

IN THE MATTER OF APPLICATION 34410 FILED)
TO APPROPRIATE THE WATER OF AN UNDERGROUND) R U L I N G
SOURCE IN THE MARY'S CREEK AREA, ELKO)
COUNTY, NEVADA.)

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INTRODUCTION

Application 34410 was filed to appropriate water from an underground source in the Mary's Creek Area Ground Water Basin, Elko County, Nevada.

FINDINGS OF FACT

I

Application 34410 was filed by Melvin R. and Rachel S. Jones on October 26, 1977, to appropriate 1.0 c.f.s. of underground water for irrigation and domestic purposes. The proposed point of diversion is within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, T.33N., R.52E., M.D.B. & M.; and the proposed place of use is a total of 36.67 acres within portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33; portions of the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, T.33N., R.52E., M.D.B. & M.

II

The applicant made the request under the "Remarks" section of the application that a portion of the water for this permit be pumped into a ditch flowing to Mary's Creek and from there into the Humboldt River in exchange for an equal amount of water to be diverted at an upstream location from Mary's Creek at the point of diversion of Permit 31215, for the irrigation of the same place of use as Permit 31215 (a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ (19.38 acres) and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ (3.22 acres) all in Section 33, T.33N., R.52E., M.D.B. & M. totalling 22.6 acres.) This diversion of water from Mary's Creek would thus supplement Permit 31215 in the irrigation of that 22.6 acres.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and subject matter of this action. 1/

II

The State Engineer is prohibited by law from granting a permit where:

- A) the proposed use conflicts with existing rights or
- B) the proposed use threatens to prove detrimental to the public welfare. 2/

III

It would be virtually impossible to regulate the diversion of water from Mary's Creek in exchange for the diversion of water from an under-ground source, as proposed in the application. An inability to properly regulate the diversion of water would tend to impair the value of existing water rights under the Humboldt River Adjudication.

IV

The appropriation of ground water for irrigation of 3.27 acres within a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, T.33N., R.52E., as described by the map supporting Application 34410, will not have an adverse effect upon the existing water rights of the Mary's Creek Area Ground Water Basin.

RULING

The proposal under Application 34410 to pump ground water into a ditch flowing to Mary's Creek in exchange for an equal amount of water to be diverted from Mary's Creek at the point of diversion of Permit 31215 for the irrigation of the same place of use as Permit 31215 is denied on the grounds that it would conflict with and tend to impair the value of existing rights and be detrimental to the public interest and welfare.

Application 34410 to appropriate ground water for the irrigation of 3.27 acres within a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 34, T.33N., R.52E., will be approved upon submission of the statutory permit fees.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

WJN/HBW/ja

Dated this 1st day

of MAY, 1980.

FOOTNOTES

1. NRS 533.370 and NRS 533.030, subsection 1, and NRS 533.325.
2. NRS 533.370, subsection 4.