

IN THE MATTER OF APPLICATION 25254)
FILED BY N. B. RANCHES, INC. TO)
APPROPRIATE THE WATERS OF THE LITTLE) R U L I N G
HUMBOLDT RIVER LOCATED IN HUMBOLDT)
COUNTY, NEVADA.)

Application 25254 was filed on August 28, 1969, to appropriate 2,500 c.f.s., but not to exceed 35,000 acre feet per year of water from the Little Humboldt River to be stored for irrigation and domestic purposes. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 36, T.41N., R.42E., M.D.B.&M. The place of use is 8920 acres and is described under the application.

This application was protested on February 24, 1970, by Robert F. and Ruby Thomas on the following grounds:

"The channel above the Reed Lane ceases to exist. Historically, the early waters of the Little Humboldt River has irrigated the meadow-land above the Reed Lane by flooding. These brush and meadow-lands have to be saturated with water before the other users downstream can be delivered their adjudicated water. Also, any structure upstream used to store water would restrict the normal flow of the Little Humboldt and would necessitate the hiring of a full time water commissioner whose salary would have to be paid by either all the users on the stream or by N. B. Ranches, Inc., individually. I would object to either of these arrangements."

Protested on February 24, 1970, by Stanley C. Klaumann on the following grounds:

"It is my belief that the waters of the Little Humboldt River are fully adjudicated and with the granting of this application, the adjudicated rights would not be served in the proper manner."

Protested on February 18, 1970, by the Barnen Cattle, Inc., on the following grounds:

"Disruption of normal irrigation season for downstream users which could adversely affect water rights of the downstream users."

Protested on March 25, 1970, by Ernest R. Miller and Alvin E. Miller on the following grounds:

"First, that if said application is granted, said protestants and their co-owners will be deprived of the water to which they are entitled and have been decreed under the Decree of Distribution of the waters of the Little Humboldt River and its tributaries heretofore made and entered in the Sixth Judicial District Court of the State of Nevada in and for the County of Humboldt. For the NW $\frac{1}{4}$ Sec. 2, N $\frac{1}{2}$ Sec. 3, T.39N., R.39E., M.D.B.&M., for the following reasons, to wit: By the time the water rights decreed to the Bullhead Ranch now owned by Nevada Garvey Ranches, Inc., the Reed Ranch, now occupied by Stanley Klauman and the Cathcart Ranch now owned by Robert Thomas are served, there will not be sufficient water to serve the water rights belonging to the said protestants and their co-owners. The land belonging to said protestants and their co-owners is on the lower end of the Little Humboldt and said water right decreed to said land are practically the last to be served by the waters of the Little Humboldt River while the said application is for water at the head of the Little Humboldt River, which would greatly diminish the supply of water to serve the water rights downstream on the Little Humboldt River. Second, that all of the waters of the Little Humboldt River are now fully appropriated and there is no water open for appropriation."

A hearing in the above matter was held on November 12, 1970, at the County Court House in Winnemucca, Nevada. Evidence and testimony were taken from both the applicants and protestants during the course of the hearing and times were set for both parties to submit briefs at the conclusion of the hearing.

The evidence and testimony given at the hearing and the briefs submitted by both parties center mainly around the interpretation and applicability of the decree and the question of surplus flows. The expert witness provided by the protestants presented figures of overall stream flow compared to decreed right requirements, basing these figures on U.S.G.S. data. It appears that a substantial amount of the flow in the river occurs during the months of January, February, and March more specifically during months when the irrigation portion of the decree is not in effect.

In preparing this ruling, there are five basic considerations that must be taken into account as follows:

1. Applicability and interpretation of the Little Humboldt River Decree.
2. What effect would a new appropriation have on existing water rights?
3. The matter of the availability of surplus water in the Little Humboldt stream system to satisfy additional appropriations.
4. The matter of "water charging the channel" on the stream system.
5. As cited in the statute is the matter of public interest.

