wildcat Spring for stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, all in T.43N., R.59E., and within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$

¹⁹ File No. 39096, official records in the Office of the State Engineer.

²⁰ File No. 39097, official records in the Office of the State Engineer.

²¹ File No. 39098, official records in the Office of the State Engineer.

²² File No. 39099, official records in the Office of the State Engineer.

Section 19, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, T.43N., R.59E., M.D.B.&M.²³

Application 39101 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Bathtub Spring for domestic use and stockwatering of 500-1,000 head of cattle for use within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, T.42N., R.60E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, T.42N., R.60E., M.D.B.&M.²⁴

Application 39103 was filed on September 21, 1979, by Hawks and Bellgardt to appropriate 0.05 cfs of water from Spring No. 6 for stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T.43N., R.59E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T.43N., R.59E., M.D.B.&M.²⁵

Application 39949 was filed on December 10, 1979, by W.H. Gibbs Co. to appropriate 0.05 cfs of water from Spring No. 2 for stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ Section 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14 all in T.42N., R.60E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T.42N., R.60E., M.D.B.&M.²⁶

Application 39950 was filed on December 10, 1979, by W.H. Gibbs Co. to appropriate 0.05 cfs of water from Spring No. 1 for

²³ File No. 39100, official records in the Office of the State Engineer.

²⁴ File No. 39101, official records in the Office of the State Engineer.

²⁵ File No. 39103, official records in the Office of the State Engineer.

²⁶ File No. 39949, official records in the Office of the State Engineer.

stockwatering of 500-1,000 head of cattle for use within the SE $\frac{1}{4}$ Section 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 11, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14 all in T.42N., R.60E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T.42N., R.60E., M.D.B.&M.²⁷

Application 44026 was filed on June 29, 1981, by Ronald M. Florance to appropriate 0.10 cfs of water from Fawn Basin Spring #2 for domestic use and stockwatering of 300 head of cattle for use within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T.43N., R.60E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T.43N., R.60E., M.D.B.&M.²⁸ Application 44026 was assigned in the records of the State Engineer to Dan and Sharon Niedringhaus effective February 1, 1995.

Application 44357 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Ezra Spring for stockwatering of 2,000 head of cattle for use within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.39N., R.64E., M.D.B.&M.²⁹

Application 44358 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Tamara Spring for stockwatering of 2,000 head of cattle for use within the SW $\frac{1}{4}$ NE $\frac{1}{4}$

²⁷ File No. 39950, official records in the Office of the State Engineer.

²⁸ File No. 44026, official records in the Office of the State Engineer.

²⁹ File No. 44357, official records in the Office of the State Engineer.

Section 9, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 9, T.39N., R.64E., M.D.B.&M.³⁰

Application 44359 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Rebecca Spring for stockwatering of 2,000 head of cattle for use within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.39N., R.64E., M.D.B.&M.³¹

Application 44360 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Camp Spring for stockwatering of 2,000 head of cattle for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M.³²

Application 44361 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Willow Creek and tributaries for stockwatering of 2,000 head of cattle for use within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M.³³

Application 44362 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Kimberley Spring for stockwatering of 2,000 head of cattle for use within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M. The point of diversion is

³⁰ File No. 44358, official records in the Office of the State Engineer.

³¹ File No. 44359, official records in the Office of the State Engineer.

³² File No. 44360, official records in the Office of the State Engineer.

³³ File No. 44361, official records in the Office of the State Engineer.

described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M.³⁴

Application 44363 was filed on August 25, 1981, by Shirley Packer to appropriate 1.0 cfs of water from Moose Spring for stockwatering of 2,000 head of cattle for use within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 8, T.39N., R.64E., M.D.B.&M.³⁵

Application 46823 was filed on April 18, 1983, by Demar H. and Nancy F. Dahl to appropriate 0.01 cfs of water from Sump Water Hole for stockwatering of 250 head of cattle for use within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T.38N., R.60., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 14, T.38N., R.60E., M.D.B.&M.³⁶

Application 46824 was filed on April 18, 1983, by Demar H. and Nancy F. Dahl to appropriate 0.01 cfs of water from Sump Water Hole for stockwatering of 250 head of cattle for use within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.38N., R.60E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 14, T.38N., R.60E., M.D.B.&M.³⁷

Application 47438 was filed on November 18, 1983, by William Max Spratling to appropriate 0.016 cfs of water from Black Butte Spring for stockwatering of 500 head of cattle for use within the

³⁴ File No. 44362, official records in the Office of the State Engineer.

³⁵ File No. 44363, official records in the Office of the State Engineer.

³⁶ File No. 46823, official records in the Office of the State Engineer.

