

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 39376,
39437, 39439 THROUGH 39452, INCLUSIVE,
39909, 39910 AND 39911 FILED TO
APPROPRIATE THE PUBLIC WATERS OF
VARIOUS SPRINGS IN THE MAGGIE CREEK
AND SUSIE CREEK AREAS, ELKO COUNTY,
NEVADA.)

RULING

GENERAL

Application 39376 was filed on October 22, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.2 c.f.s. of water from Hot Springs for stockwatering purposes within the NW1/4 Section 8, N1/2 Section 7, T.33N., R.53E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 8, T.33N., R.53E., M.D.B.&M.¹

Application 39437 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Lower Dry Susie Spring for stockwatering purposes within the NW1/4 SE1/4 Section 4, T.33N., R.53E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 4, T.33N., R.53E., M.D.B.&M.¹

Application 39439 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Cottonwood Spring #1 for stockwatering purposes within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M.¹

Application 39440 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Cottonwood Spring #2 for stockwatering purposes within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M.¹

Application 39441 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Cottonwood Spring #3 for stockwatering purposes within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 27, T.35N., R.52E., M.D.B.&M.¹

Application 39442 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Mud Springs for stockwatering purposes within the SE1/4 SW1/4 Section 26, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 26, T.35N., R.52E., M.D.B.&M.¹

Application 39443 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Cottonwood Horse Pasture Spring for stockwatering purposes within the NW1/4 NE1/4 Section 28, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 28, T.35N., R.52E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 39444 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from an Unnamed Spring for stockwatering purposes within the N1/2 SE1/4 Section 21, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 21, T.35N., R.52E., M.D.B.&M.¹

Application 39445 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Mine Springs for stockwatering purposes within the NW1/4 SW1/4 Section 10, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 10, T.35N., R.52E., M.D.B.&M.¹

Application 39446 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Fish Creek Springs for stockwatering purposes within Lot 4 and the SW1/4 NW1/4 Section 1, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 1, T.35N., R.52E., M.D.B.&M.¹

Application 39447 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Fish Creek Springs for stockwatering purposes within Lots 3 and 4 and the S1/2 NW1/4 Section 1, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 1, T.35N., R.52E., M.D.B.&M.¹

Application 39448 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Dry Susie Spring for stockwatering purposes within Lot 4 and the SE1/4 SW1/4 Section 7, T.34N., R.54E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 7, T.34N., R.54E., M.D.B.&M.¹

Application 39449 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Louse Springs for stockwatering purposes within the NE1/4 NE1/4 Section 33, T.36N., R.53E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 33, T.36N., R.53E., M.D.B.&M.¹

Application 39450 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Unnamed Springs for stockwatering purposes within the SW1/4 SE1/4 Section 18, T.35N., R.53E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 18, T.35N., R.53E., M.D.B.&M.¹

Application 39451 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Yellow Spring for stockwatering purposes within the NE1/4 SW1/4 Section 24, T.35N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 24, T.35N., R.52E., M.D.B.&M.¹

Application 39452 was filed on October 30, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Huntsman Ranch Spring for stockwatering purposes within the NW1/4 NW1/4 Section 16, T.34N., R.53E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NW1/4 section 16, T.34N., R.53E., M.D.B.&M.¹

Application 39909 was filed on December 7, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from local surface run-off for stockwatering purposes within the SW1/4 NW1/4, NW1/4 SW1/4 Section 12; SE1/4 NE1/4, NE1/4 SE1/4 Section 11, T.34N., R.52E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 11, T.34N., R.52E., M.D.B.&M.¹

Application 39910 was filed on December 7, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Middle Susie Creek Spring for stockwatering purposes within the SW1/4 NE1/4, NE1/4 SW1/4, NW1/4 SE1/4 Section 31, T.35N., R.54E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 31, T.35N., R.54E., M.D.B.&M.¹

Application 39911 was filed on December 7, 1979, by Maggie Creek Ranch, Inc., to appropriate 0.1 c.f.s. of water from Camp Creek Basin Spring for stockwatering purposes within the SE1/4 NE1/4 Section 5, T.35N., R.53E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 5, T.35N., R.53E., M.D.B.&M.¹

Applications 39376, 39437, 39450 and 39451 were timely protested on June 26, 1980, by the United States Department of Interior, Bureau of Land Management, on the following grounds:¹

"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). That the subject lands are vacant Public Lands, and that the applicant has no authorization or right to use or convey the applied for waters on or across such lands."

Application 39445 was timely protested on June 26, 1980, by the United States Department of Interior, Bureau of Land Management, on the following grounds:¹

"That the subject lands are vacant lands, and that the applicant has no authorization or right to obtain the applied for waters on or across such land. 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)."

FINDINGS OF FACT

I.

The State Engineer made an on site field investigation on June 5, 1986, of all of the sources of water under the subject applications and determined that:²

- 1) Applications 39439, 39441, 39443, 39444 and 39445 are from springs that are tributary to Cottonwood Creek which is tributary to Maggie Creek which is tributary to the Humboldt River.³

² See Report of Field Investigation under Applications 39376, 39437, 39439 through 39452, inclusive, 39909, 39910 and 39911, public record in the office of the State Engineer.

