

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

IN THE MATTER OF APPLICATIONS)
37819, 60371, 60372 AND 60373 FILED)
TO APPROPRIATE THE PUBLIC)
WATERS OF VARIOUS SURFACE)
WATER SOURCES LOCATED)
WITHIN THE MARY'S RIVER AREA)
HYDROGRAPHIC BASIN (42), ELKO)
COUNTY, NEVADA.)

RULING

#5957

GENERAL

I.

Application 37819 was filed on April 10, 1979, by the McCormick Brothers, and later assigned to the United States Bureau of Land Management, to appropriate 0.5 cubic feet per second (cfs) of water from Stage Stop Spring No. 1 for stockwater purposes. The proposed place of use is described as being located within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19, T.40N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 19.¹

II.

Application 60371 was filed on August 23, 1994, by the U.S.D. I. Bureau of Land Management and the Tabor Creek Cattle Company, to appropriate 0.018 cfs of water from Antelope Basin Spring No. 1 for stockwater and wildlife purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T.40N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29.²

III.

Application 60372 was filed on August 23, 1994, by the U.S.D. I. Bureau of Land Management, to appropriate 0.018 cfs of water from Button Rock Spring for stockwater and wildlife purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T.40N.,

¹ File No. 37819, official records in the Office of the State Engineer.

² File No. 60371, official records in the Office of the State Engineer.

R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 22.³

IV.

Application 60373 was filed on August 23, 1994, by the United States Bureau of Land Management (BLM), to appropriate 0.015 cfs of water from Allen Creek Reservoir for stockwater and wildlife purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, T.38N., R.59E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 10.⁴

FINDINGS OF FACT

I.

These applications seek to appropriate water from surface water sources within the Mary's River Hydrographic Basin, which is contained within the Humboldt River Basin. A review of the location of the proposed points of diversion indicates that these surface water sources are tributary to the Humboldt River.

The right to use the waters of the Humboldt River system and its tributaries was resolved by the Sixth Judicial District Court pursuant to an adjudication of the waters.⁵ The Sixth Judicial District court found that the waters of the Humboldt River system and all of its tributaries are fully appropriated.

The State Engineer finds that in the Final Decree on the Humboldt River and its tributaries adjudicated all claims to all the waters leaving no water available for appropriation pursuant to Applications 37819, 60371, 60372 and 60373.

II.

State Engineer's Ruling No. 4253 was issued December 7, 1995, and addressed similar applications within the Mary's River Hydrographic Basin. Forty applications were filed for stockwatering purposes on various surface water spring sources and were

³ File No. 60372, official records in the Office of the State Engineer.

⁴ File No. 60373, official records in the Office of the State Engineer.

⁵ Findings of Fact, Conclusions of Law and Decree, In the Matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Its Tributaries, Case No. 2804, Sixth Judicial District Court, State of Nevada, In and for the County of Humboldt, 1923-1938.

denied on the basis that the waters identified under the applications were tributary to the Humboldt River system.⁶

The State Engineer finds that similar applications for stockwater use from spring sources have been denied within the Mary's River Hydrographic Basin.

III.

In 2003, the Nevada Legislature amended NRS § 533.503 to provide, in part, that:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:
 - (a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:
 - (1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or
 - (2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock;
 - (b) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to law for the benefit of a person other than the applicant for the permit; and
 - (c) The lack of encumbrance required by paragraph (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant for the permit.

The State Engineer finds the BLM does not own, lease or otherwise possess a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought and, therefore, is not qualified to obtain a stockwater permit under Nevada Water Law.

IV.

Application 60371 was filed jointly by the Tabor Creek Cattle Company and the U.S.D. I. Bureau of Land Management. According to the Nevada Secretary of State, Corporation Status Database, the State Engineer finds the Tabor Creek Cattle Company dissolved on April 18, 2000.

⁶ State Engineer's Ruling No. 4253, December 7, 1995, official records on file in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- 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 that the sources sought in the subject applications are tributary to the Humboldt River and that the Humboldt River and its tributaries are fully appropriated. In addition, the Humboldt River Decree provides that those claimants entitled to water for irrigation shall be entitled to use such water for stock and domestic purposes.⁵ The State Engineer has always interpreted this to mean not only stockwater on the ditches, but also stockwater on the range, provided they are the permitted range user.

IV.

The State Engineer concludes that to approve these applications would impair the value of and conflict with existing decreed rights on the Humboldt River system.

V.

The State Engineer concludes that the United States Bureau of Land Management does not meet the requirements of NRS § 533.503; therefore, approval of the applications would threaten to prove detrimental to the public interest.

⁷ NRS chapter 533.

⁸ NRS § 533.370(5).

VI.

The State Engineer concludes Applicant Tabor Creek Cattle Company has dissolved and is ineligible to apply for a water right in the State of Nevada; therefore, approval of Application 60371 would threaten to prove detrimental to the public interest.

RULING

Applications 37819, 60371, 60372 and 60373 are hereby denied on the grounds that the approval of the applications would impair the value of existing decreed water rights, and would threaten to prove detrimental to the public interest.

Respectfully submitted,


FOR TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 13th day of

February, 2009.