

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

IN THE MATTER OF APPLICATION 44071 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE DIXIE CREEK - TENMILE )  
CREEK AREA HYDROGRAPHIC BASIN (48), )  
ELKO COUNTY, NEVADA. )

**RULING**

**# 5909**

**GENERAL**

**I.**

Application 44071 was filed on June 29, 1981, by Julian Tomera Ranches, Inc., to appropriate 0.05 cubic foot per second (cfs) of water from a spring for stockwatering purposes within the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 3, T.31N. , R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 3.<sup>1</sup>

Application 43929 was filed on June 22, 1981, by Julian Tomera Ranches, Inc., to appropriate 0.05 cfs of water from a spring for stockwatering purposes within the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 3, T.31N. , R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 3. Application 43929 was denied on December 5, 1984, on the grounds that there was no un-appropriated water in the source and that further granting would tend to impair the value of existing rights.<sup>2</sup>

Claim of vested right V06389 was filed on May 11, 1994, by Julian Tomera Ranches, Inc., for 0.006 cfs of water from an unnamed spring for stockwatering purposes within the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 3, T.31N. , R.53E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 3.<sup>3</sup>

**FINDINGS OF FACT**

**I.**

In May of 1983, Applications 43929 and 44071 were evaluated by the Division of Water Resources. With the exception of the application number and proposed points of diversion locations, the evaluations were identical. The proposed points of diversion locations were

<sup>1</sup> File No. 44071, official records in the Office of the State Engineer.

<sup>2</sup> File No. 43929, official records in the Office of the State Engineer.

<sup>3</sup> File No. V06389, official records of the Office of the State Engineer.

similar since both were located within the E½ of Section 3 and were tributary to the same regional flow system. The State Engineer's evaluations stated in part that the unnamed springs in a winter runoff or early spring were tributary to the Humboldt River. The State Engineer subsequently issued Ruling No. 3071 on December 5, 1984, which denied Application 43929 on the grounds that there was no un-appropriated water in the source as set forth in the Final Judgement and Decree of the Humboldt River Adjudication and further that the granting of the application would tend to impair the value of existing rights.<sup>2</sup>

The State Engineer finds that the spring identified as the source of water under Application 44071 and denied Application 43929 are both tributary to Dixie Creek, which in turn is tributary to the Humboldt River. The State Engineer further finds that there is still no un-appropriated water in the source, as set forth in the Final Judgement and Decree of the Humboldt River Adjudication.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- 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 threatens to prove detrimental to the public interest.

#### III.

In the Bartlett Decree for the Humboldt River Adjudication, the Court states under Finding of Fact No. 44, that the stream system is fully appropriated.<sup>5</sup> The State Engineer concludes that the stream system in question is fully appropriated.

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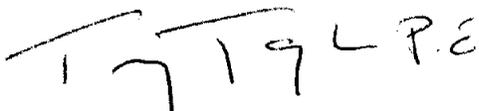
<sup>4</sup> NRS § 533.370 (5).

<sup>5</sup> In the Matter of the 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, 1923-1928. The Bartlett Decree Findings of Fact No. 44, p. 28.

**RULING**

Application 44071 is hereby denied on the grounds that there is no un-appropriated water in the source as set forth in the Final Judgement and Decree of the Humboldt River Adjudication and further that the granting of the applications would tend to impair the value of existing rights. No determination is made herein on the merits of the claim of Vested Right 06389.

Respectfully submitted,

Handwritten signature of Tracy Taylor, P.E. in black ink, consisting of stylized initials and the letters 'P.E.'.

TRACY TAYLOR, P.E.  
State Engineer

TT/DJL/jm

Dated this 26th day of

November, 2008.