

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

IN THE MATTER OF APPLICATION 80901)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE WINNEMUCCA SEGMENT)
HYDROGRAPHIC BASIN (70), HUMBOLDT)
COUNTY, NEVADA.)

RULING

#6158

GENERAL

I.

Application 80901 was filed on June 13, 2011, by Diamond Plastics to appropriate 1.0 cubic foot per second with an anticipated annual consumptive use of 7.9 million gallons of underground water for industrial purposes. The proposed place of use is described as being located within portions of the S½ SE¼ of Section 20 and the N½ NE¼ of Section 29, T.36N., R.40E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 29, T.36N., R.40E., M.D.B.&M. Information contained within the remarks section of the application indicates that the Applicant intends to use this water to supplement Permit 60423 for a PVC pipe manufacturing plant for which the actual annual use is in excess of 16 million gallons.¹

II.

Application 80901 was timely protested by Pershing County Water Conservation District of Nevada on grounds not considered in this ruling.¹

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 sufficient evidence is available in the Office of the State Engineer to evaluate the merits of Application 80901 and a hearing is not necessary.

II.

An examination of the records of the State Engineer show that the Applicant owns Permit 60423, Certificate 18101. Certificate 18101 was issued on August 24, 2011, to

¹ File No. 80901, official records in the Office of the State Engineer.

Diamond Plastics Corporation for industrial and domestic purposes in the amount of 0.68 cubic feet per second, but not to exceed 24.24 acre-feet annually (afa). The point of diversion of Permit 60423, Certificate 18101 is the same as that described in Application 80901. Totalizing meter readings submitted with the Proof of Application of Water to Beneficial Use, received on February 16, 2010, for Permit 60423 show that 30.3 acre-feet was pumped between March 2009 and March 2010. The terms of Permit 60423 state that monthly records shall be kept of the amount of water pumped from this well and the records submitted to the State Engineer on a quarterly basis within 15 days after the end of each calendar quarter. A review of these records shows that more water has been diverted from the well than was approved under Permit 60423 for each of the calendar years of 2004 through 2010. The most significant overpumpage occurred during the years of 2004 and 2008 when 42.6 and 40.57 afa were diverted, respectively. The State Engineer finds that the Applicant's filing of Application 80901 proposes to mediate the overpumpage of water from the well under Permit 60423.

III.

Nevada Revised Statute § 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 application of this provision to the Winnemucca Segment Hydrographic Basin is evidenced by State Engineer's Order No. 464, which was issued on July 24, 1972.² This initial order described and designated the Winnemucca Segment Hydrographic Basin as a groundwater basin in need of additional administration.

By designating the Winnemucca Segment Hydrographic Basin, the State Engineer set the stage for further restrictions relating to the appropriation of underground water from this area. State Engineer's Order No. 1170 issued on August 7, 2003, denied new appropriations of groundwater from the Winnemucca Segment Hydrographic Basin with the exception of water right applications filed for commercial, industrial, stockwater or wildlife purposes that seek to appropriate 1,800 gallons per day or less and where the property is zoned for such purposes. An exception was also made for water right applications that were filed for environmental remediation projects pursuant to NRS §

² State Engineer's Order No. 464, dated July 24, 1972, official records in the Office of the State Engineer.

533.437.³ The State Engineer finds that due to the amount of water requested, Application 80901 does not qualify for exception under State Engineer's Order No. 1170.

IV.

The State Engineer finds that Order No. 1170 was designed to provide water service to those properties that could not receive water from a water purveyor or municipality and to the same extent as that of a domestic well as provided under NRS § 533.013 and NRS § 534.180.

V.

The State Engineer finds that approving an additional appropriation of water for similar purposes at the same place of use of an existing permit in a basin that is fully appropriated will conflict with existing rights and is not in the public interest.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

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

III.

Water right applications that request new appropriations of underground water for an amount greater than 1,800 gallons per day for industrial purposes from the Winnemucca Segment Hydrographic Basin are denied pursuant to State Engineer's Order No. 1170. Water right applications that request new appropriations of underground water for any amount where an existing permit is appurtenant for similar purposes are denied pursuant to

³ State Engineer's Order No. 1170, dated August 7, 2003, official records in the Office of the State Engineer.

⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.370(2).

State Engineer's Order No. 1170. The State Engineer concludes that the approval of Application 80901 would violate the provisions of State Engineer's Order No. 1170 and would thereby threaten to prove detrimental to the public interest.

RULING

Application 80901 is hereby denied on the grounds that its approval would violate State Engineer's Order No. 1170 and thereby would thereby threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 19th day of
January, 2012.