

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

IN THE MATTER OF APPLICATION 45188)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF THE STATE OF NEVADA FROM)
WARM SPRINGS WITHIN THE LAMOILLE)
VALLEY HYDROGRAPHIC BASIN (045),)
ELKO COUNTY, NEVADA.)

RULING

4726

GENERAL

I.

Application 45188 was filed on January 11, 1982, by Frank Hooper to appropriate 5.0 cubic feet per second of water from Warm Springs for the irrigation of 1,280 acres located within Sections 13 and 24, T.34N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within Lot 8, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T.34N., R.59E., M.D.B.&M.¹

II.

Application 45188 was timely protested, by the Pershing County Water Conservation District of Nevada on the grounds that "Warm Springs Creek is tributary to the Humboldt River and is subject to the Bartlett Decree." The Decree states that the Humboldt River System is fully appropriated and granting said application would adversely effect existing rights, and alter irrigation seasons as defined in the Decree.¹

FINDINGS OF FACT

I.

Warm Springs is tributary to the Humboldt River system which was declared fully appropriated by the Bartlett Decree, Humboldt

¹ File No. 45188, official records in the office of the State Engineer.

River Adjudication.^{2,3} The State Engineer finds that there is no unappropriated water available for use from the source as described under Application 45188.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

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

III.

As a result of the Humboldt River Adjudication proceedings the Humboldt River stream system was declared to be fully appropriated. The State Engineer concludes that there is no

² U.S. Geological Survey 7½ minute topographic map, Soldier Peak Quadrangle, Nev. 1970.

³ 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 of Nevada, In and For the County of Humboldt, Finding of Fact No. 44, 1923-38.

⁴ NRS Chapter 533.

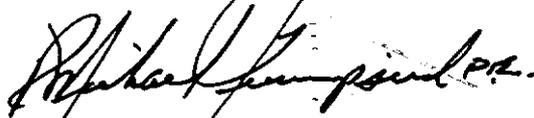
⁵ NRS § 533.370(3).

unappropriated water at the proposed source and that to approve an additional appropriation from a decreed source which has been determined to be fully appropriated would threaten to prove detrimental to the public interest and would conflict with existing water rights.

RULING

Application 45188 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest and would conflict with existing water rights.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJB/cl

Dated this 14th day of
April, 1999.