

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

IN THE MATTER OF PROTESTED APPLICATION 60666)  
FILED TO APPROPRIATE THE UNDERGROUND WATERS )  
OF THE DIXIE CREEK-TENMILE CREEK AREA )  
GROUNDWATER BASIN (48), ELKO COUNTY, NEVADA.)

RULING

# 4319

GENERAL

I.

Application 60666 was filed on November 18, 1994, by Everett E. Gustin to appropriate 0.5 cubic feet per second (cfs) of the underground waters of the Dixie Creek-Tenmile Creek Area Groundwater Basin, for commercial use for a proposed shopping center located within a portion of the N $\frac{1}{2}$  Section 3, T.33N., R.56E., M.D.B.&M. The proposed point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 3.<sup>1</sup>

II.

Application 60666 was timely protested by the Spring Creek Utilities Company on the grounds that:

1. The Dixie Creek-Tenmile Creek Area Groundwater Basin is over appropriated;
2. The additional pumping of groundwater, as proposed under Application 60666, may adversely affect the Utility's ability to meet its demand for water under its existing rights;
3. Applications to appropriate groundwater for irrigation within this basin were denied in State Engineer's Ruling No. 2964, dated May 21, 1984.

Spring Creek Utilities requests that Application 60666 be denied.<sup>2</sup>

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<sup>1</sup> File No. 60666, Official Records in the Office of the State Engineer.

<sup>2</sup> Exhibit No. 4, Public Administrative Hearing before the State Engineer, November 7, 1995.

III.

Application 60666 was timely protested by the Elko County School District on the grounds that the approval of said Application would result in interference with the School District's existing wells and would result in additional groundwater withdrawals in excess of the perennial yield of the basin. Therefore, the Elko County School District requests that Application 60666 be denied.<sup>3</sup>

This protest was later withdrawn by letter dated December 15, 1995.<sup>1</sup>

IV.

After all parties were noticed by certified mail,<sup>4</sup> a public administrative hearing was held before the Hearing Officer for the State Engineer.<sup>5</sup> At the hearing, administrative notice was taken of the records in the office of the State Engineer.<sup>6</sup>

FINDINGS OF FACT

I.

At the hearing, the Applicant addressed the issue of possible interference with nearby wells owned by the Spring Creek Utilities Company and the School District. The Applicant's expert witness testified that the long term drawdown in the School District's well located about 1600 feet away, as a result of the proposed pumping under Application 60666, is calculated to be 5.3 feet.<sup>7</sup> This

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<sup>3</sup> Exhibit No. 5, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>4</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>5</sup> Transcript of Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>6</sup> Transcript p.6, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>7</sup> Exhibit No. 8 and Transcript p. 29, Public Administrative Hearing before the State Engineer, November 7, 1995.

compares favorably with the estimate of six feet of drawdown, provided by the School District's expert.<sup>8</sup>

The Applicant's witness estimated the drawdown in Spring Creek Utilities Company's nearest well, located about one-half mile away, to be 4.6 feet.<sup>9</sup> The Utilities Company's representative agrees that the drawdown in the Utilities' well would be less than that of the School District's well.<sup>10</sup>

The State Engineer finds that the estimated lowering of the groundwater resulting from the proposed pumping under Application 60666 is reasonable. The State Engineer further finds the approval of said Application will not conflict with existing rights.

## II.

The perennial yield of a hydrologic system is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. If the perennial yield is continually exceeded, groundwater levels will decline until the groundwater reservoir is depleted of water of usable quality or until the pumping lifts become uneconomical to maintain. Perennial yield cannot exceed the natural replenishment to an area indefinitely and ultimately is limited to the maximum amount of natural discharge that can be beneficially used.

