

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

IN THE MATTER OF APPLICATION 61068)
FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS OF)
THE TRUCKEE RIVER PREVIOUSLY)
APPROPRIATED UNDER TRUCKEE RIVER)
CLAIM (DTR) 369, WITHIN THE TRUCKEE)
CANYON SEGMENT HYDROGRAPHIC)
BASIN (91), WASHOE COUNTY, NEVADA.)

RULING
5725

GENERAL

I.

Application 61068 was filed on March 23, 1995, by Ingvar Christensen to change the point of diversion and place of use of 0.181 cubic feet per second (cfs) a portion of water previously appropriated under Truckee River Claim Number 369 (DTR-369). The source of water is the Truckee River (Last Chance Ditch) and the proposed manner of use is for irrigation and domestic purposes, as decreed. The proposed place of use is described as being located within portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, T.18N., R.19E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.19N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.19N., R.18E., M.D.B.&M. The existing point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, T.19N., R.19E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Application 61068 seeks to change the point of diversion and place of use of a portion of DTR-369. When evaluating an application filed to change an existing water right, one part of the review process is to determine if, in fact there is existing water available. In this case, the Applicant has stated on the application and the supporting map the exact location of the existing water rights sought for change.

¹ File No. 61068, official records in the Office of the State Engineer.

The water is described as being appurtenant to 2.31 acres of land located within the NE¼ SE¼ Section 10, T.19N., R.19E., M.D.B.&M. The application map further shows that the area consists of Lots 1, 2, 3, 4, 5, and 6 in Block 1 and Lots 8, 9, 10, and 11 in Block 2 with their respective alleys and streets bounded by Arletta Street to the west and West Second Street to the south. Railroad tracks are indicated to the north of the described area.²

The Office of the State Engineer maps the locations of water under Truckee River claims. By comparing the map showing DTR-369 to Application 61068 and its supporting map, it is clearly shown that the described existing place of use is within an area to the east of DTR 369/370 that has been determined to be dry. In other words, there is no water under DTR-369 or any other Truckee River Claim number appurtenant to the described existing place of use.³

The State Engineer finds that Application 61068 is attempting to change water from an existing place of use where no appurtenant water exists under the described Truckee River Claim.

II.

Records in the Office of the State Engineer show that DTR-369, which forms the basis for change Application 61068, has undergone a series of ownership changes over the years. Currently, there has been no assignment of any portion of DTR-369 to the Applicant and the Applicant is not shown on the Summary of Ownership. In addition, there are no pending assignments of ownership that involve the Applicant.⁴

The State Engineer cannot consider a change application for approval unless the owner of the change application can demonstrate full title to the portion of the water right being changed.

The State Engineer finds that the Applicant has failed to show proof of ownership of any portion of DTR-369, which forms the basis for change Application 61068.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁵

² File No. 61068 and supporting map, official records in the Office of the State Engineer.

³ See, Truckee River Map TR-128, July 1, 2003, official records in the Office of the State Engineer.

⁴ Nevada Division of Water Resources Deeds Database, *Deeds Report for DTR-369*, January 4, 2006.

⁵ NRS chapter 533.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- 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 protectible 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 there is no water available to change as described by Application 61068. The State Engineer further concludes that it is not in the public interest to approve a change application when the source of water does not exist; therefore, Application 61068 is subject to denial.

IV.

The State Engineer concludes that to grant a permit under change Application 61068 when the Applicant has failed to prove ownership of any portion of the water under DTR-369, which forms the basis for the change application, would threaten to prove detrimental to the public interest.

RULING

Application 61068 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/lt

Dated this 13th day of
March, 2007.

⁶ NRS § 533.370 (5).