

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

IN THE MATTER OF APPLICATION 37980 FILED TO )  
APPROPRIATE THE PUBLIC WATERS OF MUD SPRINGS )  
LOCATED WITHIN THE LAMOILLE VALLEY HYDRO- )  
GRAPHIC BASIN, (045) ELKO COUNTY, NEVADA )

RULING

# 4785

GENERAL

I.

Application 37980 was filed on April 20, 1979 by Joe Sustacha, Jr. and Son to appropriate 0.05 cubic feet per second of water from Mud Springs for the stockwatering of 1,000 head of cattle within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 2, T.34N., R.56E., M.D.B.&M., and the W $\frac{1}{2}$ W $\frac{1}{2}$  of Section 35, T.35N., R.56E., M.D.B.&M. The proposed point of diversion is being described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of said Section 35.<sup>1</sup>

FINDING OF FACTS

I.

Both the proposed point of diversion and place of use described under Application 37980 are located upon private land which allows the applicant to graze livestock without a federal grazing lease. The State Engineer finds that Application 37980 does not fall under the provisions of NRS 533.503, which pertains strictly to those stockwater applications which request appropriations of water from water sources which are located upon land controlled by the federal government.<sup>2</sup>

II.

Application 37980 requests a new appropriation of water from Mud Springs. Information provided by the Elko Branch office of the State Engineer indicates that at certain times the flow of water derived from Mud Springs is tributary to Rabbit Creek which in turn is tributary to the Humboldt River.<sup>3</sup> The State Engineer finds that Mud Springs is a tributary source of water for the Humboldt River system.

<sup>1</sup> File No. 37980, official records in the office of the State Engineer.

<sup>2</sup> NRS 533.503.

<sup>3</sup> Bureau of Land Management, Surface Management Status Map, Elko, Nevada 1:100,000, 1976.

III.

The relative right to the use of the waters of the Humboldt River and its tributary sources was determined by the Bartlett and Edwards Decrees, herein after referred to as the Humboldt River Decree, which were filed on October 20, 1931 and October 8, 1935, respectively.<sup>4</sup> The State Engineer finds that Mud Springs falls within the jurisdiction of the Humboldt River Decree.

IV.

The Bartlett Decree contains Finding of Fact No. 44, which declares the Humboldt River and its tributary sources to be fully appropriated.<sup>4</sup> The State Engineer finds that there is no unappropriated water available for use from the subject water source.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>6</sup>

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

III.

The Humboldt River Decree fully adjudicates, allocates and describes the use of the waters of the Humboldt River and its tributary sources, one of which is Mud Springs. The State Engineer concludes that the approval of Application 37980 would conflict with and be detrimental to existing decreed water rights established under the Humboldt River Decree.

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<sup>4</sup> 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 1923-1938.

<sup>5</sup> NRS Chapter 533.

<sup>6</sup> NRS § 533.370.

IV.

The Humboldt River system was determined to be fully appropriated by the Humboldt River Adjudication. The State Engineer concludes that there is no unappropriated water available from Mud Springs, therefore, any application which requests a new appropriation of water from this source must be denied.

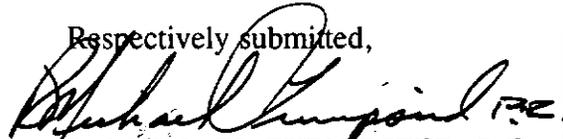
V.

The State Engineer concludes that to approve an additional appropriation of water from a decreed source which has been determined to be fully appropriated would threaten to prove detrimental to the public interest.

RULING

Application 37980 is hereby denied on the grounds that the source requested for appropriation is fully appropriated and that its approval would conflict with existing decreed water rights and would threaten to prove detrimental to the public interest.

Respectively submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/jr

Dated this 7th day of

September, 1999.