

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

IN THE MATTER OF APPLICATIONS 72361)
AND 72362 FILED TO CHANGE THE POINT)
OF DIVERSION, PLACE AND MANNER OF)
USE OF A PORTION OF HUMBOLDT RIVER)
CLAIM NO. 00570 NORTH FORK AREA (44),)
ELKO COUNTY, NEVADA.)

RULING

5818

GENERAL

I.

Application 72361 was filed March 9, 2005, by the United States of America, Bureau of Land Management to change the point of diversion, place and manner of use of a portion of Humboldt River Claim No. 00570. The amount of water requested to be changed is 0.0005 cubic feet per second (cfs) not to exceed 0.38 acre-feet annually, for wildlife purposes. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.40N., R.57E., M.D.B.&M. The proposed period of use is from January 1 to December 31 of each year. The proposed place of use is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.40N., R.57E., M.D.B.&M.¹

II.

Application 72362 was filed March 9, 2005, by the United States of America, Bureau of Land Management to change the point of diversion, place and manner of use of a portion of Humboldt River Claim No. 00570. The amount of water requested to be changed is 0.001 cfs not to exceed 0.68 acre-feet annually for wildlife purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.39N., R.58E., M.D.B.&M. The proposed period of use is from January 1 to December 31 of each year. The proposed place of use is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 28, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, T.39N., R.58E., M.D.B.&M., and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, T.39N., R.57E., M.D.B.&M.²

¹ File No. 72361, official records in the Office of the State Engineer.

² File No. 72362, official records in the Office of the State Engineer

FINDINGS OF FACT

I.

The Humboldt River Stream System is Nevada's largest adjudicated water system and is distributed in accordance with the Barlett and Edwards Decrees.³ The distribution and allocation of water under the decrees is through a priority system, which is based on the concept of "first in time, first in right". Appropriators with senior water rights, as determined through the adjudication process, are delivered water prior to the satisfaction of junior water right holders. A water commissioner appointed by the State Engineer performs the distribution and regulation of the waters of the Humboldt River system. The State Engineer finds that the Humboldt River System and tributaries, which includes the North Fork of the Humboldt River, is an adjudicated river system and is under the supervision of the State Water Commissioner who distributes and regulates the waters of the Humboldt River Decrees through a priority system.

II.

The decreed source of water for Humboldt River Claim No. 00570, which was assigned a priority date of 1903, is the North Fork of the Humboldt River. The existing point of diversion is described as being located within the SE¼ NE¼ of Section 15, T.39N., R.57E., M.D.B.&M. The attachment to this ruling depicts the respective proposed points of diversions described under Applications 72361 and 72362 and Claim No. 00570. From this map it can be seen that the existing point of diversion is a direct diversion from the North Fork of the Humboldt River, whereas, the two proposed points of diversion are found on sources that are tributary to the North Fork of the Humboldt River. The State Engineer finds that the Applicant is proposing to change the point of diversion from a direct diversion from the North Fork of the Humboldt River to two tributary streams.

III.

Application 72361 was filed by the Bureau of Land Management to change the point of diversion of a portion of Humboldt River Claim No. 00570 of the Bartlett Decree from the North Fork of the Humboldt River to one of its unnamed tributaries. Under Item No. 11 of the application, the proposed diversion works are described by the Applicant as a reservoir that will be constructed to a height of less than 20 feet and a storage capacity of less than 20 acre-feet of

³ *In the Matter of the Determination of the Relative Rights of Claimants and Appropriators 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, 1923-1938. The Barlett Decree, 1931 and Edwards Decree, 1935.

water. The proposed works are intended to provide sufficient water for 25 deer and 43 antelope. Through written and oral communications with Mark Dean of the Bureau of Land Management, Elko Field Office, it was determined that the reservoir will impound 3.02 acre-feet of water and has a surface area 1.14 acre.

Application 72362 was filed by the Bureau of Land Management to change the point of diversion of a portion of Humboldt River Claim No. 00570 from the North Fork of the Humboldt River to Little Big Spring, which is tributary to the North Fork of the Humboldt River. The proposed works will involve spring improvements and the construction of a pipeline to the proposed places of use for the watering of 49 deer and 73 antelope.

The State Engineer finds that Applications 72361 and 72362 are proposing to move a portion of a decreed Humboldt River direct diversion water right with a 1903 priority to the headwaters of an unnamed surface water source and Little Big Spring, respectively, with both sources being tributary to the North Fork of the Humboldt River.

IV.

Applications 72361 and 72362 propose to change the period of use from the decreed period of use, which is from April 15 to August 15, to annual. Application 72361 proposes to store water in a reservoir on a yearly basis, thus converting a junior priority to a higher priority right, which would be difficult to regulate. The State Engineer finds that the granting of Applications 72361 and 72362 would have a detriment impact on existing rights.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

⁴ NRS chapter 533.

⁵ NRS § 533.370(5).

- 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 Bureau of Land Management filed Application 72361 for wildlife purposes. The application states that the water will be diverted into a reservoir. Through written and oral communications, it has been determined that the reservoir will have a surface area of 1.14 acres and a storage capacity of 3.02 acre-feet. As a general policy, the State Engineer estimates that losses through evaporation from reservoirs (ponds) are equivalent to that of an equal amount of irrigated acres. Application 72361 purposes to transfer 0.38 acre-feet of water from an irrigation use. The Bartlett Decree describes the land under Claim No. 00570 as harvest, which has an annual duty of 3 acre-feet of water per acre. A reservoir of 1.14 acres in size would evaporate approximately 3.42 acre-feet of water on an annual basis. The State Engineer concludes that there is insufficient water included in the requested amount to compensate for the evaporative losses from the proposed reservoir. The State Engineer also concludes that the Applicant is proposing to move a junior priority upstream of senior water right holders and this transfer would impair those rights.

IV.

Application 72362 proposes to change the point of diversion, manner and place of use of a Little Humboldt River Decreed water right from the main stem of the North Fork of the Humboldt River to Little Big Spring, which is tributary to the North Fork of the Humboldt River. The State Engineer concludes that moving a junior priority claim's point of diversion above senior priority rights is not in the public interest and will impact existing rights.

V.

The Humboldt River Decree controls the allocation of the waters through a priority system, which requires that a senior priority must be satisfied prior to the delivery of river water to a junior appropriator. Through a system of ditches and headgates, water deliveries to many users can be regulated in an effective manner based upon their decreed priorities. The regulation of a spring source that is tributary to the Humboldt River system presents a more difficult task, since a spring cannot be prevented from flowing, if it is out of priority. This would circumnavigate the priority system, to the detriment of senior water users. The State Engineer

concludes that the transfer proposed under Applications 72361 and 72362 would have an adverse effect upon the State Engineer's ability to regulate the waters of the Humboldt River system.

Applications 72361 and 72362 propose to change the period of use from decreed (April 15 to August 15) to annual. The State Engineer concludes that to approve such a change would be detrimental to the other water users on the Humboldt River system.

RULING

Application 72361 is hereby denied on the grounds that there is insufficient water to meet the demands of the proposed project and that its approval would adversely impact existing Humboldt River Decreed water rights. Application 72362 is hereby denied on the grounds that it will adversely impact existing Humboldt River Decreed water rights.

Respectfully submitted,

K.L. Hull P.E.

for TRACY TAYLOR, P.E.
State Engineer

TT/KH/jm

Dated this 28th day of
January, 2008.

Attachment: Applications 72361 and 72362

