

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

IN THE MATTER OF APPLICATION 38031)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF FITZHUGH CREEK WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA.)

RULING

#5378

GENERAL

I.

Application 38031 was filed on April 27, 1979, by Marvin J. Jessen and Georgette E. Jessen to appropriate 1.0 cubic feet per second of water from Fitzhugh Creek for the irrigation of 15.0 acres of land that are described as being within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.20N., R.64E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 1.¹

II.

Application 38031 was timely protested by Martin T. Magnuson on grounds, which will not be considered in this ruling.¹

FINDINGS OF FACT

I.

The applicants were notified by certified mail dated April 22, 2003, to submit additional information regarding their continued interest in maintaining Application 38031. The applicants were warned that failure to respond within thirty days would result in the denial of the application. The envelope containing the certified letter to the applicants was returned to the Office of the State Engineer by the U.S. Postal Service stamped "Attempted, Not Known", with the handwritten inscription, "Not At This Address".¹ To date, the applicants have not submitted any information in response to this request. The State Engineer finds

¹ File No. 38031, official records in the Office of the State Engineer.

that the applicants were properly notified of the need for additional information regarding Application 38031 and have failed to respond.

II.

The State Engineer finds that it is the responsibility of the applicants to keep this office informed of a current, valid mailing address.

III.

The State Engineer finds that there has been no correspondence from the applicants for at least 23 years.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.³

III.

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;
- B. the proposed use or change conflicts with existing rights;
- 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.

² NRS chapters 533 and 534.

³ NRS § 533.375.

⁴ NRS § 533.370(4).

IV.

The applicants were properly notified of the requirement for additional information and have failed to submit this information to the Office of the State Engineer. The State Engineer concludes that the applicants' failure to express any interest in this application for in excess of 23 years and their failure to maintain a current mailing address demonstrates a lack of interest in pursuing Application 38031. The State Engineer concludes that it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

RULING

Application 38031 is hereby denied on the grounds that the granting of this application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/MDB/jm

Dated this 17th day of
June, 2004.