

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

IN THE MATTER OF APPLICATION 80714)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE WILLOW CREEK)
VALLEY HYDROGRAPHIC BASIN (63))
ELKO COUNTY, NEVADA.)

RULING
#6139

GENERAL

I.

Application 80714 was filed on March 30, 2011, by Rodeo Creek Gold Inc., to appropriate 0.668 cubic feet per second, not to exceed 29.95 acre-feet annually (afa) of water from an underground source for mining purposes. The proposed place of use is described as being located within Sections 33, 34, 35 and 36, T.39N., R.46E., Sections 31, 32, 33, 34, 35 and 36, T.39N., R.47E., Sections 2, 3 and 4, T.38N., R.46E., Sections 1, 2, 12 and 13, T.38N., R.47E., Sections 17, 18, 19, 20, 29, 30, 31, 32, 33 and 34, T.38N., R.48E., Sections 3, 4, 5, 8, 9, 10, 16, 17, 20, 21, 28, 29, 32 and 33, T.37N., R.48E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 35, T.39N., R.46E., M.D.B.&M.¹

II.

Application 80714 was timely protested by the Pershing County Water Conservation District of Nevada on the following grounds:¹

That the granting of said application will affect the water table and drainage and adversely affect the decreed waters of the Humboldt River. Also, Basin #063 is over appropriated.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 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 Application 80714

¹ File No. 80714, official records in the Office of the State Engineer.

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.

The Applicant requests a total duty of water not to exceed 29.95 afa. The water will be pumped from an existing water well drilled by Ruby Pipeline, LLC in support of the Ruby Pipeline Project (Project); the well is located on public land.² Water right permits were issued to support the construction phase of the Project within Nevada. The subject well was drilled under water right Permit 78862 and the associated permit terms state:

This permit is issued solely for construction and related purposes for the Ruby Gas Pipeline Project and will expire upon completion of the pipeline project, as provided in NRS 533.045 and NRS 534.120(1). The permittee shall notify the State Engineer within thirty (30) days of project completion that the diversion of water from this location for this segment of pipeline construction is no longer necessary and the State Engineer will cancel the permit and the well shall be plugged and abandoned as provided in Nevada Administrative Code 534.427.

The Applicant proposes to use the well for dust suppression and road maintenance on access roads in and around the Hollister Mine Project as shown on the proposed place of use map. It is estimated that a 4,000 gallon water truck will be filled twice every hour, ten hours per day during the months of June through September.

The State Engineer finds that the manner of use of water proposed under Application 80714 is, by nature of its activity, a temporary use and any application to change the manner of use granted will be subject to additional determination and evaluation with respect to the permanent effects on existing rights and the resource within the groundwater basin.

² Well Driller's Report, Well Log No. 112014, filed September 24, 2010, official records in the Office of the State Engineer.

III.

The combined perennial yield of Hydrographic Basins 62 (Rock Creek Valley) and 63 (Willow Creek Valley) is 2,800 afa.³ The raw total for committed groundwater is 2,260 afa and 5,720 afa, respectively. For Rock Creek Valley, 2,237.14 afa of groundwater is for mining and milling purposes and 23.29 afa is for stockwatering purposes.⁴ For Willow Creek Valley, 462.50 afa of groundwater is for mining and milling purposes, 77.62 for construction, 181 afa for environmental, 4,929.07 afa for irrigation, 58.01 for quasi-municipal, and 12.18 for stockwater.⁵

Of the 77.62 afa of water issued for construction purposes in Willow Creek Valley, 72 afa are permits issued for the Project and those permits will be cancelled upon completion of the pipeline construction per the terms of the permit. The 181 afa for environmental was issued to Newmont USA, Limited, and the terms of the permit state that, "It is understood that the amount of water herein granted is only a temporary allowance for pollution control as mandated by orders issued by the Nevada Division of Environmental Protection and subsequent correspondence with said agency. The right will cease to exist upon termination of clean up activity as determined by the Nevada Division of Environmental Protection." For the 462.50 afa and the 2,237.14 afa for mining and milling in the two hydrographic basins, the State Engineer considers the groundwater used in mining and milling to be a temporary use of water and as such is not considered in the long-term committed resource analysis for the basin.

For the 4,929.07 afa of irrigation in Willow Creek Valley, the State Engineer considers whether the groundwater is supplemental to a surface water source and the amount of groundwater that is consumptively utilized for irrigation. In this instance, the entire duty of water is contained within two permits; Permits 45107 and 46559. Both permits are comingled and supplemental to decreed and permitted surface waters.⁶ In a study of groundwater use for irrigation within the Middle Humboldt River Basin, it is

³ Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, Oct. 1971.

⁴ Special Hydrographic Basin Abstract, Water Rights Database, Rock Creek Valley Hydrographic Basin (062), July 6, 2011, official records in the Office of the State Engineer.

⁵ Special Hydrographic Basin Abstract, Water Rights Database, Willow Creek Valley Hydrographic Basin (063), July 6, 2011, official records in the Office of the State Engineer.

⁶ See File No. 28983, official records in the Office of the State Engineer.

noted that no groundwater was pumped for irrigation purposes within the Willow Creek Valley Hydrographic Basin.⁷ When groundwater rights are used as supplemental to surface water sources, it is expected that the groundwater permit so issued will not be utilized until the surface water becomes unavailable, and then only to make up for the difference between the surface water available and the right allowed. Thus, it is expected that a supplemental groundwater right will not be used to its full allocation, depending on the availability of the overlying surface water. Upon consideration of the temporary uses and the nature and limitation of the water rights issued for irrigation, the State Engineer finds the Applicant's request for the temporary use of 29.95 afa of groundwater can be considered for approval.

IV.

The space between the well casing and the wall of the well boring, is the "annular space," and is required to be sealed to prevent it from being a preferential pathway for the movement of poor quality water, pollutants, and contaminants. A secondary purpose of the annular seal is to isolate the well intake section or screen to one water-bearing unit and to minimize interaction with surface water sources and shallow aquifers.

The Well Driller's Report shows that the well was completed with a 110 foot annular seal. The depth of the seal insures that water is pumped from discrete water-bearing structures deep within the groundwater aquifer. Below the annular seal, the lithologic log shows sandy clay from a depth of 100 feet to 160 feet and the log indicates that this is not a water bearing strata. The next interval, which is a water bearing strata, is sand/gravel from 160 feet to 230 feet; however, the well has no perforations at this level and is screened at a much deeper depth with mill-slotted perforations occurring from 320 feet to 440 feet. The only perforated portion of the well where water can enter the well casing is from 320 feet to 440 feet.⁸

The State Engineer finds that the withdrawal of groundwater, as requested under Application 80714, will not impair Humboldt River water users.

⁷ Russell W. Plume, *Ground-Water Use, Locations of Production Wells, and Areas Irrigated Using Ground Water in 1998, Middle Humboldt River Basin, North-Central Nevada*, Water-Resources Investigations Report 03-4227, United States Geological Survey and Nevada Department of Conservation and Natural Resources, p.13, 2003.

⁸ Well Driller's Report, Log No. 112014, filed September 24, 2010, official records in the Office of the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰

- 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.

Based on the findings, the State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the requirements of the requested appropriation, the proposed use of water will not conflict with existing water rights within the Willow Creek Valley Hydrographic Basin or the Humboldt River, and the granting of Application 80714 does not threaten to prove detrimental to the public interest.

RULING

The protest is overruled and Application 80714 is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 10th day of
August, 2011.

⁹ NRS Chapters 533 and 534.

¹⁰ NRS § 533.370(5).