

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

IN THE MATTER OF APPLICATION 85216)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE DIXIE CREEK – TENMILE)
CREEK AREA HYDROGRAPHIC BASIN (48),)
ELKO COUNTY, NEVADA.)

RULING

#6331

GENERAL

I.

Application 85216 was filed on June 4, 2015, by SFG, LLC, to appropriate 0.2 cubic feet per second of the groundwater within the Dixie Creek – Tenmile Creek Area Hydrographic Basin for industrial purposes from January 1st through December 31st of each year. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 25, T.32N., R.55E., M.D.B.&M. The proposed place of use is described as being located in portions of the E½ NE¼ and NE¼ SE¼ of said Section 25. In the remarks in the attachment to Application 85216, the Applicant states that the total consumptive use will be 22.42 acre-feet annually (afa).¹

II.

Application 85216 was timely protested by Pershing County Water Conservation District of Nevada on the grounds that the granting of Application 85216 would affect the water table and drainage and adversely affect the decreed waters of the Humboldt River and that Basin 048 is over-appropriated.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 the state of Nevada. The State Engineer finds that 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.

¹ File No. 85216, official records in the Office of the State Engineer.

II.

In the answer to the protest, the Applicant asserts the belief that the proposed point of diversion and place of use are within the boundaries of the South Fork Area Hydrographic Basin (046) and not within the Dixie Creek – Tenmile Creek Area Hydrographic Basin (048). By plotting the point of diversion as described in Application 85216 and the basin boundary data in the office of the State Engineer, it can be seen that the proposed point of diversion is about one-quarter mile north of the administrative boundary between the South Fork Area Hydrographic Basin and the Dixie Creek – Tenmile Creek Area Hydrographic Basin, placing it within the latter basin.¹

The State Engineer finds that the Applicant proposes to appropriate 22.42 afa of groundwater in the Dixie Creek – Tenmile Creek Area Hydrographic Basin, which is a designated basin, from January 1st through December 31st of each year.

III.

State Engineer's Order No. 848, dated September 6, 1984, designated and described the Dixie Creek – Tenmile Creek Area Hydrographic Basin as a groundwater basin in need of additional administration.²

State Engineer's Order No. 1120, dated April 2, 1996, applied additional regulation for the designated Dixie Creek – Tenmile Creek Area Hydrographic Basin. Order No. 1120 stated that all applications to appropriate groundwater pursuant to Chapter 534 would be denied within a portion of the area described under Order No. 848. The only exceptions were:

- (1) Those applications for any purpose except irrigation, which seek to appropriate 4,000 gallons per day or less.
- (2) Those applications for environmental permits filed pursuant to NRS § 533.437.
- (3) Those applications filed for water from the geothermal aquifer.³

The maximum diversion that can be achieved in one year at a rate of 4,000 gallons per day is 4.48 acre-feet. The State Engineer finds that Application 85216 was filed to appropriate water for industrial purposes over the duty allowed per Order No. 1120.

² State Engineer's Order No. 848, dated September 6, 1984, official records in the Office of the State Engineer.

³ State Engineer's Order No. 1120, dated April 2, 1996, official records in the Office of the State Engineer.

CONCLUSIONS OF LAW

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 a permit under 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.

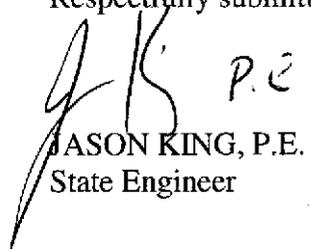
III.

The State Engineer concludes that Application 85216 seeks to appropriate 22.42 afa of groundwater within the Dixie Creek – Tenmile Creek Area Hydrographic Basin for industrial purposes; therefore, the approval of Application 85216 is prohibited by Order No. 1120, and approval of the application would threaten to prove detrimental to the public interest.

RULING

Application 85216 is hereby denied on the grounds that its approval is prohibited by State Engineer's Order No. 1120 and approval of the application would 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 12th day of
January, 2016.

⁴ NRS 533 and 534.

⁵ NRS § 533.370(2).