

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

IN THE MATTER OF APPLICATION 83348 FILED)
IN ACCORDANCE WITH STATE ENGINEER'S)
ORDER NO. 1232, DATED DECEMBER 12, 2013,)
TO PROVIDE ADDITIONAL MANAGEMENT OF)
EXISTING WATER RIGHTS AT THE TWIN)
CREEKS MINING PROJECT WITHIN THE)
KELLEY CREEK AREA HYDROGRAPHIC BASIN)
(66), HUMBOLDT COUNTY, NEVADA.)

RULING

#6273

GENERAL

I.

Application 83348 was filed on December 27, 2013, by the Santa Fe Pacific Gold Corporation to comply with State Engineer's Order No. 1232, dated December 12, 2013, for mining, milling and dewatering purposes. The application was filed for 30.75 cubic feet per second (cfs) with a consumptive use limit of 10,125 acre-feet annually (afa), which is the current amount of existing water rights associated with the Twin Creeks Mining Project. The proposed point of diversion is the approximate centroid of the mine described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 29, T.39N., R.43E., M.D.B.&M. The proposed place of use is the Twin Creeks Mining Project described in its entirety in Attachment "A" of the application and generally located within portions of T.38N., R.42E.; T.38N., R.43E.; T.39N., R.42E.; T.39N., R.43E.; T.40N., R.43E., M.D.B.&M.¹

II.

Application 83348 was protested by the Humboldt River Basin Water Authority on grounds as summarized below:¹

Basin 66 is a designated basin and managed by the Nevada State Engineer in conjunction with designated basins 64 and 65, and there is no unappropriated water available. Evaporative losses from the Twin Creeks Pit Lake have been estimated at 12 acre-feet per year and the State Engineer has indicated that this amount is not factored into the water budget for Basin 66. Currently, permitted non-temporary groundwater

¹ File No. 83348, official records in the Office of the State Engineer.

rights and evaporative losses from the Twin Creeks Pit Lake total 49,105.38 acre-feet and existing temporary mining rights total 31,111.18 acre-feet, collectively exceeding the safe yield of Basins 64, 65 and 66 by 8,216.56 acre-feet. Base applications were filed in 1985 and have been continuously revised through applications to change the manner and place of use or filing of new applications over the past 29 years, a period of time which severely challenges the notion that mining of groundwater as being a beneficial use because it is temporary and the basin can recover when pumping ceases. The long term mining of groundwater in Basin 66 may have and/or likely will have adverse effects upon existing groundwater rights and decreed rights of the Humboldt River and may have and/or likely will have adverse effects upon the environment. Notwithstanding the recognized benefits of mining to Nevada's economy, the aforementioned long term mining of groundwater in Basin 66 may not be in the public interest. Order 1232 requires "the operator to file one application equal to the total amount of water presently held for mining purposes." The application should have been filed as a change application rather than a new application for water rights. The Applicant holds both existing mining/milling and dewatering rights. The application appears to support a beneficial use not specifically addressed in Order 1232. The amount requested (10,125 acre-feet) appears excessive. The Applicant should be required to breakout how much water is being requested for mining and milling and for dewatering. The Applicant should be required to obtain a permanent water right covering the amount of annual evaporation to result from maintenance or expansion of the pit lake.

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(4) 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 Nevada. The State Engineer finds that in the case of protested Application 83348 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.

State Engineer's Order No. 1232, dated December 12, 2013, establishes rules within a portion of the designated Kelley Creek Area Hydrographic Basin related to the Twin Creeks Mining Project. The purpose of the Order is to create a single permit at the mine site which consolidates all previously permitted mining water rights issued to the Applicant. From a single permit, such as the one contemplated by Application 83348, the Applicant can file temporary change applications once per year to account for all water pumped at the mine site for mining, milling and dewatering purposes, and it allows the Applicant to drill multiple points of diversion under the permit. The issuance of a single permit significantly reduces the number of potential future change applications filed by the Applicant and reduces the processing time for applications which are filed. Orders similar to Order No. 1232 at other mine sites have proven an effective permit management tool for the Division as the reduction in paperwork is beneficial to the Division and the Applicant, does not change the amount of water appropriated or used, adds to the reporting requirements of the mine, and does not change the frequency of reporting.

The State Engineer finds that Application 83348 was correctly filed in accordance with Order No. 1232. The State Engineer finds that Application 83348 will have the effect of consolidating all of Applicant's mining permits under a single permit to provide for a more efficient management of the mine's water right permits and future change applications.

III.

