

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

IN THE MATTER OF APPLICATION 85698)
FILED IN ACCORDANCE WITH STATE)
ENGINEER'S ORDER NO. 1265, DATED)
OCTOBER 1, 2015, TO PROVIDE ADDITIONAL)
MANAGEMENT OF EXISTING WATER)
RIGHTS AT THE GOLD QUARRY AND)
NORTH AREA MINES WITHIN THE MAGGIE)
CREEK AREA HYDROGRAPHIC BASIN (51),)
ELKO AND EUREKA COUNTIES, NEVADA.)

RULING
#6367

GENERAL

I.

Application 85698 was filed on November 24, 2015, by the Newmont Gold Company to comply with State Engineer's Order No. 1265, dated October 1, 2015, for mining, milling and dewatering purposes for the Greater Gold Quarry mining project. The application was filed for 110.0 cubic feet per second (cfs), 79,637 acre-feet annually.¹ The Gold Quarry Mine has a consumptive use limit of 10,560.42 acre-feet annually (afa).² The proposed point of diversion is the approximate centroid of the mine described as being located within the NW¼ SE¼ of Section 35, T.34N., R.51E., M.D.B.&M. The proposed place of use is the Greater Gold Quarry Area described in its entirety in Attachment "A" of the application and generally located within portions of T.33N., R.51E.; T.33N., R.52E.; T.34N., R.51E.; T.34N., R.52E.; T.35N., R.50E.; and T.35N., R.51E., M.D.B.&M.¹

II.

Application 85698 was timely protested by the Pershing County Water Conservation District of Nevada on grounds that the granting of said application will affect the water table and drainage and adversely affect the decreed water of the Humboldt River and that Basin 51 is over appropriated.¹

III.

Application 85698 was timely protested by Daniel and Eddyann Filippini on the following grounds. There is no unappropriated water available in the designated Maggie Creek Hydrographic Basin 51. The proposed points of diversion will conflict with existing rights. The proposed use will

¹ File No. 85698, official records in the Office of the State Engineer.

² File Nos. 78680 and 83766, official records in the Office of the State Engineer.

conflict with existing rights, including those for irrigation, and protectable interests in domestic wells. The water use proposed will cause an unreasonable lowering of the water table. The works are not adequately described to determine the overall impact on human health, stock and domestic animals and environmental detriment. Any permits issued must contain express conditions to ensure existing appropriations will be satisfied. The proposed application will cause appropriations to exceed the perennial yield established for the basin. The Applicant has not established that it has the financial ability to construct the works, and the cost estimate is vague. The proposed use will prove detrimental to the public interest. The proposed use will prove detrimental on economic grounds and will adversely affect the cost of water use for other holders of water in the Humboldt River Basin, including the likelihood of increased expense from pumping from lowered water table depths. The proposed points of diversion and duties may result in loss of recharge to aquifers due to depletion of Humboldt River water, thereby impacting existing rights downstream and within the Humboldt River Basin. There is no geologic data or hydrologic evidence that the quantity of water requested in the application exists in the mine region. The application was not filed within 30-days from the issuance of Order 1265, and appears to be in violation of the State Engineer's mandate. The application fails to identify the base water rights that the total combined duty is based and is therefore deficient. The proposed water uses in the application are not in compliance with State Engineer's Order 872 designating the preferred use as municipal, quasi-municipal and domestic uses.¹

FINDINGS OF FACT

I.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of Nevada. The State Engineer finds that in the case of protested Application 85698 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

State Engineer's Order No. 1265, dated October 1, 2015, establishes rules within a portion of the designated Maggie Creek Area Hydrographic Basin related to the Gold Quarry Mining Project. The purpose of the Order is to create a single permit at the mine site, which consolidates all previously permitted mining water rights issued to the Applicant. From a single permit, such as the

one contemplated by Application 85698, the Applicant can file temporary change applications once per year to account for all water pumped at the mine site for mining, milling and dewatering purposes, and it allows the Applicant to drill multiple points of diversion under the permit. The issuance of a single permit significantly reduces the number of potential future change applications filed by the Applicant and reduces the processing time for applications that are filed. Orders similar to Order No. 1265 at other mine sites have proven an effective permit management tool for the Division of Water Resources (Division) as the reduction in paperwork is beneficial to the Division and the Applicant, does not change the amount of water appropriated or used, adds to the reporting requirements of the mine, and does not change the frequency of reporting. The State Engineer finds that Application 85698 will have the effect of consolidating all of Applicant's mining permits under a single permit to provide for a more efficient management of the mine's water right permits and future change applications.

III.

The State Engineer's Order No. 1265 was issued with a requirement that the Applicant file one application within 30 days of the issuance of the order, being October 31, 2015. Protestant argues that since it was filed November 24, 2015, it was not timely or in compliance with the State Engineer's Mandate. The due date was not statutory or regulatory, but one established by the State Engineer to deter excessive delay in filing the application. The Applicant was in communication with the Division of Water Resources for the purpose of ensuring that the Application was filed in accordance with the State Engineer's Order No. 1265. The State Engineer established the time frame for filing; therefore, he can waive that due date. Since the Applicant was actively working on filing the Application, the State Engineer allowed the filing within a month of the date set forth in his own order. The State Engineer finds that Application 85698 was correctly filed in accordance with State Engineer's Order No. 1265.