³ See report of field investigation and Humboldt River Adjudication, 1923-1938, Bartlett Decree, Finding of Fact #38, which describes Maggie Creek as a major tributary to the Humboldt River from April 1 through May 15.

- 2) Applications 39446 and 39447 are from springs that are tributary to Fish Creek which is tributary to Maggie Creek which is tributary to the Humboldt River.³
- 3) Application 39449 is from Louse Spring which makes up Louse Creek which is tributary to Swales Creek which is tributary to Susie Creek which is tributary to the Humboldt River.⁴
- 4) Application 39452 seeks to appropriate water from the same source as that claimed in a portion of Claim 00324 in the Humboldt River Adjudication.⁵
- 5) Application 39376 seeks to appropriate water from Hot Springs for which Application 39287 has already been denied by the State Engineer on the grounds that it is tributary to Susie Creek.⁶
- 6) Application 39442 from Mud Spring and Application 39451 from Yellow Spring flow into a reservoir for which Application 39909 is filed. All of these waters are tributary to Susie Creek.⁴
- 7) Application 39910 from Middle Susie Creek Spring is tributary to Middle Susie Creek which is tributary to Susie Creek.⁴
- 8) Applications 39447 and 39448 are tributary to Dry Susie Creek which is tributary to the Humboldt River during spring run-off.²
- 9) Application 39450 seeks to appropriate water from unnamed springs which are tributary to Susie Creek.²

II.

The Sixth Judicial District Court found that the Humboldt River system and all of its tributaries are fully appropriated during the irrigation season.⁷

⁴ See report of field investigation and Humboldt River Adjudication, 1923-1938, Bartlett Decree, Finding of Fact #38, which describes Susie Creek as being a major tributary to the Humboldt River.

⁵ See Claim 00324, Humboldt River Adjudication, 1923-1938, Order of Determination, p. 189, for waters of Camp Creek, Cold Creek and Susie Creek.

⁶ See State Engineer's Ruling, dated October 27, 1982, public record in the office of the State Engineer.

⁷ 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), Finding 44 (hereinafter "Humboldt River Decree").

III.

Protestants claim of Public Water Reserve No. 107 (43 CFR 2311) is by Executive Order signed by President Coolidge April 17, 1926.⁸

Small sources, such as springs or water holes capable of serving only a single family and its livestock, were excluded from PWR 107.⁹

Principals of priority apply to PWR 107 withdrawals in that the reservation cannot divest or displace a water right vested¹⁰ under Nevada law prior to the April 17, 1926, withdrawal date.¹¹ To the extent that appropriations which vested under Nevada law after the 1926 withdrawal date conflict with a PWR 107 reserved right, such appropriations are subject to the reserved right.¹² Appropriations made after the 1926 withdrawal date from locations outside reserved land, but from flows to or from a reserved source are effective, but are subject to the 1926 priority of the reservation.¹³ The PWR 107 reserved right is not operative on the Humboldt River and its tributaries.

IV.

The court, in the Humboldt River adjudication, ordered, adjudged and decreed that all claimants therein who held valid adjudicated rights for irrigation purposes were entitled to use such water for stock and domestic purposes.¹⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁵

⁸ See State Engineer's Ruling in the Matter of Applications 37061, et al., dated July 26, 1985, public record in the office of the State Engineer. The State Engineer, in this ruling, addressed the reserve right created by PWR 107. The Findings of Fact and Conclusions set forth in that ruling are incorporated in this ruling.

⁹ Solicitor's Opinion, M-36914, 861.D. 553, 578 (June 25, 1979), N.25 at 580, (hereinafter "Krulitz").

¹⁰ "Vested" is used here in the customary property law sense, meaning perfected, rather than in the word-of-art sense often employed in water law where it refers to water rights acquired by prior appropriation and diversion to beneficial use before the advent of statutes governing appropriations.

¹¹ Krulitz, supra, N.25, 86 I.D. at 586.

¹² Id.

¹³ Id.

¹⁴ See Humboldt River Decree (Bartlett Decree) p. 243, public record in the office of the State Engineer.

¹⁵ NRS 533.325.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹⁶

- 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 grounds of the protest, based on a valid PWR 107 claim, clearly do not apply to the waters of the Humboldt River and its tributaries.

IV.

The State Engineer concludes that all of the sources sought in the above referenced applications are tributary to the Humboldt River during the irrigation season and the Humboldt River and its tributaries are fully appropriated.

RULING

The protests to Applications 39376, 39437, 39445, 39450 and 39451 are hereby overruled on the grounds that the Executive Order pertaining to Public Water Reserves is not operative on the Humboldt River and its tributaries.

Applications 39376, 39437, 39439 through 39452, inclusive, 39909, 39910 and 39911 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.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/RMT/bl

Dated this 10th day of
July, 1986.

¹⁶ NRS 533.370(3).