

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

IN THE MATTER OF APPLICATIONS 39123)
AND 57130 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF WINZ CREEK LOCATED)
WITHIN THE LAKE VALLEY HYDROGRAPHIC)
BASIN (183), LINCOLN COUNTY,)
NEVADA.)

RULING

4817

GENERAL

I.

Application 39123 was filed on September 25, 1979, by James Wayne Cole to appropriate 1.5 cubic feet per second (cfs) of water from Winz Creek for irrigation and domestic purposes within 90.00 acres of land which are described as being located within the S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T.6N., R.67E., Lot 1 of Section 30, T.6N., R.68E., and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 25, excepting the north 600 feet of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, T.6N., R.67E., M.B.D.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, T.6N., R.67E., M.D.B.&M. By letter received in the office of the State Engineer on August 23, 1999, the applicant reduced the amount of water requested under Application 39123 to 0.2 cfs.¹

II.

Application 57130 was filed on February 3, 1992, by James Wayne Cole to appropriate 1.5 cfs of water from Winz Creek for the irrigation of 141.82 acres of land which are described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, both in T.6N., R.67E., M.D.B.&M., and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, T.6N., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 25.²

¹ File No. 39123, official records in the office of the State Engineer.

² File No. 57130, official records in the office of the State Engineer.

III.

Vicki Cole Adair timely protested Application 57130 on the following grounds:²

This water has been used continuously every year since 1919 by my family interests 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, MDBUM [sic], and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T6N, R67E., MDB&M. We hold Water Proof No. 02998 on Winz Creek in the amount of 1.55 cfs. I feel that the granting to Mr. Cole of his application 57130 would negatively affect my water holding, springs seeps, ditches, reservoirs and delivery systems to my fields that are situated up the same drainage as Mr. Cole's property. We feel Mr. Cole having water would drop our water table, dry up springs and seeps, reduce the quality and quantity of water and accelerate all these adverse affects to the surrounding property. Our livestock, wild horses, deer, antelope, elk, and a variety of smaller animals depend on our springs to LIVE.

IV.

Kathleen Mary Cole timely protested Application 57130 on the following grounds:²

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 16 T6N R68E MDB&M. I therefore 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.

V.

John Donald Cole timely protested Application 57130 on the following grounds:²

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 16 T6N R68E MDB&M. I therefore 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 be denied. All of the water available in Winz Creek has been already assigned and appropriated as evidenced by

your "Findings of Fact." dated May 14, 1990. During the process of assigning and adjudicating Wilson, Winz, and Bailey Creeks, the State Water Engineer found that Mr. Wayne Cole was not entitled to any water rights and denied him permission to build a reservoir on his property higher than five feet. Mr. Wayne Cole has been using "tail water" from Proof Numbers 02928, 02998, 03683, 4468 and 4880. He is not entitled to any water of his own since no unappropriated water is available.

VI.

Esther F. Cole timely protested Application 57130 on the following grounds:²

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, MDB&M, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T6N, R67E, MDB&M. We hold Water Proof No. 02998 on Winz Creek in the amount of 1.55 CFS. Please refer to your "Notice of entry of findings of Fact, Conclusions of Law, Judgment and Decree dated May 14, 1990, Case No. 5707, specifically on page 4, section XI. that says.."it is hereby determined that the waters of Wilson, Winz and Bailey Creeks and their tributaries, including all springs within these drainages, are fully appropriated." Further in this same document is validation of our above claim and right to Proof No. 02998, please see pages 9 and 10. We feel that the granting of application 57130 to Mr. Cole would deplete the ground water and cause a drop in water table, drying up of springs and seeps, reduction in water quality and quantity and that removing of this water would accelerate the adverse affects.

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 was determined that the waters of Wilson, Winz and Bailey Creeks and their tributaries, including all springs within their drainages were

fully appropriated.³ The State Engineer finds that the waters of Winz Creek have been determined through the adjudication process to be fully appropriated, therefore, no additional appropriation of water can be allowed from this source.

II.

The proposed points of diversion described under the subject applications are both located within the NE¼ of Section 25, T.6N., R.67E., M.D.B.&M. While all of the decreed water rights which divert the waters of Winz Creek for irrigation purposes are located upstream from these proposed sites, several claims of vested rights for stock watering purposes, Proofs V-03683 and V-03678, have portions of their respective places of use downstream from the diversion sites requested under Applications 39123 and 57130. The State Engineer finds the approval of the subject applications would allow additional diversions of water to occur from a fully appropriated source from points of diversion that are located upstream from existing decreed 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 an application to appropriate the public waters where:⁵

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

³ Findings of Fact, Conclusions of Law, Judgment 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 the County of Lincoln, Nevada, January 25, 1990.

⁴ NRS Chapter 533.

⁵ NRS § 533.370(3).

C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 39123 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 39123 must be denied.

IV.

Applications 39123 and 57130, if approved, would allow additional appropriations of Winz Creek water to occur from respective points of diversion that are positioned upstream from segments of the Winz Creek and Wilson Creek that are currently being utilized for stockwatering purposes under decreed rights. The State Engineer concludes that the approval of Applications 39123 and 57130 would conflict with existing decreed water rights that appropriate water from Winz and Wilson Creeks.

RULING

Applications 39123 and 57130 are hereby denied on the grounds that there is no unappropriated water available at the source and that their approval would conflict with existing water rights. No ruling is made on the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 7th day of
December, 1999.