Withdrawals of groundwater in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence, and possible reversal of groundwater gradients, which could result in significant changes in the recharge-discharge relationship. These conditions have

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<sup>8</sup> Transcript p. 9, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>9</sup> Exhibit No. 8, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>10</sup> Transcript p. 16, Public Administrative Hearing before the State Engineer, November 7, 1995.

developed in several other groundwater basins within the State of Nevada where storage depletion and declining water tables have been recorded and documented.<sup>11</sup>

The perennial yield for the Dixie Creek-Tenmile Creek Area is estimated to be 13,000 acre feet annually (AFA).<sup>12</sup> The quantity of water committed under permits and certificates issued by the State Engineer is 17,500 AFA.<sup>13</sup> Of this quantity, 5,800 AFA are permitted for recreational use for the development of the South Fork Recreation Area (SFRA).<sup>13</sup> The development of the SFRA is a long term project and full build-out is not expected to be completed in the near future. The maximum quantity of water that will actually be used at some future date is presently unknown but is expected to be less than the permitted amount.

Approximately 1,800 AFA are permitted for mining and milling uses within the Dixie Creek-Tenmile Area. Mining and milling uses are considered temporary in nature and will not have a permanent impact on the groundwater resource.

The State Engineer finds that the quantity of water presently committed under permits and certificates does not represent the true quantity of water that will actually be pumped from the Dixie Creek-Tenmile Creek Area Groundwater Basin in the future. There is a reasonable expectation that this quantity will be less than the perennial yield of the basin. The State Engineer further finds

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<sup>11</sup> Official Records in the Office of the State Engineer.

<sup>12</sup> Water Resources Appraisal of the Huntington Valley Area, Elko and White Pine Counties, Nevada, Water Resources Reconnaissance Series Report 35, United States Geological Survey and Nevada Department of Conservation and Natural Resources, 1965. In this report, the Huntington Valley Area was divided into three hydrologic subareas: the Huntington Creek Drainage Area; the South Fork Humboldt River Drainage Area; and the Dixie Creek-Ten Mile Creek Drainage Area. The perennial yield for the Dixie Creek-Ten Mile Area is stated as being 13,000 AFA.

<sup>13</sup> Official Records in the Office of the State Engineer.

that the approval of Application 60666 will not cause the overpumping of the basin.

III.

Evidence and testimony were presented at the hearing which indicated that the residents of the Spring Creek area will benefit from the proposed shopping center project.<sup>14</sup> The State Engineer finds that there is a demand for the project and that the approval of Application 60666 is in the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.<sup>15</sup>

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters of Nevada where:<sup>16</sup>

- A. There is no unappropriated water at the proposed source;
- B. The proposed use conflicts with existing rights; or
- C. The proposed use threatens to prove detrimental to the public interest.

III.

It is a condition of each appropriation of groundwater acquired under NRS 534 that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion.<sup>17</sup>

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<sup>14</sup> Transcript pp. 40-44, Public Administrative Hearing before the State Engineer, November 7, 1995.

<sup>15</sup> NRS 533 and 534.

<sup>16</sup> NRS 533.370.

<sup>17</sup> NRS 534.110(4).

IV.

The anticipated drawdown of the groundwater level in the vicinity of the proposed point of diversion of Application 60666 represents a reasonable lowering of the groundwater. The State Engineer concludes that the nearby wells will not be unduly impacted. The State Engineer further concludes that the approval of Application 60666 will not conflict with existing rights.

V.

The State Engineer concludes that the approval of Application 60666 will not cause the quantity of water pumped from the Dixie Creek-Tenmile Creek Area Groundwater Basin to exceed the perennial yield of the basin.

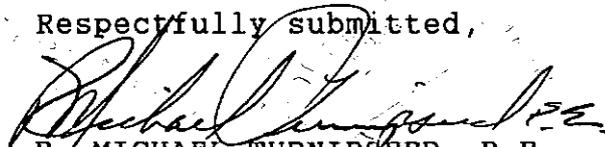
VI.

The proposed shopping center will be beneficial to the residents of the Spring Creek area and the public at-large. The State Engineer concludes that the approval of Application 60666 will not prove detrimental to the public interest.

RULING

The protest to Application 60666 is hereby overruled and said Application is hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/ab

Dated this 28th day of  
March, 1996.