

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

IN THE MATTER OF APPLICATION 64021,)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE AND MANNER OF USE)
OF A PORTION OF THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED UNDER PERMIT 11870,)
CERTIFICATE 4122, FROM WITHIN THE)
LAKE TAHOE GROUNDWATER BASIN (6-90),)
WASHOE COUNTY, NEVADA.)

RULING

4682

GENERAL

I.

Application 64021 was filed on April 3, 1998, by Harveys Casino Resorts to change the point of diversion, place and manner of use of 0.08276 cubic feet per second (cfs), not to exceed 59.887 acre-feet annually, a portion of the underground water previously appropriated under Permit 11870, Certificate 4122. The proposed manner of use is for municipal purposes within the City of Incline Village, more specifically defined as Sections 1, 2, 3, 9, 10, 11, 13, 14, 15, 16, 17, 19, 21, 22, and 23, W $\frac{1}{2}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 24, portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, S $\frac{1}{2}$ of Section 8, W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 12, E $\frac{1}{2}$ of Section 18, and portions of the W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 30, all within T.16N., R.18E., M.D.B.& M. The existing point of diversion was from an underground source located within Douglas County, more specifically defined as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, T.13N., R.18E., M.D.B.& M. The proposed point of diversion is described as being an existing Lake Tahoe intake facility described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16, T.16N., R.18E., M.D.B.&M., Washoe County, Nevada.¹

FINDINGS OF FACT

I.

By State Engineer's Order No. 956, the State Engineer described and designated the Lake Tahoe Groundwater Basin as a basin in need

¹ File No. 64021, official records in the office of the State Engineer.

of additional administration.² The State Engineer finds that both the existing and proposed points of diversion and existing and proposed places of use described within Application 64021 are located within the boundaries of the Lake Tahoe Groundwater Basin.^{1,2}

II.

The appropriation of water allowed under Permit 11870, Certificate 4122, is from an underground source located within the NW¼ SE¼ of Section 27, T.13N., R.18E., M.D.B.&M.³ The existing point of diversion consists of an 8 inch diameter well constructed in 1947 to a depth of 100 feet.³ This appropriation granted a right to beneficially use the underground waters⁴ from an aquifer⁵ within the Lake Tahoe Groundwater Basin. The perfection of these underground waters occurred in accordance with the applicable statutes of the Nevada Water Law that govern appropriations of underground water.⁶ The State Engineer finds that the existing appropriation is from an underground source perfected under the laws governing said source.

III.

Application 64021 requests a change in the existing source of the appropriation from a well constructed to divert underground water to a proposed point of diversion that would divert water directly from Lake Tahoe. Nevada Revised Statute § 533.330 requires that an application be for no more than one source. The State Engineer finds that the change in point of diversion as requested under the subject application would represent a change in the source of the appropriation from an underground source to an independent lake water source.

² State Engineer's Order No. 956, dated November 25, 1987, official records in the office of the State Engineer.

³ File No. 11870, official records in the office of the State Engineer.

⁴ NRS § 534.020.

⁵ NRS § 534.0105.

⁶ NRS § Chapters 533 and 534.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁸

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

III.

Should the need arise, the holder of a water right permit can request a change in the original point of diversion with the limitation that the source of the appropriation must remain the same. Typically, a change application, if approved by the State Engineer, acquires the permit terms and provisions originally issued under the base water right permit, including the right to appropriate a portion or all of the water diverted from the original base right source. The State Engineer concludes that the existing appropriation was perfected under NRS Chapters 533 and 534 pertaining to underground waters.

IV.

An application to appropriate water must be limited to water derived from a single source.⁹ Application 64021 requests not only a change in point of diversion, but also a change in the source of appropriation from an underground source to a surface source. The State Engineer concludes that Application 64021 is for a source other than underground water and to approve the application would threaten to prove detrimental to the public interest.

⁷ Ibid.

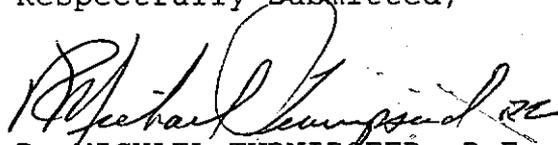
⁸ NRS § 533.370(3).

⁹ NRS § 533.330.

RULING

Application 64021 is hereby denied on the grounds that granting the application would be a change in the source of water and would be detrimental to the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 20th day of
November, 1998.