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

IN THE MATTER OF PROTESTED) APPLICATIONS 79231, 79232 AND 79233) FILED TO APPROPRIATE THE PUBLIC) WATERS OF SANTA FE CREEK,) SHOSHONE CREEK AND KINGSTON) CREEK, RESPECTIVELY, WITHIN THE) BIG SMOKEY VALLEY – NORTHERN) PART HYDROGRAPHIC BASIN (137B),) LANDER COUNTY, NEVADA.)	**RULING** **#6086**

GENERAL

I.

Application 79231 was filed on January 21, 2010, by Young Bros., a Nevada General Partnership to appropriate 2.0 cubic feet per second (cfs) of water from Santa Fe Creek for non-consumptive use – power generation purposes. The proposed place of use is described as being located within a portion of the NE¼ NE¼ of Section 21, T.16N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 18, T.16N., R.44E., M.D.B.&M.[1] The remarks section of the application indicates that water will be diverted from an existing pipeline into a hydro turbine then returned to the existing stream channel.

II.

Application 79232 was filed on January 21, 2010, by Young Bros., a Nevada General Partnership to appropriate 1.6 cfs of water from Shoshone Creek for non-consumptive use – power generation purposes. The proposed place of use is described as being located within a portion of the NE¼ NE¼ of Section 21, T.16N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 18, T.16N., R.44E., M.D.B.&M.[2] The remarks section of the application indicates that water will be diverted from an existing pipeline into a hydro turbine then returned to the existing stream channel.

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[1] File No. 79231, official records in the Office of the State Engineer.
[2] File No. 79232, official records in the Office of the State Engineer.

III.

Application 79233 was filed on January 21, 2010, by Young Bros., a Nevada General Partnership to appropriate 9.5 cfs of water from Kingston Creek for non-consumptive use – power generation purposes. The proposed place of use is described as being located within a portion of the SW¼ NE¼ of Section 31, T.16N., R.44E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 35, T.16N., R.43E., M.D.B.&M.[3] The remarks section of the application indicates that water will be diverted from an existing pipeline into a hydro turbine then returned to the existing stream channel.

IV.

Applications 79231, 79232 and 79233 were timely protested by Mike Hoffman, Gary Kemp, Emmett O. McKenzie, John Miles and James L. Wood on the following grounds: [1, 2, 3]

> According to the Kingston Creek Final Decree in 1963 and approval of permits 67295, 67296, 67297 the applicants are required to place measuring devices in compliance with these documents. The official ruling dated October 8, 2007 states that approval will be granted subject to "the installation of continuous recording devices that have been approved the the [sic] State Engineer as to their model type and location. These devices will be installed at locations determined by the office of the State Engineer, the cost of their installation, monitoring and continued maintenance will be borne by the water right holders". In a letter dated April 6, 2009 from the State Engineer to the Kingston Town Board it states-"...a USGS style staff gauge must be installed in the structure (Santa Fe and Shoshone Creek) in addition to a water level recorder...B. The measuring device on Kingston Creek must be installed above the confluence of the Santa Fe channel. The measuring device will consist of a 3 foot Parshall Flume with a stilling well, in addition to a USGS staff gauge and a water level recorder." I believe these requirements should be met before any new application are approved.

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 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 Applications 79231, 79232 and 79233 there is

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[3] File No. 79233, official records in the Office of the State Engineer.

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.

Order No. 1209-A issued by the State Engineer on September 15, 2010, concerns the issue of the measuring devices required on Kingston, Santa Fe and Shoshone Creeks per the terms of Permits 67295, 67296 and 67297. Order No. 1209-A concludes that the measuring devices required under Permits 67295, 67296 and 67297 were ultimately installed on the subject creeks on or about July 27, 2010, to the satisfaction of the State Engineer.[4] The State Engineer finds that the required measuring devices have been installed and approved by the Office of the State Engineer; therefore, the protest concerns regarding the measuring devices have been addressed.

III.

The State Engineer finds that the applications are seeking to use water for hydro-electric power generation by diverting water through a power generating facility and then returning the water to the existing stream channel. The State Engineer finds that this non-consumptive use of the water resource will not conflict with existing rights and will not threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:[6]

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 protectable interests in existing domestic wells as set forth in NRS § 533.024; or

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[4] State Engineer's Order No. 1209-A, September 15, 2010, official records in the Office of the State Engineer.
[5] NRS Chapter 533.
[6] NRS § 533.370 (5).

D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the measuring devices required of the Applicant on Kingston, Santa Fe and Shoshone Creeks have been installed per the terms of Permits 67295, 67296 and 67297; therefore, the protests may be overruled.

IV.

Based on the record of evidence available, the State Engineer concludes that approval of Applications 79231, 79232 and 79233 will not conflict with existing water rights and will not threaten to prove detrimental to the public interest.

RULING

The protests are overruled and Applications 79231, 79232 and 79233 are hereby approved subject to existing rights, the continued operation of measuring devices on the subject creeks and payment of the statutory permit fees.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 22nd day of December, 2010.