Under Findings of Fact of the Little Humboldt River Decree, Section XV it states, "That the waters of the Stream System are fully appropriated and there is no surplus of water for irrigation during the irrigating season. No finding is made upon the question of the storage of water."

The Attorney General of Nevada in an opinion, dated January 13, 1949 (No. 719) stated:

"In brief, the Decree stands thus, that each and every water user on the stream system has been and is decreed a

certain amount of the waters for beneficial irrigation purposes during a specific period of time in each year, and that beyond such specific time and during the rest of the year, he has and is decreed a reasonable amount for domestic purposes and a specific amount for stockwatering purposes. This latter water was and is not decreed as water for irrigation purposes. We think that pursuant to the decree in question, the duty of the State Engineer and his assistants and Water Commissioners, insofar as the dividing and distribution of the waters in question are concerned pursuant to the decree, is to distribute such waters during the irrigation season according to the several rights and priorities thereto, and that in the non-irrigating season to distribute the stock water and domestic water in accordance with the rights and priorities decreed thereto and no more."

The opinion further confirmed the State Engineer's authority to open the irrigation season earlier or later giving due consideration to conditions set forth in the decree. The irrigation season in any case is not to exceed 180 days.

It is our opinion that had the court intended to declare the stream system fully appropriated during the entire year, it would have so stated. It is clear, that the stream system is fully appropriated during the irrigation season only.

The question of what effect would a new appropriation have on existing rights is best answered by the fact that any new appropriation would be issued subject to existing rights namely, the decree itself. Further any new appropriation would be issued on surplus water as evidenced by the flows which reached the Humboldt River as follows:

1952-1953	-----	24,779	acre-feet
1958	-----	32,809	"
1969	-----	22,000	"
1970	-----	3,000	"
1971	-----	21,844	"
1972	-----	17,122	"

The surplus flow into the Humboldt River for the 1953 season was mostly runoff occurring during the 1952 season. The runoff was trapped in the Sand Dunes-Gumboot Lake area and was released during 1953 by channel clearance.

The decree also provides under Section XVII of the findings for cumulation of decreed rights.

The decree makes no provision for "charging of the channel" as such. It instructs the State Engineer at his discretion, "subject to the right, power and authority of the State Engineer that said season shall begin earlier or later because of the changes in climatic conditions and because of fluctuations in and to the waters of the said stream system due regard being had for all circumstances surrounding seasonal conditions." In the past the State Engineer has exercised his power to open the season early as follows:

1945	-----	March 16th
1949	-----	March 16th
1950	-----	March 16th
1951	-----	March 5th
1953	-----	March 15th
1963	-----	March 15th
1964	-----	March 20th
1966	-----	March 18th
1968	-----	March 10th

In comparing the early opening dates with years of surplus flow, only one year (1953) was the season opened early when the yearly flow showed surplus water entering the Humboldt River and this surplus was mostly flow from the 1952 season.

In the matter of public interest, it is the primary duty and court appointed obligation of the State Engineer to administer existing rights in accordance with the decree. The development and appropriation of surplus waters in this system or any system is certainly in the public interest. The storage facility proposed to be built under this requested appropriation will require a large expenditure. Therefore, it is extremely important that the applicants clearly understand that the surplus waters available in the system are

sporadic and the limit and extent of the appropriation will be subject to the availability of the surplus flows, and further, that the water rights held by protestants and other persons on the system cannot and will not be lost or in any way impaired by the action taken herein.

RULING

The protests to the granting of Application 25254 are herewith overruled, a permit will be granted subject to existing rights upon receipt of the statutory permit fees. The permit will allow for diversion to storage during the non-irrigation season at a rate not to exceed 2,500 c.f.s. and not to exceed a total of 35,000 acre feet per year. The water may be rediverted from storage only during the irrigation season.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:PGM:jw

Dated this 5th day of
December, 19 72