IV.

The protests allege that because Hydrographic Basin No. 51 is a designated basin managed by the Nevada State Engineer, there is no unappropriated water available and that the amount of committed groundwater resource, consisting of temporary mining and milling and permanent permits and certificates, exceeds the perennial yield of the basin. In addition, the Protestants assert that the approval of Application 85698 will cause unreasonable lowering of the water table, will have adverse effects upon existing groundwater rights and decreed rights of the Humboldt River, and otherwise

conflict with existing rights and protectable interests in domestic wells. The Protestant asserts that the application fails to identify the base water rights and that the application is not in compliance with State Engineer's Order 872 designating the preferred use as municipal, quasi-municipal and domestic.

Application 85698 is not requesting a new appropriation of water; rather, the application is filed to comply with State Engineer's Order No. 1265, and is not changing the mining operation's use of water, as stated in the application. The application was filed by the Applicant as directed by the Division for the total amount of water previously appropriated by the mine. Gold Quarry mine is allowed a diversion rate of 110.0 cfs, but is limited to a consumptive use of 10,560.42 afa. Water pumped in excess of the consumptive use is generally considered dewater and specific conditions apply to this water. The Gold Quarry mine is required to track water usage on a monthly basis and submit this information on a quarterly basis. The items reported include the total volume of water pumped from each diversion, the maximum flow rate from each diversion in cfs, the pumping water level in each well in feet above mean sea level, the volume of water consumptively used for mining and milling purposes, the amount of water diverted to the infiltration or injection sites, if any, and the amount of water lost through evaporation or other system losses project-wide.³ This information is available from the State Engineer's office to the public upon request.

The issues raised by the Protestant regarding the perennial yield of the basin and committed resources is not correct because the water is already appropriated and is accounted for in the basin budget; thus, Application 85698 does not change the amount of water allowed to be pumped. The water could be pumped at current points of diversion if Application 85698 was denied; or, it could be pumped at current points of diversion if Application 85698 is approved. Either way, the regional impact on the basins would not change.

The State Engineer finds that the application does not increase the appropriation of water at the mine and does not change the consumptive use limitations. The State Engineer finds that the issue of water available for appropriation was settled with the issuance of existing appropriative permits and is not relevant to Application 85698. The State Engineer finds the Gold Quarry Mine reports its water usage, including a breakdown on mining and milling and dewatering uses on a quarterly basis and that this information is publically available. The State Engineer finds the proposed application will have no additional impact on the Maggie Creek Hydrographic Basin.

³ See e.g., File No. 76020, official records in the Office of the State Engineer.

V.

The Protestant states that the works of diversion are not adequately described to determine the overall impact on human health, stock and domestic animals and environmental detriment. Under Item No. 8 of Application 85698, the Applicant describes the proposed works as being wells, pumps, motors, conveyance works, and facilities. All wells drilled in Nevada must be drilled by a well driller licensed by the Division of Water Resources and in compliance with the statutes and regulations governing the drilling of wells, including the installation of proper sanitary seals. The State Engineer's Order No. 1265 limits the drilling of these wells to locations within specifically identified areas within the Maggie Creek Area, being the Greater Gold Quarry Area, as described in the Order.

State Engineer finds that, to the extent that this protest issue falls within the purview of the Office of the State Engineer, the works are adequately described in the application and will not threaten to prove detrimental to the public interest. Other health and environmental issues related to the operation of the mine, including but not limited to discharge water quality, are not within the purview of the State Engineer, and to that extent the State Engineer finds that this protest issue is not valid.

VI.

The Protestant makes the claim that the cost estimate for the work is vague and that the Applicant has not established that it has the financial ability to construct the works. The Protestant makes the claim that the proposed use will prove detrimental on economic grounds and will adversely affect the cost of water use for other holders of water in the Humboldt River Basin, including the likelihood of increased expense from pumping from lowered water table depths.

The State Engineer finds that Application 85698 is not requesting a new appropriation of water; rather, the application is filed to comply with State Engineer's Order No. 1265. The works of diversion and mine infrastructure are already in place, making the question of precise costs and financial ability moot. Further, the State Engineer finds that approval of Application 85698 will not change the mining operation's use of water, as stated in the application, and therefore will not affect an economic impact.

VII.

Protestant states that there is no geologic data or hydrologic evidence that the quantity of water requested in the Application exists in the mine region. The fact that the water has already been and is still being developed for at least 20 years under the Applicant's existing water rights⁴ demonstrates the existence of that water; therefore, the State Engineer finds that this protest issue is without merit and can be dismissed.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

Based on the findings contained herein, the State Engineer concludes that the protests to Application 85698 are without merit and may be overruled.

RULING

The protests to Application 85698 are overruled and Application 85698 is hereby approved subject to:

1. Existing rights;
2. Payment of the statutory permit fee; and
3. State Engineer's Order No. 1265.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 26th day of
September, 2016.

⁴ Newmont Gold (Gold Quarry/Maggie Creek) Pumpage Reports File, official records in the Office of the State Engineer.

⁵ NRS Chapters 533 and 534.