

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 50392,) 50393 AND 50394, FILED TO CHANGE THE) POINT OF DIVERSION AND PLACE OF USE) OF A PORTION OF THE PUBLIC WATERS OF) WASH O'NEAL CREEK HERETOFORE) APPROPRIATED UNDER LITTLE HUMBOLDT) RIVER DECREED CLAIM 01601 IN PARADISE) VALLEY, HUMBOLDT COUNTY, NEVADA.)

RULING

GENERAL

Application 50392¹ was filed on December 1, 1986, by Donald W. and Naida Radbrush to change the point of diversion and place of use of 0.005 c.f.s. of water from Washoe O'Neal Creek heretofore appropriated under Little Humboldt River Decreed Claim 01601² for irrigation purposes on 1/2 acre of land. The existing place of use is 2.23 acres of land within the E1/2 E1/2 NE1/4 SW1/4 Section 29, T.41N., R.39E., M.D.B.&M.. The proposed place of use is within the NW1/4 NW1/4 Section 33, T.41N., R.39E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 30, T.41N., R.39E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 NW1/4 Section 33, T.41N., R.39E., M.D.B.&M.

Application 50393¹ was filed on December 1, 1986, by Donald W. and Naida Radbrush to change the point of diversion and place of use of 0.005 c.f.s. of water from Washoe O'Neal Creek heretofore appropriated under Little Humboldt River Decreed Claim 01601² for irrigation purposes on 1/2 acre of land. The existing place of use is 2.23 acres of land within the E1/2 E1/2 NE1/4 SW1/4 Section 29, T.41N., R.39E., M.D.B.&M.. The proposed place of use is within the SW1/4 SW1/4 Section 28, T.41N., R.39E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 30, T.41N., R.39E., M.D.B.&M. The proposed point of diversion is described as being within the SW1/4 SW1/4 Section 28, T.41N., R.39E., M.D.B.&M.

Application 50394¹ was filed on December 1, 1986, by Donald W. and Naida Radbrush to change the point of diversion and place of use of 0.005 c.f.s. of water from Washoe O'Neal Creek heretofore appropriated under Little Humboldt River Decreed Claim 01601² for irrigation purposes on 1/2 acre of land. The existing place of use is 2.23 acres of land within the E1/2 E1/2 NE1/4 SW1/4 Section 29, T.41N., R.39E., M.D.B.&M.. The proposed place of use is within the NW1/4 NW1/4 Section 33, T.41N., R.39E., M.D.B.&M. The existing point of diversion is described as being within the NE1/4 SE1/4 Section 30, T.41N., R.39E., M.D.B.&M. The proposed point of diversion is described as being within the NW1/4 NW1/4 Section 33, T.41N., R.39E., M.D.B.&M.

¹ Public record in the office of the State Engineer.

² In the Matter of the Determination of the Relative Rights in and to the Waters of the Little Humboldt River and Its Tributaries in Humboldt and Elko Counties, Nevada, Case No. 3157, Sixth Judicial District Court of Nevada in and for the County of Humboldt.

Applications 50392, 50393 and 50394 were timely protested on February 17, 1987, by Nevada First Corporation on the following grounds:

"on the grounds it would be impossible to administer such small amounts of water (0.005 CFS). We have no problem with the present delivery in one ditch but several ditches with such a small amount would not be feasible."

FINDINGS OF FACT

I.

On March 16, 1987, an informal field investigation was conducted by the State Engineer's office with both the applicants and protestant represented.³

II.

On March 16, 1987, the applicants submitted a letter explaining that they would be installing plastic pipes with valves in order to transport small amounts of water to the place of use.³

III.

The representative of the protestant stated he would have to meet with the corporate owners to see if that method of diversion was satisfactory to resolve the protest, in which case it would be withdrawn.

IV.

The State Engineer finds that the protestant has prior decreed rights to the tributary source under the subject applications.² There are times that there is insufficient water to reach the protestant's property, therefore, later priority rights are entitled to take the water. During the spring runoff and during flash flows, there is sufficient water for all priorities.

V.

The Little Humboldt River Decree, Finding XIII, provides that "...all claimants herein having water for irrigation are entitled to use such water for stockwatering and domestic purposes".⁴

³ See letter filed under Application 50392, public record in the office of the State Engineer.

⁴ See Little Humboldt River Decree, Finding XIII, page 10.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁶

- 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.

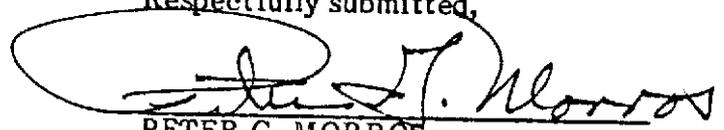
If the applicants divert the water by pipeline and install valves that can be locked shut along with measuring devices approved by the State Engineer, there should be no additional distribution problems and the proposed changes will not interfere with the rights of the protestant.

RULING

The protest to Applications 50392, 50393 and 50394 is hereby overruled and said applications are hereby approved subject to prior rights subject to the following conditions.

- 1. The applicants shall install control devices at the points of diversion that can be locked or otherwise controlled by the water commissioner.
- 2. The subject change applications are approved subject to existing rights and with the understanding that the approval cannot affect any existing rights on the source regardless of priority.

Respectfully submitted,


PETER G. MORROS
State Engineer

PGM/MT/bl

Dated this 11th day of
September, 1987.

⁵ NRS 533.325.

⁶ NRS 533.370(3).