

IN THE OFFICE OF STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION 56926 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE DIXIE CREEK-TENMILE )  
CREEK GROUNDWATER BASIN (048), ELKO )  
COUNTY, NEVADA. )

RULING

# 4730

GENERAL

I.

Application 56926 was filed on November 15, 1991, by the Spring Creek Association to appropriate 4.0 cubic feet per second (cfs) of underground water for recreational purposes within portions of Section 18, T.33N., R57E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 18, T.33N., R.57E., M.D.B.&M. Information contained within the remarks section of Application 56926 indicates that this application was filed to provide water service to the Spring Creek Golf Course with an estimated consumptive use amounting to 281 acre-feet of water annually.<sup>1</sup>

II.

Application 56926 was timely protested by the Spring Creek Utilities Company on the following grounds:<sup>1</sup>

The proposed location of the well is in very close proximity to one of our wells and would have an adverse effect on our ability to produce water for our customers. Also, we currently serve the golf course with water and losing them as a customer could have a negative dollar effect on the company.

<sup>1</sup> File No. 56926, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

The Dixie Creek-Tenmile Creek segment of the South Fork of the Humboldt River experiences an increase in its flow as it emerges from the groundwater basin. The majority of the 9,000 acre-feet which it has gained by this point is derived from groundwater contributions from the Dixie Creek-Tenmile Creek Groundwater Basin.<sup>2</sup> The State Engineer finds that any additional groundwater pumpage from the Dixie Creek-Tenmile Creek Groundwater Basin would reduce the groundwater contributions to the flow of the South Fork of the Humboldt River, adversely effecting existing water rights established under the Humboldt River Decree.

II.

The perennial yield of a hydrologic basin is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. Perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural recharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded, groundwater levels will decline until the groundwater reservoir is depleted. Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased uneconomic pumping lifts, land subsidence and possible reversal of

---

<sup>2</sup> Everett, D.E., and Rush, E.F., Water Resources Appraisal of the Huntington Valley Area, Elko and White Pine Counties, Nevada, Water Resources Reconnaissance Series Report 35, p. 23, State of Nevada Department of Conservation and Natural Resources, Division of Water Resources, U.S. Geological Survey, U.S. Department of Interior, 1966.

groundwater gradients which could result in significant changes in the recharge-discharge relationship.<sup>3</sup> The United States Geological Survey estimates that the perennial yield of the Dixie Creek-Tenmile Creek Groundwater Basin is approximately 13,000 acre-feet.<sup>4</sup> The committed groundwater resource in the form of permits and certificates issued by the State Engineer's office to appropriate underground water from the Dixie Creek-Tenmile Creek Groundwater Basin currently exceeds 15,000 acre-feet annually.<sup>5</sup> The State Engineer finds that the current committed groundwater resource of the Dixie Creek-Tenmile Creek Groundwater Basin exceeds the estimated perennial yield of the groundwater basin.

### III.

After all of the subject parties had been properly noticed by certified mail a public hearing in the matter of protested Application 56926 was held on June 12, 1995, in Elko, Nevada. Evidence and testimony were entered into the record of the hearing on behalf of the applicant and the protestant. At the conclusion of the hearing, a verbal agreement was reached between the applicant and protestant to leave the record of the hearing open to allow time for additional discussion to occur towards an

---

<sup>3</sup> State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, October 1971.

<sup>4</sup> Everett, D.E., and Rush, E.F., Water Resources Appraisal of the Huntington Valley Area, Elko and White Pine Counties, Nevada, Water Resources Reconnaissance Series Report 35, p. 30, State of Nevada Department of Conservation and Natural Resources, Division of Water Resources, U.S. Geological Survey, U.S. Department of Interior, 1966.

<sup>5</sup> Special Hydrologic Basin Abstract, Water Rights Database, Basin 48, March 31, 1999.

eventual settlement.<sup>6</sup> A January 15, 1996, deadline was assigned by the hearing officer to submit information to the State Engineer regarding the status of the these negotiations.<sup>7</sup> The State Engineer finds that no information was submitted in regard to this matter by either party on or before the mutually agreed upon deadline, therefore, the record of the June 12, 1995, hearing is closed.

IV.

