

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

IN THE MATTER OF APPLICATION 64068 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE DIXIE CREEK/TENMILE )  
CREEK AREA HYDROGRAPHIC BASIN (48), )  
ELKO COUNTY, NEVADA. )

**RULING**  
**#5518**

**GENERAL**

**I.**

Application 64068 was filed on May 1, 1998, by Spring Creek Utilities Company, to appropriate 3.0 cubic feet per second of water from an underground source for municipal purposes. The proposed place of use is described as being located within portions of the W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 2, the S $\frac{1}{2}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$ , Lots 2, 3, and 4 of Section 3, the E $\frac{1}{2}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  NE $\frac{1}{4}$ , Lot 1, SE $\frac{1}{4}$  of Section 4, the N $\frac{1}{2}$  N $\frac{1}{2}$  of Section 9, the N $\frac{1}{2}$  N $\frac{1}{2}$  of Section 10, the W $\frac{1}{2}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 11, all except the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 14, the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 15, the E $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 22 and the N $\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.33N., R.56E., M.D.B.&M.<sup>1</sup> The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 11, T.33N., R.56E., M.D.B.&M.

**II.**

The application was timely protested by Pershing County Water Conservation District of Nevada on the following grounds.<sup>1</sup>

That the granting of said application will effect the water table and drainage and adversely effect the decreed waters of the Humboldt River. Also, basin #48 is already over appropriated.

**FINDINGS OF FACT**

**I.**

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary

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<sup>1</sup> File No. 64068, official records in the Office of the State Engineer.

to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 64068, 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.

Nevada Revised Statute (NRS) 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved. The implementation of this provision of the NRS to the Dixie Creek/Tenmile Creek Area Hydrographic Basin is evidenced by two orders issued by the State Engineer beginning with Order No. 848, which was issued on September 6, 1984. This initial order described and designated the Dixie Creek/Tenmile Creek Area Hydrographic Basin as a groundwater basin in need of additional administration.<sup>2</sup>

By designating the Dixie Creek/Tenmile Creek Area Hydrographic Basin, the State Engineer set the stage for further restrictions related to the appropriation of underground water from the basin. Order No. 1120, issued on April 2, 1996, gave notice that new appropriations of underground water within a portion of the Dixie Creek/Tenmile Creek Area Hydrographic Basin would be denied with the following exceptions:<sup>3</sup>

1. Those applications for any purpose except irrigation which seek to appropriate 4,000 gallons per day or less.
2. Those applications for environmental permits filed pursuant to NRS 533.437.
3. Those applications filed for water from the geothermal aquifer.

The State Engineer finds that new appropriations of water from the Dixie Creek/Tenmile Creek Area Hydrographic Basin that fall within the areas described under Order No. 1120 must comply with the above noted exceptions in order to be considered for approval.

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<sup>2</sup> State Engineer's Order No. 848, official records in the Office of the State Engineer.

<sup>3</sup> State Engineer's Order No. 1120, official records in th Office of the State Engineer.

### **III.**

An examination of Application 64068 shows that the proposed point of diversion and place of use are located within the area described under Order No. 1120 and therefore, must comply with the exceptions listed in Order No. 1120. The amount of water requested is estimated in the remarks section of the application as 326.61 million gallons annually with a diversion rate of 3.0 cubic feet per second. In order to easily compare the quantity of water requested in Application 64068 to the amount that may be allowed in accordance with Order No. 1120, it will be necessary to convert 326.61 million gallons annually to units of gallons per day. By using the appropriate conversion factors, 326.61 million gallons annually equates to approximately 894,209 gallons per day. The applicant's request of approximately 894,209 gallons per day is substantially greater than the 4,000 gallons per day allowed in the exceptions provided in Order No. 1120.

The State Engineer finds that approval of Application 64068 would violate the limitations set forth in Order No. 1120.

### **CONCLUSIONS**

#### **I.**

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

#### **II.**

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:<sup>5</sup>

- 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.

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<sup>4</sup> NRS chapters 533 and 534.

<sup>5</sup> NRS § 533.370(4).

**III.**

State Engineer's Order No. 1120 was issued to safeguard the limited underground water resources of the Dixie Creek/Tenmile Creek Area Hydrographic Basin. The State Engineer concludes that the approval of Application 64068, in its entirety, would be contrary to this effort and would violate the provisions established under State Engineer's Order No. 1120; therefore, Application 64068 must be denied.

**RULING**

Application 64068 is hereby denied on the grounds that its approval would violate the provisions of State Engineer's Order No. 1120. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/TH/jm

Dated this 13th day of  
September, 2005.