

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

IN THE MATTER OF APPLICATION)
76315 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF A SURFACE)
SOURCE WITHIN THE KELLY)
CREEK AREA HYDROGRAPHIC)
BASIN (66), HUMBOLDT COUNTY,)
NEVADA.)

RULING

#5863

GENERAL

I.

Application 76315 was filed on September 20, 2007, by Pacific West Financial Corp. to appropriate 0.00446 cubic feet per second (cfs) from Dog Spring for domestic purposes within the W½ NE¼ of Section 21, T.37N., R.41E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 21.¹

II.

Application 76315 was timely protested, by Jo Hibbs Christison, on the following grounds:¹

Our objection to the application is that the proposed point of diversion is the same as our existing permitted point of diversion of our vested stock water right #02840. (Dog Springs)

There exists NDWR #3129-066, which previously addressed the waters in question. The issuance of application #76315 would create a conflict with an existing valid vested water right and therefore should be denied.

FINDINGS OF FACT

I.

Nevada Revised Statutes § 533.365(3) 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 the State of Nevada. The State Engineer finds that sufficient evidence is available in the

¹ File No. 76315, official records in the Office of the State Engineer.

Office of the State Engineer to evaluate Application 76315 and a hearing is not necessary.

II.

Before an application to appropriate water can be considered for approval, it must be determined that there is sufficient unappropriated water available at the source and that the appropriation will not conflict with existing water rights. A review of records on file in the Office of the State Engineer shows that these issues were previously addressed under the review of prior applications, which also sought to appropriate water from Dog Spring. The first is Application 27856, which was denied by State Engineer's Ruling No. 2103 on the grounds that there was insufficient water available at the source. The Ruling noted that a field investigation was conducted that determined Dog Spring flowed only 1 gallon per minute.² The second is Application 35887, which was denied by State Engineer's Ruling No. 3129 in part on the grounds that the application would conflict with existing water rights. The Ruling found that the Protestant claimed all of the waters of Dog Spring under an existing claim of vested right. It should also be noted that Application 35887 was filed for 0.00446 cfs, the same amount of water that is requested for appropriation under Application 76315. A review of records on file in the Office of the State Engineer confirms that the Protestant has an existing water right claim on Dog Spring under vested claim V-02840.

The State Engineer finds that similar applications to appropriate additional water from the spring source have been denied. The State Engineer finds that Dog Spring is fully appropriated by the Protestant under vested claim V-02840. The State Engineer further finds that the approval of additional appropriations of water from Dog Spring would conflict with the Protestant's existing water rights.

CONCLUSIONS

I.

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

² State Engineer's Ruling No. 2103, dated December 12, 1975, official records in the Office of the State Engineer.

³ NRS chapters 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters 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.

III.

Application 76315 requests an additional appropriation of water from Dog Spring, a water source that is fully appropriated under an existing senior water right and where prior applications to appropriate additional water have been denied. The State Engineer concludes that there is no unappropriated water at the proposed source and the approval of Application 76315 would conflict with the Protestant's existing water rights and thereby threaten to prove detrimental to the public interest.

RULING

The protest is upheld and Application 76315 is hereby denied on the grounds that there is no unappropriated water at the proposed source and its approval would conflict with existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 27th day of
June, 2008.

⁴ NRS § 533.370(5).