

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

IN THE MATTER OF APPLICATIONS)
65250 AND 65251 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
A SURFACE SOURCE WITHIN THE)
PARADISE VALLEY HYDROGRAPHIC)
BASIN (069), HUMBOLDT COUNTY,)
NEVADA.)

RULING

#5433

GENERAL

I.

Application 65250 was filed on June 28, 1999, by Anthony L. and Nancy A. Lesperance to appropriate 1.02 cubic feet per second (cfs) of water described as run off for irrigation purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, and portions of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T.42N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 20.¹

II.

Application 65251 was filed on June 28, 1999, by Anthony L. and Nancy A. Lesperance to appropriate 1.02 cfs of water described as run off for irrigation purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, and portions of the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, T.42N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 20.²

III.

Applications 65250 and 65251 were timely protested by Leslie J. Stewart, PTR, Ninety-Six Ranch on the following grounds:^{1,2}

Under determination of rights on the Little Humboldt River, case No. 3157 it states, "The waters of the system are fully appropriated and there is no surplus water for irrigation". (Page 73)

Further on page 75 it states "Successors and assigns in and to water rights herein described and each of them is forever enjoined from claiming any

¹ File No. 65250, official records in the Office of the State Engineer.

² File No. 65251, official records in the Office of the State Engineer.

rights in and to waters of the Little Humboldt River System except the rights set up and specified in this Decree”.

Further, the application asks for water for irrigation Jan. 1 – Dec. 31. The decree sets time limits on the irrigating season. It does not provide for year around irrigation rights.

IV.

Applications 65250 and 65251 were timely protested by the Nevada First Corporation on the following grounds:^{1,2}

Application 65250 [65251] lists runoff as the source of appropriation; the application is not specific as to the source of the runoff. The surface water of the Little Humboldt River system is fully appropriated, and Nevada First Corporation holds water rights that are downstream from this proposed use. If this application proposes any use of the surface waters of the Little Humboldt River system, the application should be denied.

V.

Bruce L. Rice of Rice Engineering, as agent for the applicants, signed applications 65250 and 65251. Mr. Rice has informed the State Engineer’s office that he has closed his business and retired from water rights consulting.

FINDINGS OF FACT

I.

The applicants were notified by certified mail dated April 13, 2004, to submit additional information regarding Applications 65250 and 65251 to the State Engineer’s office. Specifically, the applicants were asked to supply additional information regarding the nature of the water source and details of their project. The applicants were warned that failure to respond within 30 days would result in denial of the application. 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”. To date, the applicants have expressed no interest in pursuing these applications and have not submitted the additional information requested.^{1,2} The State Engineer finds that the applicants were properly notified of the request for additional information regarding interest in pursuing Applications 65250 and 65251 and failed to respond.

II.

The State Engineer finds that there has been no correspondence from the applicants or their agent in regards to this application for over 5 years.^{1,2} The State

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

CONCLUSIONS

I.

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

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.⁴

III.

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

IV.

The applicants were properly notified of the requirement for additional information and have failed to submit the information to the State Engineer's office. The State Engineer concludes that the failure to express any interest in these applications for over 5 years and the failure to submit requested information demonstrates the applicants' lack of interest in pursuing Applications 65250 and 65251. The State Engineer concludes it would threaten to prove detrimental to the public interest to issue a permit under these circumstances.

³ NRS chapter 533.

⁴ NRS § 533.375.

⁴ NRS § 533.370(4).

RULING

Applications 65250 and 65251 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,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 21st day of
October, 2004.