

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 39932,) 39933, 39934, 39935, 39936, 39937, 39938,) 39939, 39940, 39941, 39942, 39943, 39944 AND) 39945 FILED TO APPROPRIATE THE PUBLIC) WATERS OF VARIOUS SPRINGS IN THE) MAGGIE CREEK AREA AND MARY'S CREEK) AREA, ELKO COUNTY, NEVADA.)

RULING

GENERAL

Application 39932 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.1 c.f.s. of water from Cherry Springs for stockwatering purposes of 500 to 1,000 head of cattle within the SE1/4 Section 21; SW1/4 SW1/4, N1/2 S1/2 Section 22; N1/2 S1/2 Section 23; N1/2 SW1/4, S1/2 N1/2 Section 24; T.33N., R.51E., M.D.B.&M.; Lot 1 Section 19; S1/2 SW1/4 Section 18; T.33N., R.52E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 21, T.33N., R.51E., M.D.B.&M.¹

Application 39933 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.1 c.f.s. of water from Mud Spring for stockwatering purposes of 500 to 1,000 head of cattle within the S1/2 N1/2 Section 15; SW1/4 NW1/4, N1/2 NW1/4 Section 14; SE1/4 SW1/4, S1/2 SE1/4, NE1/4 SE1/4 Section 11; N1/2 SW1/4, SE1/4 NW1/4, SW1/4 NE1/4, NW1/4 NE1/4 Section 12; S1/2 SE1/4, NE1/4 SE1/4 Section 1, T.33N., R.51E., M.D.B.&M.; Lot 5, Lot 12 Section 6, T.33N., R.52E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 15, T.33N., R.51E., M.D.B.&M.¹

Application 39934 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 1 for stockwatering purposes of 500 to 1,000 head of cattle within the SW1/4 NE1/4 Section 33, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 33, T.33N., R.51E., M.D.B.&M.¹

Application 39935 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 2 for stockwatering purposes of 500 to 1,000 head of cattle within the NW1/4 SE1/4 Section 33, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 33, T.33N., R.51E., M.D.B.&M.¹

Application 39936 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 3 for stockwatering purposes of 500 to 1,000 head of cattle within the SE1/4 SW1/4 Section 33, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 33, T.33N., R.51E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application 39937 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 4 for stockwatering purposes of 500 to 1,000 head of cattle within the SW1/4 SW1/4 Section 33, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 33, T.33N., R.51E., M.D.B.&M.¹

Application 39938 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 5 for stockwatering purposes of 500 to 1,000 head of cattle within the NE1/4 NE1/4 Section 9, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 9, T.33N., R.51E., M.D.B.&M.¹

Application 39939 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 6 for stockwatering purposes of 500 to 1,000 head of cattle within the NE1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39940 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 7 for stockwatering purposes of 500 to 1,000 head of cattle within the SW1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39941 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 8 for stockwatering purposes of 500 to 1,000 head of cattle within the SW1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39942 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 9 for stockwatering purposes of 500 to 1,000 head of cattle within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39943 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 10 for stockwatering purposes of 500 to 1,000 head of cattle within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39944 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 11 for stockwatering purposes of 500 to 1,000 head of cattle within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

Application 39945 was filed on December 10, 1979, by Lee and Betty Taylor and Melvin R. and Rachel S. Jones to appropriate 0.05 c.f.s. of water from Spring No. 12 for stockwatering purposes of 500 to 1,000 head of cattle within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 10, T.33N., R.51E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The sources of water under Applications 39938, 39939, 39940, 39941, 39942, 39943, 39944 and 39945 are determined to be tributary to James Creek.²

II.

James Creek is tributary to the Humboldt River and is the source of water under Claim 00321.³

III.

The sources of water under Applications 39932, 39933, 39934, 39935, 39936 and 39937 are determined to be tributary to Mary's Creek which is tributary to the Humboldt River.²

IV.

Mary's Creek makes up a portion of the water to serve Claim 00227 in the Humboldt River Decree.⁴

V.

The Humboldt River and its tributaries are decreed to be fully appropriated during the irrigation season.⁵

² See map and report of field investigation under Application 39932, public record in the office of the State Engineer.

³ See 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, 1923-1938; Final Decree, p. 157 (Bartlett Decree).

⁴ Mary's Creek flows south to the meadows on the south side of I-80 and is diverted onto lands decreed to George Arthur. See 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, Case No. 2804, Sixth Judicial District Court, 1923-1938, (p. 150, Bartlett Decree) and supporting maps.

⁵ See 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, 1923-1938; (Findings of Fact #44, Bartlett Decree). The decree further provides that "...all claimants herein for water for irrigation shall be entitled to use such water for stock and domestic purposes". See Bartlett Decree, p. 243.

VI.

A field investigation conducted by the office of the State Engineer establishes that to grant the subject applications would interfere with and impair the value of existing rights.⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁸

- 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.

There is no unappropriated water available in the source described under the subject applications.

IV.

The granting of the subject applications would interfere with and impair the value of existing rights and therefore would not be in the public interest.

⁶ See report of field investigation under Application 39932, public record in the office of the State Engineer.

⁷ NRS Chapter 533.

⁸ NRS 533.370.

RULING

Applications 39932, 39933, 39934, 39935, 39936, 39937, 39938, 39939, 39940, 39941, 39942, 39943, 39944 and 39945 are hereby denied on the grounds that there is no unappropriated water in the source and that the granting thereof would interfere with and impair the value of existing rights and would therefore not be in the public interest.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/RMT/bl

Dated this 21st day of
January, 1987.