

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

IN THE MATTER OF APPLICATION 77498)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF THREEMILE SPRING WITHIN)
THE MARYS RIVER AREA HYDROGRAPHIC)
BASIN (42), ELKO COUNTY, NEVADA.)

RULING

#6138

GENERAL

I.

Application 77498 was filed on October 17, 2008, by Paul and Lori Bottari to appropriate 0.134 cubic feet per second (cfs) of water from Threemile Spring for irrigation purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, a portion of the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and a portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T.38N., R.62E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T.38N., R.62E., M.D.B.&M.¹

II.

Application 77498 was timely protested by Martha P. Sims-Hoots on the grounds that Threemile Spring is tributary to the Humboldt River, which is fully appropriated.

FINDINGS OF FACT

I.

Application 41153 was filed on April 23, 1980, for 0.5 cfs of water from the same Threemile Spring. This application was denied by State Engineer's Ruling No. 3180. The grounds for denial were the water from the spring was tributary to the Humboldt River, which is fully appropriated; therefore, there is no unappropriated water in the source and granting the application would impair the value of existing rights.²

On December 4, 2008, staff from the Elko Branch Office of the Nevada Division of Water Resources conducted a field investigation on the Threemile Spring and determined that the spring is tributary to the Humboldt River.¹

On June 13, 2011, staff from the Carson City Office and the Elko Branch Office of the Nevada Division of Water Resources conducted a follow-up field investigation on the Threemile Spring and determined that the spring is tributary to the Humboldt River.¹

¹ File No. 77498, official records in the Office of the State Engineer.

² State Engineer's Ruling No. 3180, dated May 8, 1985, official records in the Office of the State Engineer.

In the Bartlett Decree for the Humboldt River Adjudication, the Court found that the Humboldt River and its tributaries are fully appropriated.³

The State Engineer finds the water source is tributary to the Humboldt River and no water is available for appropriation.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁵

- 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.

RULING

Application 77498 is hereby denied on the grounds that there is no unappropriated water in the source and further granting thereof would adversely affect existing rights and would threaten to prove to be detrimental to the public interest.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 9th day of
August, 2011.

³ *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 of Nevada, In and for the County of Humboldt, Nevada 1923-1938. Findings of Fact No. 44, p. 28.

⁴ NRS Chapter 533.

⁵ NRS § 533.370(5).