³⁷ File No. 46824, official records in the Office of the State Engineer.

NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 22, T.40N., R.61E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T.40N., R.61E., M.D.B.&M.³⁸

Application 47491 was filed on December 9, 1983, by Dalton Livestock to appropriate 0.032 cfs of water from Spring "B" for stockwatering of 1,000 head of cattle for use within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T.40N., R.62E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T.40N., R.62E., M.D.B.&M.³⁹

Application 47492 was filed on December 9, 1983, by Dalton Livestock to appropriate 0.032 cfs of water from Spring "A" for stockwatering of 1,000 head of cattle for use within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, T.38N., R.63E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, T.38N., R.63E., M.D.B.&M.⁴⁰

II.

Applications 39093, 39094, 39095, 39096, 39097, 39099 and 39103 were timely protested by the Bureau of Land Management on June 18, 1980, for the following reasons and on the following grounds to wit:

That the water is not available for appropriation under state law because it is already federally reserved as a public water. Land containing this water was withdrawn by E.O. April 17, 1926 as Public Water Reserve No. 107 (43 CFR 2311).

The protestant requested that said applications be denied.^{16-20,}
22, 25

³⁸ File No. 47438, official records in the Office of the State Engineer.

³⁹ File No. 47491, official records in the Office of the State Engineer.

⁴⁰ File No. 47492, official records in the Office of the State Engineer.

An identical protest was filed by the Bureau of Land Management on March 28, 1980, under Applications 37823 and 38140 with a similar request for denial.^{3, 15}

FINDINGS OF FACT

I.

The right to use the waters of the Humboldt River system and its tributaries was resolved by the Sixth Judicial District Court pursuant to an adjudication of the waters.⁴¹

II.

The Sixth Judicial District Court found that the waters of the Humboldt River system and all of its tributaries are fully appropriated.⁴²

III.

On May 6, 1994, a letter was sent from the Division of Water Resources to the Supervising Water Commissioner on the Humboldt River system asking him to have field investigations conducted with regard to each of the applications subject of this ruling in order to determine whether the waters identified under the applications are tributary to the Humboldt River system.¹⁻⁴⁰

IV.

On November 1, 1994, the Supervising Water Commissioner responded stating that all the applications were for waters of Humboldt River Basin, that all the waters of the Humboldt River and its tributaries are fully appropriated, and that granting the applications would conflict with existing rights to the waters of the Humboldt River system.¹⁻⁴⁰

⁴¹ In the Matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and for the County of Humboldt, 1923-1938.

⁴² Id. at Findings of Fact 44.

V.

The ownership of Permit 37823 was assigned to the United States of America, USDI, BLM by the Nevada Division of Water Resources on February 2, 1993.³ The State Engineer finds that the original protest to the granting of this application by the Bureau of Land Management is moot, since this agency is in effect protesting its own application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.⁴³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴⁴

- 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.

III.

The State Engineer concludes that the sources sought in the subject applications are tributary to the Humboldt River and that the Humboldt River and its tributaries are fully appropriated. In addition, the Humboldt Decree provides that those claimants entitled to water for irrigation shall be entitled to use such water for stock and domestic purposes.⁴⁵ The State Engineer has always

⁴³ NRS Chapter 533.

⁴⁴ NRS 533.370(3).

⁴⁵ In the Matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and for the County of Humboldt, 1923-1938, p. 243.

interpreted this to mean not only stockwater on the ditches, but also stockwater on the range, provided they are the permitted range user.

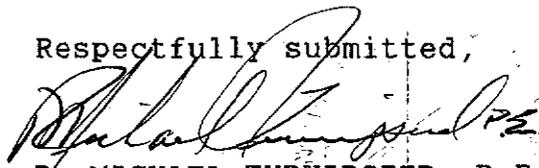
IV.

As the waters of the Humboldt River system are fully appropriated, and the sources sought under the subject applications have been found to be tributary to the Humboldt River system, there is no unappropriated water at the proposed sources to support the subject applications and to grant permits on the applications would conflict with existing rights.

RULING

Applications 37821, 37822, 37823, 37824, 37826, 37827, 37828, 37832, 37833, 37842, 37845, 37846, 37847, 37849, 38140, 39093, 39094, 39095, 39096, 39097, 39098, 39099, 39100, 39101, 39103, 39949, 39950, 44026, 44357, 44358, 44359, 44360, 44361, 44362, 44363, 46823, 46824, 47438, 47491 and 47492 are hereby denied on the grounds that the Humboldt River and its tributaries are fully appropriated and to approve said applications would impair the value of existing decreed rights. No ruling is made with regards to the merits of the Bureau of Land Management's protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 7th day of
December, 1995.