By certified letter dated January 15, 1999, the applicant and protestant were requested to provide the State Engineer with information relating to resolution of the protest to Application 56926.<sup>1</sup> A response was received from the applicant's agent which stated that the applicant was still interested in pursuing Application 56926 and that two more years would be necessary to determine whether or not there would be a need for the water requested under the application. No response was received from the protestant.<sup>1</sup>

The State Engineer finds that in excess of seven years have passed since Application 56926 was filed and that sufficient time has passed for the applicant to formulate any plans for placing the requested appropriation of water to a beneficial use.

V.

The Spring Creek Utility Company maintains a service area which includes the proposed point of diversion and the proposed place of use described under the subject application.<sup>8</sup> Under the

---

<sup>6</sup> Transcript, p. 4, public administrative hearing before the State Engineer, June 12, 1995, (Hereinafter referred to as "Transcript".)

<sup>7</sup> Transcript, pp. 95-97.

<sup>8</sup> Permit Map No. 38888, official records in the office of the State Engineer.

provisions of NRS § 534.120 the State Engineer may deny applications to appropriate underground water for any purpose in areas where water can be furnished by an entity such as a water district or municipal water company. Exceptions to this law may be considered by the State Engineer in cases where a service connection to an existing water distribution system would involve the expenditure of extreme amounts of money. One of the grounds on which the Spring Creek Utility Company protested Application 56926 was the fact that it was currently providing water service to the Spring Creek Golf Course. The State Engineer finds that municipal water service is currently being supplied to the golf course, the applicant did not provide additional information to warranting the granting of an exception to the provisions established under NRS § 534.120, therefore, Application 56926 must be denied.

VI.

Application 56926 was filed by the Spring Creek Association to appropriate 281 acre-feet of underground water for use upon the Spring Creek Golf Course. It is the applicant's position that this application does not request a new appropriation of underground water, but an appropriation that would be used in conjunction with the utility company's existing water rights, so that the State Engineer's approval of this new supplemental water right would not increase the total combined duty of the utility company's water right account.<sup>9</sup> The Spring Creek Association does not hold any existing permitted water rights within the Spring Creek Utility Company's service area which could be utilized for its golf course, therefore, if a supplemental water right was

---

<sup>9</sup> Transcript, p. 30.

issued for Application 56926 its associated annual duty would have to be held with water rights owned by the utility company. Testimony entered into the record of the June 1995 hearing indicates that the utility company has no intention of allowing an additional water right owned by the Spring Creek Association to be added to its existing total combined duty.<sup>10</sup> The State Engineer finds that the Spring Creek Association can not force the Spring Creek Utilities Company to absorb any water right granted under Application 56926 into its existing combined duty of municipal water rights, therefore, Application 56926 must be considered a stand alone application representing a new appropriation of underground water from the Dixie Creek-Tenmile Creek Groundwater Basin.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>11</sup>

##### II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>12</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.

---

<sup>10</sup> Transcript, pp. 27, 95.

<sup>11</sup> NRS Chapters 533 and 534.

<sup>12</sup> NRS § 533.370(3).

III.

The Dixie Creek-Tenmile Creek Groundwater Basin contributes a portion of its groundwater discharge to the flows of the South Fork of the Humboldt River whose waters were fully adjudicated under the Humboldt River Decree. Application 56926 if approved would allow an additional appropriation of 281 acre-feet of underground water to occur from the Dixie Creek-Tenmile Creek Groundwater Basin reducing its outflow contributions to the South Fork of the Humboldt River and ultimately the amount of water available for appropriation under existing decreed water rights. The State Engineer concludes that the approval of Application 56926 would conflict with existing water rights established under the Humboldt River Decree.

IV.

The committed groundwater resource of the Dixie Creek-Tenmile Creek Groundwater Basin currently exceeds the groundwater basin's estimated perennial yield. The State Engineer concludes that the approval of Application 56926 would add to this imbalance and conflict with existing permits which appropriate underground water from the Dixie Creek-Tenmile Creek Groundwater Basin.

V.

Under the provisions of NRS § 534.120, the State Engineer must deny an application which requests a new appropriation of underground water from within the service area of an established municipal water company. The State Engineer concludes that the approval of Application 56926 would violate NRS § 534.120.

VI.

The State Engineer concludes that to grant an application which would conflict with existing decreed and permitted surface

Ruling

Page 8

and underground water rights would threaten to prove detrimental to the public interest.

**RULING**

Application 56926 is hereby denied on the grounds that its approval would violate the provisions of NRS § 534.120, conflict with existing water rights, and would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 11th day of  
May, 1999.