

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

IN THE MATTER OF APPLICATION)
77687 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF BISHOP CREEK)
WITHIN THE MARYS RIVER AREA)
HYDROGRAPHIC BASIN (42), ELKO)
COUNTY, NEVADA.)

RULING

5980

GENERAL

I.

Application 77687 was filed on December 15, 2008, by Pacific Reclamation Water Company to appropriate 9.00 cubic feet per second (cfs) of water from Bishop Creek for irrigation purposes. The proposed place of use is described as being located within portions of Sections 18, 19 and 28 through 32, all in T.39N., R.62E., M.D.B.&M., and portions of Sections 13, 14, 15 and 22 through 25, all in T.39N., R.61E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 27, T.39N., R.62E., M.D.B.&M.¹

II.

Application 77687 was timely protested by Pershing County Water Conservation District of Nevada, Humboldt River Basin Water Authority, Howell Angus Ranch, LLC, Martha P. Hoots, Dorsey Land, LLC, Craig Spratling, Michael Howell, Frank and Phyllis Hooper, and Willy and Tennille Whitaker. The Protestants requested, among other things, that the application be denied due to the fact that the waters from the Humboldt River are fully appropriated.

FINDINGS OF FACT

I.

Bishop Creek (Humboldt River Claim No. 00608) is tributary to the Humboldt River.² All of the water from Bishop Creek, 6.32 cfs under Humboldt River Claim No. 00608, was changed under Permit 11125, Certificate 2846.³

¹ File No. 77687, official records in the Office of the State Engineer.

² In the Matter of Determination of the Relative Rights of the Waters of the Humboldt River System and Tributaries, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and For the County of Humboldt, 1923-1938, pp.80-81 and p. 104.

³ File No. 11125, official records in the Office of the State Engineer.

II.

In the Bartlett Decree for the Humboldt River Adjudication, the Court found that the Humboldt River and its tributaries are fully appropriated.⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

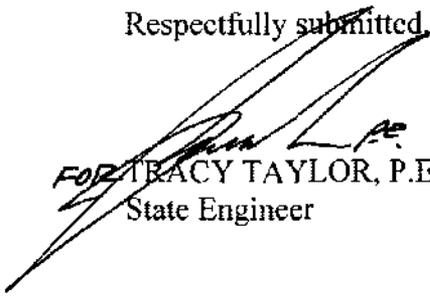
The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

RULING

Application 77687 is hereby denied on the grounds that there is no unappropriated water in the source and granting thereof would adversely affect existing rights and would be detrimental to the public interest.

Respectfully submitted,


FOR TRACY TAYLOR, P.E.
State Engineer

TT/JED/jm

Dated this 20th day of

April, 2009.

⁴ In the Matter of Determination of the Relative Rights of the Waters of the Humboldt River System and Tributaries, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and For the County of Humboldt, 1923-1938, Findings of Fact No. 44, p. 28.

⁵ NRS chapters 533.

⁶ NRS § 533.370(5).