

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

IN THE MATTER OF APPLICATION 5051 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF TALBOT CREEK WITHIN )  
THE LAMOILLE VALLEY HYDROGRAPHIC )  
BASIN (045), ELKO COUNTY, NEVADA. )

RULING

# 4724

GENERAL

I.

Application 5051 was filed on May 4, 1918, by Ramon Echebarrieta, to change the place use of 0.25 cubic feet per second of water from Talbot Creek, a portion of water claimed by Mr. Echebarrieta to have been historically used for irrigation and domestic purposes on 50 acres of land located within the E $\frac{1}{2}$  E $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 21, T.33N., R.58E., M.D.B.&M. Application 5051 requested to change the place of use of 25 acres to the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and E $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 21 T.33N., R.58E., M.D.B.&M. The existing and proposed point of diversion are described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 21, T.33N., R.58E., M.D.B.&M.<sup>1</sup>

II.

Application 5051 was timely protested on by James Billett on the grounds that the protestant has a vested right to such waters as Talbot Creek, that Ramon Echebarrieta does not own the waters of Talbot Creek, and that to grant said application would damage and prejudice the vested rights of the protestant.<sup>1</sup>

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<sup>1</sup> File No. 5051, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer finds that Application 5051 was filed prior to the adjudication of the Humboldt River and its tributaries.

II.

Talbot Creek is tributary to the Humboldt River.<sup>2</sup> The waters of the Humboldt River were adjudicated under the Bartlett Decree on October 20, 1931, and the Edwards Decree on October 7, 1935, both in the Sixth Judicial Court of the State of Nevada, In and For the County of Humboldt.

Claim 00417 found at Page 178 of the Bartlett Decree provides for the irrigation of 128 acres within the W $\frac{1}{2}$  E $\frac{1}{2}$  and E $\frac{1}{2}$  W $\frac{1}{2}$  of Section 21 T.33N., R.58E., M.D.B.&M. with Antonio Echeverrieta as the recognized claimant.<sup>3</sup>

The State Engineer finds that the proposed place of use under Application 5051 is completely within the place of use of Claim 00417 under the Bartlett Decree. The State Engineer finds that the intended purpose for which Application 5051 was filed was superseded by Claim 00417 recognized in the Bartlett Decree.

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<sup>2</sup> U.S. Geological Survey 7 $\frac{1}{2}$  minute topographical map, Lamoille Quadrangle, Nev. 1990.

<sup>3</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, Finding of Fact No. 44, 1923-38.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>5</sup>

A. there is no unappropriated water at the proposed source;

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 Application 5051 was filed prior to the Humboldt River Adjudication and that said adjudication under Claim 00417 accomplished all that Application 5051 was filed for. The State Engineer further concludes that to approve a new appropriation for a purpose that was superseded by an adjudicated water right would not be in the public interest and would conflict with existing rights.

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<sup>4</sup> NRS Chapter 533.

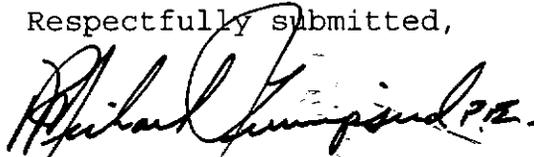
<sup>5</sup> NRS § 533.370(3).

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Application 5051 is hereby denied on the grounds that to approve said application would conflict with existing rights under Claim 00417 of the Bartlett Decree, Humboldt River Adjudication.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJB/cl

Dated this 14th day of  
April, 1999.