

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION)
46300 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AIRPLANE)
SPRING, MARY'S CREEK AREA,)
EUREKA COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 46300 was filed on November 5, 1982 by Palisade Ranch, Inc. to appropriate 0.1 c.f.s. of water from Airplane Spring for stockwatering of 300 head of cattle within the SW1/4 NE1/4 of Section 34, T.32N., R.51E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 34, T.32N., R.51E., M.D.B.&M.¹

II.

On March 19, 1983 this application was timely protested by the U.S. Bureau of Land Management on the grounds that:¹

"This water is required for multiple-use management of the public lands and the water is Public Water Reserve reserved under the authority of E.O. 107, April 17, 1926 and as identified in CFR 2311. This water is therefore not available for appropriation under Nevada State Law."

FINDING OF FACT

I.

The source was examined and found to be tributary to the Humboldt River at certain times of the year.²

¹ Public Record in the Office of the State Engineer.

² See Memo in file 46300 public record in office of the State Engineer.

II.

The district court found that the Humboldt River stream system is fully appropriated during the irrigation season.³

III.

Under the Humboldt River decree any holder of a decreed irrigation right is entitled to stockwater.⁴

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where⁶:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights or,
- C. The proposed use or change threatens to prove detrimental to the public interest.

³ Final Decree, Finding of Fact 44 pg. 28 In the Matter of the Relative Rights of Claimants and Appropriators of the Water of the Humboldt River Stream System Case No. 2804, Sixth Judicial District Court, County of Humboldt.

⁴ Final Decree (Bartlett) pg. 243 In the Matter of the Relative Rights of Claimants and Appropriators of the Water of the Humboldt River Stream System Case No. 2804, Sixth Judicial District Court, County of Humboldt.

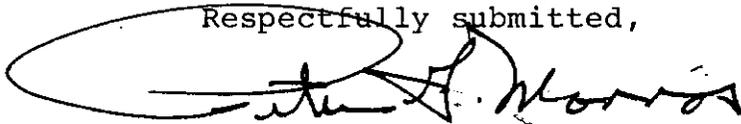
⁵ NRS Chapter 533

⁶ NRS 533.370

RULING

Application 46300 is hereby denied on the grounds that it would not be in the public interest to grant a permit on a source that is tributary to the Humboldt River Stream System, a fully appropriated system. No ruling is made on the grounds of the protest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", is written over a large, hand-drawn oval. The signature is fluid and cursive.

PETER G. MORROS
State Engineer

PGM/SW/pm

Dated this 25th day of

January, 1990