

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

IN THE MATTER OF APPLICATION 36480)
FILED TO APPROPRIATE THE WATERS OF)
MAHOGANY CREEK AND IT'S TRIBUTARIES))
LOCATED WITHIN THE SUMMIT LAKE)
VALLEY, HUMBOLDT COUNTY, STATE OF)
NEVADA.)

RULING

#3784

GENERAL

I.

Application 36480 was filed on January 17, 1979, by the U.S. Department of Interior, Bureau of Land Management, to appropriate 1.48 c.f.s. of non-consumptive instream flow from July through February and 4.94 c.f.s. of non-consumptive instream flushing flow from March through June from Mahogany Creek and it's tributaries for recreation purposes located along the natural channels within portions of T.41N., R.26 and 27E., M.D.B.&M.; and T.42N., R.26 and 27E., M.D.B.&M. The point of diversion is described as being located within the SW1/4 NW1/4 of Section 22, T.42N., R.26E., M.D.B.&M.

Recreation uses are to include hunting, camping, and hiking. The retention of instream flows is necessary to maintain riparian vegetation along the stream as habitat to wildlife and for maintaining the aesthetic quality of the area.

Additional, the appropriation is sought to maintain instream flows to preserve the Summit Lake Lahontan cutthroat trout population. The Lahontan cutthroat trout has been designated a threatened species by the U.S. Fish and Wildlife Service and is protected by the Nevada Division of Wildlife.¹

II.

Application 36480 was timely protested on October 26, 1982 by Ken Earp on the following grounds:

¹ Public record in the office of the State Engineer.

"The applicant's request under application 36480 will deplete the waters of Mahogany Creek and its tributaries for downstream users, where water has been historically used for stockwater and domestic purposes. It is further stated that the Bureau of Land Management should not be involved in the business of recreation."

Wherefore protestant prays that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.¹

III.

Certificate 3634 was issued on June 12, 1951, under Permit 12975 to appropriate 0.15 c.f.s. and 26.74 acre-feet of water from Mahogany Creek to irrigate 6.91 acres located in the E1/2 NE1/4 Section 27, T.42N., R.26E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 27, T.42N., R.26E., M.D.B.&M. The current owners of record are listed as R.C. and Barbel Roberts.¹

Certificate 3635 was issued on June 12, 1951, under Permit 12976 to appropriate 0.10 c.f.s. and 18.04 acre-feet of water from Mahogany Creek to irrigate 4.51 acres located within the E1/2 NW1/4 Section 2, T.41N., R.26E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 2, T.41N., R.26E., M.D.B.&M. The current owners of record are listed as R.C. and Barbel Roberts.¹

Certificate 3636 was issued on June 12, 1951, under Permit 12977 to appropriate 0.05 c.f.s. and 9.04 acre-feet of water from Mahogany Creek to irrigate 2.26 acres located within the S1/2 SW1/4 Section 35, T.42N., R.26E., M.D.B.&M; and N1/2 NW1/4 Section 2, T.41N., R.26E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 2, T.41N., R.26E., M.D.B.&M. The current owners of record are listed as R.C. and Barbel Roberts.¹

Permit 12975, Certificate 3634; Permit 12976, Certificate 3635; and Permit 12977, Certificate 3636, were formerly owned by Kenneth H. and Doris N. Earp and currently owned by R.C. and Barbel Roberts.¹

FINDINGS OF FACT

I.

The points of diversion and the places of use of the aforementioned permits and certificates are upstream from the proposed point of diversion and place of use of Application 36480.

II.

Providing water for recreation and wildlife is a beneficial use.²

III.

The State Engineer finds that the beneficial uses described in the application are non-consumptive in nature and with no depletion of the water, existing rights will not be impaired.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

² State v. State Engineer, 104 Nev. 709, 706 P. 2d 263 (1988).

³ NRS Chapter 533.

⁴ NRS 533.370.

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

III.

The State Engineer concludes that the granting of Application 36480 will not have any adverse affects on existing rights on Mahogany Creek.

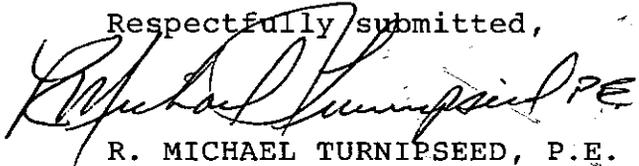
IV.

The State Engineer determines that recreation and maintaining the necessary habitat for a threatened species are in the public interest.

RULING

The protest of Ken Earp is herewith overruled and Application 36480 will be issued subject to existing rights on Mahogany Creek and it's tributaries and upon payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Dated this 14th day of
February, 1991