

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

IN THE MATTER OF APPLICATION 30216)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF WINZ CREEK LOCATED WITHIN)
THE LAKE VALLEY HYDROGRAPHIC BASIN)
(183), LINCOLN COUNTY, NEVADA.)

RULING

4796

GENERAL

I.

Application 30216 was filed on May 4, 1976, by Andrew L. Scott to appropriate 3.0 cubic feet per second of water from Winz Creek for the irrigation of 100 acres of land which are described as being located within the S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 27, T.6N., R.67E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 27.¹

II.

Application 30216 was timely protested by Urban Cole on the following grounds:¹

THIS WATER HAS BEEN USED CONTINUOUSLY EVERY YEAR SINCE 1919, ON THE FOLLOWING DESCRIBED GROUND: NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ AND PARCEL 1 LOT NUMBER 4 IN SECTION 19 T6N R68E MD&B. AND SE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 24 T.6N R.67E. MD&B. WE THEREFOR (SIC) FEEL SINCE WE HAVE USED THE HIGH WATER EVERY YEAR, PLUS APPLICATION TO USE WATER UNDER #4880 APPROPRIATION IN 1923, THAT THIS APPLICATION SHOULD BE DENIED.

III.

Application 30216 was also timely protested by John Cole on the following grounds:¹

THIS WATER HAS BEEN USED CONTINUOUSLY EVER (SIC) YEAR SINCE 1917, ON THE FOLLOWING DESCRIBED GROUND: NW $\frac{1}{4}$ SE $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ OF SECTION 9 AND THE NE $\frac{1}{4}$ OF NW $\frac{1}{4}$ OF SECTION

¹ File No. 30216, official records in the office of the State Engineer.

16 T6N R68E MDB&M. WE THERFOR (SIC) FEEL SINCE WE HAVE USED THE HIGH WATER AND ANY WATER RUNNING DOWN FROM EMPEY CANYON, PLUS APPLICATION TO USE WATER UNDER #4468 APPROPRIATION IN 1917, THAT THIS APPLICATION SHOULD BE DENIED. WE HAVE USED THIS WATER EVERY YEAR.

FINDINGS OF FACT

I.

The Wilson Creek Decree contains a declaration of full appropriation which states that from the record of the adjudication proceedings and the record of claimed vested water rights and permits issued by the State Engineer, it is hereby determined that the waters of Wilson, Winz, and Bailey Creeks and their tributaries, including all springs within their drainage are fully appropriated.² The State Engineer finds that the waters of Winz Creek have been determined through the adjudication process to be fully appropriated, therefore, no additional appropriations of water can be allowed from this source.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

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

A. there is no unappropriated water at the proposed source;

² Findings of Fact, Conclusions of Law, Judgement and Decree, In the Matter of the Determination of the Relative Rights In and To the Waters of Wilson Creek and its Tributaries in Lincoln County, Seventh Judicial District Court In and for Lincoln County, Nevada, January 25, 1990.

³ NRS Chapter 533.

⁴ NRS § 533.370(3).

- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 30216 requests an additional appropriation of surface water from a source which has been determined to be fully appropriated. The State Engineer concludes that there is no unappropriated water available for use from Winz Creek, therefore, Application 30216 must be denied.

RULING

Application 30216 is hereby denied on the grounds that there is no unappropriated water available at the source. No ruling is made on the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 21st day of
September, 1999.