

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

IN THE MATTER OF APPLICATIONS)
37229 AND 37230 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE AND)
APPLICATION 38232 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF A SURFACE SOURCE WITHIN THE)
GARDEN VALLEY HYDROGRAPHIC)
BASIN (172), NYE COUNTY, NEVADA.)

RULING

5275

GENERAL

I.

Application 37229 was filed on March 27, 1979, by Lynn C. Wadsworth to appropriate 2.7 cubic feet per second (cfs) of water from an underground source for irrigation and domestic purposes. The proposed place of use is 160 acres described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, all within T.3N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, T.3N., R.58E., M.D.B.&M.¹

II.

Application 37230 was filed on March 27, 1979, by Lynn C. Wadsworth to appropriate 2.7 cfs of water from an underground source for irrigation and domestic purposes. The proposed place of use is 160 acres described as being located within SE $\frac{1}{4}$ of Section 32, T.3N., R.58E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T.3N., R.58E., M.D.B.&M.²

III.

Application 38232 was filed on May 24, 1979, by Lynn C. Wadsworth to appropriate 0.045 cfs of water from a spring source for irrigation and domestic purposes. The proposed place of use is 5 acres described as being located within SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T.3N., R.57E., M.D.B.&M. The proposed point of diversion is

¹ File No. 37229, official records in the Office of the State Engineer.

² File No. 37230, official records in the Office of the State Engineer.

described as being located within the SE¼ SW¼ of Section 15, T.3N., R.57E., M.D.B.&M.³

IV.

Applications 37229 and 37230 were timely protested by Michael Heizer on the following grounds:¹

1. Protestant owns 1,400 acres in Sections 13, 14 and 15 in Township 2 North, Range 58 East, M.D.B.&M., which is being developed, and the requested appropriation would impair the development of what is now private property.
2. Protestant believes the requested appropriation would diminish the water table and might affect existing rights.
3. Protestant's lands, as well as Cherry Creek, are downstream and subjected to surplus runoff with chemicals and other fertilizers being carried downstream. Cattle and existing wildlife use Cherry Creek for water and Protestant believes they would be adversely affected.
4. The parcels to be irrigated are non-contiguous and Protestant believes, would result in an inefficient use of the water.
5. Protestant believes the amount requested is in excess of that required for the project and is in excess of the resources of the area.
6. Protestant believes the requested appropriation is not in the best public interest or economic welfare of the State of Nevada.

V.

Applications 37230 and 38232 were timely protested by Gracian Uhalde and Gracian N. Uhalde and by Charles E. Wadsworth and D. Clayton Wadsworth via separate protests on the following grounds:²

That it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestants' grazing of said areas and Protestants' existing water rights and ranges.

FINDINGS OF FACT

I.

The applicant was notified by certified mail dated March 5, 2003, to submit additional information to the State Engineer's office. The applicant was warned that failure to respond within 30 days would result in denial of the application. A properly

³ File No. 38232, official records in the Office of the State Engineer.

endorsed certified receipt was returned to the Office of the State Engineer by the U.S. Postal Service on March 10, 2003.¹ To date, there has been no response from the applicant. The State Engineer finds that the applicant was properly notified of the request for additional information regarding Applications 37229, 37230 and 38232 and has failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicant regarding Applications 37229, 37230 and 38232 for at least 16 years.³

CONCLUSIONS

I.

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

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.⁵

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:⁶

- 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.

IV.

The applicant was properly notified of the requirement for additional information concerning interest in these applications and has failed to submit any information to the State Engineer's office. The State Engineer concludes that the failure to express any interest in the application for over 16 years and failure to respond to the certified request

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.375.

⁶ NRS § 533.370(3).

for additional information demonstrates the applicant's lack of interest in pursuing Applications 37229, 37230 and 38232. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue permits under applications for which no interest is expressed.

RULING

Applications 37229, 37230 and 38232 are hereby denied on the grounds their issuance would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,

A handwritten signature in black ink that reads "Hugh Ricci, P.E." in a cursive style.

HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 5th day of
September, 2003.