The protest alleges that Hydrographic Basin No. 66 is a designated basin and managed by the Nevada State Engineer in conjunction with designated basins 64 and 65, that there is no unappropriated water available, and that the committed groundwater resource consisting of temporary mining and milling and permanent permits and certificates exceed the safe yield of the basins. The protest notes that the base applications were filed in 1985 and have been continuously revised through applications to change the manner and place of use or filing of new applications over the past 29 years, severely challenging the notion that mining of groundwater as being a beneficial use because it is temporary and the basin can recover when pumping ceases. In addition, Protestant asserts that the long term mining of groundwater in Basin 66 may have, and/or

likely will have adverse effects upon existing groundwater rights and decreed rights of the Humboldt River and may have and/or likely will have adverse effects upon the environment.

Application 83348 is not requesting a new appropriation of water; rather, the application is filed to comply with State Engineer's Order No. 1232, and is not changing the mining operation's use of water, as stated in the application. The application was filed by the Applicant as directed by the Division for the total amount of water previously appropriated by the mine. Twin Creeks mine is allowed a diversion rate of 30.75 cfs, but is limited to a consumptive use of 10,125 afa. Water pumped in excess of the consumptive use is generally considered dewater and specific conditions apply to this water. The Twin Creeks mine is required to track water usage on a monthly basis and submit this information on a quarterly basis. The items reported include the total volume of water pumped from each diversion, the maximum flow rate from each diversion in cfs, the pumping water level in each well in feet above mean sea level, the volume of water consumptively used for mining and milling purposes, the amount of water diverted to the infiltration or injection sites, if any, and the amount of water lost through evaporation or other system losses project-wide.² This information is available from the State Engineer's office to the public upon request.

The issues raised by the Protestant regarding the perennial yield of the basin and committed resources is not correct because the water is already appropriated and is accounted for in the basin budget; thus, Application 83348 does not change the amount of water allowed to be pumped. These issues, in addition to arguments that long term mining of groundwater will have adverse effects upon the environment, were addressed in the approval of the Twin Creeks Mine appropriative permits, which, as the Protestant noted, were filed as far back as 1985.³ The water could be pumped at current points of diversion if Application 83348 was denied; or, it could be pumped at current points of diversion if Application 83348 is approved. Either way, the regional impact on the basins would not change.

² See, e.g., File No. 61142, official records in the Office of the State Engineer.

³ See State Engineer's Ruling No. 3606, dated May 19, 1989, official records of the Office of the State Engineer.

The State Engineer finds that the application does not increase the appropriation of water at the mine and does not change the consumptive use limitations. The State Engineer finds that the issue of water available for appropriation was settled with the issuance of existing appropriative permits and is not relevant to Application 83348. The State Engineer finds the Twin Creeks Mine reports its water usage, including a breakdown on mining and milling and dewatering uses on a quarterly basis and that this information is publically available. The State Engineer finds the proposed application will have no additional impact on the Kelley Creek Hydrographic Basin.

IV.

The protest indicates that the Applicant should be required to obtain a permanent water right covering the annual amount of evaporation for maintenance or expansion of pit lake evaporation that will result from the proposed mining operation. The protest also states that “Evaporative losses from the Twin Creeks Pit Lake have been estimated by the Nevada Division of Water Resources at 12 acre feet per year.” The Applicant’s existing water rights provide for a consumptive use of 10,125 afa and for the last three years the Applicant has reported consumptive water use of approximately 5,500 afa, 5,800 afa, and 5,900 afa, for 2011, 2012 and 2013, respectively. The application under review is to create a single permit at the mine site and is not related to any appropriation for future pit lake evaporative losses. Currently, there is no pit lake at the mine and the mine is actively backfilling the pit; therefore, the final size of any future pit lake cannot be determined at this time. Since a pit lake does not exist at this time, the State Engineer finds that this protest issue is not germane to the application currently under consideration.

CONCLUSIONS

I.

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

⁴ NRS Chapters 533 and 534.

II.

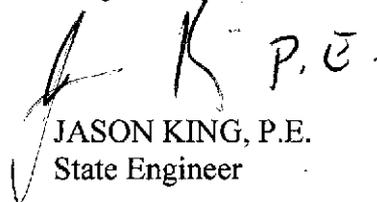
Based on the findings contained herein, the State Engineer concludes that the protest to Application 83348 is without merit and is overruled.

RULING

The protest is overruled and Application 83348 is hereby approved subject to:

1. Existing rights;
2. Payment of the statutory permit fee; and
3. State Engineer's Order No. 1232.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 3rd day of
April, 2014.