

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

IN THE MATTER OF APPLICATION 28898)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF SHOSHONE CREEK)
WITHIN THE SALMON FALLS CREEK)
GROUNDWATER BASIN (040), ELKO)
COUNTY, NEVADA)

RULING

5172

GENERAL

I.

Application 28898 was filed on November 11, 1974, by W.D. Ranching Company to appropriate 1.0 cubic-foot per second of water from Shoshone Creek for stockwatering purposes. The place of use is described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, and NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 22, all within T.47N., R.65E., M.D.B.&M. The proposed point of diversion is described as being located within SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, T.47N., R.65E., M.D.B.&M.¹

II.

Ownership of Application 28898 was transferred to Y-3 II, an Idaho General Partnership, by Grant, Bargain, and Sale Deed filed November 14, 1988.¹

III.

Application 28898 was timely protested by the Salmon River Canal Company, Ltd., on the following grounds:

The waters of Shoshone Creek are fully appropriated by virtue of the Decrees of the United States District Court for the District of Nevada, the District Court for Elko County, State of Nevada, and the Nevada State Engineer, as is established by, inter alia, the instruments, a description of which is attached hereto and marked as Exhibit A and incorporated within this protest as if here set out in full.

Wherefore Protestant prays that the application be denied.¹

¹ File No. 28898, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

Maps on file in the Office of the State Engineer confirm that Shoshone Creek is tributary to Salmon Falls Creek² which in turn is tributary to the Salmon River. The Order of Determination cites Shoshone Creek as a tributary with rights in the name of Vineyard Land and Stock Company.³ The State Engineer finds that Shoshone Creek is tributary to the Salmon River, which is subject to the claims decreed within the Salmon River Decree⁴, a fully appropriated stream.

II.

The Salmon River Decree states in part:

SEVENTH. That there be and there is inserted in said original order of determination the following:

In addition to water used during the irrigation season, each user should be entitled to his proper proportion the priority to the use of water in such reasonable amounts as necessary for the spring and fall irrigation and for stockwatering purposes during both the irrigation and the non irrigation season.⁴

The State Engineer finds decreed users are allowed to use water in the Salmon River system for stockwatering purposes as decreed.

III.

The State Engineer finds that the Final Decree on the Salmon River and its tributaries, including Shoshone Creek, adjudicated all claims to all the waters of the Salmon River system leaving no water available for appropriation pursuant to Application 28898.

² "Gollaher Mountain "and" East of Jackpot," 7.5 Minute Series (Topographic), U. S. Geological Survey, 1989.

³ Order of Determination, In the Matter of the Determination of the Relative Rights in and to the Waters of Salmon River and its Tributaries, in Elko County, Nevada, 1916, official records in the Office of the State Engineer.

⁴ In the Matter of the Determination of the Relative Rights in and to the Waters of Salmon River and Its Tributaries, in Elko County, In the District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko, 1923.

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 an application to appropriate the public waters 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.

III.

The State Engineer concludes the Salmon River and its tributaries are fully appropriated by decree; therefore, there is no water available for appropriation under Application 28898.

IV.

The State Engineer concludes that to approve Application 28898 would impair the value of and conflict with existing decreed rights.

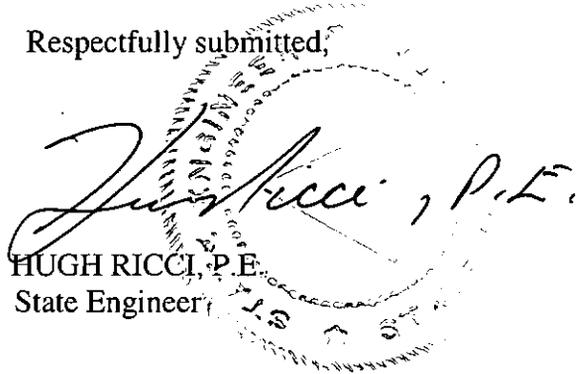
⁵ NRS chapter 533.

⁶ NRS § 533.370(3).

RULING

Application 28898 is hereby denied on the grounds that no water is available for appropriation and the approval of said application would impair the value of and conflict with existing decreed water rights on the source.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/dl

Dated this 20th day of

November, 2002.