

IN THE MATTER OF APPLICATIONS 33228,)
33229 AND 33230 FOR THE WATERS OF)
CHIATOVICH CREEK IN ESMERALDA COUNTY,)
NEVADA)

RULING

FINDINGS OF FACT

I

Application 33228 was filed by Robert E. and Shirley S. Duval on August 19, 1977, for 7.5 c.f.s. of water from Chiatovich Creek at a point located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 25, T.1S., R.34E., M.D.B. & M. Water is to be used for irrigation purposes on 160 acres in the S $\frac{1}{2}$ N $\frac{1}{2}$ Section 25, T.1S., R.34E., M.D.B. & M.

Application 33229 was filed by Robert E. and Shirley S. Duval on August 19, 1977, for 6.0 c.f.s. of water from Chiatovich Creek at a point located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T.1S., R.35E., M.D.B. & M. Water is to be used for irrigation purposes on 120 acres in the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 29, and SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 28, T.1S., R.35E., M.D.B. & M.

Application 33230 was filed by Robert E. and Shirley S. Duval on August 19, 1977, for 1.5 c.f.s. of water from Chiatovich Creek at a point located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 20, T.1S., R.35E., M.D.B. & M. Water is to be used for irrigation purposes on 20 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.1S., R.35E., M.D.B. & M.

These applications were assigned by deed dated October 15, 1979, from Robert E. and Shirley S. Duval to B. Ann Walker. 1/

II

These applications were protested by Arlemont Ranch, a general partnership, which protests seek that the applications be denied on the following grounds:

- "1) All of the Waters of Chiatovich Creek have been previously appropriated and applied to a beneficial use by the protestant and his predecessors in interest, in accordance with the Chiatovich Creek Decree.
- 2) The property for which the appropriation is sought is not suitable for irrigation by flood or any other means because of the steepness and unevenness of the terrain.
- 3) The property is far too rocky and uneven for land leveling to be economically or ecologically feasible.

- 4) The rockiness and unevenness of the property renders it unsuitable for cultivation.
- 5) In years when more water is available than that which has been decreed, the removal of water above the presently existing diversion points and withdrawal of water from upstream underground sources would jeopardize the prior appropriative rights of the protestant.
- 6) The applicant has neither the experience, the expertise, the equipment nor the financial ability to carry out any plan to irrigate the property in question, or to apply the water which he seeks to appropriate to any beneficial use." 2/

III

A field investigation into the matter of these protested applications was held on May 24, 1979. 3/

IV

The records of the office of the State Engineer show the following water rights from Chiatovich Creek in the name of Arlemont Ranch. 4/

Certificate 402 (Proof 01307)	14.044 c.f.s.	597.74 acres
Certificate 403 (Proof 01308)	3.031 c.f.s.	153.24 acres
Permit 5249	1.2267 c.f.s.	122.64 acres
Permit 9062	15.0 c.f.s.	1401.8 acres
Permit 23192	<u>25.8</u> c.f.s.	1561 acres
	60.0017 c.f.s.	total

The annual duty appropriated under these rights is approximately 7805 acre-feet for the irrigation of approximately 1561 total acres.

Stream flow records on Chiatovich Creek indicate the average flow to be 8.63 c.f.s., and in the sixteen years of record the peak flow has only exceeded 60.0017 c.f.s. three times. 5/ Cumulative stream flow records show an average discharge of 6370 acre-feet per year. 6/

CONCLUSIONS

I

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

II

The State Engineer is prohibited by law from granting a permit where:

1. There is no unappropriated water for irrigation in the proposed source, or
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest. 8/

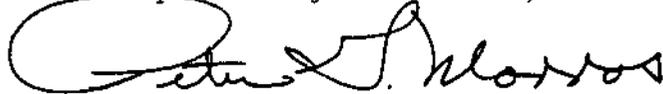
III

Current appropriations on Chiatovich Creek exceed both the average flow rate and the cumulative average annual discharge.

RULING

Applications 33228, 33229, and 33230 are herewith denied on the grounds that there is no water available for irrigation appropriations in Chiatovich Creek, and their granting would therefore interfere with existing water rights and be detrimental to the public interest.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM:LCR:gk

Dated this 3rd day of
FEBRUARY, 1982.

FOOTNOTES

1. Applications 33228, 33229, and 33230 are of public record and available for inspection in the office of the State Engineer.
2. These protests are filed under Applications 33228, 33229, and 33230 and are of public record and available for inspection in the office of the State Engineer.
3. Report of Field Investigation of June 19, 1979, is a public record available for inspection in the office of the State Engineer.
4. Available for review in the office of the State Engineer.
5. Available for review in the office of the State Engineer; "Nevada Streamflow Characteristics. Water Resources. Information Series Report 28."
6. Water Resources Data for Nevada Water Year 1975, page 62. U.S. Geological Survey Water Data Report NV 75-1.
7. NRS 533.025 and NRS 533.030, Subsection 1.
8. NRS 533.370, Subsection 4.