

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

IN THE MATTER OF APPLICATIONS 37818, 37820,)
37829 THROUGH 37831, 37834 THROUGH 37841,)
37843, 37844, AND 37848 FILED TO APPROPRIATE)
THE SURFACE WATERS OF VARIOUS SPRINGS WITHIN)
THE NORTH FORK AREA (044), ELKO COUNTY,)
NEVADA.)

RULING

4252

GENERAL

I.

Application 37818 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cubic feet per second (cfs) of water from Spring No. 17 for stockwatering of 1,000 head of cattle for use within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.40N., R.58E., M.D.B.&M.¹ Application 37818 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37820 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 14 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M.²

Application 37829 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 2 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ NE $\frac{1}{4}$

¹ File No. 37818, official records in the Office of the State Engineer.

² File No. 37820, official records in the Office of the State Engineer.

Section 15, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.39N., R.58E., M.D.B.&M.³

Application 37830 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 3 for stockwatering of 1,000 head of cattle for use within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.39N., R.58E., M.D.B.&M.⁴ Application 37830 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37831 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 4 for stockwatering of 1,000 head of cattle for use within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10; NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, both in T.39N., R.58E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T.39N., R.58E., M.D.B.&M.⁵

Application 37834 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 6 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T.40N., R.58E., M.D.B.&M.⁶ Application 37834 was assigned in the records of the State Engineer to United States Department of Interior, Bureau of Land Management effective February 2, 1993.

³ File No. 37829, official records in the Office of the State Engineer.

⁴ File No. 37830, official records in the Office of the State Engineer.

⁵ File No. 37831, official records in the Office of the State Engineer.

⁶ File No. 37834, official records in the Office of the State Engineer.

Application 37835 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 7 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T.40N., R.58E., M.D.B.&M.⁷

Application 37836 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 8 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T.40N., R.58E., M.D.B.&M.⁸

Application 37837 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 9 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T.40N., R.58E., M.D.B.&M.⁹

Application 37838 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 10 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M.¹⁰ Application 37838 was assigned in the records of the

⁷ File No. 37835, official records in the Office of the State Engineer.

⁸ File No. 37836, official records in the Office of the State Engineer.

⁹ File No. 37837, official records in the Office of the State Engineer.

¹⁰ File No. 37838, official records in the Office of the State Engineer.

State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37839 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 12 for stockwatering of 1,000 head of cattle for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M.¹¹ Application 37839 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37840 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 11 for stockwatering of 1,000 head of cattle for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M.¹² Application 37840 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37841 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 13 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 22, T.40N., R.58E., M.D.B.&M.¹³ Application 37841 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

¹¹ File No. 37839, official records in the Office of the State Engineer.

¹² File No. 37840, official records in the Office of the State Engineer.

¹³ File No. 37841, official records in the Office of the State Engineer.

Application 37843 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Mud Springs for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.40N., R.57E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.40N., R.57E., M.D.B.&M.¹⁴ Application 37843 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37844 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 16 for stockwatering of 1,000 head of cattle for use within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.40N., R.58E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T.40N., R.58E., M.D.B.&M.¹⁵ Application 37844 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

Application 37848 was filed on April 10, 1979, by McCormick Brothers to appropriate 0.5 cfs of water from Spring No. 21 for stockwatering of 1,000 head of cattle for use within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.41N., R.58E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T.41N., R.58E., M.D.B.&M.¹⁶ Application 37848 was assigned in the records of the State Engineer to the United States Department of Interior, Bureau of Land Management effective February 2, 1993.

¹⁴ File No. 37843, official records in the Office of the State Engineer.

¹⁵ File No. 37844, official records in the Office of the State Engineer.

¹⁶ File No. 37848, official records in the Office of the State Engineer.

II.

Application 37831 was timely protested by the Bureau of Land Management for the following reasons and on the following grounds to wit:

That the water is not available for appropriation under state law because it is already reserved as a public water. Land containing this water was withdrawn by E.O. April 17, 1926 as Public Water Reserve No. 107 (43 CFR 2311).

The protestant requested that the application be denied.⁵

FINDINGS OF FACT

I.

The right to use the waters of the Humboldt River system and its tributaries was resolved by the Sixth Judicial District Court pursuant to an adjudication of the waters.¹⁷

II.

The Sixth Judicial District Court found that the waters of the Humboldt River system and all of its tributaries are fully appropriated.¹⁸

III.

On May 6, 1994, a letter was sent from the Division of Water Resources to the Supervising Water Commissioner on the Humboldt River System asking him to have field investigations conducted on multiple applications, including Application 37831, in order to determine whether the waters identified under the applications are tributary to the Humboldt River System.¹⁻¹⁶

IV.

On September 21, 1994, a letter was sent from the Division of Water Resources to the Supervising Water Commissioner on the

¹⁷ 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.

¹⁸ Id. at Findings of Fact 44, p. 28.

Humboldt River System asking him to have field investigations conducted with regard to each of the applications, except Application 37831, in order to determine whether the waters identified under the applications are tributary to the Humboldt River System.¹⁻¹⁶

V.

On November 1, 1994, the Supervising Water Commissioner responded stating that all the applications were for waters of the Humboldt River Basin, that all the waters of the Humboldt River and its tributaries are fully appropriated, and that granting the applications would conflict with existing rights to the waters of the Humboldt River System.¹⁻¹⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.¹⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:²⁰

- 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.

The State Engineer concludes that the sources sought in the subject applications are tributary to the Humboldt River and that the Humboldt River and its tributaries are fully appropriated. In addition, the Humboldt Decree provides that those claimants entitled to water for irrigation shall be entitled to use such

¹⁹ NRS Chapter 533.

²⁰ NRS 533.370(3).

water for stock and domestic purposes.²¹ The State Engineer has always interpreted this to mean not only stockwater on the ditches, but also stockwater on the range, provided they are the permitted range user.

IV.

As the waters of the Humboldt River System are fully appropriated, and the sources sought under the subject applications have been found to be tributary to the Humboldt River System, there is no unappropriated water at the proposed sources to support the subject applications, and to grant permits on the applications would conflict with existing rights.

RULING

Applications 37818, 37820, 37829, 37830, 37831, 37834 through 38741, 37843, 37844 and 37848 are hereby denied on the grounds that the Humboldt River and its tributaries are fully appropriated and to approve said applications would impair the value of existing decreed rights. No ruling is made as to the merits of the Bureau of Land Management's protest to Application 37831.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 7th day of
December, 1995

²¹ 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, p. 243.