

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 45011)
AND 45012 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF TROUT CREEK IN)
STARR VALLEY AREA, ELKO COUNTY,))
NEVADA.)

RULING

GENERAL

Application 45011 was filed on November 2, 1981, by Marshall L. Morgan to appropriate 3.0 c.f.s. of water from Trout Creek for irrigation and domestic purposes on 160 acres of land within the SW1/4 Section 5, T.37N., R.61E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 21, T.37N., R.61E., M.D.B.&M.¹

Application 45012 was filed on November 2, 1981, by Marshall L. Morgan to appropriate 3.0 c.f.s. of water from Trout Creek for irrigation and domestic purposes on 160 acres of land within the SW1/4 Section 5, T.37N., R.61E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 21, T.37N., R.61E., M.D.B.&M.¹

Applications 45011 and 45012 were timely protested by Florence G. Peavey on the following grounds:¹

"This will adversely affect our stockwater and irrigation water rights during the time set forth in the decree."

Application 45011 was timely protested by Wells Rural Electric Company on the following grounds:¹

"That Protestant holds a valid existing permit for the diversion of the waters of Trout Creek for the generation of hydroelectric power and that there is insufficient waters to satisfy this application and existing adjudicated water rights and permits during portions of any average water production year."

Application 45012 was timely protested by Wells Rural Electric Company on the following grounds:¹

"1. That Protestant holds a valid existing permit for diversion of water through the pipeline which is to be used by applicant as the diversion and applicant has not obtained Protestant's permission for the use of said pipeline.

2. That diversion of water through said pipeline may adversely affect Protestant's use of said pipeline which is for the generation of hydro-electric power.

¹ Public record in the office of the State Engineer.

3. That there will be insufficient water in Trout Creek to satisfy this application and existing adjudicated water rights and permits during portions of any average year."

Applications 45011 and 45012 were timely protested by Frederick A. Howell on the following grounds:¹

"1.) The public waters the subject of this application is a tributary of the Humboldt River System which system was fully adjudicated by Decrees of the Sixth Judicial District Court, case no. 2804 of the State of Nevada dated October 20, 1931 and October 8, 1935, and said Court found that said water system was fully appropriated and on an average year there is no surplus water for irrigation. (Finding #44-Bartlett Decree). Approval of this application would not comply with said Findings and Decrees.

2.) That approval of this application would reduce the natural stream flow of Trout Creek which would in turn affect the matter of stream loss through underground percolation and further adversely affect the flow of springs which may be fed by such percolation.

3.) That protestant holds a portion of Proof #00609 as set forth in said Humboldt River System adjudication and that approval of this application would adversely affect protestants rights under said Proof."

Applications 45011 and 45012 were timely protested by Pershing County Water Conservation District of Nevada on the following grounds:¹

"Trout Creek is tributary to the Humboldt River and is subject to the Bartlett Decree. The Decree states that the Humboldt River System is fully appropriated and granting said application would adversely effect existing rights and alter irrigation seasons as defined in the decree."

Applications 45011 and 45012 were timely protested by Martha P. Sims on the following grounds.¹

"Granting this would adversely affect our stockwater and irrigation water rights as set forth in the decree."

All of the above named protestants request that Applications 45011 and 45012 be denied.

Under Item 12 of Applications 45011 and 45012, the applicant states that due to the installation of a pipeline on Trout Creek, substantial amounts of water will be saved from ditch loss. These applications are being filed on those waters realized due to lack of ditch absorption and will be placed upon additional acreage under cultivation.

FINDINGS OF FACT

I.

Trout Creek, located in the Starr Valley Area of Elko County, Nevada, is the source of water for Applications 45011 and 45012 and is tributary to the Humboldt River.²

II.

The Sixth Judicial District Court of the State of Nevada, in its findings of fact, conclusions of law and decree, has determined that the waters of the Humboldt River Stream System are fully appropriated and that in the average year, as shown by the flow in the said stream system, there is no surplus water for irrigation.³

III.

The applicant of 45011 and 45012 wishes to appropriate the salvaged waters that normally would be lost evaporation and percolation in a ditch system by using a pipeline to transport the water to the place of use.

In Colorado, where the basis of the water law is the prior appropriation doctrine which is the same in Nevada,⁴ case law has established that salvaged waters or waters saved by the use of a pipeline or removal of water loving plants are subject to prior appropriation.

In the case of Trout Creek, tributary to the Humboldt River, such waters would be appropriated by senior decreed rights in the stream system.

CONCLUSIONS

I.

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

² Edwards Decree, October 20, 1931, Case No. 2804, Sixth Judicial District, State of Nevada. Proofs 607 and 608, pp. 80-81.

³ Bartlett Decree, January 2, 1931, Case No. 2804, Sixth Judicial District, State of Nevada. Finding of Fact No. 44, p. 28.

⁴ Southeastern Colorado Water Conservancy District v. Shelton Farms, Inc., Supreme Court of Colorado, 1975, 187 Colo. 181, 529 P.2d 1321, Opinion of the Court, Justice Hay.

⁵ NRS 533.325.

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.

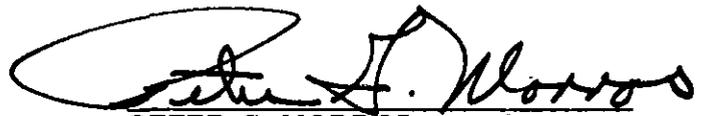
III.

Trout Creek, which is the source of Applications 45011 and 45012, is tributary to the Humboldt River and, as such, is subject to the Humboldt Decree. Since the stream system has been declared fully appropriated during the irrigation season, any new appropriation, whether salvaged waters or return flows, would be subject to prior appropriation by holders of senior decreed rights in the system.

RULING

Applications 45011 and 45012 are hereby denied on the grounds that there is no unappropriated water on the source.

Respectfully submitted,


PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 8th day of
November, 1985.

⁶ NRS 533.370(3).