

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

IN THE MATTER OF APPLICATIONS 54170)
AND 54171 FILED TO CHANGE THE POINT)
OF DIVERSION OF THE WATERS OF LAKE)
TAHOE, HERETOFORE APPROPRIATED UNDER)
PERMITS 52269 AND 52270, RESPECTIVELY)
BY THE GLENBROOK COMPANY IN THE LAKE)
TAHOE BASIN, DOUGLAS COUNTY, NEVADA.)

RULING

#3781

GENERAL

I.

Application 54170 was filed on November 15, 1989, by the Glenbrook Company to change the point of diversion of 0.336 c.f.s., not to exceed 111.76 acre feet annually of water heretofore appropriated under Permit 52269 for irrigation of the Glenbrook Golf Course. The existing point of diversion is described as being within the NW1/4 SE1/4 of Section 10, T.14N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within Lot 2 of Section 10, T.14N., R.18E., M.D.B.&M.¹

Application 54171 was filed on November 15, 1989, by the Glenbrook Company to change the point of diversion of 0.12 c.f.s., not to exceed 36.50 acre feet annually of water heretofore appropriated under Permit 52270 for irrigation of the Glenbrook Golf Course. The existing point of diversion is described as being within the NW1/4 SE1/4 of Section 10, T.14N., R.18E., M.D.B.&M. The proposed point of diversion is described as being within Lot 2 of Section 10, T.14N., R.18E., M.D.B.&M.²

1 State of Nevada Exhibit No. 2, Public Administrative Hearing before the State Engineer, June 26, 1990.

2 State of Nevada Exhibit No. 3, Public Administrative Hearing before the State Engineer, June 26, 1990.

II.

Applications 54170 and 54171 were timely protested by the Glenbrook Homeowners Association on the grounds that:^{3, 4}

Protestant is involved in a lawsuit involving the applicant. One of the issues currently on file with the Nevada Supreme Court is ownership of various water rights, including the supporting or base permits upon which Applications 54170 and 54171 seek to change. The official caption of that action is Glenbrook Homeowners Association v. Glenbrook Company and Glenbrook Properties, Case No. 20096, in the Nevada Supreme Court. The final disposition by the Nevada Supreme Court will affect ownership of these rights.

Protestant is the owner of certain real property across which the proposed intake works of applicant will cross. Protestant has not yet granted a right of way or easement to protestant.

The Parties have previously attempted to resolve all water disputes, and other disputes, through negotiations. At the present time, those negotiations have not resulted in complete settlement.

In accordance with NRS 533.370(3), "...where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the permit asked for." Both elements are present in the instant case, so the State Engineer should withhold action on Applications 54170 and 54171.

³ State of Nevada Exhibit No. 4, Public Administrative Hearing before the State Engineer, June 26, 1990.

⁴ State of Nevada Exhibit No. 5, Public Administrative Hearing before the State Engineer, June 26, 1990.

Additionally, NRS 533.370(2)(b) states that "...the state engineer may withhold action until it is determined that there is unappropriated water or the court action becomes final." The above supreme court action is not yet final.

The protestant requested that the application not be acted upon pending resolution of all issues between the parties.

III.

After proper notice,⁵ a public administrative hearing was held before the State Engineer on June 26, 1990, to provide the protestant and the applicant a full opportunity to present evidence and testimony in support of their respective positions.

FINDINGS OF FACT

I.

The protestant requested that the State Engineer withhold action on Applications 54170 and 54171 until the court action, Glenbrook Homeowners Association v. Glenbrook Company and Glenbrook Properties, Case No. 20096 in the Nevada Supreme Court, becomes final.^{3, 4} This case involves the ownership of water rights including Permits 52269 and 52270 which are the base rights for Applications 54170 and 54171.

The current owner of record in the Office of the State Engineer of Applications 54170 and 54171 and their respective base rights, Permits 52269 and 52270 is the Glenbrook Company.⁶ Procedures exist which allow changing the owner of record of these applications and permits. The State Engineer finds that he can act on Applications 54170 and 54171 and at a later date, if the court rules in favor of the protestants, a change to the new owner of record can be effected.

⁵ State of Nevada Exhibit No. 1, Public Administrative Hearing before the State Engineer, June 26, 1990.

⁶ Public record in the Office of the State Engineer.

II.

In his protests, the protestant stated that the applicant has no easement or right of way over protestant's property for the new water intake line.^{3, 4} The applicant has submitted evidence demonstrating that an easement exists for the new intake line.⁷ The State Engineer finds that he has no jurisdiction to rule on this issue. Furthermore, the approval of Applications 54170 and 54171 does not guarantee a right of way or easement for the new intake line.

III.

In his protests, the protestant claimed that the changes proposed by Applications 54170 and 54171 conflict with existing rights and threaten to prove detrimental to the public interest.^{3, 4} The applicant's consultant stated that the water rights for irrigation of the golf course are entirely separate from the quasi-municipal water rights under control of the protestant.⁸ Additionally, the applicant's consultant stated that it is not necessary for the irrigation water to be treated with chlorine. Allowing these changes, results in much less chlorine being used at the existing point of diversion.⁹ The state Engineer finds that these applications present no conflict with existing rights and no detriment to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.¹⁰

⁷ Applicant's Exhibit No. 11, Public Administrative Hearing before the State Engineer, June 26, 1990.

⁸ Testimony of Applicant's witness, Mr. Milton L. Sharp, page 83, transcript of Public Administrative Hearing before the State Engineer, June 26, 1990.

⁹ Testimony of Applicant's witness, Mr. Milton L. Sharp, page 104, transcript of Public Administrative Hearing before the State Engineer, June 26, 1990.

¹⁰ NRS 533.

II.

The State Engineer may act upon Applications 54170 and 54171 prior to resolution of Nevada Supreme Court Case No. 20096 with no adverse affects suffered by the protestant.

III.

The State Engineer has no jurisdiction to rule on whether or not an easement exists on property owned by the protestant for the proposed water intake line. Approving Applications 54170 and 54171 does not grant an easement.

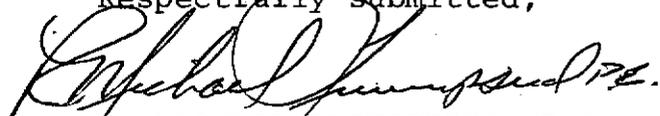
IV.

The approval of Applications 54170 and 54171 presents no conflict with existing rights and does not prove detrimental to the public interest.

RULING

The protests filed by the Glenbrook Homeowners Association to delay action on Applications 54170 and 54171 are overruled. Applications 54170 and 54171 are hereby approved subject to payment of the statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 14th day of
February, 1991