

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

IN THE MATTER OF APPLICATION 70921)
FILED TO CHANGE THE POINT OF)
DIVERSION, PLACE OF USE AND)
MANNER OF USE AND TEMPORARY)
APPLICATION 72354-T FILED TO CHANGE)
THE PLACE OF USE AND MANNER OF)
USE OF A PORTION OF SURFACE WATER)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 27596, CERTIFICATE 9662 WITHIN)
THE TRUCKEE CANYON SEGMENT)
HYDROGRAPHIC BASIN (091), WASHOE)
COUNTY, NEVADA.)

RULING

#5623

GENERAL

I.

Application 70921 was filed on March 4, 2004, by Western Supply Corporation to change the point of diversion, place of use and manner of use of 0.6628 cubic feet per second (cfs) not to exceed 190.09 acre-feet annually, a portion of the Truckee River water previously appropriated under Permit 27596, Certificate 9662, for municipal purposes. The existing point of diversion, place of use and manner of use is described under Permit 27596, Certificate 9662. The proposed place of use is extensive and fully described in "Exhibit B", of Application 70921. The proposed points of diversion are described as multiple diversions to existing Truckee Meadows Water Authority treatment plants, fully described by name and legal description in "Exhibit A", of Application 70921.¹

II.

Application 72354-T was filed on March 8, 2005, by Western Supply Corporation to temporarily change the place of use and manner of use of 0.6628 cfs not to exceed 190.09 acre-feet annually, a portion of Truckee River water previously appropriated under Permit 27596, Certificate 9662, for recreational purposes. The existing point of diversion, place of use and manner of use is described under Permit 27596, Certificate 9662. The proposed place of use is described as being 153.01 acres within the SE¼

¹ File No. 70921, official records in the Office of the State Engineer.

NW¼, SW¼ SE¼, NE¼ SW¼, NW¼ SE¼, NE¼ SE¼, NE¼ NE¼, SW¼ NE¼, SE¼ NE¼, NW¼ NE¼ of Section 19, T. 18N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 31, T.19N., R.18E., M.D.B.&M.²

III.

Certificate 9662 was issued on December 10, 1981, under Permit 27596. Western Supply Corporation is the owner of record of 0.6628 cfs not to exceed 190.09 acre-feet annually and this portion of Truckee River water forms the basis for change Applications 70921 and 72354-T. The manner of use issued under Permit 27596, Certificate 9662, is described as irrigation, stockwater and domestic. The place of use is described as being located within the NE¼ SE¼, NW¼ SE¼, SE¼ SE¼, SW¼ SE¼ of Section 21 and the SW¼ NW¼, NW¼ SW¼, SW¼ SW¼, NE¼ NE¼, NW¼ NE¼ of Section 22, T.19N., R.18E., M.D.B.&M. The point of diversion is described as being located within the NE¼ SW¼ of Section 31, T.19N., R.18E., M.D.B.&M.³

IV.

Application 70921 was timely protested by William Ben Scott and Sandra M. Scott, on the following grounds:²

These protestants are the owners of a portion of the water rights from the Orr Ditch Decree Claim 75 covered by the Application and by granting the Application the State Engineer will exacerbate and perpetuate the cloud upon the title to these water rights. Protestants request a hearing prior to the consideration of the granting of the Application.

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 an administrative hearing is not necessary to consider the merits of this protest.

² File No. 72354-T, official records in the Office of the State Engineer.

³ File No. 27596, official records in the Office of the State Engineer.

II.

The water at issue originated under Truckee River Decree Claim 75/75A (DTR 75/75A). Permit 27596, Certificate 9662 was approved to change the place of use of a portion of water decreed under DTR 75/75A and Application 70921 was later filed to change the point of diversion, place of use and manner of use of a portion of water under Permit 27596, Certificate 9662.

The point of diversion, place of use and manner of use of an existing water right or portion thereof may be changed through the filing of a change application in accordance with the statutory criteria. Part of the review process for change applications consists of checking ownership records on file in the Office of the State Engineer. The change application must be filed in the identical name as the existing water right sought for change or the applicant must update the ownership of the existing water right with the Nevada Division of Water Resources.⁴

A review of DTR 75/75A, Permit 27596 Certificate 9662, and Application 70912 show that documentation has been submitted to the Office of the State Engineer showing that Western Supply Corporation is the owner of record of the portion of water requested for change by Application 70912. The Protestant's claim to the same water has been investigated and rejected based on a review of records in the Office of the State Engineer.

The State Engineer finds that the Applicant is the owner of record of the water sought for change under Application 70912 and the applicant has filed all necessary supporting documentation required under NRS § 533.382 and NRS § 533.383.

III.

In the 2005 legislative session, Senate Bill 62 added language to the Nevada water law regarding the proper venue for resolving conflicting claims of ownership. The Nevada Revised Statutes were amended to read:⁵

The procedures in this chapter for changing the place of diversion, manner of use or place of use of water, and for confirming a report of conveyance, are not intended to have the effect of quieting title to or changing ownership of a water right and that only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right.

⁴ NRS § 533.370(5), NRS § 533.386.

⁵ NRS § 533.024(2).

The State Engineer finds that the Applicant has filed the proper documentation regarding ownership of the water and if the Protestant wishes to make a subsequent conflicting claim of ownership the proper venue for pursuing such a claim is through the courts, as specified in NRS § 533.024(2).

V.

A review of the records in the Office of the State Engineer shows that Application 72354-T was a temporary change application filed at a later date than change Application 70921. Both applications seek to change the same portion of water under Permit 27596, Certificate 9662. The State Engineer finds that if Application 70921 were approved in its entirety, no additional water would exist under Permit 27596, Certificate 9662, to support temporary change Application 72354-T.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁶

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁷

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. or conflicts with protectible interests in existing domestic wells as set forth in NRS 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that the approval of change Application 70921 will not conflict with existing rights, will not conflict with protectible interests in existing domestic wells or threaten to prove detrimental to the public interest.

⁶ NRS chapter 533.

⁷ NRS § 533.370(5).

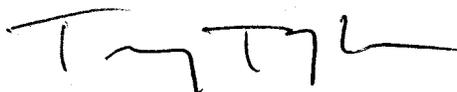
IV.

With the issuance of Permit 70921, the water Application 72354-T sought to change is no longer available and the reason for the temporary application no longer exists. The State Engineer concludes that Application 72354-T is subject to denial.

RULING

The protest to Application 70921 is hereby overruled and the application is approved subject to existing rights and payment of the statutory permit fees. Temporary Application 72354-T is hereby denied on the grounds that, with the approval of Application 70921, there is no remaining water available for change under Permit 27596, Certificate 9662.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 12th day of
July, 2006.